FUNDAMENTALS OF THE CLERY ACT

Presented by
The Texas A&M University System
Office of General Counsel
Areas to be Covered

• What is the Clery Act?

• What are the University’s responsibilities?

• How does the Clery Act apply to me?
WHAT IS THE CLERY ACT?
History

Nineteen year old university freshman Jeanne Ann Clery was raped and murdered while asleep in her residence hall room on April 5, 1986.
In Brief

• Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act

• All public and private postsecondary institutions that participate in Title IV student financial assistance programs must comply.

• Enforced by the U.S. Department of Education (ED)
WHAT ARE THE UNIVERSITY’S RESPONSIBILITIES?
The Big Picture

• The Requirements

• Consequences of Noncompliance
The Requirements

Every institution must:
1. Collect, classify and count crime reports and crime statistics
2. Issue campus alerts
   – Timely warning and
   – Emergency notification
3. Publish an annual security report
4. Submit crime statistics to ED
The Requirements (cont.)

• If your institution maintains a campus police or security department, you must keep a daily crime log.

• If your institution has any on-campus student housing facilities, you must:
  – Disclose missing student notification procedures
  – Disclose fire safety information
    • Keep a fire log
    • Publish an annual fire safety report
    • Submit fire statistics to ED
Timely Warning

• Purpose is to alert the campus community to certain crimes in a manner that is timely and will aid in the prevention of similar crimes
  – “Timely” is not defined.
    • Means that a warning should be issued as soon as the pertinent information is available.

• The warning must be issued for Clery Act crimes that are considered by the institution to represent a serious or continuing threat to students and employees.
Emergency Response and Evacuation Procedures

• The institution is required to have and disclose emergency response and evacuation procedures.
  – Test it.
  – Evaluate it.
  – Publicize it.
Emergency or Dangerous Situation Notification

• The institution is required to immediately notify the campus community upon confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on campus.
Differences between Emergency Notification and Timely Warning

**Emergency Notification**
- Scope is any significant emergency or dangerous situation (including, but not limited to, Clery crimes).
- Triggered by an event currently occurring on or imminently threatening the campus.
- Applies to situations that occur on campus.
- Initiate procedures immediately upon confirmation.

**Timely Warning**
- Narrow focus on Clery crimes.
- Is triggered by crimes that have already occurred but represent an ongoing threat.
- Applies to crimes that occur anywhere on your “Clery Geography.”
- Warning issues as soon as the pertinent information is available.
Daily Crime Log

• The purpose of the daily crime log is to record criminal incidents and alleged criminal incidents that are reported to the campus police or security department.

• Crime log entries include all crimes reported to the campus police or security department for the required geographic locations, not just Clery Act crimes.

• Includes crimes that occurred within the patrol jurisdiction of the campus police or security department.
Missing Students

• Requires that institutions have procedures in place that it will follow if any student residing in on-campus student housing is determined to be missing for 24 hours.

• When a student who lives in on-campus housing is determined to have been missing for 24 hours, you have only 24 hours after receiving the report to initiate specific notification procedures.
Missing Students

Sun at 1
- Last time student is seen

Mon at 1
- Student reported missing to officials, including UPD;
- UPD makes official determination that student is missing

Tues at 1
- Emergency contact procedures must be initiated
Fire Safety Information

• Requires that institutions:
  – Maintain a log of all reported fires that occur in those on-campus student housing facilities,
  – Publish an annual fire safety report that contains fire safety policies and fire statistics for each of those facilities, and
  – Submit the fire statistics from the fire safety report annually to ED.
Fire Safety Reporting and Disclosures

• Fire is defined as any instance of open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner.

• Includes all fires that meet the definition regardless of size, cause, or whether the fire results in injury, death, or property damage.
Consequences of Noncompliance

May include:

• Fines of up to $27,500 per violation or

• Limitation, suspension, or termination of the eligibility of the institution to participate in a Title IV, HEA program.
## Fine Actions

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Chart updated as of 5/6/11
HOW DOES THE CLERY ACT APPLY TO ME?
The Big Picture

1. Clery Geography

2. Clery Crimes

3. Collecting Crime Statistics
1. Clery Geography

• Clery geography is important because statistics for Clery crimes that don’t occur within your Clery geography are not included in your Clery statistical disclosures even if your students or employees are involved.
Clery Geography includes:

- On-campus Geography
- Public Property
- Noncampus Buildings or Property
- Separate Campus
On-campus Geography

• For the first part of the on-campus geography definition, your campus includes buildings and properties that meet all of the following criteria:
  – Your institution owns or controls them;
  – They are reasonably contiguous to one another; and
  – They directly support or relate to the institution’s educational purposes.
Example

