

Draft Regulation for Discussion at Second Negotiated Rulemaking
Session on Changes to the Clery Act by VAWA
February 24-25, 2014

§668.46 Institutional security policies and crime statistics.

(a) *Additional definitions that apply to this section.*

Business day: Monday through Friday, excluding any day when the institution is closed.

Campus: (1) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(2) Any building or property that is within or reasonably contiguous to the area identified in paragraph (1) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

Campus security authority: (1) A campus police department or a campus security department of an institution.

(2) Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department under paragraph (1) of this definition, such as an individual who is responsible for monitoring entrance into institutional property.

(3) Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.

(4) An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. If such an official is a pastoral or professional counselor as defined below, the official is not considered a campus security authority when acting as a pastoral or professional counselor.

Clery Geography: (1) For the purposes of collecting statistics on the crimes and incidents listed in paragraph (c) of this section for submission to the Department and inclusion in an institution's annual security report, Clery geography includes--

(i) Buildings and property that are part of the institution's campus;

(ii) The institution's noncampus buildings and property;
and

(iii) Public property within or immediately adjacent to
and accessible from the campus.

(2) For the purposes of maintaining the crime log required
in paragraph (f) of this section, Clery Geography includes, in
addition to the locations in paragraph (a)(1) of this section,
areas within the patrol jurisdiction of the campus police or the
campus security department.

Consent: For the purposes of determining whether a sex
offense is reportable under this section, consent means the
affirmative, unambiguous, and voluntary agreement to engage in a
specific sexual activity during a sexual encounter. Consent
cannot be--

(1) Given by an individual who--

(2) Is asleep, or mentally or physically incapacitated,
either through the effect of drugs or alcohol or for any other
reason; or

(i) Is under duress, threat, coercion, or force; or

(3) Inferred under circumstances in which consent is not
clear, including but not limited to--

(i) The absence of "no" or "stop"; or

(ii) The existence of a prior or current relationship or sexual activity.

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.

Comment [JF1]: §485(f)(6)(A)(i) & §485(f)(7)
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(1) The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(2) For the purpose of this definition-

(i) A social relationship of a romantic or intimate nature means a relationship which is characterized by the expectation of affection or sexual involvement between the parties.

(ii) Dating violence can be a single event or a pattern of behavior that includes, but is not limited to, sexual or physical abuse.

(iii) Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence: (1) A felony or misdemeanor crime of violence committed--

Comment [JF2]: §485(f)(6)(A)(i) & §485(f)(7)
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(i) By a current or former spouse or intimate partner of the victim;

(ii) By a person with whom the victim shares a child in common;

(iii) By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

(iv) 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

(v) 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.

(2) Domestic violence can be a single event or a pattern of behavior that includes, but is not limited to, sexual, or physical abuse.

Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) program: A nationwide, cooperative statistical effort in which city, university and college, county, state, tribal, and federal law enforcement agencies voluntarily report data on crimes brought to their attention. The UCR program also serves as the basis for the definitions of crimes in Appendix A to this subpart and the requirements for classifying crimes in this subpart.

Hate crime: 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 bases for the determination of a hate crime are race, religion, gender, gender identity, sexual orientation, ethnicity/national origin, and disability.

Hierarchy Rule: A requirement in the FBI's UCR program that, for purposes of reporting crimes in that system, that, for purposes of reporting crimes in that system, when more than one criminal offense was committed during a single incident, only the most serious offense be counted.

Noncampus building or property: (1) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or

(2) Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

Pastoral counselor: A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential

counseling, and is functioning within the scope of that recognition as a pastoral counselor.

Professional counselor: A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification.

Public property: All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

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.

Sexual assault: An offense that meets the definition of rape, sodomy, sexual assault with an object, fondling, incest, or statutory rape used in the FBI's UCR program and included in Appendix A of this subpart.

Comment [JF3]: §485(f)(6)(A)(v)
(Page 4 of 8)

Stalking: (1) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to--

Comment [JF4]: §485(f)(6)(A)(i) & §485(f)(7)
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(i) Fear for his or her safety or the safety of others; or

(ii) Suffer substantial emotional distress.

(2) For the purpose of this definition--

(i) 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.

(ii) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Test: Regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities.

(b) *Annual security report.* An institution must prepare an annual security report that contains, at a minimum, the following information:

(1) The crime statistics described in paragraph (c) of this section.

