

Florida SouthWestern State College Clery Act Crime Reporting & Compliance Guide

Crime Reporting Obligations under Federal Law

Federal law requires colleges and universities to report certain crime statistics to students and employees annually. We do this in an Annual Security Report that we call, the *Campus Safety Guide*. The law also directs institutions to make timely reports to the campus community about crimes that pose a threat to students and employees. In complying with these two requirements, institutions must account not only for crimes reported to campus security and police, but also for crimes reported to other school officials (even when those reports do not, for whatever reason, result in police reports or investigations). These non-law enforcement "campus security authorities" are those officials having "significant responsibility for students or campus activities." Statistics are reported in different formats and categories depending upon legal requirements: FBI reports include different crimes from the Clery Act, while the Clery Act requires statistics be reported from a wider geographic area than the FBI (e.g., adjacent public property and student organization properties), and also requires reports of student disciplinary referrals in addition to arrests for drug, alcohol, and weapons offenses.

Due to the reporting requirements and definitions of the various crimes, the most reasonable and effective way to manage the reporting of crimes is that if you observe any crime especially those listed below, or if any person reveals to you that he/she learned of, or was a victim of, perpetrator of, or witness to any crime, immediately contact public safety to complete a report.

If circumstances do not allow this, complete the Crime Statistics Data Reporting Form, and as indicated at the bottom of the form, send the original to the Department of public safety. This includes any campus, center or at any other college property or college activity. Public Safety would prefer to be aware of any information you may have about any crime.

Please do not investigate any crime or attempt to determine, in fact, if a crime took place. Simply complete all the information required on the incident report and forward the information to the office of public safety.

If you are in doubt as to whether a crime is reportable, please err on the side of reporting the matter.

If you are on the distribution list for this outline, it has been determined that you are among the College officials who have the reporting obligations described above. In order for the College to fully comply with its reporting obligations, therefore, these responsible College officials must provide relevant information to the Department of

Public Safety, charged with the responsibility of coordinating the College's compliance with these two reporting requirements.

This outline summarizes the applicable law regarding the requirements, explains how these obligations extend to certain faculty and administrators and describes the procedures that should be used to report required information.

Timely Warning and Emergency Notification*

With the exception of pastoral and professional counselors, a responsible official who receives a report of a crime that may pose a threat to students and employees should call the Department of Public Safety, as soon as s/he receives the report of the incident.

What is Reportable?

The federal law, known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("the Act"), requires institutions to report statistics concerning the occurrence on campus and in other geographic areas specified in the Act of certain criminal offenses reported to campus security authorities or local police. See Appendix A below for a list of those offenses and definitions. In certain offenses we are required to report only Hate Crimes, also described below.

The Act requires institutions to make a "timely warning" to the campus community when, in the judgment of the institution, the crime at issue poses a threat to students and employees. The Act and its implementing regulations leave it to each institution to determine the suitability, timing and substance for these reports. At the College, the Department of Public Safety along with the President's office is responsible for making these determinations and for issuing "timely warnings" when appropriate.

Who Must Report Crime Information?

Under the Act, the College's annual statistics must include crimes reported to campus security authorities. The term "*campus security authorities*" is defined as "campus security officials and campus officials with significant responsibility for student and campus activities." Based in part on guidance from the U.S. Department of Education, we have determined that certain administrators fall within the group of College officials with reporting obligations. For example, the U.S. Department of Education has said that disciplinary officers, counselors, deans, athletic coaches and student affairs professionals are among the officials that have an obligation to provide information for the preparation of crime statistics. In most schools, the officials responsible for providing this information will be student affairs professionals and those administrators designated by each school to handle student complaints or provide support services. These and other responsible officials, in turn, must ensure that others within their department inform them about incidents that may be reportable.

Two categories of school officials who may have significant responsibility for student and campus activities – namely, pastoral and professional counselors – are exempted from this reporting requirement.

The regulations define: “pastoral counselor” as: “A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.”

“professional counselor” 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.” The U.S. Department of Education has specifically stated that this exemption is not intended to relieve non-professional and informal counselors from the reporting obligations.

It is important to note that the obligation to report statistics does not require responsible officials to disregard confidentiality. The information these officials provide to Public Safety does not have include personally identifiable information about victims or anyone else involved in an incident. In addition, responsible officials are not expected to decide whether a crime has occurred or how to categorize possible crimes. Their role is to provide relevant information about possible offenses to enable Public Safety to classify reported incidents within the rubric of the Act.

In order to promote confidential assistance to victims, the Department of Education has also exempted pastoral counselors and professional counselors from the “timely warning” requirement. Thus, College officials who fit within the category of either “pastoral counselor” or “professional counselor” (as defined above) are not required to provide information for “timely warning” reports.

How Do You Report Information?

