

## Hitting the Highlights

*New and Important Changes from the June 2016  
Clery Handbook*

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## Important Note

We cannot cover every change.

**Today's session will hit some of the key  
changes, clarifications, and confirmations.**

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## Today's Agenda

### Critical Foundations:

CSAs & Geography

### Reporting:

Crime Statistics & Crime Log

### Putting it All Together:

Drafting, Publication, Distribution, Updates

## Why is all of this important?

- **2005 and 2011 Handbooks --**
  - “The views expressed herein do not necessarily represent the positions or policies of the U.S. Department of Education”
- **2016 Handbook --**
  - “The handbook reflects the Department’s interpretations and guidance as of the date of publication.” (1-4)
  - “It is intended for use by the Department’s program reviewers who are responsible for evaluating an institution’s compliance with the requirements as well as postsecondary institutions and outside reviewers. (1-4)

## **Building Blocks to Compliance: CSAs & Geography**

## **Who are your CSAs?**

*Same definition, but now some expanded examples*

## Read your policies!

### CSA Category #3

Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.

- If you direct the campus community to report criminal incidents to anyone or any organization in addition to police or security-related personnel, then that individual or organization is a CSA.
- May include:
  - Title IX Coordinator
  - Physicians in a campus health center
  - **\*Counselors, including peer counselors**
  - Health educators, including peer health educators
- **\*Limited exemption for professional and pastoral counselors acting in that role.**

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## Consider the function, not the title

### CSA Category #4

An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings.

*\*Official = any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.*

- ✓ Dean of students who oversees student housing, a student center, or student extracurricular activities
- ✓ Director of athletics and **all athletic coaches, including part-time and graduate assistants**
- ✓ **Faculty advisor to a student group**
- ✓ Student resident advisor or assistant
- ✓ Coordinator of Greek Affairs
- ✓ **Title IX Coordinator**
- ✓ **Ombudsperson, including student ombudpersons**
- ✓ **Director of a campus health or counseling center**
- ✓ **Victim advocates or others who are responsible for providing victims with advocacy services such as assisting with housing relocation, disciplinary action or court cases**
- ✓ **Members of a SART or other sexual assault advocates**

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**IMPORTANT:  
Limit Regarding  
Indirect Knowledge of CSA**

CSAs are responsible for reporting allegations of Clery Act crimes that are reported to them in their capacity as a CSA. *This means that CSAs are not responsible for investigating or reporting incidents that they overhear students talking about in a hallway conversation; that a classmate or student mentions during an in-class discussion; that a victim mentions during a speech, workshop, or any other form of group presentation; or that the CSA otherwise learns about in an indirect manner.*

- Handbook at 4-5

## Clery Geography

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## 2016 Handbook -- Geography Snapshot (Chapter 2)

Did not change the geographic definitions

### *On-Campus:*

Institution-associated Entities & Reasonably Contiguous

### *Student Housing:*

Third Party Agreements & Parking/Dining Facilities

### *Non-Campus:*

Mobile Classrooms & Overnight Trips

### *Separate Campus:*

Organized Program of Study/Transition from Non-C

### On-Campus #1

## Institution-associated entity

Handbook at 2-2 & 2-3

- Institution-associated entity may include
  - Foundation
  - Holding company
  - Subsidiary
  - Alumni association
  - Athletic booster club
  - Hospital or medical center
- Institution-associated hospital/medical center
  - Overlapping faculty/doctors
  - Overlapping boards of directors or officers
  - Used as part of educational program
  - Geographic proximity
  - Ongoing relationship
  - Whether students consider the hospital or medical center to be part of the campus
- \*State ownership (state school)

**On-Campus #2****Reasonably  
Contiguous***Handbook at 2-3*

- One-mile radius of campus border
- DOE says determination is case-by-case
- But if you exclude building within one-mile radius, must be able to explain:
  - E.g., building within one-mile radius but separated from campus by a six-lane highway
- Review your non-campus geography:
  - E.g., are there residence halls that were considered non-campus but fall within reasonably contiguous?
- **Document decision to consider a location non-campus v. on-campus**

**On-Campus Student  
Housing Facilities #1****Third Party  
Agreements***Handbook at 2-9**Note:**Compare to Third-Party  
Agreements under Non-  
Campus.**See Handbook at 2-23 to 2-24*