(2) A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including--

(i) Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in paragraph (c)(1) of this section;

(ii) Policies for preparing the annual disclosure of crime statistics; and

(iii) A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph (c)(1) of this section for the purpose of making timely warning reports and the annual statistical disclosure. This statement must also disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures.

(3) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(4) A statement of current policies concerning campus law enforcement that--

(i) Addresses the enforcement authority ~~of security personnel, including their relationship with State and local~~

~~police agencies and whether those security personnel have the authority to arrest individuals and jurisdiction of security personnel;~~

~~(ii) Addresses the working relationship of campus security personnel with State and local police agencies, including--~~

~~(A) Whether those security personnel have the authority to arrest individuals; and~~

~~(B) Any agreements, such as written memoranda of understanding, for the investigation of alleged criminal offenses.~~

~~(iii) Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies, even when the victim of a crime elects not to or is unable to make such a report; and~~

~~(iv) Describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.~~

(5) A description of the type and frequency of programs designed to inform students and employees about campus security

Comment [JF5]: §485(f)(1)(C)

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Comment [JF6]: §485(f)(1)(C)(iii)

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procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(6) A description of programs designed to inform students and employees about the prevention of crimes.

(7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity ~~inby which~~ students ~~engaged~~ at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities.

(8) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws.

(9) A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws.

(10) A description of any drug or alcohol-abuse education programs, as required under section 120(a) through (d) of the HEA. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with section 120(a) through (d) of the HEA.

(11) A statement of policy regarding the institution's ~~campus sexual assault~~ programs to prevent ~~sex offenses~~ sexual assault, domestic violence, dating violence, and stalking, and procedures ~~to~~ that the institution will follow when a sex offense occurs ~~once one of these incidents has been reported~~. The statement must include--

Comment [JF7]: §485(f)(8)(A)(i)
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Comment [JF8]: §485(f)(8)(A)(ii)
(Page 4 of 8)

(i) A description of educational programs to promote the awareness of ~~rape, acquaintance rape, and other forcible and nonforcible sex offenses;~~ domestic violence, dating violence, sexual assault, and stalking, as required by paragraph (j) of this section;

Comment [JF9]: §485(f)(8)(B)(i)
(Page 5 of 8)

(ii) Procedures ~~students~~ victims should follow if ~~a sex offense occurs~~ an incident of domestic violence, dating violence, sexual assault, or stalking has occurred, including ~~procedures concerning who should be contacted, the written information about~~--

Comment [JF10]: §485(f)(8)(B)(iii)
(Page 5 of 8)

(A) The importance of preserving evidence ~~for~~ that may be necessary to prove the proof of a criminal ~~alleged~~ offense, and ~~to~~ or to obtain a protection order;

Comment [JF11]: §485(f)(8)(B)(iii)(I)
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(B) To whom and how the alleged offense should be reported;

Comment [JF12]: §485(f)(8)(B)(iii)(II)
(Page 5 of 8)

~~(iii) Information on a student's option to notify appropriate~~ (C) Options regarding the involvement of law

enforcement and campus authorities, including notification of the victim's option to--

Comment [JF13]: §485(f)(8)(B)(iii)(III)
(Page 5 of 8)

(1) Notify proper law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student;

Comment [JF14]: §485(f)(8)(B)(iii)(III)(aa)
(Page 5 of 8)

(2) Be assisted by campus authorities in notifying these law enforcement authorities, if the student requests the assistance of these personnel; victim so chooses; and

Comment [JF15]: §485 (f)(8)(B)(iii)(III)(bb)
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(3) Decline to notify such authorities; and

Comment [JF16]: §485(f)(8)(B)(iii)(III)(cc)
(Page 6 of 8)

(D) Where applicable, the rights of victims and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

Comment [JF17]: §485(f)(8)(B)(iii)(III*)
(Page 6 of 8)

(iii) Information about how the institution will protect the confidentiality of victims, including how publicly available recordkeeping will be accomplished without the inclusion of identifying information about the victim, to the extent permitted by law.

*It appears that Congress intended this to be IV, not III.

