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## Common mistakes to avoid when trying to report campus crimes (essay)

Submitted by Hayley E. Hanson and Anne D. Cartwright on July 27, 2017 - 3:00am

It has been a year since the U.S. Department of Education updated, via the new Handbook for Campus Safety and Security Reporting <sup>[1]</sup>, its guidance about the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (often referred to as just the Clery Act). But many campus officials charged with reporting campus crimes remain unclear about how to comply with the changes. And *each* inaccuracy or omission can cost an institution tens of thousands of dollars in fines and create the appearance that campus safety is not a priority -- consequences that can shake student confidence and hinder recruiting.

Since it was enacted in 1990, the Clery Act has been amended four times, as well as revised to take into account the Violence Against Women Reauthorization Act of 2013. Such changes repeatedly broadened the law's scope, expanding institutions' requirements to disclose statistics, create policies and offer programming related to sexual assault, dating violence, domestic violence and stalking.

And today, while the Trump Administration may be easing off the gas pedal when it comes to regulatory enforcement overall, there is no indication of a slowdown when it comes to Clery Act compliance. On April 20, the Education Department announced <sup>[2]</sup> that fines for Clery violations would increase to \$54,789 per violation -- more than double the original \$25,000 fine -- under federal inflationary adjustment rules. Legislators, too, encouraged by public advocates, have continued the push for more campus security enhancements in both the U.S. House and Senate <sup>[3]</sup>, as well as in state legislatures.

A substantial number of colleges and universities have received notices of Clery audits, noncompliance and associated fines in recent years. The most common triggers have been: 1) federal student aid program reviews, 2) complaints made to Education Department or 3) inconsistencies in institutional crime reports required by the federal government.

In fact, each year on October 1, all institutions participating in federal student aid programs must submit an Annual Security Report detailing what they have done and are doing to protect students and employees from violence on campus. These reports can be extensive and include information about how the institutions collect, classify and report certain crimes, investigate and process complaints and reports, and notify students and employees of emergencies.

## Common Compliance Mistakes

Unfortunately, the path to creating a perfect Annual Security Report is laden with obstacles. Colleges and universities often falter despite having collected the requisite information. But by reviewing some of the most common Clery pitfalls, institutional leaders can strengthen compliance and avoid potentially massive fines while also better serving and protecting their students and institutions. Some common mistakes include:

- failing to include gender identity and national origin, as defined by the Violence Against Women Reauthorization Act. You also need to include statistics about VAWA-defined hate crimes in your reports, along with the other VAWA offenses (sexual assault, domestic violence, dating violence and stalking);
- making general statements about how the disciplinary process worked in cases of VAWA crimes. The new guidelines require that institutions list each disciplinary proceeding used to resolve a complaint in cases involving such crimes;
- not reporting all of the possible sanctions following a disciplinary proceeding;
- reporting thefts as burglaries. Under the new guidelines, burglary requires unlawful entry within a structure. For example, a backpack in a student lounge would not count as burglary;
- misreporting drug offenses. You should not count as an offense possession of a small amount of marijuana in states that have decriminalized it. In addition, don't count a person's misuse of a legally-obtained prescription drug;
- including incidences in the "referral for disciplinary action" statistics that were violations of institutional policy but not violations of the law;
- using your Annual Security Report in place of a statement of victims' rights and options. The revised *Handbook* has made it abundantly clear that providing a copy of the report alone is not enough to fulfill VAWA's requirement to give victims written information about their rights and options. You must provide a document that walks victims through the process. Giving such written information to respondents clarifies procedures, ensures a reference point for future questions, and demonstrates fair treatment of both parties before the investigation and determination of a complaint; and
- transplanting your Title IX sexual misconduct policy into the report. Your Title IX policy is unlikely to fulfill the requirements spelled out in the *Handbook* for ASR policy statements concerning VAWA obligations. These required statements relate to sexual assault, dating violence, domestic violence and stalking, and they address your institution's response -- typically managed by your Title IX office -- to complaints of such activity. As a result, it's a good practice to have your Title IX coordinator review the VAWA-related areas of your Annual Security Report.