• A house two blocks from campus that’s owned by your institution and has been converted into an art studio for your students
On-campus Geography

• The second part of the definition for on-campus geography requires that you include buildings and properties that meet all of the following criteria:
  – Your institution owns but does not control them;
  – They are within your campus, or reasonably contiguous to it;
  – They are frequently used by your students; and
  – They are used to support the institution’s educational purposes.
Public Property

• All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.
Street, Sidewalk, Street
Public Parking
Noncampus Buildings or Property

• Include any location (except a separate campus) that:
  – Is owned or controlled by the institution;
  – Supports or is used for the institution’s educational purposes;
  – Is frequently used by students; and
  – Is not considered part of the core campus.
Examples

• You lease a municipal athletic field for team’s home soccer games

• You rent space in a local high school two nights a week for creative writing classes
Noncampus Buildings or Property

• Also include any building or property that is owned or controlled by a student organization if the organization is “officially recognized” by your institution.

• Example
  – House owned by a sorority that is officially recognized by you.
    • If a fraternity or sorority house is located within the confines of the campus on land that is owned by the institution, the building is considered to be “on campus” even if it is owned or controlled by the fraternity or sorority.
Separate Campus

• Consider an additional location a separate campus if it meets all of the following criteria:
  – Your institution owns or controls the site;
  – It is not reasonably geographically contiguous with the main campus;
  – It has an organized program of study; and
  – There is at least one person on site acting in an administrative capacity.
Example

• You have a school of law that has an organized program of study, administrative personnel on-site and is not reasonably contiguous to the main campus.
2. Clery Crimes

The Clery Act requires your institution to disclose three general categories of crime statistics:

• Criminal Offenses
• Hate Crimes, and
• Arrests and Referrals for Disciplinary Action
Attempted Crimes

• Do not differentiate between attempted and completed crimes.

• The only exception to this rule applies to attempts or assaults to murder when the victim does not die. These incidents would be classified as aggravated assaults rather than murders.
Criminal Offenses

• Include:
  – criminal homicide
  – sex offenses (including forcible and non-forcible),
  – robbery,
  – aggravated assault,
  – burglary,
  – motor vehicle theft, and
  – arson
Crime Definitions

• Per the Clery Act, you must classify crimes based on the Federal Bureau of Investigation’s (FBI’s) Uniform Crime Reporting Handbook (UCR).
Criminal homicide offenses

• Separated into two categories:

  – Murder and Non-negligent Manslaughter, and

  – Negligent Manslaughter
Sex Offenses—Forcible

• There are four types of forcible sex offenses:
  – Forcible rape
  – Forcible sodomy
  – Sexual assault with an object
  – Forcible fondling
Example 1

• A female student reports to the campus police that she was forcibly raped in her car in a parking lot on her school’s campus by students from another college.

• Classify this as one on-campus Forcible Sex Offense.
Example 2

• A male student reports that another male student fondled him in a campus building.

• Classify this as one on-campus Forcible Sex Offense if it’s determined that the offender’s intent was sexual gratification.
Example 3

- A female student reports that an unknown male attempted to rape her on a city-owned sidewalk outside a classroom building on campus, but that he was frightened away by another pedestrian before completing the attack.

- Classify this as one public property Forcible Sex Offense.
Example 4

• 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.
Sex Offenses—Non-Forcible

There are two types of non-forcible sex offenses:

- Incest
- Statutory rape
Example of Robbery

• Two students returning to campus from a night at a local bar are approached by three armed men on a city sidewalk outside their residence hall and told to hand over their wallets. The students comply, and the three armed men leave without harming the students.

• Classify this as one Robbery on public property.
Example of Aggravated Assault

• Sarah and Anne had a heated argument at a party at a sorority house owned by the sorority located a mile from the campus. Sarah grabbed a lacrosse stick and repeatedly beat Anne across the back with it, breaking several ribs.

• Classify this as one Aggravated Assault in the noncampus category.
Example of Burglary

• A room in an on-campus dormitory is broken into and a laptop is stolen by a student living down the hall.

• Because the student unlawfully entered the room, classify the incident as one on-campus Burglary and one on-campus student housing facility Burglary.
Examples of Motor Vehicle Theft

• A faculty member’s car is reported stolen from a campus parking garage and is later recovered a block off campus.

• Classify this as one on-campus Motor Vehicle Theft.
Example of Arson

• A resident of a noncampus Greek house sets fire to his couch on the lawn in front of the house in celebration of a school football victory. Investigators determine that the incident was Arson.

