

THE STUDENT PRESS LAW CENTER

COVERING CAMPUS CRIME

A HANDBOOK FOR JOURNALISTS

FOURTH EDITION

FUNDED BY THE SIGMA DELTA CHI FOUNDATION
THE EDUCATIONAL ARM OF THE SOCIETY OF PROFESSIONAL JOURNALISTS

Covering Campus Crime, Fourth Edition
A Handbook for Journalists

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FOREWORD

It is a joy as director of the Student Press Law Center to be able to work with some of the brightest and most inquisitive college journalists in the country, because no one ever enjoyed being a college journalist more than I did. My most enduring memories from my days as a student journalist involve covering crime stories. These stories are uniquely compelling because they tap into our collective anxiety over security at a place – college – that for many is the first extended venture outside the protective family bubble.

One tragically unforgettable story took place over a quiet Thanksgiving holiday weekend. A few of us newsroom stragglers, fresh from the morning bagel run, heard an increasingly agitated string of police-scanner chatter about a body found at a condominium complex close to campus that was home to many faculty members. We learned that the address belonged to an especially beloved Food Sciences professor. What we could cobble together of a coverage team – me and a photographer – hurried to the scene. A row of squad cars and a banner of crime-scene tape made the search easy.

A uniformed police sergeant filled the doorway of the second-floor unit. He tersely shook off our questions. Getting a peek inside was out of the question. We turned and took one step to leave, when a local TV news videographer came hustling out the door and rumbled past us down the stairs. “Hey!” I protested, summoning all of the indignity available to an unshowered 18-year-old with cream cheese in his teeth, “That’s our competition!” The sergeant – who outweighed the two of us together, and would have towered over us even without the half-a-foot advantage from the stairway landing – was unmoved. But, I explained – hoping it was true – our photographer doesn’t just shoot for the college newspaper, he shoots for the wire services. This picture will go out everywhere across the country. You’re chasing guys in a stolen car, who might be anywhere. *This is a good thing for you.*

He took a half-step back. “One picture.”

Eight seconds and three frames later, Joe and a clatter of cameras were springboarded out the door. We had the shot – *the* shot – of the macabre aftermath of a drug-addled nightmare. Three drifters, ages 21 to 15, had not merely murdered the professor (whose body, thankfully, we didn’t see) but trashed the living room in a binge of intoxication and violence, scrawling eerie messages on the walls with ketchup and mustard. The exclusive photo did, in fact, make the national wires. It was featured on CNN and in all of the major dailies. And the killers were soon apprehended.

From that experience, and from countless others over my reporting career, I came to appreciate that gathering the news is equal parts know-how, persistence, and luck. But, as I continue reminding the young journalists I work with even today, nothing good happens unless you put yourself in a position to be lucky.

This handbook is designed to give you some foundational legal knowledge and some practical newsgathering tips to put you in the best position to catch that lucky break. It is designed to be equally helpful to those working in traditional journalistic settings and to those freelancing or blogging without a newsroom support structure – anyone can access police records, and the safety of college communities is all of our responsibilities. Most of your work on the police beat, mercifully, will not be material for CNN. But even the unglamorous work of holding public safety agencies accountable is important work, and the lessons and experiences will stay with you for a lifetime.

The Student Press Law Center turns 35 this year. We began publishing the booklet that would become *Covering Campus Crime* in 1990, almost two decades ago. The publication has gone through several cycles of update and expansion, most recently in 2000, when the third edition was issued. Since then, the landscape of campus crime coverage has changed significantly. Technology has made databases of crime reports far more widely accessible, and far easier to display in a reader-friendly form. Horrific acts of violence at Virginia Tech and at Northern Illinois University prompted new attention to the adequacy of early-warning systems for campus emergencies, and new federal warning requirements. Despite some advances in transparency, however, student journalists continue reporting persistent problems in gaining access even to basic information, suggesting that both additional legal reforms and – importantly – additional public education are essential. Journalists can help by educating their own college administrators about their responsibilities, and by bringing to light instances in which colleges are falling short.

This handbook is made possible by a generous grant of support from the Society of Professional Journalists and its charitable arm, the Sigma Delta Chi Foundation. We especially thank SPJ’s former national president, Carolyn S. Carlson, a longtime Associated Press journalist turned journalism educator. Carolyn has been a champion both of the work of the SPLC and of transparency in campus crime and disciplinary records, and she was instrumental in securing the grant funding to make this publication a reality. We dedicate this edition of *Covering Campus Crime* to the memory of the late Terry Harper, SPJ’s gregarious Executive Director. His passing on June 2, 2009, deprived the battle for open government of its happiest warrior.

Covering Campus Crime is primarily the work of longtime SPLC attorney Mike Hiestand, whose exhaustive fact-gathering informs this and all of the Center’s many educational publications. This edition benefited from the research and editing skills of Debra Gersh Hernandez, and the layout and design expertise of Julia Chapman and Elizabeth White, working with the SPLC as McCormick Foundation Publications Fellows. SPLC Legal Fellow Wayne Pollock, and law students Jen Fein, Michael Beder and John Myers, provided many hours of legal research and drafting to keep this publication up-to-date and reliable. We thank them all for their extraordinary dedication to this project and to the work of the Student Press Law Center. And we salute the many outstanding student journalists whose tenacity in pressing for greater openness in the disclosure of crime information has resulted in favorable court orders and legislative reforms benefiting the safety of campus communities everywhere.

We hope that you will use *Covering Campus Crime* as just the starting point of educating yourself about the criminal justice system, and that you will take advantage of the resources at www.splc.org, and contact us if you have questions or if you want to suggest improvements to make this guide more helpful.

We also hope that you will share with the SPLC the results of your journalistic work. The foundational mission of the Student Press Law Center is, and always will be, helping remove the censorship barriers that impede student journalists from distributing their best work. We are convinced that demonstrating to the public the irreplaceable value of student journalism is the best way to safeguard it against those who would prefer that unpleasant information remain unreported.

Frank LaMonte
Executive Director
Student Press Law Center
October 2009

SECTION ONE

A PUBLIC SERVICE WORTH FIGHTING FOR

Crime reporting can be one of the most exciting, frustrating, exhilarating, disappointing, rewarding beats you cover as a reporter.

There is a strong public service component to police reporting, but getting that information can be difficult. Just about every reporter who has covered the police beat will tell you that at some point he or she was stymied in their quest for information. It could be political, it might be a cover up, maybe the cops don't feel like cooperating because they didn't like the last article you wrote — or the desk officer might just be on his way to lunch.

The problem is compounded on college and university campuses where the pressure to present a picture-perfect scene for potential and current students and their families, for donors and simply for public relations may discourage officials from revealing the full extent of what's happening.

It's vital that you pursue the truth. Students need to know if they should take additional precautions or be extra wary of strangers. They need accurate, reliable information. They cannot protect themselves from dangers they do not know exist. This is as true of campus reporting as at any metropolitan news organization.

Look at the numbers.

In 2007, there were 88,040 crimes reported to campus police, according to numbers compiled by the Office for Victims of Crime, a division of the U.S. Department of Justice.¹

Among the three percent of those classified as violent crimes, just over half were aggravated assaults, nearly a third were robberies, about 2 in 10 were forcible rapes and the remainder, less than 1 percent, were murders.

But the numbers don't tell the whole story. For example, the OVC report estimates that “12 percent of women currently attending American colleges have been raped, and 12 percent of rapes of college women were reported to law enforcement.”

Similarly, “Sexual assault is widely considered to be the most underreported violent crime in America,” according to “Sexual Assault on Campus: What Colleges and Universities Are Doing About It,” a December 2005 report from the National Institute of Justice.²

In looking at sexual assault on campus, the researchers discovered uneven compliance with federal reporting law. “Overall, four-year and historically black institutions are doing better than other schools,” the NIJ stated in its report.

“Most schools comply with the requirement to report crime data, but only about a third do so in a way fully consistent with federal laws.”

And that's just one category of crime.

Whether the under-reporting is by victims or by police, the overall impact is the same: those on campus are not getting all the information they need to keep themselves safe from potential predators. Good reporters are the public's eyes and ears.

To pursue the truth, however, you first need to know the law. There are two main sources of legal authority that give the public and press a right of access to crime information: federal law and state law. These two sources of law complement each other, and a journalist seeking access to information need not choose one or the other. It is important to understand both, because — unfortunately — journalists often find themselves having to educate police agencies about their own legal duty to disclose.

“It’s vital that you pursue the truth. Students need to know if they should take additional precautions or be extra wary of strangers. They need accurate, reliable information. They cannot protect themselves from dangers they do not know exist. This is as true of campus reporting as at any metropolitan news organization.”

WHAT IS THE LAW?

The federal law for reporting campus crime data is most commonly known as the Clery Act. It was named for Lehigh University freshman Jeanne Clery, 19, who in 1986 was viciously raped, beaten and murdered by a fellow student in her dorm room.

As they learned the details surrounding the death of their only daughter, Howard and Connie Clery soon learned that Jeanne’s attack was one of several violent crimes committed on the campus — crimes that students had generally been unaware of and, thus, had left themselves vulnerable to with open and unlocked security doors.

The following year, the Clerys founded Security on Campus Inc. in Jeanne’s memory.³ The organization’s mission is to ensure crime information from college campuses is made public. To that end, it has supported dozens of laws, chief among them the Crime Awareness and Campus Security Act of 1990, which was renamed the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act in 1998 and is typically called simply the “Clery Act.”⁴

The Clery Act requires colleges and universities receiving federal funding to open their crime information to the public. Data covered under the Act include murder, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, manslaughter, arson and certain liquor, drug and weapons violations.

In 2008, President George W. Bush signed several amendments to the Clery Act into law. The changes had been pushed through in the wake of the Virginia Tech shootings in April 2007, when a lone gunman killed 32 students and faculty members on the campus. Notable among the changes was the requirement that university officials “immediately notify” students, faculty and other staff about significant or dangerous campus threats and emergencies. The amendments also require colleges to report hate crime statistics and will protect whistleblowers from retaliation.

The Clery Act watchdog is no mere yipping Chihuahua. This big dog can bite — as officials at Eastern Michigan University found out.

In June 2008, Eastern Michigan University was assessed the largest fine to date for violation of the Clery Act: \$350,000 for seven violations spelled out in an 18-page report issued by the U.S. Department of Education.⁵ The incident also cost the university’s president his job.

The Eastern Michigan University case arose from the death of 22-year-old student Laura Dickinson in her dorm room. The university announced only that Dickinson had died unexpectedly and that there was “no reason to suspect foul play.” In subsequent updates, the university neither gave a cause of death, nor did it indicate that the death was being investigated as a murder.

That was, however, until 10 weeks later, when Dickinson’s classmate, Orange Taylor III, was arrested and charged with her homicide, as well as two counts of sexual conduct, larceny and home

invasion. (Taylor was later convicted of murder and sentenced to life in prison.) It became clear that the university knew from the start that Dickinson had been murdered but consciously misled the public, providing a false sense of security.

Facing outraged and angry students and families, who accused Eastern Michigan of staging a cover-up, university officials maintained that their campus-wide updates were in compliance with the Clery Act.

The Department of Education disagreed, citing Eastern Michigan for seven violations of the Clery Act and fining it \$350,000. “Not only did EMU fail to disclose information that would enable the campus community to make informed decisions and take necessary precautions to protect themselves,” the DOE report stated, “but it issued misleading statements from the outset, providing false reassurance that foul play was not suspected, and that it had no knowledge of an ongoing criminal/homicide investigation prior to the arrest of the suspect.”

The university’s own 568-page assessment, completed by an independent Michigan law firm, was equally damning. “The report reveals a systemic failure to comply with the federal Clery Act, including the failure to warn the campus of potential danger,” Board of Regents Chairman Thomas Sidlik said at the time. The regents also voted to fire university President John Fallon, Vice President of Student Affairs Jim Vick and Public Safety Director Cindy Hall. Since then, Eastern Michigan has implemented a new campus security plan — actually developed by Fallon before he was fired — that includes updating crime statistics.

Unfortunately, although many colleges and universities are compliant with Clery Act provisions, many are not. Among them:

- An audit by the New York State Comptroller’s Office found inconsistencies in crime reports published annually and those submitted to the Department of Education by 19 of the 29 colleges in the State University of New York system.
- Student journalists at Middle Tennessee State University discovered that not only had the campus police log not been updated in a timely manner over the summer, they also found that some 418 crime reports were missing from the police log, compiled instead in a separate “case log.”
- Campus-wide alert systems have been beset by glitches, such as those incurred by Oregon State University, which saw messages sent by its phone system going out 30 minutes after text and e-mail alerts. (Of course, campus alert systems also suffer when students and faculty don’t sign up to receive alerts or when universities don’t use their systems consistently or effectively.)



For a more thorough discussion of the Clery act and the other legal concerns presented in this guide, see the Student Press Law Center’s *Law of the Student Press*.

SECTION TWO

The effectiveness of the Clery Act has been hampered both by genuine confusion about what the law requires and the continued efforts of some school officials to keep their crime information secret. It is important, however, that if you need to fight for this information you know what the law proscribes (and what your state law allows, as detailed in the next section) and what you can do about it.

Below is a brief introduction to the Clery Act. Be cautioned, however that campus crime reporting laws can be an active area of law, changing frequently. For more information and to find the latest updates, visit the SPLC's Clery Act page⁷ or go to the Security on Campus Web site.⁸

ANNUAL CAMPUS SECURITY REPORT (CRIME STATISTICS)⁹

• What should I expect to find in my school's annual campus security report?

