

¹ U.S. Department of Education, Office of Postsecondary Education, The Handbook for Campus Safety and Security Reporting: 2016 Edition ("Handbook").

² Handbook p. 1-9.

³ Id. pp. 4-11, 4-8.

Campus Victim Advocates and the Clery Act

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), a consumer protection law passed in 1990, requires all colleges and universities that receive federal funding to share information about crime on campus and their efforts to improve campus safety. Additionally, the law requires institutions to inform the public of crime in or around campus. This information is made publicly accessible through the institution's annual security report. Colleges and universities must outline specific policies and procedures within their annual security reports, including those related to disseminating timely warnings and emergency notifications, options for survivors of sexual assault, domestic violence, dating violence, and stalking, and campus crime reporting processes.

The Department of Education enforces the Clery Act. The Department evaluates compliance with the Clery Act regulations through program reviews. The Handbook for Campus Safety and Security Reporting (2016) ("Handbook"), sub-regulatory guidance, helps institutions understand how the Department interprets aspects of the regulations and how to apply them within an institution's own unique structure.¹

Often the requirements of the Clery Act are misinterpreted or misunderstood. This document addresses potential concerns and myths regarding the role of victim advocates within the Clery Act. This document clarifies victim advocate reporting responsibilities under the Clery Act and how advocates can still maintain trust and be a critical resource for students and employees while fulfilling their federal obligations under the Clery Act.

Advocates as Campus Security Authorities

The Clery Act requires specific individuals to share reports of crime within a reporting structure determined by the institution. These individuals are called campus security authorities (CSAs). Campuses must "identify campus security authorities at the beginning of the calendar year and collect crime reports from campus security authorities within the institution on an ongoing basis."² Colleges and universities should train campus security authorities regarding their role and responsibilities. According to the Handbook, CSAs can submit statistical reports without identifying the victim, and in most cases it is possible for CSAs to fulfill their responsibilities while still maintaining victim confidentiality.³

Who is a campus security authority?

- A campus police department or a campus security department of an institution.
- Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department.
- 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.
- 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. An official is defined as any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.

⁴ Handbook p. 4-3.

⁵ Id p. 4-4.

⁶ 20 U.S.C. § 1092(f)(8)(B)(ii)(II).

⁷ Handbook, p. 8-9.

⁸ Id. p. 4-1.

⁹ Handbook p. 4-6

¹⁰ 34 C.F.R. § 668.46(a).

The last category of CSAs is typically the broadest. The Handbook encourages campuses to consider function when determining which individuals are campus security authorities, looking for individuals whose functions involve relationships with students.

The Handbook identifies “victim advocates or others who are responsible for providing victims with advocacy services, such as assisting with housing relocation, disciplinary actions or court cases, etc.” as examples of individuals who generally meet the criteria for being campus security authorities.⁴ It also identifies members of a sexual assault response team (SART) or other sexual assault advocates as CSAs. In addition, the handbook states that “if your institution directs students to report crimes to other individuals, then those individuals are also CSAs,” and gives counselors as an example, including peer counselors (except for professional or pastoral counselors).⁵

Under the Clery Act, institutions must include within campus sexual assault, domestic violence, dating violence, and stalking policies information on how an offense should be reported.⁶ The Handbook indicates this should include anyone who can assist the victim, including rape crisis counselors.⁷ The Handbook also states that a crime is “reported” when it is brought to the attention of a campus security authority.⁸ Thus, the Handbook treats victim advocates as CSAs as a result of their role as individuals to whom a survivor may report an offense. It is essential that the role of victim advocates or rape crisis counselors as CSAs is clearly communicated to the campus community, as they are often in the best position to help the survivor examine their many options as they determine a path forward after an assault.

What must campus security authorities do?

- CSAs must report allegations of Clery Act crimes to the official or office designated to collect the information. In most cases CSAs can fulfill their role while still maintaining victim confidentiality.⁹
- A CSA report **does not need to result in automatic police or disciplinary action if the victim does not want to pursue those actions.**
- CSAs are not responsible for (unless they serve in a law enforcement or investigator capacity):
 - Investigating a crime
 - Determining whether a crime took place
 - Trying to convince the victim to contact law enforcement if the victim chooses not to do so
 - Reporting incidents they overhear in the hallway or shared during an in-class discussion, speech, workshop, group presentation, or otherwise learned about in an indirect manner.

Who is exempt from Clery Act reporting?

