

Office/Contact: Office of Student Affairs/Division of Technology and Security

Source: Clery Act, codified at 20 U.S.C. § 1092 (f); 34 CFR 668.46(e) and (g); University Policies 4:5, 10:2 and 10:3

Link: <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title20/html/USCODE-2011-title20-chap28-subchapIV-partF-sec1092.htm>; <https://www.sdstate.edu/sites/default/files/policies/upload/Prevention-of-Sexual-Assault-Domestic-Violence-and-Stalking.pdf>;
<http://www.sdstate.edu/policies/upload/Notification-that-a-Student-is-Missing.pdf>;
<http://www.sdstate.edu/policies/upload/Community-Notification.pdf>

SOUTH DAKOTA STATE UNIVERSITY
Policy and Procedure Manual

SUBJECT: Clery Act Compliance

NUMBER: 10:11

1. Purpose

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998, a part of the Higher Education Act of 1965, was extended by the Higher Education Opportunity Act of 2008 and the Violence Against Women Reauthorization Act of 2013, all as amended or reauthorized from time to time (collectively known as the “Clery Act”) and requires universities receiving federal financial assistance to gather and make public information about certain crimes on or near their campuses and publish policy statements concerning campus safety and security.

This policy and its procedures set forth the protocols intended to ensure compliance with the Clery Act’s reporting disclosure obligations.

2. Definitions

- a. Annual Security and Fire Safety Report: the annual security and fire safety report that the University is required to publish no later than October 1 of each year.
- b. Campus Security Authority (“CSA”): Except for individuals acting within the scope of employment while performing duties pursuant to licensed privilege, including licensed professional and school counselors when functioning with

discipline, and campus judicial proceedings. A University official is any person who has the authority and is assigned the duty to take action or respond to particular issues on behalf of the University.

- c. Clery Crime: any of the following major categories of crimes reportable under the Clery Act:
 - i. Criminal Homicide, including murder, non-negligent manslaughter, and negligent manslaughter;
 - ii. Sex offenses, including rape, fondling, incest, and statutory rape offenses;
 - iii. Robbery;
 - iv. Aggravated Assault;
 - v. Burglary;
 - vi. Motor Vehicle Theft;
 - vii. Arson;
 - viii. Dating Violence;
 - ix. Domestic Violence; or
 - x. Stalking.

- d.

- j. Fire Log: the log of any fire that occurs in an on-campus student housing facility, which is maintained by the University Police Department and is subject to public inspection.
- k. Hate Crime: a Criminal Homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, arson, larceny/theft, simple assault, intimidation, any other crime involving bodily injury to the victim, or destruction/damage/vandalism of property; in which the victim is intentionally selected, in whole or in part, because of the actual or perceived race, gender, religion, national origin, sexual orientation, gender identity, ethnicity, or disability of the victim.

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2. “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.
 3. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- r. Timely Warning: notifications to the University community that provide information on Clery Act crimes that occur on University Clery geography, are reported to campus security authorities, the University Police Department, or local law enforcement, and pose a serious or continuing threat to students and employees.
 - s. To the extent that this policy is intended to implement protections arising under the criminal law, amendments to those underlying statutes will be deemed to have been incorporated hereon on the effective date of such amendments.
 - t. The following South Dakota criminal law classifications align with the definitions set out in this policy as follows:
 - i. Dating violence includes domestic abuse as defined in SDCL ch. 25-10 that occurs between persons involved in a romantic relationship as defined in SDCL § 25-10-3.2 who are not cohabiting and who have never cohabited;
 - ii. Domestic violence includes domestic abuse as defined in SDCL ch. 25-10 that occurs between persons involved in a romantic relationship as defined in SDCL § 25-10-3.2 who are cohabiting and who have cohabited; and
 - iii. Stalking includes stalking as defined in SDCL ch. 22-19A.

3. Policy

- a. This policy applies to all CSAs and University personnel who have responsibility for an aspect of campus security, as well as offices and individuals with significant responsibility for student and campus activities as defined in this policy.
- b. Reporting Crimes
 - i. Any individual who is the victim of an on-campus crime, regardless of Clery Crime classification, is strongly encouraged to report the crime to the University Police Department immediately by calling 605-688-5117.
 - ii. University faculty and staff, including volunteers, who are aware of a crime are encouraged to report the crime to the University Police Department immediately by calling 605-688-5117 when the victim of such crimes wants to or is unable to make such a report. When University faculty and staff, including volunteers, have knowledge that a felony was committed and that knowledge is not privileged, they are required by state law to report the crime to law enforcement in accordance with SDCL 22-11-12.

