Office/Contact: Office of Student Affairs/Division of Technology and Security

Source: Clery Act, codified at 20 U.S.C. § 1092 (f); 34 CFR 668.46(e) and (g); University Policy 4:5; University Policy 10:2; University Policy 10:3

Link: <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title20/html/USCODE-2011-title20-chap28-subchapIV-partF-sec1092.htm>; <https://www.sdstate.edu/sites/default/files/policies/upload/Prevention-of-Sexual-Assault-Domestic-Violence-and-Stalking.pdf>; <https://www.sdstate.edu/policies/upload/Notification-that-a-Student-is-Missing.pdf>; <https://www.sdstate.edu/policies/upload/Community-Notification.pdf>

# SOUTH DAKOTA STATE UNIVERSITY

# Policy and Procedure Manual

## SUBJECT: Clery Act Compliance

NUMBER: 10:11

1. Purpose

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998, a part of the Higher Education Act of 1965, was extended by the Higher Education Opportunity Act of 2008 and the Violence Against Women Reauthorization Act of 2013, all as amended or reauthorized from time to time (collectively known as the “Clery Act”) and requires universities receiving federal financial assistance to gather and make public information about certain crimes on or near their campuses and publish policy statements concerning campus safety and security.

This policy and its procedures set forth the protocols intended to ensure compliance with the Clery Act’s reporting disclosure obligations.

1. Definitions

	1. Annual Security and Fire Safety Report: the annual security and fire safety report that the University is required to publish no later than October 1 of each year.
	2. Campus Security Authority (“CSA”): Except for individuals acting within the scope of employment while performing duties pursuant to licensed privilege, including licensed professional and school counselors when functioning within their scope of their license or certification, the following are designated as CSAs:
		1. The University Police Department;
		2. Any individual who is responsible for campus security but is not member of the University Police Department;
		3. Any individual or organization specified by the University’s statement of campus security policy as an individual or organization to which students and employees should report criminal offenses;
		4. An official of the University who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. A University official is any person who has the authority and is assigned the duty to take action or respond to particular issues on behalf of the University.
	3. Clery Crime: any of the following major categories of crimes reportable under the Clery Act:
		1. Criminal Homicide, including murder, non-negligent manslaughter, and negligent manslaughter;
		2. Sex offenses, including rape, fondling, incest, and statutory rape offenses;
		3. Robbery;
		4. Aggravated Assault;
		5. Burglary;
		6. Motor Vehicle Theft;
		7. Arson;
		8. Dating Violence;
		9. Domestic Violence; or
		10. Stalking.
	4. Daily Crime Log: the log of any and all reported criminal incidents that are reported to the University Police Department, which is maintained by the University Police Department and is subject to public inspection.
	5. Dating Violence: violence committed by a person – (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; *and* (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
	6. Domestic Violence: a felony or misdemeanor crime of violence committed by – (1) a current or former spouse of the victim; (2) a person with whom the victim shares a child in common; (3) a person who is cohabiting with, or has cohabited with, the victim as a spouse; (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction; or (5) 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 in which the crime of violence occurred.
	7. Emergency Notification: notifications to the University community that alert the University community to a significant emergency or dangerous situation involving an immediate threat to the health and safety of students or employees occurring on the University campus.
	8. Emergency Response and Evacuation Procedures: the procedures the University will follow to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.
	9. Fire: any instance of open flame or other burning in a place not intended to contain the burning, or in an uncontrolled manner.
	10. Fire Log: the log of any fire that occurs in an on-campus student housing facility, which is maintained by the University Police Department and is subject to public inspection.
	11. Hate Crime: a Criminal Homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, arson, larceny/theft, simple assault, intimidation, any other crime involving bodily injury to the victim, or destruction/damage/vandalism of property; in which the victim is intentionally selected, in whole or in part, because of the actual or perceived race, gender, religion, national origin, sexual orientation, gender identity, ethnicity, or disability of the victim.
	12. Non-campus Property: any building or property owned or controlled by a student organization that is officially recognized by the University; or any building or property owned or controlled by the University that is used in direct support of, or in relation to, the University’s educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the University.
	13. On-Campus Property: any building or property owned or controlled by the University within the same reasonable contiguous geographic area and used by the University in direct support of, or in a manner related to, the University’s educational purposes, including residence halls. The term also means any building or property that is owned by the University within the same reasonably contiguous geographic area, but controlled by another person (e.g. a food or other retail vendor).
	14. On-Campus Student Housing Facility: any student housing facility that is owned or controlled by the University, or is located on property that is owned or controlled by the University, and is within the reasonably contiguous geographic area that makes up the campus.
	15. Other Notifications: in addition to Timely Warnings and Emergency Notifications, the University, at its discretion, may provide information to the University community when an incident does not meet the threshold for a Timely Warning or an Emergency Notification.
	16. Public Property: all public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.
	17. Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
		1. Fear for their safety or the safety of others; or
		2. Suffer substantial emotional distress.
		3. For the purposes of this definition:
			1. “Course of conduct” means two (2) 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. “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.
			3. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
	18. Timely Warning: notifications to the University community that provide information on Clery Act crimes that occur on University Clery geography, are reported to campus security authorities, the University Police Department, or local law enforcement, and pose a serious or continuing threat to students and employees.
	19. To the extent that this policy is intended to implement protections arising under the criminal law, amendments to those underlying statutes will be deemed to have been incorporated hereon on the effective date of such amendments.
	20. The following South Dakota criminal law classifications align with the definitions set out in this policy as follows:
		1. Dating violence includes domestic abuse as defined in SDCL ch. 25-10 that occurs between persons involved in a romantic relationship as defined in SDCL § 25-10-3.2 who are not cohabiting and who have never cohabited;
		2. Domestic violence includes domestic abuse as defined in SDCL ch. 25-10 that occurs between persons involved in a romantic relationship as defined in SDCL § 25-10-3.2 who are cohabiting and who have cohabited; and
		3. Stalking includes stalking as defined in SDCL ch. 22-19A.
2. Policy

