

Campus Safety Act Update

I. Introduction

Concern about campus safety issues led Congress in 1990 to pass the federal Campus Crime Awareness and Campus Safety Act (CSA). The Act was intended to “make sure institutions of higher education provide students, prospective students and faculty the information they need to avoid becoming the victims of campus crime.” *Congressional Record 1990*. To carry out this purpose, it required all colleges and universities participating in federal student assistance programs under Title VI of the Higher Education Act (HEA) to collect and report annually data for certain types of campus crime and to certify their compliance with CSA requirements in their Title VI program agreements. The Department of Education was given the responsibility of monitoring compliance. The Act was amended in 1992, by the Campus Sexual Assault Victims Bill of Rights Act, to add “sex offenses, forcible and nonforcible” as a new category of crime and to require that institutions establish campus sexual assault programs including educational activities, procedures for reporting and handling sexual offenses, etc.

In 1998, responding to complaints that neither the Department of Education nor institutions were giving sufficient attention to their duties, Congress passed another round of amendments to the CSA. These amendments renamed the law the “Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act” (in memory of a Lehigh University student who had been raped and murdered and whose parents led a national campaign advocating better campus safety) and significantly strengthened and broadened the scope of the law. Guidance for the implementation of these changes was provided through administrative regulations published in final form in November 1999, supplanting earlier, 1994 regulations, and a “Dear Colleague” letter sent to institutions by the Department of Education in July of this year.

The CSA has from the beginning imposed on universities three primary duties: to prepare an annual report containing certain crime data and information about certain security-related campus policies; to provide copies of the report to a defined group of interested individuals; and to provide a warning to the campus community about criminal activities posing a threat to campus safety. Additional duties were added by subsequent amendments.

II. Annual Report

A. Crime Data

With respect to preparation of the annual report, data on nine types of offenses must now be compiled and presented. These offenses are murder, nonnegligent and negligent manslaughter, forcible sex offenses (such as rape or sodomy), nonforcible sex offenses (such as statutory rape), robbery, aggravated assault, burglary, motor vehicle theft, and arson. In addition, data must be reported for arrests for liquor law violations, drug violations, and illegal weapons possession charges and for any incident where, though there was no arrest, the case was referred to the campus disciplinary system. Finally, an institution must indicate whether any of the reported crimes (that is, one of the nine types of crime described above) or any other crime

involving bodily injury was a “hate crime.” A “hate crime” is defined as one in which the “victim was intentionally selected because of the victim’s actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.” C.F.R. § 668.46(c)(3). The categories of gender and disability were added by the 1998 amendments.

Each year’s report is to include these statistics for the three most recent calendar years. Thus, the current year’s annual report provides data for 1997, 1998, and 1999. The recent regulations indicate that a crime statistic is to be counted in the year in which was reported, as opposed to the year in which it occurred. No identification of the victim or the accused may be made in the report. The Uniform Crime Reporting Handbook is to be used by a University for the definition of the crimes that must be reported.

B. Reporting by Geographical Zones

One of the changes introduced by the 1998 amendments with regard to crime reporting is a broadening of the geographical area covered by the reports. An institution must now breakout its statistical crime and arrest data into four “zones.” The first includes campus property and other property within the same reasonably contiguous area that is owned by the institution though controlled by some other party, is used by students, and supports institutional purposes. A building adjacent to the campus that is leased by the institution to food vendors might be an example of this latter kind of property. UAH has no such property at this time. The second area is actually a subset of campus property: campus dormitories and residence halls.

The third zone is that of “noncampus building or property” and includes both property owned or controlled by a recognized student organization (such as off-campus fraternity or sorority houses) and property not within the same reasonably contiguous area that is owned or controlled by the institution, is used by students, and supports institutional purposes. At one time the Noojin House may have been used in such a manner as to fall within this classification. The final zone is “public property,” such as sidewalks, streets, and parking areas, on or immediately adjacent to the campus. The public thoroughfares surrounding and running through the campus, such as Sparkman Drive, University Drive, Holmes Avenue, the streets in the Sanderson Subdivision, etc. fall within this zone. The last two UAH Annual Campus Security Reports have referenced all the new areas, though no criminal activity was reported to have occurred there.

C. Identifying “Campus Security Authorities”

An issue that has generated considerable attention since the passage of the CSA relates to who is a “campus security authority,” that is, who is obligated to transmit information regarding offenses and arrests to the institution’s administration so that it may be included in the annually reported data. Of course, campus police are security authorities, as is anyone designated in the annual report as an official to whom others should provide crime/arrest information. The most recent UAH report identified the Director of Housing, the Director of the University Center, and the Assistant Vice President for Human Resources as the University’s designated officials. A third type of security authority is any official with significant responsibility for student and campus activities, excluding, however, any official who is a professional or pastoral counselor

when carrying out counseling duties. Comments to the new regulations indicate that the Department of Education may have a broad view of the scope of this category. Finally, the regulations have always required a university, by means of an arrangement with local police authorities, to monitor and record instances of student criminal activity at off-campus student organization sites. The new regulations are perhaps more explicit about this duty and require an institution to “make a reasonable, good faith effort to obtain the required statistics” from local police agencies. 34 C.F.R. § 668.46(c)(9).