(iv) NotificationA statement that the institution will provide written notification to students of and employees about existing on and off campus counseling, health, mental health, or victim advocacy, legal assistance, and other student services

Comment [JF18]: §485(f)(8)(B)(v)
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available for victims of sex offenses, both within the institution and in the community;

Comment [JF19]: §485(f)(8)(B)(vi)

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(v) ~~Notification to students~~A statement that the institution will ~~change a victim's~~provide written notification to victims about options for, and available assistance in, changing academic and, living, transportation, and working situations after an alleged sex offense and of the options for those changes,. The institution must make such accommodations only if those changes are requested by the victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement;

Comment [JF20]: §485(f)(8)(B)(vii)

(Page 6-7 of 8)

(vi) ~~Procedures~~An explanation of the procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that

~~(A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and~~

~~(B) Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. Compliance with this paragraph does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g). For the purpose of this~~

~~paragraph, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused~~action in cases of alleged domestic violence, dating violence, sexual assault, or stalking, as required by paragraph (k) of this section; and

Comment [JF21]: §485(f)(8)(B)(iv)
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~~(vii) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.~~

(vii) A statement that, when a student or employee reports to the institution of higher education that the student or employee has been a victim of domestic violence, dating violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section.

Comment [JF22]: §485(f)(8)(C)
(Page 7 of 8)

(12) Beginning with the annual security report distributed by October 1, 2003, a statement advising the campus community where law enforcement agency information provided by a State under ~~section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(j)),~~42 U.S.C. [16921],

Comment [JF23]: Technical change

concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

(13) Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding emergency response and evacuation procedures, as ~~described in~~ required by paragraph (g) of this section.

(14) Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding missing student notification procedures, as ~~described in~~ required by paragraph (h) of this section.

(c) *Crime statistics.* (1) ~~Crimes that must be reported-~~ and disclosed. An institution must report to the Department and disclose in its annual security report statistics for the three most recent calendar years concerning the ~~occurrence on campus,~~ in or on noncampus buildings or property, and on public property, number of each of the following crimes or incidents that occurred on or within its Clery Geography and that are reported to local police agencies or to a campus security authority:

(i) Primary crimes, including--

(A) Criminal homicide:

(A1) Murder and nonnegligent manslaughter-, and

(~~B~~2) Negligent manslaughter.

(~~ii~~B) Sex offenses:

~~(A) Forcible sex offenses.~~

~~(B) Nonforcible sex offenses.~~

~~iii~~(1) Rape,

(2) Sodomy,

(3) Sexual assault with an object,

(4) Fondling,

(5) Incest, and

(6) Statutory rape.

(C) Robbery.

(~~iv~~D) Aggravated assault.

(~~v~~E) Burglary.

(~~vi~~F) Motor vehicle theft.

(~~vii~~G) Arson.

(~~viii~~)(~~A~~)(H) (1) Arrests for liquor law violations, drug law violations, and illegal weapons possession.

(B2) Persons not included in paragraph (c)(1)(~~viii~~)(~~A~~)(H) of this section, who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

~~(2) Recording crimes. An institution must record a crime statistic in its annual security report for the calendar year in which the crime was reported to a campus security authority.~~

~~(3) Reported crimes if a hate crime. An institution must report, by category of prejudice, the following crimes reported to local police agencies or to a campus security authority that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability:~~

~~(i) Any crime it reports pursuant to (ii) Hate crimes, including--~~

~~The number of each type of crime in paragraph (c)(1)(i) through (vii) of this section.~~

~~(A) (ii) The crimes of larceny-theft, simple assault, intimidation, that are determined to be hate crimes; and destruction~~

~~(B) The number of the following crimes that are determined to be hate crimes:~~

~~(1) Larceny-theft.~~

~~(2) Simple assault.~~

~~(3) Intimidation.~~

~~(4) Destruction/damage/vandalism of property.~~

~~(iii)5) Any other crime involving bodily injury.~~

Comment [JF24]: Note: This text has not been removed but instead relocated.

~~(4)(iii) Crimes by location. The institution must provide a geographic breakdown of the statistics reported under in paragraphs (c)(1)(i) and (3c)(1)(ii)(B) of this section according to that meet the following categories:~~

~~(i) On campus.~~

~~(ii) Of the crimes definitions in paragraph (e)(4)(i) a) of this section of this section--~~

~~(A) Domestic violence,~~

~~(B) Dating violence, or~~

~~(C) Stalking.]~~

~~(2) Crimes must be recorded by calendar year. (i) An institution must report and disclose a crime statistic for the calendar year in which the crime was reported to local police agencies or to a campus security authority.]~~

~~(ii) When recording incidents of stalking by calendar year, an institution must follow the requirements in paragraph (c)(5) of this section.~~

~~(3) Hate crimes must be recorded by category of bias. For each hate crime recorded under paragraph (c)(1)(ii) of this section, an institution must identify the category of bias that motivated the crime. For the purposes of this paragraph, the number categories of bias include the victim's actual or perceived--~~

Comment [JF25]: §485(f)(1)(F)(iii)
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Comment [JF26]: Note: This is existing text but was relocated.

