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### 3.309 Clery Act

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The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”) is a federal law requiring that colleges and universities participating in federal financial aid programs publicly disclose statistics concerning certain types of crimes occurring on campus, in non-campus buildings or property, and on certain public property, as well as disclosure of certain policies concerning safety on campus. The Act reflects the government’s effort to increase transparency for prospective and actual students and their parents, faculty, and staff concerning crime on campus.

This policy is intended to guide Antioch's crime statistics collection efforts, preparation of the ASR, and publication of the ASR in compliance with the Clery Act. In furtherance of this goal,

<sup>1</sup> References to the Office of the Provost throughout this policy include the Office's designee.

this policy restates definitions and examples provided in the 2016 *The Handbook for Campus Safety and Security Reporting* (the “Clery Handbook”) written by the Department of Education (“DOE”).<sup>2</sup>

## **II. Preparation of the Annual Security Report**

Responsibility for preparation of the ASR belongs to all who touch the campus safety function. The preparation effort is led by each Office of the Provost, and relevant stakeholders will be consulted on an ongoing basis for: (a) information concerning reports to campus security authorities of Clery reportable crimes; and (b) policy developments that must be reflected in the ASR. The purpose of this effort is to ensure that all data elements required by law are incorporated into the ASR. Responsibility for efforts on behalf of University-wide programs resides with Antioch University Midwest.

### **A. Statistical Reports**

Development of statistical data concerning Clery reportable crimes is led by the Office of the Provost through outreach to campus security authorities at each of the Antioch campuses, which outreach will be coordinated through each campus’s Campus Security Officer (“CSO”). The CSO is primarily responsible for ensuring that CSAs for each campus are identified and that appropriate outreach is made throughout each year to track data that is: (a) necessary for inclusion in the annual statistical disclosures; and (b) helpful to the University’s effort to enhance safety, irrespective of whether the law requires disclosure of such information.

### **B. Policy Statements**

Clery compliance consists of both statistical and policy information disclosures. Accordingly, each year, the University, through the Office of the Provost, will coordinate a review of all institutional policies required to be disclosed through policy statements in the ASR. This coordinated review aims to ensure that revised policies are accurately reflected in the ASR’s statements of institutional policy in a timely manner.

### **C. ASR Drafting**

Each year’s ASR will be drafted by the Office of the Provost. The drafting process will be guided by the checklist set forth in Appendix E to the *Clery Handbook*. With the exception of certain drug and alcohol information contained in the Drug-Free Schools and Communities Policy 4.505, which policy will be cross-referenced in the ASR through

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<sup>2</sup> This policy is not intended to replace the guidelines published in the DOE’s *Handbook*. Employees with responsibility for submitting statistics to the Department of Education (the “DOE”) or participating in the drafting or publication of the University’s ASR must familiarize themselves with the *Handbook* and should refer to the *Handbook* when preparing the ASR.

a web hyperlink, no policy disclosure statements in the ASR may be referred to generally by web link without a corresponding statement in the ASR that meets the requirements of the Clery statute, its implementing regulations, and the checklist referenced above.

### **III. Publication and Distribution of the Annual Security Report**

Each campus will publish its ASR on or before midnight on October 1 of each year in which it is required to publish an ASR. Notice of publication will be made via mass email to all then-currently enrolled students and then-currently employed faculty and staff. Students and staff will also be advised of how to obtain a paper copy of the report upon request and at no charge.

Notice of availability of the ASR will be provided to prospective students through a web link posted to the admissions web page for each Antioch campus. Similar notice will be provided to prospective employees via web link posted to the Human Resources web page for each campus, and will similarly be provided to new employees via employment orientation.

### **IV. Campus Security Authorities**

Antioch relies upon its campus security authorities (“CSAs”) to comply with the University’s statistical disclosure requirements. All crimes reported to CSAs that fall into one of the categories identified below *must* be included in the ASR.

Under federal law, a CSA is defined as:

- A. A campus police department or a campus security department.
- B. Any individual who has responsibility for campus security but who is not a member of the campus police department or the campus security staff.
- C. Any individual specified in a school’s statement of campus security policy as an individual to whom students and employees should report crimes.
- D. Any official of an institution who has significant responsibility for student and campus activities. For purposes of this category, the term “official” means any person who has the authority and duty to take action or respond to particular issues on behalf of the University.

