

## Clery Act Compliance

Campus safety is a vital concern to John Tyler Community College. In 1990, Congress enacted the *Crime Awareness and Campus Security Act of 1990* (Title II of Public Law 101-542), which amended the *Higher Education Act of 1965 (HEA)*. This act requires all postsecondary institutions participating in *HEA's* Title IV student financial assistance programs to disclose campus crime statistics and security information. The act was amended in 1992, 1998 and 2000. The 1998 amendments renamed the law the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* in memory of a student who was slain in her dorm room in 1986. It is generally referred to as the *Clery Act*.

On Aug. 14, 2008, the *Higher Education Opportunity Act* or *HEOA* (Public Law 110-315) reauthorized and expanded the *Higher Education Act of 1965*, as amended. *HEOA* amended the *Clery Act* and created additional safety-and security-related requirements for institutions.

Tyler Security Services works with various areas of the college to ensure compliance of the Clery Act for the safety of Tyler's students, faculty, staff and community. If you have any questions or comments concerning Clery Act, please email [tbrown01@jtcc.edu](mailto:tbrown01@jtcc.edu).

### Reportable Crimes

Tyler posts statistics for serious crimes reported to local police agencies and campus security authorities. The following considerations are used to assist in the classification and recording of serious crimes:

1. The Federal Bureau of Investigation (FBI), Uniform Crime Reporting (UCR) Handbook is used for all definitions of offenses except for sex offenses.
2. For sex offenses only, the National Incident-Based Reporting System (NIBRS) Edition of the UCR Handbook is used for classification.
3. Clery Act reporting DOES NOT require disclosure of all other sexual related offenses. ex. sexual harassment, voyeurism and incident exposure.
4. Offenses are counted on the basis of calls for service, complaints and investigations.
5. Findings of courts, coroners, jury, prosecutorial decisions and student judicial boards are NOT a basis for counting Clery Act crimes.

**Hierarchy Rule** is when the offender/perpetrator commits multiple offences in the same incident. When this occurs, the hierarchy rule must be used when counting multiple offenses. The hierarchy rule requires the most serious offense be counted when more than one offense was committed during a single incident. A single incident means that the offenses must be committed at the same time and place; and that the time interval

and distance between the offenses were insignificant.

## **Definitions of Crime Categories**

**Murder/non-negligent manslaughter** is the willful killing of one human being by another.

### **Count**

- Count one offense per victim.
- Deaths caused by injuries received in a fight, argument, quarrel or commission of a crime.

Suicides, traffic fatalities, fetal deaths, situational heart attacks, accidental deaths, assaults, attempts to murder, and justifiable homicide are NOT Clery reportable.

**Negligent Manslaughter** is the killing of another person through gross negligence.

Count one offense per victim.

Deaths due to own negligence, accidental deaths not resulting from gross negligence and traffic fatalities are NOT Clery reportable.

**Forcible Rape** is carnal knowledge of a person forcibly and/or against the person's will, or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).

- Count victims, NOT offenders.
- Use or threat of force counts a forcible regardless of victim's age.
- Include males and females.

### **Comments**

- The ability of the victim to give consent must be a professional determination by a law enforcement agency.
- A male could be a victim if a female forced him to have vaginal intercourse with her.

**Forcible Sodomy** is oral or anal sexual intercourse with another person, forcibly and/or against that person's will, or not forcibly or against that person's will 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.

- Count victims, NOT offenders.
- Use or threat of force counts a forcible regardless of victim's age.
- Include males and females.

### **Comment**

- The ability of the victim to give consent must be a professional determination by a law enforcement agency.

**Sex Assault with an Object** is use of 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 that person's will 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.

- Count victims, NOT offenders.
- Count any object other than the offender's genitalia such as finger, bottle, handgun, stick, etc.
- Include males and females.

Comment

- The ability of the victim to give consent must be a professional determination by a law enforcement agency.