Among the data in the report should be: (1) campus security policies and procedures; (2) the law-enforcement authority status of security personnel, including working relationships with state and local police agencies; (3) a description of drug and alcohol abuse, crime prevention and sexual assault education programs available to the campus community; (4) a listing of any policies that encourage accurate and prompt reporting of crime to the appropriate police agencies; (5) campus policies regarding law enforcement relating to drug and alcohol use; and (6) actual campus crime statistics.

As discussed more fully below, the law also requires schools to provide unquestioned access to the campus security force's

HOW TO USE THE CLERY ACT

daily crime logs (see page 6) — and information about a school's emergency notification system and campus evacuation procedures (see page 8) .

• Who must comply with the statistical reporting requirements?

All post-secondary institutions, public and private, that participate in federal Title IV student aid programs (for example, federal work-study or grants and National Direct Student Loans) or that receive federal financial assistance (e.g., institutional research grants) must comply. Since virtually every post-secondary institution offers or receives some form of federal assistance, it's likely your campus is included.

The Clery Act mandates that campus security personnel and anyone "who has significant responsibility for student and campus activities" (such as residence hall directors, coaches, faculty advisers, the director of the student center, etc.) must report acts of campus crime for inclusion in the annual report.

Schools must also make a good-faith effort to obtain information from local police for both on-campus and off-campus public property crime.

Be aware, however, that changes to the law in 1999 created a reporting exemption for licensed or certified "pastoral or professional counselors" who provide counseling as part of their official duties at the school. These professional counselors may, at their discretion, refer students to a voluntary, confidential reporting program, if their school has one. The exemption does not include non-professional or informal counselors.

• How can I get a copy of my school's annual report?

The law requires schools to "prepare, publish and distribute" their security reports to all current students and employees. Schools also

must alert applicants to the report's availability and provide a copy on request. Reports must be available by Oct. 1 of each year.

Reports can be mailed via the U.S. Postal Service or through campus mail, e-mailed, or hand-delivered as part of a publication distributed campus-wide. The law's distribution requirement also can be met by posting the report on the Internet or a school intranet, provided the school properly notifies the campus community of its availability online and offers to provide a paper copy on request.

The U.S. Department of Education compiles and makes available a searchable database of nationwide campus crime statistics on its Web site at: <http://ope.ed.gov/security>. The FBI also provides state-by-state tables of crimes on campus — broken down both by number of reported offenses and by number of arrests — as part of its annual "Crime in the United States" report.¹⁰ Additionally, *The Chronicle of Higher Education* publishes a comprehensive annual listing of crime statistics gathered from schools across the country, although this is available online only to premium subscribers.¹¹ Keep in mind that reliability of some schools' self-reported statistics have been questioned. If your journalistic instincts tell you that a statistic looks suspicious — if there is a sudden drop in rapes or burglaries for which there is no obvious explanation — then the statistical reports are only the beginning of your newsgathering work, not the end.

• What do the reports look like?

A school's annual report can range from a no-frills brochure to a full-color, tabloid-sized publication with poster-size maps and safety tips. Some schools have included the information in campus publications or mailings, such as student newspapers, school catalogs, student handbooks or tuition bills.



• What types of crimes must be included in the statistical report?

Statistics must be maintained for the following crimes and violations: criminal homicide, which must be separated to distinguish between murder, non-negligent homicide and negligent manslaughter; sex offenses, separated to distinguish between forcible and non-forcible acts; robbery; aggravated assault; burglary; motor vehicle theft; arson; larceny- theft; simple assault; intimidation; and destruction, damage, or vandalism of property. You can find definitions of these crimes on the FBI's Web site.¹²

If an incident involves more than one crime — for example, a victim is murdered after he is robbed — the "hierarchy rule" requires that the most serious crime be included in the report.

Where an arrest or disciplinary referral is made, a school must also report statistics concerning: liquor law violations, drug law violations and illegal weapons possession.

As part of a hate crimes provision in the law, statistics must also be maintained for several of the crimes above, or any other crime involving bodily injury, in which the victim was intentionally selected

because of his or her actual or perceived race, gender, religion, sexual orientation, ethnicity or disability.

Further, most of the crimes listed above must be included in the report whether they are prosecuted by local law enforcement officials, campus judiciary or no one at all. In cases of liquor or drug violations or weapons possession, the information must be included in the annual report where either an arrest is made or the accused is referred for campus disciplinary proceedings.

• Where does a crime have to occur to be included in the statistical report?¹³

Crimes must be broken down based on whether they occurred: (1) on campus, (2) in a student dormitory or residential facility, (3) in or on a non-campus building or property, or (4) on public property.

The term "campus" is defined by the Clery Act to include "any building or property owned or controlled by" an institution "within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls." It also includes "property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor)."

A "non-campus building or property" is "any building or property owned or controlled by a student organization recognized by the institution" and "any building or property (other than a branch campus) owned or controlled by an institution... that is used in direct support of, or in relation to, the institution's educational purposes, is used by students and is not within the same reasonable contiguous geographic area of the institution."

"Public property" is defined as "all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes."

Based on these definitions, the requirement to gather and report statistics under the Clery Act extends to school-related premises such as research, teaching or athletic facilities used by a school (including a city-owned auditorium or stadium leased for school games); and fraternity and sorority houses and other off-campus student housing that may not be owned by the university but that are operated under a contract with the school or otherwise "controlled" by it.

Crimes that occur on privately owned property that is frequented primarily by students, but which is nevertheless not in any way "controlled" by the school (such as a favorite off-campus bar or

an apartment complex) do not have to be included in the annual report.

- **Can a school limit its reporting to a map that labels areas as "on campus," "non-campus," and "public" property?**

The 1999 regulations do allow a school to use a map to establish its reporting area, but the map must be provided to the entire campus community and be an accurate depiction of the geographic area.

Because such a map might shield a school from later claims that it failed to report crimes not listed, it is essential that campus news media request a copy of their school's map on a regular basis to ensure that it accurately reflects the campus area. If you find that your school's map improperly excludes certain areas from their reporting obligations, contact the Office of Student Financial Assistance in the Department of Education's regional office for the state where your school is located. (A list of regional offices is included in the Appendix.)

- **What period of time does the annual report cover?**

Statistical information contained in each report should be based on the calendar year (Jan. 1 - Dec. 31) in which the crime was reported to campus officials, not necessarily when the crime occurred. The annual reports also must contain statistics for the three most recent calendar years.

DAILY CAMPUS CRIME LOGS¹⁴

In addition to the yearly reports, since 1998 the Clery Act has required virtually all colleges and universities — both public and private — to maintain and disclose daily crime logs through their police or security offices.

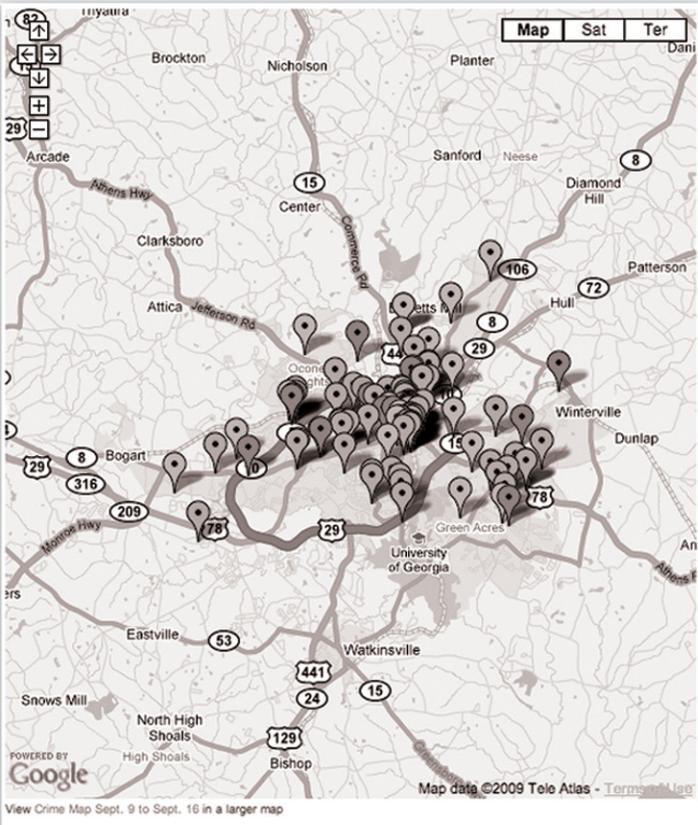
- **Who must comply with the law?**

As with the rest of the Clery Act requirements, compliance is mandatory for all post-secondary institutions, public and private, receiving federal financial assistance that maintain a police or security department of any kind.

- **What does the Clery Act's campus crime log provision require?**

The college or university must "make, keep and maintain a daily log, written in a form that can be easily understood, recording all crimes reported" to the police or security department and make that log "open to public inspection." The law does not allow police or security officials to simply read the log to a requesting reporter or student. The log must be physically available for public inspection. (The Clery Act itself does not address photocopying, but virtually all state open-records acts do require that copies of government records, which includes crime logs, be available for copying.)

OUT MAPPING IT OUT MAP



New mapping technology available to the student media is providing opportunities to add a new layer to campus crime reporting: visually appealing, easy-to-understand crime maps.

Maps like the one on the left use multi-colored markers to show readers not only where crimes occurred around campus, but what type of crime occurred. For example, red pins could signify property crimes, green pins violent crimes, etc.

By incorporating a visual element into online crime reporting, the student media is better able to fulfill its goal of keeping students aware and safe.

While the addresses attached to the incidents reported in campus police briefs may not jump out to a student, seeing a several pins surrounding his apartment or place of employment can raise awareness in a way words may not.

Companies like Google make putting a campus crime map together an accessible project for a student media organization. With the topography done for them, reporters and editors can plug in the location and details of that day or week's incidents and make the map available on their Web site.

Screenshot courtesy of University of Georgia's *Red and Black*

- **When must the log be available?**

The log must be open to public inspection during the police or security department's normal business hours, Monday through Friday, excluding holidays. Schools must keep offices properly staffed to handle requests during these times.

- **When must information be added to the log?**

Crimes must be added to the log within two business days of the initial report to the campus police or security department. Officials are also required to add new information about a previously recorded crime to the log within two business days.

- **How far back must the logs go?**

Logs for the most recent 60-day period must be open to public inspection during normal business hours. Information older than 60 days must be made available within two days of a request being made.

- **What crimes must be included in the log?**

All crimes reported to the campus police or security department from any source must be included in the daily log. Unlike in the annual statistical report, there is no set list of crimes.

- **Where must crimes occur to be included in the log?**

Any crime that occurs "on campus, on a non-campus building or property, on public property or within the patrol jurisdiction of the campus police or the campus security department" and is reported to them must be included in the log.

This is potentially a larger reporting area than that required for the statistical report.

If campus police respond to a call from an off-campus location — a call from students living in a private apartment complex, for example — they would be responsible for reporting any criminal activity they find in the school's crime log because the crime would have occurred within their patrol jurisdiction.

TIP Deal or no deal?

Take the denial of an open-records request as just the opening bid -- and think about whether you're willing to bargain. If you have no intention of printing the name of the crime victim or phoning her, consider offering to take the police report with the victim's name blacked out. Same with the names of informants, undercover officers, or other information that isn't important to your story.

- **What information is required in the log entries?**

The log must report the nature, date, time and general location of each crime, and the disposition of the complaint, if known. A school can include additional information if it chooses, and may be obligated to do so under its state's open records law.

Remember, the law requires that the information be provided in a "form that can be easily understood." Unreasonably vague descriptions or undecipherable technical jargon or codes are unacceptable.

For example, if your school describes a sexual assault as "intentionally causing physical harm or apprehension of harm"

(an actual description reported by one school) or lists a crime's location as simply "campus," such conduct should be challenged.

- **Is anything exempt from disclosure under the law?**

A school will not have to release information in the log if the law prohibits disclosure of that information or disclosure would jeopardize the confidentiality of the victim.

Information can also be withheld if there is clear and convincing evidence that the release of the information would: jeopardize an ongoing criminal investigation or the safety of an individual; cause

It's a floor, not a ceiling TIP

"I can't give you that under the open records act" is almost never the right answer. In only a very few cases does an open records law say that the agency can't give out documents. For the most part, when a document is exempt from the open records act -- for instance, personnel evaluations are sometimes exempted by law -- that just means the college can't be forced to disclose it. But there's almost never any penalty for voluntarily giving out the document. So when the college says "we can't," what they really mean is "we won't."

a suspect to flee or evade detection; or result in the destruction of evidence.

The Department of Education, however, has indicated that these exemptions should be interpreted narrowly, and that an institution may withhold only the specific information required to avoid the above risks. Once the risk has passed, the institution must disclose all information.

- **Does a crime have to be prosecuted before it is reported?**

No. Any complaint of activity that would constitute a crime and that is reported to a campus police or security department must be included in the crime log whether it is prosecuted by local law enforcement officials, the campus judiciary or no one at all.

- **Does the Clery Act allow campus police to provide less information than required under a state's open records laws?**

No. Department of Education officials have characterized the Clery Act as a "floor" that establishes the minimum campus crime reporting requirements.

It does not supplant state law. For example, a state law might require campus police or security departments at public schools to include additional information in their logs (for example, names of those accused or arrested, complainants' names, actual

addresses, more detailed information about the incident, name of responding officer, etc.). Maintaining separate state and federal crime logs is neither required nor suggested.