Comment [JF27]: Note: This is existing text but was relocated

(i) race,

(ii) gender,

(iii) gender identity,

(iv) religion,

(v) sexual orientation,

(vi) ethnicity and national origin, or

(vii) disability.

Comment [JF28]: §485(f)(1)(F)(ii)

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Comment [JF29]: §485(f)(1)(F)(ii)

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(4) Crimes must be recorded by location. (i) An

institution must specify whether each of the crimes recorded
under paragraph (c)(1) of this section occurred--

(A) On campus,

(B) In or on a noncampus building or property, or

(C) On public property.

(ii) An institution must identify, of the crimes that
occurred on-campus, the number that took place in dormitories or
other residential facilities for students on campus.

~~(iii) In or on a noncampus building or property.~~

~~(iv) On public property.~~

~~(iii) When recording incidents of stalking by location,~~
an institution must follow the requirements in paragraph (c)(5)
of this section.

(5) Recording incidents of stalking.

(i) When recording incidents of stalking that include activities in more than one calendar year, an institution must record a crime statistic only for the calendar year in which the course of conduct was first reported to a local police agency or to a campus security authority.

(ii) An institution must record each report of stalking as occurring at only the first location within the institution's Clery Geography in which the course of conduct originated or was received.

(iii) An institution must record a new incident of stalking that involves the same perpetrator and victim if--

(A) A significant amount of time elapses between acts in a course of conduct; or

(B) An official intervention has occurred.

(6) Identification of the victim or the accused. The statistics required under ~~paragraphs~~paragraph (c)~~(1) and (3)~~ of this section may not include the identification of the victim or the person accused of committing the crime.

~~(6)~~7) Pastoral and professional counselor. An institution is not required to report statistics under ~~paragraphs~~paragraph (c)~~(1) and (3)~~ of this section for crimes reported to a pastoral or professional counselor.

~~(7)–8) Using the FBI’s UCR definitions, program and the Hierarchy Rule. (i) An institution must compile the crime statistics required under paragraphs (c)(1)(i) and (3ii) of this section using the definitions of crimes provided in ~~appendix~~Appendix A to this subpart and the Federal Bureau of Investigation’s ~~Uniform Crime Reporting (UCR)~~ Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection. For further guidance concerning the application of definitions and classification of crimes, an institution must use either the UCR Reporting Handbook or the UCR Reporting Handbook: ~~NIBRS EDITION, except that in determining how to report crimes committed in a multiple offense situation an institution must use the UCR Reporting Handbook. Copies of the UCR publications referenced in this paragraph are available from: FBI, Communications Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306 (telephone: 304 625 2823).~~National Incident-Based Reporting System (NIBRS) EDITION, except as provided in paragraph (c)(8)(ii) of this section.~~

~~(8ii) In counting crimes when more than one offense was committed during a single incident, an institution must conform to the requirements of the Hierarchy Rule in the UCR Reporting Handbook, with one exception. In reporting incidents of sexual assault, the Hierarchy Rule does not apply. For example, if a~~

victim is both raped and murdered in a single incident, then an institution must include both the rape and the murder in its statistics.

(9) *Use of a map.* In complying with the statistical reporting requirements under ~~paragraphs~~paragraph (c)(1) and (3) of this section, an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas if the map accurately depicts its campus, noncampus buildings or property, and public property areas.

(~~9~~10) *Statistics from police agencies.* In complying with the statistical reporting requirements under ~~paragraphs (c)(1) through (4)~~paragraph (c) of this section, an institution must make a reasonable, good faith effort to obtain the required statistics and may rely on the information supplied by a local or State police agency. If the institution makes such a reasonable, good faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics.

(d) *Separate campus.* An institution must comply with the requirements of this section for each separate campus.

