




# What Security Directors in Hospitals and Other Healthcare Settings Need to Know About the Clery Act

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Presented by:





As a leader at the forefront to enhance security and safety at the nation's higher education facilities and hospital campuses, STANLEY Security understands the significance of educating school administrators and policy-makers on the intricacies of compliance. For years, STANLEY has not only supplied highly intuitive technologies and integrated security solutions to promote on-campus safety, but has acted as an educator on the importance of compliance-driven decisions.

STANLEY continues this progressive, comprehensive approach to 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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# THE STANLEY DIFFERENCE

## ABOUT THIS WHITEPAPER

This whitepaper was developed for **security directors in hospitals and other healthcare settings that are affiliated with an institution of higher education**, either through a formal arrangement (such as a lease or memorandum of understanding) or informally, such as when the healthcare facility allows a college or university to use space within its facilities without the existence of a formal agreement. Each of these arrangements triggers compliance requirements for institutions of higher education that are subject to the requirements of the Clery Act. Security directors in hospitals and other healthcare settings can play an integral role in helping ensure an affiliated college or university is in compliance with the requirements of the Clery Act with respect to these facilities. This whitepaper will identify some of the more foundational Clery compliance issues pertaining to institutions of higher education and their affiliated healthcare facilities so that security directors in hospitals and other healthcare settings can understand these requirements and work with appropriate administrators from the college or university to ensure institutional compliance with this federal law.



The *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* (“the Clery Act”) is a landmark federal campus safety law that applies to any U.S. institution of higher education that participates in any of the federal financial assistance programs authorized under the Higher Education Act of 1965 (“HEA”). The law requires institutions to develop, publish and disseminate an Annual Security Report (ASR) that contains current statements of policy across a wide spectrum of safety and security-related topics. The ASR must also contain the most recent three years of crime statistics for 15 categories of crime<sup>4</sup> that are enumerated in the law. These statistics must be disclosed in Clery-specific location categories based upon the location where the crime reportedly occurred. These location categories (collectively referred to as an institution’s “Clery Geography”) include: On Campus, Public Property; and Noncampus buildings or properties. Institutions that have On Campus Student Housing Facilities must also disclose crime statistics in the ASR as a subset of the On Campus statistics and must publish additional policy statements regarding missing students and fire safety.

Compliance with the Clery Act is subject to review by the U.S. Department of Education (ED). In recent years, ED has doubled-down on its efforts to monitor and enforce compliance with the Act, levying fines for noncompliance at an unprecedented rate (DeBowes, 2016). At present, an institution of higher education can be subject to a maximum civil penalty (i.e., a fine) of \$35,000 for each violation of the Clery Act (Adjustment of Civil Monetary Penalties for Inflation, 2012). One of the handful of Clery-related bills under consideration by Congress would



raise the maximum fine amount to \$150,000 per violation or misrepresentation, an amount that would be adjusted annually for inflation if the bill is passed in its current form (Campus Accountability and Safety Act, 2015).

Most colleges and universities are making earnest efforts to comply with the various requirements of the law, although these efforts do not always result in full compliance. Program reviews conducted by ED are necessarily dualistic in their outcome: either the institution was found to have no compliance shortfalls, or one or more errors were discovered that yielded noncompliance determinations. The existing requirements are specific, nuanced, and fraught with complexities and contradictions (Stafford, 2015). The 2016 Handbook for Campus Safety and Security Reporting contains 265 single-spaced pages of sub-regulatory guidance institutions should use to comply with the Clery Act. Even this voluminous text can’t fully address all of the nuances of compliance, so the Department of Education contracts with a third party to operate a “Help Desk” from which institutions can receive additional assistance and clarification. The Clery Act Compliance Team, which is the subset of ED’s Office of Federal Student Aid responsible for monitoring and enforcing Clery Act compliance, also provides technical assistance, upon request.

The 2016 edition of the Handbook, released in June 2016, includes additional information to help institutions comply with the expanded crime reporting, response and programmatic requirements introduced by the *Violence Against Women Reauthorization Act of 2013* (“VAWA”) and its final implementing regulations (VAWA Final Rule, 2014), which collectively expanded Clery Act requirements for all institutions of higher education



(Campus Safety & Security Help Desk, 2016). However, before institutions were able to access (yet alone implement) the most recent Handbook guidance, members of the House and Senate were shepherding new bills through legislative committees that, if passed, would expand Clery Act requirements yet again. These legislative proposals are swirling at a time in which students, parents, victims, advocacy groups and members of the public-at-large are demanding increased accountability and transparency when it comes to preventing and responding to violent crimes on campus, especially those involving sexual violence.

