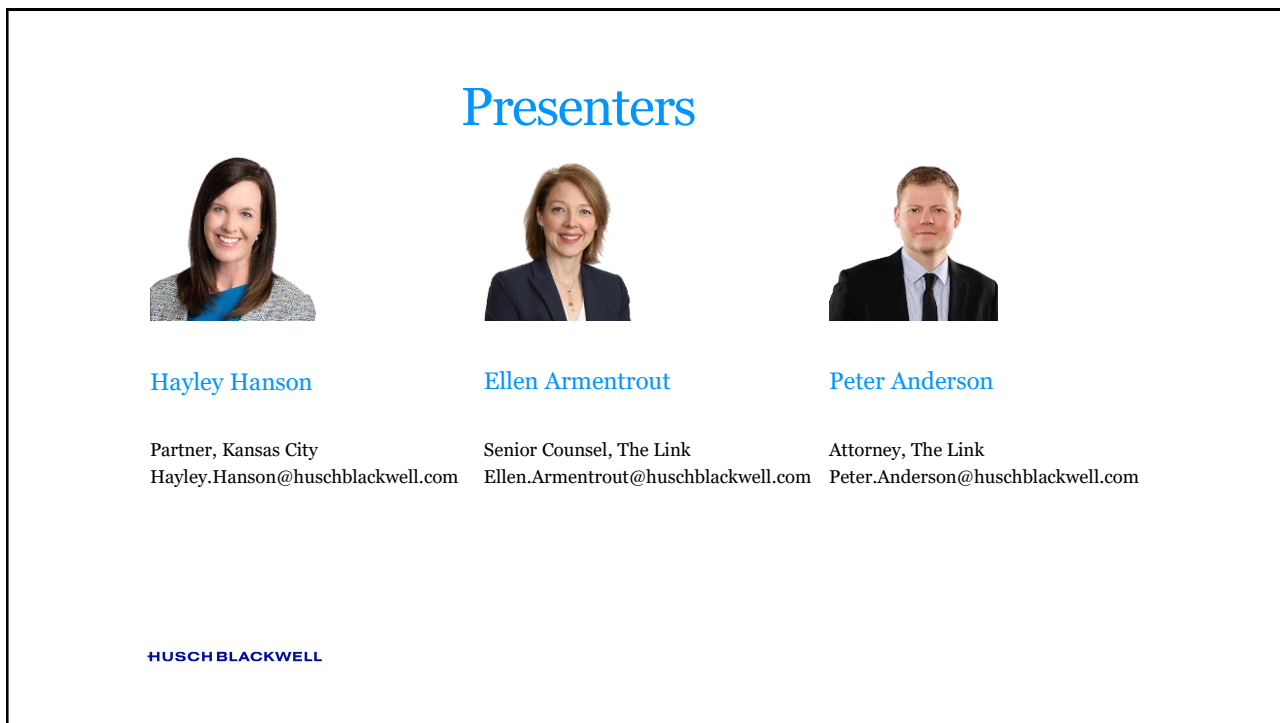


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Standard Legal Disclaimer

This presentation is not legal advice and is not intended to be legal advice. This information is provided for general informational purposes only and does not provide the necessary context to properly advise any institution's specific situation. For appropriate legal advice, you should consult with your attorney.

