

## TOPIC:

### **THE 2011 CLERY HANDBOOK: NEW DEVELOPMENTS AND IMPORTANT CHANGES**

## INTRODUCTION:

On November 8, 2010, the Clery Act [\[1\]](#), a law that governs how colleges report on and work to prevent crimes on campus, turned twenty years old. Over the course of two decades, the law has been amended and expanded several times, most recently by the 2008 Higher Education Opportunity Act (“HEOA”) and the implementing regulations that followed. In 2005, the United States Department of Education (“the Department”) Office of Postsecondary Education issued *The Handbook for Campus Crime Reporting* [\[2\]](#) (“2005 Handbook”), which provided some detail, context and examples for campuses to use as they worked to comply with the Clery Act. The Department also used the 2005 Handbook as a guide when conducting program reviews of compliance with the Clery Act. The 2005 Handbook was a strong effort, but it was not perfect, and did not reflect more recent changes to the law.

In February 2011, the Department released *The Handbook for Campus Safety and Security Reporting* [\[3\]](#) (“2011 Handbook” or “Handbook”). The 2011 Handbook reflects recent changes to law and regulations and provides clearer guidance, examples and standards for colleges to use. Coincidental with the timing of the 2011 Handbook is an increased effort by the Department of Education to conduct audits and program reviews of institutional compliance with the Clery Act [\[4\]](#). Accordingly, this NACUANOTE discusses some of the more notable differences between the 2005 Handbook and the 2011 Handbook in an attempt to assist both campus attorneys and their Clery-responsible clients in complying with the law [\[5\]](#). To facilitate ease of use, this Note will proceed in the order that topics appear in the 2011 Handbook, though minor adjustments have been made to group like content together. The Note is meant to allow for easy cross-reference against the 2011 Handbook, but will also include (where noted) reasonable advice that is crafted based on personal discussions with officials at the Department of Education.

The Handbook commences with an important point worthy of note: “[W]e want to stress that this is not a one-person job . . . most of you will find it necessary to coordinate compliance activities with many people and offices in the campus community.” [\[6\]](#) To that end, this Note is meant to be shared with appropriate personnel across the campuses of NACUA member institutions. It is also meant to be read in conjunction with an earlier NACUANOTE [\[7\]](#) covering HEOA changes to the Clery Act, and does not retread the same ground discussed in that Note.

## DISCUSSION:

### Chapter 1: Introduction: An Overview of Campus Safety and Security Reporting [\[8\]](#)

All colleges and universities that accept federal funds through Title IV of the Higher Education Act must comply with the Clery Act and the new federal fire and missing persons requirements. Note that Table 1 on page 8 provides a timeline for compliance with the Clery Act and Appendix E on page 269 provides a helpful Checklist for the Various Components of Campus Safety and Security Compliance.

### Chapter 2: Geography: Location, Location, Location [\[9\]](#)

Clery obligations differ depending upon location, and the 2011 Handbook expands significantly upon some of the geographic location examples in the 2005 Handbook.

Colleges that have no physical campus whatsoever, and conduct all classes over distance education need not comply with the requirements of the Clery Act. Further, foreign institutions are exempt. However, the Handbook states that “foreign campuses of U.S. institutions are not exempt and must comply with HEA requirements.” [\[10\]](#) Moreover, for institutions with multiple campuses, each campus must comply with the Clery requirements. With respect to military bases, if the institution has a written agreement to use specific space, “and the location otherwise meets the definition of a campus, it’s a separate campus,” requiring a separate Annual Security Report. However, if “your school simply sends instructors to the base, it’s not a separate campus.”

Clery Act crimes must be reported if they occur in four locations:

- On campus
- On campus in a residence hall (this is reported as its own subset)
- In noncampus property owned or controlled by the institution
- On public property within or immediately adjacent to the campus.

#### A. On-Campus Property [\[11\]](#)

On-campus property is:

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

For property to be “controlled” by an institution, there must be a written agreement to rent or lease. “Even if there is no payment involved in the transaction, under Clery, a written agreement for use of space gives your institution control of that space for the time period specified in the agreement.” [\[12\]](#) This includes renting space on another college’s campus. Incidents that occur outside of controlled space and time are not reportable in the Annual Report.

If an institution-associated foundation owns or controls a building or property that is operated in support of, or in relation to, the institution’s educational purposes, the institution is considered to be

in control of that building or property. Restaurants, bookstores and other businesses that lease space on campus are also considered to be on-campus for Clery reporting purposes. Private restaurants off campus that are frequented by students are not.

