



ISSUING TIMELY WARNING NOTICES FOR NON-STRANGER RAPES

Are You in Compliance?

EXTENDED
ELECTRONIC VERSION

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As a security leader, enhancing security and safety at higher education facilities, colleges and universities, STANLEY Security understands the significance of educating school administrators and policymakers on the intricacies of compliance. We partner with institutions of higher learning to help develop, review, and refine physical security standards and procedures that reinforce cultures of safety for campuses all over North America. Not only do we offer cutting-edge technologies and integrated security solutions to promote on-campus safety, but we also act as an educator on the importance of compliance-driven decisions.

STANLEY continues this progressive, comprehensive approach to higher education security by partnering with D. Stafford & Associates and the National Association of Clery Compliance Officers and Professionals (NACCOP). STANLEY has combined its expertise with that of Dolores Stafford, a nationally recognized expert on the Clery Act and premier consultant on campus security in both the law enforcement and security industries for the last 17 years, to establish a culture of safety, knowledge and information sharing amongst campus advisors and administrators in the endeavor to secure campus environments nationwide.

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ABSTRACT

Institutions are required to assess crime reports and distribute a Timely Warning Notification for any Clery Act crime occurring within the institution's Clery Geography that is considered to represent a serious or continuing threat to students and employees. While it is customary for institutions to issue Timely Warning Notices in cases involving stranger rape, it is considerably less common for institutions to issue notifications in cases of non-stranger rape. This whitepaper draws on relevant Department of Education guidance, Final Program Review Determinations and informal interviews with campus police chiefs/public safety directors and urges campuses to revisit their approach to this important issue.

According to the *Handbook for Campus Safety and Security Reporting*, the purpose of the Clery Act is “to provide students and their families, as higher education consumers, with accurate, complete and timely information about safety on campus so that they can make informed decisions.”¹ Lawmakers have devised the Timely Warning Notice (TWN) as one means of fulfilling the Act’s goals by requiring institutions to inform students and employees about certain crimes that may pose an ongoing threat to the campus community. According to the Clery Act’s implementing regulations, a Timely Warning Notice must be issued for any Clery crime that is “considered by the institution to represent a threat to students and employees.”² The Handbook for Campus Safety and Security Reporting uses the phrase “considered by the institution to represent a serious or continuing threat to student and employees”³ to describe the threshold for issuing a Timely Warning Notice. At its core, the notification is intended to provide the campus community with timely information that will enable them to take appropriate precautions based upon recently reported criminal activity that is geographically associated with the campus.

Institutions must consider all Clery crimes that occur on or within their Clery geography for a potential Timely Warning Notice,⁴ but the crimes for which there is a greater likelihood of a serious or continuing threat include crimes against people. Unless mitigating circumstances warrant withholding a Timely Warning Notice, as discussed below, the crimes that will likely require the distribution of a Timely Warning Notice include: Murder/Non-negligent Manslaughter (or any suspicious death); Robbery; Aggravated Assault; and Sexual Assault. Of course, the institution should assess all other Clery crimes as well to determine if there is a serious or continuing threat, as a major incident of Arson or a pattern of Burglaries in a particular area of the campus may necessitate issuing a timely warning. However, the Clery crime of Negligent Manslaughter, defined as “the killing of another person through gross negligence,”⁵ is not a willful act and is not likely to pose a danger to the rest of the campus community.

A timely warning must be distributed “as soon as the pertinent information is available”⁶ which means that the institutional officials cannot wait to review video footage, interview involved parties, complete an

¹ Westat, Ward, Diane & Mann, Janice. *The Handbook for Campus Safety and Security Reporting*. <http://www2.ed.gov/admins/lead/safety/handbook-2.pdf>, xi.

² Violence Against Women Act; Final Rule, 79 Fed. Reg. 62752 (October 20, 2014), p. 62787.

³ Westat, *The Handbook for Campus Safety and Security Reporting*, 111.

⁴ *Ibid*, 111.

⁵ Federal Bureau of Investigation [FBI]. Uniform Crime Reporting Summary Reporting System (SRS) User Manual (2013), <http://www.fbi.gov/about-us/cjis/ucr/nibrs/summary-reporting-system-srs-user-manual>, 31.