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Agenda

Background

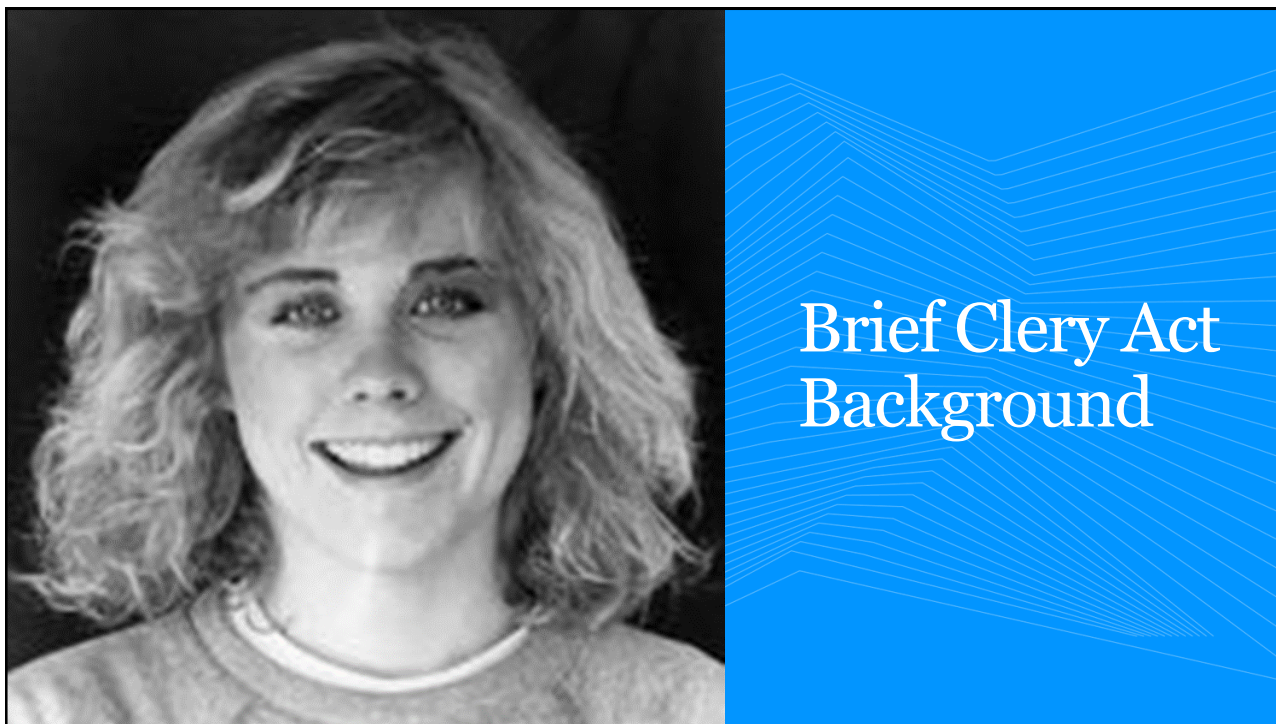
Common Clery Violations and Compliance Tips

VAWA Compliance

Questions?

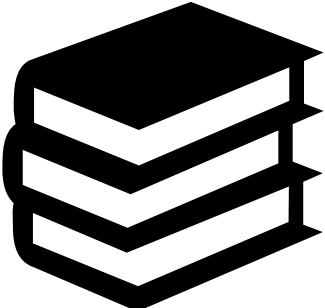
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The Law



- Campus Crime and Security Act of 1990
- Amendments: 1992, 1998, 2000, 2008, 2013
- 2008: Name of law changed to Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)
- 2013: Violence Against Women Reauthorization Act of 2013 (VAWA) signed into law
 - Contains significant amendments to the Clery Act
 - Amendments sometimes referred to as “Campus SaVE Act”

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Subregulatory Guidance



- Clery Handbook
- FSA Appendix
- Finding Letters

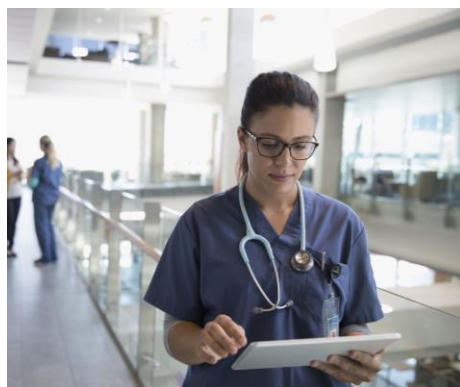
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Which Institutions Must Comply?

All institutions participating in Title IV programs (including foreign campuses of these institutions)

- Distance education-only and foreign institutions are not subject to the Clery Act



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What is a CSA?

The Clery regulation defines a Campus Security Authority as:

1. A campus police or security department
2. Any individual or individuals who have a responsibility for campus security but who do not constitute a campus police department or campus security department



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CSA Obligations

- The Clery regulation requires that institutions must report to the Department and in their ASRS:
 - Clery crimes
 - Within Clery geography
 - Reported to local police agencies or a **CSA**

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Identifying CSAs

The FSA Handbook states:

The Department will defer to an institution's designation of CSAs as authoritative. . . . On a case by case basis, institutions may apply the regulations to not designate CSA responsibilities for Clery Act reporting purposes to an individual. . . . [I]nstitutions should focus on the "significant responsibilities" of an employee when determining whether that employee is a CSA for Clery purposes.