### **B. On-Campus Residence Halls [13]**

Incidents that occur in residence halls are to be reported twice: once as on-campus incidents, and once as on-campus residence hall incidents. Some campuses have written agreements with third parties (including foundations and auxiliary organizations) to run residence halls. If a written agreement exists to do so, incidents occurring in those buildings must be reported, regardless of whether rent is paid directly to the third party or through the college [14]. Likewise, housing for officially recognized and unrecognized organizations (such as fraternities and sororities) owned or controlled (including by written agreement) by the college and located on college property must have incidents that occur therein reported as on-campus and on-campus residential. If two institutions share a residence hall, both are considered in control, and both must report all incidents that occur in that facility.

### **C. Public Property Adjacent to and Accessible from the Campus [15]**

Public property incidents are only reportable if the property is both owned by the public and accessible from the campus [16]. Public property within a campus includes public roads or bike paths that run through a campus and are not controlled by the institution. Incidents that occur on college-owned roads or bike paths are reported as occurring on-campus.

The 2011 Handbook provides a key piece of guidance on how far to extend the public property definition to streets surrounding a college campus. The Handbook states that, ordinarily, a college should define such public property to be “sidewalk, street, sidewalk.” Public property does not include anything beyond the second sidewalk, and if there is not a second sidewalk, it does not include anything beyond the street.” [17]

If a college borders a public waterway and the waterway is accessible from the border of the college, the college should include any reported incidents occurring within one mile of the campus in the waterway. If the waterway is not accessible, it is not reportable public property.

If a college has no public property (e.g. it is completely surrounded by private property or another college campus or is surrounded by a restrictive fence), then the Annual Report may say so, and include no table for public property.

### **D. Noncampus Property [18]**

Noncampus property is often the most difficult property to correctly categorize for reporting purposes. It is defined as any “building or property owned or controlled by a student organization that is officially recognized by the institution; or [a]ny 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.” If property is located off campus and is owned or controlled by a recognized student organization, it is noncampus property (including fraternity and sorority houses not located on the campus). Property associated with the college, not located on campus, but not itself a separate campus, and frequently used by students is likewise noncampus property (such as a public athletic facility used by a college team or space in a local high school classroom for college classes). Such off-campus property not used by students (e.g. back office employees) is not considered noncampus property.

Note that unlike on-campus property, for which the Annual Report includes public property adjacent

to and accessible from the campus, noncampus property does not have a public property component, and incidents that occur on public property adjacent to and accessible from noncampus property (such as the sidewalk in front of a recognized fraternity's house) are not reportable.

Off-campus apartment buildings owned by the college but managed as regular apartment buildings by a management company are not reportable, even if students happen to rent apartments there. In mixed use buildings, only report the floors or areas that are used for student housing (not those used only by faculty or staff).

Crimes that occur on college-sponsored field trips or at overnight stays on college-sponsored trips are not reportable, nor are crimes that occur in study-abroad programs if the college does not own or control the space. However, if the college "rents or leases space . . . in a hotel or student housing facility" for its students, it must report crimes occurring there, as the college "controls" that space for the time period covered by the institution's agreement. Crimes occurring on "research boats or ships that carry students for educational purposes" must be disclosed as noncampus incidents.

### **Chapter 3: Crime Statistics: Classifying and Counting Clery Act Crimes [\[19\]](#)**

The 2011 Handbook changes or explains differently the guidance on classifying and counting certain Clery Act reportable crimes. Not all changes are based on the new crimes added in the 2008 HEOA.

#### **A. Non-Forcible Sex Offenses [\[20\]](#)**

On page 40 of the Handbook, the Department highlights a common mistake colleges make in the Clery Act Annual Security Report. There are only two non-forcible sex offenses as defined by federal reporting requirements: statutory rape and incest. The form of rape sometimes referred to as "date rape" or "acquaintance rape" is a forcible sex offense and should never be reported as non-forcible. Note that for statutory rape purposes, the age of consent differs by state, and must be reported as appropriate in the state in which the college campus is located.

#### **B. Aggravated Assault [\[21\]](#)**

New in the 2011 Handbook is guidance that colleges must classify "assault with disease" as a type of aggravated assault. This includes cases when the offender is aware that he or she is infected with a deadly disease and deliberately attempts to infect another with that disease by biting, spitting, or some other method.