⁶ Westat, *The Handbook for Campus Safety and Security Reporting*, 111.

investigation, etc. before notifying the community. Once the crime is reported to a Campus Security Authority, it must be assessed, and if there is a potential serious or continuing danger to the community, the institution must quickly distribute a timely warning to the entire campus community. Unlike emergency notifications, there is no provision in the Clery Act to send a timely warning to a segment of the community. Therefore, the current students and employees that receive the notice of availability of the Annual Security Report must also receive every Timely Warning Notice the institution disseminates.

CLERY CRIMES LIST FOR TIMELY WARNING ASSESSMENT:

Murder/Non-Negligent Manslaughter

Sex Offenses

Robbery

Aggravated Assault

Major Incidents of Arson

All other Clery Crimes as deemed appropriate

⁷ Westat, *The Handbook for Campus Safety and Security Reporting*, 111.

THE ISSUE OF MITIGATION

A warning is not required to be issued if the threat has been immediately mitigated. The Department of Education Handbook states:

... after a Clery crime is reported you should consider whether your students and employees are at risk of becoming victims of a similar crime. For example, if a rape is reported on campus and the alleged perpetrator has not been caught, the risk is there. If the alleged perpetrator was apprehended, there is no continuing risk.⁷

So, what we know with some level of certainty is that if the subject is quickly apprehended and is in custody, the threat has been mitigated to the Department's satisfaction. However, other forms of mitigation might not be sufficient.

For example, in an audit of LaSalle University, the Department of Education identified two instances (one in 2003, another in 2004) in which Campus Security Authorities (basketball coaches) became aware of sexual assaults perpetrated on or within LaSalle's Clery Geography. Neither of these assaults resulted in the issuance of a Timely Warning Notification. The Dean of Students sent a letter to the student body four days after the assault in 2004, though the letter was not sent under the auspices of a Timely Warning Notification.^{8,9}

In the 2004 assault, the two perpetrators were known by the victim to be members of the men's basketball team. The players were placed on interim suspension following the victim's report. LaSalle defended the decision not to issue a Timely Warning Notification in this instance because they "acted swiftly to eliminate any possible threat to the community by placing both of the accused students on interim suspension."¹⁰ The Department disagreed with the notion that the administrative action imposed by the University (interim

suspension) relieved LaSalle of its duty to issue a Timely Warning Notification based on the initial crime report. In the fine letter to LaSalle, the Department indicated:

A warning should be issued as soon as pertinent information is available to alert the campus community of potential threats and thereby enabling the community to protect itself and assist in preventing similar crimes. The Department does not agree that suspending the accused students achieves this requirement. The potential of a serious threat continued and should have been disseminated to the campus community.¹¹

The Department also found that the 2003 assault was not reported by the coaches to the individuals responsible for assessing reported crimes for Timely Warning Notification purposes and was therefore never reviewed for whether a serious or continuing threat existed, contrary to the institution's timely warning procedures and the requirements of the Clery Act. The Department of Education noted that in both instances it was "appropriate" to issue a Timely Warning Notice, but LaSalle failed to do so.¹²

It would appear that the Department of Education tends to presume that sexual assaults, when reported in a timely fashion, are ripe for a Timely Warning Notification, and that anything short of an arrest that results in the subject being placed in continued police custody may not meet the Department of Education standard for mitigation.



CLERY GEOGRAPHY INCLUDES:

On Campus, Noncampus Buildings and Property, Public Property, and On Campus Student Housing Facilities.

⁸ John Cicala, June 28, 2004 Dean's Letter to Students (LaSalle University), <http://www.lasalle.edu/univcomm/media/resources/deanletter.pdf>.

⁹ Mary Gust, LaSalle University Fine Notice (October 25, 2007), <http://studentaid.ed.gov/sites/default/files/fsawg/datacenter/cleryact/lasalleuniversity/LaSalleIntenttoFineAction10252007.pdf>, 7.

¹⁰ *Ibid.*, 7.

¹¹ *Ibid.*, 7.

¹² John Loreng, LaSalle University Program Review Report (January 25, 2007), <http://studentaid.ed.gov/sites/default/files/fsawg/datacenter/cleryact/lasalleuniversity/LaSallePRR01252006.pdf>, 5.

¹³ Westat, *The Handbook for Campus Safety and Security Reporting*, 113.