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Common Mistakes Regarding CSAs

- Failure to identify relevant employees as CSAs
- Failure to inform employees that they are CSAs
- Failure to train CSAs regarding their obligations
- Failure to keep track of new and departing CSA positions

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Compliance Tips regarding CSAs



- Focus on the language in the regulation to identify CSAs
- Maintain a current (and regularly updated) list of CSAs by title
- When new positions are added, determine if they should be designated CSAs
- Inform CSAs of their role and what their obligations are:
 - They are **not** investigators
 - They are to report Clery crimes of which they are aware

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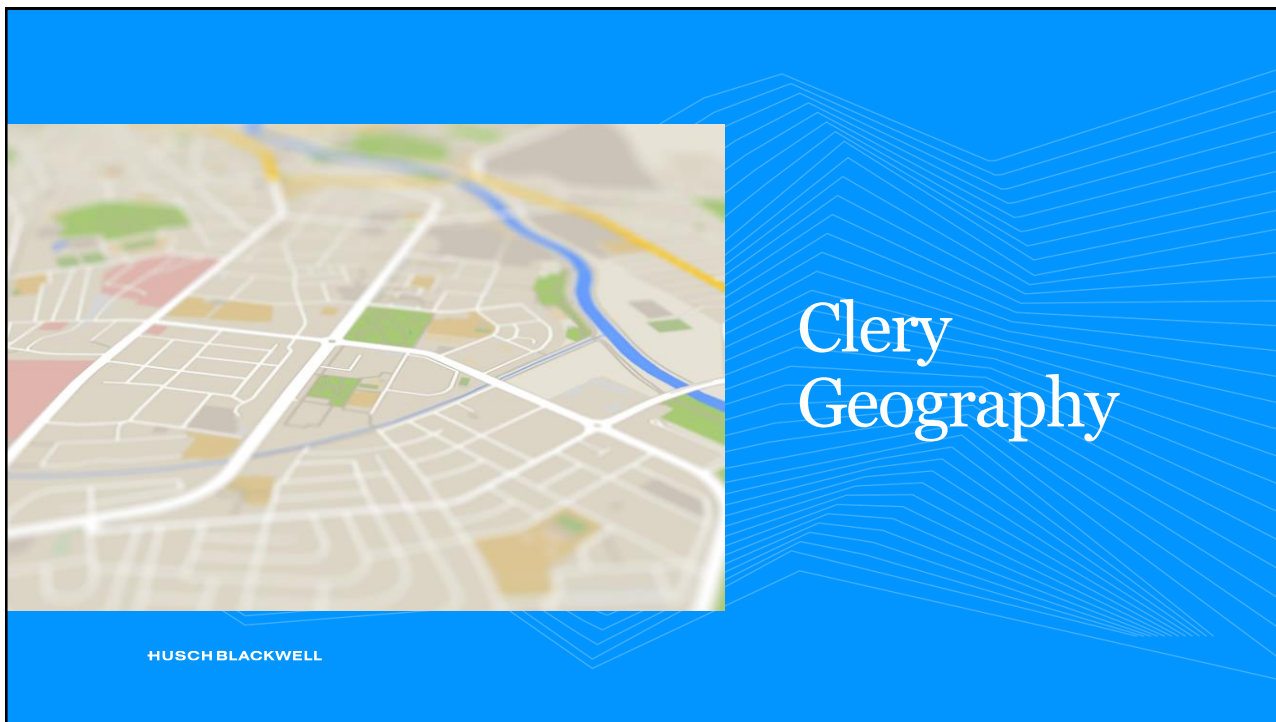
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Compliance Tips regarding CSAs (cont.)

- Consider annual training
 - Not required by the regulation
 - Multiple finding letters have criticized institutions for a failure to provide CSA trainings (*e.g., Although institutions are not generally required to train employees or to otherwise provide training opportunities on most areas of the Clery Act, it is very difficult for a large institution to comply without it.*)
- Consider creating a standardized reporting form: 1) what to report; 2) how to report; 3) to whom to report
- Send out a request to CSAs annually to ensure compliance

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What is Clery Geography?