#### **C. Burglary [\[22\]](#)**

The 2011 Handbook corrects what is widely regarded as a misstatement in the 2005 handbook defining burglary. The 2005 Handbook included a letter from the Federal Bureau of Investigation to George Washington University that stated, among other things, that when investigating a report of items missing from a residence hall, if an investigator has "exhausted all avenues leading toward the offense of larceny-theft, then the proper classification would be burglary." [\[23\]](#) Under this interpretation, burglary would differ from all other reportable crimes in that its definition was based on one's *not* establishing all the elements of another crime.

The 2011 Handbook clarifies any misunderstanding, requiring three elements be met for an incident to be classified as burglary—unlawful entry, into a structure, for the purpose of committing a felony or theft. If those three elements are not met, colleges should not classify the incident as a burglary.

It is not burglary when items are taken from open access areas, such as dining halls and libraries,

and the incident must occur in a structure (four walls, a roof and a door); telephone booths, gym lockers and cubbies do not count. The Handbook provides examples of burglaries and larcenies (larceny is not reportable under the Clery Act), including for burglaries in individual student rooms, suites, private academic offices, and patient rooms in hospitals.

#### **D. Arson [\[24\]](#)**

The Handbook urges colleges to investigate all non-accidental fires to determine whether they were arson. Arson includes fires “determined through investigation to have been willfully or maliciously set” as well as attempts. As a reminder, arson is counted separately than other crimes covered by the hierarchy [\[25\]](#). This means that if an individual is killed as a result of arson, a college counts one homicide and one arson [\[26\]](#).

#### **E. Four New Hate Crimes [\[27\]](#)**

The new Handbook clarifies four new crimes that are reportable only as hate crimes. Those crimes are: larceny-theft, simple assault, intimidation, and destruction, damage or vandalism of property.

Larceny-theft is defined as “the unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another.” Note that, as with other crimes, to correctly report hate crime larceny-theft on the Annual Report, a college must establish the elements of larceny-theft and also establish that the act was committed as a hate crime. The status of the victim alone is insufficient to establish that a hate crime occurred [\[28\]](#).

Simple assault is defined as “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.” Such assaults are only reportable when conducted as a hate crime. If the attack is against another “for the purpose of inflicting severe or aggravated bodily injury,” then the crime is an “aggravated assault,” and reportable both as a hate crime and as a regular crime [\[29\]](#).

Intimidation is defined as “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.” [\[30\]](#) This crime is only reportable if the threatening words or conduct are related to a characteristic (real or perceived) that is motivated, in whole or in part, by bias against the recipient because of their membership in a protected class. The reporting victim need not be the intended target, as another person may see the threats or graffiti or writing of the assailant and feel intimidated. Further, intimidation may be in person, in writing, or online.

Destruction, damage or vandalism of property is defined as “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.” The Department lists as examples: cutting auto tires, drawing obscene pictures on restroom walls, smashing windows, destroying school records, or defacing library books, when committed as a hate crime. Hate crime incidents of destruction through burning, however, are classified as arson.

The Handbook encourages a case-by-case assessment of each set of facts to determine whether an incident qualifies as a hate crime, and provides a number of helpful sample scenarios. Unlike all other crimes, hate crimes may be listed in narrative form or tabular form [\[31\]](#).

#### **F. Arrests and Disciplinary Referrals for Violation of Weapons, Drug and Liquor Laws [\[32\]](#)**

When reporting the number of arrests or disciplinary referrals for violations of drug, alcohol, and weapons laws, officials responsible for Clery compliance can face a vexing problem, especially when

an individual is arrested or referred for violating multiple laws in the same incident. Specifically, which violation should the institution report? The hierarchy of crime reporting, which states that colleges must report only the single most heinous crime conducted, does not apply to these violations. The Handbook simply states: "If a person is arrested [or referred for disciplinary action] for multiple violations during a single incident (e.g., violations of both drug and liquor laws), law enforcement or security officer discretion should be used to determine which violation to count. We recommend that you document the justification for this determination."

In conversations with Department officials, they have unofficially approved of two systems, provided that such systems are applied uniformly across departments, officers, shifts and years:

1. report each arrest or referral for multiple violations on a case-by-case basis determining which offense was the more prevalent offense or which offense was the one that the student was primarily caught doing; or
2. report in a standard manner with a makeshift hierarchy of weapons violations being the most heinous, then drugs, then alcohol.

Strengths and weaknesses exist in each system. The first is more accurate on a case-by-case basis, but is less likely to be applied uniformly since individual opinions may vary as to which was the primary violation. The second may be less accurate in the micro sense, but more accurate in overall counting of drug, alcohol and weapon violations on campus across different offices and different years. In either system, the key is to be consistent and to note in a policy or procedure which method your college uses.