CONTENT OF THE NOTICE

Although campuses must assess all Clery crimes and issue a Timely Warning Notification whenever there is a serious or continuing threat to the campus community, institutions have some latitude for determining the content of the message. There is no standard format for issuing Timely Warning Notifications, although warnings should nonetheless contain two important elements. First, a clear description of what has been reported is essential. The campus community must understand what crime reportedly occurred (including a general statement regarding where it occurred) in order to take appropriate precautions to prevent becoming the victim of a similar crime. Additionally, because the purpose of a Timely Warning Notification is to enable people to protect themselves, institutions should ensure their Timely Warning Notifications include information that will advise community members of the steps they can take to aid in the prevention of similar occurrences.¹³ Any Timely Warning Notification that fails to include these two elements (crime description and prevention information) is vulnerable to Department of Education scrutiny and potential findings of noncompliance. Finally, when developing the content of the notification, institutions should take care to ensure that the notice does not jeopardize the confidentiality of the victim(s) as required by the Reauthorization of the Violence Against Women Act of 2013 (VAWA).¹⁴

Institutions may withhold limited information when

issuing a Timely Warning Notification. The Department of Education Handbook notes:

Whether you issue a timely warning must be decided on a case-by-case basis in light of all the facts surrounding a crime, including factors such as...the possible risk of compromising law enforcement efforts. This factor does not mean that in the event of a serious or continuing threat to your students or employees you should decide not to issue a timely warning. It means that you should take law enforcement efforts into consideration when you issue a warning. For example, you should warn students if there is a serial rapist preying on female joggers along the bike paths running through campus; you should not compromise law enforcement efforts by disclosing that two undercover female officers have been assigned to patrol the bike path.

This factor has been erroneously used by campuses to justify not distributing a Timely Warning Notice under the auspices of preserving law enforcement efforts. However, the possibility of compromising law enforcement efforts is one of many factors to consider in deciding *what* to tell the campus community rather than *whether* to tell them anything at all. The purpose of this passage in the Handbook is to give institutions the discretion to withhold limited, law enforcement sensitive information that may hamper efforts to apprehend the suspect, investigate or otherwise solve the crime. It is not to be used as a basis for withholding a warning when the nature of the crime report would suggest a warning should be issued.

CRITICAL ELEMENTS FOR TIMELY WARNING NOTICES:

- 1 – PROVIDE CLEAR DESCRIPTION OF WHAT HAS BEEN REPORTED
- 2 – OUTLINE STEPS COMMUNITY MEMBERS CAN TAKE TO PREVENT SIMILAR OCCURRENCES
- 3 – DO NOT JEOPARDIZE THE CONFIDENTIALITY OF THE VICTIM(S)

¹⁴ Violence Against Women Act; Final Rule, 79 Fed. Reg. 62752 (October 20, 2014), p. 62787.

¹⁵ Westat, *The Handbook for Campus Safety and Security Reporting*, xi.

ISSUING TIMELY WARNING NOTICES FOR NON-STRANGER RAPES

One of the biggest misconceptions regarding the issuance of timely warnings appears to be the belief by many campus administrators that a Timely Warning Notice is not necessary (or required) following the report of a non-stranger Rape (that is, a Rape perpetrated by an offender who is known to or otherwise acquainted with the victim). In today's climate, this issue needs to be re-assessed by every college and university in the country. We have now witnessed several years of increasing focus on sexual assaults on campus by the media; the Department of Education Office of Civil Rights (regarding the implementation of Title IX and the investigation of complaints being made by survivors); the Reauthorization of the Violence Against Women Act; the White House Task Force and the subsequent creation of the Not Alone website; the recent Congressional attention to the issue, including three roundtable discussions and a national survey conducted by Senator Claire McCaskill; and student advocates starting initiatives like Know Your IX.

There has never been a better time to conduct an assessment of your Timely Warning Notice practices and procedures and to initiate a conversation with the President and Executive level staff members at your institution. Compliance with the Clery Act is an institutional responsibility, not just the responsibility of the Public Safety Unit.¹⁵ Often times, Public Safety receives pushback and criticism from other campus administrators who are not in tune with the specific requirements of the Clery Act. Sometimes, the Public Safety unit is actually forbidden from distributing a Timely Warning Notice or is not given the authority to do so based on the assessment of leaders outside of that unit. Therefore, all of the appropriate leaders

need to understand the requirements and the potential consequences of failing to communicate potential serious or ongoing threats to the campus community. In today's climate, this failure to communicate is leaving low-hanging fruit on the tree for a complaint against the institution for a violation of the Clery Act.