D. “Confidential” Reporting

A new provision in the recently issued regulations requires a university to determine whether it has a policy allowing a witness or victim of a crime to report it on a “voluntary, confidential basis” and, if so, to describe the policy in the annual report. 34 C.F.R. § 668.46(b)(2)(iii). A related provision calls for a university to set forth in the annual report a description of any procedures in place encouraging its counselors to inform a person receiving counseling about the confidential reporting option. 34 C.F.R. § 668.46(b)(4)(iii).

E. Campus Security Policies and Procedures

In addition to presenting the crime and arrest statistics mentioned above, the annual security report must also include a summary of university policies and procedures in a number of areas. It must describe how students, employees, and others can report campus crimes and related incidents and indicate generally how the university will respond. Other items that must be present in the report are a statement of policy regarding security of and access to university buildings, a description of the authority of campus police and their relationship with local law enforcement authorities, and a description of institutional programs to inform the campus about law enforcement and crime prevention procedures. The university must set forth its policy regarding alcohol and illegal drug use and reference any ongoing educational efforts in these areas. Finally, the campus sexual assault program must be explained, including reporting procedures, institutional disciplinary responses, and activities undertaken to promote greater awareness of rape risk factors.

III. Issuance of Timely Warnings

As mentioned above, a university’s second major obligation, under the CSA, is to issue a timely “warning” to the campus about criminal activity that may pose a threat to students or employees. Institutional policies relating to when and how it intends to issue these warnings must be included in the annual security report. Warnings are not required when information about the crime is acquired by a counselor. At least one university has been cited for its failure to have such policies in place and its failure to issue warning reports.

IV. Distribution of Report

This information is of little use unless it is disseminated. The third major requirement imposed by the CSA is that an institution “publish and distribute, through appropriate publications and mailings” the report to all current students and employees and, upon request, to any applicant for enrollment or employment.

A. Current Students and Employees

The 1994 regulations had stated that the report could be provided to current employees and students “by appropriate publications and mailings,” delivered by U.S. mail, campus mail, or a computer network, or by a publication provided directly to each individual. More recently, higher education groups pressed the Department of Education for approval to use a campus website as a means of accomplishing the report distribution. The revised, 1999 regulations now address this option, providing that an institution may choose to post its report on an Internet or Intranet website as the distribution method for employees and enrolled students, as long as the website is reasonably accessible. C.F.R. § 668.41(b), (e)(1). If it selects this method, the institution must distribute by October 1 of each year a notice informing employees and students about the availability of the report and the exact electronic address where it is posted. The notice must also briefly describe the contents of the report and state that a paper copy will be provided upon request. *Id.* at § 668.41(c)(1), (2);(e)(3). The regulations expressly require that this notice be given to an individual “on a one-to-one basis.” While U.S. mail, campus mail, or email may be used for this purpose, a website posting may not. According to the comments to the regulations, whatever method is used “must provide individualized notice.”

B. Prospective Students and Employees

Prospective employees and students must be given notice about the availability of the report and a general idea of the report’s contents. If a request is made, a copy is to be provided. As with present employees and students, an institution may, under the 1999 regulations, use a website posting as the means of providing the report, as long as the electronic address is provided and a paper copy is also available. A prospective employee or student is defined as any one who contacts the university requesting information about employment or enrollment.

V. New Duties

The 1998 amendments add two additional, major duties for universities. The first is to maintain an “open police log” in which certain information about crime reports is recorded. These logs must, with limited exceptions, be made available to the public within two days after an incident is reported. Secondly, an institution’s annually compiled statistics must now be provided to the Secretary of the Department of Education, who may make them available to the public. Previously, the data was only provided upon request. This year, for the first time, the Department collected data from institutions electronically, using the World Wide Web.

VI. Conclusion

It is clear that campus crime has become a major issue today. Congress has acted several times in the past decade to require that the nature and extent of the risks posed by criminal activity on campus be monitored and disclosed to those who are there as workers and students. Advocacy groups and others have contended that at least some universities are not accurately reporting campus crime and may not be sufficiently proactive in protecting employees and students. While there has been little enforcement activity by the Department of Education, five institutions were reviewed in 1997 and were cited for a variety of deficiencies. It seems likely that federal monitoring and enforcement actions will become more frequent in the future, raising the prospect of serious sanctions for noncomplying institutions (fines of \$25,000 for an institution that substantially misrepresents the number or nature of reportable crimes, possible disqualification for the receipt of HEA funds, etc.). The safety of a campus has evidently become one of the benchmarks by which universities are measured in today's world.

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