Violation of either the annual reporting or daily log provisions of the Clery Act is serious business. The U.S. Department of Education can impose financial penalties of up to \$27,500 per violation. In extraordinary cases, the department is authorized to withhold all federal funds from a noncompliant school.

Any member of the public, including a student journalist, who believes that an institution has failed to meet its disclosure obligations under the Clery Act can file a written complaint with the director of the Regional Office of the U.S. Department of Education serving

the state in which the school is located. A list of offices is included in the Appendix. Provide a brief summary of your situation and any evidence of the school's non-compliance.

Should the DOE regional office not be responsive to your request, you might find it helpful to contact your congressional representative.

You might also have some success by filing a complaint with your state's attorney general. In 2009, for example, New York's attorney general launched an investigation and found a private college to have violated the Clery Act. It subsequently reached a settlement that included a \$20,000 fine and changes to the school's crime reporting policies.¹⁵

Finally, if you have other questions — and also to report any problems or successes you might have so that we can share them with others — please contact the Student Press Law Center.

Throughout the complaint process, it is vital that you keep accurate and detailed records and notes of all your contact with school officials and, later, with government agencies or others. This includes people's names, titles/departments and the day/time of contacts.

This not only helps in resolving the issue, it also shows that you are professional and serious about getting the data. Of course, a school's failure to live up to its Clery Act obligations is also legitimate fodder for news stories and editorials. The glare of public attention sometimes brings schools into compliance faster than a federal investigation.

“TIMELY REPORTS” AND “EMERGENCY NOTIFICATION”

In addition to a daily police log and an annual statistical report on campus crime, the Clery Act requires campus officials to quickly disseminate information about ongoing threats to the campus community.

First, the Act requires that schools make “timely reports to the campus community on crimes [from statistical crime list above] considered to be a threat to other students and employees.”¹⁶ The statute does not define “timely reports” and the Department of Education has stated that the need for such reports must be decided on a case-by-case basis.

Second, following a series of highly publicized campus shootings, an additional provision was added to the law in August 2008 requiring campuses to publish procedures to “immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation” that threatens the health or safety of individuals on campus, “unless issuing a notification will compromise efforts to contain the emergency.”¹⁷ This supplements, but does not replace, the original “timely reports” requirement.

• What crimes are subject to the timely warning provision?

Crimes that present a serious or continuous threat to students and employees will trigger the school's obligation to issue a timely warning.

• What triggers the emergency notification provision?

Schools must immediately alert the campus community of a “significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on campus.” Neither the law nor regulations currently proposed by the Department of Education provide a more precise definition.

• Who is responsible for making a timely report?

All campus security personnel and any “official of an institution

UNCODING THE REDACTIONS

Even when student journalists are successful in obtaining campus police reports, it is not uncommon for those reports to arrive at the newsroom heavily redacted — that is, with information “blacked out” that is important to fully cover campus crime. In 2008, editors of the student newspaper, *Eastern Progress*, at Eastern Kentucky University won a battle with their university over redacted police reports.

Former *Progress* reporter Ben Kleppinger noticed the summarized crime reports provided by the campus police department had an increasing number of redactions. Early in 2008, Kleppinger saw the department was redacting not just personal information such as Social Security numbers, but curse words, portions of conversations and other information, often without explanation.

The campus police department had been voluntarily supplying the *Progress* with summarized police reports, and the university took the position it could freely redact these. The law, however, requires that when responding to a formal open records request, a government agency (such as the campus police department) can redact information only when it can show that the stricken material fits within one of the statute's narrow categories of exempt information. For example, a state employee can withhold “information of a personal nature,” but only when he or she can show “the public disclosure . . . [of such information] would constitute a clearly unwarranted invasion of personal privacy.” That is a legal standard defined by Kentucky courts, not one that campus police can decide for themselves.

Kleppinger and his editor, Marty Finley, submitted a freedom of information request asking to see all reports — without redactions — filed by campus police during several weeks in March 2008. They sought to compare those documents to the reports voluntarily provided by ECU's campus police during that same period to determine what had been removed. When the requested documents arrived, editors found the university had not included certain crime reports. Moreover, the requested reports still had addresses, ages and phone numbers redacted. Kleppinger decided to appeal to the Kentucky attorney general's office.

Eventually, the attorney general's office sided with Kleppinger. The decision, issued July 24, 2008, said Eastern Kentucky University had overstepped the law by removing addresses from the reports. “We are aware of no prohibition on disclosure of campus addresses appearing in an incident report, or according them greater protection . . .” Attorney General Jack Conway stated. The only exception was that the police could redact the addresses of victims of sexual offenses.

Following the ruling, the university made it clear it accepted the decision and was going to deliver reports. Now, the department issues full reports to the *Progress* every week, and in cases where the reports must be redacted due to an ongoing investigation, the department provides a summary report of the case.

who has significant responsibility for student and campus activities” are responsible for issuing timely warnings. Significantly, a school is also responsible for warning the campus community about qualifying crimes that are reported to local police agencies (for example, an unsolved sexual assault or a robbery that occurs near campus).¹⁸ Such a requirement presumes that campus police will make a reasonable, good faith effort to obtain relevant information from nearby state or local law enforcement agencies. As with the statistical report, professional and pastoral counselors are exempt from mandatory reporting.

- **Who is responsible for issuing an emergency notification?**

Under regulations currently being proposed by the Department of Education, each institution would be required to create a policy statement that spells out how it intends to implement its emergency response and campus evacuation procedures.

As part of the policy, the school would be required to specify who is responsible for issuing a notification and an explanation for how those responsible would determine who to notify, when to notify, how notification would occur and what would be in an emergency notice. Additionally, the report would need to provide details about how the system will be tested. (Annual testing is required under the law.) This policy statement would need to be included as part of a school’s annual Clery Act security report.¹⁹

- **How much time does a school have to issue a timely report?**

The law does not define “timely,” which has been an ongoing source of criticism among advocates for more accurate and effective campus crime reporting.

However, because the purpose of the requirement is to enable the campus community to protect itself, it can strongly be argued that any significant amount of time that passes between when a crime that could present an ongoing threat occurs and when the public is notified violates the law’s intent. The Department of Education has said that schools should issue a timely warning “as soon as the pertinent information is available.”²⁰

- **How much time does a school have to issue an emergency notification?**

Schools are required to “immediately” notify the campus community of a significant threat or dangerous situation. The law does not include a specific time limit. Proponents of the 2008 amendments had hoped to include a 30-minute time limit but were unsuccessful. Regulations currently proposed by the Department of Education also do not include a specific time limit but would require schools to issue a notification “without delay” after assessing that a warning is required and determining that it would not interfere with emergency response efforts.²¹

- **How must a “timely report” be distributed to the campus community and what must it contain?**

Unfortunately, neither the law nor the regulations provide much detail. However, they do state that a timely report must “be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.”

The Department has further instructed institutions that warnings “must be issued in a manner that gets the word out quickly communitywide.”²² It is clear that schools have an obligation to swiftly and actively notify individuals in the campus community (as opposed to passively making the report available on request) of a threat.

Further, the report must contain enough information about the crime to allow students and employees to protect themselves. At a

If you can’t go through a door, try a window TIP

If all else fails with the police agency, think about the other agencies that may have documents or information that might be more cooperative. Once an arrest is made, a trail of court records will develop. Think about all the other agencies that might get copies of memos or reports – city councils, state Departments of Education, community college district offices – and try your request there.

minimum that would reasonably seem to include specific information about what happened, when and where it occurred and a description of any suspect(s), if available. It can certainly be argued that alerting the campus news media would be a fundamental part of any reasonable notification process.

- **How must an “emergency notification” be issued to the campus community and what must it contain?**

The law does not specify a method of notification.

The Department of Education has said it believes that institutions should have flexibility in designing effective emergency warning systems and has not specified a particular mode of communication. It has said, however, that institutions “may and should have multiple methods of communication with the campus community.”²³ Regulations currently being considered by the Department mention the use of Web sites, radio and television stations (presumably including campus media), text messaging and e-mail.²⁴

- **What should I do if my school ignores the timely reports or emergency notification requirement?**

The timely reports requirement has potentially been one of the most important provisions in the Clery Act, but for years few schools seemed to have paid much attention to it. Because of recent incidents of campus violence and the inclusion of the new emergency notification provision, that may be changing. But student media must do its part.

It is essential that you monitor compliance and remind your school officials of their legal obligations. If they ignore the law, you can file a written complaint with the director of the Regional Office of the Department of Education that serves the state in which your school is located.²⁵ A state attorney general’s office might also provide some assistance. Schools that fail to provide adequate timely reports can be fined up to \$27,500 per violation and risk losing their federal funding. In fact, as discussed in more detail on page ##, in December 2007 the DOE informed the Eastern Michigan University it was being fined \$357,500 (later reduced to \$350,000) — the largest amount ever assessed under the Clery Act — for 13 violations, including failing to issue a timely warning after the on-campus death of an EMU student.

SECTION THREE

In addition to the federal Clery Act, state law can also provide a key to obtaining campus crime information (as well as information about other goings-on inside government.)

At the state level, government access laws, also known as Sunshine Laws, guarantee in varying degrees the public's right to official records and meetings. These laws can be extremely helpful in gathering information about campus crime, particularly at state colleges and universities.

There are several resources to help you understand what's covered (or not) by your state's law. The Reporters Committee for Freedom of the Press publishes a comprehensive compendium to every state's openness laws, the *Open Government Guide*.²⁶ The National Freedom of Information Coalition also has links to state resources on its Web site.²⁷ Though the laws vary, the following is a general step-by-step process to help you use state law to access campus police reports.

STEP 1: ARE YOUR CAMPUS POLICE REPORTS COVERED BY STATE LAW?

The first step is to determine whether state open government law applies to your school. To do this, you need to determine whether the school is considered a "public body," and to do that, you need to know what kind of law enforcement or public safety agency the campus security force is, something that can vary widely from campus to campus.

If you are at a public college or university (including a community college) and your campus law enforcement officials are employees of the school, the police or security department is almost always considered a "public body" or "agency" and the campus crime records

STATE OF THE STATE LAWS

it compiles are subject to state freedom of information laws. You should have the same level of access as you would to any city police department or other law enforcement agency. There are, however, states such as Pennsylvania and Delaware that have exemptions for some college and university records in their state open records laws, so be sure to check your state's availability.

At public colleges and universities where security services are contracted through private companies, the chances remain good that the state open records laws will apply. There has been some debate over whether these contract security units from private companies become quasi-public entities when working for a public college or university.

Many states have addressed this, requiring that some records of private organizations contracted by public or government institutions be considered open documents covered by the state's Freedom of Information Act.²⁸ Check your state's open records laws.

Private colleges or universities that hire campus police with "law enforcement authority" should make their records open under state FOI laws. This authority is generally granted to campus police by specific local, county or state legislation.²⁹

Campus security officers also can be deputized by local law enforcement officers, or they may qualify if they exercise police powers, such as carrying guns or making arrests. To determine whether security personnel at your school carry this authority, simply ask — or consult the school's annual Clery Act report, which is supposed to contain this information.

Security officers at some private colleges and universities do not have law enforcement authority. You might be able to make the claim

In many ways, Harvard University in Cambridge, Mass., and Yale University in New Haven, Conn., are quite similar. Both are renowned private Ivy League schools in New England. The schools have a storied rivalry, including an annual football game (“The Game”). But when it comes to public access to university police records, Yale students are the clear winners.

Both schools in recent years denied requests for records from their respective police departments, arguing their status as private schools made them exempt from public records laws even though campus police at both schools had some of the same arrest powers as officers of public police agencies. Massachusetts’ highest court backed Harvard in 2006, refusing a request from the *Harvard Crimson* and the Student Press Law Center to declare Harvard police records open. Two years later, Connecticut’s Freedom of Information Commission reached the opposite conclusion and said Yale’s police department had to comply with open-records requests.

Two main factors seem to account for the difference.

First, Yale’s police department has a stronger connection to the city government, and its officers have broader powers. Yale police

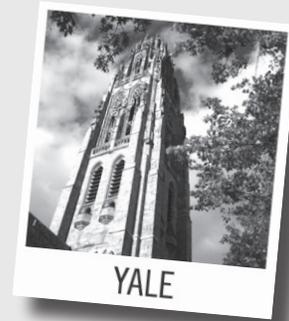
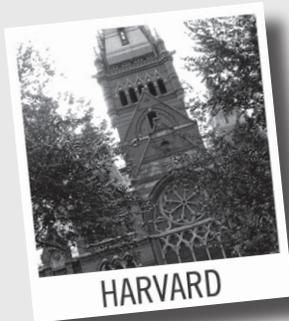
officers are appointed by New Haven and have all the same powers as municipal police, on and off campus. In contrast, only some Harvard police officers had been granted public police authority (either as special state police or as deputy sheriffs in surrounding counties).

Harvard’s special state police could make arrests only on campus.

Second, Connecticut’s open-records law is broader than Massachusetts’. The Massachusetts law applies only to government bodies.

The state’s high court concluded Harvard’s police department did not become a public body simply because some individual officers were granted law-enforcement powers under state law. Connecticut’s law, in contrast, applies not only to public agencies but also to any entity that is “the functional equivalent of a public agency.”

Yale police officers’ broad authority made the department the functional equivalent of public law enforcement agencies. The lesson from these Ivy Leaguers: know the particulars of your state open-records law, and of your police department’s structure.