Although they may have significant responsibility for student and campus activities, pastoral and professional counselors are not campus security authorities under the Clery Act. These individuals must be acting in the role of a pastoral or professional counselor (i.e. their function on the campus must be within one of these roles specifically) in order to remain exempt.

The Clery regulations define professional counselor as “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 the counselor’s license or certification.”¹⁰ The purpose of this specific exemption is to protect the counselor-client relationship and ensure that counselors can provide appropriate services without an obligation to report under Clery. It is important for victim advocates to understand whether under their own state laws and licensing

¹¹ Handbook p. 4-8

¹² Handbook p. 4-8

¹³ Id.

requirements they would be considered professional counselors. Victim advocates who provide services where they must disclose personally identifying information such as changing a victim's course schedule or switching housing may not be able to maintain the confidentiality of the victim's identity in order to provide the services that the victim needs. However, someone who meets the Clery definition of a professional counselor that provides holistic, trauma-informed health services may be bound by state law statutory privileges from divulging any confidential information absent a waiver.

PRACTICE TIP:

Because an institution determines campus security authorities by function, it's important to avoid overlapping roles if possible. For example, the Handbook notes: "If [a] dean is employed by the institution as both a professional counselor and an academic counselor, and she learns of a criminal incident while she is engaged in academic counseling, she is not exempt from reporting that incident. Note also, that if your institution has an individual with dual roles, one as a professional or pastoral counselor and the other as an official who qualifies as a CSA, and the roles cannot be separated, that individual is considered a campus security authority and is obligated to report Clery Act crimes of which they are aware."¹¹

What happens when a CSA makes a report?

- The campus determines whether or not the incident was a Clery Act crime within the institution's Clery-specific geography.
- Incidents that fall within Clery reporting requirements are included within the institution's crime statistics captured within their annual security report and reported to the Department of Education.
- Institutions with a campus police or security department report the incident within the institution's daily crime log.
- The institution evaluates whether or not the incident calls for a timely warning (for Clery Act crimes that present a serious or ongoing threat to the campus community) or an emergency notification (for immediate threats to the health or safety of the campus community).
- The institution must afford specific rights and options to survivors of sexual assault, domestic violence, dating violence, and stalking, regardless of whether the incident took place on campus. The institution describes these rights and options within a written document provided to survivors when they make a report. In addition to providing the document to survivors, advocates may choose to use it as a resource when providing options counseling.

What information is a CSA required to share?

In most cases it is possible for a CSA to fulfill their responsibilities while still maintaining victim confidentiality;¹² CSA reports are used by institutions to compile aggregate statistics—not individual descriptions – on an ongoing basis and to help determine if a timely warning or emergency notification is required. The Handbook clearly states that a CSA report does not need to automatically result in the initiation of a police or disciplinary investigation if the victim does not want to pursue this action.¹³

CSAs should document and share:

- The nature of the crime
- The location of the crime
- The date and time the crime occurred
- The date and time the person reported it to the CSA

This information must be shared in real time, not at the end of a month, semester, or academic year. The Handbook guidance encourages CSAs to keep hard copy or electronic documentation

¹⁴ Handbook p. 4-10.

¹⁵ Id. p. 4-11.

¹⁶ 34 C.F.R. § 668.46(b)(11)(iii).

¹⁷ 42 U.S.C. § 13925(a)(20).

¹⁸ Handbook p.1-6 to 1-7.

¹⁹ Handbook p.1-6 to 1-7.

²⁰ Handbook p. 6-13-6-14.

for all CSA-reported crimes.¹⁴ In the suggested training elements for CSAs, the Handbook states the importance of providing as much information about a reported incident as possible to aid law enforcement in addressing and categorizing the crime. However, fulfilling one's CSA obligations does not require reporting personally identifiable information if the victim does not want the information to go beyond the CSA.¹⁵ In addition, other federal and state laws may influence how much information an advocate may be in a position to share.

An institution's policies for sexual assault, domestic violence, dating violence, and stalking should include information on how the institution protects the confidentiality of victims and other necessary parties, including how it will complete publicly available recordkeeping, including Clery Act reporting and disclosures (timely warnings, the daily crime log, information shared within the annual security report, etc.) without inclusion of personally identifying information about the victim.¹⁶

Personally identifying information includes:

- A first or last name
- A home or physical address
- Contact information
- Social security number, driver's license number, passport number, or student identification number
- Any other information, including date of birth, racial or ethnic background, or religious affiliation that would serve to identify any individual¹⁷

When would an institution issue a timely warning or emergency notification?

