

CLASSIFY, COUNT, REPORT!
CRUNCHING THE CLERY NUMBERS – PT. I
SUNY STUDENT CONDUCT INSTITUTE

SAFE Campuses, LLC

Clery Week 2023

February 1, 2023



LEARNING OBJECTIVES

- Understand Clery Act Crime Collection
- Understand Clery Act Crime Review
- Understand How to Define “Primary Crimes”

CLERY ACT CRIME STATISTICS

- “An institution must report to the Department and disclose in its annual security report statistics for the three most recent calendar years concerning the number of each of the following crimes that occurred on or within its Clery geography and that are reported to local police agencies or to a campus security authority.”
 - 34 CFR §668.46(c)(1)
- Clery Act Crime Reporting is adapted from the FBI’s Uniform Crime Reporting (UCR) program and includes definitions from both the Summary Reporting System (SRS) and National Incident Based Reporting System (NIBRS). Additional definitions are adapted from the Violence Against Women Act (VAWA).
- Clery Regulations specify exact definitions.
- <https://safecampuses.biz/clery-act/clery-act-crime-definitions/>

CLERY CRIME CATEGORIES

- “Primary Crimes”
- Arrests & Disciplinary Referrals
- Hate Crimes
- VAWA Crimes
- Report Each Category Separately
 - “Four Buckets”
- Same Offense or Offenses May Be Reported In More Than One

CLASSIFICATION REVIEW WORK GROUP

- Empowered From The Top
- Clery Act Coordinator
- Campus Public Safety
- Multidisciplinary Officials
- Real-Time Collaboration
- Information Sharing
- Cross-Departmental Awareness
- Evaluate & Change Responses
- Separate From Policy Committee

MULTIDISCIPLINARY OFFICIALS

Campus Public Safety

Student Affairs

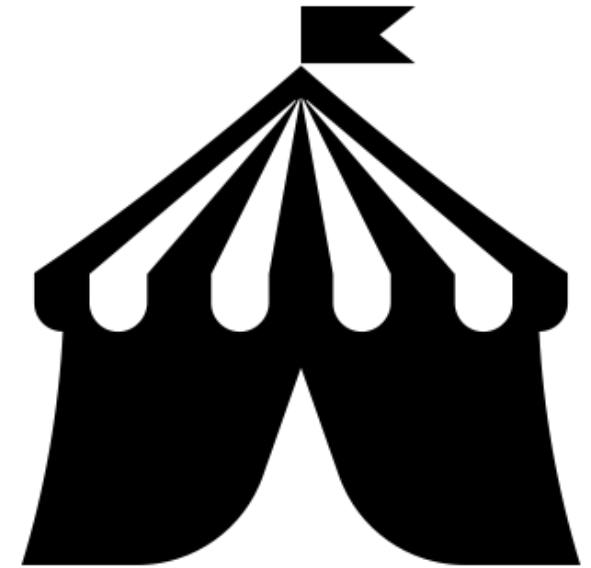
Residence Life

Human Resources

Legal Counsel

Facilities Management

Athletics



CLERY REPORTABLE

In order to be Clery Reportable an offense must meet each of these criteria.

- Any Crime In Institution's Jurisdiction Including Misdemeanor
- Meets Clery Crime Definition
 - Uses Nationally Uniform Definitions & Terminology
- Occurs in "Clery Geography"
- Reported to a Campus Security Authority and or Local Law Enforcement
- Not Determined to be "Unfounded"

- Reported in Year First Disclosed not Year Occurred
- Some Crimes do Require Understanding of Definition in Local Jurisdiction
 - Statutory Rape (Age of Consent)
 - Domestic Violence
 - Illegal Weapons Possession (Concealed Carry on Campus)

WHEN IS A CRIME REPORTED?

- “Good Faith” Report
- Brought To The Attention Of
- No Formal Report Necessary



UNFOUNDED

- Investigated by Sworn Law Enforcement
- False OR
- Baseless
- Excluded From Statistics
- Reported in Aggregate Statistic
- 34 CFR §668.46(c)(2)(iii)



CLERY ACT CRIME CATEGORIES

Clery Act Crimes Fall Into One or More of Four Categories.

PRIMARY CRIMES

Homicide & Sex Offenses Are Reported by Subcategory.

Reporting of “Primary Crimes” provided for by 34 CFR §668.46(c)(1)(i).

