



VAWA Offense Statistics for Clergy Act Purposes

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CLERY ACT FOUNDATIONS

Three Part Test



1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery crime?
3. Did the crime occur on or within the institution's reportable Clery Geography?

Campus Security Authorities (CSAs)



Group 1: Campus Police/Security Department Personnel

Group 2: Individuals with security-related responsibilities

Group 3: Individuals or organizations to which students/employees should report crimes

Group 4: Institutional officials with significant responsibility for student and campus activities

A CSA's Primary Responsibility is...



to promptly report allegations of Clery Act crimes they receive to the reporting structure established by the institution.

CSA Reminder from Baylor FPRD



“...it is incumbent upon CSAs to obtain as much information as possible when it is made available to them as that report could be [the institution’s] one and only opportunity to obtain all the information concerning a crime or incident if the complainant refuses to report it to [the campus police or security department].”

(Baylor University Final Program Review Determination, 2020, p. 33)

Clery Geography



- The Clery Act requires institutions to disclose statistics for select crimes that occur:
 - On Campus,
 - on **Public Property** within or immediately adjacent to and accessible from the campus, and
 - in or on **Noncampus Buildings or Property** that the institution (or an officially recognized student organization) owns or controls
- **On-Campus Student Housing Facilities** are a subset of the On-Campus category
- Institutions may have **Separate Campus** locations as well

Clery Act Crimes



■ Primary Crimes

- Murder/Non-negligent Manslaughter
- Manslaughter by Negligence
- Sexual Assault (Rape, Fondling, Incest & Statutory Rape)
- Robbery
- Aggravated Assault
- Burglary
- Motor Vehicle Theft
- Arson

■ VAWA Offenses

- Dating Violence
- Domestic Violence
- Stalking

■ Arrests and Referrals for Disciplinary Action

- Liquor Law Violations
- Drug Law Violations
- Weapon Law Violations

■ Hate Crimes

- All Primary Crimes (except Manslaughter by Negligence)
- Larceny-Theft
- Simple Assault
- Intimidation
- Destruction/Vandalism/Damage of Property

+ Unfounded Crimes

Clery Crime Definitions



- Use the definitions provided in the Clery Act's implementing regulations
 - VAWA Offense definitions can be found at [34 CFR 668.46\(a\)](#)
 - All other crime definitions can be found in [Appendix A to Subpart D of Part 668 - Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program](#)

A crime is reported when...



*it is brought to the attention of a
CSA.*

Key Classification Considerations



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- Affiliation of parties do not matter (except for LDW referrals)
- No corroboration necessary or required
- Do not discount attempts
- Outcome independent
 - Investigation/adjudication not required to classify/count a reported crime
- All reported Clergy crimes occurring within Clergy Geography must be included in the statistics
 - Special case of Unfounded offenses

Key Process Considerations



- There must be procedures in place to ensure CSAs promptly report crimes to the reporting structure of the institution
 - Align procedures with Annual Security Report disclosure(s)
 - Develop a mechanism CSAs can use to document and forward crime reports to the reporting structure
 - Consider how the reporting structure may differ for certain CSAs, including the preferred receivers of reports (e.g., residence life personnel or Title IX Coordinator)

Responsibility for Classifying Offenses



"The Department [of Education] must emphasize that the proper classification of an incident is not in any regard dependent on the label that a victim or witness uses to describe it. Rather, a competent institutional official with the requisite knowledge and experience must evaluate the available information and determine the crime classification(s) that apply to the particular set of case facts" (University of Saint Thomas FPRD, 2017, p. 10).

When a CSA Reports a Crime...





THE BASICS OF TITLE IX

Determining Title IX Applicability



Offense Meets Title IX Definition

Jurisdiction of Person

Participation in the Educational Program

Offense occurs in the Context of the Program

SEXUAL HARASSMENT DEFINITIONS





§ 106.30(A) - SEXUAL HARASSMENT

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- 1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;*
- 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;*
- 3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).*