Case background	{	<p>The Harvard University Police Department denied a public-records request from the <i>Harvard Crimson</i>, saying the university was not a public entity.</p>	<p>A public defender requested the personnel files of two Yale University police officers who arrested a boy on a public sidewalk near Yale’s campus.</p>
Police powers	{	<p>Some HUPD officers were appointed special state police officers, giving them arrest powers only on university property. Separately, some HUPD officers were appointed deputy sheriffs in surrounding counties.</p>	<p>Under state law, New Haven commissioned all Yale police officers, giving them “all the powers conferred upon municipal police officers,” including the power to make arrests off campus.</p>
Decision-maker	{	<p>Massachusetts Supreme Judicial Court</p>	<p>Connecticut Freedom of Information Commission</p>
Decision	{	<p>HUPD records exempt from public records law.</p>	<p>YUPD records covered by public records law</p>
Rationale	{	<p>State law granted some limited police powers only to individual officers, which did not make HUPD itself a public agency.</p>	<p>YUPD’s exercise of full police powers on and off campus made it “the functional equivalent of a public agency.”</p>

Photos by Ed Brodzinsky (left) and Sage Ross (right)

that the department is still open to state open records law, but it's possible the law does not require this information to be made public and you will need to look to other resources for the data.

STEP 2: WHAT KINDS OF RECORDS MAY BE AVAILABLE UNDER STATE LAW?

There are many different names for campus police reports, but they tend to fall into five basic categories:

- **The daily police blotter or incident report log.**

This is a daily summary of every incident the office responded to or was called about. It is often compiled by the police dispatcher. It will usually give a brief description of the incident as well as the time and the place where it occurred. Because of the limited information it contains, a blotter is useful mainly as a starting point for asking additional questions.

- **Incident reports.**

These are the more detailed reports that are created by the officer or officers who actually responded to the incident. They will usually give the names and addresses of the individuals involved in the incident, if known, and will provide a longer narrative of what happened. This is often the most valuable document for finding the details of the incidents you want to cover.

- **Investigation reports.**

Some crimes — particularly those where a suspect is not immediately apprehended — require additional police work. Documents and evidence generated by such work become part of an investigatory file.

Because such records may contain active leads or other information whose release might jeopardize an ongoing police investigation, many state laws have specific provisions that exempt such records from mandatory disclosure.

While the reasons for an “ongoing investigatory records” exemption make sense, experience has shown such exemptions to be among those most frequently abused.

If you believe that to be the case in your situation, challenge it.

- **Arrest or booking log.**

This is a record of all individuals who are charged with crimes. Only campus law enforcement agencies that have arrest powers will have this kind of log, but if they do, it is an important source of information for stories about individuals accused of breaking the law. This log will give the name, address and age of someone accused of a crime as well as the charge against him.

- **Miscellaneous crime records.**

In addition to the above, law enforcement officials sometimes maintain a number of other records that may prove useful. Among them:

Accident Reports: Reports of motor vehicle accidents or other emergencies to which the police responded are available under most state open record laws. Note, however, that specific medical information about an individual is frequently exempt under federal law.³⁰

Parking Ticket Records: A 1998 Maryland court decision required the University of Maryland at College Park to release parking violation records for scholarship athletes to the student newspaper after it was revealed that a basketball player had thousands of dollars in unpaid fines for repeatedly parking in handicapped spaces.³¹ In Maryland, as in many other states, parking violations are misdemeanor criminal offenses.

911 Tapes/Transcripts: While it is doubtful that such records will be maintained by a campus police force, tapes (or transcripts of tapes) of calls made to a central emergency office are usually maintained by and available through local law enforcement agencies.

Criminal Histories: The availability and type of information about an individual's criminal history varies considerably by state. Under some state laws, all such information is open to the public. In others, no information is open. Where it is available, it is generally maintained by a central state office.

Safety Policies/Security Budget Reports: Information about a public schools' campus police force budget would be available under virtually every state's open records law. In addition, the federal Clery Act requires all schools receiving federal funds to provide information about certain campus security policies and programs, including a statement indicating the enforcement authority of a school's security personnel, crime reporting procedures, policies concerning access to campus facilities and crime prevention programs.

MY DAD, THE POLICE REPORTER

Former U.S. Attorney General Janet Reno reflects on her father's time as a police reporter.

My father, Henry Reno, was a police reporter for the Miami Herald for thirty years. In 1948 the Herald won a Pulitzer for exposing wide open illegal gambling in Miami. Daddy and his partner, Red McGhee were responsible for the stories involved.

But he was not a flamboyant reporter out to win fame and expose bad guys. He was fascinated with stories; with what was true and what wasn't; with the fascinating

oddities of the human race. He had no office at the Herald.

He usually phoned in his stories and didn't have a byline. He hung out in police departments and the County Courthouse.

Every morning he woke up early and watered his sweetheart rose bush and his gardenias. Then he sat down by the phone



and called every police department in town: “This is Reno, anything during the night?” Then he stopped to get donuts and drove to each police department to drop off donuts and sweetheart roses and gardenias for the lovely ladies who told him what had happened during the night.

He found out more by listening than he could have by swaggering and threatening. Everyone trusted him from the police to the gamblers. The secretaries loved him.

• Legal limitations

Sometimes, however, you just simply do not have a legal right to certain kinds of information, even from a public body. All state open records laws contain some exemptions that limit access to specified information.

Common exemptions include records that would compromise an ongoing investigation, or reports that could identify confidential informants or undercover officers.

These exemptions vary widely by state, but in most cases the police agency has the responsibility of stating why the record is being withheld and to redact (black out) only those portions of the record that are exempt. One sentence of exempt information is not grounds for withholding an entire report.

STEP 3: HOW DO YOU GET THE RECORDS?

The first move in any attempt to get official records is simply to ask professionally and politely for the information you want. Unless there are exemptions or other legitimate roadblocks as described above, there's often a proscribed time period to comply (e.g., "within five business days") and you should get the information you seek by then.

When you go to the records or security office, identify yourself and your news organization. You can ask to speak with the person who handles press queries, or whoever is in charge of handling the incident reports.

There is no reason to be adversarial, and you should always treat the officer or official with respect, utilizing the appropriate courtesy titles (Officer, Sergeant, Mr. or Ms.).

If, however, your request is ignored or stonewalled, it's time to start a paper trail. First, put the request in writing. A sample letter is included in the Appendix, and a fill-in-the-blanks request letter generator is available at the SPLC Web site.³²

In most cases you should send your request to the person you believe is responsible for physically maintaining the records you want. For campus crime records that usually means starting with the campus police chief or director of public safety. Hand-deliver or send your letter with a return receipt requested.

If you still don't receive everything you want, you are entitled to a legal justification for the denial of your request. Most state laws require that officials provide a written explanation, with citations to the specific legal exemption(s). Some states, such as New York, New Jersey and Washington, have created agencies to assist both members of the public and government officials with questions about state freedom of information law and to be available to provide guidance and written opinions when disputes arise. Texas's law even goes so far as to *require* that a state agency seeking to deny a request for public records immediately ask for a state attorney general's opinion on the matter.³³

Without being overly adversarial, now may be a good time to remind the official of the state's penalties for noncompliance. You might also suggest that the school's legal counsel be consulted — or send that person a copy of the request yourself — before a final denial is issued.

This is the point where it is crucial you know what your rights are and to what information you're entitled. The records custodian may be under the impression he's following the law, or simply not

be aware of what the law is.

It's important to remain adamant but always courteous. You do not want to paint the recordkeeper into a corner; give him room to back down without losing face.

That said, if the denial continues, your next step is usually to file a written appeal up the chain of command. This should include the same information as your initial written request, but also should briefly describe how you were denied access. Include the names and titles of all those who denied you access and the date their denials occurred.

If those who denied your request up to this point did cite a specific justification for the denial, state why you believe that explanation is insufficient under the law.

This may be a good time to consult with a local media attorney, the Student Press Law Center or some other resource that specializes in freedom of information law for help in formulating your response. File the appeal with the recordkeeper's immediate

Save a few trees **TIP**

If documents are kept in a computer database rather than on paper, most state laws say you're entitled to have the documents in electronic form if you prefer -- which may make for easier searching.

supervisor and, if necessary, the college or university president and any other relevant school or government officials. You might also let the various officials know that your news story will mention that the campus police refused to give you access to public records.

FERPA IS NO EXCUSE

Congress enacted the Family Educational Rights and Privacy Act ("FERPA"), also known as the Buckley Amendment, in 1974 to require that any school or college accepting federal education money — which is pretty much all of them, public or private — allow a student (and/or his parent or guardian) access to key academic records. As an add-on, Congress clarified that student educational records should be kept confidential other than in response to student or family requests. Unfortunately, that confidentiality add-on has become the proverbial "tail wagging the dog." FERPA is now often cited — and abused — as a catch-all to deny access to otherwise-public records merely because a student is referenced or named.

There may be room for disagreement about the scope of FERPA when it comes to student disciplinary proceeding — discussed in the next section. But when it comes to police records, there's no room for doubt. Congress amended FERPA in 1992 to make it crystal clear that police reports — even if they name students — are not "educational records" made confidential by FERPA.³⁴ And that includes records held by a "campus security" agency, even if its employees are not sworn law enforcement officers.³⁵ If police cite the Buckley Amendment in refusing access to incident reports, they're misusing FERPA.

WHEN OPEN-RECORDS LAW IS NO HELP

Even if the police force on your campus is not required by open records laws to release specific crime records, the college reporter should not give up. Indeed, in light of the growing concern about

safety on campuses as well as the potential liability faced by schools that shirk the responsibility they have to protect their students (see discussion on page ###), administrators might be convinced of the importance of cooperating with the news media to promote student safety.

Further, almost every school in the country is now required to provide at least some information about their campus crime situation. Once you have at least some information, you often have the leverage necessary to convince school officials to be even more forthcoming. As attempts to cover up the reality of campus crime have been exposed, more and more school administrators have learned the hard way that being open with information about campus crime is the best strategy.

STATE CAMPUS POLICE LOG LAWS

In addition to the daily campus police log requirement of the federal Clery Act, some states have passed their own campus police log laws, often requiring that schools provide additional information or provide it in a different way. Schools in these states must create and provide logs that comply with both laws.

• California

(Cal. Ed. Code secs. 67380 and 94380)

Who must comply with the law?

Section 67380 applies to community colleges that have received legislative funding for the purpose, California State University, Hastings College of the Law, the University of California and all post-secondary institutions that receive public funds for student financial aid. Section 94380 applies to private post-secondary institutions with more than 1,000 students and private vocational educational institutions.

What kind of information is available under the law?

Under section 67380, logs must detail occurrences and arrests for campus crimes of violence, hate violence, theft, destruction of

property and illegal drug or alcohol use. Under section 94380, logs must detail occurrences and arrests for campus crimes of violence, theft, destruction of property and illegal drug or alcohol use.

How is the information obtained?

Under section 67380, students, employees, applicants for admission and the media may request the logs from their custodian who must disclose the information within two business days.

What are the penalties for nondisclosure?

Under section 67380, a person who is refused information may sue in a civil action for damages of up to \$1,000. Section 94380 provides no set penalty for nondisclosure.

The law applies to all public four year institutions and to community colleges or technical colleges that grant postsecondary education credentials. Additionally, the law applies to any private college or university licensed by the Council on Postsecondary Education.

What kind of information is available under the law?

Schools must keep and maintain a daily log of campus crimes (a list of crime categories that must be reported, which includes most personal and property crimes, is included in the law), in a form that can be easily understood, that includes at least the following: (1) the category of crime, (2) a description of the incident, (3) the date and time of the crime, (4) the general location of the crime and (5) the disposition of the complaint if known, including referral to institutional disciplinary proceedings, other law enforcement agencies or prosecutors. The law also requires that schools actively notify the campus community of any crime that presents a safety or security threat. The law explicitly suggests that such notification include alerting campus publications.

How is the information obtained?

The logs must be “readily accessible” and open for public inspection at all times. In addition, the information must be made available on campus computer networks. New crimes must be included in the logs within 24 hours after being reported to campus security officials.

What are the penalties for nondisclosure?

Violation of the law can result in a fine of up to \$1,500 and jail time of up to 30 days.

• Massachusetts

(Mass. Ann. Laws, chapter 41, sec. 98F)

Who must comply with the law?

The law, in conjunction with the state open records laws, applies to all public and private schools whose law enforcement officers have been deputized by the state.

What kind of information is available under the law?

The logs must list all responses to complaints received by the police, crimes reported, the names and addresses of persons arrested and any charges against those persons, unless the crime involves a handicapped person.

How is the information obtained?

The logs are available to the public without charge during regular business hours and at all other reasonable times.

What are the penalties for nondisclosure?

Nondisclosure can result in a fine of \$20 per month until the police disclose the logs as well as the award of attorney fees and court costs.

• Pennsylvania

(18 Pa. Stat. Ann. secs. 20.303(b.1)-(d))

Who must comply with the law?

The law applies to all public and private institutions of higher education.

What kind of information is available under the law?

The logs must include a chronological listing of all crimes reported to the campus police, the names and addresses of anyone arrested and a description of charges filed and their disposition.

How is the information obtained?

The information is available to the public without cost during regular business hours and at all other reasonable times.

What are the penalties for nondisclosure?

The state attorney general can compel compliance in a civil action where the public official can be liable for a penalty of up to \$10,000 for willful violation of the law.