But just how, if at all, does the current groundswell of attention being paid to the Clery Act affect institutions with affiliated healthcare facilities, such as hospitals? What are some of the unique compliance challenges these institutions face with existing requirements of the law? What should security directors in hospitals and other healthcare settings know about the Clery Act, and how can these individuals partner with colleges and universities to enhance compliance? This whitepaper will explore some

of the key areas for which healthcare facilities (and affiliated institutions of higher education) must attend in order to get the institution into and maintain compliance with the Clery Act. Although we recognize that privately-owned healthcare facilities do not have any statutory obligations under the Clery Act since the law applies only to those public and private postsecondary institutions that participate in federal financial assistance programs authorized by HEA, there are key areas of compliance with which security directors of hospitals and other healthcare facilities nonetheless play an integral role. Furthermore, institutions of higher education that own or control any portion of healthcare facilities must comply with the Act, making it essential for institutional officials and healthcare facility leaders to understand basic requirements about the Act. By working together on Clery compliance initiatives, institutions and affiliated healthcare facilities can promote safety of students, employees, patients and visitors within these settings.





# CLERY GEOGRAPHY

One of the perennial challenges institutions affiliated with healthcare facilities must address is how these facilities fit into the institution's overall Clery Geography. For example, does the college or university own or lease healthcare facilities? Does the institution use space within privately-owned healthcare facilities, with or without a formal written agreement memorializing use of space? Any of these arrangements create potential Clery Act reporting requirements that must be further evaluated from a Clery Geography perspective.

Institutions must undertake a careful and deliberate review of their owned or controlled properties to determine the boundary of their core campus for Clery Act purposes (Swope, 2016). From there, additional judgments can be made as to what Public Property locations (such as thoroughfares, streets and sidewalks) are within or immediately adjacent to and accessible from the campus. Furthermore, the establishment of the core campus boundary allows institutions to determine which remaining owned or controlled properties are: not contiguous to the campus, frequently used by students and used to support the institution's educational purposes. Locations meeting these criteria are categorized as Noncampus buildings or properties for Clery Act purposes.

However, not all locations that are separate and apart from the institution's main campus will inherently qualify as Noncampus, as such locations must meet each of the aforementioned criteria. If a non-contiguous location is owned or controlled by the institution, has an organized program of study and an official on site that is acting in an administrative capacity, then the location is considered to be a "Separate Campus" for Clery Act purposes. Although the Clery Act imposes *institutional* compliance obligations, each Separate Campus must comply independently with all Clery Act requirements. This means that each Separate Campus must publish its own ASR with its own