- Include as on-campus student housing facilities, any building that is owned by a third party that has a:
  - **Written agreement with your institution to provide student housing**
  - **\*Reminder: Still must be “reasonably contiguous” to be deemed an on-campus student housing facility**
    - See Note to the left
  - Does not matter whether student or institution pays rent to third party.
  - May include mixed-use hotels or apartment buildings
    - Include portion leased for student housing (even if unoccupied), common areas, and access areas

## Non-Campus #1

### Overnight Trips

*Handbook at 2-25 to -26*

- **Overnight, school-sponsored trip**
  - One night & not repeated use do not count
- **Repeated Use:**
  - “If your institution sponsors students on an **overnight trip every year and the students stay in the same hotel every year . . .**”
  - Does not matter:
    - Number of days hotel is used
    - If used by the same or different students
- **Short stay-away trips:**
  - “[i]f your institution sponsors short-stay “away” trips of **more than one night** for its students, **all locations** used by students during the trip, controlled by the institution during the trip and used to support educational purposes should be treated as noncampus property.”

## One more Clery Geography Update . . .

### Separate Campuses

*Handbook at 2-6 to 2-8*

- **Organized Program of Study**
  - “Offers courses in education programs leading to a degree, certificate, or other recognized credential”
  - *How broad?*
- **Administrative Personnel**
  - Anyone from director to secretary
  - May be present only once a week
- **New examples:**
  - Research campuses
  - Athletic campuses or complexes
- **Question:**
  - What is the building use?



## **Reporting: Crime Statistics & Crime Log**

## **Crime Statistics**

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## What to Report

Criminal Offenses	VAWA Offenses	Arrests and Referrals for Disciplinary Action	Hate Crimes
<ul style="list-style-type: none"> <li>• Criminal Homicide</li> <li>• Sex Offenses</li> <li>• Robbery</li> <li>• Aggravated Assault</li> <li>• Burglary</li> <li>• Motor Vehicle Theft</li> <li>• Arson</li> </ul>	<ul style="list-style-type: none"> <li>• Dating Violence</li> <li>• Domestic Violence</li> <li>• Stalking</li> </ul>	<ul style="list-style-type: none"> <li>• Liquor law violations</li> <li>• Drug law violations</li> <li>• Illegal weapons possession</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Criminal offenses + larceny-theft, simple assault, intimidation, destruction/damage/vandalism of property motivated by:</i></li> <li>• Race</li> <li>• Gender</li> <li>• Gender identity</li> <li>• Religion</li> <li>• Sexual orientation</li> <li>• Ethnicity</li> <li>• National origin</li> <li>• Disability</li> </ul>

## 2016 Clery Handbook Change

**Hierarchy Rule applies  
ONLY when counting crimes in the  
Criminal Offenses category.**

\*within that category remember  
Homicide/*Sexual Assault* and Arson exceptions

## Let's play that out.

Joe believes that Steve is cheating on him and that there are pictures on Steve's computer to support this belief; he wants to take the computer and confront Steve. Joe does not have free and regular access to Steve's room, but knows that Steve typically leaves his dorm room door unlocked. Joe enters the room at a time when he believes Steve is at the gym. Upon entering the room, however, Joe unexpectedly finds Steve in the room on the phone with another male. Enraged, Joe runs over to Steve knocking him to the floor in the process. Steve is not injured. An RA hears the commotion and calls campus police. Steve tells the police that Joe is just drunk and this was a misunderstanding. The police leave without any arrests or citations. The RA refers Joe to student conduct for underage drinking.

## What to Report

(In Both On-Campus and On-Campus Student Housing)

Criminal Offenses	VAWA Offenses	Arrests and Referrals for Disciplinary Action	Hate Crimes
• Burglary	• Dating Violence	• Liquor law violation	• None

## Sex Offenses

### Rape

- Penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females. **Count one offense per victim.**

### Fondling

- The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. **Count one offense per victim.**

### Incest

- Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. **Count one offense per victim.**

### Statutory Rape

- Sexual intercourse with a person who is under the statutory age of consent. **Count one offense per victim.**