The Clery Regulation defines Clery geography as:

- Buildings and property that are part of the institution's campus
- The institution's noncampus buildings and property
- Public property within or immediately adjacent to and accessible from the camps
- *For purposes of the Daily Crime Log:* the patrol jurisdiction of the campus police or security department



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Clery Geography Definitions: Campus

Campus

- (i) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and
- (ii) Any building or property that is within or reasonably contiguous to the area identified in paragraph (i) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

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Clery Geography Definitions: Noncampus Property

Noncampus Property

- (i) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or
- (ii) Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

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Clery Geography Definitions: Public Property

Public Property

- All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

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Why is Clery Geography Important?



- An institution is required to report crime statistics for Clery crimes that occur on its Clery geography
- Failure to identify an institution's Clery geography appropriately leads to incorrect statistics (and incorrect statistics can result in massive Clery finds)
- An institution that does not have a handle on its Clery geography will lead the Department to question the institution's understanding of (and compliance with) its Clery obligations

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Clery Geography and Subregulatory Guidance

- There was some thinking that the Appendix was going to change the interpretation of geography regarding trips; it did not.
- The Appendix mostly refers to the regulatory definitions of Clery geography (it does reference a lease as evidence of “control”)
- The Clery Handbook devotes 26 pages of text to providing guidance on what constitutes Clery geography
- As a result: lots of confusion!

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Common Clery Geography Mistakes

- Difference between campus and non-campus property
- Difference between non-campus property and a separate campus
- Failure to include all property that the Department considers part of Clery geography (trips, collaborations, etc.)
- Failure to understand what constitutes student housing
- Failure to identify what property is considered the institution’s public property for Clery purposes
- Not monitoring the acquisition and sale/loss of control of property

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Compliance Tips regarding Clery Geography

- Rely heavily on the statutory definitions and use the Handbook as a safe harbor when necessary
- Do a deep dive into what happens at all the institution's properties that are outside of the main campus
 - Are classes offered? If so, what kind? Do they lead to a certificate or degree?
 - Are there employees there? If so, which employees, what are their roles, and how often are they there?
- Determine if there are any student organization-owned properties outside of the main campus

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Compliance Tips regarding Clery Geography (cont.)

- Get a handle on all trips, and determine how those properties will be categorized (consistency in approach is important)
 - Athletic trips
 - Study abroad
- Research institutional collaborations that involve members of the college/university community spending time at other locations
 - Is there ownership/control?
 - What do any related agreements say regarding the use of space?

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Compliance Tips regarding Clery Geography (cont.)

- Connect your Clery Compliance Office with your leasing office and any other offices engaged in contracting or property acquisition and encourage information sharing
- Document your Clery geography
 - Consider conducting an audit of the institution's Clery geography (can be difficult, but the payoff is worth it)
 - Consider the language used in various agreements to determine whether there are space implications that could trigger Clery geography requirements
 - Require your institution's various departments to sign off on their geography annually

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Annual Security Report Requirements

The Clery regulation requires institutions to prepare an Annual Security Report (ASR) annually, to be published no later than October 1

ASR must include a variety of policy statements, describe programming, and set forth Clery crime statistics (among other things)



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Failure to Comply with Requirements pertaining to the Annual Security Report

Some common mistakes we see:

1. Failure to publish the ASR by October 1, as one document
2. Failure to include (or include completely) the requisite policy statements
 - a) Not discussing the relationship with local law enforcement (even if not memorialized)
 - b) Not discussing security measures in the maintenance of facilities
 - c) Omitting registered sex offender information

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Failure to Comply with Requirements pertaining to the Annual Security Report (cont.)

- d) Not addressing confidential reporting options, and the roles of pastoral and professional counselors
- e) Failing to include information about monitoring criminal activity at off campus locations of RSOs
- f) Omitting a statement about providing, upon written request, the results of a disciplinary proceeding to the alleged victim
- g) Not including the relevant drug and alcohol policy information
 - i. Policy statements
 - ii. Enforcement statements
 - iii. Link to (compliant) drug and alcohol abuse education programs

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Failure to Comply with Requirements pertaining to the Annual Security Report (cont.)