The 2011 Handbook clarifies what steps are required for a referral for disciplinary action to be counted for Clery purposes. The Handbook states that if the process involves the following three criteria, it is a disciplinary action under Clery:

1. The official receiving the referral must initiate a disciplinary action;
2. A record of the action must be kept; and
3. The action may, but does not have to, result in a sanction.

The results of the disciplinary process (found responsible or not responsible, accepts responsibility for a lesser violation as a "plea bargain") are irrelevant.

In counting arrests for drug possession, the Handbook acknowledges that possession of a small amount of marijuana has been decriminalized in some states. Thus, if a person is given a civil citation for possession under state law, there will be no arrest statistic under Clery. However, if a person with marijuana in his or her possession is arrested for violation of the federal Controlled Substances Act, this is an arrest statistic for Clery purposes.

## **Chapter 4: Collecting Statistics: Campus Security Authorities and Law Enforcement Agencies [\[33\]](#)**

### **A. Campus Security Authorities:**

The 2011 Handbook includes examples of individuals who meet the criteria of campus security authorities, and provides recommendations for coordinating the crime reporting process among police/security and campus security authorities. Those recommendations include:

- Designate an individual or office to coordinate and oversee your campus security authorities.
- Make sure your campus security authorities know they're campus security authorities.
- Provide training.

- Forward crime reports to your campus police or security department, if you have one.
- Keep documentation of all crime reports.

### **B. Campuses in Foreign Countries:**

The 2011 Handbook instructs U.S. colleges that have additional campuses in foreign countries that such a campus “has an obligation to make a good-faith effort to obtain statistics from local law enforcement authorities there.”

As with local statistics, the Clery Act does not govern local domestic police departments, and certainly does not govern police departments in foreign countries. U.S. colleges satisfy this Clery Act requirement by requesting appropriate statistics in writing and documenting that good faith effort. If the statistics are not supplied, it is not a violation on the college’s part. If the statistics are supplied in a manner that can be used, then they must be included in the Annual Report. If not, add a caveat that the statistics were requested but were not supplied or were not supplied in a usable format [\[34\]](#). If the local police agency requests payment to provide the statistics, “you may pay the agency, but you are not required to do so.”

## **Chapter 5: The Daily Crime Log: Recording Crimes Reported to Campus Police or Security (see also Chapter 12) [\[35\]](#)**

### **A. The Daily Crime Log and the Fire Log:**

The HEOA added a requirement that colleges maintain a log of reportable fires occurring in residence halls. The 2011 Handbook allows colleges to use a single log to catalog all reported crimes and reportable fires that occur in the residence halls [\[36\]](#). The crime log includes all reported crimes (not just Clery crimes) in the four applicable geographic locations, as well any crimes that occur outside of those locations but within the patrol jurisdiction of the police/security department. The crime reporting hierarchy does not apply to the crime log; in an incident that includes multiple crimes, all are included in the log.

### **B. Making the Log Available:**

The log may be made available in paper or electronic format. Colleges may maintain the log in a police or security office, or may make it available online. The 2011 Handbook requires that colleges publicize availability of the crime log, by posting a notice on the college web site, in the security or police office, in student or employee handbooks or elsewhere “likely to be seen.” Further, the crime log must truly be available to the public, including the media, whether they are members of the campus community or not. The crime log for the most recent 60-day period must be open to public inspection during normal business hours, and any portion of the log that is older than 60 days must be available within two business days of a request for public inspection. Institutions cannot require a written request.

## **Chapter 6: Emergency Notification and Timely Warnings: Alerting Your Campus Community [\[37\]](#)**

The HEOA added an emergency notification requirement to the existing timely warning requirement of the Clery Act. Note also that under the Clery regulations, institutions must test emergency response and evacuation procedures on at least an annual basis. Relevant information may be found in the above referenced NACUANOTE [\[38\]](#), and is repeated in this Handbook chapter.

## **Chapter 7: Policy Statements: Disclosing What You Do and How You Do It [\[39\]](#)**

In addition to crime statistics, the Annual Report includes certain required policies. The content of these policies is not specifically prescribed in federal law or the Handbook, but “must reflect your institution’s unique security policies, procedures and practices.” While all policies must actually appear in the Annual Report (not as references or links to other sources [\[40\]](#)), policies may appear in the Report in any order and may be combined or listed separately. Updated samples of every required policy are available in this chapter of the Handbook and that content may be used in whole or in part in a college’s own policies.