**Forcible Fondling** is touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will, or not forcibly or against that person's will where the victim is incapable of giving consent because of his/her youth or because of his/her mental incapacity.

- Count victims, NOT offenders.
- Count indecent liberties and child molestation.
- Include males and females.

Comment

- The ability of the victim to give consent must be a professional determination by a law enforcement agency.

**Sex Offenses, non-forcible** are unlawful, non-forcible sexual intercourse. For sex offenses only, you must use the National Incident-Based Reporting System (NIBRS) edition of the UCR.

Two types are included:

1. Incest-non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - Count victims not offenders.
  - Include males and females.
2. Statutory rape-non-forcible sexual intercourse with a person who is under the age of consent.
  - Count victims not offenders.
  - Count the victims that fit your state's statutory limit.
  - Include males and females.

Do Not Count

If force or threats used or a victim is unable to give consent then it counts as forcible rape.

**Robbery** is taking or attempting to take anything of value from the care, custody or

control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

There are four categories in analyzing robbery:

1. Robbery with a firearm - use of any firearm as a weapon or employed as a means of force to threaten the victim or put the victim in fear.
  2. Robbery with knife or cutting instrument - use of a knife, broken bottle, razor, ice pick or other cutting or stabbing instrument as weapon or as a means of force to threaten the victim or put the victim in fear.
  3. Robbery with other dangerous weapon - a club, acid, explosive, brass knuckles, mace, pepper spray or other dangerous weapon is used or use is threatened.
  4. Strong arm - hands, fists, feet, etc. Includes muggings and similar offenses where personal weapons such as hands, arms, feet, fists and teeth are used or use is threatened to deprive victim of possessions.
- Count one offense per distinct operation (incident) including attempts.
  - Carjacking counts as robbery, NOT as a motor vehicle theft.

Not Clerly Reportable

- Do not count number of victims robbed, those present or the number of offenders.
- Do not count if force or threat of force does not exist such as a pick-pocket or purse snatching.
- If injury results in death count as a homicide.

Comments

- Robbery is committed in the presence of the victim who is threatened with force or put in fear that force will be used.
- Robbery involves a theft or larceny but is aggravated by the element of force or threat of force.
- Because some type of assault is an element of robbery, do not report an assault as a separate crime as long as it was performed in furtherance of the robbery.

**Aggravated Assault** is the unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. Usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm.

There are four categories of aggravated assault:

1. Aggravated assault with a firearm. When a firearm of any type is used or threatened to be used. It includes revolvers, semi-automatic pistols, shotguns, zip guns, rifles, etc.
2. Aggravated assault with a knife or cutting instrument. When weapons such as knives, razors, hatchets, axes, cleavers, scissors, glass, broken bottles, or ice picks are used to cut or stab objects or used to threaten someone.
3. Aggravated assault or other dangerous weapon. Use or threatened use of any object as a weapon in which serious injury does or could result. Weapons include mace, pepper spray, clubs, bricks, jack handles, tire irons, bottles or other blunt

objects to club or beat victims. Also includes explosives, acid, lye, poisoning, scalding and burning.

4. Aggravated assault with hands, fists, feet and teeth. Use of personal weapons (hands, fists, feet, etc.) that result in serious or aggravated injury.
  - one offense per victim
  - only count crimes meeting UCR definitions
  - count offense per victim even if injury does not result if a weapon is used that could have caused serious injury

#### Do Not Count

Do not count offenses based on local law classifications or policy definitions.

#### Comments

Factors to consider:

- Type of weapon or use of an object
- Intent of the assailant to cause injury
- Seriousness of the injury
  - serious injuries include broken bones, stitches, internal injury, loss of teeth, severe laceration and loss of consciousness

If the number of persons involved cannot be distinguished from the victims, count the number of persons assaulted as the number of offenses.