Each year, the Office of the Provost will distribute notice to those Antioch has identified as CSAs, advising of reporting obligations and notifying of planned trainings designed to aid CSAs in their reporting function. CSAs will report to the Office of the Provost all crimes (not only Clery reportable crimes) that have been reported to the CSA during the period for which the Office of the Provost is requesting information, and the Office of the Provost will, in turn, evaluate such information. Information required to be disclosed in the ASR will be published in the annual report for the year in which CSAs receive reportable information.

CSAs should not attempt to make a determination whether an incident involves a Clery reportable crime or whether an incident occurred in an area within the University's geographical reporting area. Crime and geographical definitions are highly technical in nature, and the Office of the Provost is ultimately responsible for making all determinations concerning all reportable categories.

## **V. When A Crime Is "Reported"?**

A crime is considered "reported" for Clery purposes at the time it is brought to the attention of a campus security authority or local law enforcement agency by a victim, witness, other third-party, or offender. The law does not distinguish between institutional affiliates and non-affiliates for reporting purposes. If a campus security authority receives information and believes that the reporting party has a good faith basis for making the report, the incident should be counted in the institution's ASR, provided it is a "Clery Act crime" and occurred in the University's "Clery Act Geography." Similarly, the law does not distinguish between allegations and findings of criminal conduct. All reports of Clery reportable crimes which are made in good faith *must* be disclosed in an institution's ASR.

## **VI. Clery Act Crimes**

The Clery Act requires that the University disclose statistics concerning the following Group A<sup>3</sup> crimes.

### **GROUP A CRIMES**

#### **A. Murder and Non-negligent Manslaughter**

Murder and non-negligent manslaughter are defined as the willful (non-negligent) killing of one human being by another. Any death caused by injuries received during a fight, argument, quarrel, assault or commission of a crime must be classified as murder or non-negligent manslaughter.

#### **B. Negligent Manslaughter**

Negligent manslaughter is defined as the killing of another person through gross negligence. Gross negligence is the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another. If a prudent person would not do it, then it's gross negligence.

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<sup>3</sup> This policy groups crimes for ease of applying Clery's provisions. Neither the statute nor regulations use these groupings.

### C. Sexual Assault

*Sexual assault* means any sexual act directed against another person, without the consent of the victim, including instances when the victim is unable to give consent. Sexual offenses including the following:

1. **Rape**, which is defined as 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.
2. **Fondling**, which is defined as 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 their age or because of their temporary or permanent mental or physical incapacity.
3. **Non-Forcible Sex Offenses**, which is defined as the unlawful, non-forcible sexual intercourse including:
  - a. **Incest**, which is defined as the non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; and
  - b. **Statutory rape**, which is defined as non-forcible sexual intercourse with a person who is under the statutory age of consent.

### D. Robbery

*Robbery* is defined as the taking or attempting to take anything of value from the care, custody, or control of a person by force or by threat of force or violence and/or by putting the victim in fear. The definition of robbery requires the following essential elements:

1. The crime must be committed in the presence of a victim;
2. The victim must be directly confronted by the perpetrator;
3. The victim must be threatened with force or put in fear that force will be used; and
4. There must be a theft or larceny.

A robbery may be accomplished in a number of ways. It may involve the use of a gun, knife, or club. It may involve the use of personal weapons such as arms, fists, feet, or teeth. It may also involve "pretend weapons," or weapons which the perpetrator does

not display during the robbery but claims to possess while communicating with the victim.

The robbery crime category includes both armed robberies as well as those in which only a personal weapon (e.g. fist, feet, etc.) is used. Because an assault is necessarily an element of the crime of robbery, the assault component is not reported separately as an assault statistic. Accordingly, those taking reports of robberies must be diligent in obtaining facts concerning events leading up to and subsequent to the robbery in order to distinguish any prior or subsequent assault that may have occurred.

Use of force is an essential element of a robbery. If force is used to overcome a resistant victim during the commission of a larceny-theft, then the crime becomes a robbery and must be disclosed in the University's ASR.

#### **E. Aggravated Assault**

*Aggravated assault* is defined as an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm.

A weapon is any item, even if it is not ordinarily considered to be a weapon, which is used to aid a perpetrator in the commission of an assault. *The Handbook* provides the example of a person intentionally driving a car into another occupied car. The assault involves an aggravating factor, i.e. the use of a car to assist in the assault. Therefore, an aggravated assault has occurred and should be reported.