Campuses must determine on a **case-by-case** basis whether a reported incident falls within the Clery Act requirements and whether the facts of the report precipitate a timely warning or emergency notification. To ensure that the members of the campus community have the information to make informed decisions about their health and safety, campuses must "issue a timely warning for any Clery Act crime that represents an ongoing threat to the safety of students or employees"¹⁸ (for example, numerous reports of a drug-facilitated sexual assault at a particular location) and "issue an emergency notification 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 campus" (like an active shooter).¹⁹

Timely warnings are intended to alert the community to Clery Act crimes in a manner that will aid in the prevention of similar crimes and include information about the type of incident that occurred.

Determinations for issuing a timely warning should consider²⁰:

- The nature of the crime
- The continuing danger to the community
- Whether the issuance could compromise a law enforcement investigation
- How to issue the warning without identifying the victim.

Not every Clery Act crime will require a timely warning. The Department of Education stresses that these determinations should be made on a case-by-case basis based on the institution's evaluation of whether there is a serious or ongoing threat to the broader campus community. Decisions to issue or not issue a warning should be documented.

²¹ Handbook p. 6-13.

²² 42 U.S.C. § 13925(b) (2).

It is important to note that campuses are not required to provide timely warnings for crimes that are reported only to a pastoral or professional counselor.²¹

How does the CSA role impact victim advocates?

Victim advocates are trusted resources on the campus and it is possible for advocates to maintain that trust while still fulfilling their duties as CSAs.

Advocates can do this by:

- Immediately communicating their role as a CSA on the campus and explaining what information may be disclosed and with whom
- Setting expectations with the survivor as to what may occur and gathering input on what details they're comfortable sharing and any concerns
- Understanding the institution's timely warning policies and procedures in order to explain what information may be required to be disclosed in the future
- Notifying a survivor if the institution intends to issue an alert (this would require collaboration with the individual or office disseminating the warning) and helping to explain the reason (often that both the community and the student may be at risk and the campus and advocate will work to protect their safety or identity)

Remember: the advocate is permitted to submit the report without any personally identifying information. However, law enforcement, campus security, or other entities responsible for assessing CSAs' reports for timely warnings may request additional information, if they believe a timely warning may be necessary. Evaluate whether the information requested is covered under state privilege laws and whether these laws have exceptions for threats to individual safety or the safety of the community. Determine how state law affects what information can be shared and how it can be shared, such as any mechanism for survivors to waive the privilege, such as a time-limited specific release. If there are no applicable state privilege laws, whether or not victim advocates share additional details will be a matter of campus policy or practice as well as the specifics of an incident (i.e. do the details of the incident indicate a serious or ongoing threat?) In addition, advocates at institutions receiving funds from the Office on Violence Against Women should not share personally identifying victim information on a routine basis, as they are required to have written consent from the victim to share such information, absent a statutory mandate.²² Advocates and campus officials responsible for making timely warning determinations should work together to assess whether the non-identifying information in a report indicates a timely warning may be necessary under the Clery Act. **All campus advocates should consider the promising practices outlined below when fulfilling their role and responsibilities as campus security authorities.**

SOLUTIONS MOVING FORWARD

CURRENT CONCERNS FROM THE FIELD

*I'm an advocate at my institution and a campus security authority under the Clery Act. My advocacy center is well respected and survivors frequently access our resources, sometimes soon after a victimization, and other times with a delay. I feel pressure within my role as an advocate to make sure we're seen as a trusted resource while still meeting federal obligations. If someone comes to me and they believe they're sharing information in confidence and then their story is shared in a timely warning, it may feel like a betrayal. Further, law enforcement on my campus sometimes asks me for additional details regarding cases I report when evaluating a timely warning and it can get tricky to know what I'm **required** to share versus what additional information is useful to know but not legally required. I know they just want to do their job well and the goal is to keep campus safe, but I have other legal obligations that limit what information I can share. And, ultimately, I want to make sure we continue to be a place where survivors feel they can readily go to for help.*

An advocate's role as a CSA can feel unique and in many ways it is. Although all CSAs are trusted individuals whom someone may go to for help, advocates are uniquely trained in responding to victims of crime. While other CSAs might rarely navigate reports and may rely heavily on the expertise and knowledge of others on campus, advocates receive reports on a regular basis and are often the ones providing options and counseling and helping a victim decide what they want to do next. (Although advocates may not typically call information disclosed to them a "report", the information shared is considered a report for the purposes of Clery because the institution directs victims to advocates as a resource when addressing options for reporting.) Further, there may be laws regarding privileged or confidential information that influence how much information an advocate is able to share with others on campus, including campus security, law enforcement, or other departments responsible for collecting Clery Act information and evaluating timely warnings.