## **Chapter 8: Policy Statements: Sex Offenses and Offenders [\[41\]](#)**

The Clery Act requires certain statements regarding sex offenses and sex offenders. There are no major changes in this chapter from the 2005 Handbook.

## **Chapter 9: The Annual Security Report: Publishing Policy Statements and Crime Statistics [\[42\]](#)**

The law, regulations, and Handbook are clear on exactly which crimes must be reported. Colleges are not required to report any crimes that are not specifically called for by the Clery Act (e.g. larceny, driving while intoxicated). Colleges may choose, however, to report additional crimes. The Clery Act sets a reporting floor, but not a ceiling. The 2011 Handbook states, however, that if “you are including non-Clery statistics in your annual security report (e.g., non-Clery crimes and/or crimes that occurred outside of your Clery geographic locations), present those statistics in a separate table or in a caveat.”

### **A. Distributing the Annual Security Report:**

In addition to distributing the report to currently enrolled students and all employees (via a clear, standalone notice and not buried in a much longer document), the Clery Act requires colleges to issue the report to prospective students and employees. A prospective student is defined as an individual who has contacted an eligible institution requesting information about admission to that institution, and a prospective employee is defined as an individual who has contacted an eligible institution requesting information concerning employment with that institution. Beyond these definitions, the Handbook gives no further guidance on how to comply. In conversations with employees of the Department of Education (combined with language in the 2011 Handbook), the following methods have been developed as reasonable methods of compliance:

- For prospective students, the Admissions web page should contain an easily readable link to campus crime statistics. Additionally, admissions books (e.g. view books, catalogs, transfer brochures, etc.) should state that prospective students may access the Annual Security Report for the College at a specified web site, briefly describe the contents of the report, and provide contact information to request a hard copy of the report. Importantly, the Handbook states that this notice may be provided along with other information in one document [\[43\]](#).
- For prospective faculty and staff, the college’s Human Resources web page should contain an easily readable link to campus crime statistics. Additionally, for those campuses that use an electronic application process, the bottom of each job posting should provide the same information identified in the preceding bullet point. If, upon submitting an application, a prospective employee receives a form letter or e-mail acknowledging their application, that

- letter or e-mail should likewise contain notification of the availability of the report, a link to access the report, a brief description of the contents of the report, and a notification that they can request a paper copy.
- If a campus is taking out an employment advertisement in a periodical or newspaper, then it need not put in these extra sentences at a significant cost (especially where an advertiser pays by the line or by the word). Simply placing the language on the campus job posting and form letter acknowledgement will satisfy the requirement.
  - A college is not required to notify an individual to whom it sends a rejection letter based on his or her unsolicited employment application.

### **B. Retaining Clery Act Records:**

Your institution or state may require specific retention timing for Clery Act records or the Annual Safety and Fire Reports. Absent such requirements, all Clery Act records must be retained for at least seven years to facilitate an audit.

## **Chapter 10: Missing Students: The Twenty-four Hour Rule [\[44\]](#)**

The HEOA added a requirement that colleges take certain actions when on-campus residential students are reported missing. Those requirements are discussed in the aforementioned NACUANOTE [\[45\]](#). The 2011 Handbook includes some additional pertinent guidance.

Although the statute requires action within 24 hours, an institution need not wait 24 hours to determine that a student is missing. While colleges must have a policy for missing on-campus residential students, they may have a policy covering all students, and may utilize a single policy. The missing persons contact is distinct from the “emergency contact” information collected by many institutions, and eligible students must be given the opportunity to register a confidential missing persons contact even if they have already supplied an emergency contact. Students must be offered this opportunity at least annually, and all students who move into residence halls midyear must be offered the opportunity to register a contact when they move in.

The Handbook views this section of the Clery statute and regulations as a new clarification to FERPA, and states that to “protect confidentiality, general emergency contact information and missing student contact information must be kept separate, even if the student has registered the same person for both purposes. Because *HEA* requires the information to be kept confidential, it has greater privacy protections than the *Family Educational Rights and Privacy Act (FERPA)* provides.” The information is not to be shared with any college officials with legitimate educational interests, as is traditional for FERPA-protected information, but instead, authorized campus officials “may disclose the contact information *only* to law enforcement officials and *only* for the purpose of a missing student investigation.” Sample policy statements and confidential contact registration forms are available in this chapter of the Handbook.