TIP Be a smart shopper

Agencies that know they can't outright refuse an open records request will sometimes erect financial hurdles. Don't let them. In most states, agencies are limited by law to charge only the fee that covers their expense of running the copy machine -- so if someone quotes you a price of \$1 per page, haggle back.

property and illegal drug or alcohol use. Under section 94380, logs must detail occurrences and arrests for campus crimes of violence, theft, destruction of property and illegal drug or alcohol use.

How is the information obtained?

Under section 67380, students, employees, applicants for admission and the media may request the logs from their custodian who must disclose the information within two business days.

What are the penalties for nondisclosure?

Under section 67380, a person who is refused information may sue in a civil action for damages of up to \$1,000. Section 94380 provides no set penalty for nondisclosure.

• Kentucky (Michael Minger Act)

(Ky. Rev. Stat. secs. 164.948 to 164.9495 and 164.993)

Who must comply with the law?

The law applies to all public four year institutions and to community colleges or technical colleges that grant postsecondary education credentials. Additionally, the law applies to any private college or

• Tennessee

(Tenn. Code Ann. secs. 49-7-2206 to 49-7-2207)

Who must comply with the law?

The law applies to institutions of higher education that maintain either police or security departments composed of state, private or contract employees.

What kind of information is available under the law?

The log must include the date, time, general description and the names of all persons arrested for crimes against persons or property. The logs need not include the names of persons who reported the crime, victims, witnesses or suspects. School officials must also notify “appropriate law enforcement officer[s]” where they believe a student is committing or has committed a class A misdemeanor (the most serious) or any felony.

How is the information obtained?

The log is open for inspection without charge to the public during regular business hours.

What are the penalties for nondisclosure?

Failure to comply with the law is a Class C misdemeanor, which can result in a \$50 fine and up to 30 days in jail.

Virginia

(Va. Code Ann. sec. 23-232.2)

Who must comply with the law?

The law applies to private campus police departments. (Public schools are subject to the state open records law.)

What kind of information is available under the law?

The log must include the date, time, general location, any injuries suffered or property damaged or stolen and the names and addresses of anyone arrested for felonies or misdemeanors involving assault, battery or moral turpitude. Information may be withheld if necessary to facilitate an ongoing criminal investigation.

How is the information obtained?

Any citizen, student or parent may obtain the information during the regular business hours of the custodian of the log.

What are the penalties for nondisclosure?

The law does not include a specific penalty provision.

West Virginia

(W. Va. Code sec. 18B-4-5a)

Who must comply with the law?

The law applies to all public and private institutions of higher education.

What kind of information is available under the law?

The log must include the nature, date, general description and time of all murders, rapes, robberies, aggravated assaults, burglaries, car thefts and arrests for liquor, drug or weapons law violations committed on campus. The identity of the victim need not be revealed.

How is the information obtained?

The public must have access to the information within 10 days of the log entry unless nondisclosure is required in order to facilitate an ongoing investigation. The information may not be withheld after an arrest. Students at a public school should seek access under the regular state open records law, which requires disclosure within five working days.

What are the penalties for nondisclosure?

According to the West Virginia Attorney General’s office, a member of the public who is denied access may file a writ of mandamus to compel disclosure. The court may award attorney fees.

As of 2009 the following states had their own laws requiring schools to compile and release statistical information regarding campus crime:

- California: Cal. Educ. Code secs. 67380 to 67381
- Connecticut: Conn. Gen. Stat. Ann. secs. 10a-55 to 55c
- Delaware: 14 Del. Code Ann. secs. 9001 to 9007
- Florida: Fla. Stat. Ann. sec. 1006.67
- Kentucky: Ky. Rev. Stat. secs. 164.9485 and .9487
- Louisiana: La. Rev. Stat. Ann. sec. 17:3351(C)
- Maine: Me. Rev. Stat. Ann. tit. 25, sec. 1544 (Univ. of Maine system)
- Massachusetts: Mass. Ann. Laws, ch. 6, sec. 168C
- New York: N.Y. Educ. Law sec. 6433 (requiring all schools that receive state aid to inform their students how to obtain the school’s annual campus crime statistical report required by the federal Clery Act)
- Nevada: Nev. Rev. Stat. sec. 396.329 (Univ. of Nevada system)
- Pennsylvania: 18 Pa. Stat. sec. 20.303(a)-(b)
- Tennessee: Tenn. Code Ann. secs. 49-7-2201 to 49-7-2205
- Virginia: Va. Code Ann. sec. 23-9.1:1
- Washington: Wash. Rev. Code Ann. sec. 28B.10.569
- Wisconsin: Wis. Stat. Ann. sec. 36.11(22)

Schools in these states must produce reports that meet both the federal and state law requirements. The advantage to some of these laws is that they may require schools to report more information (for example, more or different categories of crime, crimes from a broader geographic area, more detailed description) than required by the federal law.

Delaware’s law is especially broad. Unlike the federal law, which requires a public or private university to report only certain designated crimes that occur on campus, Delaware requires colleges to report the number and type of every offense that is reported to them. Willful noncompliance with the statute can result in a fine up to \$10,000.

In Tennessee, all public or private universities must report all crimes occurring on campus that are reported to the Tennessee Bureau of Investigation (TBI). The TBI must then compile all of the statistics, divided by college, into an annual report. The TBI must include in the report, as a separate section, incidents where a student is the victim of an off-campus crime in the county in which he goes to school. This type of information should be of special value to student journalists attempting to get a more complete picture of the campus-area crime scene.

Unlike the federal law, some state laws are limited to public schools. Some laws, like California’s, are limited by size. However, most states with crime statistics laws explicitly cover both public and private schools. Every state requires the report be given, upon request, to any currently enrolled student, student applicant or employee, with a few states requiring that institutions send their report to all enrolled students every year.

SECTION FOUR

LAW AND ORDER: COVERING CAMPUS COURTS

Access to campus police records is only half the story — and in many cases, only half the battle. Even as universities and colleges were forced to open up their crime reports, many of them continued to significantly limit or ban entirely access to campus disciplinary bodies, which we'll refer to by the shorthand of "campus courts" even though they lack the formality and authority of real-world courts. (And don't make the mistake in covering these bodies of lapsing into misleading terms imported from the courtroom. A student who is found to have broken a disciplinary rule was not quote-unquote "convicted" or quote-unquote "found guilty," since those terms imply the standard that would be used in a court of law: "beyond a reasonable doubt." Campus disciplinary bodies generally can dispense punishment based on a less demanding standard of proof.)

The system most widely used today — panels with some mix of students, faculty and/or trained hearing officers offering some form of procedural due process — was born of the campus upheaval of the 1960s, according to the Association for Student Conduct Administration, formerly known as the Association of Student Judicial Affairs. For many years, these disciplinary bodies busied themselves mainly with cases of students violating campus rules, academic standards (e.g., plagiarism, cheating, etc.) or student codes of conduct. But the public often is amazed to learn that these bodies now handle complaints involving conduct that would be a felony carrying significant prison time if pursued in a court of law.

The structure of campus courts is not like a court of law. There is, for instance, no formal evidence gathering known as "discovery," no cross-examination and no power to issue subpoenas. Participation of witnesses is voluntary. A case that would be dismissed for lack of

evidence in a criminal court may result in a ruling against the accused in a campus court.

Because campus disciplinary proceedings and records generally are kept more confidential than if the same matter were handled through law enforcement, critics have long suspected that officials discourage students from filing police reports in favor of taking the issue directly to a campus disciplinary panel.

ON ONE HAND: CAMPUS OFFICIALS MAKE THE CASE FOR CLOSURE

Campus courts find ways around disclosure because they are designed to be educational, rather than simply punitive. A frequent argument is that students can better learn to correct their behavior in an environment free from public scrutiny. Administrators also contend that campus court affords student offenders a "second chance" to recoup from a youthful lapse in judgment by avoiding a public criminal record that could follow the offender the rest of his life.

ON THE OTHER HAND: THE PUBLIC CASE FOR OPEN PROCEEDINGS

The news media, as representatives of the public, maintain that openness in these proceedings is crucial for many reasons. Among them: students aware of crimes on campus will be more alert and, thus, safer; the accused and accuser have no guarantee of fairness in a closed proceeding; and open campus courts engender trust between students and campus officials as there can be no accusation of cover-

up or favoritism. Moreover, at a public school, campus courts are administered by government officials, whose conduct, like that of all government officials, should be subject to public oversight. Finally, advocates of greater openness argue that it's hard to justify why a 20-year-old college student accused of a criminal act should be afforded more leniency (and secrecy) than a 20-year-old nonstudent who committed the same type of offense, but must face the charges in an open public court.

GETTING IN THE DOOR

There are strong public-accountability arguments for allowing media coverage of campus court proceedings. But if you are unable to obtain access by diplomacy, you will have to rely on your state's open meetings and open records laws. Get familiar with the laws before you try to gain access so you can refer the campus court officers to the relevant sections. Look at the language of the statute to see what types of public bodies it covers and be prepared to argue why the campus court fits one of them. And remember that the open-records and open-meetings laws may not be identical — it is at least possible that a document may fall within an exemption to disclosure under an open-records law, yet a meeting where that subject is being discussed remains an open meeting.

THE FERPA ROADBLOCK

Even where open-meetings and open-records laws do appear to open the door on campus disciplinary hearings, federal privacy law may slam it shut.

The first media organization to sue for access to campus court information was *The Red & Black*, the student newspaper at the University of Georgia in Athens, which in 1991 went to court to force release of disciplinary proceedings and other records regarding alleged hazing at a campus fraternity.

The Georgia Supreme Court sided with the newspaper, finding: (1) that the university's student judicial board was a public body subject to the state's open records law and (2) that the Family Educational Rights and Privacy Act (FERPA), also known as the Buckley Amendment, could not be cited as a reason to keep those records from the public.³⁶

In 1997, following a request by the editor of Miami University of Ohio's student newspaper for access to student disciplinary records — with student names and unique ID numbers redacted — the Ohio Supreme Court likewise ruled that the university's student disciplinary board was a public body, whose records were subject to disclosure under that state's open records law. It also found that the redacted records sought by *The Miami Student* were not student "education records" subject to FERPA (The paper sought the records as part of an investigative project looking at the campus justice system, which was spurred, in part, by claims that students charged with similar violations had been punished differently).

The state high court ordered the school to release the requested records that included the general location of the incident giving rise to the disciplinary proceeding, the age and sex of student, the nature of the offense and the type of disciplinary penalty imposed.³⁷

Three years later, however, a federal district court in Ohio, in a ruling later upheld by a federal appellate court, ruled that FERPA required Ohio universities to withhold disciplinary records that

included information that identified individual students.³⁸

The legal battle over campus court records — and the tension between state disclosure laws and FERPA — continues today. University of Iowa officials cited FERPA as a reason to withhold documents related to the informal investigation of rape charges made by a female student against two Iowa football players. It wasn't until the local newspaper, the *Iowa City Press-Citizen*, filed a lawsuit that the matter was finally pushed forward, although the university did release information piecemeal.³⁹

Students can, however, fight improper claims of FERPA secrecy and win. In 2008, the U.S. Department of Education found the University of Virginia in Charlottesville misapplied FERPA when it required students who were sexually assaulted to sign confidentiality agreements to learn about the outcome of their own complaints.⁴⁰ While it remains uncertain how much the public and press can demand to know about the workings of campus courts in most states, Congress has provided some clarification.

THE PROBLEM WITH FERPA

The U.S. Department of Education is the agency in charge of administering FERPA, and it is the sole vehicle for enforcing a FERPA violation. Schools and colleges look to the DOE to provide legal interpretations when there is confusion over whether particular types of information should or should not be kept confidential.

Unfortunately, the DOE has failed for many years to offer clear guidance to schools and colleges about what information is and is not truly exempt from disclosure when requested under a state open-records act. The DOE's approach has historically been one of "secrecy for secrecy's sake," with no consideration for the public's interest in disclosure. In some instances, the DOE has even taken the position that statistics — with no student names attached — can be "confidential student records," which stretches FERPA far beyond what its authors intended. When confused, most schools play it safe and opt to release nothing.

Thankfully, the public is beginning to appreciate how much newsworthy information is being illegitimately withheld on questionable FERPA privacy grounds. The *Columbus Dispatch* set off waves of howls from parents and policymakers alike with a May 2009 series of stories, following a six-month nationwide investigation, that found college athletic departments abusing FERPA to withhold documents about NCAA recruiting violations and other newsworthy matters with no valid student privacy interest. The DOE and Congress are under increasing pressure to reform FERPA so that it protects only legitimately private information such as grades. If you believe that your open-records requests are being blocked because of an improper claim of FERPA privacy — write and editorialize about it, just as the *Dispatch* did. And because there is so much room for interpretation, don't take the first FERPA-based rejection as the last word on the subject.

FERPA — SOMETIMES — IS NO EXCUSE

Congress amended FERPA in 1998 to explicitly say that certain disciplinary records are not covered by the law:

"Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of

violence ... or nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense."⁴¹

In other words, the outcomes of disciplinary proceedings involving crimes of violence, or nonforcible sex offenses, are not covered by FERPA when the accused is held responsible in that proceeding. The change answered some, but by no means all, questions about what records from so-called "campus court" proceedings are covered by FERPA and can be properly withheld if requested under state open records law.

• Does FERPA require schools to release the outcome of disciplinary proceedings?

