

THE JEANNE CLERY ACT

DEFINITION AND EXPLANATION OF CRIMES

1. Criminal Homicide. These offenses are separated into two categories:

- a) Murder and Non-negligent Manslaughter is defined as the willful (non-negligent) killing of one human being by another. Include as Murder and Non-negligent Manslaughter: Any death caused by injuries received in a fight, argument, quarrel, assault or the commission of a crime.
- b) Manslaughter by Negligence is defined as the killing of another person through gross negligence.

2. Sexual Assault (Sex Offenses). Any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent.

- a) Rape is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
- b) Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. Fondling is recognized as an element of other sex offenses.
- c) Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d) Statutory Rape is sexual intercourse with a person who is under the statutory age of consent.

While the definitions of Sexual Assault include lack of consent as an element of the offense, for the purposes of including a reported Sexual Assault in Clery Act statistics, no determination as to whether that element has been met is required. Therefore, all Sexual Assaults that are reported to a campus security authority must be included in the Clery Act statistics, regardless of the issue of consent.

The statutory age of consent differs by state and is complicated. In Maryland, the statutory age of consent is 16 years of age (which means the victim must be under 16); however, 14- and 15-year-olds may consent if the offender is less than four years older than the victim. In Nevada, the age of consent is 16; however, sexual intercourse with someone who is under 16 years of age is illegal only if the defendant is at least 18 years of age (the age at which the defendant can be prosecuted).

3. Robbery. Robbery is the taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

Essential Elements of a Robbery:

- Committed in the presence of a victim (usually the owner or person having custody of the property).
- Victim is directly confronted by the perpetrator.
- Victim is threatened with force or put in fear that force will be used.
- Involves a Theft or Larceny.

The classification of Robbery includes both armed robbery and robberies where only personal weapons are used. Armed robbery includes incidents commonly referred to as stickups, hijackings, holdups, heists, carjackings, etc. Carjacking is a Robbery offense in which a motor vehicle is taken through force or threat of force. In such case, following the Hierarchy Rule, report only a Robbery, not a Motor Vehicle Theft. Robberies in which only personal weapons, such as hands, arms, fists, feet and teeth, are used or threatened to be used may be referred to as "strong-arms" or "muggings."

The UCR considers a weapon to be a commonly known weapon (a gun, knife, club, etc.) or any other item that, although not usually thought of as a weapon, becomes one in the commission of a crime. Robbery also includes crimes involving pretend weapons or those in which the weapon is not seen by the victim, but the robber claims to possess one.

4. Aggravated Assault. Aggravated Assault is an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault is usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm. However, if a number of persons are involved in a dispute or disturbance, and the aggressors cannot be distinguished from the victims, count the number of persons assaulted as the number of offenses.

Include as Aggravated Assaults:

- Assaults or attempts to kill or Murder.
- Poisoning (including the use of date rape drugs).
- Assault with a dangerous or deadly weapon.
- Maiming.
- Mayhem.
- Assault with explosives.
- Assault with disease (as in cases when the offender is aware that he or she is infected with a deadly disease and deliberately attempts to inflict the disease by biting, spitting, etc.).

5. Burglary. Burglary is the unlawful entry of a structure to commit a felony or a theft.

Classify as Burglary:

- Offenses that are classified by local law enforcement agencies as Burglary (any degree); unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts at these offenses.
- Forcible Entry: All offenses where force of any kind is used to unlawfully enter a structure for the purpose of committing a theft or felony. This rule applies

when a thief gains entry by using tools; breaking windows; forcing windows, doors, transoms or ventilators; cutting screens, walls or roofs; and where known, using master keys, picks, unauthorized keys, celluloid, a mechanical contrivance of any kind (e.g., a passkey or skeleton key) or other devices that leave no outward mark but are used to force a lock. This includes Burglary by concealment inside a building followed by exiting the structure.

- Unlawful Entry—No Force: The entry of a structure in this situation is achieved by use of an unlocked door or window. The element of trespass to the structure is essential in this category, which includes thefts from open garages, open warehouses, open or unlocked dwellings (such as dorm rooms) and open or unlocked common basement areas in apartment houses where entry is achieved by someone other than the tenant who has lawful access, or others whom the tenant allows to have free and regular access to the structure. If an item was taken from an unlocked dorm room and you can establish that neither the tenant nor those friends with free and regular access to the room have taken the item, then unlawful access has occurred. In this context, it is important to note that a “breaking” occurs when a perpetrator crosses the threshold of a boundary that results in a trespass. As such it is possible for a burglar to “break” an open doorway or window. There is no requirement that entry be forced in any way or that damage to a door, window or frame be evident.