• Classify this as one Arson in the noncampus category.
Hate Crimes

- A hate crime is a criminal offense committed against a person or property which is motivated, in whole or in part, by the offender’s bias.
- Bias is a preformed negative opinion or attitude toward a group of persons based on their race, gender, religion, disability, sexual orientation or ethnicity/national origin.
Hate Crimes

Include any offense in the following that is motivated by bias:

- Murder and Non-negligent manslaughter
- Forcible sex offenses
- Non-forcible sex offenses
- Robbery
- Aggravated assault
- Burglary
- Motor vehicle theft
- Arson

- Larceny-theft
- Simple assault
- Intimidation
- Destruction/damage/vandalism of property
Hate Crimes

• 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.
Arrests and Referrals for Disciplinary Action

Include arrests and the number of persons referred for disciplinary action for the following law violations:

• Weapons violations,
• Drug Abuse violations, and
• Liquor Law violations
Example 1

• A dozen students are cited for underage drinking by campus police at a popular off-campus bar.

• Do not include statistics for these violations, as they occurred on private property off campus.
Example 2

- Two nonstudents are arrested during an on-campus football game for possession of cocaine.

- Classify this as two on-campus arrests for Drug Abuse Violations.
Example 3

• Police respond to an incident at a noncampus, institution-owned sorority house where there are underage students drinking at a party. The officers list all 10 of the students in their report, which is forwarded to the campus Judicial Affairs office. A Judicial Affairs official interviews the students and finds that two of them had not been drinking. Those students are not charged. Judicial Affairs continues the disciplinary process against the eight students who were drinking.

• Classify this as 10 noncampus referrals for disciplinary action.
3. Collecting Crime Statistics

- Who?
- What?
- When?
Who?

• The Clery Act requires all institutions to collect crime reports from a variety of individuals and organizations that Clery considers to be “campus security authorities.”

• “Campus security authority” (CSA) is a Clery-specific term that encompasses four groups of individuals and organizations associated with an institution.

• Consider the **function** of that individual or office, not the title.
A CSA is...

• A campus police department or a campus security department of an institution.

• Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department.
A CSA is...

• 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.
A CSA is...

• 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.

• An official is defined as any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.
Examples of CSAs

- A dean of students who oversees student housing, a student center or student extracurricular activities.
- A director of athletics, a team coach or a faculty advisor to a student group.
- A student resident advisor or assistant or a student who monitors access to dormitories.
- A coordinator of Greek affairs.

- A CSA is NOT a faculty member who does not have any responsibility for student and campus activity beyond the classroom.
What?

- The function of a campus security authority is to report to the official or office designated by the institution to collect crime report information, such as the campus police or security department, those allegations of Clery Act crimes that he or she concludes were made in good faith.

- A campus security authority is **not** responsible
  - for determining authoritatively whether a crime took place
  - for trying to convince a victim to contact law enforcement if the victim chooses not to do so
Documentaiton

• If unsure whether an incident is a Clery crime, or even if it’s criminal in nature, you should report it.

• Provide as much information about a criminal incident as possible to aid law enforcement and to categorize the crime.

• Crime reports should include personally identifying information if available.
When?

• Under Clery, a crime is “reported” when it is brought to the attention of a campus security authority by a victim, witness, other third party or even the offender.
  – It doesn’t matter whether or not the individuals involved in the crime, or reporting the crime, are associated with the institution.

• If a campus security authority receives the crime information and believes it was provided in good faith, he or she should document it as a crime report.
Example 1

- A student mentions to her boyfriend that a number of rooms on her dorm floor were broken into during the previous night’s football game. Later that day, her boyfriend tells the athletics director what he heard. The AD asks which dorm it was and what, if anything else, the boyfriend knows about the incident.
Example 1 (cont.)

• Analysis:
  • Clery geography?
  • Clery crime?
  • Report made to CSA in good faith?

• The AD should document the information and forward it to the school’s campus security department per the school’s crime reporting policy.
Example 2

• Ms. Jones, director of Student Housing at your school, gets a call from the director of a counseling center in town. The caller wants to let the director know that four students from the school sought assistance at the center and told the center’s counselors that they had been sexually assaulted on campus and were seeking emotional support. They did not want police investigations.
Example 2 (cont.)

• Analysis:
  • Clery geography?
  • Clery crime?
  • Report made to CSA in good faith?

• These are third party reports and Ms. Jones, having no reason to believe that they were not made in good faith, should document all of the information she was given and forward the reports to the person or office responsible for collecting Clery crime reports at her institution.
Resource

• The Handbook for Campus Safety and Security Reporting (February 2011)

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