## **Chapter 11: Fire Safety Disclosures: Requirements and Definition of a Fire [\[46\]](#)**

The HEOA added a requirement that colleges disclose fires that occur in residence halls, which includes “any instance of open flame or other burning in a place not intended to contain the burning.” That definition from the regulations is now paired in the Handbook with helpful examples of what should and should not be categorized as a fire. Violations of institutional policy (such as possessing candles) do not necessarily result in reportable fires, as a candle is intended to contain burning. Fires outside of on-campus residence halls are not reportable. However, fires on the roof or outside walls of a residence hall are reportable, even if the fire does not spread inside. Fires in attached parking facilities or dining halls are reportable (except for vehicle fires that do not spread), but this

does not include parking facilities or dining halls dedicated to a residence hall but physically separate. A fire that originates in a private structure that shares a wall with an on-campus residence hall is not reportable unless it spreads to the residence hall [47]. If there are injuries or damage in such a fire, report only the injuries or damage in the residence hall, not the private structure [48].

## **Chapter 12: The Fire Log: Recording Fires in On-campus Student Housing Facilities (See Also Chapter 5) [49]**

In addition to the requirements established in Chapter 5 of the 2011 Handbook, Chapter 12 provides guidance specific to the log of residence hall fires [50]. Unlike Clery crime reporting, in which a crime is “reported” when it’s brought to the attention of a campus security authority or a local law enforcement agency, there are no such restrictions with fire reporting. Any student housing fire that is reported to any official at your institution must be documented in your fire log. Note that this is different from the requirements of the statute and regulations which state that in the Annual Fire Report, a college must include “a list of the titles of each person or organization to which students and employees should report that a fire occurred.” [51] Prior to issuance of the 2011 Handbook, this language was interpreted to mean (in a manner similar to missing persons) that a college should provide a limited list of offices trained in fire response and reporting, to whom residence hall fires should be reported [52].

The Department has taken a different interpretation in the 2011 Handbook. The Handbook interprets this sentence as applying to *any* official at an institution. The expansive definition of official is “any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.” Handbook examples of such officials include resident assistants, maintenance workers, local fire department, and potentially others. Colleges would be wise to provide training to a wide swath of potential officials on how to recognize an active or extinguished fire and how to report such a fire in a manner that ensures inclusion in the Annual Fire Report statistics. The Fire Report may still list a group of officials to whom fires should be reported [53], but any “official” must be trained to so report.

## **Chapter 13: Fire Statistics: Classifying and Counting Fires in On-campus Student Housing Facilities [54]**

### **A. Formatting the Fire Report:**

Fires are to be reported in a tabular format similar to crimes, unless there are no reports of fires in any residence halls, in which case a narrative statement may be used. Additionally, colleges “must collect and disclose statistics for each on-campus student housing facility separately for the three most recent calendar years (i.e., Jan. 1 through Dec. 31) for which data are available. You may treat a group of attached buildings, such as a row of townhouses, as a single student housing facility if they share a name and have the same fire safety policies and systems. All other student housing facilities must be reported separately.”

### **B. Reporting the Cause of a Reportable Fire:**

The Handbook provides guidance on listing the “cause of fire” in the Annual Fire Report. The cause is “the factor or factors that give rise to a fire. The causal factor may be, but is not limited to, the result of an intentional or unintentional action, mechanical failure, or act of nature.” Figure 46 of the Handbook provides examples for proper classification of fire causes.

### **C. Fire-Related Injuries or Deaths:**

The Annual Fire Report includes statistics on any injuries or deaths caused by on-campus residence hall fires. In addition to students and employees, this number includes firefighters and any other individual. Individuals who “appear to be injured but refuse to be treated or transferred to a medical facility” are not counted. Count each individual injured once, even if he or she seeks treatment more than once or for different injuries. In counting deaths, colleges must make a reasonable effort to ascertain if someone’s death within one year was caused by the reportable fire including tracking individuals where possible and including those whose deaths are reported by the media.

### **D. Fire-Related Property Damage:**

Colleges must report damage caused by fires in on-campus residence halls. The Handbook states that reports of structural damage are based on replacement value, not market value and include any damage caused by “overhaul” (defined as “the practice of searching a fire scene to detect hidden fires or sparks which may rekindle, and to note the possible point of origin and cause of ignition”). Only direct damage is counted, not indirect losses. Since an exact figure of damages may be hard to determine, the Handbook provides a table of value ranges for classifying estimated property damage in a reportable fire.