It bears mention that nowhere in the Uniform Crime Reporting system do the Sex Offense definitions stipulate that the parties be or not be acquainted. In fact, there is no mention of this aspect whatsoever in the definitions of Rape and Fondling, which are the two Sex Offense categories most likely to require a Timely Warning Notice (in cases involving Incest and Statutory Rape, the victim willingly has sex with the accused, but is unable to lawfully consent to sex due to age or a familial relationship between them. Thus a Timely Warning Notice would not typically be necessary in these cases, unless there are unusual circumstances, as there is typically no further threat to the rest of the community).



¹⁵ Federal Bureau of Investigation. Uniform Crime Reporting Summary Reporting System (SRS) User Manual (2013), <http://www.fbi.gov/about-us/cjis/ucr/nibrs/summary-reporting-system-srs-user-manual>, 32.

OFFICIAL DEFINITIONS (by the Uniform Crime Reporting system)

The UCR Summary Reporting System (SRS) definition of RAPE (per VAWA) is:

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. This definition includes any gender of victim or perpetrator.

- Sexual penetration means 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, or by a sex-related object.
- This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol).
- Physical resistance is not required on the part of the victim to demonstrate lack of consent.¹⁶

SOURCE: Federal Bureau of Investigation. Uniform Crime Reporting Summary Reporting System (SRS) User Manual (2013). <http://www.fbi.gov/about-us/cjis/ucr/nibrs/summary-reporting-system-srs-user-manual>, 32.

The UCR National Incident-Based Reporting System (NIBRS) definition of FONDLING is:

The touching of the private body parts of another person for the purpose of sexual gratification without consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or temporary or permanent mental or physical incapacity.¹⁷

SOURCE: Federal Bureau of Investigation. Uniform Crime Reporting National Incident-Based Reporting System (NIBRS) User Manual 2013). <http://www.fbi.gov/about-us/cjis/ucr/nibrs/nibrs-user-manual>, 40.

Both definitions focus on penetration, oral copulation, touching of private body parts and consent, not on whether the parties were acquainted. Therefore, as assessment of whether or not a serious or ongoing threat exists should be completed for any crime that meets these definitions. That two parties were acquainted with one another does not diminish the seriousness of a Sex Offense and should not be part of the analysis regarding whether issuing a timely warning is appropriate. Similarly, the absence of force does not diminish the seriousness of Rape involving an incapacitated victim, nor does its absence reduce the likelihood that a serious and continuing threat exists.

The Director of the Clery Compliance Division, James Moore, III, testified about an institution's discretion to issue a Timely Warning Notification in instances of non-stranger assaults In the Matter of Virginia Polytechnic Institute and State University. In his testimony, Mr. Moore indicated that "the next biggest thing [following Criminal Homicide] in the UCR hierarchy for us [the Clery Compliance Division] is sexual assault."¹⁸ He cautioned:

...most of our sexual assaults are acquaintance crimes. It's not somebody jumping out of the bushes. Although there is plenty of research that would argue you in the other direction, it may

be reasonable for a school to determine that perpetrator is only a danger to that victim. That's risky. And all of the research would suggest that you shouldn't take that approach.¹⁹

We urge campuses not to absorb the risk identified by Mr. Moore in these instances by choosing to refrain from notifying the campus community of reported non-stranger assaults. Not only would doing so subject the institution to potential noncompliance determinations, but it may also make members of the campus community vulnerable to subsequent victimization, thus undermining the Act's intent and the safety of the campus community.

Critics of institutions that forgo a timely warning in cases of non-stranger rapes may suggest that institutions are attempting to protect their image by electing not to shine a light on these crimes. However, all Rapes—including non-stranger Rapes—must be listed in the Daily Crime Log within two business days of Public Safety receiving the report, regardless of whether a timely warning is also issued. It is likely that the campus community will be made aware of the incident by the student/campus newspaper, and student press will question why the campus wasn't made aware of a serious crime that was reported to officials of the institution. A recent example from the Oklahoma Daily (the student newspaper of

¹⁷ Federal Bureau of Investigation. Uniform Crime Reporting National Incident-Based Reporting System (NIBRS) User Manual (2013). <http://www.fbi.gov/about-us/cjis/ucr/nibrs/nibrs-user-manual>, 40.

