

CLASSIFY, COUNT, REPORT!
CRUNCHING THE CLERY NUMBERS – PT. 2
SUNY STUDENT CONDUCT INSTITUTE

SAFE Campuses, LLC

Clery Week 2023

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LEARNING OBJECTIVES

- Understand the definitions of Arrest & Referral Crimes
- Understand the definitions of “Hate Crimes”.
- Understand the definitions of “VAWA Offenses”

ARRESTS AND DISCIPLINARY REFERRALS

“Disciplinary Referrals” for all persons was included in Clery offenses because it may be employed in place of an arrest.

- **Arrest** for Clery Act purposes is defined as persons processed by arrest, citation or summons.
- **Referred for campus disciplinary action:** The referral of any person to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.
- Do NOT report incidents that are merely a violation of institutional policies but aren't a crime in the jurisdiction where they occur.
- If an arrest & referral is made only count the arrest.
- Exempt from the Hierarchy Rule.
- -34 CFR §668, Subpt. D, App. A

COUNTING

- Count the number of arrests for Weapons: Carrying, Possessing, Etc., the number of arrests for Drug Abuse Violations and the number of arrests for Liquor Law Violations.
- If a single incident involving a Liquor Law Violation resulted in the arrest of 10 students, count this as 10 arrests.
- If the same person is arrested for multiple incidents in the same calendar year (e.g., one arrest in February and one arrest in March), count this as two arrests. Count this as two arrests even when both arrests are for the same type of violation (e.g., both were Drug Abuse Violations).
- If an individual is arrested for one type of law violation and referred for disciplinary action for a different type of law violation during a single incident (e.g., arrested for a Drug Abuse Violation and referred for a Liquor Law Violation), count only the arrest.
- If a person is both arrested and referred for disciplinary action for a single incident involving a law violation (e.g., a Drug Abuse Violation), count only the arrest.
- If a person is arrested for multiple violations during a single incident (e.g., violations of both drug abuse and liquor laws), law enforcement or security officer discretion should be used to determine which violation to count.

LIQUOR LAW VIOLATIONS

- The violation of State or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages, not including driving under the influence and drunkenness.
- The manufacture, sale, transporting, furnishing, possessing, etc., of intoxicating liquor.
- Maintaining unlawful drinking places.
- Bootlegging.
- Operating a still.
- Furnishing liquor to a minor or intemperate person.
- Underage possession.
- Using a vehicle for illegal transportation of liquor.
- Drinking on a train or public conveyance.

DRUG ABUSE VIOLATIONS

- The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance. Arrests for violations of State and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs.
- The relevant substances include opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana; synthetic narcotics—manufactured narcotics that can cause true addiction (Demerol, methadone); and dangerous non-narcotic drugs (barbiturates, Benzedrine).

DRUG ABUSE VIOLATIONS

- Classify as a Drug Abuse Violation:
 - All drugs, without exception, that are illegal under local or state law where your institution is located. This means that if you have campuses in different states, the laws may differ for each of them.
 - All illegally obtained prescription drugs.
- Do not classify as a Drug Abuse Violation:
 - Possession of a small amount of marijuana in states that have decriminalized this conduct, meaning that the conduct is no longer a criminal offense. Referrals that occur for this decriminalized conduct should not be counted for Clery Act reporting purposes.
 - Use of legally obtained, personal prescription drugs used by the owner in a manner not consistent with the instructions provided by the physician.

WEAPONS: CARRYING, POSSESSING, ETC.

- The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons.
- This classification encompasses weapons offenses that are regulatory in nature.
- This type of violation is not limited to “deadly” weapons; it also applies to weapons used in a deadly manner.
- Manufacture, sale, or possession of deadly weapons.
- Carrying deadly weapons, concealed or openly.
- Using, manufacturing, etc., of silencers.
- Furnishing deadly weapons to minors.
- Aliens possessing deadly weapons.
- Attempts to commit any of the above.

HATE CRIMES

34 CFR §668.46(A) & (C)(1)(III)

A crime reported to local police agencies or to a campus security authority that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim. For the purposes of this section, the categories of bias include the victim's actual or perceived race, religion, gender, gender identity, sexual orientation, ethnicity, national origin, and disability.

- Clery Act “Primary Crimes” (Addressed in Part One)
- Larceny-Theft
- Simple Assault
- Intimidation
- Destruction/Damage/Vandalism of Property

- Reported separately, not subject to Hierarchy Rule
- All Hate Crimes in a Multiple Offense Situation are Reported
- May use a narrative format to disclose

RECORDING HATE CRIMES

34 CFR §668.46(c)(9)(iii)

- An institution must compile the crime statistics for the hate crimes of larceny-theft, simple assault, intimidation, and destruction/damage/vandalism of property using the definitions provided in the “Hate Crime Data Collection Guidelines and Training Manual” from the FBI’s UCR Program, as provided in Appendix A to this subpart.