## **Chapter 14: The Annual Fire Safety Report: Publishing Policy Statements and Fire Statistics [\[55\]](#)**

### **A. Publishing the Annual Fire Safety Report:**

The Annual Fire Safety Report may be published alone or in a single document with the Annual Security Report [\[56\]](#). Alternatively, a college may publish two separate reports provided that each is distributed to current and prospective students and employees and that each report includes information about how to access the other report (not just a statement that the other report exists) [\[57\]](#).

### **B. Fire Evacuation Procedures:**

Colleges must publish evacuation procedures in the event of a fire. If the procedures are uniform, they may be published once. If procedures differ for different residence halls, the Annual Fire Safety Report must include the procedures for each hall. These procedures need not be so detailed that the Fire Report becomes the size of a telephone book. The Handbook provides a sample statement of procedures.

### **C. Future Improvements in Fire Safety:**

The Annual Fire Report must include plans (if any) for future improvements in fire safety in residence halls. To quote the Handbook: “Your plan can be limited to ‘Our institution is going to do the following ...’ or can include ‘If we obtain the means we’d like to do the following ...’ We suggest that you include information that tells the reader why the improvements are necessary. Do not simply state that the institution has plans for future improvements without indicating what those improvements will be. You may, but are not required to, include a time line.”

## CONCLUSION:

This NACUANOTE is not intended as a replacement for a careful read of the Clery Act statute, regulations, and Handbook, but is rather intended to highlight some of the important changes in the Handbook that institutions might miss while poring over the hundreds of pages of compliance requirements. While it may be difficult to perfectly comply with every single aspect of the Handbook, the original intent of the Clery Act should serve as a guide star: honest and consistent reporting of safety policies and crime and fire statistics so that students, parents, employees and community members may research and compare the safety of their college or university.

## FOOTNOTES:

- FN1.** Codified at 20 U.S.C. § 1092(f).
- FN2.** U.S. Department of Education, Office of Postsecondary Education, *The Handbook for Campus Crime Reporting*, Washington, D.C., 2005.
- FN3.** U.S. Department of Education, Office of Postsecondary Education, *The Handbook for Campus Safety and Security Reporting*, Washington, D.C., 2011.
- FN4.** See, e.g., Allie Grasgreen, [Crackdown on Clery Compliance](#), INSIDE HIGHER ED, May 17, 2011; Nick Anderson and Ian Shapira, [Timing of Va Tech's Warnings During Massacre Leads to \\$55,000 Penalty](#), WASH. POST, March 29, 2011.
- FN5.** Remember that the Handbook is an accessory to the law and regulations but it is not itself law. Indeed, the Handbook itself states, "The views expressed herein do not necessarily represent the positions or policies of the U.S. Department of Education." See 2011 Handbook at ii. Where in conflict, the law and regulations take precedence.
- FN6.** 2011 Handbook at xi.
- FN7.** See Joseph Storch, [NACUANOTES: Safety, Missing Students and Fire Reporting Requirements of the Higher Education Opportunity Act](#) (August 25, 2010).
- FN8.** 2011 Handbook at 1-9.
- FN9.** 2011 Handbook at 11-32.
- FN10.** 2011 Handbook at 3 (crime reporting); 171 (fire reporting).
- FN11.** 2011 Handbook at 12-14.
- FN12.** 2011 Handbook at 12, 27. If the written agreement, however, is to send students to a specific program, but not to rent physical space, then incidents occurring there are not reportable. 2011 Handbook at 28. Also note that the written agreement can be formal or informal – even a letter or email can trigger an obligation to report. 2011

Handbook at 12.

- FN13.** 2011 Handbook at 17-18.
- FN14.** 2011 Handbook at 18. Note that a similar agreement with a third party to house students outside of campus property still requires that incidents are reported, but in the noncampus category, not on-campus residential. 2011 Handbook at 28-29.
- FN15.** 2011 Handbook at 18-25.
- FN16.** For instance, if the property is separated by railroad tracks or a major highway, it is not accessible from the campus. However, if students do actually use that property frequently (such as by cutting a hole in a fence) then it is reportable as public property. 2011 Handbook at 19-20.
- FN17.** 2011 Handbook at 20. Included there is a helpful diagram.
- FN18.** 2011 Handbook at 25-32.
- FN19.** 2011 Handbook at 33-72.
- FN20.** 2011 Handbook at 37-40.
- FN21.** 2011 Handbook at 42-43.
- FN22.** 2011 Handbook at 44-49.
- FN23.** 2005 Handbook at 180.
- FN24.** 2011 Handbook at 51-53.
- FN25.** 2011 Handbook at 53-54. The hierarchy states that, for all crimes other than arson, a college only reports the most grievous crime. If an individual viciously punches another in the face and then murders that person, the college counts one homicide, but not the aggravated assault.
- FN26.** Potentially, a single incident could be counted many times, potentially leading to confusion. For instance, if an individual sets fire to a residence hall resident's room on the basis of the resident's membership in a protected class, and the resident is killed, the correct count would be:
1. one on-campus homicide;
  2. one on-campus residence hall homicide;
  3. one on-campus arson;
  4. one on-campus residence hall arson;