**Burglary** is unlawful entry of a structure to commit a felony or a theft.

There are three categories of burglary:

1. **Forcible Entry:** All offenses where force of any kind is used to unlawfully enter a structure for the purpose of committing a theft or felony. Entry through the use of tools; breaking or forcing windows, doors, transom or ventilators; cutting screens, walls or roofs, and if known use of master keys, picks unauthorized keys, celluloid, a mechanical contrivance such as a pass or skeleton key or any device that leaves no outward mark but forces a lock. Include concealment inside a building followed by exiting the structure.
2. **Unlawful Entry - No Force:** Entry by use of an unlocked door or window. Includes thefts from open garages, open warehouses, open or unlocked dwellings, and open or unlocked common basement areas where entry is someone other than the lawful tenant.
3. **Attempted Forcible Entry:** Forcible entry is attempted, but not completed.

An incident must meet three conditions to be classified as a burglary:

1. There must be evidence of unlawful entry (trespass). Both forcible entry and unlawful entry -- no force is counted.
2. The unlawful entry must occur within a structure, which is defined as having four walls, a roof, and a door.
3. The unlawful entry into a structure must show evidence that the entry was made in order to commit a felony or theft. If the intent was not to commit a felony or theft, or if the intent cannot be determined, the proper classification is Larceny.

The FBI UCR Office has recently clarified what they mean in the “conditions” 1. and 3. above regarding the word “evidence”. They stated that they do NOT mean PHYSICAL EVIDENCE. “EVIDENCE” to the FBI UCR Office means “THE FACTS OF THE CASE”– Agencies are required to consider the facts of the case as described by the victim and the information obtained in the subsequent preliminary investigation or full investigation, if there is one.

#### Count

- Count one offense per distinct operation.
- Only count crimes meeting UCR definitions.
- Count one offense for each residence, dorm room or structure if more than one was entered.

*Burglaries in Suites:* Each bedroom in a student housing facility suite is considered a separate dwelling. Count the Burglary of four bedrooms and the common room in a suite during a single incident as five burglaries.

#### Do Not Count

Do not count more than one offense per academic/administrative building regardless of the number of classrooms or offices entered, unless the offenses are not committed at the same time and place and the time interval and distance between offenses is significant.

Do not count offenses based on local law classifications or institutional policy definitions.

#### Comments

Structure includes but is not limited to apartments, barns, cabins, churches, condominiums, dwelling houses, factories, garages, house trailers or houseboats (used as permanent dwellings), mills, offices, out buildings, public buildings, railroad cars, rooms, schools, stables, storage facilities, vessels (ships), and warehouses. This includes mobile units permanently fixed and used as an office, residence or storehouse.

#### *Key Questions to ask at the scene of a theft that occurs in a structure on campus:*

- Were there signs of forcible entry?
- Was the victim’s space (room/office) locked?
- Was the building in a locked or secured mode when the theft occurred?
- Does it appear that someone defeated the locking mechanism or unlawfully used a master key to enter the space?
- In a suite in a residential facility -- how many rooms were entered?
- When is the last time the victim saw the property?
- When did victim notice the property missing?

**Liquor Law Violations** are violations of state laws or local laws/ordinances prohibiting the manufacture, sale, purchase, transportation, possession, use of alcoholic beverages.

Must include:

- manufacture, sale, transporting, furnishing, possessing, etc. of intoxicating liquor
- maintaining unlawful drinking places
- bootlegging and operating a still
- furnishing liquor to a minor or intemperate person
- underage possession
- using a vehicle for illegal transportation of liquor
- drinking on train or public conveyance

*Attempts to commit any of the above.*

Count the number of persons arrested, NOT the number of occurrences of law violations.

**Motor Vehicle Theft** is the theft or attempted theft of a motor vehicle.

There are three classes of motor vehicles:

1. autos -- sedans, station wagons, coupes, convertibles, sport utility vehicles, minivans, and other similar motor vehicles that serve the primary purpose of transporting people from one place to another. Autos used as taxis and station wagons licensed as trucks must be classified as autos.
2. trucks -- pickup trucks and cargo vans regardless of their uses. Self-propelled motor home is considered a truck.
3. buses and other vehicles -- motor vehicles that meet the UCR definition such as snowmobiles, motorcycles, motor scooters, trail bikes, mopeds, golf carts, all-terrain vehicles and motorized wheelchairs.

