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EXPLAINING HATE CRIMES

UNDER THE CLERY ACT

Since the Clery Act was passed in 1990 it has provided a framework for higher education institutions to communicate transparently about crime response and prevention. From requiring the publication of an annual security report to adding the crimes of dating violence, domestic violence and stalking to those included in institutions' crime statistics, **the Clery Act promotes information sharing that provides a clearer picture of what violence looks like on each campus.**

Clery Act crime classification has changed over time. Beginning with the 2008 calendar year, in addition to the seven original criminal offenses of the Clery Act, the crimes of simple assault, larceny-theft, intimidation and destruction/damage/vandalism of property could be classified as hate crimes. Additionally, with the VAWA Amendments to the Clery Act passed in 2013, bias categories used for hate crime classification expanded to include gender identity and separated national origin and ethnicity into their own categories. These updates reflect a hallmark of the Clery Act: a willingness to evolve.

Hate crimes not only persist on college campuses today but have gained more attention in recent years due to the current climate. Many campuses cite an increase in hate crime reporting, which may demonstrate an increased awareness of the significance of bias-related incidents as well as possible trust in reporting mechanisms on campuses. It has become increasingly important to ensure the accurate reporting and classification of these crimes as well as appropriate response and follow up when such crimes occur. Use this document to educate others on what constitutes hate crimes under the Clery Act, how that intersects with federal and state or local classifications of hate crimes, and what campuses can do to encourage reporting of all bias-related incidents.

Defining & Classifying Hate Crimes Under The Clery Act

The Clery Act defines hate crimes as **a criminal offense that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim.**

For Clery Act purposes hate crimes include criminal homicide, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson.

Larceny-Theft, Simple Assault, Intimidation, and Destruction/Damage/Vandalism of Property (see full descriptions in callout box on page 2) are included in your Clery Act statistics only if they are hate crimes.



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Under the Clery Act, before an incident can be classified as a Hate Crime, sufficient objective facts must be present to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias. While no single fact may be conclusive, facts such as the following, particularly when combined, are supportive of a finding of bias:

- the offender and the victim were of different identities (whether racial, sexual orientation, gender or gender identity, etc.)
- bias-related comments, markings, words were found at the scene of the crime
- several incidents involve victims that share an identity that was marginalized in the actions of the incident, to name a few.

For more examples of facts that would support a finding of bias refer to pages 3-29 to 3-31 in *The Handbook for Campus Safety and Security Reporting (2016)*. It is important to remember that it is essential to conduct a case-by-case analysis of each crime that presents possible bias motivated actions in order to make appropriate classifications of hate crimes.

Four Additional Crime Categories for Hate Crime Classification

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, but is in a position to exercise dominion or control over a thing. (*Ex. pickpocketing, shoplifting, thefts of bicycles.*)

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. Include all assaults that do not involve the use of a firearm, knife, cutting instrument or other dangerous weapon, and in which the victim did not sustain serious or aggravated injuries.

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.

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. (*Ex. drawing obscene pictures on restroom walls, defacing library books.*)



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8 BIAS CATEGORIES

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.

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.

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.



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8 BIAS CATEGORIES

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.

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.

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.



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FEDERAL & STATE DEFINITIONS OF HATE CRIMES

The Clery definition of hate crimes mirrors that of the FBI: “A hate crime is a traditional offense like murder, arson, or vandalism with an added element of bias. For the purposes of collecting statistics, the FBI has defined a hate crime as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.” Hate itself is not a crime—and the FBI is mindful of protecting freedom of speech and other civil liberties.” (<https://www.fbi.gov/investigate/civil-rights/hate-crimes>)

Although institutions use Clery-specific definitions for hate crime classification, some states and localities have their own definitions of hate crimes institutions may need to consider for state-specific reporting requirements. Forty-five states and the District of Columbia have statutes criminalizing various types of bias-motivated violence or intimidation (the exceptions are Arkansas, Georgia, Indiana, South Carolina, and Wyoming). Therefore it is even more critical to emphasize on campuses the importance of reporting all information as one incident might not meet the level of classification as a hate crime under Clery but still might be a violation of institutional policy or even state or local law.