	1. This policy applies to all CSAs and University personnel who have responsibility for an aspect of campus security, as well as offices and individuals with significant responsibility for student and campus activities as defined in this policy.
	2. Reporting Crimes
		1. Any individual who is the victim of an on-campus crime, regardless of Clery Crime classification, is strongly encouraged to report the crime to the University Police Department immediately by calling 605-688-5117.
		2. University faculty and staff, including volunteers, who are aware of a crime are encouraged to report the crime to the University Police Department immediately by calling 605-688-5117 when the victim of such crimes wants to or is unable to make such a report. When University faculty and staff, including volunteers, have knowledge that a felony was committed and that knowledge is not privileged, they are required by state law to report the crime to law enforcement in accordance with SDCL 22-11-12.
		3. University faculty and staff, including volunteers, who have personal knowledge of an on-campus Clery Crime should report the crime to the University Police Department immediately by calling 605-688-5117.
		4. University CSAs who are aware or receive a report of an on-campus Clery Crime are required to report the crime to the University Police Department immediately by calling 605-688-5117.
		5. University students, University contractors, visitors, and the general public who are aware of an on-campus Clery Crime are strongly encouraged to report the crime to University Police Department immediately by calling 605-688-5117.
		6. Crimes in Progress: Individuals who suspect that behavior detected is actually a crime-in-progress or another emergency should call the University Policy Department at 111 from on-campus phones or 911 from mobile or off-campus phones.
		7. Anonymous Reporting of Crimes: Students and other non-employees may report a suspected crime anonymously. While it is preferred that a reporting person provide their name and contact number so that the University Police Department can fully investigate, it is not necessary for the caller to provide his or her name and contact information. No electronic reporting system, including email, should be used to report a crime in progress.
	3. Compiling and Disclosure of Clery Statistics
		1. The University shall compile and disclose statistics of reports of Clery Crimes occurring on campus property, including that subset of Clery Crimes occurring in on-campus student housing facilities; on non-campus property; and on those public areas immediately adjacent to campus including any public streets intersecting the campus. In reporting crime statistics, the University will classify crimes based on the Federal Bureau of Investigation’s (FBI’s) Uniform Crime Reporting Handbook (UCR) and in accordance with Clery Act definitions and requirements. Definitions from the FBI’s National Incident-Based Reporting System (NIBRS) edition of the UCR will be used for sex offenses.
		2. The University must also compile and disclose statistics concerning hate crimes, which will be classified according to the FBI’s Uniform Crime Reporting Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection. The University must identify the category of bias that motivated the crime: race, gender, gender identity, religion, sexual orientation, ethnicity, national origin, or disability.
		3. The University must also disclose the number of arrests and the number of students referred pursuant to the Student Conduct Code for disciplinary action for violations of weapon, drug, and alcohol laws.
		4. Generally, only the most serious offense from a given incident must be reported, including arrests for liquor drug, or weapons violations. Exceptions include arson and sexual offenses occurring in the same incident as a murder.
	4. Emergency Notifications/Timely Warnings

