

ONGOING REQUIREMENTS

A. Timely Warning

The Clery Act⁶⁵ and the Clery Act Regulations⁶⁶ require that each campus provide a “timely warning” to the campus community concerning the occurrence of a Clery crime that the campus believes represents a continuing threat to the campus community.

1. Legal Requirements

The Clery Act regulations⁶⁷ require the following:

1. A campus must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are –
 - Required to be reported in the Annual Security Report;
 - Reported to campus security authorities as identified under the institution’s statement of current campus policies for reporting criminal actions and emergencies; and
 - Considered by the campus to represent a threat to students and employees.
2. A campus is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

⁶⁵ 22 U.S.C. 1092 (f) (3)

⁶⁶ 34 C.F.R. 668.46 (e)

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2. Definition of “Timely Reports”

To date, the Department of Education has declined to provide a definition of “timely reports.” The Department has advised that “timely reporting to the campus community. . . must be decided on a case-by-case basis in light of all the facts surrounding a crime, including factors such as the nature of the crime, the continuing danger to the campus community, and the possible risk of compromising law enforcement efforts.” Campus security authorities who receive reports of crimes are directed to consult with campus police for guidance on how and when to release “timely warning” reports to the campus community.⁶⁸

3. Confidentiality Issues

All Clery reportable crimes are subject to the timely warning requirements when police believe the crimes pose an ongoing threat regardless of whether or not the victim or perpetrator is a member of the campus community. However, there are often concerns raised regarding confidentiality if the information disclosed in the timely warning report would personally identify an individual.

Information that might personally identify students may be disclosed, if disclosure of this information is necessary to protect the health and safety of the student or other individuals.

For example, see the Family Educational Rights and Privacy Act (“FERPA”)⁶⁹ and the FERPA regulations⁷⁰: personally identifiable information may be disclosed from an education record of a student without the student’s consent “to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of a student or other individuals.”

See also, California Information Practices Act:⁷¹ the University may disclose personally identifying information about an individual if it determines “that compelling circumstances exist which affect the health or safety of an individual.”

The same California Information Practices Act standard applies concerning the disclosure of personally identifying information about any other individuals, including campus employees and individuals not associated with the University.⁷²

⁶⁸ See 59 Fed.Reg. 22316 (April 29, 1994)

⁶⁹ 20 U.S.C. § 1232(g) (b) (1) (I)

⁷⁰ 34 C.F.R. §§ 99.31(a) (10) and 99.36

⁷¹ Civil Code § 1798.24(i)

⁷² See Civil Code § 1798.24

4. Timely Warning Procedure

The amount and type of information that the campus discloses in a “timely warning” report will vary depending on the circumstances of each case, as noted above in the Department of Education explanation of this provision. In general, whenever a report of a violent crime against a person or a major crime against property on campus is received by the campus police department that is determined by the police department to represent an ongoing threat to the safety of the campus community, the campus police department must issue a Campus Crime Alert. The alerts should be sequentially numbered, beginning January 1 of each year, and should include the following details of the crime, if available:

- A succinct description of the incident.
- A physical description of the suspect, including gender and race.
- Composite drawing of the suspect, if available.
- Apparent connection to previous incidents, if applicable.
- Race of the victim, but only if there was an apparent bias motive.
- Sex of the victim, if relevant.
- Injury sustained by the victim.
- Date and time the campus crime alert was released.

An example of a Campus Crime Alert is provided in Appendix C, #15.

Campus Crime Alerts should be distributed as soon as possible after the time the incident is reported, subject to the availability of accurate facts concerning the incidents. The alerts should be widely distributed in appropriate areas on the campus, provided to campus media, posted on a relevant campus website or websites, electronically mailed to members of the campus community determined to have a need to know of the alert, and posted in appropriate areas.

For all reports of violent crimes against a person or major crimes against property that are received by the campus police department, the campus police department should complete a Crime Alert Publication Determination Form that explains the decision on whether or not to distribute a Campus Crime Alert. An example of such a form is provided in Appendix B, #10.

B. Crime Logs

The 1998 amendments to the Clery Act introduced the requirement, effective October 1, 1998, that campus police departments maintain a daily written crime log of any crime (not just those required to be included in the Annual Security Report) that is reported to the campus police department. (See example in Appendix C, #16)

The Clery Act regulations⁷³ require as follows:

1. Scope

A campus that maintains a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a non-campus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. This log must include:

- The nature, date, time, and general location of each crime; and
- The disposition of the complaint, if known.

2. Data Entry

The campus must make an entry or an addition to an entry to the log within two business days of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

3. Disclosure Exceptions

The campus may withhold the information required above if there is clear and convincing evidence that the release of the information would:

- Jeopardize an ongoing criminal investigation or the safety of an individual;
- Cause a suspect to flee or evade detection; or
- Result in the destruction of evidence.

The campus must disclose any information withheld for these reasons once the adverse effect is no longer likely to occur.

4. Public Inspection

The campus must make the crime log for the most recent 60-day period available for public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection.

⁷³ 34 C.F.R. 668.46(f)

5. Department of Education Explanation

The Department has declined to define the following terms used to describe the contents of “crime log” entry: “the nature, date, time, and general location of each crime.”⁷⁴

The Department responded to a comment regarding protecting the confidentiality of a victim by noting that a campus “may only withhold this information when it is sufficiently clear the victim’s confidentiality is in jeopardy.”⁷⁵ The Department’s guidance on this issue should be read in the context of the comment to which it responds. It is clear from the guideline promulgated by the Department that the campus may withhold from disclosure not only information that would jeopardize the confidentiality of the victim, but also information that would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence.

6. Related State Law

California Education Code § 67380, part of the Donahoe Higher Education Act,⁷⁶ require campus officials to “compile records” of:

- (1) all occurrences reported to campus safety or security authorities of campus crimes that involve violence, hate violence, theft or destruction of property, illegal drugs, or alcohol intoxication; and
- (2) all occurrences of non-criminal acts of hate violence reported to, and for which a written report is prepared by, designated campus authorities.⁷⁷

This code section provides for disclosure of this information available to current students and campus employees, prospective students, and the media.

The Donahoe Act provides that none of its provisions apply to the University of California unless the Regents, “by appropriate resolution,” make a provision applicable to the University. The Regents have taken no such action and, therefore, this crime record compilation and disclosure requirement does not technically apply to the University of California campuses. However, the University generally complies voluntarily with these provisions, because compliance with the Clery Act Annual Security Report requirements would meet essentially all the requirements of this state law.

⁷⁴ 64 Fed.Reg. 59065 (November 1, 1999)

⁷⁵ 64 Fed.Reg. 59065 (November 1, 1999)

⁷⁶ Education Code §§ 66000 et seq.

⁷⁷ Education Code § 67380(a)