5. one on-campus hate crime arson (detailed by protected class);
6. one on-campus residence hall hate crime arson;
7. one fire in the Annual Fire Report;
8. one death by fire in the Annual Fire Report.

In that case, a campus would be wise to properly disclose, but with an asterisk that explains the reason for the multiple counts stemming from a single incident.

**FN27.** 2011 Handbook at 55-64.

**FN28.** For instance, if a report comes in that money or supplies have been stolen from a religious office on campus or from the student offices of a club that represents students in a protected class, that report alone is insufficient to determine that the larceny was due to a hate crime. The items may have been stolen by a member of the group or an outsider who simply wanted the money or items, but bears no ill will toward the organization or its members. Actual evidence, such as testimony of the suspect or witnesses as to the motive for the crime or notes or graffiti left behind by the assailants, is required to establish the elements of this reportable crime. Larceny that is not tied to a hate crime is not reportable in the Annual Report.

**FN29.** 2011 Handbook at 42. This is the crime reported when a weapon is used or severe injury occurs.

**FN30.** A person is presumed to be placed in "reasonable fear" if he reports the threatening words or conduct to law enforcement. 2011 Handbook at 58. However, discussions with the Department have also indicated that if the victim states to law enforcement that he is not afraid, but merely annoyed or angered by the words or conduct, this can overcome the presumption.

**FN31.** 2011 Handbook at 150, 153.

**FN32.** 2011 Handbook at 64-72.

**FN33.** 2011 Handbook at 73-87.

**FN34.** For instance, if a city police department, foreign or domestic, provided a college with statistics for all crimes that occurred in the city in a calendar year, with no geographic breakdown, those numbers are not in a form that can be utilized since the Clery Act requires that a college report crimes within designated geographic areas, not that occur in an entire city. 2011 Handbook at 82, 87.

**FN35.** 2011 Handbook at 89-96.

**FN36.** 2011 Handbook at 90-91, 179.

**FN37.** 2011 Handbook at 97-118.

- FN38.** See n. 7, *supra*.
- FN39.** 2011 Handbook at 119-139.
- FN40.** Except drug and alcohol policies, which may be cross-referenced. See 2011 Handbook at 136.
- FN41.** 2011 Handbook at 141-148.
- FN42.** 2011 Handbook at 149-159.
- FN43.** Please do not take this advice as an instruction to destroy current documents in use! Rather, in an effort to continually improve Clery compliance, you may consider making this statement a part of appropriate future publications, and alerting and educating admissions and marketing officials of the need to include this statement somewhere in these admissions documents.
- FN44.** 2011 Handbook at 161-169.
- FN45.** See n. 7, *supra*.
- FN46.** 2011 Handbook at 171-174.
- FN47.** 2011 Handbook at 185.
- FN48.** 2011 Handbook at 185.
- FN49.** 2011 Handbook at 175-179.
- FN50.** Colleges may choose to report all fires, but must do so separately and with a caveat from the required report of on-campus residence hall fires. 2011 Handbook at 177. Note also that if an institution has multiple campuses, it must maintain a log for those that have on-campus student housing facilities. Institutions with foreign campuses with on-campus student housing also must comply with these fire safety regulations. 2011 Handbook at 171.
- FN51.** 34 CFR § 668.49(b)(7).
- FN52.** See Joseph Storch, [NACUANOTES: Safety, Missing Students and Fire Reporting Requirements of the Higher Education Opportunity Act](#) (August 25, 2010).
- FN53.** 2011 Handbook at 194-195.
- FN54.** 2011 Handbook at 181-187.
- FN55.** 2011 Handbook at 189-197.
- FN56.** 2011 Handbook at 155.

**FN57.** 2011 Handbook at 155.

## **AUTHOR:**

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## **RESOURCES:**

- [2011 Clery Act Handbook](#)
- [NACUA Clery Act Resources Page](#)
- [Security on Campus Statutory and Regulatory Redlining](#)

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