Use what you know: Applying Foundational Compliance Principles to Clery Act Requirements

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Roadmap

- Who is in the room?
- Regulatory Requirements
- Policy
- Training
- Controls
  - Reporting
  - Investigations
  - Defining Clery Geography
  - CSAs
- Testing and Monitoring
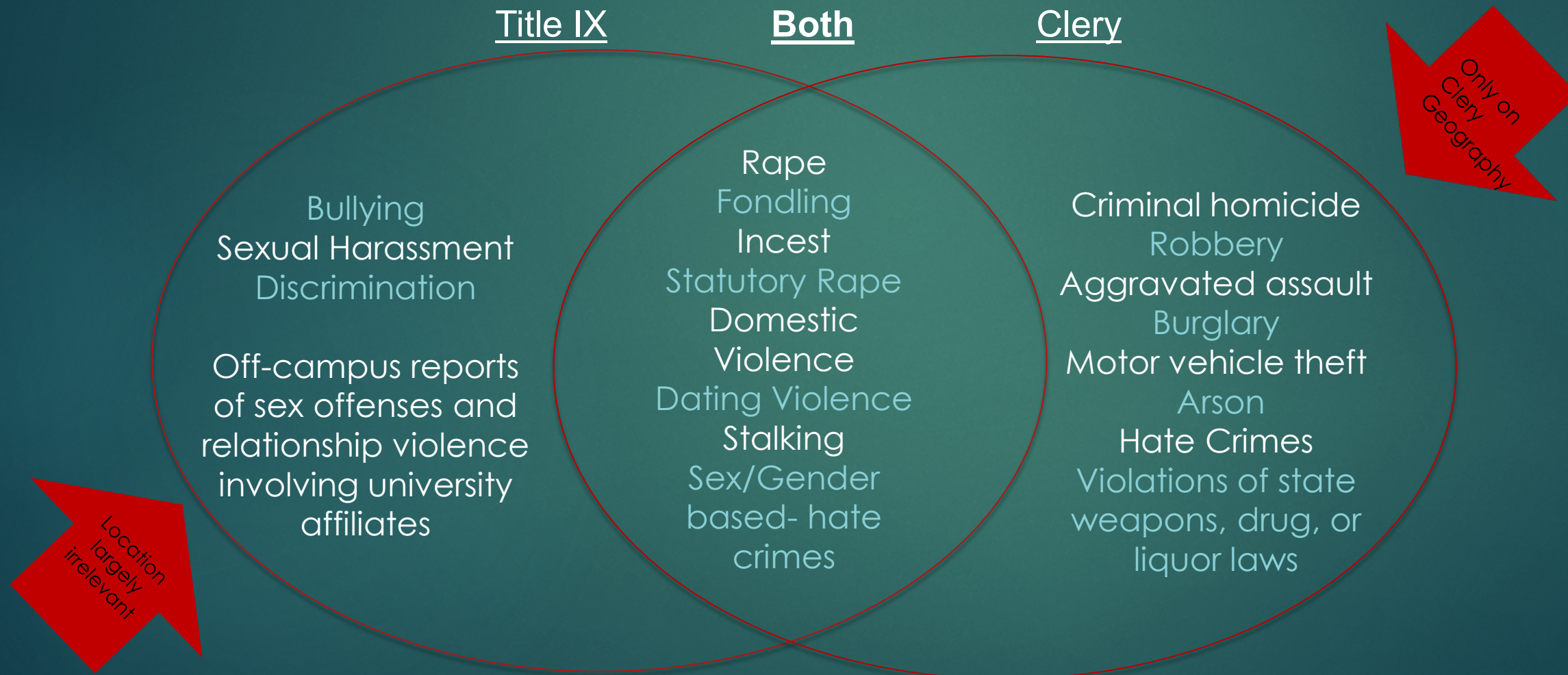- Evidence of Compliance: Records Retention and Records Requests
- Clery Compliance Hacks

Who is in the room?