(e) *Timely warning and emergency notification.* (1) An institution must, in a manner that is timely, that withholds the

names of victims as confidential, and that will aid in the prevention of similar crimes, report to the campus community on crimes that are--

Comment [JF30]: §485(f)(3)

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(i) Described in paragraph (c)(1) ~~and (3)~~ of this section;

(ii) Reported to campus security authorities as identified under the institution's statement of current campus policies pursuant to paragraph (b)(2) of this section or local police agencies; and

(iii) Considered by the institution to represent a threat to students and employees.

(2) An institution is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

(3) If there is an immediate threat to the health or safety of students or employees occurring on campus, as described in paragraph (g)(1) of this section, an institution must follow its emergency notification procedures. An institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

(f) *Crime log.* (1) An institution 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 noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and its Clery Geography~~ and that is reported to the campus police or the campus security department.

This log must include--

(i) The nature, date, time, and general location of each crime; and

(ii) The disposition of the complaint, if known.

(2) The institution must make an entry or an addition to an entry to the log within two business days, as defined under paragraph (a) of this section, 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)(i) An institution may withhold information required under paragraphs (f)(1) and (2) of this section if there is clear and convincing evidence that the release of the information would--

(A) Jeopardize an ongoing criminal investigation or the safety of an individual;

(B) Cause a suspect to flee or evade detection; or

(C) Result in the destruction of evidence.

(ii) The institution must disclose any information withheld under paragraph (f)(3)(i) of this section once the adverse effect described in that paragraph is no longer likely to occur.

(4) An institution may withhold under paragraphs (f)(2) and (3) of this section only that information that would cause the adverse effects described in those paragraphs.

(5) The institution must make the crime log for the most recent 60-day period open to 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.

(g) *Emergency response and evacuation procedures.* An institution must include a statement of policy regarding its emergency response and evacuation procedures in the annual security report. This statement must include--

(1) The procedures the institution will use to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus;

(2) A description of the process the institution will use to--

(i) Confirm that there is a significant emergency or dangerous situation as described in paragraph (g)(1) of this section;

(ii) Determine the appropriate segment or segments of the campus community to receive a notification;

(iii) Determine the content of the notification; and

(iv) Initiate the notification system.

(3) A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency;

(4) A list of the titles of the person or persons or organization or organizations responsible for carrying out the actions described in paragraph (g)(2) of this section;

(5) The institution's procedures for disseminating emergency information to the larger community; and

(6) The institution's procedures to test the emergency response and evacuation procedures on at least an annual basis, including--

(i) Tests that may be announced or unannounced;

(ii) Publicizing its emergency response and evacuation procedures in conjunction with at least one test per calendar year; and

(iii) Documenting, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced.

(h) *Missing student notification policies and procedures.*

(1) An institution that provides any on-campus student housing facility must include a statement of policy regarding missing student notification procedures for students who reside in on-campus student housing facilities in its annual security report. This statement must--

(i) Indicate a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;

(ii) Require that any missing student report must be referred immediately to the institution's police or campus security department, or, in the absence of an institutional

police or campus security department, to the local law enforcement agency that has jurisdiction in the area;

(iii) Contain an option for each student to identify a contact person or persons whom the institution shall notify within 24 hours of the determination that the student is missing, if the student has been determined missing by the institutional police or campus security department, or the local law enforcement agency;

(iv) Advise students that their contact information will be registered confidentially, that this information will be accessible only to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation;

(v) Advise students that if they are under 18 years of age and not emancipated, the institution must notify a custodial parent or guardian within 24 hours of the determination that the student is missing, in addition to notifying any additional contact person designated by the student; and

(vi) Advise students that, the institution will notify the local law enforcement agency within 24 hours of the determination that the student is missing, unless the local law enforcement agency was the entity that made the determination that the student is missing.

(2) The procedures that the institution must follow when a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours include---

(i) If the student has designated a contact person, notifying that contact person within 24 hours that the student is missing;

(ii) If the student is under 18 years of age and is not emancipated, notifying the student's custodial parent or guardian and any other designated contact person within 24 hours that the student is missing; and

(iii) Regardless of whether the student has identified a contact person, is above the age of 18, or is an emancipated minor, informing the local law enforcement agency that has jurisdiction in the area within 24 hours that the student is missing.

