

Violence Against Women Act Negotiated Rulemaking Committee

Issue Paper #2

Issue: Counting Reported Offenses in New VAWA Categories

Statutory Cites: §485(f) of the HEA, as amended by §304 of the Violence Against Women Reauthorization Act of 2013

Regulatory Cites: 34 CFR §668.46

Summary Question(s): How should institutions count and disclose statistics for reported offenses in the new crime categories?

Background: VAWA expanded crime reporting under the Clery Act to include incidents of sexual assault, domestic violence, dating violence, and stalking that are reported to campus police officers, campus security personnel, certain local law enforcement agencies, and other mandatory crime reporters known as campus security authorities (CSA).

Issue Paper #1 outlines some key issues related to how the new crimes should be defined. However, another critical question to be addressed is how incidents of crimes reported in the new categories should be tallied and disclosed. Historically, the Department has drawn on the Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) system to guide our enforcement program and policy guidance. While the Clery Act does not incorporate the entire UCR system, it does incorporate many of its definitions and borrows some of its methodology.

When counting reported offenses under the Clery Act, several principles generally apply:

- A crime is considered to be “reported” when it is brought to the attention of a CSA or local law enforcement personnel by a victim, witness, other third party or the offender. It doesn't matter whether or not the individuals involved in the crime, or reporting the crime, are associated with the institution. If a CSA receives information about a crime, he or she must document it as a crime report. Offenses are counted based on FBI/UCR guidance as either one offense per victim (i.e. aggravated assault) or one offense per distinct operation (i.e. robbery).
- At times, multiple offenses can take place within a single incident of crime. A single incident means that the offenses were committed at the same time and place. That is, the time interval between the offenses and the distance between the locations where they occurred were insignificant. Offenses are counted according to UCR system's “Hierarchy Rule,” which dictates that only the highest applicable crime category in a single incident would be reflected. For example, if a victim is raped and then murdered during a single incident, the statistics would reflect only a murder and the rape would not be captured. Because of this, under the Clery Act, some incidents are counted in multiple categories. For example, hate crimes are always reported. So, an aggravated assault that is determined to be a hate crime would be counted both in the criminal offense table under

aggravated assault and in the hate crime table as an aggravated assault with the appropriate category of bias.

There are some additional issues concerning the new categories to consider:

- As discussed in Issue Paper #1, there are significant differences in the definitions for these offenses across jurisdictions.
- Incidents of domestic violence, dating violence and stalking are currently counted as assaults in the UCR. Stalking is considered a form of intimidation and is always categorized as a simple assault, whereas domestic violence and dating violence can be either aggravated assault or simple assault, depending on the severity of the injuries or the use of a weapon. Since the Clery Act does not require simple assaults to be counted unless they are hate crimes, it is possible that significant numbers of these instances would not be counted if reported under the normal UCR guidance.
- Institutions will be required to count incidents of sexual assault, domestic violence, dating violence, and stalking that have occurred against a victim who is unable to make a report. As stated above, for Clery reporting purposes, an incident of crime is always considered to be reported when that incident is brought to the attention of a CSA or local law enforcement personnel by a victim, witness, other third party or the offender.
- By definition, stalking represents a pattern of behavior which may not be recognized as stalking until several incidents have occurred. This presents challenges for when and how stalking incidents should be counted.

Understanding the Clery framework and the challenges of the new categories, how should institutions disclose incidents of sexual assault, domestic violence, dating violence, and stalking?

- Should a separate table be required to report VAWA offenses such as the one currently used for hate crimes?
- What problems/challenges could result from adoption of this general structure?
- Should we use an approach where a single reported incident could theoretically be counted in up to four areas (i.e., on-campus; on-campus student residential facility; hate crimes; VAWA)?
- For stalking, should institutions be required to count prior incidents that are determined by investigation to be part of the stalking pattern or only the reported incident?