- **Attempted Forcible Entry:** A situation where a forcible entry into a locked structure is attempted but not completed. An attempt to commit the crime of Burglary must be evaluated in context based on all available information. Such incidents must not be classified merely as “suspicious activity” or “vandalism” where the totality of facts indicates that a Burglary was in fact attempted. Possible indicators of an attempted Burglary may include, but are not limited to, damage to a door or window, the presence of Burglary tools, a recurring or similar modus operandi or “signature” that ties an incident to other similar offenses (sometimes referred to as “common plan and scheme”), and/or proximity in time and place to a pattern of other similar crimes.

6. Motor Vehicle Theft. Motor Vehicle Theft is the theft or attempted theft of a motor vehicle.

Classify as Motor Vehicle Theft:

- Theft of any self-propelled vehicle that runs on land surface and not on rails, such as sport utility vehicles, automobiles, trucks, buses, motorcycles, motor scooters, trail bikes, mopeds, all-terrain vehicles, self-propelled motor homes, snowmobiles, golf carts and motorized wheelchairs.
- All incidents where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned. Include joyriding in this category. If a vehicle is stolen in conjunction with another offense, classify the crime using the procedures for classifying multiple offenses (See Hierarchy Rule).

7. Arson. Arson is any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Classify as Arson:

- Only fires determined to have been willfully or maliciously set.
- Attempts to burn.
- Any fire that investigation determines to meet the UCR definition of Arson regardless of the value of any property damage.
- Incidents where an individual willfully or maliciously burns his or her own property.

The Clery Act requires institutions to disclose all Arsons including seemingly minor fires such as burning wastebaskets or bulletin boards, regardless of whether they are discovered while burning or after being extinguished. All of the evidence for any fire not known to be accidental (such as a cooking fire) must be considered by the institutional official designated to make such determinations. Some jurisdictions have specific rules that state that a fire is not to be classified as Arson unless and until a fire marshal makes a determination of malicious burning. The Clery Act’s Arson definition does malicious burning. The Clery Act’s Arson definition does not require that any findings be made by a fire official before classifying an incident.

Cautions in Disclosing Arson statistics Point of origin:

- If a fire (determined to be Arson) starts in a privately owned house located next to your campus and spreads to a building on your campus, you are not required to include the fire in your Arson statistics because the point of origin for the Arson was not your Clery Act geography.
- If the situation is reversed, and an on-campus fire (determined to be Arson) spreads to the house, you must include the on-campus Arson in your Clery Act statistics.
- If the private home and the on-campus building are burning, and investigators later determine that the cause was Arson, but the point of origin could not definitively be

determined, your school is responsible for including the Arson in your statistics for the on-campus building.

- Count incidents in which persons are killed as a direct result of Arson as both Criminal Homicides and Arson. Similarly, report the number of persons severely injured during an Arson as Aggravated Assaults along with the Arson. When other reportable offenses are committed during the same distinct operation as the Arson offense, report the most serious offense along with the Arson. (See Hierarchy Rule)

There are exceptions to using the Hierarchy Rule when counting offenses. They apply to Arson, Sexual Assaults, Hate Crimes and VAWA Offenses. Arson and Sexual Assaults are defined above and the rules for counting them are discussed here. (See the Hate Crime section for the rules for counting Hate Crimes. See page 3-42 in the VAWA Offenses section for the rules for counting VAWA Offenses.)

The rules for counting Arson are:

- Always count Arson regardless of the nature of any other offenses that were committed during the same incident.
- When multiple offenses are committed during the same distinct operation as the Arson offense, report the most serious offense along with the Arson.
- Include incidents in which persons are killed as a direct result of Arson as Murder and Non-negligent Manslaughter and Arson or Manslaughter by Negligence and Arson.

The rules for counting Sexual Assaults are:

- If Rape, Fondling, Incest or Statutory Rape occurs in the same incident as Murder, count both the sexual assault and the Murder.
- Fondling is recognized as an element of the other Sexual Assaults. Include a Sexual Assault as Fondling only if it is the only Sexual Assault. If Fondling occurs in the same incident as Murder, count both the Fondling and the Murder.

