

THE CLERY ACT QUIZ

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NCHERM published the original Clery Act Quiz in 2000. This is an updated and expanded version for 2006. The answers to these questions are given according to the National Center for Higher Education Risk Management [NCHERM]. NCHERM is not affiliated with, and does not speak for the U.S. Department of Education, which has the final say on Clery Act Compliance.

1. **Q:** Colleges must have timely warning policies in place, but the Clery Act does not require the college to publish that policy in the Annual Security Report. **TRUE or FALSE?**

A: FALSE, COLLEGES ARE REQUIRED TO HAVE A TIMELY WARNING POLICY, AND TO PUBLISH IT IN THE ANNUAL SECURITY REPORT.

2. **Q:** Miami University in Ohio was recently required by the Department of Education to release hearing outcomes to sexual assault victims in writing in accordance with the Clery Act. **TRUE or FALSE**

A: FALSE. IT IS TRUE THAT MIAMI UNIVERSITY WAS REQUIRED TO RELEASE HEARING OUTCOMES TO SEXUAL ASSAULT VICTIMS IN WRITING, BUT ONLY BECAUSE THE DEPARTMENT OF EDUCATION REQUIRED THEM TO FOLLOW THEIR OWN POLICY, WHICH REQUIRED WRITTEN NOTIFICATION. WRITTEN NOTIFICATION IS A BEST PRACTICE (SO THAT YOU CAN PROVE YOU DID IT), BUT THE CLERY ACT DOES NOT REQUIRE THAT NOTIFICATION BE IN WRITING.

3. **Q:** The largest fine ever imposed for violating the Clery Act is:

- a. **\$15,000**
- b. **\$27,500**
- c. **\$385,000**
- d. **\$250,000**

A: SALEM UNIVERSITY WAS FINED \$250,000, PAYABLE OVER FIVE YEARS, FOR MULTIPLE CLERY ACT VIOLATIONS. THE RECOMMENDED FINE WAS \$385,000, BUT \$250,000 WAS THE FINE ULTIMATELY IMPOSED (this Quiz pre-dated the Eastern Michigan University finding).

4. **Q:** The Dean of Students was previously Director of Counseling, and is a certified professional counselor in the state of PA, though he no longer has any counseling duties on campus. A student comes to the Dean to discuss judicial options regarding a sexual offense, and asks the Dean if he would keep the report confidential. The Dean agrees to, citing that the student came to him in a counseling capacity, and does not make a Clery Act statistical report. Is this permissible? **YES, NO, OR MAYBE?**

A: NO. THE DEAN MAY BE A COUNSELOR, BUT HE IS NOT FUNCTIONING WITHIN THE LICENSE AND SCOPE OF HIS CERTIFICATION FOR THE PURPOSES OF THIS REPORT.

5. **Q:** The college has designated a list of people, in its annual security report, to whom crimes should be reported. In the section on sex offenses, the college also directs victims

of sexual misconduct to contact the local rape crisis center and the on-campus student peer-counseling group as reporting and support resources.

- a. Can the college report statistics from these two organizations? **Yes, No or Maybe?**
- b. Must it report statistics from these two organizations? **Yes, No or Maybe?**
- c. Must the organizations supply statistics to the college? **Yes, No, or Maybe?**

A:

- a. **YES, THESE ORGANIZATIONS MAY SUPPLY NON-PERSONALLY IDENTIFIABLE STATISTICAL INFORMATION WITHOUT CONCERN FOR BREACHING CONFIDENTIALITY.**
- b. **YES, IF THE COLLEGE DESIGNATES INDIVIDUALS AS REPORTING AUTHORITIES, THEN THEY ARE REPORTING AUTHORITIES.**
- c. **NO. THE COLLEGE CANNOT REQUIRE REPORTING BY THE LOCAL RAPE CRISIS CENTER. ASSUMING THE PEER COUNSELING GROUP IS FUNCTIONING UNDER A STATE CONFIDENTIALITY LAW OR THE LICENSE OF A PROFESSIONAL COUNSELOR, REPORTING IS ALSO VOLUNTARY FOR THEM.**

6. **Q:** The Clery Act may only be enforced by the US Department of Education through fines and required corrective action. **TRUE or FALSE?**

A: UNFORTUNATELY, THE ANSWER MAY BE NO. THE DEPARTMENT OF JUSTICE HAS ASSERTED THE RIGHT TO PUNISH NON-COMPLIANCE WITH THE CLERY ACT UNDER THE FALSE CLAIMS ACT, A FEDERAL

LAW USED TO RECOVER GOVERNMENT FUNDING FROM ENTITIES WHO MAKE ASSURANCES OF LEGAL COMPLIANCE, ACCEPT GOVERNMENT FUNDING IN RETURN, AND THEN FAIL TO COMPLY. THE POTENTIAL FINES COULD BE IN THE MILLIONS OF DOLLARS. WHILE FALSE CLAIMS ACT SUITS HAVE BEEN THREATENED, THE DEPARTMENT OF JUSTICE HAS NOT YET APPLIED THIS REMEDY TO COLLEGES.