Unfortunately, no. Although the 1998 law does not require schools to release the outcome of disciplinary proceedings, it takes away their most frequent excuse for refusing to release that information: FERPA. No school, public or private, can use FERPA as its excuse for refusing to provide disciplinary records that fall within the categories created by 1998 amendments. But because federal law does not itself require the release of disciplinary records, the ability to actually obtain them will require one of two things: (1) willingness by a school to release the records simply because they can or (2) some other legal obligation that requires their release.

Most public schools will be required to provide access to these records under their existing state open records laws. Indeed, within days of the law's passage, Patrick Nolan, a staff member of *The Standard*, Southwest Missouri State University's student newspaper, requested access to the outcomes of campus disciplinary proceedings at his school pursuant to the state's open records law. The case soon went to court, and a Missouri Circuit Court judge, citing the federal law, affirmed the school's obligation to release the information.⁴² Although this decision addressed the application of only Missouri's open records law, it provides useful ammunition to journalists in other states seeking similar access.

• What kinds of disciplinary records does the 1998 law say schools can release?

The law says a college or university can release the final results of a disciplinary proceeding when (1) the student is an "alleged perpetrator" of a "crime of violence" or a "nonforcible sex offense," and (2) the student has committed a violation of the institution's rules or policies with respect to the allegation.⁴³

An "alleged perpetrator" is a student who is alleged to have committed acts that would, if proven, constitute a crime of violence or a nonforcible sex offense (see list below).⁴⁴ It does not matter whether the college does or does not report the incident to police, or whether a police investigation is still ongoing.

• What constitutes a "crime of violence" or a "nonforcible sex offense?"

According to regulations issued by the Department of Education in 2000, a "crime of violence" means one of the following offenses: (1) arson, (2) assault offenses, (3) burglary, (4) manslaughter by negligence, (5) murder and nonnegligent manslaughter, (6) destruction/damage/vandalism of property, (7) kidnapping/abduction, (8) robbery and (9) forcible sex offenses. A "nonforcible sex offense" means (10) statutory rape and (11) incest.⁴⁵

• At what point in the disciplinary process can these records be released?

They can be released when there is a "final result." Final result means "a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within the institution."⁴⁶ This allows a school to disclose the results of a proceeding before all internal reviews and appeals have been exhausted.

• What constitutes "the final result" of a disciplinary proceeding can be released?

According to FERPA, schools can release four things: (1) the name of the student about whom the allegation is made, (2) the violation committed, (3) any sanction imposed by the institution on the student and (4) the name of any other students, such as victims or witnesses, but only when they have provided their written consent.

"Violation Committed" refers to the institutional rules or code sections that were violated as well as any essential findings supporting the institution's conclusion that the violation was committed. "Sanction Imposed" means (1) a description of the disciplinary action taken by the institution, (2) the date of its imposition and (3) its duration.⁴⁷

• Does FERPA prohibit access to campus disciplinary hearings?

The DOE, which is the only administrative agency with authority to enforce FERPA against schools, has said that "FERPA does not prevent an institution from opening disciplinary proceedings to the public."⁴⁸

Thus, where otherwise required by a state open meetings law, FERPA cannot be used as an excuse to prevent public access to campus disciplinary hearings, even if the records of such hearings are off-limits.

This is an important point to highlight, because student journalists frustrated by stonewalling on their open-records requests may be able to get the information they need simply by citing the state open-meetings law and showing up for the disciplinary hearing.

The 1998 changes to FERPA provided an important opportunity for journalists reporting on campus crime.

But even if the records you want were not exempted from FERPA by the 1998 amendments, FERPA does not necessarily override obligations for disclosure created by a state freedom of information law.⁴⁹ State legislatures ultimately have the authority to determine whether the records of state agencies should be released.

Finally, remember that FERPA applies only to information that is "directly related" to a student. It should not apply to records that contain only general "non-identifying" information, such as the age and sex of the accused, the offense and the general location of the conduct (*e.g.*, the name of a residence hall, but not an individual room number).

Nor does it apply to any information relating to college faculty, staff or other non-students.

Even for those disciplinary records still subject to FERPA, it can strongly be argued that a state open records law requires a school to remove personally identifiable information from the record (by blacking it out) and turn over the remaining information upon request.⁵⁰

NAVIGATING THE COURTHOUSE

Once an arrest is made, your story is just beginning. If the crime is prosecuted through the criminal justice system rather than (or in addition to) the college's internal disciplinary system, a whole host of new government agencies – and records and potential sources – enter the picture. If you know your way around the justice system, you'll be able to stay on top of a criminal case from arrest through trial. And if your campus police agency slams the front door, some other agency may provide a back door to even better information.

WHERE TO LOOK

- First, know your jurisdictions. **State court** (which may be called circuit or district or superior court) will handle almost all criminal matters, including violent or property crimes on campus. **Federal court** (U.S. District Court) will handle major drug trafficking offenses and other federal crimes, like bank robbery. Each courthouse will have a **criminal division clerk's office** that is the keeper of its records.

WHAT TO LOOK FOR

- **Search warrants** are issued by judges or magistrates to authorize police to search (and confiscate evidence from) homes, businesses or other premises that aren't open to public foot traffic. The warrant may be sealed until the search is completed, but afterward its contents should be a public record – including the sworn statement (“affidavit”) made by the investigating officer to convince the judge that there was enough information to justify a search.

- **Indictments** are the charging documents that describe the alleged crime and the laws violated. Indictments are the result of a grand jury hearing, but some criminal charges, particularly less-serious charges, originate with a more informal filing (typically called an **information**) by the prosecutor's office. The judge will then hold a preliminary hearing to determine whether the information is adequate to justify holding the defendant on criminal charges.

- Defense attorneys often will file **pretrial motions** to attempt to get certain evidence (or even the entire case) thrown out before trial. These motions are public records and should be kept on file at the Clerk's Office under the number assigned to each criminal defendant's case. A common pretrial motion is a **motion to suppress**, arguing that evidence gathered in violation of the defendant's rights – for instance, drugs found in the defendant's home when police searched it without getting a warrant – should be disallowed.

WHO TO GET TO KNOW

- **The prosecutor's office** (usually known as the district attorney or solicitor) will handle the case for the government. An assistant solicitor or assistant district attorney will be assigned to each case, and may be willing to talk about the charges and possible penalties.

- **The public defender's office** will represent criminal defendants who can't afford a lawyer.

- **Judges** have a staff that may include a law clerk, a calendar clerk and other assistants. They probably won't give you quotes,

but they can answer scheduling questions – “When and where is the hearing?” – and judges themselves sometimes welcome visits from reporters, especially students who are curious about the legal system.

- In federal and in some state courts, cases are assigned to **magistrates** before they go to a judge – the magistrate may handle the initial hearing where bail is set and the charges are read. Like judges, they'll have clerks and staffers that may answer basic who/when/where questions.

TIPS AND TRICKS

- Within a day or two of arrest, the defendant will be entitled to some kind of court hearing. This may be for purposes of setting a bond for his release from jail, or simply to present him with the charges against him. Typically, there will be a follow-up hearing several days or weeks later for the defendant to enter a plea of guilty or not guilty. These preliminary hearings are open to press coverage and often are good opportunities for you to (a) find out the name and contact information of the defense lawyer, and (b) get some pictures – perhaps on the way into or out of the courthouse, if cameras aren't allowed inside (see below).

- Judges can almost never close a trial (or even pretrial proceedings) to the public – there is a First Amendment right of access for the media to attend the key proceedings in a criminal case. If a judge tries to exclude you, respectfully and politely identify yourself and your media outlet, and ask for a brief recess so you can contact legal counsel.

- If you're going to cover a criminal trial, get the ground rules first. Most state courts do allow photography, but photographers should check with the judge's office in advance (and with the sheriff's deputies who control courthouse security, so that camera doesn't end up confiscated at the door).

There may be limited camera positions, “pool” arrangements or other restrictions. Cameras aren't allowed in federal courts. This may also affect your coverage plans – if you're planning to live-blog the trial, make sure your communications device will get past courthouse security.

- If you attend a trial, steer clear of talking – even elevator chat – with (or in front of) jurors. Judges are very protective of their jurors and, during trial, they're off-limits. After trial, you are free to attempt to contact them, and jurors sometimes have given the media interesting insights into what evidence was and was not convincing.

- *After* trial, the district attorney's file may be obtainable by way of an open-records request. Documents being used in an ongoing criminal prosecution may be exempted from your state's open-records law, but once the case is closed, there is no “ongoing” prosecution.

SECTION FIVE

BEST PRACTICES FOR COVERING CRIME AND COURTS

Though the procedures are somewhat different, the basics of covering the police beat on campus or on the street are essentially the same. Before embarking on the campus crime beat, here are some pointers from professional journalists on covering police. (One hint: no doughnuts!)

TIPS FROM THE PROS

Susan Schwartz, reporter
The Press Enterprise, Bloomsburg, Pa.:

- Police have a tight fraternity. The nature of their jobs can make them distrust outsiders — especially the press, which a lot of them feel is out to get them. So, if you want to get them to talk to you, you have to give them time to get to know you, and to realize you're not out to make them look bad — you just want accurate stories.
- Hang around the police station and make small talk with them — look for common ground. A lot of them are into physical fitness, so you can talk about your running program with them, or television shows you both watch, or other interests.
- If you can arrange a ride-along, do it. It will give you a better understanding of their jobs and a chance for them to know you. Plus you'll probably get a good story out of it. If you write something that makes them look good, bring them a copy of that paper.
- Realize they have a hard job. The hours are often irregular and long, the job involves an awful lot of paperwork for people who generally are more action-oriented, they deal with a lot of angry people, and sometimes they're in mortal danger.
- Cookies are usually appreciated — but avoid doughnuts — there are too many jokes about that, and you might offend them.
- Return their calls promptly, and if you make a mistake, apologize and correct it immediately. This doesn't mean you should pull your punches if the police do something wrong. Of course you should investigate and report abuses thoroughly. Good officers don't want bad members in their ranks — and if they trust you, might even tip you off to some of them. You just want to earn a reputation of being honest and fair — not a fly-by-nighter looking to make a name for yourself with a sensational, inaccurate story that makes them look bad.
- Police officers who know me have let me look over their shoulders to copy the names of accident victims and have called me to remind me of court hearings — the same officers who won't give reporters they don't trust the time of day.
- In fact, I'm writing this in the police station. There was a stabbing in my coverage area earlier today. Police in Pennsylvania don't have to release anything to the press until court papers are filed, but I already have the name of the stabbing suspect and the victim, and the officers let me hang out here, which means I saw them bring in the suspect, gave me time to call a photographer, and will be able to follow them to the arraignment. The officers even have my cell phone number — there was a moment I thought my editors were going to send me to another assignment, and the police promised to call me in time to catch up with them in court.
- Treat the officers fairly, and they'll return the favor. That's my motto.



Photos by Bradley Wilson

Bryan Dean, staff writer
The Oklahoman, Oklahoma City, Okla.

- The first thing I would say is that you have to have a healthy understanding of the openness laws in your state. The nature of the relationship between police and journalists is sometimes inherently hostile, and when conflict arises, the police are going to take advantage if you don't know the law.

- You also have to be willing to challenge them. Police use intimidation as a strategy to control suspects, and they will sometimes try to use it on young journalists, as well. You have a powerful weapon in the printing press. I've been called a bully while sitting in a room with four armed officers.

- All that said, you need to build relationships if you can, and "find your friends" on the beat. Find the officers you believe you can trust and lean on them when you need help. Understand they have a job to do and that there is a time when you might have to compromise for the sake of public safety.

- Other than openness-related tips, my best advice is to separate from the pack. Often when you are covering a breaking crime story, TV and other journalists will be on the scene. Don't be afraid to break away and hunt down your own sources rather than following the pack and talking to the one or two witnesses who seem most eager. That's often how you will find some of your best stuff.

J.W. August, managing editor
10News and Azteca America, San Diego, Calif.

- Do a ride-along every six months.
- Check the logs in the morning — look for trends.
- Be first to get that jailhouse interview when a high-profile arrest is made (understand the procedure for jail interviews).
- Talk to angry cops — they can give you the dirt.
- Develop relationships with some mucky mucks in the police union.
- Be wary of police data — always be suspicious.
- Want to make some "friends"? Go to a street fair where the cops have a booth — chat 'em up.
- Go to a crime scene AFTER the cops leave.
- Familiarize yourself with sheriffs/jail Web site.
- Know at least three bail bondsmen by their first name.
- Homicide, vice and robbery — develop at least one source in each division then expand. My goal was always having friends in the intelligence unit.
- Understand that many police officers rotate out of positions when they are coming up the ladder, so a source in robbery may become a source in vice.

Jim Lee, editor
The Carroll County Times, Westminster, Md.

- You won't get the cops to call you back by sitting at your desk. You need to respond to the calls that they respond to, even if you know you aren't going to write about it. Just like any other sources, you need to build relationships, and that comes from hanging around while they are doing their job. On off times, ask them what's happening in their department that should be written about.

No, you are not going to create news or write fluff pieces just to gain favors, but if they have a new K-9 and you haven't done a story on the training that goes in to getting a dog ready for that type of duty, perhaps your readers would be interested. Do ride-alongs — perhaps write about it; perhaps not. In today's environment where many reporters have blogs or use Twitter, perhaps a ride-along and blog or, better, tweeting during the ride-along would be something readers would enjoy, and you will be building those relationships.

- Along with that, get out into the community. Ask business owners and residents how police coverage is. Go online, there's a place where local police agencies can post arrests, www.crimereports.com. Talk to the cops on those beats, again, building relationships.