Hate Crimes 34 CFR 668.46(c)(4)

A Hate Crime is a criminal offense that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim. Although there are many possible categories of bias, under the Clery Act, only the following eight categories are reported:

- **Race.** A preformed negative attitude toward a group of persons who possess common physical characteristics, e.g., color of skin, eyes, and/or hair; facial features, etc., genetically transmitted by descent and heredity which distinguish them as a distinct division of humankind, e.g., Asians, blacks or African Americans, whites. African Americans, whites.
- **Religion.** A preformed negative opinion or attitude toward a group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being, e.g., Catholics, Jews, Protestants, atheists.
- **Sexual Orientation.** A preformed negative opinion or attitude toward a group of persons based on their actual or perceived sexual orientation. Sexual Orientation is the term for a person's physical, romantic, and/or emotional attraction to members of the same and/or opposite sex, including lesbian, gay, bisexual, and heterosexual (straight) individuals.
- **Gender.** A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender, e.g., male or female.
- **Gender Identity.** A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender non-conforming individuals. Gender non-conforming describes a person who does not conform to the gender-based expectations of society, e.g., a woman dressed in traditionally male clothing or a man wearing makeup. A gender non-conforming person may or may not be a lesbian, gay, bisexual, or transgender person but may be perceived as such.

- **Ethnicity.** A preformed negative opinion or attitude toward a group of people whose members identify with each other, through a common heritage, often consisting of a common language, common culture (often including a shared religion) and/or ideology that stresses common ancestry. The concept of ethnicity differs from the closely related term “race” in that “race” refers to a grouping based mostly upon biological criteria, while “ethnicity” also encompasses additional cultural factors.
- **National Origin.** A preformed negative opinion or attitude toward a group of people based on their actual or perceived country of birth. This bias may be against people that have a name or accent associated with a national origin group, participate in certain customs associated with a national origin group, or because they are married to or associate with people of a certain national origin.
- **Disability.** A preformed negative opinion or attitude toward a group of persons based on their physical or mental impairments, whether such disability is temporary or permanent, congenital or acquired by heredity, accident, injury, advanced age or illness.

For Clery Act purposes, Hate Crimes include any of the following offenses that are motivated by bias.

- Murder and Non-negligent Manslaughter
- Sexual Assault
- Robbery
- Aggravated Assault
- Burglary
- Motor Vehicle Theft
- Arson
- Larceny-Theft
- Simple Assault
- Intimidation
- Destruction/Damage/Vandalism of Property

In addition to the seven offenses are defined and discussed in the Criminal Offenses section earlier, Larceny-Theft, Simple Assault, Intimidation, and Destruction/Damage/Vandalism of Property are included in the Clery Act statistics only if they are Hate Crimes.

1. **Larceny-Theft** is the unlawful taking, carrying, leading or riding away of property from the possession or constructive possession of another. (Larceny and theft mean the same thing in the UCR.) Constructive possession is the condition in which a person does not have physical custody or possession, person does not have physical custody or possession, but is in a position to exercise dominion or control over a thing.

Classify as Larceny:

- Thefts of bicycles or automobile accessories.
- Shoplifting.
- Pocket-picking.
- The stealing of any property or article that is not taken by force and violence or by fraud.
- Any of the above regardless of the value of the item or items taken (For example, include the unlawful taking of a parking sticker that is peeled off a car windshield.)
- Attempted larcenies.

Do not classify as Larceny:

- Motor Vehicle Theft.
- Attempted Motor Vehicle Theft.
- Embezzlement.
- Confidence games.
- Forgery.

- Worthless checks.

2. **Simple Assault** is 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.
3. **Intimidation** is 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.

A person is assumed to be placed in “reasonable fear” if he or she reports threatening words or other conduct to law enforcement personnel. To be the victim of Intimidation, one doesn’t have to be the intended target of the offender. For example, a person who reports seeing anti-gay threats on a bathroom wall to law enforcement is considered a victim. (For the Intimidation to be considered a Hate Crime there would have to be other supporting evidence of bias as well.) Include in this category cyber-intimidation if the victim is threatened via electronic means while on your Clery Act geography.

4. **Destruction/Damage/Vandalism of Property** is 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.

Classify as Destruction/Damage/Vandalism of Property a wide range of malicious behavior directed at property, such as:

- Cutting auto tires.
- Drawing obscene pictures on restroom walls.
- Smashing windows.
- Destroying school records.
- Defacing library books.