¹⁸ Evidentiary Hearing *In the Matter of Virginia Polytechnic Institute and State University*, Docket Number 11-30-SF, Federal Student Aid Proceeding, December 7, 2011, 123.

¹⁹ *Ibid*, 123-124.

the University of Oklahoma) illustrates this point well. Following the discovery of an on-campus Rape in the institution's Daily Crime Log, the editorial board wrote "We believe all alleged on-campus assaults could pose an ongoing threat, especially in cases where an arrest has not been made."²⁰ The Board – perhaps unknowingly – poignantly captured the sentiments of the Department of Education in just 21 words as they advocated for being notified of all on-campus sexual assaults.

Institutions should be aware that the campus community is not the only audience of student newspapers. Indeed, the Department of Education now conducts "media reviews" and has staff monitoring campus media outlets for reports of serious crimes and potential violations

of the Clery Act, so this type of article could directly result in an audit of an institution by the Department of Education. Between January 2012 and June 2014, the Department conducted 477 media reviews and the Director of the Clery Act Compliance Division testified to the Senate that "the Clery Division has developed a strategic plan through which they are leveraging crime analytics and other technology to more effectively monitor crime trends and identify possible compliance failures."²¹ This testimony suggests that media reviews will become even more commonplace as the Department implements its monitoring plan, and it is reasonable to believe that the issue of sexual assaults – perpetrated by strangers or non-strangers – are on the Department of Education's radar as part of this review strategy.

CONTEMPORARY PRACTICE

In an effort to better understand the current practices of campus law enforcement/public safety units, Ms. Stafford conducted informal interviews with more than twenty Chiefs and Directors to find out whether they routinely issue Timely Warning Notices following the receipt of reports regarding non-stranger assaults. Chiefs were asked detailed questions in an attempt to understand the rationale behind their decisions. While this was not conducted as a formal study, some interesting themes emerged from these conversations.

Chiefs and Directors generally offered the following commentary on this issue:

- *"Many of the reports that Campus Security Authorities receive are not reported in a timely manner."* This is true and one could argue that if a report is received months or years after the incident occurred, that the institution cannot issue a "timely" warning notice to the community. Each institution should implement language in their policies/standard operating procedures regarding Timely Warning Notifications that addresses the issue of when a crime is deemed to have been reported in a "timely" manner which would then prompt further consideration for the issuance of a notification.
- *"If the threat has been appropriately mitigated by an arrest, i.e., the perpetrator is in custody, there is no need to issue a Timely Warning."* It is true that, if the perpetrator is in custody, the threat has been mitigated. However, in these types of cases, a perpetrator is likely to make bail or be otherwise released within a day or two, at which point the institution must (re)assess if there is a potential serious or continuing threat, and if so, issue a Timely Warning Notice at that time. Assessing reported crimes for timely warning purposes is not a one-time event. Although the initial determination to issue a timely warning should be based upon what was first reported to the campus police/public safety agency, additional information may come to the agency's attention that impacts whether a Timely Warning Notice is subsequently required based upon new information that supports there may be a serious or continuing threat to students and employees.

²⁰ Editorial Board, "OUPD should alert students about sexual assaults" *The Oklahoma Daily*, http://www.oudaily.com/opinion/editorials/oupd-should-alert-students-about-sexual-assaults/article_dbe9f794-7a66-11e4-913f-575c154e0274.html

²¹ James Moore, III, Testimony of James L. Moore, Director Clery Act Compliance Division, Office of Federal Student Aid, U.S. Department of Education, Before the U.S. Senate Committee on Health, Education, Labor, and Pensions Hearing on "Sexual Assault on Campus: Working to Ensure Student Safety" (June 26, 2014), <http://www.help.senate.gov/imo/media/doc/Moore.pdf>.