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- **No longer forcible/non-forcible**
- Code as Rape:
  - If force was used or threatened
- Code as Statutory Rape
  - If the victim consented, the offender did not force or threaten the victim, and the victim was under the statutory age of consent (3-6)
  - **Note: Potential typo (3-7)**
- Code as Fondling
  - Fondling is as an element of the other sex offenses, so count the incident as Fondling if that is the only sex offense
  - **Intent clarification (next slide)**

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## Fondling Clarification

### Fondling -- Old Scenario

- **Scenario 9:** A woman is walking on a public sidewalk in front of your campus and a male pinches her buttocks as he runs by her. Classify the incident as one Public Property Forcible Sex Offense **if it's determined that the man's intent was sexual gratification.**

### Fondling -- New Scenario

- **Scenario 7:** A woman is walking on a public sidewalk in front of your campus and a man pinches her buttocks as he runs by her. Include this as one public property Fondling **only if the victim reports that it was sexual in nature.**

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## Hypothetical

- Six females report that an unknown male has walked in to the bathroom while each woman was showering and watched. The male has not attempted to touch any of the women.

## Hypothetical

- Six females report that an unknown male has walked in to the bathroom while each woman was showering and watched. The male has not attempted to touch any of the women.
- No Clery Offense

## Aggravated Assault

An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm.

**Count one offense per victim.** However, if a number of persons are involved in a dispute or disturbance, and the aggressors cannot be distinguished from the victims, count the number of persons assaulted as the number of offenses.

- **Poisoning, which is assault, includes date rape drug (3-10)**
- Weapon used or extent of injury is often deciding factor
- It is not necessary that injury result when a gun, knife or other weapon that could cause serious personal injury is used.
- **The intent to cause death or severe bodily harm can arise after the parties to an incident have already engaged in some consensual contact.**
- Include an attack that requires medical treatment or hospitalization, such as stitches or casting, **regardless of whether or not the victim accepts such assistance.**

## Hypothetical

- Jack slips a date rape drug into Suzanne's drink at a noncampus fraternity house. Jack brings Suzanne to his room, but before they engage in any contact Suzanne passes out. Jack realizes this was been a bad idea and gets Suzanne's friend, Megan, to help take her home. Megan is happy and Suzanne calls him the next day to say thank you. Jack tells his friend Tom the whole story while at lunch and Tiffany, another student, overhears the story and tells her RA.

## Hypothetical

- Jack slips a date rape drug into Suzanne's drink at a noncampus fraternity house. Jack brings Suzanne to his room, but before they engage in any contact Suzanne passes out. Jack realizes this was been a bad idea and gets Suzanne's friend, Megan, to help take her home. Megan is happy and Suzanne calls him the next day to say thank you. Jack tells his friend Tom the whole story while at lunch and Tiffany, another student, overhears the story and tells her RA about the date rape drug.
- **Include:**
  - **one Aggravated Assault in your noncampus category**

## Arson

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

**Count one offense for each distinct incident of Arson occurring on your Clery Act geography.**

- Only fires determined to have been willfully or maliciously set.
  - Includes attempts to burn
  - Includes incidents where an individual willfully or maliciously burns his or her own property
- **Reminder for institutions that have on-campus student housing facilities:** Arsons in on-campus student housing facilities must also be included in your fire statistics.
- **Determination clarification (next slide)**

## Arson Update (3-21)

- All of the evidence for any fire not known to be accidental (such as a cooking fire) must be considered by **the institutional official designated to make such determinations.**
- **WHO IS THIS ON YOUR CAMPUS?**
- Some jurisdictions have specific rules that state that a fire is not to be classified as Arson unless and until a fire marshal makes a determination of malicious burning. **The Clery Act's updated Arson definition does not require that any findings be made by a fire official before classifying an incident.**

## Domestic Violence

A felony or misdemeanor crime of violence committed—

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- **By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;**
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
- **By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.**

- **The relationship between the perpetrator and the victim must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship. (3-38)**
- **Some jurisdictions roommates are covered under the domestic violence laws -- Conflict with Act and Handbook?**
  - **Document conflict**
  - **Treat matters consistently**



## Stalking

Engaging in a **course of conduct** directed at a specific person that would cause a **reasonable person** to fear for **his or her safety or the safety of others**; or suffer **substantial emotional distress**.