## Geographic classifications

Institutions can also frequently make mistakes concerning geographic issues related to crimes. Those potential mistakes include:

- failing to disclose statistics for reported Clery Act crimes that occur on non-campus buildings or property that your institution owns or controls. You must also include crimes that occur on public property within or immediately adjacent to the campus;
- failing to include crimes that are reported on property controlled by entities affiliated with your institution. According to the *Handbook*, any property owned or controlled by an institution-associated foundation, holding company, subsidiary, alumni association,

booster club or other institution-affiliated entity is considered to be controlled by your college or university where that property is operated in support of, or in relation to, the institution's educational purposes. Institution-associated hospitals and/or medical centers controlled by your institution and reasonably contiguous to campus are deemed part of your campus, as well;

- failing to show how each of your institution's campuses complies independently. Under this revised guidance, many buildings previously reported as non-campus property (including some ongoing study abroad sites) now qualify as separate campuses that must meet all of the requirements of the Clery Act. The new *Handbook* cleared up questions about separate campuses. To be considered a separate campus, a site must: 1) be owned or controlled by the institution, 2) not be reasonably contiguous to the main campus, 3) offer an organized program of study, and 4) offer courses in educational programs leading to a degree, certificate or other recognized credential; and have at least one administrative person on site at least part time; and
- failing to collect crime statistics on some non-campus properties. The new *Handbook* expanded the definition of non-campus property, such that it may now include locations used for repeated institution-sponsored trips. For example, if a university debate team stays at the same hotel year after year for a competition, rooms in the hotel plus the common and access areas are now considered non-campus property, and you must to collect crime statistics for those areas.

## The Hierarchy Rule

When counting multiple crimes for purposes of Clery crime reporting, the FBI's Uniform Crime Reporting [Hierarchy Rule](#) <sup>[4]</sup> applies. Under that rule, when more than one criminal offense has been committed during a single incident, you only count the most serious offense. With the new *Handbook*, the Hierarchy Rule now only applies to the category of criminal offenses or primary crimes and no longer extends to arrests and disciplinary referrals, which are reported separately. Common mistakes when applying the Hierarchy Rule include:

- not counting arson. Regardless of the offenses, if arson is involved, it must be included;
- not including sexual assault when it occurs with a murder. You need to count both; and
- counting fondling in incidents that include other sexual assault offenses. Only use the fondling designation if it is the sole sexual assault offense reported.

## Fire logs, policies, and reports

Along with preparing an Annual Security Report, institutions with on-campus student housing must disclose fire safety information related to facilities. Common mistakes include:

- not keeping a fire log that is open to public inspection;
- not publishing an annual fire-safety report containing policy statements as well as fire statistics associated with each on-campus student housing facility, including the number of fires, cause of fires, injuries, deaths and property damage;
- only stating that fire drills took place, rather than listing the exact number of drills that occurred in the year;
- not specifying if any planned improvements are planned for fire safety systems. If no improvements are planned, state that instead;

- not including the institution's policies on portable appliances, smoking and open flames; and
- not informing prospective students and employees about the availability of the report.

### Going the extra mile

This is a sampling of the many areas the new *Clery Handbook* addresses. The *Handbook* contains a useful checklist of Annual Security Report elements, but Clery compliance calls for more than checking off boxes. Your report must provide several levels of detail for each required statement of policy, procedure and programming. A deep understanding of the *Handbook*, regulations and related developing guidance can lead to a compliant report, strengthened institutional systems and a safer community for your institution.

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#### Links:

[1] <https://www2.ed.gov/admins/lead/safety/handbook.pdf>

[2] <https://www.federalregister.gov/documents/2017/04/20/2017-08034/adjustment-of-civil-monetary-penalties-for-inflation>

[3] <https://legiscan.com/US/bill/SB856/2017>

[4] <https://www.law.cornell.edu/cfr/text/34/668.46>

[5] <https://www.insidehighered.com/taxonomy/term/224>

[6] <https://www.insidehighered.com/taxonomy/term/204>