Customized from FBI Uniform Crime Reporting Program’s Summary Reporting System & National Incident Based Reporting System



- Homicide
 - Murder and Nonnegligent Manslaughter
 - Negligent Manslaughter
- Sex Offenses
 - Rape
 - Fondling
 - Incest
 - Statutory Rape
- Robbery
- Aggravated Assault
- Burglary
- Motor Vehicle Theft
- Arson

CLERY “HIERARCHY RULE” PRIMARY CRIMES

- Count Only the Most Serious Offense in a Multiple Offense Situation.
 - A single incident means that the offenses were committed at the same time and place.
 - That is, the time interval between the offenses and the distance between the locations where they occurred were insignificant.
 - Adapted from Summary Reporting System.
- Murder and Non-negligent Manslaughter
 - Manslaughter by Negligence
 - Sexual Assault
 - Robbery
 - Aggravated Assault
 - Burglary
 - Motor Vehicle Theft

“HIERARCHY RULE” EXCEPTIONS

Information about each separate offense should be gathered for the purpose of assessing what offenses occurred, which was the most “serious”, and if any are subject to Clery specific exceptions to the rule. Each individual offense may also be subject to timely warning and crime log reporting whether or not it is reportable in annual statistics.

- Arson (Always Report)
- Sexual Assault
 - Count if in same incident as Murder
 - If Arson & Murder – Count Murder, Arson, & Sexual Assault (Rape or Fondling)
 - Only report “Fondling” if it is the only offense
- Hate Crimes
 - Disclosed in Separate Category
- VAWA Offenses
 - Disclosed in Separate Category

HOMICIDE

- **Criminal Homicide—Murder and Nonnegligent Manslaughter**
 - The willful (nonnegligent) killing of one human being by another.
- **Criminal Homicide—Manslaughter by Negligence**
 - The killing of another person through gross negligence.
- Count one offense per victim.
- Classify assaults and attempts to Murder as Aggravated Assaults.
- ***Only attempted murder is classified as another crime category, other attempts count in the original crime category.***

SEXUAL ASSAULT

“An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s UCR program and included in Appendix A of this subpart.”-34 CFR §668.46(a)

- Report Each Category Individually
 - Rape
 - Fondling
 - Incest
 - Statutory Rape
- The term “Forcible” was removed from the FBI’s Uniform Crime Reporting (UCR) program in 2013.
- The U.S. Department of Education (ED) followed suit and removed “Forcible” from Clery Act reporting beginning with 2015.
- Clery uses “Sex Offenses” & “Sexual Assault” interchangeably.
- The Umbrella Term “Sexual Assault” is also used in the Clery Act’s VAWA Provisions.

CONSENT

The Clery Act doesn't define the term
"Consent".

- Note that, while the definitions of Sexual Assault include lack of consent as an element of the offense, for the purposes of including a reported Sexual Assault in Clery Act statistics, ***no determination as to whether that element has been met is required.***
- ***Therefore, all Sexual Assaults that are reported to a campus security authority must be included in your Clery Act statistics*** and also included in your crime log (if you are required to have one), regardless of the issue of consent.
- *The Handbook for Campus Safety and Security Reporting Page 3-7*
- While "rescinded" institutions may continue to rely upon *Handbook* guidance

RAPE

- The 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.
 - -Summary Reporting System (SRS) User Manual
 - -34 CFR §668, Subpt. D, App.A
- Count one offense per victim.
- Gender Neutral.-This offense includes the rape of both males and females.
 - *Sodomy*
 - *Sexual Assault With an Object*
- If force was used or threatened, or the victim was incapable of giving consent because of his/her age or temporary or permanent mental impairment, the offense is Rape, not Statutory Rape.

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.
- -National Incident Based Reporting System (NIBRS) User Manual
- -34 CFR §668, Subpt. D, App. A
- Count one offense per victim.
- Fondling is recognized as an element of the other sex offenses. Therefore, count Fondling only if it is the only sex offense.

ADDITIONAL SEX OFFENSES

- Incest—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- -National Incident Based Reporting System (NIBRS) User Manual
- -34 CFR §668, Subpt. D, App. A
- Count one offense per victim.
- Statutory Rape—Sexual intercourse with a person who is under the statutory age of consent.
- -National Incident Based Reporting System (NIBRS) User Manual
- -34 CFR §668, Subpt. D, App. A
- Count one offense per victim.

KNOWLEDGE CHECK

HOW SHOULD EACH BE REPORTED?

- 1.) A student reports to their RA that while they were asleep in their on-campus residence hall room another student attending a party in their suite came into their room and forced a beer bottle into their anus.
- 2.) An employee reports to the Title IX Coordinator that their supervisor groped their buttocks during a holiday party held in an office at a building leased for classroom space 2 miles from campus.
- 3.) The parents of a student call the police department to report that their daughter's ex-boyfriend raped her at his apartment across the street from campus.
- 4.) During an investigation into sexual harassment a student discloses to the Dean of Students that during their first semester, 2 years prior, they had non-consensual sexual intercourse in an on-campus parking garage.