- *“The threat was potentially mitigated if the subject can be shown to have been removed from the campus.”* If the administration removes a subject from campus and they subsequently do not issue a Timely Warning Notice, they should be certain that the subject no longer poses a threat to the campus community, and any information supporting that determination should be well-documented. In our opinion, removal from the campus is necessary, but not sufficient, to meet the Department’s mitigation standard. If, however, a campus has independently determined, based on the unique facts and circumstances of the case, that a subject who has been removed from campus (but is not in police custody) does not pose a serious or ongoing threat to students and employees, we would strongly recommend that the subject be issued a bar notice or trespass warning for all institutional property in addition to any other mitigation strategies the institution employs. While trespass warnings may serve legitimate purposes as one of many tools to promote the overall safety of the campus community, institutions are cautioned against relying on these types of notices exclusively as being sufficient to justify the decision not to issue a Timely Warning Notification. In the LaSalle case, an interim suspension – in effect, an immediate separation of the students from the campus and all of its properties – was not sufficient mitigation in the Department of Education’s eyes.

Taken together, these conversations underscore that if a crime is reported in a timely manner and the suspect is not in custody, then an assessment must be completed to determine whether or not the subject poses a potential serious or ongoing threat to the campus community. We would suggest that the campus leaders ask themselves the following question in non-stranger sexual assaults: “Are we certain that there is no further threat to anyone else in our campus community?” If they cannot answer this question confidently with a “yes”—a Timely Warning Notice should be distributed to the campus community. However, instead of including the typical crime prevention tips that could lead to victim blaming in timely warnings (e.g., lock your doors, don’t walk alone at night, etc.), we recommend institutions use myths and facts about non-stranger sexual assaults that provide educational information as a way of providing prevention information. This information should be provided in addition to a brief statement about what was reported to Public Safety.

This is an issue for which the Department of Education has issued several Final Program Review Determination reports resulting from audits of Liberty University, Wesley College, Notre Dame College of Ohio and LaSalle

University. Following each audit, the institution was fined \$27,500 (the maximum fine amount at the time of these audits) for failing to issue a Timely Warning Notice in cases of non-stranger Rapes. In the LaSalle and Wesley cases, the Department of Education also noted that the institutions never conducted an assessment of whether or not there was a serious or continuing threat to other people in the campus community. In the Notre Dame of Ohio case, the Dean made the decision that Timely Warning Notice was not necessary, but according to the Department of Education, the institution did not have a policy regarding who was responsible for deciding whether or not to issue a Timely Warning Notification. Therefore, the institution could not demonstrate that the Dean had the authority to decide not to issue a Timely Warning Notification. Further, they had no standards for when a Timely Warning Notification should be issued. The policies and practices were not outlined sufficiently in the school’s Annual Security Report.

These examples highlight the importance of developing timely warning policies and procedures that meet regulatory requirements and the importance of following the institution’s own timely warning policy/procedures. Further, in all of these cases, institutions

MYTHS AND FACTS ABOUT NON-STRANGER SEXUAL ASSAULTS

MYTH

FACT

When a woman dresses in skimpy clothing or in an alluring manner, she is asking to be raped.

Perpetrators choose victims for their vulnerability, not their sexiness or how they look or act. Rape is not a crime of sexual desire. It is a crime of hostility and violence toward the victim. People often engage in victim blaming. It is a way to preserve the false belief that they will be safe from sexual assault “if only” they do not do what the victim did. However, rape is never the victim’s fault. Only the perpetrator chooses to commit sexual assault.

It could never happen to me.

All individuals are potential rape victims: regardless of age, race, class, religion, occupation, sexual orientation, educational background, or physical description. Both males and females can be rape victims. Rape is never the victim’s fault.

Anyone who gets drunk or takes drugs is partially responsible for being raped.

Being drunk does not mean a person is asking to be raped. Forcing sexual contact on another person without consent is against the law. Someone who is passed out, unconscious, or incapacitated because of drugs or alcohol is unable to give consent. Sex without consent is sexual assault. Rape is never the victim’s fault.

Women lie about being raped to protect their reputations, or to get revenge on a guy.

According to the FBI, the incidence of false reporting is only 2%, the same as for other felonies. Sexual assaults are investigated just like any other crime. It is far more likely that rape is under-reported and in fact, some studies estimate that only 40% of rapes are reported. Rape is never the victim’s fault.

When someone says that they are not interested in sex, or doesn’t respond to their partner’s sexual advances, they just need to be persuaded to have sex.

Sex without consent is sexual assault. A person can withdraw their consent at any time. Not responding to sexual advances is not consent. A “no” in any form, must be respected and listened to. Consent is actual words or conduct indicating a freely given agreement to engage in sexual activity. Rape is never the victim’s fault.

