

TO: Roger Johnson;  
Ed Engelbride  
FROM: Joseph Storch  
RE: 2008 Changes to Clery Act Reporting Requirements  
DATE: September 2, 2008  
CC: Nicholas Rostow  
Marcia Isaacson

In August 2008, the President signed HR 4137, "An Act to amend and extend the Higher Education Act of 1965." Included in the myriad changes in the new bill are additional reporting requirements for compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act).

As campuses prepare the 2007 Annual Security Report (ASR) due October 1, 2008, please note that the legislation has several changes which must be implemented immediately. If a campus has already printed the document, it should at least make the required changes to the electronic copy posted on the campus website.

Following is guidance on complying with the new reporting requirements, a copy of the recent amendments, and a copy of a document reflecting the recent amendments to the Clery Act.

Please note four specific changes to the ASR:

1- Campuses must now include in the ASR additional policies regarding:

- "(i) the law enforcement authority of campus security personnel;
- "(ii) the working relationship of campus security personnel with State and local law enforcement agencies, including whether the institution has agreements with such agencies, such as written memoranda of understanding, for the investigation of alleged criminal offenses; and
- "(iii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate law enforcement agencies."

Campuses should already have such policies in place, and may describe them here. Subsection ii does not require that campuses include the entire language of Memorandums of Understanding with local police agencies, but merely describe the working relationship and note that such Memorandums have been signed. This section should be complied with immediately.

2- Campuses must also include in the ASR:

"(J) A statement of current campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication (if appropriate), which policies shall include procedures to--

- "(i) 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 staff occurring on the campus, as defined in paragraph (6), unless issuing a notification will compromise efforts to contain the emergency;

"(ii) publicize emergency response and evacuation procedures on an annual basis in a manner designed to reach students and staff; and

"(iii) test emergency response and evacuation procedures on an annual basis."

This does not require campuses to include all language of all policies regarding emergency notification. Instead, the statute requires a "statement of current policies." For most campuses, this will mainly focus around SUNY Alert and a description of campus policies for use of that method to notify the campus community of emergencies. Campus policies must reflect the requirement of annual publicity of the system to students and staff as well as annual system testing. This section should be complied with immediately.

- 3- Four additional crimes must be reported if they can be classified as hate crimes:
  - a. Larceny-theft;
  - b. Simple assault;
  - c. Intimidation;
  - d. Destruction, damage, or vandalism of property.

Note that the amendment does not require that campuses report these four crimes in the ordinary course along with the other specifically reportable crimes. These four categories need only be reported if they are classified as hate crimes.

In the past, the Department of Education has required campuses to begin to collect new statistics in the calendar year following the amendments. They have recognized that it is difficult to report statistics that a campus did not know it was required to keep. The Department so delayed for the 1998 Amendments to the Clery Act. They have not said, however, that they will do the same for the 2008 amendments and we can not depend on the Department doing so again. Our advice to comply with this section is as follows:

- a. If a campus already collects such statistics for state reporting or internal purposes, report these statistics in the current year's ASR for 2007, 2006, and 2005 (or for as long as you have such statistics).
  - b. If a campus did not collect such statistics, it must begin to collect statistics immediately. In the 2009 ASR, a campus can note that it began collecting statistics on these four crimes when the 2008 Amendments passed to explain why it is a partial count, and note that a full collection of calendar year 2009 statistics will appear in the 2010 ASR and from that point forward.
- 4- The statute now includes language specifically protecting whistleblowers who report violations of the Clery Act. This section is effective immediately.

**Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act  
2008 Amendments  
As Adopted In The “Higher Education Opportunity Act” (Public Law 110-315)  
Enacted Into Law August 14, 2008; Effective Immediately\***

Deleted Provisions In ~~Strikethrough~~, New Provisions In **Bold**

20 U.S.C. § 1092(f) Disclosure of campus security policy and campus crime statistics

(1) Each eligible institution participating in any program under this title, **other than a foreign institution higher education**, shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.

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

(C) A statement of current policies concerning campus law enforcement, including--

~~(i) the enforcement authority of security personnel, including their working relationship with State and local police agencies; and~~

~~(ii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.~~

**(i) the law enforcement authority of campus security personnel;**

**(ii) the working relationship of campus security personnel with State and local law enforcement agencies, including whether the institution has agreements with such agencies, such as written memoranda of understanding, for the investigation of alleged criminal offenses; and**

**(iii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate law enforcement agencies.**

(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

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

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available--

(i) of the following criminal offenses reported to campus security authorities or local police agencies:

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\* Acknowledgement to Security on Campus, Inc. for sharing this document.

- (I) murder;
- (II) sex offenses, forcible or nonforcible;
- (III) robbery;
- (IV) aggravated assault;
- (V) burglary;
- (VI) motor vehicle theft;
- (VII) manslaughter;
- (VIII) arson; and

(IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and

(ii) of the crimes described in subclauses (I) through (VIII) of ~~clause (i), and clause (i), of~~ **larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of** other crimes involving bodily injury to any person, in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice.

(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

(H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under section 120 of this Act [20 USCS § 1011i].

(I) 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)), 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.