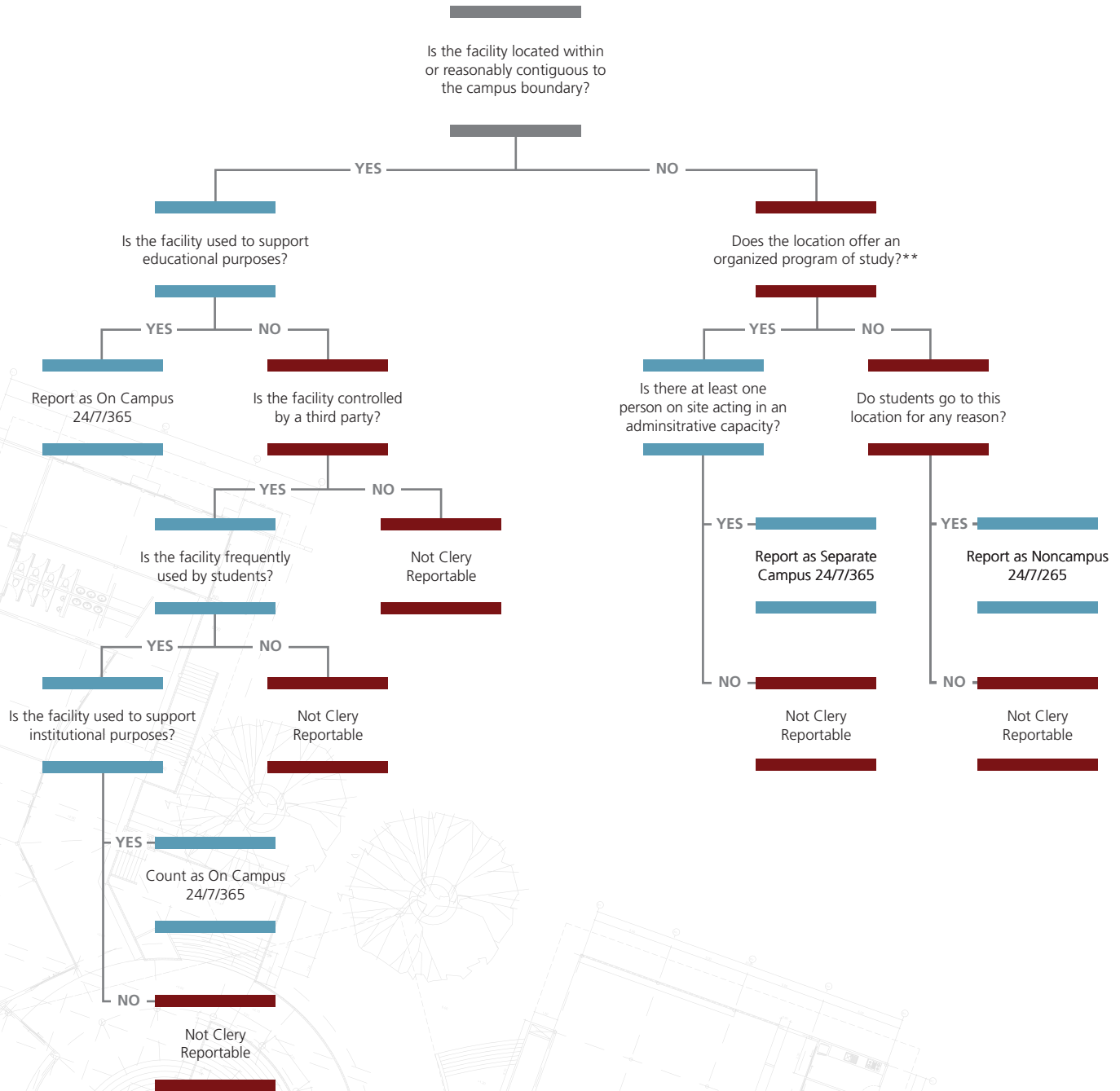
crime statistics, though an institution can publish a single ASR that covers all of its campuses provided certain criteria are met, such as publishing a separate crime statistics chart for each campus and addressing any policy statements that may be different than those of the main campus (U.S. Department of Education, 2016).

Understanding how the physical parameters of crime reporting apply to healthcare facilities affiliated with a college or university is of critical importance. A college or university cannot accurately disclose crime statistics by location if it has not conducted a comprehensive evaluation of its real estate holdings from a Clery Geography perspective. This is especially true for healthcare facilities given the various models that are in place. For example, a college or university may own a hospital that is located within its core campus. In such instances, the hospital is treated no differently than other On Campus locations from a Clery Act perspective when it is owned or controlled by the institution and is used in direct support of, or in a manner related to, educational or institutional purposes. However, other institutions may own or control a hospital that is not "reasonably contiguous" to the main campus. Such arrangements require an assessment to determine if the hospital meets the Noncampus or Separate Campus definitions for Clery Act purposes.