- iii. University faculty and staff, including volunteers, who have personal knowledge of an on-campus Clery Crime should report the crime to the University Police Department immediately by calling 605-688-5117.
 - iv. University CSAs who are aware or receive a report of an on-campus Clery Crime are required to report the crime to the University Police Department immediately by calling 605-688-5117.
 - v. University students, University contractors, visitors, and the general public who are aware of an on-campus Clery Crime are strongly encouraged to report the crime to University Police Department immediately by calling 605-688-5117.
 - vi. Crimes in Progress: Individuals who suspect that behavior detected is actually a crime-in-progress or another emergency should call the University Police Department at 111 from on-campus phones or 911 from mobile or off-campus phones.
 - vii. Anonymous Reporting of Crimes: Students and other non-employees may report a suspected crime anonymously. While it is preferred that a reporting person provide their name and contact number so that the University Police Department can fully investigate, it is not necessary for the caller to provide his or her name and contact information. No electronic reporting system, including email, should be used to report a crime in progress.
- c. Compiling and Disclosure of Clery Sta (r)1.110.913.6 (c)3tan9
- i. The University shall compile and disclose statistic3taf reports of Clery Crimes occurring on campus property, including that subset of Clery Crimes occurring in on-campus student housing fac3talitæon non-campus property; and on those

d. Emergency Notifications/Timely Warnings

- i. Emergency Notifications, Timely Warnings, and Other Notifications will be issued to the campus community in accordance with University Policy 10:3: Community Notification of Potential, Imminent or Active Threat to the University.

October 1 of each year.

- v. In accordance with the Clery Act, the University shall maintain and disclose in its Annual Security and Fire Safety Report its policies regarding:
 - 1. How students and others should report crimes and emergencies;
 - 2. Security of and access to University facilities;
 - 3. Crime prevention;
 - 4. University law enforcement;
 - 5. Alcohol and drugs;
 - 6. Sex offenses; and
 - 7. How to obtain sex offender information.

- vi. Under the Violence Against Women Reauthorization Act of 2013, the University must also provide in its Annual Security and Fire Safety Report:
 - 1. Policy statements concerning reporting requirements;
 - 2. Policies encouraging accurate and prompt reporting of all crimes to University Police and appropriate law enforcement when the victim wants to or is unable to make a report;
 - 3. Statements of the standard of proof/evidence used in sexual assault, stalking, dating violence, and domestic violence cases (e.g. the standard of proof in student disciplinary cases is the “preponderance of evidence,” which differs from the “beyond reasonable doubt” standard in criminal prosecutions);
 - 4. Policies on required educational programs;
 - 5. Policies regarding ongoing prevention and awareness campaigns;
 - 6. Procedures victims should follow (victim resources);
 - 7. Procedures for University disciplinary actions, including the requirement of annual training by officials conducting investigations and hearings; and
 - 8. Policies on equal opportunity regarding choice of advisors.

g. Missing Students

- i. The University must maintain and follow a missing student policy and notification procedure. University Policy 10:2, Notification that a Student is Missing, provides guidelines for the notification of law enforcement and appropriate persons that a University student is missing.

h. University Police Department Responsibilities

- i. The University Police Department shall have the authority to investigate crimes and determine, authoritatively, whether a crime took place or is “unfounded.”
- ii. The University Police Department shall collect and compile statistics regarding Clery Crimes and shall provide those collected and compiled statistics to the University on an annual basis.

4. Procedures

committee will be responsible for the oversight of the University's Clery Act compliance activities, including the following:

- i. Developing and coordinating the University's Clery Act compliance program and related activities, including policy development and implementation;
- ii. Serving as the designated "campus safety survey administrator," as that term is defined by the Department of Education;
- iii. Preparing, publishing, and distributing the Annual Security and the Fire Safety Report and submitting specifically requested data to the Department of Education.