- d) Failing to include information regarding missing students (if there is on campus housing)
 - where to report a missing student; that report should be immediately referred to campus security/police or local police; contact person separate from regular emergency contact (how to identify that person to the institution and that it will be confidential); when parents will be notified (under 18); law enforcement notified within 24 hours.
- e) Failing to include the Fire Safety Report (if there is on campus housing)
 - fire safety systems; number of drills; rules re; appliances, smoking, open flames; evacuation plan; student training; to whom to report fires; street address of campus housing locations; plans for future improvements (even if there aren't any)
- f) Relying exclusively on links (when it is not appropriate to do so)

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Failure to Comply with Requirements pertaining to the Annual Security Report (cont.)

3. Cutting and pasting entire policies into the ASR (is it really **wrong**?)
4. Failing to describe the procedures for Timely Warnings and Emergency Notifications (and the distinctions between the two)

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Failure to Comply with Requirements pertaining to the Annual Security Report (cont.)

5. Misreporting crime statistics
 - a) Using old crime definitions
 - b) Not differentiating between arrests and referrals for disciplinary action
 - c) Not addressing hate crimes (or not including the relevant bias)
 - d) Not addressing unfounded crimes
 - e) Only reporting the most recent year's statistics
 - f) Not including columns for each type of Clery geography
 - g) Not dually-reporting on campus student housing statistics
 - h) Not properly applying the Hierarchy Rule*
 - i) Using zeros when "N/A" would be appropriate (*e.g.*, if the institution has no noncampus property)

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Daily Crime Log Requirements

The Clery regulation requires that an institution with a campus police or security department must maintain a written, easily understood DCL that records, by the date the crime was reported, any crime that occurred within its Clery geography (including its patrol jurisdiction) that is reported to the campus police or the campus security department.

- Nature, date, time, and general location
- Disposition of the complaint, if known
- Entries and corrections must be made within two business days (certain exceptions apply)
- Last 60 days must be publicly available; earlier information must be made available within two business days

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Failure to Comply with DCL Requirements

- Failure to make it publicly available
- Failure to provide older DCL information within two business days
- Failure to update information within two business days (including adding dispositions)
- Failure to provide all the relevant information
- Including only Clery crimes
- Using the DCL as a catch-all for all campus incidents (including noncriminal activity)
- Using generic crime descriptions (*e.g.*, “administrative info” or “consultation”)

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Compliance Tips regarding the DCL

- Use a standard format that includes columns for all the requisite information
- Train the employee(s) who maintains the DCL in:
 - Appropriate timing of entries and update
 - Appropriate crime descriptions
 - Not including incidents other than crimes in the DCL
- Ensure that the employee(s) has the requisite authority to obtain the necessary information
- Conduct periodic reviews of the DCL (by someone other than the primarily responsible employee)

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Timely Warnings

The Clery regulation requires institutions, in a manner that is timely and that will aid in the prevention of similar crimes, report to the campus community:

1. Clery crimes
2. Reported to CSAs or local policy agencies
3. Considered to represent a threat to students and employees

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Emergency Notifications

If there is an immediate threat to the health or safety of students or employees occurring on campus, an institution must follow its emergency notification procedures. If it does so, it is not required to issue a timely warning based on the same circumstances.

Adequate follow-up information must be provided to the community as needed.

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Failure to Issue Timely Warnings and Emergency Notifications Appropriately (cont.)

- Failure to issue TWs or ENs in a timely fashion (or at all)
- Misnaming the alert that is issued (*e.g.*, identifying an EN as a TW)
- Identifying an alert as a TW or EN, when it is some other kind of alert
- Issuing alerts that do not provide adequate information (or issuing alerts that provide confidential information)
- Not issuing alerts to the appropriate segments of the community (including the larger community)
- Over-issuing alerts
- Not following the institution's policy

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Compliance Tips for Timely Warnings and Emergency Notifications

- Ensure that more than one employee can determine when a TW or EN is required, so that at least one employee is available to do so at all times
- Ensure that more than one employee can physically issue alerts when necessary, for the same reason
- Create a flowchart outlining when TWs and ENs are required
- Minimize unnecessary alerts
- Follow your policy
- Document your decision to issue, **or not to issue**, a TW or EN. If one is issued, include in the documentation why and when the alert was issued

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Key Elements of VAWA in the Clery Act

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VAWA

- Violence Against Women Reauthorization Act of 2013
- Affects campus procedures, on-campus programming, Clery reporting, and ASR content
- Four major crimes targeted: domestic violence, sexual assault, dating violence, and stalking

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Domestic Violence

- A felony or misdemeanor crime of violence committed
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By 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
 - By 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.