§ 106.30(A) - THE VAWA OFFENSES

Sexual Assault

- Rape
 - Fondling
 - Incest
- Statutory Rape

Intimate Partner Violence

- Dating Violence
- Domestic Violence

Stalking

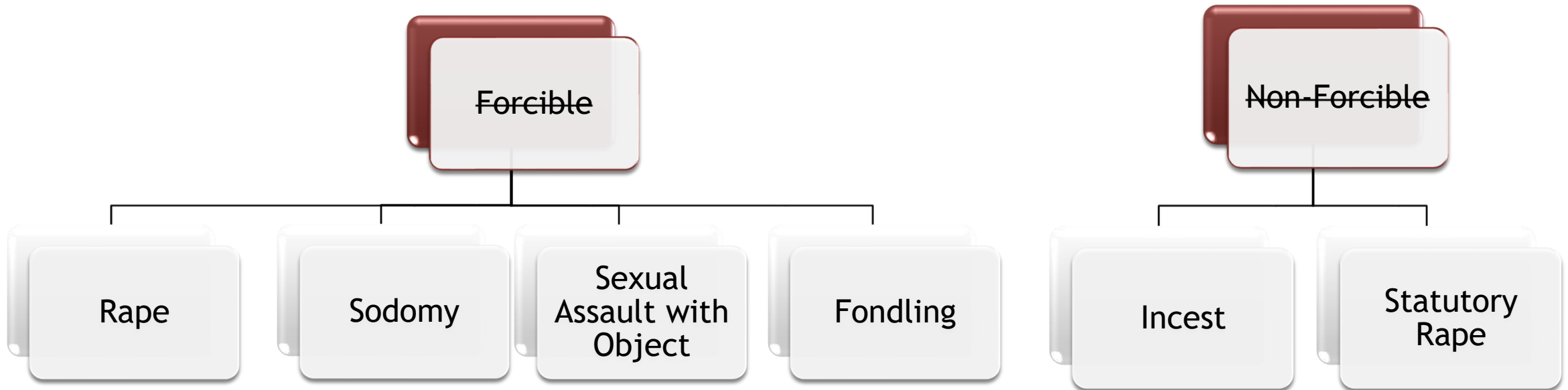
SEXUAL ASSAULT

*“SEXUAL ASSAULT” AS DEFINED IN
20 U.S.C. 1092(F)(6)(A)(V)*

2023 NACCOP 2ND ANNUAL MID-YEAR CONFERENCE



Sexual Assault



Option 1: Sexual Assault - Rape (From SRS)

- *Rape - 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.*

OPTION 2: SEXUAL ASSAULT-RAPE (FROM NIBRS)

- **Sex Offenses, Forcible** - Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
- **Forcible Rape** - (Except Statutory Rape) The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.
- **Forcible Sodomy** - Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
- **Sexual Assault With An Object** - To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

D. **“Sexual Assault”** includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.

1. “Rape” is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sex organ of the other person. Attempted Rape is included.
2. “Sodomy” is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
3. “Sexual Assault with an Object” is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
4. “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 age or because of temporary or permanent mental or physical incapacity.
5. “Incest” is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by the law of the state where the sexual intercourse occurred.
6. “Statutory Rape” is sexual intercourse with a person who is under the statutory age of

INSTITUTIONAL
TITLE IX POLICY
UTILIZING
NIBRS
(AND IT’S OK!)



QUESTION:

WHAT CHALLENGES
DOES THIS POSE FOR
TITLE IX
COORDINATORS AND
CLERY COMPLIANCE
OFFICERS IN
COMMUNICATING AND
RECONCILING DATA?

SEXUAL ASSAULT - FONDLING

-
- **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 age or because of temporary or permanent mental incapacity.*



§ 106.30(a) - Consent

- *The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault.*

SEXUAL ASSAULT
DEFINITION:
CONSIDERATIONS
IN TITLE IX

*QUESTION: HOW
DOES THIS IMPACT
CLERGY ACT
STATISTICAL
REPORTING?*

Includes attempts

Can broaden based on “consent” definition

Can specify which body parts are “private” and whether touching is over or under clothes

“Severity” of rape vs. fondling

Naming the offense in the policy

SEXUAL ASSAULT - INCEST & STATUTORY RAPE

Incest - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape - Sexual intercourse with a person who is under the statutory age of consent.

INTIMATE PARTNER VIOLENCE

- *“dating violence” as defined in 34 U.S.C. 12291(a)(10),*
- *“domestic violence” as defined in 34 U.S.C. 12291(a)(8)*



DATING
VIOLENCE - 34
U.S.C.
12291(A)(10)

- *The term “dating violence” means violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.*

DATING VIOLENCE - CLERY REGULATION ADDITIONS

- *(ii) For the purposes of this definition -*
 - *(A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.*
 - *(B) Dating violence does not include acts covered under the definition of domestic violence.*

DOMESTIC
VIOLENCE - 34
U.S.C.
12291(A)(8)

- *The term “domestic violence” includes felony or misdemeanor crimes 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 receiving grant monies, 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.*

STALKING

*“STALKING” AS DEFINED IN
34 U.S.C. 12291(A)(30)*



STALKING - 34
U.S.C.
12291(A)(30)

- *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.*

STALKING - CLERY REGULATION ADDITIONS

- *(ii) For the purposes of this definition -*
 - *(A) 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.*
 - *(B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.*
 - *(C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.*

Title IX Jurisdiction - Person



At the time of filing a formal complaint...the complainant must be participating in or attempting to participate in the education program or activity.” (§106.30(a))



The recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

“Attempting to Participate”



- Has withdrawn due to alleged harassment and has desire to re-enroll
- Has graduated but intends to apply to new program or participate in alumni programs
- Is on a leave of absence and still enrolled or intends to re-apply
- Has applied for admission