		1. Emergency Notifications, Timely Warnings, and Other Notifications will be issued to the campus community in accordance with University Policy 10:3, Community Notification of Potential, Imminent or Active Threat to the University.
	5. Emergency Response and Evacuation Procedures

		1. The University shall maintain and disclose emergency response and evacuation procedures that address significant emergencies or dangerous situations that pose immediate threats to the health and safety of students or University employees. University emergency preparedness plans, notification procedures, emergency preparedness information and resources, and emergency training and exercises shall be the responsibility of the Emergency Management Team Chair, successor, or designee.
	6. Crime Log/Fire Log/Annual Security and Fire Safety Report

		1. University Police must maintain a daily crime log of all crimes reported to campus security. The daily crime log is available to the public at the University Police Department.
			1. Each entry in the daily crime log shall include the following: date, time, general location, and nature of the crime, and disposition of the complaint.
			2. Each entry must be in the log within two (2) business days unless the information, by clear and convincing evidence, would jeopardize an ongoing criminal investigation or the safety of an individual. Only that information needed to protect a person or the investigation shall be withheld and that information should be logged as soon as the jeopardy or need for protection has lapsed.
		2. The University must maintain a daily fire log of any fire that occurs in an on-campus student housing facility. Any student housing fire that is reported to a campus official must be documented in the fire log. Reported fires include fires that were already extinguished as well as those discovered while still burning. The University Police Department will generate the daily fire log, which is available to the public and maintained at the University Police Department.
		3. The University must publish and distribute the Annual Security and Fire Safety Report no later than October 1 of each year. It must be distributed to all currently enrolled students and all employees in one of two ways: (1) directly by U.S. Postal Service mailings, campus mail, University email, or a combination of these methods; or (2) posting the Annual Security and Fire Safety Report online to a website that is reasonably accessible to enrolled students and to current employees. The University will provide the Annual Security and Fire Safety Report to any prospective student or prospective employee upon request.
		4. The University must submit crime statistics and fire statistics from the Annual Security and Fire Safety Report to the Department of Education no later than October 1 of each year.
		5. In accordance with the Clery Act, the University shall maintain and disclose in its Annual Security and Fire Safety Report its policies regarding:
			1. How students and others should report crimes and emergencies;
			2. Security of and access to University facilities:
			3. Crime prevention;
			4. University law enforcement;
			5. Alcohol and drugs;
			6. Sex offenses; and
			7. How to obtain sex offender information.
		6. Under the Violence Against Women Reauthorization Act of 2013, the University must also provide in its Annual Security and Fire Safety Report:
			1. Policy statements concerning reporting requirements;
			2. Policies encouraging accurate and prompt reporting of all crimes to University Police and appropriate law enforcement when the victim wants to or is unable to make a report;
			3. Statements of the standard of proof/evidence used in sexual assault, stalking, dating violence, and domestic violence cases (e.g. the standard of proof in student disciplinary cases is the “preponderance of evidence,” which differs from the “beyond reasonable doubt” standard in criminal prosecutions);
			4. Policies on required educational programs;
			5. Policies regarding ongoing prevention and awareness campaigns;
			6. Procedures victims should follow (victim resources);
			7. Procedures for University disciplinary actions, including the requirement of annual training by officials conducting investigations and hearings; and
			8. Policies on equal opportunity regarding choice of advisors.
	7. Missing Students