**(J) A statement of current campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication (if appropriate), which policies shall include procedures to-**

**(i) 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 staff occurring on the campus, as defined in paragraph (6), unless issuing a notification will compromise efforts to contain the emergency;**

**(ii) publicize emergency response and evacuation procedures on an annual basis in a manner designed to reach students and staff; and**

**(iii) test emergency response and evacuation procedures on an annual basis.**

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

(3) Each institution participating in any program under this title shall make timely reports to the campus community on crimes considered to be a threat to other students and employees

described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

(4) (A) Each institution participating in any program under this title that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including--

- (i) the nature, date, time, and general location of each crime; and
- (ii) the disposition of the complaint, if known.

(B) (i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security authority.

(ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department.

(iii) If there is clear and convincing evidence that the release of such 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, such information may be withheld until that damage is no longer likely to occur from the release of such information.

(5) On an annual basis, each institution participating in any program under this title shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall--

(A) review such statistics and report to the ~~Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate~~ **authorizing committees** on campus crime statistics by September 1, 2000;

(B) make copies of the statistics submitted to the Secretary available to the public; and

(C) in coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(6) (A) In this subsection:

(i) The term "campus" means--

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

(II) property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

(ii) The term "noncampus building or property" means--

(I) any building or property owned or controlled by a student organization recognized by the institution; and

(II) any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's

educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

(iii) The term "public property" means all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.

(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

(7) The statistics described in paragraphs (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act [28 USCS § 534 note]. Such statistics shall not identify victims of crimes or persons accused of crimes.

(8) (A) Each institution of higher education participating in any program under this title shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding--

(i) such institution's campus sexual assault programs, which shall be aimed at prevention of sex offenses; and

(ii) the procedures followed once a sex offense has occurred.

(B) The policy described in subparagraph (A) shall address the following areas:

(i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.

(ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible.

(iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.

(iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that--

(I) the accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and

(II) both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.

(v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.

(vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community.

(vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

(C) Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.

(9) The Secretary shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.

(10) Nothing in this section shall be construed to require the reporting or disclosure of privileged information.

(11) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

(12) For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur--

(A) on campus;

(B) in or on a noncampus building or property;

(C) on public property; and

(D) in dormitories or other residential facilities for students on campus.

(13) Upon a determination pursuant to section 487(c)(3)(B) [20 USCS § 1094(c)(3)(B)] that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this subsection, the Secretary shall impose a civil penalty upon the institution in the same amount and pursuant to the same procedures as a civil penalty is imposed under section 487(c)(3)(B) [20 USCS § 1094(c)(3)(B)].

(14) (A) Nothing in this subsection may be construed to--

(i) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(ii) establish any standard of care.

(B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

**(15) The Secretary shall annually report to the authorizing committees regarding compliance with this subsection by institutions of higher education, including an up-to-date report on the Secretary's monitoring of such compliance.**

**(16) The Secretary may seek the advice and counsel of the Attorney General concerning the development, and dissemination to institutions of higher education, of best practices information about campus safety and emergencies.**

**(17) Nothing in this subsection shall be construed to permit an institution, or an officer, employee, or agent of an institution, participating in any program under this title to retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual with respect to the implementation of any provision of this subsection.**

(18) This subsection may be cited as the "Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act".

## Higher Education Act Reauthorization August 2008 Clery Act Changes

“An Act to amend and extend the Higher Education Act of 1965”

§488

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(e) CRIMINAL OFFENSES REPORTED.--Section 485(f) (20 U.S.C. 1092(f)) is amended--  
(1) in paragraph (1)--

(A) in the matter preceding subparagraph (A), by inserting ", other than a foreign institution higher education,"

after "under this title";

(B) in subparagraph (C), by striking clauses (i) and (ii) and inserting the following:

"(i) the law enforcement authority of campus security personnel;

"(ii) the working relationship of campus security personnel with State and local law enforcement agencies, including whether the institution has agreements with such agencies, such as written memoranda of understanding, for the investigation of alleged criminal offenses; and

"(iii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate law enforcement agencies.";

(C) in subparagraph (F)(ii)--

(i) by striking "clause (i), and" and inserting "clause (i), of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of"; and

(ii) by inserting a comma after "any person"; and

(D) by adding at the end the following new subparagraph:

"(J) A statement of current campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication (if appropriate), which policies shall include procedures to--

"(i) 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 staff occurring on the campus, as defined in paragraph (6), unless issuing a notification will compromise efforts to contain the emergency;

"(ii) publicize emergency response and evacuation procedures on an annual basis in a manner designed to reach students and staff; and

"(iii) test emergency response and evacuation procedures on an annual basis.";

(2) by redesignating paragraph (15) as paragraph (18); and

(3) by inserting after paragraph (14) the following:

"(15) The Secretary shall annually report to the authorizing committees regarding compliance with this subsection by institutions of higher education, including an up-to-date report on the Secretary's monitoring of such compliance.

"(16) The Secretary may seek the advice and counsel of the Attorney General concerning the development, and dissemination to institutions of higher education, of best practices information about campus safety and emergencies.

"(17) Nothing in this subsection shall be construed to permit an institution, or an officer, employee, or agent of an institution, participating in any program under this title to retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual with respect to the implementation of any provision of this subsection."