7. **Q:** Where an incident occurred off-campus, in a house three miles from campus, that was owned by the institution, used for housing the chemistry department's primate lab, and where professors frequently conducted animal testing without the knowledge of students, would the Clery Act require the reporting of that statistic? **Yes, No, or Maybe?**

A: NO. THERE IS NO FREQUENT USE BY STUDENTS, AS REQUIRED BY THE CLERY ACT.

8. **Q:** The Clery Act requires colleges to release the final results of hearings on sexual assault to the alleged victim. Because of this, victims cannot have a right of appeal because they are not entitled to know the result of the hearing until it is a final result, and all appeals have been exhausted. **TRUE or FALSE?**

A: FALSE. THE DEPARTMENT OF EDUCATION CONSIDERS THE OUTCOME OF AN INITIAL HEARING TO BE A FINAL RESULT, REGARDLESS OF SUBSEQUENT APPEALS. WE SHOULD BE MINDFUL THAT OUR DUTY TO NOTIFY ALLEGED VICTIMS EXTENDS NOT ONLY TO INITIAL HEARING RESULTS, BUT TO APPEALS OUTCOMES AS WELL.

9. **Q:** If an incident occurred on public property right next to an academic building that was on-campus, but occurred between two non-students, is there any obligation to report it?

Yes, No, or Maybe?

A: YES. THE STATUS OF THE PEOPLE INVOLVED IN THE INCIDENT IS IRRELEVANT UNDER THE CLERY ACT.

10. **Q:** An RA enters a student room to find two underage students in possession of open beer cans, and a third underage student who is present but not in possession of any beer. There is, however, an open half-full beer can on the table in front of this student. The RA completes incident reports for possession for the two beer-holders, and completes an incident report for the third student for “being in the presence of alcohol.” The college security officials should count this as 2 alcohol disciplinary referrals when reporting their Clery statistics. **TRUE, FALSE or MAYBE?**

A: MAYBE. WE ARE REQUIRED TO REPORT ALCOHOL VIOLATIONS UNDER THE “DISCIPLINARY REFERRAL FOR LIQUOR LAW VIOLATIONS” CATEGORY ONLY WHEN THE ALCOHOL INCIDENT IS BOTH A VIOLATION OF OUR CODE AND A VIOLATION OF LAW. MANY COLLEGES DO NOT CONSIDER “PRESENCE OF ALCOHOL” CONDUCT CODE VIOLATIONS TO BE VIOLATIONS OF LAW. BUT, IN MANY JURISDICTIONS, THERE ARE STATUTORY CONSTRUCTIVE POSSESSION LAWS REGARDING ALCOHOL. CHECK YOUR STATE STATUTES. IF YOU HAVE A CONSTRUCTIVE POSSESSION LAW, IT LIKELY COVERS THIS

SCENARIO, AND THEREFORE YOUR DUTY WOULD BE TO REPORT THREE REFERRALS, NOT TWO.

11. **Q:** Should campus law enforcement unfound a reported incident when the case goes to trial locally and the defendant is found not-guilty? **Yes, No or Maybe**

A: IT DEPENDS ON WHETHER, DESPITE THE TRIAL RESULTS, CAMPUS LAW ENFORCEMENT STILL HAVE A GOOD FAITH BELIEF THAT THE INCIDENT HAPPENED. A CRIMINAL NON-GUILTY VERDICT WILL NOT UNFOUND A REPORT OF A CRIME IN WHICH THE POLICE STILL HAVE A GOOD FAITH BELIEF, AFTER THE TRIAL. ADDITIONALLY, ONLY POLICE CAN UNFOUND A CRIME. IF YOU DO NOT HAVE A SWORN POLICE DEPARTMENT, YOUR ABILITY TO UNFOUND THE REPORT IS MORE LIMITED.

12. **Q:** Recently, the US Department of Education published *The Handbook for Campus Crime Reporting*. This handbook describes Liquor Law Violations on p.48. In that description, violations include the:

- A. manufacture,
- B. sale,
- C. purchase,
- D. transportation,
- E. possession or
- F. use of alcoholic beverages.