Regulatory Requirements

20 U.S.C. §1092(f)

► Information in:
  ► Collect, classify, count crime reports and/or statistics from
    ► Campus Security Authorities (CSAs)
    ► Law Enforcement Agencies

► Information out:
  ► Issue campus alerts (Emergency Notifications, Timely Warning Notices)
  ► Publish a Daily Crime Log of incidents
  ► Publish Annual Security and Fire Safety Report
  ► Submit statistics to Department of Education (Campus Safety Survey)

Clery and Title IX

Title IX

Both

Clery

Bullying
Sexual Harassment
Discrimination

Off-campus reports of sex offenses and relationship violence involving university affiliates

Rape
Fondling
Incest
Statutory Rape
Domestic Violence
Dating Violence
Stalking
Sex/Gender based- hate crimes

Criminal homicide
Robbery
Aggravated assault
Burglary
Motor vehicle theft
Arson
Hate Crimes
Violations of state weapons, drug, or liquor laws

Only on Clery Geography

Location largely irrelevant

Policy

- Define Roles and Responsibilities
  - Clery Act Compliance Team members
    - Roles in CSA identification
    - Roles in tracking travel, contracts, and leases that trigger non-campus property
    - Roles in reviewing incident reports and sending to appropriate offices for disclosures
    - Roles in document/record creation and retention
    - Roles for Auxiliary or Affiliate Entities
  - Campus Security authorities
    - Report promptly
    - Complete training as assigned

Policy

- ▶ Formalize accountable and responsible parties for essential processes
  - ▶ Where applicable, also make clear distinctions between consultative relationships, and persons who will be informed but not involved in decisions
  - ▶ Example: Timely Warning Analysis process
    - ▶ Engage broad group of stakeholders in templates and matrix development for TWN determinations
    - ▶ Decision maker in real time should be streamlined and efficient
    - ▶ Inform key campus partners and leaders promptly that TWN has been issued

"Statements of Policy"

- The Clery Act Statute and regulations drive practice by prescribing policy statements, including many that are procedural in nature
  - Example: "*A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency;*"
- ED has indicated that the requirements for "statements of policy" in the Annual Security Report (ASR) means that these must be formalized through your campus policy process, not merely words typed into your ASR
- Revisions to source policies on your campus or in your system trigger a requirement to update the Annual Security Report

Training

- Give relevant training to different campus stakeholders (What do they need to do their part?)
  - How to report-*Campus Security Authorities (CSAs)*
  - Crime classification training-*TIX, Residential Life, Police, Student Conduct, HR*
  - Deep Dives for process partners involved in controls discussed later
  - Leadership-*Risk, requirements around administrative capability, policy structure, Requests for records*
- Think about the values and priorities of each person or group, and frame content in a manner that is likely to resonate with them

Controls: General Principles

▶ Where possible, link controls to key business and investigative processes, to optimize efficiency and enhance completeness of data sets

▶ Controls should be process-based and repeatable

▶ Controls should have broad input in their design, but efficiency in day to day implementation

　　▶ Clery Compliance teams are best place for designing controls

Controls: Reports of Crime

- ▶ Create auto cc on incident reports (TIX, Student Conduct, Housing) to the person who completes Timely Warning Notice analysis or makes Daily Crime Log entry

- ▶ Build in supervisor approval steps at the time of incident report creation AND modification if that supervisor is responsible for getting Clery reportable incidents to the Crime Log or Annual Statistics

- ▶ Utilize custom reports and configurations in RMS systems

- ▶ Discuss in your Clery Compliance team the pro's and cons of a single Clery reporting process used by all CSAs (including University Police Department) versus routing reports from existing structures.

Clarification about Daily Crime Log

Regulations

An institution **that maintains a campus police or a campus security department** must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred within its Clery geography, as described in paragraph (ii) of the definition of *Clery geography* in paragraph (a) of this section, and that is reported to the campus police or the campus security department.

Statute

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

This is also explicit in the rescinded Handbook for Safety and Security Reporting ("the Handbook" CSA chapter (chapter 4).

Penn State Audit

"Penn State's interpretation would create a perverse incentive for institutions to steer students and others to report crimes to officials outside the campus police department to avoid having to list those crimes in the log. It would also mean that the crime log would be unreliable and irreconcilable with the institution's publicly-available crime statistics. Such an approach is inconsistent with the purpose and proper administration of the Clery Act." (Penn State Campus Crime Final Program Review Determination, 2016, p.26).

Investigations

- Persons conducting investigations on your campus are almost certainly CSAs.