		1. The University must maintain and follow a missing student policy and notification procedure. University Policy 10:2, Notification that a Student is Missing, provides guidelines for the notification of law enforcement and appropriate persons that a University student is missing.
	8. University Police Department Responsibilities

		1. The University Police Department shall have the authority to investigate crimes and determine, authoritatively, whether a crime took place or is “unfounded.”
		2. The University Police Department shall collect and compile statistics regarding Clery Crimes and shall provide those collected and compiled statistics to the University on an annual basis.
3. Procedures
	1. The University will designate a Clery Act Report Review Committee that will be co-chaired by representatives of the Offices of Student Affairs and Safety and Security. The committee will be responsible for the oversight of the University’s Clery Act compliance activities, including the following:

		1. Developing and coordinating the University’s Clery Act compliance program and related activities, including policy development and implementation;
		2. Serving as the designated “campus safety survey administrator,” as that term is defined by the Department of Education;
		3. Preparing, publishing, and distributing the Annual Security and the Fire Safety Report and submitting specifically requested data to the Department of Education in accordance with applicable deadlines;
		4. Maintaining and making available the official list of positions identified as CSAs based on their duties and providing annual training to individuals serving in these positions;
		5. Gathering and consolidating crime and disciplinary referral data from various internal and external sources, such as local and state law enforcement agencies;
		6. Coordinating with campus departments to ensure compliance with HEA Fire Safety regulations;
		7. Training key University stakeholders on the Clery Act;
		8. Serving as the record custodian for all Clery Act associated records; and
		9. Staying up-to-date on amendments to the Clery Act and other laws or regulations affecting the Clery Act.
	2. University departments will assist in meeting compliance with the Clery Act by identifying no less than one (1) individual and one (1) successor to assist their respective area with Clery Act compliance, as set forth in this policy.
	3. The following designated areas will be assigned specific responsibilities directly related to Clery Act compliance on an annual basis:

		1. The Associate Vice President for Facilities and Services, successor, or designee will provide Clery geography and maps of the main campus and adjacent campus-owned or controlled properties and will share information in a clear and well-organized manner.
		2. The Vice President for Student Affairs, successor, or designee will provide a list of addresses of University affiliated and recognized organizations that maintain offices or residences in the community.
		3. The University Registrar, successor, or designee will provide the physical addresses of all locations where the University has provided course offerings, the dates and times the courses were provided, and the duration of time the courses were provided. The information will be provided on or before February 1 each year.
		4. The Office of Academic Affairs, or designee, International Programs, Student Affairs and Athletics departments will provide locations and dates of student travel in covered University activities and programs.
	4. The following designated areas will function as follows regarding data and policy collection and compilation:

		1. The Assistant Director of Student Conduct, successor, or designee will tabulate all student conduct referrals in conjunction with Clery Act requirements and will provide the data to the Clery Act Report Review Committee on or before March 30 each year.
		2. The University Police Department will provide reports and overall tabulations for all crimes reported as required by the Clery Act on or before March 30 each year; will provide reports and policy statements as required by the Clery Act; and will contact law enforcement agencies requesting crime reports for locations identified by Facilities and Services and the Registrar as being owned or controlled by the University and having a consistent student presence before March 1 each year.
		3. The Director of Residential Life, successor, or designee will complete all portions of the Annual Fire Safety Report relating to campus student housing with the exception of Greek student housing on or before March 30 each year, with any necessary updates due to property acquisitions or repurposing on or before August 1 each year.
		4. The Executive Director of the Student Union, successor, or designee will complete all portions of the Annual Fire Safety Report relating to Greek student housing on or before March 30 each year, with any necessary updates due to property acquisitions or repurposing on or before August 1 each year.
		5. The Title IX Coordinator, or designee, will provide a tabulation of the number of reported instances of Title IX violations that fall under the requirements for the Annual Security Report on or before March 30 each year and will provide all required policy and procedure statements regarding pertinent Title IX and equal opportunity information as required by the Clery Act by the same date.
4. Responsible Administrator

The Vice President for Student Affairs and Vice President and General Counsel, their successors, or designees are responsible for the annual and ad hoc review of this policy and its procedures. The University President is responsible for approval of this policy.

SOURCE: Approved by President on November 5, 2019. Revised; Approved by President on .