The following crimes should be classified as aggravated assaults: assaults or attempts to kill or murder, poisoning, assault with a dangerous or deadly weapon, maiming, mayhem, assault with explosives, and assaults with diseases.

The DOE advises that reporting officers "[c]onsider the seriousness of the injury as the primary factor in establishing whether the assault is aggravated or simple. Classify the assault as aggravated if the personal injury is serious (broken bones, internal injuries, loss of teeth or stitches required). On the other hand, classify the offense as a simple assault if the injuries are not serious (abrasions, minor lacerations or contusions) and require no more than usual first-aid treatment."

The DOE suggests that officers carefully consider the type of weapon or object used in an assault, the seriousness of any resulting injury, and whether the assailant intended to cause serious injury. The DOE further suggests that in most instances, a determination concerning the nature of the assault (i.e. whether aggravated or simple) may be made by examining the type of weapon or object used or the nature of any resulting injury. It is seldom necessary for officers to examine an assailant's intent.

## **F. Burglary**

*Burglary* is defined as the unlawful entry of a structure to commit a felony or theft. The DOE requires that the following be classified as burglaries: offenses that are classified by local law enforcement agencies as burglaries in any degree, any unlawful entry where the perpetrator has the intent to commit a larceny or felony, any breaking and entering where the perpetrator has the intent to commit a larceny, housebreaking, safecracking, and any attempt to commit any of the acts described in this paragraph.

The DOE further requires that any forcible entry be disclosed as a burglary. Forcible entry is defined as any offense where force of any kind is used to unlawfully enter a structure for the purpose of committing a felony or theft. Forcible entry may be accomplished by use of tools; breaking of windows; forcing of windows, doors, transoms, or ventilators; cutting of screens, walls, or roofs; use of master keys, picks, unauthorized keys, celluloid, a mechanical contrivance of any kind, or other devices that leave no outward mark but are used to force a lock. Attempted forcible entry must also be disclosed as a burglary.

Unlawful entry where no force is used must be disclosed as a burglary. Unlawful entry without force is defined as the entry of a structure by use of an unlocked door or window. In order for there to be an unlawful entry, there *must be* a trespass.

Thefts from areas of open access do *not* constitute burglaries under Clery unless the theft is accomplished by means of entry into the area after it has been closed to the public.

Burglaries are not robberies because a burglary is a crime against property whereas a robbery is a crime against the person. Burglaries may, however, become robberies in the event that an unwitting person becomes involved in the robbery as a victim. For example, if a burglar enters a room and is surprised by someone inside the room, and the burglar attacks the person and steals their belongings, both a burglary and a robbery have occurred. If the person surprised the burglar and the burglar simply fled without further involvement with the person, the crime is simply a burglary.

There are three essential elements to a burglary: (1) there must be evidence of unlawful entry; (2) the entry must occur within a structure having four walls, a roof, and a door; and (3) the structure must be entered by a person with the intent to commit a felony or theft. If the perpetrator has no intent to commit a felony or a theft, then the crime is not a burglary under Clery. For example, if a student enters a classroom building while the building is closed, without using force to enter the building, and simply goes to sleep while inside the building, there has been no burglary. However, if the student uses a crow bar to pry open a window in order to enter the building, then a burglary has occurred, regardless of whether the student was successful in actually entering the structure.



## **G. Motor Vehicle Theft**

*Motor vehicle theft* is defined as the theft or attempted theft of a motor vehicle. A motor vehicle is defined as any self-propelled vehicle that runs on land surface and not on rails, such as: sport utility vehicles, automobiles, trucks, buses, motorcycles, motor scooters, trail bikes, mopeds, all-terrain vehicles, self-propelled motor homes, snowmobiles, golf carts, and motorized wheelchairs.

The following are *not* considered motor vehicle thefts under Clery: theft of farm equipment, bulldozers, airplanes, construction equipment, or watercraft; taking of a vehicle for temporary use when prior authority has been granted or can be assumed; or theft from inside a motor vehicle.

## **H. Arson**

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

Incidents of fire are *only* counted in the University's ASR if they have been determined, through investigation, to have been willfully or maliciously set. Every fire that is not known to be accidental *must be* investigated because institutions are required to disclose *all* arsons that occur within their geographical Clery boundaries. Only a fire authority, law enforcement personnel, or other individual experienced in arson investigation<sup>4</sup> may declare a fire to have been the result of arson.