- Investigations occurring for other compliance purposes may uncover "reports" in addition to the first
  - Example: Domestic Violence report to the TIX office
  - Trigger a Crime log update when an additional "charge" is added in a civilian records management system
  - Clery Statistics are disclosed in the calendar year reported, not the year it occurred

- Disclosures are based on what is reported by the victim or third party, not findings of an administrative or law enforcement investigation, or conclusions by a court, coroner, or Jury

Clery Geography Context

Campus

"Reasonably Contiguous"

1. What you and your community intuitively consider to be and treat as campus

2. Properties that are close to campus (rescinded guidance characterized "reasonably contiguous" as within a mile

Identify campus (student) residence spaces as an explicit sub-category

Separate Campuses-see survey user guide for definition

Noncampus

Property owned or controlled by a recognized Student Organization

Property owned or controlled by the University that is

1) Frequently used

2) by students

3) for educational purposes

**Pro Tip: Do not conflate the three-part test of the latter with the former*

Public Property

Public Property Immediately Adjacent to and Accessible from campus

Public Property within campus

Controls: Geography

▶ **Noncampus property**
  ▶ Prompt students to self-report off-campus events as part of annual Student Organization recognition process
  ▶ Build controls on University Travel system (incorporate a filter for "does this trip include students).
    ▶ If not integrated, separate, ad-hoc processes can be attached to business processes of Athletics, service learning, and rec sports
  ▶ Add a trigger point when reserving university owned vehicles
  ▶ Add control to existing Insurance/risk management processes
  ▶ Integrate prompt for consultative process (or checklist and train on use) into real estate, lease, contracting and campus procurement workflows

Who is a CSA

Security related

1. The entire campus police department or a campus security department of an institution
2. Individuals with responsibility for campus security (e.g., an individual who is responsible for monitoring the entrance into institutional property, those who provide security at a campus parking kiosk, act as event security, such as for sporting events or large, registered parties, or escort students around campus after dark (including other students)

Designated

An individual or organization specified in an institution's statement of campus security policy as an individual or organization to whom your campus community is directed to report criminal offenses

** Pro tip: Look at how your campus characterizes your confidential advocates, if you have not identified them as CSAs*

Significant Responsibility

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.

Controls: CSAs

- Notification when employees join or depart their role
  - IT process
  - HR process
- Integrate role identification into recruitment process
- Auto-delivery or assignment of training to CSAs upon hire, and periodically thereafter
- Use tools in Learning Management Systems for communicating information and capturing attestations
- Leverage existing opportunities with these audiences, such as annual training for student organization officers, pre-departure training for study abroad, etc.

Testing and Monitoring

- It is wise to spot check delegated determinations about crime classification or property classification for rigor and consistency.
  - By Office
  - By individual

- [Federal Student Aid ISIR Analysis tool](#) with Financial aid

- Integrate into your Compliance risk assessments process
  - Safety Risks
  - Reputational Risks
  - Financial Risks

Monitoring by External Regulators

- ► Many Agencies include Clery as an item to check
  - ► ED/Federal Student Aid Program Participation Agreement renewal and audits
  - ► OCR
  - ► USDA/National Institution of Food and Agriculture compliance audit
  - ► ED/Minority Servicing Under Resources Schools Division Audit
  - ► Law enforcement Agency accrediting bodies
- ► Clery is included in the Office of the Inspector General (OIG) Guide for audits of Proprietary Schools and for Compliance attestation engagements of Third-party Servicers Administering Title IV Programs
- ► Media Audits

Evidence of Compliance: Records

▶ Clery records retention is governed by 34 CFR 668.24(e).
  - ▶ CSA Training records
  - ▶ Evidence of regular CCT meetings (attendance, agendas)
  - ▶ Evidence of Timely Warning Notice determinations
  - ▶ Supporting documentation for statistics

▶ Short timeline for Clery-related records requests
  - ▶ Annual Security Report: Must be provided (hard copy, if requested,) immediately upon request
  - ▶ Daily Crime log: most recent 60 days must be made available for public inspection immediately upon request
  - ▶ Older logs within retention must be provided within two business days

Clery Compliance Hacks

- Make yourself useful. If you make their life easier, not harder, they will follow you

- Overwhelm happens often. Likely what your contributors need is a thought partner and second opinion. This can be helpdesk, consultants, or a smart compliance generalist.

- Frame decisions for the campus partners whose buy in you need, and let them chose the control or policy decision that they are on board with

- If you are torn on exclude vs. include, write a rationale both ways, and read it back. Usually one stands out as more reasonable. Be the proverbial "reasonable person".

Questions?

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