Count

- Count one offense for each stolen vehicle.
- Count when motor vehicle is stolen by a person who does not have legal access or consent.
- Include theft or attempted theft, joy riding and even if vehicle is recovered.

Do Not Count

- Do not include thefts from motor vehicles.
- Do not count embezzlement of vehicles.
- Do not count farm equipment, bulldozers, airplanes, construction equipment or water craft such as motorboats, sailboats, house boats or jet skis.
- Taking a vehicle for temporary use when prior authority has been granted or can be assumed, such as in family situations, rental car agreements, or unauthorized use by chauffeurs and others having lawful access to the vehicle.

Comments

- If vehicle is stolen in conjunction with another offense, classify the crime using the Hierarchy Rule.
- UCR definitions and not state or local classifications.

**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, or who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner.

**Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on the length of the relationship, type of relationship and frequency of interaction between the persons involved in the relationship.

**Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: a) fear for his or her safety or the safety of others or b) suffer substantial emotional distress. Such behaviors may include, but are not limited to:

- non-consensual (unwanted) communication or contact (face-to-face, telephone, touching, electronic mail, instant messaging, texts, written letters, unwanted gifts, etc.)
- harassment (either by the individual or through a third party)
- use of threatening gestures
- pursuing or following
- surveillance or other types of observation
- trespassing

**Weapons Law Violations** is the violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons.

This classification encompasses weapons offenses that are regulatory in nature.

Agencies must include: manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; using, manufacturing, etc. of silencers; furnishing deadly weapons to minors; aliens possessing deadly weapons; and attempts to commit any of the above.

Count the number of persons arrested, NOT the number of occurrences of law violations.

**Arson** is willful or malicious burning or the attempt to burn with or without intent to defraud a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

There are three categories of arson:

1. Structural: houses, townhouses, duplexes, apartments, hotels, inns, dormitories, barns, garages, warehouse stores, restaurants, offices, churches, jails, schools, monuments, buildings under construction
2. Mobile: cars, trucks, buses, motorcycles, trailers, planes, boats
3. Other: crops, timber, fences, signs, merchandise stored outside a structure

One offense for each distinct arson operation originating within the reporting jurisdiction. Count only if investigated. This is the only Clery Act offense that requires an investigation prior to including in statistics.

Because the Clery Act requires institutions to disclose all arsons that occur on their Clery geography, you must have every fire that is not known to be accidental (such as a cooking fire) investigated.

- For multiple offenses, one of which is arson, report the arson and apply the Hierarchy Rule to determine the most serious offense to report.
- Count any fire that investigation determines to meet the UCR definition of arson regardless of the value of the property damage.
- Count incidents where an individual willfully or maliciously burns his or her own property.

#### Do Not Count

- Do not count if origin is not in your jurisdiction.

#### Comments

- The fire must be more than suspicious or of an unknown nature of origin.
- An arson determination must be made by either a fire authority (such as a fire marshal or law enforcement personnel) or by another individual experienced in arson investigation. The latter includes someone at your institution who has received training in arson investigation by a fire authority.

**Hate Crimes** are any of the reportable crimes or other crimes involving bodily injury reported to local police agencies or to a campus security authority, that manifest evidence that the victim was intentionally selected because of the perpetrator's bias or the perpetrator perceived the person to be in one of the protected group categories. There are six types of bias categories: (You must use the FBI's UCR Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection.)