The following must be classified as arson: fires that are determined to have been willfully or maliciously set, attempts to burn, any fire that meets the Uniform Crime Reporting definition of arson regardless of the value of any property damaged, and incidents in which an individual willfully or maliciously burns his/her own property.

There are several counter-intuitive nuances to reporting of arson statistics. Those responsible for reporting are referred to the *Clery Handbook* for additional information concerning classifications of fires.

## **VII. Summary of Hate Crime Categories**

The University must also disclose statistics concerning certain "hate manifested crimes." Under federal law, a "hate crime" is "a criminal offense committed against a person or property which is motivated, in whole or in part, by the offender's bias." "Bias" is defined as a preformed negative opinion or attitude toward a group of persons based on their race, gender, religion, disability, sexual orientation, or ethnicity/national origin.

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<sup>4</sup> This may be someone at the institution who has received training in arson investigation by a fire authority.

Although there are many possible categories of bias, under Clery, only the following categories are reported:

**A. Race**

Bias based on race is defined as a preformed negative attitude toward a group of persons who possess common physical characteristics (*e.g.* color of skin, eyes, and/or hair; facial features, etc.) genetically transmitted by descent and heredity, which distinguish them as a distinct division of humankind (*e.g.* Asians, black, whites, etc.)

**B. Gender**

Bias based on gender is defined as a preformed negative opinion or attitude toward a group of persons because those persons are male or female.

**C. Religion**

Bias based on religion is defined as 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 the existence or nonexistence of a supreme being (*e.g.* Muslims, Jews, Catholics, Protestants, atheists).

**D. Sexual Orientation**

Bias based on sexual orientation is defined as 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 (*e.g.* gays, lesbians, heterosexuals).

**E. Gender Identity**

Bias based on gender identity is defined as a preformed negative opinion or attitude regarding actual or perceived gender-related characteristics.

**F. Ethnicity/National Origin**

Bias based on ethnicity/national origin is defined as a preformed negative attitude toward a group of persons of the same race or national origin who share common or similar traits, languages, customs and traditions (*e.g.* Arabs, Hispanics).

## **G. Disability**

Bias based on disability is defined as a preformed negative opinion or attitude toward a group of persons based on their physical or mental impairments/challenges, whether such disability is temporary or permanent, congenital or acquired by heredity, accident, injury, advanced age or illness.

The University must separately disclose statistics concerning any of the crimes identified in Group A where those crimes manifest one of the categories of bias described above. In addition, the University must disclose statistics concerning the occurrence of the crimes identified in Group B below if there is evidence that the crime is motivated by bias.

## **GROUP B CRIMES**

### **A. Larceny Theft**

*Larceny-theft* is defined as the unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Constructive possession is the condition in which a person does not have physical custody or possession, but is in a position to exercise dominion or control over a thing. For Clery reporting purposes, the value of an item is *not* relevant to a determination of whether a larceny<sup>5</sup> has occurred.

### **B. Simple Assault**

*Simple assault* is defined as an unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness. In determining whether a simple assault has occurred, officers should refer to the guidance set forth in Section IV. F above.

### **C. Intimidation**

*Intimidation* is defined as unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack. For Clery reporting purposes, “reasonable fear” is established where a victim reports a perpetrator’s use of threatening words. The victim need not be the intended target of the offender.

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<sup>5</sup>

The terms “larceny” and “theft” are synonymous under the Clery Act.

## **D. Destruction / Damage / Vandalism of Property**

*Destruction/damage/vandalism of property* is defined as willful or malicious destruction, damage, defacement, or other injury to real or personal property without the consent of the owner or the person having custody or control over it.

The *Clery Handbook* provides detailed guidance useful in determining the presence of bias and whether an incident must be reported.

## **VIII. Violence Against Women Act Crimes**

In 2013, the Violence Against Women Reauthorization Act amended the Clery Act to require that institutions also disclose incidents of domestic violence, dating violence, and stalking and defines each of those crimes as follows:

### **A. Domestic Violence**

*Domestic violence* is defined as a felony or misdemeanor crime of violence committed by any of the following individuals: a current or former spouse 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; 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.

### **B. Dating Violence**

*Dating violence* is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. The existence of a "social relationship of a romantic or intimate nature with the victim" is determined based on the length of the relationship; the type of the relationship; and the frequency of interaction between the persons involved in the relationship. The term dating violence does not include acts covered under the federal definition of "domestic violence" (*see below*).