(i) [Reserved]

(j) Programs to promote the awareness of domestic violence, dating violence, sexual assault, and stalking. As required by paragraph (b)(11)(i) of this section, an institution must include in its annual security report a statement of policy that addresses the institution's programs to promote awareness of domestic violence, dating violence, sexual assault, and stalking.

Comment [JF31]: 5485(f)(8)(B)

(Page 5 of 8)

(1) The statement must include--

(i) A statement that the institution prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking;

Comment [JF32]: §485(f)(8)(B)(i)(I)(aa)
(Page 5 of 8)

(ii) The definition of domestic violence, dating violence, sexual assault, and stalking in the applicable jurisdiction;

Comment [JF33]: §485(f)(8)(B)(i)(I)(bb)
(Page 5 of 8)

(iii) The definition of consent, in reference to sexual activity, in the applicable jurisdiction;

Comment [JF34]: §485(f)(8)(B)(i)(I)(cc)
(Page 5 of 8)

(iv) Safe and positive steps an individual may take to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against another person. This could include, but is not limited to, information about recognizing situations of potential harm, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action, such as reporting incidents to appropriate authorities;

Comment [JF35]: §485(f)(8)(B)(i)(I)(dd)
(Page 5 of 8)

(v) Information on how to recognize warning signs of abusive behavior in order to mitigate the likelihood of perpetration, victimization, or bystander inaction;

Comment [JF36]: §485(f)(8)(B)(i)(I)(ee)
(Page 5 of 8)

(vi) A description of the institution's primary prevention programs and awareness programs for new students and new employees; and

Comment [JF37]: §485(f)(8)(B)(i)(I)
(Page 5 of 8)

(vii) A description of the institution's ongoing prevention and awareness campaigns for students and employees.

Comment [JF38]: §485(f)(8)(B)(i)(II)

(Page 5 of 8)

(2) For the purposes of this paragraph--

(i) Primary prevention programs means comprehensive, intentional, and integrated programming, initiatives, and strategies intended to stop domestic violence, dating violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors and beliefs.

Examples of primary prevention programs include, but are not limited to, efforts to change behavior and social norms, promote healthy relationships, promote healthy sexuality and egalitarian gender roles, promote an understanding of the risk factors and protective factors for bystander inaction, and change social norms around bystander inaction.

(ii) Awareness programs means community-wide or audience-specific programs, campaigns, or initiatives that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

Examples of awareness programs include, but are not limited to, awareness month campaigns, speak outs, rallies, marches, informational poster campaigns, social media events, and resource Web sites.

(3) An institution's primary prevention programs and awareness programs must include, at a minimum, the information described in paragraph (j)(1) of this section.

Comment [JF39]: §485(f)(8)(B)(i)(I)
(Page 5 of 8)

(k) Procedures for institutional disciplinary action in cases of alleged domestic violence, dating violence, sexual assault, or stalking. As required by paragraph (b)(11)(vi) of this section, an institution must include in its annual security report a clear statement of policy that addresses the procedures for institutional disciplinary action in cases of alleged domestic violence, dating violence, sexual assault, or stalking and that--

Comment [JF40]: §485(f)(8)(B)(iv)
(Page 6 of 8)

(1)(i) Describes, in detail, each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; and how the institution determines which type of proceeding to use based on the circumstances of a reported incident;

(ii) Describes the standard of evidence that will be used during any institutional disciplinary proceeding arising from a report of these incidents; and

Comment [JF41]: §485(f)(8)(A)(ii)
(Page 4-5 of 8)

(iii) Describes the possible sanctions or protective measures that the institution may impose following the results

of any institutional disciplinary procedure regarding these incidents;

(2) Provides that the proceedings will--

(i) Include a prompt, fair, and impartial investigation and resolution;

(ii) Be conducted by officials who at a minimum receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;

(iii) Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice; and

(iv) Require simultaneous notification, in writing, to both the accuser and the accused, of--

(A) The result of any institutional disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking;

(B) The institution's procedures for the accused and the victim to appeal the result of the institutional disciplinary proceeding, if such procedures are available;

Comment [JF42]: §485(f)(8)(B)(ii)

(Page 5 of 8)

Comment [JF43]: §485(f)(8)(B)(iv)

(Page 6 of 8)

(C) Any change to the result; and

(D) When such results become final.