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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.
 - 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.

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Sexual Assault

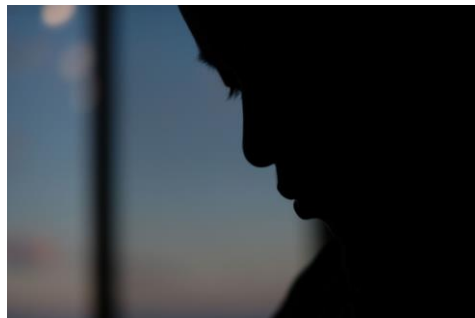
- An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program

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Stalking

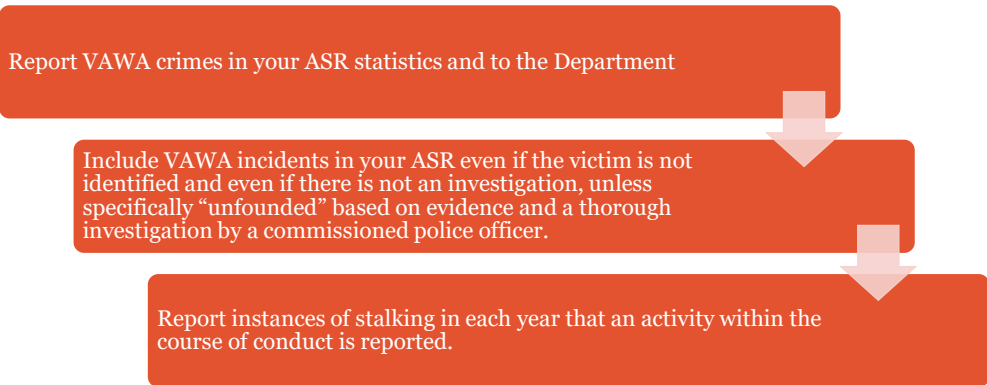
- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - Fear for the person’s safety or the safety of others; or
 - Suffer substantial emotional distress.
- Course of conduct = two or more acts, including when a person directly or indirectly follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.



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Duties Regarding VAWA Crimes



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VAWA Requirements in ASR – Broad Overview

- A statement of policy regarding VAWA crimes that must include:
 - Description of institutional programs and campaigns to promote the awareness of VAWA crimes.
 - Procedures victims should follow if a VAWA crime has occurred
 - Information about how institution will protect confidentiality
 - Notification about services available to victims
 - Notification about accommodations and protective measures available to victims.
 - Explanation of procedures for institutional disciplinary action
 - Reporting party will be given a statement of rights and options

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Programs to Prevent VAWA Crimes

- Programs = Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end VAWA crimes.
 - Culturally relevant, inclusive, sustainable
 - Informed by research or assessed for value, effectiveness, or outcome
 - Consider environmental risk and protective factors

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Prevention and Awareness Programs

Primary Prevention and Awareness Programs

- Programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur.

Ongoing Prevention and Awareness Programs

- Sustained over time and focus on increasing understanding of topics relevant to, and skills for addressing, VAWA crimes using a range of strategies with audiences throughout the institution.

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Program Content in the ASR

- Statement describing primary prevention and awareness programs and ongoing prevention and awareness programs
- Statement that your institution prohibits VAWA crimes
- Definitions of VAWA crimes and consent (regarding sexual activity) in your jurisdiction.
- Bystander intervention
- Risk reduction
- Much more

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Risk Reduction



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- Remain alert and aware of your surroundings.
- Stay grouped up with friends, family, or other people that you know for sure that you can trust. Continuously watch out for one another to make sure everyone stays safe.
- Keep your friends and family aware of where you are and where you are going to be at all times. If you are going somewhere in a group, make a plan and make sure nobody is left behind.
- Always watch your drink, don't leave your drink unattended, and don't take drinks from strangers.
- Avoid dimly lit and isolated areas to the extent possible.
- Keep doors and windows locked. This is particularly important when you are alone or asleep.
- Be careful what you share online.

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Bystander Intervention



Definition: Safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of a VAWA crime occurring.



Bystander's safety is of paramount importance.



Some ways to be an active bystander:

- Ask the person being harassed if they need help or support.
- Directly confront the harasser.
- Distract the parties or disrupt the situation.
- Recruit help from friends or authorities.
- Bring attention to the harassing behavior.
- Continuously monitor the situation in case things change.
- Remove the person being harassed from the situation.