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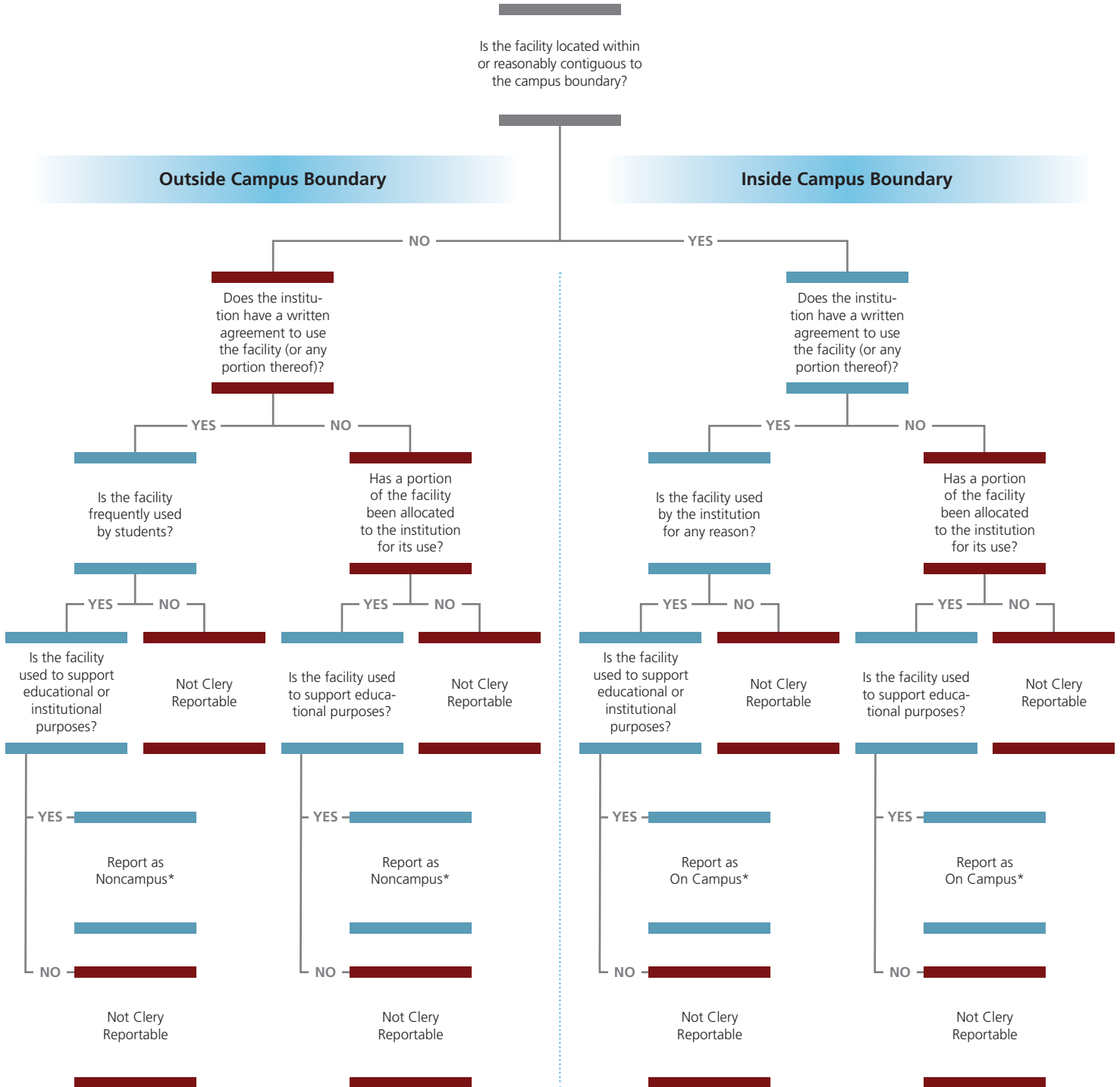


# CLERY GEOGRAPHY CONSIDERATIONS FOR HOSPITALS AND OTHER HEALTHCARE FACILITIES OWNED\* BY AN INSTITUTION OF HIGHER EDUCATION



\*Ownership may be sole or joint, and includes facilities owned by the institution or an institutionally-related foundation (such as a Real Estate Foundation).  
 \*\*An "organized program of study" means that students take classes at this location, conduct research at this location, or engage in practical experiences at this location, all of which would lead towards a degree or other educational credential.

# CLERY GEOGRAPHY CONSIDERATIONS FOR HOSPITALS AND OTHER HEALTHCARE FACILITIES NOT OWNED BY AN INSTITUTION OF HIGHER EDUCATION



\*Controlled locations are reportable during the dates and times established by the written agreement (or, in the absence of a written agreement, during the dates and times a third party has allocated space for the institution to use). Crimes occurring in spaces addressed by the written agreement (or, in the absence of a written agreement, spaces allocated for institutional use) must be reported as well as any common areas used to access these spaces (such as elevators, stairwells, hallways, lobbies, etc.).