(3) For the purposes of this paragraph--

(i) An institution's disciplinary proceedings are considered prompt, fair, and impartial if the proceedings are--

(A) Completed within the timeframe designated by an institution's policy and without undue delay;

(B) Conducted in a manner that is consistent with the institution's policies and transparent to all parties;

(C) Conducted by officials who do not have a real or perceived conflict of interest or bias for or against the accused or the accuser; and

(D) At a minimum, comply with guidance issued by the U.S. Department of Education's Office for Civil Rights.

(ii) Advisor means an individual who provides the accused or accuser support or counsel. An institution may not limit the choice of advisor for either party. However, an institution may establish limits regarding the extent to which an advisor may participate in the proceedings, such as restricting cross-examination of witnesses or prohibiting advisors from addressing the decision-maker, as long as the limits apply equally to both parties.

Comment [JF44]: §485(f)(8)(B)(iv)

(Page 6 of 8)

(iii) Proceeding means all activities related to the resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings.

(iv) Result means an initial, interim, or final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result must include any sanctions imposed by the institution when the results are final.

(l) Compliance with paragraph (k) of this section does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g).

(m) Prohibition on retaliation. An institution, or an officer, employee, or agent of an institution, may not retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities under any provision in this section.

Comment [JF45]: §485(f)(17)
(Page 8 of 8)

_(Authority: 20 U.S.C. 1092)

APPENDIX A TO SUBPART D OF PART 668 - CRIME DEFINITIONS IN ACCORDANCE WITH THE FEDERAL BUREAU OF INVESTIGATION'S UNIFORM CRIME REPORTING PROGRAM

The following definitions are to be used for reporting the crimes listed in §668.46, in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program. The definitions for *murder; robbery; aggravated assault; burglary; motor vehicle theft; weapons: carrying, possessing, etc.; law violations; drug abuse violations; and liquor law violations* are ~~excerpted~~ from the Uniform Crime Reporting Handbook. The definitions of ~~forcible rape and nonforcible~~the sex offenses ~~are~~ excerpted from the National Incident-Based Reporting System Edition of the Uniform Crime Reporting Handbook. The definitions of *larceny-theft (except motor vehicle theft), simple assault, intimidation, and destruction/damage/vandalism of property* are ~~excerpted~~ from the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook.

Crime Definitions ~~From~~from the Uniform Crime Reporting Handbook

Arson

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.

Criminal Homicide—Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide—Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

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.

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.)

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.

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.)

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.

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.

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.

SEX OFFENSES DEFINITIONS FROM THE NATIONAL INCIDENT-BASED REPORTING SYSTEM EDITION OF THE UNIFORM CRIME REPORTING PROGRAM

Sex Offenses — ~~*Foreible*~~

Any sexual act directed against another person, ~~foreibly~~ and/or against that person's will; or not foreibly or againstwithout the ~~person's will~~ consent of the victim, including instances where the victim is incapable of giving consent.

A. ~~*Foreible*~~ Rape — The ~~earnal knowledge of~~ penetration, no matter how slight, of the vagina or anus with any body part or

object, or oral penetration by a person, forcibly and/or against that person's will; or not forcibly or against the person's will sex organ of another person, without the consent of the victim.

B. Sodomy – Oral or anal sexual intercourse with another person, 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 or physical incapacity ~~(or because of his/her youth).~~

~~B. Forcible Sodomy – Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.~~

C. ~~Sexual Assault With An Object~~ – The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, ~~forcibly and/or against that person's will; or not forcibly or against~~ without the person's will consent of the victim, including instances where the victim is incapable of giving consent because of his/her youth ~~age~~ or because of his/her temporary or permanent mental or physical incapacity.

D. ~~Forceible~~ *Fondling* – The touching of the private body parts of another person for the purpose of sexual gratification, ~~forcibly and/or against that person's will; or, not forcibly or against~~without the ~~person's will~~consent of the victim, including instances where the victim is incapable of giving consent because of his/her youthage or because of his/her temporary or permanent mental incapacity.

~~Sex Offenses – Nonforceible~~

~~Unlawful, nonforceible sexual intercourse.~~

~~A.~~

E. *Incest* – Nonforceible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

~~B.~~ F. *Statutory Rape* – Nonforceible sexual intercourse with a person who is under the statutory age of consent.

DEFINITIONS FROM THE HATE CRIME DATA COLLECTION GUIDELINES OF THE UNIFORM CRIME REPORTING HANDBOOK

Larceny-Theft (Except Motor Vehicle 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.

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.

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.