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Potential Ideas for Prevention and Awareness Programming

- Compulsory entrance programming for new students and employees to be given at or before entrance to the institution.
- Survivor Speak Outs, where survivors empowered to share their stories in a safe environment.
- Workshops where students and employees learn about the dynamics of healthy relationships.
- Flyers and Posters with key information located around campus, in dorms, and in bathroom stalls.
- Events related to Sexual Assault Awareness Month, Domestic Violence Awareness Month, and Stalking Awareness Month.
- Role-playing situations to better understand how a situation or conversation would look like in practice, for instance, with bystander intervention.
- Training on consent and making sure that both participants consent to every step of a sexual encounter.
- Panels of experts where students and employees can ask questions about sexual misconduct, ways to prevent it, and relevant University procedures and policies.
- Targeting of particular groups with special training sessions, such as athletes, sororities/fraternities, and employees/students with supervisory authority.

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Accommodations and Protective Measures

MUST make accommodations or provide protective measures if requested and reasonably available.

May include (depending on the situation):

- Changes to class schedule or section
- Changes in housing/residence
- Campus escorts
- Academic accommodations, such as rescheduling an exam, tutoring, or a Leave of Absence.
- Banning perpetrator from campus (If they are not a student or employee)
- Transportation
- Employment accommodations
- Access to medical, mental health or disability services

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Services

- Services available to victims in the institution and in the community regarding
 - Counseling
 - Mental health
 - Victim advocacy
 - Legal assistance
 - Visa/Immigration assistance
 - Student financial aid
 - Other services

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Procedures for if a VAWA Crime has Occurred

The importance of preserving evidence

How and to whom the alleged offense should be reported

Victim's options regarding the involvement of law enforcement and campus authorities

- Notify proper law enforcement authorities
- Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses
- Decline to notify such authorities

Victim's rights and institution's responsibilities regarding lawful orders (orders of protection, restraining orders, etc.)

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Procedures for Institutional Disciplinary Action

Describe **each type** of disciplinary proceeding used by the institution, including

- The steps of the process
- The anticipated timelines
- The decision-making process
- How to file a complaint
- How the institution decides which proceeding to use

Standard of evidence used for VAWA crimes

- Generally, the preponderance of the evidence
 - (over 50% likely that the crime occurred)
- New Title IX regulations – can use clear and convincing (BIG IF)

Implement new Title IX regulations if not legal enjoined from being enforced in your jurisdiction

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Sanctions and Range of Protective Measures

- Possible Sanctions to Include:
 - Suspension; expulsion; termination; written reprimand or warning; demotion or transfer; loss access to campus buildings, classrooms, and other locations; loss of privileges, status, or eligibility, probation; etc.
 - Remember to include ALL sanctions the institution may impose.
- Range of protective measures offered to victim following allegation of VAWA crime.

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Procedure Requirements in ASR

- Procedures must:
 - Be prompt, fair and impartial
 - Reasonably prompt timeframes
 - No conflict of interest or bias for accuser or accused
 - Be conducted by trained officials

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Procedure Requirements in ASR (cont.)

Procedures must:

- Provide that accuser and accused have same opportunity to have others present during proceedings, including an advisor of their choice at any related meeting/proceeding.
- Provide that the institution will not limit the choice of advisor or advisor's presence for either party during meetings/proceedings
- Simultaneously notify accused and accuser, in writing, of:
 - Result of institutional proceedings regarding VAWA crime allegations
 - Procedures for both parties to appeal the result of the proceedings
 - Any changes to the proceeding result
 - When proceeding results become final

ASR must state that when a student or employee reports to the institution that the student or employee has been a victim of a VAWA crime, the institution will provide them a written explanation of their rights and options.

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Common VAWA Mistakes in the ASR

- Not explicitly stating that the institution prohibits dating violence, domestic violence, sexual assault, and stalking
- Not including the relevant state law definitions of the VAWA crimes
- Failing to define consent in the relevant jurisdiction
- Distinguishing between PPAP and OPAC programming
- Not including information about PPOs

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Common VAWA Mistakes in the ASR (cont.)