*“Although the presence of a written agreement for space is always determinative of control, the absence of a written agreement is not.”*

Determining ownership or control of these facilities is an important first step towards identifying how such locations fit into the institution’s overall Clery Geography. Some institutions (or their institutionally-affiliated foundations or entities, such as a holding company or subsidiary) own these facilities or the property on which these facilities reside. In other cases, a third party owns the location in its entirety. There are also hybrid models of joint ownership between an institution of higher education and a private entity, such as a healthcare system. For instances in which the institution does not own any portion or percentage the buildings or properties that comprise these facilities, an assessment as to whether or not the institution “controls” them is warranted, as the Clery Act requires institutions to include owned or controlled properties as part of their Clery Geography when they meet certain other conditions.

When determining control, an institution should look first to whether it maintains any written agreements that grant the institution use of a facility (or a portion thereof). These agreements can be formal, such as in the case of a lease, or informal, such as an email or handwritten note. The key is that such agreements must address use of space within privately-owned facilities. The *Handbook for Safety and Security Reporting* indicates that institutions that maintain “a written agreement to send students to a privately owned hospital for clinical training, but...don’t have a written agreement for use of the hospital or any space within the hospital...do not have to include statistics for crimes that occur there” since these are *programmatic agreements* that do not explicitly deal with use of space inside the facility (U.S. Department of Education, 2016, p. 2-21).

Although the presence of a written agreement for space is always determinative of control, the absence of a written agreement is not. For example, a privately-owned hospital that is reasonably contiguous to the campus that incorporates the institution’s name into the name of the hospital may be viewed by ED to be “controlled” by the institution, even without a formal agreement that gives the institution use of space in the hospital. Furthermore, there may be times when a privately-owned healthcare facility allocates certain spaces for institutional use. Although some of these allocations are memorized in writing, this is not always the case. However, the absence of a written agreement to use space doesn’t necessarily absolve institutions of the responsibility to treat that space as part of its Clery Geography.



The Department of Education’s compliance review of Yale University (“Yale”) serves as a cautionary tale in that regard. In 2004, ED initiated a compliance review of Yale after an article published in the Yale Alumni Magazine raised questions as to Yale’s compliance with the Clery Act. Following the Department’s on-site review, it was determined that Yale failed to categorize as On Campus locations select portions of the privately-owned Yale-New Haven Hospital, which is located directly across the street from the Yale University school of medicine and portions of which were used by the University to support educational purposes.

In response to the initial Program Review Report identifying this violation, Yale commissioned a self-study of its compliance with the Clery Act. In the course of that examination, the University discovered that there were seven spaces that Yale used for faculty offices, patient care and clinical instruction (Yale University, 2010). Although Yale maintained that “the University’s authority to use these spaces had not been formalized in a written agreement” (Yale University, 2010, p. 4), and therefore the University was not in control of these locations for Clery Act purposes, ED did not find this argument persuasive and determined that these spaces were nonetheless countable. To support this conclusion, ED pointed to the existence of formal affiliation agreements between the University and the hospital. ED also noted that the hospital had allocated certain spaces to be used by the University to support educational purposes (U.S. Department of Education, 2011). ED stated, “The lack of a written agreement does not diminish Yale’s responsibility to account for these spaces” (U.S. Department of Education, 2011, p. 12). As a result of this violation, the University was fined \$27,500 (U.S. Department of Education, 2013).



# CAMPUS SECURITY

As the Yale case demonstrates, there is a pressing need for security directors in hospital and healthcare settings to collaborate with college or university officials involved in Clery Act compliance activities to communicate with one another about portions of healthcare facilities where the institution of higher education is using space so that the space can be identified as part of the institution's Clery Geography and crime statistics can be requested and reported for these locations, as required by law. Not only will institutional use of space inside the facility be an important factor to consider when determining whether it is controlled by the institution for Clery Act purposes, but other factors should be considered as well. The 2016 *Handbook for Campus Safety and Security Reporting* implores institutions to consider a hospital or medical center to be controlled by the institution based on an assessment of the following factors:

- whether the facility has overlapping faculty/doctors,
- whether the facility has overlapping boards of directors or officers,
- use of the hospital or medical center as part of the institution's educational program,
- geographic proximity,
- an ongoing relationship between the institution and the hospital, AND
- whether students consider the hospital or medical center to be part of the campus (U.S. Department of Education, 2016, p. 2-3).