- Course of conduct:
  - Two or more acts in same calendar year
  - **It is not necessary that all activities in the course of conduct occur on Clery geography**
- Reasonable person:
  - Under similar circumstances and with similar identities of victim
- Substantial emotional distress:
  - Significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling
- **May include explanation if needed (3-39)**

## Hate Crimes

A criminal offense that **manifests evidence** that the victim was intentionally selected because of the perpetrator's bias against the victim.

Categories of Bias:

- Race
- Gender
- Religion
- Sexual Orientation
- Ethnicity
- **National Origin**
- Disability
- **Gender Identity**

- Must have an underlying:
  - Criminal Offense;
  - Larceny-Theft;
  - Simple Assault;
  - Intimidation; or
  - Destruction/Damage/Vandalism of Property
- Before an incident can be classified as a Hate Crime, **sufficient objective facts** must be present to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias.
- HYPO: writing on the whiteboard.

## Unfounding a Clery Crime -- Updated

### Full Investigation

Cannot designate as unfounded if:

- (a) no investigation was conducted;
- (b) the investigation was not completed; or
- (c) inconclusive or unsubstantiated investigation.

### Formal Determination

False

Baseless

### Proper Authority

Sworn or Commissioned Law Enforcement Personnel

Does not include DA or CSAs who are not sworn or commissioned law enforcement personnel

## The Daily Crime Log

**Applies to every institution  
that has a campus police or security department**

## Required Elements

- ✓ Date it was reported to campus police or security department
- ✓ Date and Time the Crime occurred
- ✓ Nature of the Crime
- ✓ General Location of the Crime
- ✓ Disposition of the Complaint, if known
- ❖ **DO NOT DELETE AN ENTRY ONCE MADE, UPDATE IF NEEDED (5-5)**

## Riddle me this . . .

- In preparation for your ASR, you request reports from your local law enforcement agency.
- On April 3, 2017, as part of the law enforcement agency's response to your request, you receive a report about a crime that occurred on May 3, 2014.
- You cannot match the report to anything on your existing or prior crime logs. What do you do?

## Riddle me this . . .

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- On April 3, 2017, as part of the law enforcement agency's response to your request, you receive a report about a crime that occurred on May 3, 2014.
- You cannot match the report to anything on your existing or prior crime logs. What do you do?
- **Handbook says to “[e]nter the report on the log by the date your campus police or security department received the report from the local law enforcement agency.” (5-5)**

## Putting it All Together:

Drafting, Distribution, Publication,  
and Updating

# ASR Drafting

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## Quick Reminders

- ✓ Firm Deadline of October 1
- ✓ Must be a Single Document
- ✓ Titled Annual Security Report  
(*Annual Security Report and Annual Fire Safety Report*)
- ✓ Tabular Format for Criminal Offenses & VAWA Offenses  
(*Narrative option for Unfounded and Hate Crimes – don't need to break unfounded crimes down by crime type or geography*)
- ✓ No blanks for any stats (place "0")
- ✓ Policy Statements

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## Clery Handbook “Reminder”

Do not just repeat your policy statement from year to year; make sure that the statements of policy actually reflect your institutions’ procedures and practices.

- Handbook at 7-2

## Publication and Distribution of the ASR

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## Meeting Your Deadline -- *Updates*



### Publication

- Multiple campuses?
- May publish one ASR with separate crime statistics (and policies if applicable) (2-6)



### Distribution

- Notification?
- Include those who are not taking courses but are completing thesis or dissertation work (9-8)

## Need to correct your ASR? (9-10 to 9-11)

- If there are any statistical changes or updates to policies after publication:
  - **Re-publish the ASR explaining:**
    - the change,
    - the date of the change, **and**
    - any reasons for the change
  - **Re-notify:**
    - current students and employees **and**
    - prospective students and employees
- **What if older statistics are corrected? (i.e., 2014 statistical error)**
  - **Correct the statistics in all previous ASR that included the statistics**

**The lesson of the 2016 Updates: No one person can handle an institution's Clery Compliance alone.**

## Designate a Point person

- Who will track/train CSAs?
- Who will track Geography?
- Who will determine Arson?
- Who will receive the CSA reports?
- Who will decide whether to issue a timely warning? Is there a protocol in place?
- Who will control/update the crime log?



## Last Handbook Update for Today

Remember to maintain detailed documentation of your compliance with each requirement. Institutions are routinely required to provide this documentation to Department officials during the conduct of program reviews.

- Handbook at 1-6

