

## Clery Act Crime Definitions (including VAWA)

The following definitions apply to the incidents of crime disclosed in the crime statistics tables contained within this report:

### Clery Act Felony Definitions

**Murder and Non-Negligent Manslaughter:** The willful (non-negligent) killing of one human being by another.

**Negligent Manslaughter:** The killing of another person through gross negligence.

**Aggravated Assault:** An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. Simple assaults are excluded.

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

**Burglary:** The unlawful entry of a structure to commit a felony or a theft. Attempted forcible entry is included.

**Robbery:** The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

**Motor Vehicle Theft:** The theft or attempted theft of a motor vehicle.

**Sexual Assault:** Any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent.

### Clery Act Sex Offenses Definitions

The following sex offenses fall with the definition of "sexual assault" under the Clery Act.

**Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

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

**Incest:** Non forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape:** Non forcible sexual intercourse with a person who is under the statutory age of consent.

## Arrest and Referrals for Discipline for Violations of Liquor, Drug, and Weapons Laws<sup>1</sup>

**Liquor Law Violations:** The violation of state and local municipal laws and ordinances prohibiting the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor or intemperate person; using a vehicle for illegal transportation of liquor; drinking on a train or public conveyance; and all attempts to commit any of the aforementioned. (Drunkenness and driving under the influence are not included in this definition.)

**Weapons Law Violations:** The violation of federal, state and local laws or ordinances dealing with weapon offenses, regulatory in nature, such as: manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; furnishing deadly weapons to minors; aliens possessing deadly weapons; and all attempts to commit any of the aforementioned.

**Drug Law Violations:** Violations of federal, state, and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs. The relevant substances include opium or cocaine and their derivatives (morphine, heroin, codeine), marijuana, synthetic narcotics (demerol, methadone), and dangerous non-narcotic drugs (barbiturates, benzedrine).

## Hate Crimes

Under the Clery Act, a hate crime is a criminal offense committed against a person or property which is motivated, in whole or in part, by the offender's bias.<sup>2</sup> For Clery purposes, hate crimes include any Clery Act felony (murder or non-negligent manslaughter, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, or arson) together with any of the following crimes to the extent they manifest evidence of bias:

**Larceny-theft:** The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another.

**Simple assault:** An unlawful physical attack by one person on another where neither the offender displays a weapon nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

**Intimidation:** To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or conduct, but without displaying a weapon or subjecting the victim to actual attack.

**Destruction, damage or vandalism of property:** To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of the property.

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<sup>1</sup> Under Clery, an arrest is defined as the processing of a person by arrest, citation, or summons. A referral for disciplinary action is defined as the referral of any person to an institutional official who institutes a disciplinary action of which a record is kept and which may result in the imposition of a sanction. Disciplinary action occurs where an official receiving the information initiates a disciplinary action, a record of the action is kept, and the action may, but not need have to, result in a sanction. Disciplinary actions may be initiated in both informal and formal manners and can include an interview or a simple, initial review of names submitted to an institutional official. An incident involving both an arrest and a referral for discipline is counted only as an arrest.

<sup>2</sup> "Bias" is a preformed negative opinion or attitude toward a group of persons based on their race, gender, religion, disability, sexual orientation, ethnicity, national origin, or gender identity.

## Violence Against Women Reauthorization Act (VAWA) Crimes

The Violence Against Women Reauthorization Act of 2013 requires that institutions report incidents of sexual assault, domestic and dating violence (also known as 'intimate partner violence) and stalking in its annual security report. The following federal law definitions apply to this reporting requirement. In addition, VAWA requires that institutions publish state law jurisdictions of the same crimes.

### Federal Definitions

**Domestic Violence** is defined as a felony or misdemeanor crime of violence committed—

- By a current or former spouse or intimate partner of the victim; By a person with whom the victim shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
- *By 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.*

**Dating Violence** is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition 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.

**Stalking** is a course of conduct<sup>3</sup> directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.<sup>4</sup>

### California Penal Code Definitions

The following is a summary of the definitions applicable to Title IX and the Violence Against Women Reauthorization Act (2013) offenses (sexual assault, dating violence, domestic violence, and stalking) under California state law.

**Consent:** Positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue. Nothing in this section shall affect the admissibility of evidence or the burden of proof on the issue of consent." See Cal. Penal Code § 261.<sup>5</sup>

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<sup>3</sup> "Course of conduct" means behavior composed of two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, engages in any of the following: monitoring, following, observing, threatening, surveilling, or communicating to or about a person, or interfering with a person's property.

<sup>4</sup> "Substantial emotional distress" means significant mental suffering or anguish.

<sup>5</sup> The complete texts of sections 261, 261.5, and 262 of the California Penal Code are available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=261-269>.

**Sexual Assault:** The California Penal Code establishes three categories of sexual assault and related offenses: rape, spousal rape, statutory rape, and sexual battery.

**Rape** is defined under section 2616 of the California Penal Code as an act of sexual intercourse under certain, enumerated circumstances, including:

- where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the accused;
- where the accused uses force, violence, duress, menace, or fear of immediate and unlawful bodily injury;
- where any intoxicating or anesthetic substance, or any controlled substance, prevents the accuser from resisting, and this condition was known, or reasonably should have been known by the accused;
- where the accuser is at the time unconscious of the nature of the act, and this is known to the accused;
- where the accuser submits under the belief that the accused is someone known to the accuser other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief;
- where the accused threatens to retaliate physically in the future against the accuser or any other person, and there is a reasonable possibility that the accused will execute the threat; and
- where the accused threatens to use the authority of a public official to incarcerate, arrest, or deport the accuser or another, and the accuser has a reasonable belief that the accused is a public official.

The definition of spousal rape under section 262 of the California Penal Code generally tracks the definition of rape, except that the accused is the spouse of the accuser.

Section 261.5 of the California Penal Code refers to statutory rape as “unlawful sexual intercourse.” The term means an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is under eighteen years old. The crime is either a misdemeanor or a felony depending on whether the age difference between the accused and accuser is greater or less than three years.

Under section 243<sup>6</sup> of the California Penal Code, sexual battery is defined, in part, as touching the intimate part of the accused against his or her will for the purpose of sexual arousal while the accuser is either: (1) unlawfully restrained by the accused or an accomplice; (2) institutionalized for medical treatment and seriously disabled or medically incapacitated; or (3) under the impression, due to the accused’s fraudulent representations, that the touching served a professional purpose.

**Domestic Violence:** Section 243(e) of the California Penal Code defines “domestic battery” to mean willful and unlawful touching that is committed against: (1) the accused’s spouse or former spouse; (2) the accused’s cohabitant or former cohabitant; (3) the parent of the accused’s child; (4) the accused’s fiancé or fiancée, either former or current; or (5) someone with whom the

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<sup>6</sup> The complete text of section 243 of the California Penal Code is available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=240-248>.

accused has, or has had, a dating relationship (*i.e.* frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations). In addition, section 273.5<sup>7</sup> of the California Penal Code prohibits the willful infliction of corporal injury resulting in a traumatic condition upon an accuser who meets these same five categories.

**Dating Violence:** California law has no criminal law that exclusively addresses dating violence. However, California domestic battery and corporal injury laws, both set forth above, encompass acts committed within the context of dating relationships.

**Stalking:** Under section 646.9<sup>8</sup> of the California Penal Code, stalking is defined as willfully, maliciously, and repeatedly following or harassing the accuser and making a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family.

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<sup>7</sup> The complete text of section 273.5 of the California Penal Code is available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=270-273.75>.

<sup>8</sup> The complete text of section 646.9 of the California Penal Code is available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=639-653.2>.