Institutions will need to consider these factors when determining whether hospitals or other medical centers (or spaces contained therein) are "controlled" by the institution and therefore Clery-reportable. Since the Handbook does not identify whether any of these factors are decisive, institutions are urged to contact the Department's Help Desk to obtain specific guidance regarding the applicability of these factors to specific locations that are being used by the institution.

## CAMPUS SECURITY AUTHORITIES

Regardless of the applicable Clery Geography category into which an affiliated healthcare facility may fit, there are some important considerations that institutions that own these facilities must address. First, the institution will need to identify any Campus Security Authorities (CSAs) who are associated with the facility regardless of whether those individuals are employed by the institution or the healthcare facility. Minimally, Campus Security Authorities should include the campus police/public safety personnel that provide safety and security services in the healthcare setting, regardless of whether these individuals are:

- part of the institution's campus police or public safety department that provides such services for the rest of the institution;
- an entity unto themselves (such as a police or security force that provides security and patrol services exclusively to a hospital affiliated with an institution), or;
- are contract security officers that provide supplemental security services to healthcare facilities.

Institutions should also evaluate whether there are personnel at these locations who monitor access to these facilities, including parking lots and structures, since persons performing these functions are also considered to be CSAs. The functions of other staff and/or faculty at these facilities must also be evaluated to determine whether any of these individuals constitute officials of the institution who have "significant responsibility for student and campus activities," (U.S. Department of Education, 2016, p. 4-2) such as persons involved in student discipline (including



medical student professional standards review boards and related appellate bodies) or faculty or staff that advise a student organization that is officially recognized by the institution. It is worth noting that, generally speaking, a person functioning solely in the capacity of a physician, nurse or other medical professional and whose responsibilities are limited to providing patient care are not typically considered to be CSAs absent some other function that gives them “significant responsibility for student and campus activities” (U.S. Department of Education, 2016, p. 4-2).

Any persons meeting the definition of a CSA need to be notified of this designation and trained in their responsibilities, which primarily includes documenting and promptly forwarding reports of Clery Act crimes brought to their attention to the reporting structure of the college or university (as identified in the applicable statement of policy published in the institution’s Annual

Security Report). Additionally, the institution is required to collect crime reports from all CSAs at least once annually, although institutions should encourage CSAs to immediately report all serious crimes or other emergencies to the appropriate campus officials so that these reports can be assessed for potential inclusion in the institution’s crime statistics but also for purposes of issuing a Timely Warning Notice or an Emergency Notification. A Timely Warning Notice is a Clery-specific alert that must be issued for any Clery Act crime that occurs on or within the institution’s Clery Geography that is considered by the institution to pose a serious or continuing threat to students and employees (U.S. Department of Education, 2016). Additionally, in accordance with Public Law 110-315, *Higher Education Opportunity Act (2008)* [also known as “HEOA”], institutions are also obligated to issue Emergency Notifications upon confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees on the campus. CSAs in healthcare facilities should be trained as to their reporting responsibilities so that appropriate institutional officials can evaluate this information within the constructs of the Timely Warning and Emergency Notification requirements of the Clery Act and HEOA, respectively. Although CSAs in affiliated healthcare facilities may have setting-specific emergency response and communication protocols, these protocols supplement, not supplant, the institution’s responsibility to ensure that Timely Warnings and Emergency Notifications are distributed, where applicable, in accordance with applicable laws and institutional policies.

If a healthcare facility is part of the institution’s main campus, and the institution’s campus police or public safety department is responsible for providing safety and security services for the entire campus, including the healthcare facility, it is likely that identification, notification, training and collection of crime reports from CSAs (including security personnel in the healthcare facility) will be centrally managed by the college or university. However, if the healthcare facility has its own security department or officers who are not serving under the auspices of the institution’s campus police or public safety department, then the institution will need to ensure it requests statistics from the security department or officers when institutional officials are gathering crime reports from CSAs for potential inclusion in the annual crime statistics. This will require additional training of security officers in healthcare settings (beyond the training that is provided to other CSAs) as these officers will need to understand more of the nuances involved in classifying and counting crimes from a Clery Act perspective so that they can thoroughly gather and document relevant details that will allow for an assessment of incident reports to determine whether a Clery crime was reported.