WHAT CAMPUSES CAN DO

Reporting

The only way to know what is happening on campus is if individuals report information. The Clery Act identifies certain individuals on campus as campus security authorities (CSAs) who are responsible for reporting information about Clery crimes reported to them to the crime collection body on their campus. CSAs include those working in campus public safety or campus police as well as officials with significant responsibility for student and campus activities. (For more information on CSAs see the Handbook for Campus Safety and Security Reporting.)

While CSAs are typically trained on the type of information they need to pass on they are not experts on crime classification and therefore it is crucial to emphasize how they should document as much information as possible, for hate crimes in particular, so those on a campus that do make such analyses have all the information they need. Please note CSAs are not required to share personally identifiable information in their reports.

Additionally, anyone can report a bias-related incident, not just CSAs.

Evidence of bias motivation on the part of the perpetrator is necessary in order to make accurate classifications of hate crimes. Therefore, it is crucial to encourage robust reporting when incidents occur, as well as proper documentation by staff of such information to ensure the institution appropriately captures details that demonstrate such evidence.

Hate Crime Reporting Reminders

- Report all hate crimes or bias-related incidents using a reporting form.
- Ask questions about details, especially those you might not understand; sometimes evidence deteriorates or is mistakenly discarded.
- Include all details, specifically of evidence that demonstrates bias motivation.
- Do not discourage reporting if no evidence is immediately apparent; collect as much information as possible up front.
- Include all demographic information of reporting parties and alleged perpetrators to support future classification as a hate crime.
- Document all information that is shared with you, even though it might not be significant to you in the moment, it might be significant to a culture or identity group with which you are not familiar at the outset.



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It is critical to educate the campus community on the importance of reporting all incidents that may seem even remotely bias motivated, as not all members of the community may know what factors will determine hate crime reporting.

When communicating with the campus community about hate crime documentation and response, stress the value of specific, detailed information and that even if the incident does not fit the formal definition of hate crimes under Clery, it might still be a policy violation or a concern that can be formally addressed by the institution. Clery statistics are a helpful measure of what crime is reported, but do not fully capture all types of harm impacting the campus community or even all types of harm covered by campus policy.

Campus climate surveys can be a helpful tool in assessing prevalence rates of bias-related incidents, percentage of those that are reported, and feelings on whether or not institutional response to such incidents was adequate. Conducting such surveys regularly provides a clearer picture of what is actually occurring within the campus community and what may even be contributing to a perpetuation of hate crimes.

Training

Without knowledge of different cultures or identities, it is difficult to notice and appropriately address or respond to bias-related incidents. Include cultural proficiency trainings for all students and staff, particularly those responding to and investigating or adjudicating reports of bias-related incidents, to ensure a comprehensive and just response process. Helpful trainings would include information on the historic marginalization of those holding various racial and ethnic identities, religious affiliations, disabilities, sexual orientations and gender identities as well as what types of on-campus and local resources exist to support those that are the victims of hate crimes as they move forward from an incident.

References

U.S. Department of Education, Office of Postsecondary Education, The Handbook for Campus Safety and Security Reporting, Washington, D.C., 2016.

Bureau of Justice Statistics Data on hate crimes: <https://www.bjs.gov/index.cfm?ty=tp&tid=37>

<https://www.fbi.gov/investigate/civil-rights/hate-crimes>

Federal Bureau of Investigation, Criminal Justice Information Services Division, Uniform Crime Reporting Program, Hate Crime Data Collection Guidelines and Training Manual, Washington, D.C., 2015.

Remember

Identifying and sharing the distinctions between hate crimes under Clery and other bias-related incidents to campus community members provides clarification about why some incidents that are violations of institutional policy might not show up as a statistic in an annual security report.

It is critical that responses to hate crimes or bias-related incidents, regardless of how they are classified, should be more than a number in a column and should involve open dialogue and collaborative partnership to ensure all community members feel heard, supported, and welcome. Below are some resources to reference as you work to create the most helpful prevention and response strategies for combatting hate crimes on your campus.