PRIMARY CRIMES

Homicide & Sex Offenses Are Reported by Subcategory.

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

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

ADDITIONAL CRIMES

34 CFR §668, SUBPT. D, APP. A

- **Larceny-Theft**
 - The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Attempted larcenies are included. Embezzlement, confidence games, forgery, worthless checks, etc., are excluded.
- **Simple Assault**
 - An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

ADDITIONAL CRIMES

34 CFR §668, SUBPT. D, APP. A

- **Intimidation**
- To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.
- A person is assumed to be placed in “reasonable fear” if he or she reports threatening words or other conduct to law enforcement personnel. To be the victim of Intimidation, one doesn’t have to be the intended target of the offender. For example, a person who reports seeing anti-gay threats on a bathroom wall to law enforcement is considered a victim. (For the Intimidation to be considered a Hate Crime there would have to be other supporting evidence of bias as well.) Include in this category cyber-intimidation if the victim is threatened via electronic means while on your Clery Act geography.
- *-The Handbook for Campus Safety and Security Reporting page 3-29*

ADDITIONAL CRIMES

34 CFR §668, SUBPT. D, APP. A

- **Destruction/Damage/Vandalism of Property**
- To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.
- A wide range of malicious behavior directed at property
- Cutting auto tires
- Drawing obscene pictures on restroom walls
- Smashing windows
- Destroying school records
- Defacing library books

BIAS CATEGORIES

Hate crimes must be recorded by category of bias. For each hate crime recorded under paragraph (c)(1)(iii) of this section, an institution must identify the category of bias that motivated the crime. For the purposes of this paragraph, the categories of bias include the victim's actual or perceived—

-34 CFR §668.46(c)(4)

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

CATEGORIES OF BIAS

- **Race.** A preformed negative attitude toward a group of persons who possess common physical characteristics, e.g., color of skin, eyes, and/or hair; facial features, etc., genetically transmitted by descent and heredity which distinguish them as a distinct division of humankind, e.g., Asians, blacks or African Americans, whites.
- **Religion.** A preformed negative opinion or attitude toward a group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being, e.g., Catholics, Jews, Protestants, atheists.
- **Sexual Orientation.** A preformed negative opinion or attitude toward a group of persons based on their actual or perceived sexual orientation. Sexual Orientation is the term for a person's physical, romantic, and/or emotional attraction to members of the same and/or opposite sex, including lesbian, gay, bisexual, and heterosexual (straight) individuals.
- **Gender.** A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender, e.g., male or female.

CATEGORIES OF BIAS

- **Gender Identity.** A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender non-conforming individuals. Gender non-conforming describes a person who does not conform to the gender-based expectations of society, e.g., a woman dressed in traditionally male clothing or a man wearing makeup. A gender non-conforming person may or may not be a lesbian, gay, bisexual, or transgender person but may be perceived as such.
- **Ethnicity.** A preformed negative opinion or attitude toward a group of people whose members identify with each other, through a common heritage, often consisting of a common language, common culture (often including a shared religion) and/or ideology that stresses common ancestry. The concept of ethnicity differs from the closely related term “race” in that “race” refers to a grouping based mostly upon biological criteria, while “ethnicity” also encompasses additional cultural factors.

CATEGORIES OF BIAS

- **National Origin.** A preformed negative opinion or attitude toward a group of people based on their actual or perceived country of birth. This bias may be against people that have a name or accent associated with a national origin group, participate in certain customs associated with a national origin group, or because they are married to or associate with people of a certain national origin.
- **Disability.** A preformed negative opinion or attitude toward a group of persons based on their physical or mental impairments, whether such disability is temporary or permanent, congenital or acquired by heredity, accident, injury, advanced age or illness.

ADDITIONAL CONSIDERATIONS

- **Need for a case-by-case assessment of the facts.** The aforementioned factors are not all-inclusive of the types of objective facts that evidence bias motivation. Therefore, examine each case for facts that clearly provide evidence that the offender's bias motivated him or her to commit the crime.
- **Misleading facts.** Be alert to misleading facts. For example, the offender used an epithet to refer to the victim's race, but the offender and victim were of the same race.
- **Feigned facts.** Be alert to evidence left by the offenders that is meant to give the false impression that the incident was motivated by bias. For example, students of a religious school vandalize their own school, leaving anti-religious statements and symbols on its walls in the hope that they will be excused from attending class.

ADDITIONAL CONSIDERATIONS

- **Offender's mistaken perception.** Even if the offender was mistaken about the victim's race, religion, disability, sexual-orientation, ethnicity, national origin, gender or gender identity, the offense is still a Hate Crime as long as the offender was motivated by bias against that group. For example, a non-gay student leaving a publicized LGBTQ meeting in a noncampus fraternity house is followed back to campus and attacked behind a dorm by six teenagers who mistakenly believed the victim is gay. Although the offenders were mistaken, the offense is a Hate Crime because it was motivated by the offenders' anti-gay bias.