ROBBERY

- The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.
- -Summary Reporting System (SRS) User Manual
- -34 CFR §668, Subpt. D, App. A
- Count one offense for each distinct operation (i.e., incident), including attempts.
- Committed in the presence of a victim (usually the owner or person having custody of the property).
- Victim is directly confronted by the perpetrator.
- Victim is threatened with force or put in fear that force will be used.
- Involves a Theft or Larceny.

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. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)
- --34 CFR §668, Subpt. D, App. A
- 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.

AGGRAVATED ASSAULT

Include as Aggravated Assaults

- Assaults or attempts to kill or Murder.
- Poisoning (including the use of date rape drugs).
- Assault with a dangerous or deadly weapon.
- Maiming.
- Mayhem.
- Assault with explosives.
- Assault with disease (as in cases when the offender is aware that he or she is infected with a deadly disease and deliberately attempts to inflict the disease by biting, spitting, etc.).

BURGLARY

- The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.
- -34 CFR §668, Subpt. D, App. A
- Count one offense per each distinct operation.
- Three specific elements must be met in order to be reportable as burglary.
- The U.S. Department of Education (ED) has established classification & counting rules that are unique to Clery including for determining what is a distinct operation.

BURGLARY'S THREE REQUIRED ELEMENTS

*The U.S. Department of Education (ED) previously shared erroneous guidance from the FBI indicating that if it was unknown who committed a theft from a structure it should be classified as a “Burglary”. This guidance was withdrawn in 2011.

- There must be evidence of unlawful entry (trespass). This means that the person did not have the right to be in the structure at the time the incident occurred.*
- The unlawful entry must occur within a structure, which is defined as having four walls, a roof, and a door.
- The structure was unlawfully entered to commit a felony or a theft. If the intent was not to commit a felony or a theft, the incident is not a Burglary. For example, if a homeless student unlawfully entered a structure to sleep, do not include the incident as a Burglary.

WHAT IS & ISN'T A STRUCTURE

- Is-
- Apartment, barn, cabin, church, condominium, dwelling house, factory, garage, house trailer or houseboat (if used as a permanent dwelling), mill, office, other building, outbuilding, public building, railroad car, room, school, stable, storage facility, vessel (ship) and warehouse.
- Any house trailer or other mobile unit that is permanently fixed as an office, residence or storehouse.
- Isn't-
- Motor vehicles.
- Tents, tent trailers, motor homes, house trailers or other mobile units that are being used for recreational purposes.
- A telephone booth.
- A gym locker or cubby.

CLERY BURGLARY COUNTING RULES (MODIFIED HOTEL RULE)

- Burglaries in individual student rooms: Because residents of rooms in student housing facilities are not considered transient, the Burglary of each room is a separate offense. This means that if an offender unlawfully enters five dorm rooms on one floor of a student housing facility for the purpose of taking something, you should count this as five Burglaries.
- Burglaries in suites: Each bedroom in a student housing facility suite is considered a separate dwelling. Count the Burglary of four bedrooms and the common room in a suite during a single incident as five Burglaries.
- Burglaries in private academic offices: Unlike a student housing facility in which each room is considered to be a separate dwelling, the various rooms within an academic building are typically under the control of a single firm (the college or university). Count the Burglary of an academic structure as one offense, regardless of the number of interior rooms entered or items stolen if the rooms were all burglarized during the same time frame.
- Burglaries in patient rooms in campus or noncampus medical centers: Because residents in patient rooms in hospitals or medical centers are transient, offenses are most likely to be reported to law enforcement by the institution. Count the Burglary of a number of patient rooms during the same time frame as a single offense.

MOTOR VEHICLE THEFT

- The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned—including joyriding.)
- -34 CFR §668, Subpt. D, App. A
- Count one offense for each stolen vehicle.
- Theft of any self-propelled vehicle that runs on land surface and not on rails, such as sport utility vehicles, automobiles, trucks, buses, motorcycles, motor scooters, trail bikes, mopeds, all-terrain vehicles, self-propelled motor homes, snowmobiles, golf carts and motorized wheelchairs.

ARSON

Always report “Arson” alongside next most serious offense in a multiple offense situation.

Arsons in on-campus student housing facilities must also be included in your fire statistics.

- 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.
- -34 CFR §668, Subpt. D, App. A
- Count one offense for each distinct incident of Arson occurring on your Clery Act geography.
- Include “Incidents where an individual willfully or maliciously burns his or her own property.”
- Exclude “Fires of unknown origin.”

QUESTIONS?

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