Which of these six alcohol-related behaviors was added in this Handbook without explanation and without any prior inclusion in the Clery Act, its amendments, or regulations?

A: F. USE OF ALCOHOLIC BEVERAGES WAS ADDED IN THE HANDBOOK. THIS HAS IMPLICATIONS BECAUSE SOME STATES HAVE ENACTED POSSESSION BY CONSUMPTION LAWS, SUCH AS MISSOURI.

13. **Q:** An incident is reported to an adjunct professor of psychology. This professor teaches two classes, and provides academic advising to four students. Must the campus police include statistics from this faculty member in the annual security report? **Yes or No?**

A: NO. THIS PROFESSOR’S LEVEL OF CAMPUS INVOLVEMENT DOES NOT RISE TO THE LEVEL OF SIGNIFICANT RESPONSIBILITY FOR CAMPUS LIFE AND ACTIVITIES. HOWEVER, THE POLICE MAY INCLUDE STATISTICAL INFORMATION SUPPLIED BY EMPLOYEES WHO TECHNICALLY FALL OUTSIDE THE DEFINITION OF “CAMPUS SECURITY AUTHORITIES” THOUGH THEY ARE NOT REQUIRED TO.

14. **Q:** A student is found responsible in a campus hearing of violating the policy on non-consensual sexual intercourse. How, if at all, should this be categorized, as a Clery Act statistic?

A. Forcible sex offense.

B. Non-Forcible Sex Offense.

C. Forcible Rape.

D. Does not qualify as a Clery Act offense.

A: A. THIS IS CATEGORIZED AS A FORCIBLE SEX OFFENSE. B. IS THE WRONG ANSWER BECAUSE THIS CATEGORY INCLUDES ONLY STATUTORY RAPE AND INCEST, DESPITE IT BEING NAMED IN A WAY THAT MAKES IT SOUND LIKE IT APPLIES TO DATE RAPE. C. IS WRONG BECAUSE FORCIBLE RAPE IS NOT A CLERY CATEGORY. D. IS WRONG BECAUSE IT DOES QUALIFY AS A CLERY ACT OFFENSE IF THE ACT WAS AGAINST THE WILL OF THE VICTIM, AND OCCURRED IN ONE OF THE FOUR GEOGRAPHICAL AREAS COVERED BY THE CLERY ACT.

15. **Q:** An incident occurs off-campus, in an area where Clery Act reporting is not mandated. But, the college decides to take judicial jurisdiction over it, and hears the complaint in an on-campus hearing. Must the college then report that incident in its annual statistics? **Yes, No, Maybe?**

A: NO. THE TAKING OF OFF-CAMPUS CONDUCT JURISDICTION DOES NOT BRING AN OFFENSE UNDER THE CLERY ACT. IT MUST OCCUR IN ONE OF THE FOUR CLERY GEOGRAPHIC ZONES TO QUALIFY AS A STATISTIC, REGARDLESS OF HOW THE REPORT IS PROCESSED BY THE COLLEGE OR UNIVERSITY.

16. **Q:** A person under the age of 17 is violently sexually assaulted on-campus. How should this offense be classified for Clery purposes?

A. Forcible sex offense.

B. Non-forcible sex offense.

C. Forcible Fondling.

D. Sexual Assault of a Minor.

A: A. UNDER THE HIERARCHY RULE, THOUGH THIS QUALIFIES AS A STATUTORY RAPE, AND THEREFORE A NON-FORCIBLE SEX OFFENSE, IT WAS ALSO A FORCIBLE SEX OFFENSE, WHICH OUTRANKS A NON-FORCIBLE OFFENSE.

17. **Q:** A bicycle belonging to a student is stolen from a rack on-campus. Is this a reportable Clery Act statistic?

- a. **No. It's a theft.**
- b. **Yes. It's a theft.**
- c. **No, It's a burglary.**
- d. **Yes, It's a robbery.**

A: NO. IT'S A THEFT (LARCENY)

18. **Q:** A master's student in psychology is interning in the college's counseling center, working under the license of a supervising counselor, and receives a report from a client of an aggravated assault. What are that intern's reporting requirements?

- a. **Does not need to report.**
- b. **Must report.**
- c. **Can voluntarily report.**
- d. **Must tell supervisor, only.**

A: C. COUNSELORS ARE VOLUNTARY REPORTERS UNDER CLERY, AND AN INTERN IS COVERED BY THE LICENSE OF THEIR SUPERVISING COUNSELOR, ACCORDING TO THE HANDBOOK FOR CAMPUS CRIME REPORTING.

