

# Clery Act Overview

## Introduction

The “Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998,” commonly referred to as the “Clery Act,”<sup>1</sup> requires institutions of higher education receiving federal financial aid to report specified crime statistics on college campuses and to provide other safety and crime information to members of the campus community. This compliance manual provides guidance to University of California employees who have responsibilities under the Act. Each campus will be responsible for establishing appropriate procedures for implementing these guidelines.

The University provides crime information and statistics to the public in a variety of ways. In addition to the Clery Act, the University provides to the California Department of Justice crime statistics that are classified pursuant to the Uniform Crime Reporting (UCR) Program administered by the FBI. These statistics are reflected in the University of California Police Department *Annual Report and Crime Statistics*, the annual California Department of Justice *Crime in California*, and the annual FBI *Crime in the United States* publications.

## Background

The current Clery Act is the latest iteration of a law first passed by Congress in 1990 as part of the Higher Education Act, the “Student Right-To-Know and Campus Security Act of 1990.”<sup>2</sup> Amendments enacted in 1998 renamed the “Student Right-to-Know and Campus Security Act” as the “Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act,” expanded the campus responsibilities for recording crime statistics, added people from whom colleges must collect statistics, and revised reporting methods and deadlines. The Department of Education regulations implementing the 1998

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<sup>1</sup> 20 U.S.C § 1092(f)

<sup>2</sup> 20 U.S.C § 1092(f)

amendments to the Clery Act were adopted November 1, 1999, and became effective July 1, 2000.<sup>3</sup> The 1999 regulations define and clarify reporting obligations for various geographic locations, clarify the responsibilities of counselors, add new categories of crimes to be reported and new policies to be disclosed, clarify how to compile and describe crime statistics, change the date for disclosure of the Annual Security Report to October 1, and require certain institutions (including the University of California campuses) to maintain a publicly available crime log.

## Clery Act Requirements

The Clery Act includes the following general substantive requirements:

### 1. Publication of Annual Security Report

Campuses must publish an annual security report detailing statistics regarding crimes committed on campus and at affiliated locations for the previous three calendar years, and describing specified policies, procedures, and programs regarding safety and security. The act is part of the “consumer information” provisions of the Higher Education Act implementing federal student aid programs. The 1994 regulations note that “Encouraging students to pursue high quality postsecondary education is an important element of the National Education Goals; a safe campus environment facilitates such education.”<sup>4</sup> The Clery Act is intended to provide students and their families, as higher education consumers, with accurate, complete, and timely information about the safety of the campus so that they can make informed decisions.

The Department of Education is authorized to impose fines on an educational institution that “substantially misrepresents the nature of its educational program.” It may also “limit, suspend, or terminate the institution’s participation in federal financial aid programs.”<sup>5</sup> The Department defines as “misrepresentation” any “false, erroneous, or misleading statement made to a student or prospective student, to the family of an enrolled or prospective student, or to the Department,”<sup>6</sup> including misrepresentation regarding any matters required to be disclosed to prospective students under 34 CFR 668.44 (institutional information) and 34 CFR 668.47 (campus security information).<sup>7</sup>

The Act requires the collection and reporting of annual crime statistics reflecting reports of specified crimes that occur on and adjacent to, a university campus and certain properties associated with the campus. This statistical compilation must be broken down by specified types of

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<sup>3</sup> See 34 C.F.R. § 668.40 and 668.46

<sup>4</sup> Vol. 59 Fed. Reg. No. 82, page 22314, April 29, 1994

<sup>5</sup> Institutional Eligibility and Participation, 2001-2002, Volume 2, Chapter 7, page 222

<sup>6</sup> Id., at pages 222-224

<sup>7</sup> Id., at page 224.

crimes and campus disciplinary referrals, and must indicate if a specified crime is a hate crime. Campuses must also provide a geographic breakdown of the crime statistics reported according to the following defined geographic areas: “on campus” (including a further breakdown of the number of crimes that occurred in campus student residential facilities), “in or on a non-campus building or property,” and “on public property.”<sup>8</sup>

## 2. Disclosure of Campus Safety Policies

The Annual Security Report must describe specified campus policies concerning:

- reporting criminal activity or other emergencies occurring on campus;
- security, maintenance of, and access to campus facilities;
- authority of campus law enforcement units;
- monitoring and recording through local police agencies of off-campus criminal activity by students; and
- alcohol and drugs.