A college or university should address certain key questions well in advance of working with a survivor in order to develop an effective process for collecting Clery statistics and making timely warning determinations.

- *Does a CSA have to share every detail about a case reported to them if the survivor requests that specific information not be shared?* No. The CSA should share the nature of the crime, location of the crime, the date and time the crime occurred, and the date and time the person reported it to the CSA. Sharing as much information as possible is always helpful to the campus process (for evaluating whether to issue a timely warning in particular), but the sharing of additional information is going to be dependent on the requests of the victim or an advocate's recognition of a potential serious threat to the campus community. Because advocates navigate more questions regarding confidentiality and privilege than other CSAs on campus, it is critical they understand what definitions are used for Clery Act reporting so they can ensure that the crimes they report align with the crime definitions used for Clery and they are not sharing information beyond the requirements (unless requested by the victim).
- *Will a timely warning go out after every report?* Campuses should evaluate whether to issue timely warnings on a case-by-case basis and institutions with policies that require a timely warning for every Clery Act crime should reevaluate their policies and practices. The goal of a timely warning is to keep the campus community safe. Overuse of timely warnings or emergency notifications, especially for cases that do not represent an immediate, serious, or ongoing threat to the campus community, can result in the campus paying less attention to

the information shared and can have a chilling effect on victims who believe their story will be shared in a public forum, regardless of whether others were still at risk and even though they themselves are not identified within the warning.

- *What role do advocates play in timely warnings?* Advocates should communicate about the possibility of timely warnings when working with survivors. They also may be responsible for working with others on campus to ensure that no identifying information is shared within the warning or notifying a survivor if the institution plans to issue a warning. Advocates should also consider whether there are exceptions to any state law privilege governing their communications with survivors that require them to inform others when there is a risk to an individual or others, as that may also influence the timely warning process. If and when that happens, what are they required to share? With whom? These questions will be specific to state laws governing privileged communications between victims and advocates. Lastly, advocates can also play a key role in crafting template language for timely warnings so the information shared within a warning conveys a message of care and support from the institution if and when a crime occurs.

How can I compassionately communicate my role as a CSA to someone in crisis?

Developing and maintaining trust is crucial when working with victims of crime. Institutions should train CSAs on the best way to communicate about their CSA reporting responsibilities while still showing care for and empowering individuals who are disclosing victimization. Advocates should carefully consider the most appropriate time to share the information and the language they use to communicate their role. If information is presented as simply an obligation or a frustration, it is likely the survivor may react to that and also have concerns. If it's presented as a way the institution works to maintain safety for both the individual and the community as a whole, it may be viewed as additional care for the survivor. When appropriate, the advocate may choose to use language like, "Thank you so much for trusting me with this information. I do want you to know that within my role at the institution, I will need to share non-identifying information with another person on campus, meaning I am not going to share your name, but I am going to share the type of incident and where it occurred as we work to keep you and the campus safe if there is a continuing threat to the campus. The institution may have to issue a timely warning to the community, but that warning would not include your name or any identifying information about yourself." Know the factors used in determining a continuing threat to assist with explaining this process to a survivor. Help set expectations about what may happen moving forward and create a space where the survivor helps to provide context on what type of information might identify them or potential concerns. Communicate these details when reporting if permitted by the survivor.

It may also be helpful to remind a survivor of the ability of pastoral or professional counselors on campus to maintain full confidentiality and their option to meet with those individuals if they so choose.

Advocates can also communicate this role in writing in signage, forms, or brochures describing services.

What are some action steps the campus can take to effectively integrate the role of advocates into CSA reporting?

- Train all CSAs on their roles and responsibilities. Training should include case studies to evaluate process and outline policies and procedures adopted by the campus to meet its

Clery Act reporting requirements. Implement exercises to familiarize CSAs with the factors considered in issuing a timely warning, how the institution will craft warning language, and necessary documentation to support the decision to issue a warning. Evaluate and revise timely warning policies and policy statements as needed.

- Draft sample language explaining the role of CSAs and publicly communicate about their role in different forums.
- Include victim advocates in discussions regarding the implementation of timely warnings to ensure that concerns about victim confidentiality and how to integrate best practices in prevention within timely warning tips are considered.
- Establish a timely warning working group or assign another committee to review the process to evaluate privacy concerns and confidentiality issues.
- Talk to students about the roles of certain administrators when it comes to reporting. Ask students to help communicate these roles.

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