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## The Clery Act: Requirements and Legal Issues

Colleges, universities, and other institutions of higher education (IHEs) face several federal legal requirements that pertain to the safety and security of students. One statute that addresses such issues is the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). The Clery Act applies to all domestic IHEs that participate in Title IV of the Higher Education Act's student financial assistance programs. The Clery Act requires covered IHEs to publish a report (by October 1 of each year) disclosing campus crime statistics and campus security policies. The Department of Education (ED) has promulgated regulations implementing the Clery Act. ED's Office of Federal Student Aid conducts reviews to evaluate compliance with the statute and imposes fines on institutions for noncompliance.

### Crime Statistics

The Clery Act instructs covered IHEs to publish an annual security report (ASR) containing crime statistics for the past three years. IHEs must share the ASR with current students and employees, as well as with any applicants for enrollment or employment upon request (IHEs must also submit a copy to ED).

### Reportable Crimes

Incidents that must be published in an IHE's ASR include various criminal offenses reported to campus security authorities or local police agencies, including murder, sex offenses, robbery, aggravated assault, burglary, auto theft, manslaughter, and arson. In addition, an ASR must include incidents reported to campus security or local police if the victim of any of the aforementioned crimes, or the victim of any of a broader group of crimes (such as larceny-theft, simple assault, intimidation, destruction of property, or crimes involving bodily injury to a person) was selected based on race, gender, religion, national origin, sexual orientation, gender identity, ethnicity, or disability. A school's ASR must also include arrests (and referrals for campus disciplinary action) for liquor and drug-related violations, as well as weapons possession. Finally, under amendments under the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), an ASR must include incidents of domestic violence, dating violence, and stalking reported to campus security authorities or local police. The statistics that must be published under the Clery Act do not include the identities of persons accused of committing a crime or the victims of those crimes.

### Clery Geography

Incidents must be collected and included in the ASR if they occur on campus, on public property within or immediately adjacent to the school, or on certain "noncampus buildings or property." The latter includes property owned or controlled by a student organization officially recognized

by the institution, as well as any property frequently used by students that is owned or controlled by the institution and supports its educational purposes.

### Campus Alerts and Information Regarding Criminal Activity

IHEs must also issue timely alerts to the campus community of Clery Act-specified crimes that are reported to campus security or local police and constitute a threat to students and employees. The alerts must withhold the names of victims as confidential. In the case of an immediate threat to the health or safety of students or employees, an institution must follow its emergency notification procedures (discussed below).

If an institution maintains a police or security department, then that department must keep a daily security log that records all crimes reported to it. That log must be open to public inspection. The log must include all covered incidents within the patrol jurisdiction of the campus police.

### Who Are Campus Security Authorities?

ASR's and crime alerts are only required to include covered incidents reported to local police agencies or "campus security authorities." Clery Act regulations provide that campus security authorities include campus police or security departments; individuals entrusted with responsibility for campus security; any individual or entity specified in a statement of campus security policy to which students and employees should report criminal offenses; and any official who has significant responsibility for student and campus activities, including student housing or discipline. But pastoral or professional counselors do not qualify when acting in that capacity.

### Campus Policies

IHEs must also include in their ASR a statement on a number of school policies.

### General Policies

IHEs must provide a statement on the procedures available for students to report crimes (including how to do so on a voluntary and confidential basis) and the policies the IHE has concerning its response to these reports; the titles of persons or organizations that students and employees should report criminal offenses to; security and access to campus facilities; law enforcement authority on campus; and a description of programs geared toward informing employees and students of security procedures and the prevention of crimes.

The ASR also must include a statement of policy on the monitoring through local police of criminal activity at off-campus student groups; underage drinking and illegal drug

possession, use, or sale; and where to find information about registered sex offenders.

An ASR also must include a statement of policies on immediate emergency response and evacuation procedures. These must include procedures to notify the campus community immediately during a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff on campus. Finally, institutions that provide on-campus housing for students must provide a policy statement on missing student notification procedures.