In addition, the report must describe:

- the type and frequency of campus programs to inform students and employees about campus security procedures and precautions, and the prevention of crimes;
- available drug and alcohol abuse prevention education programs;
- campus programs to prevent sexual assaults, including procedures to be followed when such an assault occurs; and
- where law enforcement agency information concerning registered sex offenders may be obtained (this statement is not required until October 28, 2002).<sup>9</sup>

## 3. Compilation and Disclosure of Campus Crime Statistics

The Act requires the collection and reporting of annual crime statistics reflecting reports of specified crimes that occur on, and adjacent to, campus and certain properties associated with the campus. This statistical compilation must be broken down by specified types of crimes and campus disciplinary referrals, and must indicate if a crime is a hate crime. Campuses must also separately report crime statistics for the following defined geographic areas: “on campus” (including a further breakdown of crimes that occurred in campus student residential facilities), “in or on a non-campus building or property,” and “on public property.”<sup>10</sup>

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<sup>8</sup> 34 C.F.R. § 668.46(c)

<sup>9</sup> 20 U.S.C. § 1092(f) (1); 34 C.F.R. § 668.46(b)

<sup>10</sup> 34 C.F.R. § 668.46(c)

## **4. Timely Warning Requirements**

The campus is required to report to the campus community crimes that represent a threat to students and/or employees “in a manner that is timely and will aid in the prevention of similar crimes.”<sup>11</sup> (See page 39 for further explanation)

## **5. Disclosure of Crime Log Information**

Campuses that maintain a police department are required to maintain a daily crime log that contains specified information about any and all crimes that occur within the patrol jurisdiction of the campus police and that are reported to the campus police department.<sup>12</sup> Information that would jeopardize the success of an investigation or the safety of a person involved in the investigation may be withheld. The campus must make the crime log for the most recent 60-day period open to public inspection during normal business hours, while crime logs containing material more than 60 days old must be retained for seven years for public inspection upon two days’ notice. (See Appendix C, Sample Policy 16.)

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<sup>11</sup> 34. C.F.R. § 668.46(e)

<sup>12</sup> 34. C.F.R. § 668.46(f)

## History of Changes to the Clery Act

The Campus Security Act was first introduced during the 101<sup>st</sup> Congress as House of Representatives Bill 3344 by Representative Bill Goodling (R-Pa.) and as Senate Bill 1925 by Senator Arlen Specter (R-Pa.). The goal of the legislation, as stated by Representative Goodling, was “to assist students in making decisions which affect their personal safety . . .” and “to make sure institutions of higher education provide students, prospective students and faculty the information they need to avoid becoming the victims of campus crime.” Congressional Record 1990. President Bush signed the Act on November 8, 1990.

This federal Act was a response to campus safety issues that began to get greater attention by state and federal legislators during the late 1980s. The Act is modeled on a State of Pennsylvania law that was adopted following the murder of Jeanne Anne Clery in her Lehigh University dormitory room in 1986.

Congress amended the Campus Security Act in 1992 in two substantive ways. It first excluded campus law enforcement records from coverage under the Family Educational Rights and Privacy Act of 1974 (“FERPA”),<sup>1</sup> meaning that law enforcement records are not protected from disclosure on privacy grounds as “educational records.” This amendment also provided that disclosure of the outcome of campus disciplinary proceedings concerning sexual assault to the victim and accused is not a violation of FERPA. The other substantive amendment incorporated the “Campus Sexual Assault Victims’ Bill of Rights,” which requires campus security policies to specifically address sex offense prevention and specifies procedures that must be included in a campus disciplinary proceeding.<sup>2</sup> These laws became effective September 1, 1992, and the Department of Education enacted final regulations implementing the Campus Security Act, as amended, on April 29, 1994.<sup>3</sup>

<sup>1</sup> 20 U.S.C. § 1232(g)

<sup>2</sup> See 20 U.S.C. § 1092(f) (7) and 34 C.F.R. § 668.46(b) (11)

<sup>3</sup> See 59 Federal Register 22314 et seq. (April 29, 1994), then found in section 668.47 to Title 34 of the Code of Federal Regulations