- If one police department in your area denies access to

information, go to another. When we were trying to start publishing daily police logs we got a lot of push back, but one chief saw the value in having those in print so we started publishing them. Then, we showed that to other departments. If another department can do this, why can't they? Residents also saw one department's logs in the paper and wondered why their police logs weren't in. Call the police department, we'd say, and ask them. We'll be more than happy to print them as long as they give them to us. Before long we were running them from all the departments.

**Amy L. Edwards, crime and courts reporter
The Orlando (Fla.) Sentinel:**

- Never assume anything.
- Be nice to everyone. It goes a very long way.
- Never be afraid to ask a question. If you don't ask, they won't tell. So ask as many questions as you have — regardless of how silly or ignorant it may be.
- Get out of the office — you can garner so much from a crime scene, a victim's house, a neighbor, or the roadside memorial of a child than you could sitting at your desk.
- Remember that many cops (and many others) think reporters are evil and only out to get them. Try to prove them wrong.

NEWS BROTHERS IN NEWS BR

Dick and Steve Lynn have sat on opposite ends of the news camera: Dick as a television producer and Steve as a police chief. SPLC asked each of them to share their thoughts on the best ways to cover police stories.

Behind the Camera:

Dick Lynn, Television Producer, Jamestown, RI

I have to have a reason to dislike someone. Think about that as you are interviewing police. My brother was one. In fact, he was a police chief and a very good one. I am proud of him. We are at opposite ends of the political spectrum, but I appreciate what he does, and what police do for society. Good police.

I learned a lot by doing what police call "ride-alongs," accompanying police on their beat, riding along in the back of the car. There is no substitute for experiencing their experiences.

You will see the world in a different light. Police are the first contact in a crisis, large or small. Someone's personal crisis becomes the officer's problem. In a major crisis, things happen quickly, and they must decide what to do — or not do — quickly.

People are not at their best when an officer arrives. They are distraught. They are angry. Maybe they are out of their head. They are seldom calm. They either look at the officer as their savior or their enemy. The officer never knows how the party they encounter will behave, or what they will do.

If an incident passes calmly, it is a good situation for the officer.

If you ride along before you start to report on police, you will begin to understand what they experience every day. Then you will be able to write objectively, and look at a situation from both sides. I want you to understand my brother as well as you understand the person he has been called to help — or arrest.

Behind the Badge:

D. Steven Lynn, Police Chief Retired, Davenport, IA

When you approach or interview a police officer call them just that: Officer. Not cop or other cute name.

It shows them respect. You are dealing with personalities. There is no standard police personality. By training and experience they have seen most everyone they have come in contact with want something or just lie to them. Be up front with them. Put suspicions to rest. Don't make promises you can't keep, such as their anonymity.

You should understand that in larger departments with heavy call loads that an officer may not be lying to you when he or she says they don't know about a certain call or accident. They may not. They may not know everything you think they should at a crime scene. Their assignment there (to guard the scene) may not give them access to the investigative information either!

Have patience. They may be busy and unable to respond immediately. They may become brusque. You may have taken up an unsafe position when you walked over or drove up to speak with him/her.

They might be directing you or other to move for your own safety. I can recall telling a television camera crew and anchor person not to go directly into a shooting scene after we had cleared the scene. They were shot at several times before we could respond to their predicament when they didn't take this officer's advice!

Don't flirt. Don't speak or act in a suggestive manner to get the story. Some may fall for it. Most become distrustful of you. You can be friendly.

Just report the news. Don't editorialize. You probably don't have the complete story.

SECTION SIX

The Student Press Law Center fields thousands of questions each year about libel, privacy and other pitfalls that journalists can encounter in gathering and reporting the news. A detailed treatment of each of these topics could fill a lawbook (and has).

Crime reporters don't occupy any special status - all of the standard media-law rules and privileges apply. But because they deal with extra-sensitive subject matter - few things are more damaging than being falsely accused of a crime - police reporters must take sensible precautions to protect themselves and their publications against claims by the people they cover. This section will help you at least flag the most common risk factors, and recognize when it's time to call the lawyers.

LIBEL

Libel is the publication or broadcast of a false statement of fact that harms an individual's reputation. Obviously, reporting that someone has been accused of or is any way involved in criminal activity will almost always damage a person's reputation and — if the report is false — is one of the surest ways to end up as a defendant in a libel lawsuit.

Newsrooms should adopt strict editorial policies regarding crime reporting that will catch problems before publication or broadcast. Truth is an absolute defense to a libel charge.

Reporters should be cautioned about the need to take scrupulous notes, obtain copies of all documents and consult all relevant sources. Editors should be made aware of the special need to verify reported facts and to watch for imprecise or misleading

CAUTION: COMMON LEGAL HAZARDS

copy, headlines or photograph captions.

Legal terminology can sometimes be confusing. Such terms should not be used or changed, however, until their meaning is understood.

The American Bar Association publishes a free, online guide for court reporters that includes a description of the legal process and a list of common legal terms at: <http://www.abanet.org/publiced/courts>. Legal reference materials, such as *Black's Law Dictionary*, available in most libraries, or a discussion with a practicing attorney or law professor may also prove helpful.

Whenever possible, cite a public record (a police log, filed court records, etc.) as the source for your information. Many states recognize a "public records privilege," which can insulate you, as member of the news media, from liability as long as the information was fairly characterized and accurately reported from certain records, even if it later turns out that facts contained in the public record were false.

INVASION OF PRIVACY

Invasion of privacy is related to libel law, with some important differences. Invasion of privacy law is generally concerned with a person's right to be left alone. The most common types of invasion of privacy problems of which campus crime reporters should be aware include:

- **Publishing information that may be considered "private."**

Unlike a libel claim, the fact that a statement is true is no defense. Examples might include information about a person's medical



CRIME SCENE JOURNALISM

condition, his sex life or her financial status. In the context of police reporting, the newsworthiness of an event generally overrides a privacy claim.

For example, you are free to publicize that a cyclist run over by a campus bus is in the hospital with six broken ribs, even though that person's health might not otherwise be anyone's business — the newsworthiness of the crash overrides the victim's privacy.

• Intruding on an individual's "private space."

The news media has no special license to intrude in someone's private space without consent. The press has no special right to trespass, to plant electronic "bugs" or secret cameras or to fraudulently misrepresent who they are to gain access to a private place to which they would otherwise not have access.

The press also has no special right to enter a closed crime scene without the consent of authorities, although any restrictions on access must be reasonable. On the other hand, the press cannot be denied access to public space. And any information you gather while in a public area is generally fair game for publication.

• Publishing names

One question that frequently arises in the context of invasion of privacy is that of the publication of names in stories about criminal incidents on campus.

Once you are sure your information is accurate, the decision to publish a person's name (the accused's, the victim's, a witness, etc.), even if that person is a minor, is yours. It is a myth — a persistent and common one, but still a myth — that it is "against the law" to use the names of juvenile offenders or rape victims. In fact, the Supreme Court has said just the opposite.

While many news organizations do not publish some names as a matter of editorial policy, the First Amendment protects your right to do so.

Because the decision to publish (or not publish) some names, such as sexual assault victims, is extremely controversial, it is worth anticipating the issues and developing a written policy prior to having to make a sudden decision.

The nonprofit Poynter Institute has collected a helpful list of resources that may help you in formulating such a policy.



For a more information on developing an editorial policy guiding the publication of names, visit www.poynter.org/content/content_view.asp?id=72875.

In an event such as a riot, a protest or an unfolding crime scene, journalists and law enforcement sometimes struggle to do their jobs in the same space.

Law enforcement cannot selectively exclude the press from any place where the public is allowed. Conversely, being a member of the press does not inherently grant special permission to gain access to areas off-limits to the public.

Steve Zansberg, an attorney with Levine Sullivan Koch and Schulz who represents news media organizations, reminds journalists that police cannot stop the press from covering events of this type, and offers these tips to student journalists who interact with police:

- Make sure you have press credentials and identify yourself to law enforcement on the scene as early as possible. Make it clear you are not a participant.
- Be courteous and respectful.
- If you are prohibited from filming or photographing in a particular area police are clearing, ask where you may lawfully stand and conduct your newsgathering activities.
- Remain calm in the face of confrontations between police and protesters. It never helps to add fuel to the fire.
- If you anticipate police-protester confrontations, contact law enforcement in advance to come up with a plan ahead of time and to avoid surprises and improvised rule-making in the field.

The SPLC also reminds college reporters covering unfolding events:

- If a law enforcement or school official tries to confiscate your notes or film, protest the confiscation right away. Tell the official that such action is almost always illegal. If the official insists, hand the material over — then contest the seizure.
- Be prepared for the possible execution of a search warrant in your newsroom. The federal Privacy Protection Act of 1980 states that law enforcement officials may not seize work product documents or other documents possessed by the media.
- Newsroom searches are only allowed when the government can prove the information it is looking for is needed to prevent death or serious injury, or when the government can prove the person who has the information most likely committed a crime, and the information they possess is relevant to that crime.

SECTION SEVEN

One of the most effective means of persuading school officials to make more crime information accessible is to help them realize that the consequences of cover up are far worse than those of openness.

PUBLIC PRESSURE

- Make the issue of access to campus crime information a regular news item. Editorialize about why your school's policy denying access to police logs or disciplinary records needs to be reconsidered.
- Many news people are hesitant to make themselves a focus of the story, but you have to remember that it is your readers who are ultimately being denied information. Get them involved in the battle.
- Enlist the support of the student government and/or other sympathetic campus groups including the faculty senate and women's and minority student organizations whose members may have been the victims of crime on campus. Also look for chapters of openness/civil rights advocacy groups of all political persuasions. A professor at your law school specializing in criminal law or media law can be a useful ally, either as a source to quote or, perhaps, to write an authoritative op-ed piece explaining why the public has a right of access to crime information.
- Contact local news media, professional journalism and state Freedom of Information coalitions. Make them aware of your situation and enlist their support. Find out if they have had similar problems getting information from campus officials. They might be interested in the records you seek and be willing to join in your effort, and they might also run stories about your efforts.

TURNING UP THE HEAT

- Contact local, state or national legislators who might vote on funding for your school and tell them your plight. Frequently politicians rely on student campaign workers and look for student votes. They might be able to apply some effective pressure on school administrators.
- And, of course, contact the Student Press Law Center if you need information about the law, and to keep us posted about your situation. The more information SPLC has about the extent of the problem, the better able we will be to help you fight to get it.

GOING TO COURT

Filing a lawsuit to get campus crime information should always be a last resort. It is a slow and expensive process. But if you have a legal right of access to the information, and none of your other efforts to secure that information has succeeded, court may be the only alternative.

The Student Press Law Center can provide assistance in finding a lawyer to represent you for little or no charge. You also might consider approaching local news media and wire services to join your lawsuit. In addition to adding weight and credibility to your claim, it also can increase the resources available.

SCHOOL LIABILITY FOR FAILURE TO WARN

In what may prove the most convincing argument yet, schools that refuse to provide access to accurate and timely campus crime information may soon find themselves feeling it in one place it really seems to hurt — the pocketbook.

Student journalists attempting to persuade campus police authorities to disclose information regarding campus crimes can bolster their efforts by informing school officials of their potential legal liability should they refuse. Courts nationwide have held schools civilly liable for crimes committed against their students when the school has failed to warn the student body of the dangers of crimes committed on campus. The California case of *Peterson v. San Francisco Community College District*⁵¹ is illustrative.

In *Peterson* a female student was assaulted on a stairway in the college's parking lot by a man hiding in foliage. The college knew of previous similar incidents in the same area. In holding that the college had a duty to exercise reasonable care to protect its students, the court emphasized that a college "is not immune for failure to warn its students of known dangers posed by criminals on campus."

Normally, an owner isn't legally responsible for crimes committed on his property. But what made this situation unusual, in the court's view, is that previous similar attacks put the college on notice that "any woman who might use the stairs or the parking lot would be a potential target." The attack was therefore foreseeable. Further, the college clearly controlled the premises where the student was assaulted.

As in the *Peterson* case, courts in other states have relied on foreseeability and control as the determinative factors in deciding whether to hold schools liable for criminal activities on their campuses.⁵² For example, the Kansas Supreme Court ruled that Kansas State University had "a legal duty to use reasonable care" to protect a student from criminal conduct that might occur in a residence hall common area.⁵³ That duty, the court ruled, included the duty to warn students of foreseeable dangers. In this case, a female student was sexually assaulted in her dorm by another resident, who, it turned out, was a KSU football player who had been accused of

raping another student three weeks earlier.

Clearly, schools that know about campus crimes and hide them from their students must be prepared to suffer potential legal liability for their actions. The threat of this risk serves as a powerful weapon in the student media's battle to protect their audience members.

CONCLUSION

Access to information about campus crime is one of the recurring issues for which students seek assistance from the Student Press Law Center. The frequency of questions tells us both that there is a high level of interest in the subject, and that there are frequent misunderstandings and obstructions that impede newsgathering.

The skills needed to report on campus crime are fundamental to all of journalism: understanding the structure and chain of command of the agencies you cover, getting to know the personalities and internal politics of those agencies, learning the terminology used by the insiders and using those terms precisely, cultivating sources who can provide information where documents can't, and exercising sound judgment to avoid sensationalizing or invading the rights of innocent people.

As a student journalist, you are in a position to actually bring about positive change for your community by truthful and persistent reporting about safety on campus and about the workings of the justice system.