### **C. Stalking**

*Stalking* is defined under federal law as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress. For purpose of this definition:

1. The term “*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.
2. The term “*substantial emotional distress*” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
3. The term “*reasonable person*” means a reasonable person under similar circumstances and with similar identities to the victim.

There are differences between federal and state laws in terms of how crimes are labeled and how they are defined. In 2013, federal law began requiring colleges and universities to publish state law definitions of the crimes above. Criminal definitions under state law for some of the conduct described under above, such as relationship violence (including dating and domestic violence) and stalking, can be found in the following Appendices to the University’s Title IX, Sex Discrimination, Sexual Harassment and Sexual Violence Policy 4.607:

**Appendix A:** California;

**Appendix B:** New Hampshire;

**Appendix C:** Ohio;

**Appendix D:** Washington.

As with reporting of hate crimes, VAWA crimes must be reported separately in the ASR, irrespective of whether an incident involving a VAWA crime also involves a felony crime identified in Group A above.

#### **IX. Disciplinary Referrals for Violations of Weapons, Drug, and Liquor Laws**

The University must disclose statistics concerning arrests or discipline arising from the following categories of incidents:

- A. Weapons law violations;
- B. Drug law violations; and
- C. Liquor law violations.

The University must also disclose statistics concerning disciplinary referrals. A *disciplinary referral* is defined as “the referral of any person to any official who initiates a disciplinary action

of which a record is kept and which may result in the imposition of a sanction.” It is important to note that whether an incident involving weapons, drug, or liquor law violations must be disclosed in the University’s ASR does *not* depend on the result of any disciplinary action. An incident must be disclosed in the University’s ASR if it involves any disciplinary action at all, whether formal or informal, even if it merely involves a review of names of individuals allegedly involved in an incident.

## **X. Geographical Reporting Boundaries**

Clery requires that any of the crimes described in Sections IV and V above be reported for the following locations:

### **A. On-Campus**

*On-campus* is defined as:

1. Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution’s educational purposes, including residence halls; and
2. Any building or property that is within or reasonably contiguous to the property described above that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as food or other retail vendor).

### **B. On-Campus Student Housing Facilities**

*On-campus student housing facilities* are defined as any student housing facility that is owned or controlled by the institution, or is located on property that is owned or controlled by the institution, and is within the reasonably contiguous geographic area that makes up the campus.

### **C. Non-Campus Buildings or Property**

*Non-campus buildings or property* are defined as:

1. Any building or property owned or controlled by a student organization that is officially recognized by the institution; or
2. 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 contiguous geographic area of the institution.

## **D. Public Property**

*Public property* is defined as:

1. All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.
2. The acquisition, sale, or lease of property may change the boundaries of a particular reporting location. Each year, prior to submission of the University's annual statistics to the DOE, the Office of the Provost will determine the University's properties to confirm the accuracy of the geographical reporting boundaries.

## **XI. Local Law Enforcement Statistics Concerning Public Property Crimes**

The University is required to include statistics concerning the occurrence of Clery reportable crimes on certain public property near the University. The Office of the Provost will generally submit a written request for these statistics to the law enforcement agencies for each jurisdiction in which the University operates a campus or operates non-campus property prior to the commencement of the fall academic semester of the year during which the ASR containing such statistics is to be published. In the event the University does not receive a response from law enforcement, the Office of the Provost will submit a follow up request in a good faith attempt to obtain statistics for disclosure in the ASR.

## **XII. Review of Disciplinary Referral Statistics**

Each year, the Office of the Provost will undertake a coordinated review of disciplinary referral statistics with the Student Services Officer to ensure that disciplinary referrals are accurately classified and reported in a timely manner.

## **XIII. Outreach to Non-Law Enforcement CSAs**

On a periodic basis throughout the year, the Office of the Provost will attempt to reach out to CSAs, through department heads, to request that those individuals supply information concerning crimes reported to them for inclusion in the University's ASR. In furtherance of this effort, the Office of the Provost will circulate a letter in the form recommended by the DOE, which provides specific instruction concerning the information being requested.

## **XIV. Policy Questions**

Any staff with questions concerning the University's Clery reporting obligations or about this Clery Act Policy should contact the relevant Office of the Provost.

### Policy Cross References

Title IX, Sex Discrimination, Sexual Harassment and Sexual Violence	Policy #4.607
Drug-Free Schools and Communities	Policy # 4.505