VAWA OFFENSES

34 CFR §668.46(c)(1)(iv)

- Dating Violence
- Domestic Violence
- Stalking
- Exempt from the Hierarchy Rule
- Reportable in Separate Category
- For Prevention & Response requirements also includes Sexual Assault

DATING VIOLENCE

34 CFR §668.46(a)

Dating Violence is Mutually Exclusive of
Domestic Violence

- **Dating violence.** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
- (i) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (ii) For the purposes of this definition—
 - (A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - (B) Dating violence does not include acts covered under the definition of domestic violence.
- (iii) For the purposes of complying with the requirements of this section and § 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

DATING VIOLENCE CONSIDERATIONS

- *Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.*
- *Dating violence does not include acts covered under the definition of domestic violence.*
- We caution that differences in the culture of different people and their use of terms may mean that a reporting party may describe a dating relationship using different terms from how an institutional official might describe “dating.”
- When the reporting party asserts that there was a dating relationship, you should assume that the victim and perpetrator were in a dating relationship to avoid incorrectly omitting incidents. The victim’s use of terms such as “hanging out” or “hooking up” rather than “dating,” or whether or not the relationship is described as “monogamous” or “serious” should not be the determining factor.
- No matter who reports the incident, whether it is the victim or a third party, it is the responsibility of the institution to determine whether the incident should be included as Dating Violence.

DOMESTIC VIOLENCE

34 CFR §668.46(a)

Domestic Violence is Mutually Exclusive of
Dating Violence



- **Domestic violence.** (i) A felony or misdemeanor crime of violence committed—
 - (A) By a current or former spouse or intimate partner of the victim;
 - (B) By a person with whom the victim shares a child in common;
 - (C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - (D) 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, or
 - (E) 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.
- (ii) For the purposes of complying with the requirements of this section and § 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

DOMESTIC VIOLENCE CONSIDERATIONS

Federal Register

October 20, 2014

Page 62757

- “With regard to the comment about roommates, the final definition of ‘domestic violence,’ consistent with the proposed definition, requires more than just two people living together; rather, the people cohabitating must be spouses or have an intimate relationship.”-ED, 2014
- Clery Def. Incl.: “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.”

STALKING

34 CFR §668.46(A)
BASED ON VAWA NOT UCR

- **Stalking.** (i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - (A) Fear for the person’s safety or the safety of others; or
 - (B) Suffer substantial emotional distress.
- (ii) For the purposes of this definition—
 - (A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.

STALKING

34 CFR §668.46(A)

- (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- (C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- (iii) For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.
- -Stalking is also reportable in a multiple offense situation with either Dating Violence or Domestic Violence

COUNTING STALKING

- Record each report of Stalking as occurring at only the first location within the institution's Clery Act geography in which either the perpetrator engaged in the Stalking course of conduct or the victim first became aware of the Stalking.
- A Stalking incident in which only one or some of the activities took place on Clery Act geography must be included in the reported statistics.
- When recording reports of Stalking that include activities in more than one calendar year, an institution must record a crime statistic for each and every year in which the course of conduct is reported to a local police agency or to a campus security authority.

COUNTING VAWA OFFENSES

*The Handbook for Campus Safety and Security
Reporting page 3-41*

- The Hierarchy Rule does not apply to VAWA Offenses. Therefore, for any Criminal Offense, Hate Crime, or arrest for Weapons, Drug or Liquor Law Violations that is also a VAWA Offense, your statistics must reflect the original offense and the VAWA Offense.
- For example, if an Aggravated Assault is also Domestic Violence, include the incident as one Aggravated Assault in the Criminal Offenses category and as an incident of Domestic Violence in the VAWA Offenses category.

STALKING CASE STUDY

- Jane reports that she was in her on-campus apartment at Alpha State when her ex-boyfriend, John, who attend Delta Tech, started sending harassing messages. She asked him to stop. She ignored the incoming messages, which stopped around 11:00 PM.
- The next day, the harassing text messages started again at 10:00 AM. Jane asked her ex to stop and ignored the messages again. He said he was going to head to her residence hall at Alpha State when he got out of class (at Delta Tech).
- In his interview, John said that he and Jane were never a couple. He considered it but felt she was too uptight for him and moved on.
- Please tell us your best guess for Classification, Count, and Clery Geography.

QUESTIONS?

- **S. Daniel Carter, President**
- **Safety Advisors for Educational Campuses, LLC**
- **<http://safecampuses.biz>**
- **P.O. Box 2019, Thomson, GA 30824**
- **706-986-0257**
- **s.daniel.carter@safecampuses.biz**