## THE DAILY CRIME LOG

An additional issue raised by healthcare settings with their own security departments pertains to the Daily Crime Log. All institutions subject to the Clery Act that have a campus police or security department must create, maintain and make available a Daily Crime Log. The Log is intended to capture all crimes reported to the department, not just those Clery Act crimes for which the institution discloses statistics annually. The scope of the Log is limited to those crimes reported to the security department that occurred On Campus, on Public Property affiliated with the campus, in or on Noncampus buildings and property, or within the security department's expanded patrol jurisdiction, if one exists. The most recent 60 days of the Log must be immediately available to anyone requesting access, and the last 7 years of the Log must be made available to the consumer within 2 business days of the complete Log's request. An entry must be made to the Log within 2 business days of receiving the information, and institutions are also required to update, within 2 business days, any dispositions of Log entries recorded during the prior 60 days.

Typically, the institution's campus police or public safety department is responsible for managing the Log for the main campus. However, if there is a hospital or other affiliated healthcare facility that is part of the main campus, and the facility has its own security department that is independent of the campus police or public safety department, then the institution should implement a system to ensure that crimes reported to healthcare security are added to the Log by the institution's campus police or public safety department within 2 business days of the healthcare security department learning about a crime. Given the presence of a stand-alone security department on the main campus, we would recommend that a copy of the Log be available in both the main campus police or public safety department office as well as the healthcare facility's security department office to ensure that a consumer asking for the Log can obtain it from both locations since a key requirement of the Daily Crime Log is that it is accessible on site.<sup>5</sup> Alternately, if the institution's healthcare facility constitutes as Separate Campus for Clery Act purposes, and there is a security presence at this location, then the institution must ensure that a Log is maintained at both campuses. When more than one campus must maintain a Log, the institution can maintain separate Logs (one for each campus) or a combined Log, so long as the combined Log includes all crimes for all campuses. Security personnel at Separate Campus healthcare facilities must be well versed in the requirements of the Daily Crime Log to ensure that the Log includes all required elements and is being populated in accordance with the requirements of federal law.

*"All institutions subject to the Clery Act that have a campus police or security department must create, maintain and make available a Daily Crime Log."*





# TOWARD AN INTEGRATED APPROACH

Healthcare facilities that are affiliated with an institution of higher education or are allowing an institution to use space within their facilities play a valuable role in evaluating a campus's Clery compliance program in light of the specific compliance considerations presented by these types of arrangements. Some of the more foundational issues are presented in this whitepaper, but institutions must consider the myriad of other ways in which compliance with the Clery Act can be nuanced for its affiliated healthcare facilities, regardless of whether those facilities are owned or operated by the college or university. A proactive, collaborative review of pertinent policies, procedures and practices pertaining to these facilities can help stave off noncompliance findings in the event of an ED audit. Given the current compliance environment, efforts in this area are well worth it.

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<sup>4</sup>These categories include: Murder and Nonnegligent Manslaughter; Manslaughter by Negligence; Sexual Assault (including Rape, Fondling, Incest and Statutory Rape); Robbery; Aggravated Assault; Burglary; Motor Vehicle Theft; Arson; Arrests and Referrals for Disciplinary Action for Liquor Law Violations; Arrests and Referrals for Disciplinary Action for Drug Law Violations; Arrests and Referrals for Disciplinary Action for Illegal Weapons Possession; Hate Crimes; Domestic Violence; Dating Violence; and Stalking.

<sup>5</sup>The regulations and the Handbook for Campus Safety & Security Reporting appear to assume that an institution will have a single "security department." It is possible that the presence of multiple security departments could trigger the requirement to maintain as many Logs as a campus has security departments. However, maintaining a single Log for the campus that combines crimes reported to the main campus police/public safety unit and any healthcare security department(s) should help institutions with healthcare facilities fulfill the Daily Crime Log requirements. Institutions are urged to obtain written guidance from the Department of Education regarding their specific circumstances as it pertains to the Daily Crime Log requirements.

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