- Forgetting to state that victims may be assisted in reporting by campus authorities, and may decline to notify such authorities
- Failing to include information about providing victims with information regarding visa and immigration assistance, and financial aid assistance, as well as other services
- Failing to include all relevant disciplinary procedures
- Cutting and pasting the entire Title IX Policy (is this really a mistake??)
- Not including all possible sanctions for violations of the VAWA laws

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Compliance Tips regarding VAWA Sections of the ASR



Pick the low-hanging fruit: *e.g.*, simply state that the institution prohibits certain conduct, that certain information will be shared, etc.



Contact various stakeholders at the institution to obtain information regarding relevant programming



Keep a working document of relevant state law definitions, and task someone with updating it each year

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Compliance Tips regarding VAWA Sections of the ASR



Don't copy and paste your Title IX Policy if you can avoid it (provide the information that is asked for)



Make sure you include the procedures for **all** applicable disciplinary proceedings



Have the relevant stakeholders review this section of the ASR for consistency and accuracy

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A Clery Reporting Resource:



- **Clery Compliance Toolset** is software designed by our higher education attorneys based on ED Clery Act regulations
- Develop policies and procedures, log incidents, and generate your Annual Security Report
- Subscription includes an optional “red flag” review of your ASR by a Husch Blackwell higher education attorney.
- Scan the QR code to register for a 30-minute demonstration on August 8th or August 21st



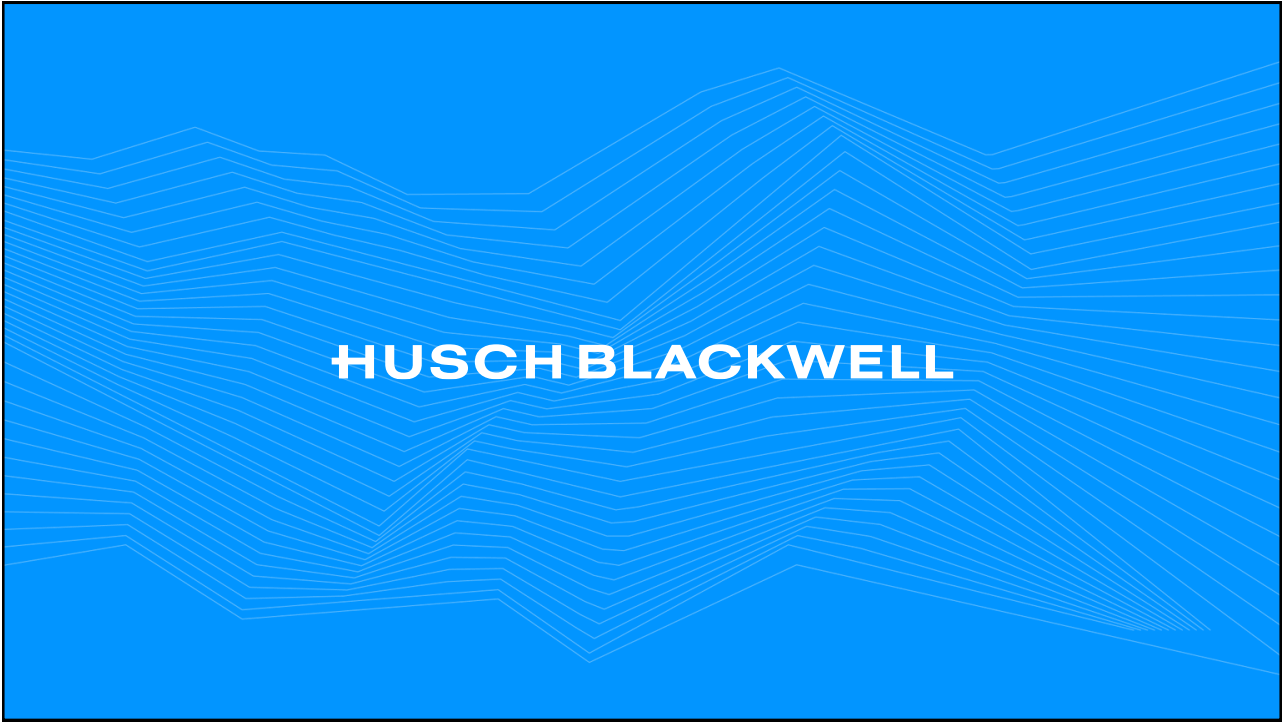
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Questions?

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