### VAWA Offenses

VAWA 2013 amended the Clery Act to require that IHEs include a statement of policy in their ASRs about programs to prevent domestic violence, dating violence, sexual assault, and stalking. The statement must also address awareness programs for incoming students and employees (as well as ongoing awareness campaigns for students and faculty) that define these terms. The ASR must also include the definition of consent; safe options for bystander intervention; and recognizing warning signs of abusive conduct.

The ASR also must include a statement of policy on an IHE's procedures to address such incidents. This includes the standard of evidence used during any disciplinary hearing; possible sanctions or protective measures that may be imposed following a determination that the conduct occurred; and procedures victims should follow if an offense has occurred. The latter includes information about to whom an offense should be reported; as well as a victim's option to notify law enforcement authorities, be assisted in doing so by campus authorities, and decline to notify authorities if the victim so chooses.

In addition, the statement of policy must address specific procedures on disciplinary actions in cases of alleged domestic violence, dating violence, sexual assault, or stalking. The policy must include a "clear statement" that the accuser and accused have the same opportunity to have others present during a disciplinary proceeding; that both accuser and accused will receive notice of the outcome of a proceeding and appeal procedures; and that such proceedings shall be fair, prompt, and impartial and be conducted by officials who have received training on the safety of victims during the investigation and hearing process. And Clery Act regulations provide that proceedings must be conducted in a way that provides equal access to the accuser and accused of any information used during a disciplinary meeting or hearing.

The policy statement must also address information on how the institution will ensure the confidentiality of victims; written notification for students and employees on support systems for the campus community; and written notification for victims about options and assistance, such as altering academic and living situations.

Finally, under the statute, students or employees who report to the IHE that they are victims of domestic violence,

dating violence, sexual assault, or stalking must be provided with a written explanation of their rights.

### Enforcement

ED's Office of Federal Student Aid enforces the Clery Act (and its attendant regulations) by conducting reviews of institutions' compliance with the statute's requirements. Such reviews may be triggered in several ways, such as through receipt of a complaint or significant media attention. When a review is completed, ED issues a Program Review Report that describes noncompliance concerns for an IHE and offers it an opportunity to respond. After considering all the information it receives, ED issues a Final Program Review Determination Letter. Based on these findings, ED may issue fines for violating the Clery Act and its regulatory requirements.

### Legal Considerations for Congress

Congress has addressed the safety and security of postsecondary students through a number of statutes, such as the Clery Act, that impose obligations on institutions of higher education. The responsibilities of an IHE under the Clery Act must be understood in relationship to other relevant federal statutes that could impose different requirements regarding a school's response to the same class of incidents. For instance, the Family Educational Rights and Privacy Act (FERPA) limits the disclosure of student education records. But the Clery Act and its regulations require a clear statement of policy that addresses procedures regarding disciplinary action for VAWA 2013 offenses, which include the disclosure to both an accuser and the accused of the results of any proceeding, as well as equal access to any information used during disciplinary meetings and hearings. Clery Act regulations provide that compliance with these provisions does not constitute a FERPA violation.

Likewise, Title IX of the Education Amendments of 1972 (Title IX) requires schools to respond appropriately to incidents of sexual harassment and assault. At times, certain Clery Act crimes can also constitute sexual harassment or assault under Title IX, meaning that IHEs may have overlapping responsibilities under both statutes regarding the same incident (for more on Title IX and sexual harassment, see CRS Report R45685, *Title IX and Sexual Harassment: Private Rights of Action, Administrative Enforcement, and Proposed Regulations*, by Jared P. Cole and Christine J. Back).

Several bills to amend the Clery Act have been introduced in the 116<sup>th</sup> Congress. Proposals include increasing the penalty for a violation to \$150,000; requiring IHEs to report on the number of selected crimes that involved a victim with a disability; and providing that IHEs adopt policies to improve their responses to hate crimes.

Another consideration for Congress is how the directives of the Clery Act are effectuated. While ED enforces the statute and can issue fines for noncompliance, the law contains no provision conferring private individuals, including students, with a right to bring suit in federal court against an IHE challenging its compliance with the Clery Act.

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