19. **Q:** There is a parking garage that shares a common wall with an academic building on campus. But, the parking garage is owned by the city and not on campus property. There is no access to the garage from the campus side of the building. If an incident occurs there, must the campus police report it as a statistic? **Yes, No or Maybe**

A: NO, IT IS IMMEDIATELY ADJACENT TO, BUT NOT IMMEDIATELY ACCESSIBLE FROM THE CAMPUS.

20. **Q:** An RA catches a student drinking beer in the residence hall. The RA takes the student to the head resident, who verbally rebukes the student, but does nothing more. No record is made or kept. Is this alcohol offense to be counted as a Clery Act Disciplinary Referral statistic? **Yes or No?**

A: NO. THIS DOES NOT COME UNDER THE CLERY DEFINITION OF A DISCIPLINARY REFERRAL BECAUSE NO DISCIPLINARY ACTION WAS INITIATED AND A RECORD WAS NOT KEPT.

21. **Q:** A date-rape occurs on campus. Must a timely warning be issued to the campus community about it?

a. **Yes, without question. Students have a need to know.**

- b. **No, never. It's just a date-rape.**
- c. **Not likely, unless the incident poses a threat of substantial harm to students.**
- d. **Yes, unless it would jeopardize the victim's confidentiality.**

A: THERE ARE TWO RIGHT ANSWERS TO THIS QUESTION. C. IS THE BEST ANSWER ACCORDING TO THE SPECIFIC TEXT OF THE CLERY REGULATIONS. HOWEVER, A. IS NOT A BAD ANSWER, ACCORDING TO THE DEPARTMENT OF EDUCATION. IN TWO CLERY ACT INVESTIGATIONS, THE DEPARTMENT HAS TAKEN ISSUE WITH THE FAILURE OF THE INSTITUTION TO MAKE A TIMELY WARNING ABOUT DATE RAPE SITUATIONS, TO "GENERALLY HEIGHTEN AWARENESS AND PROMOTE SAFETY." THE ONLY LIMIT ON THIS IS WHEN MAKING A WARNING WOULD JEOPARDIZE THE VICTIM'S CONFIDENTIALITY.

22. **Q:** Rick, a junior, rapes his date, Jennifer, and as he's leaving the room, tells her that he's going to get the rest of her stuck-up prissy sorority sisters, next.

- a. **Must a timely warning be issued? Yes or No?**
- b. **Can/should/must it contain Rick's name? Yes or No?**
- c. **Bonus:** **Would this violate FERPA if the college released his name? Yes or No.**

A:

- a. **YES.**
- b. **IT CAN, IT SHOULD, AND I WOULD CONSIDER IT A MUST, AT LEAST AS SUPPLIED TO THE SORORITY.**

c. **BONUS: NO. FERPA'S HEALTH AND SAFETY EXCEPTION APPLIES HERE TO PERMIT RELEASE.**

23. **Q:** Martin, a campus newspaper reporter, walks into the campus police station, and asks to see the campus police log entry on a crime that was reported last week. The clerk tells him under federal law, she has two business days to produce the log entry for Martin. **True or False?**

A: FALSE. THE POLICE MUST PRODUCE THE ENTRY WHEN IT IS REQUESTED. THE CAMPUS POLICE HAVE TWO BUSINESS DAYS TO ENTER THE REPORT IN THE LOG FROM THE TIME IT IS REPORTED, BUT THAT TIME PERIOD HAS ALREADY PASSED.

24. **Q:** John, a resident student, reports that his IPOD has been stolen from his room. He believes his roommate took it, but there is no evidence to support that. His room door was unlocked at the time, and the IPOD was visible and lying on a table. Is this to be classified as a **burglary or a theft?**

A: BURGLARY. UNDER A QUIRK OF THE UCR, BURGLARY IS THE DEFAULT WHEN YOU CANNOT CLASSIFY A TAKING AS A THEFT OR ROBBERY. IF THE ROOMMATE CONCLUSIVELY TOOK THE IPOD, THIS COUNTS AS A THEFT, BECAUSE THE ROOMMATE WAS AUTHORIZED TO BE PRESENT AT THE SCENE OF THE TAKING. HOWEVER, IN THIS EXAMPLE, WE DO NOT KNOW WHO TOOK THE IPOD, OR WHETHER THAT PERSON WAS

**AUTHORIZED TO BE PRESENT OR NOT. THEREFORE, IN THE ABSENCE OF
THAT KNOWLEDGE, THE UCR RULE DEFAULTS TO BURGLARY.**

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