Once a male is aroused or excited, he has to have sex. He will not be able to stop himself.

There is a difference between not wanting to stop and not being physically able; people are physically capable of controlling their sexual actions. For example, if two people are engaged in consensual sexual activity and a roommate walks in the room, they are physically able to (and probably would) stop having sex. Rape is never the victim’s fault.

Sexual assault is an impulsive, spontaneous act.

Most rapes are carefully planned by the rapist. A rapist will rape again and again, usually in the same area of town (or within the same college or university) and in the same way.

Sexual assault usually occurs between strangers.

By some estimates, over 70% of rape victims know their attackers. The rapist may be a relative, classmate, friend, co-worker, date or other acquaintance. In college acquaintance or non-stranger rape accounts for nearly 90% of all completed or attempted rapes on campus.

failed to issue a timely warning in cases of non-stranger Rapes and the Department of Education determined this decision was erroneous in each case. We are not aware of any instances in which the Department of Education has reviewed an institution’s compliance with the timely warning requirement of the Clery Act and affirmed the decision not to issue a timely warning in a case of non-stranger assault.

One important note, almost every leader with whom Ms. Stafford spoke (more than 90%) said that they were typically not issuing Timely Warning Notices for non-stranger assaults. In fact, many of them admitted that they were not even assessing every reported incident of this nature for potential distribution of a Timely Warning Notice. This is a critical step in the effort to get into compliance – **campus leaders must develop a process to assess all reported sexual assaults,**

regardless of whether the victim and perpetrator were acquainted, for the potential distribution of a Timely Warning Notice. These assessments should be documented in some way, to allow the institution to show proof of the assessment, if challenged about the decision ([click here for a Sample of a Timely Warning Publication Determination Form](#)).

Some institutions have raised a concern that distributing a Timely Warning Notice in non-stranger cases may have a chilling effect on reporting of sexual assault cases. This concern may have some validity, but it could also be argued that the campus community not being aware that these types of crimes occur and could put them in a position where they don’t take the necessary steps to try to prevent themselves from becoming the victim of a similar crime, which is one of the key goals of a Timely Warning Notice. We recommend that timely warnings

be issued in non-stranger cases that were reported in a timely manner and where the serious or continuing threat has not been mitigated. However, instead of including the typical crime prevention tips that could lead to victim blaming about non-stranger sexual assaults (see sample Myths and Facts on page 11) that provide educational information as a way of providing prevention information. This information should be provided in addition to a brief statement about what was reported to Public Safety.

Keep in mind that it is imperative that each institution train the Campus Security Authorities (CSA) in their responsibility to report crimes to the reporting

structure of the institution in a timely manner so they can be assessed for a potential Timely Warning Notice. Remember, positions such as Resident Assistants, leaders in Housing and Student Affairs, Coaches, the Title IX Coordinator, etc. are CSAs, so the institution needs to ensure that a system is implemented so that information can be shared quickly to ensure a proper assessment of whether a Timely Warning Notification should be distributed. *If you need assistance determining who should be considered a Campus Security Authority on your campus, there is a whitepaper called "Campus Security Authority Guidance to Colleagues" under the Resource Tab at www.dstaffordandassociates.com.*

KEY TAKEAWAYS

- Develop a policy or operating procedure that outlines the process for assessing crimes, developing content and distributing Timely Warning Notices to the campus Community.
- Assess all Clery crimes that occur on or within the institution's Clery Geography to determine if there is a potential serious or ongoing threat to the community.
- Distribute a Timely Warning Notification as soon as pertinent information is available, as you don't have days to decide this issue.
- Distribute a Timely Warning Notification for any reported sex offense that was reported in a timely manner, if you determine there is a potential serious or continuing threat and the institution or local law enforcement has not sufficiently mitigated the threat.

ADDITIONAL RESOURCES

There is an additional whitepaper called "[Timely Warning Guidance to Colleagues](#)" on this topic under the Resource Tab at www.dstaffordandassociates.com. That document will provide additional requirements regarding this topic and provides an assessment of the lessons institutions should have learned post-Virginia Tech.

Additional whitepapers are available for NACCOP members on the member's only site. For information about joining NACCOP, go to www.naccop.org.