Title IX Jurisdiction – Context of Educational Programs or Activities



Locations, events or circumstances in which the institution has control over the respondent AND context

Or

Any building owned or controlled by a student organization that is officially recognized

And

Occurred in the United States



RECEIVING
*REPORTS-WHO
ARE TITLE IX
REPORTERS*

§ 106.44(a) - General Response to Sexual Harassment



Prompt

Not Deliberately Indifferent

i.e., clearly unreasonable in light of the known circumstances

Equitable

Offer supportive measures to complainant

Follow grievance process before imposing sanctions

§ 106.30(a) - Actual Knowledge



Title IX Coordinator

Official with Authority

No Actual Knowledge § 106.30(a)



Not
constructive
notice

Not vicarious
liability

Not when
respondent only
has notice

Not just ability,
obligation, or
training to
report

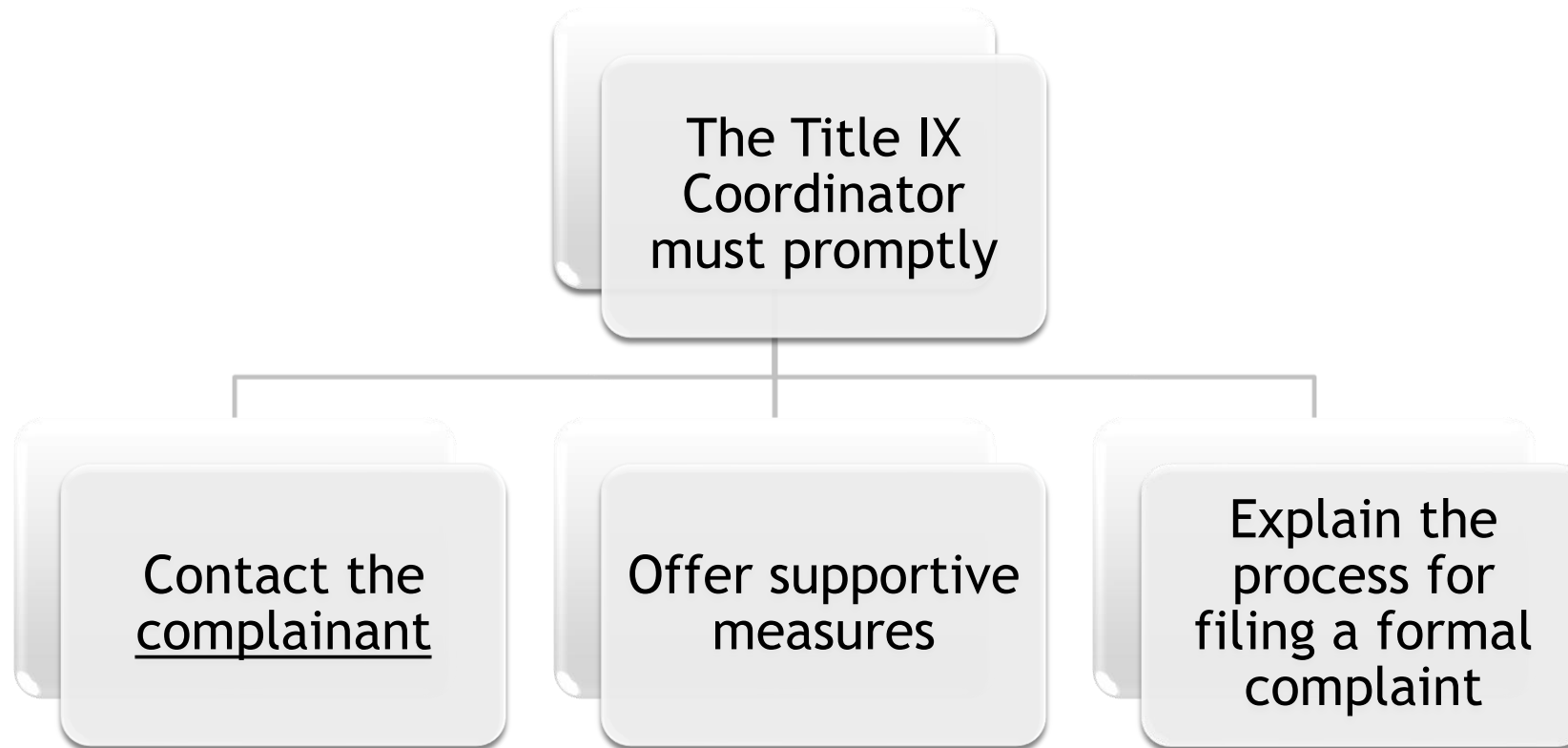
Who May Report (from the Q&A)



- “A school may receive actual knowledge of sexual harassment from any person. There is no requirement that the person be participating in or attempting to participate in a school program or activity to report sexual harassment.”
 - Complainant
 - Friend
 - Parent
 - Witness



Response to a Report



REPORTING, DOCUMENTING & RECONCILING





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