1. **Race:** A preformed negative attitude toward a group of persons who possess common physical characteristics such as color of skin, eyes, and/or hair, facial features genetically transmitted which distinguish them as a distinct division of humankind. ex. Asians, blacks, whites
2. **Gender:** A preformed negative opinion or attitude toward a group of persons because those persons are either male or female. Gender bias is a Clery Act specific term that is not found in the FBI's Hate Crime Data Collection Guidelines.
3. **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 existence or nonexistence of a supreme being. ex. Catholics, Jews, Protestants, Muslims, etc.
4. **Sexual Orientation:** A preformed negative opinion or attitude toward a group of persons based on their sexual attraction toward, and responsiveness to, members of their own sex or members of the opposite sex. ex. gays, lesbians, heterosexuals

5. Ethnicity/National Origin: A preformed negative opinion or attitude toward a group of persons of the same race or national origin who share common or similar traits, languages, customs and traditions. ex. Arabs, Hispanics, etc.
6. Disability: A preformed negative opinion or attitude toward a group of persons based on their physical or mental impairment/challenges whether such disability is temporary or permanent, congenital or acquired by heredity, accident, injury, advanced age or illness.

*Hate crimes include any offense in the following two groups:*

Group A

Murder and non-negligent manslaughter

Forcible sex offenses

Non-forcible sex offenses

Robbery

Aggravated assault

Burglary

Motor Vehicle Theft

Arson

Group B

Larceny-theft

Simple assault

Intimidation

Destruction/damage/vandalism of property

Count

- Count offense per victim by geographic location.
- Count if sufficient objective facts are present to conclude that the offender's actions in whole or part were motivated by bias.

Do Not Count

- Do not count unless there is evidence. Knowing that the perpetrator is prejudiced is not enough.
- Do not count based on the victim's perception, it is the perception of the perpetrator that classifies the offense as bias.
- Do not count rape unless there is a clear evidence of bias.

Comments

While there are additional types of bias, the Clery Act limits disclosure to the six types. Campus security departments are encouraged to seek guidance from local police to classify hate crimes.

Some factors to consider in determining bias are:

- oral comments, written statements or gestures;
- drawings, markings, symbols or graffiti;
- occurred on a holiday or a date of significance;
- previous involvement in a similar hate crime; and

- Community perception that incident was bias motivated.

*Sources:* FBI UCR Rape Reporting (May 2013); DOJ NIBRS Handbook (August 2000); DOJ Hate Crimes Manual (December 2012); DOE Clery Handbook (February 2011); FBI UCR Handbook (2004); D Stafford & Associates Reference Guide: Collecting; Classifying & Counting Clery Act Crime Data; and Clery Act Training Program Handout (2013).

### **Tyler Geographical Locations**

The Department of Education requires statistical data to be included within the Annual Security report from three distinct Clery geography locations. Tyler has to comply with three reportable statistical locations since the institution does not currently have on-campus dorms or on-campus student housing. Tyler's specific Clery geography can be found at the following link:

[Click here for an interactive map](#) of all Tyler locations.

**On-Campus:** The Department of Educations provided two separate three prong tests to determine if locations should be considered on-campus.

Locations are considered to be on-campus if:

- the institution owns or controls them;
- they are reasonably contiguous to one another
- they directly support or relate to the institution's educational purposes

Locations are also considered to be on-campus if:

- the institution owns, but does not control them
- they are frequently used by students
- they are used to support the institution's educational purposes

Examples of on-campus property include Tyler's campuses like the Chester and Midlothian Campuses.

**Public Property:** Under Clery, public property encompasses the following: All public property, including thoroughfares, streets, sidewalks, and parking facilities, that are within the campus or immediately adjacent to and accessible from the campus.

For example, the sidewalk adjacent to campus property, the street, and the median are included within public property statistics.

**Non-Campus:** The first part of the Clery non-campus definition is any building or property owned or controlled by a student organization that is officially recognized by the institution. Also, 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 close geographic area of the institution.

The Clery non-campus definition also includes a second definition which must be complied with under a four-prong test.

Non-Campus Property:

- is owned or controlled by the institution
- supports or is used for the institution's educational purposes
- is frequently used by students
- is not considered part of the core campus