Public Safety has developed the FSW State College Crime Statistics Reporting Data Form to collect information about incidents that may be reportable. Located in the Forms link of the public safety webpage.

To provide required information about incidents reported to your department, you should complete the form and submit it to the Department of Public Safety.

Responsible officials should complete a separate form for each criminal incident reported to them if the following conditions are met: 1) the incident appears to fit the definition of an offense described in Appendix A; and 2) the incident has not previously been reported to Public Safety. Again, the form does not require providing identifying information about victims or alleged offenders. However, in order to enable those compiling the College’s statistics to properly assign offense and geographical classifications to each incident, the person completing the form should provide a clear description of what occurred and as precise a location as possible for each incident. It is not necessary to provide a specific room or apartment number when doing so would compromise confidentiality. If there is evidence that the selection of the victim was

motivated by bias, the person completing the form should describe the evidence and specify the type of prejudice involved.

Please note that this form is merely a tool to collect crime statistics data. It is not intended to be used for making referrals or notifying others about possible follow-up. Further, submitting this form to Public Safety does not amount to reporting a crime to the police. Responsible officials should complete and submit the FSW State College Crime Statistics Reporting Data Form when the two conditions described above are met even if a victim does not wish to make a police report or have an incident investigated.

With the exception of counselors, a responsible official who receives a report of a crime that may warrant a timely report should call the Office of Public Safety, as soon as s/he receives the report of the incident. Alternatively, the official can satisfy the two reporting obligations simultaneously by promptly submitting a completed FSW State College Crime Statistics Reporting Data Form to the Office of Public Safety upon receipt of the report.

How Do You Obtain Guidance?

If you have any questions about the legal obligations outlined in this memorandum or how they apply to you or to seek guidance about how to handle a particular incident, please call Public Safety. If you have questions or comments about the FSW State College Crime Statistics Reporting Data Form, please contact the Director of Public Safety.

Appendix A: Definitions of Crimes Reportable Under the Clery Act. Note: they may not match the Florida statutes definitions.

I. Primary Crimes

1. *Criminal Homicide*
 - a. *Murder and Non-negligent Manslaughter* - The willful (non-negligent) killing of one human being by another.
 - b. *Negligent Manslaughter* - The killing of another person through gross negligence.

2. *Sex Offenses* - Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - a. *Rape* (sexual battery in Florida) - 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.
 - b. *Fondling* - 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.

- c. *Incest* - sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - d. *Statutory Rape* - Sexual intercourse with a person who is under the statutory age of consent.
3. *Robbery*
The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.
 4. *Aggravated Assault* (aggravated battery in Florida)
An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)
 5. *Burglary*
The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.
 6. *Motor Vehicle Theft*
The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned--including joyriding.)
 7. *Arson*
Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

II. Arrests and Referrals for Disciplinary Actions

- a. *Weapons: Carrying, Possessing, Etc.*
The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons.
- b. *Drug Abuse Violations*

The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance. Arrests for violations of State and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs.

c. *Liquor Law Violations*

The violation of State or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages, not including driving under the influence and drunkenness.

III. Hate Crimes

A crime that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim. That bias includes the victim's actual or perceived race, religion, gender, gender identity, sexual orientation, ethnicity, national origin, and disability. A reportable hate crime is any of the crimes in the first seven categories listed above and

A. *Larceny-Theft* (Except Motor Vehicle Theft)

The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Attempted larcenies are included. Embezzlement, confidence games, forgery, worthless checks, etc., are excluded.

B. *Simple Assault* (battery in Florida)

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.

C. *Intimidation*

To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

D. *Destruction/Damage/Vandalism of Property*

To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

IV. Other Reported Crimes

- A. *Dating Violence* - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:
- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.
- B. *Domestic Violence* - A felony or misdemeanor crime of violence committed by:
- a current or former spouse or intimate partner of the victim;
 - a person with whom the victim shares a child in common;
 - a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
 - any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- C. *Stalking* - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to--
- Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.
- For the purposes of this definition:
- Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

What about confidentiality?

The crime statistics included in the Annual Security Report (ASR) do not include any information that would personally identify the victim or the person accused of committing

the crime. Your report to the Clery Act Coordinator should not include personally identifying information.

For more information on the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, please visit <http://www.securityoncampus.com>.

* The implementing regulations of the Crime Awareness and Campus Security Act incorporates the definitions used in the Federal Bureau of Investigation's Uniform Crime Reporting Program. The definitions for murder, arson, rape, robbery, aggravated assault, burglary, motor vehicle theft, weapons: carrying, possessing, etc., law violations, drug abuse violations, and liquor law violations are from the Uniform Crime Reporting Handbook. The definitions of fondling, incest, and statutory rape are from the National Incident Based Reporting System (NIBRS) Manual. The definitions of larceny-theft (except motor vehicle theft), simple assault, intimidation, and destruction/damage/vandalism of property are from the Hate Crime Data manual.