There are times when your reporting may upset powerful people. At those times, you will find comfort in knowing your legal rights — both your right to get access to information, and (at a public institution) your First Amendment right to publish — and how to assert them intelligently.

OPEN RECORDS REQUEST LETTERS

In most cases, making a verbal request for records is a good first step. A professional but informal request in person may get you the information you need. But in some cases, especially when a verbal request has been denied, a written request letter is the best way to get the information you are seeking.

Submitting a request letter is not difficult. A complete, well-written request may help you avoid delays and further correspondence with a government agency.

This letter may be used as a model to obtain public records using your state open records law. Insert your own relevant information to conform to the provisions of your state's law and the specifics of your situation.

The SPLC's Web site is also home to a nationally-recognized automated open-records letter generator.

The letter generator can be used to request documents from a state or local government agency or body (e.g., public school district, city or campus police, state board of health, etc.)

After you fill in basic information including a reasonable description of the public record you are seeking and the name and address of the government official responsible for keeping those records, your letter will be generated.

October 16, 2009
George King, Director of Public Safety
University of Monticello
1776 American Way
Arlington, VA 22203

Dear Public Safety Director King,

Pursuant to the state open records law, Va. Code Ann. secs. 2.2-3700 to 2.2-3706, I write to request access to and a copy of all records of any kind (including, without limitation, all video and audio recordings, photos, letters, memos, notes, e-mails, electronic database entries, and any and all other forms of information) concerning the break-in of the Monroe Student Center that occurred on or about September 21, 2009. If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$50. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided by the open records law, I would request your response within five (5) working days.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Please be advised that I am prepared to pursue whatever legal remedy necessary to obtain access to the requested records. I would note that willful violation of the open records law can result in a fine of up to \$2500, for which you can be held personally liable. Court costs and reasonable attorney fees may also be awarded.

Thank you for your assistance.

Sincerely,

Tom E. Jefferson
222 Declaration Street
Arlington, VA 22209
(555) 555-5555

YOU BE THE JUDGE (OR AT LEAST TALK LIKE ONE)

A detailed examination of the American legal system is beyond the scope of this booklet. However, the American Bar Association has put together an excellent online guide, *How Courts Work*, which walks users through pre-trial procedures and provides a step-by-step guide to the criminal (and civil) trial process. The guide is free and available on the ABA's Web site.

This list covers some commonly used legal terms that a reporter on the crime beat might encounter, including some that are prone to erroneously being used as synonyms. Non-lawyers often use criminal-justice terms loosely, but small distinctions — like the difference between “theft” and “burglary” — can have huge consequences.

- **Appearance:** An “initial appearance” is a criminal defendant’s first time in court to hear the charges read, to be advised of his rights, and to have bail determined. The initial appearance is usually required by statute to occur within a few days (or sometimes just “without delay”).
- **Arraignment:** A hearing where the accused is brought before the court to plead to the criminal charge in the indictment or information. The charge is read to him and he is asked to plead “guilty” or “not guilty” or, where permitted “*no contest*” (see below).
- **Arrest:** Taking custody of another for the purpose of holding him to answer a criminal charge or civil demand. Note that people often are transported to police stations for questioning without actually being placed under arrest.
- **Bail:** A security such as cash or a bond required by a court for the release of a prisoner who must appear at a future time. A “bond” is simply a promise to pay that is secured by a cash down payment (or occasionally just by a signed promise).
- **Burglary:** Unlawfully entering a premises with the intent to commit a crime. “Entering” can be as simple as reaching through an open window — and it is a burglary once the burglar enters, even if nothing is actually stolen. Not to be used interchangeably with “*robbery*” or “*theft*.”
- **Charge:** To indict or formally accuse a person of having committed a criminal offense. Being “charged” is of course not the same thing as being convicted.
- **Defendant:** In a criminal case, it is the person accused of a crime. The opposing party will be referred to as the “prosecution” (or sometimes just “the state” or “the government”).
- **Felony:** A crime of a more serious nature than those designated as misdemeanors, generally punishable by more than one year’s incarceration. Reporters must be careful to note, for example, whether an accused has been charged with aggravated assault (a felony) or simple assault (a misdemeanor).
- **Grand Jury:** A body of citizens who have the responsibility of listening to evidence, generally presented by the prosecutor, to determine whether probable cause exists that a crime has been committed and whether an indictment should be returned. A grand jury does not determine whether a person is guilty, only whether he should be indicted.
- **Indictment:** A written accusation presented to a court by a grand jury charging that a person has done (or not done) some act that, by law, is a public offense. A person that is indicted has not been found guilty and still has the opportunity to present a full defense. A charging document filed with the court by prosecutors rather than by a grand jury is referred to as an “*information*” and not an “indictment.”
- **Innocent:** Juries do not “find people innocent,” they find them “not guilty.” A person found not guilty can accurately be described as “acquitted,” meaning there was not sufficient evidence of guilt beyond a reasonable doubt.
- **Jail:** A city or county government’s detention center where persons awaiting trial or those convicted of misdemeanors are confined. Not the same thing as “*prison*.”
- **Misdemeanor:** Offenses lower than felonies and generally punishable by fine or a term in a local jail of less than one year (as opposed to confinement in a prison).
- **No Contest/Nolo Contendere Plea:** A plea in a criminal case which has a similar legal effect as pleading guilty (but which should be reported as a “no contest” plea). Unlike a guilty plea, however, a “no contest” plea may not be used against the defendant in a subsequent lawsuit as an admission of wrongdoing.
- **Parole:** The release of a prisoner from imprisonment before the full sentence has been served. Parole usually is granted for good behavior on the condition that the parolee regularly report to a supervising officer for a specified period. Not synonymous with “*probation*.”
- **Plea:** The formal response that a defendant enters before a court in response to a criminal charge. A defendant can change his plea at any time before the conclusion of his trial.
- **Preliminary Hearing:** A criminal hearing (usually conducted by a magistrate) to determine whether there is sufficient evidence to prosecute an accused person. If sufficient evidence exists, the case will be set for trial or bound over for grand-jury review, or an information will be filed in the trial court.
- **Prison:** A state or federal facility of confinement for convicted criminals, especially felons. Not the same thing as “*jail*.”
- **Probable Cause:** A reasonable ground to suspect that a person has committed or is committing a crime, or that a place contains specific items connected with a crime. Under the Fourth Amendment, probable cause — more than a mere suspicion but less than the evidence necessary for conviction — must be shown before a warrant may be issued.
- **Probation:** A court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of (or sometimes after) sending the criminal to jail or prison. Not synonymous with “*parole*.”
- **Robbery:** The wrongful taking of property accompanied by violence or threats (even if the threat is unfounded, such as a bank robber’s note falsely claiming to have a bomb). Not to be used interchangeably with “*burglary*” or “*theft*.”
- **Theft:** The wrongful taking of property without a threat or violence, such as shoplifting. Not to be used interchangeably with “*burglary*” or “*robbery*.”
- **Verdict:** Juries return verdicts. Judges don’t. If a judge enters a sentence of 20 years in prison, that’s not a “verdict.”
- **Warrant:** A court order directing or authorizing a person to do something. An *arrest warrant* is based on a finding of probable cause that an individual has committed a crime, directing a law-enforcement officer to arrest and bring the person to court. A *search warrant* is a judge’s written order authorizing a law-enforcement officer to conduct a search of a specified place and to seize evidence.

Sources: *Black’s Law Dictionary (8th ed., 2004)*; “*Covering Crime and Justice*,” available at www.justicejournalism.org.

FOOTNOTES

1 See Campus Crime Statistical Overview, available online at: <http://ovc.ncjrs.gov/ncvrvw2009/pdf/StatisticalOverview.pdf>.

2 The NIJ report is available online at: <http://www.ojp.usdoj.gov/nij/pubs-sum/205521.htm>.

3 <http://securityoncampus.org>.

4 Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. sec. 1092(f).

5 Rob Arcamona, "Eastern Mich. U agrees to largest-ever fine for violations of crime reporting law," Student Press Law Center *News Flash* (June 6, 2008), available at: <http://www.splc.org/newsflash.asp?id=1769&year=2008>.

6 The text of the full Clery Act, 20 U.S.C. sec. 1092(f), is available in the Appendix. Additionally, the federal regulations issued by the U.S. Department of Education, which set forth many of the Act's more detailed rules and definitions and from which much of the information in this section is taken, can be found at 34 CFR 668.46, and are available online at: <http://www.gpoaccess.gov/CFR>. Finally, in 2005 the Department's Office of Postsecondary Education published *The Handbook for Campus Crime Reporting*. The handbook, which was developed by the DOE to present step-by-step procedures, examples, and references for higher education institutions to follow in meeting the Clery Act requirements, is accompanied by an online tutorial, and both can provide helpful and additional information about many of the issues discussed in this section. They are available on the DOE Web site at: <http://www.ed.gov/admins/lead/safety/campus.html>.

7 <http://www.splc.org/cleryact>

8 <http://campussafety.org>

9 The statistical reporting requirements of the Clery Act are found at 20 U.S.C. sec. 1092(f)(1).

10 The 2008 report is posted online at http://www.fbi.gov/ucr/cius2008/data/table_09.html.

11 <http://chronicle.com>

12 http://www.fbi.gov/ucr/cius2008/about/offense_definitions.html.

13 The geographic reporting requirements of the Clery Act can initially be a bit daunting. If you have additional questions, the Department of Education has created an online tutorial — primarily for campus administrators but useful to campus reporters — that uses helpful graphics and maps to better explain the law's requirements. It is available on the DOE Web site at: <http://www.ed.gov/admins/lead/safety/campus.html>

14 The daily campus police log requirements of the Clery Act are found at 20 U.S.C. sec. 1092(f)(4).

15 Christopher Carter, "N.Y. college must pay \$20,000 in settlement over discrepancies in campus crime statistics," Student Press Law Center *News Flash* (June 30, 2009), available at: <http://www.splc.org/newsflash.asp?id=1930>.

16 20 U.S.C. section 1092(f)(3).

17 20 U.S.C. section 1092(f)(1)(J).

18 20 USC §1092(f)(3); 34 CFR §668.46(e)(1)(ii).

19 74 Fed. Reg. 42380, 42440 (proposed Aug. 21, 2009)(to be codified at 34 CFR 668.46(g)).

20 *The Handbook for Campus Crime Reporting* (2005), U.S. Department of Education, Office of Postsecondary Education, page 61 (Chapter 5). Available on the DOE Web site at: <http://www.ed.gov/admins/lead/safety/campus.html>.

21 74 Fed. Reg. 42380, 42440 (proposed Aug. 21, 2009)(to be codified at 34 CFR 668.46(g)(3)).

22 *The Handbook for Campus Crime Reporting*, page 62.

23 74 Fed. Reg. 42380, 42397 (Aug. 21, 2009).

24 74 Fed. Reg. 42380, 42440 (proposed Aug. 21, 2009)(to be codified at 34 CFR 668.46(e)).

25 A list of the DOE's regional offices is available in our Appendix.

26 <http://www.rcfp.org/ogg/>

27 <http://www.nfoic.org/resources>

28 See, for example, Alaska Stat. sec. 40.25.220(3) (defining "public records" to include those "developed or received...by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency"); Ariz. Rev. Stat. sec. 39-121.01(A)(2) (defining "public body" to include "any public organization or agency, supported in whole or in part by monies from the state or any political subdivision of the state..."); Ark. Code Ann. sec. 25-19-103(5)(A) (defining "public records" to include records "of the performance or lack of performance of official functions that are or should be carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds"); 29 Del. Code sec. 10002(c) (covering bodies "established . . . appointed . . . or otherwise empowered by any state governmental entity" which are supported in whole or in part by any public funds); Fla. Stat. Ann. sec. 119.011(2) (defining public "agency" to include any "public or private agency, person, partnership, corporation or business entity acting on behalf of any public agency"); Haw. Rev. Stat. sec. 92F-3 (finding public records to include those belonging to any unit of government which is "owned, operated, or managed by or on behalf of this State or any county...") Hawaii's Attorney General has specifically ruled that the daily activity reports maintained by the University of Hawaii at Hilo's Auxiliary Services (in this case, a private company under contract with UHH to provide security guard services on the campus) are "government records," subject to public inspection. OIP Op. Ltr. No. 94-3 (March 23, 1994); Ind. Code sec. 5-14-3-2(m)(3) (defining "public agency" to include any entity that is subject to budget review by the State Board of Tax Commissioners or the governing body of a county, city, town, township or school corporation, or subject to an audit by the State Board of Accounts, meaning non-governmental bodies receiving public funds or benefits would be subject to the Act); Iowa Code sec. 22.2 (stating that "[a] government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions"); Kan. Stat. Ann. sec. 45-217(f)(1) (defining "public body" to include any entity receiving or expending and supported in whole or part by public funds); La. Rev. Stat. Ann. sec. 17:3390 (interpreted in Op. Att'y Gen. 79-282 to say that nongovernmental bodies receiving public funds, performing a public service, and rendering a public function are subject to the statute); Mich. Comp. Laws Ann. sec. 15.232(d)(iv) (defining "public body" to include "[a]ny... body which is created by state or local authority or which is primarily funded by or through state or local authority"); N.Y. Pub. Off. Law sec. 86 (defining public "agency" to include any "governmental entity performing a governmental or proprietary function for the state"); N.D. Cent. Code sec. 44-04-17.1(12) (defining "public entity" to include "any entity...created by the individual in charge of a state agency or institution, to exercise public authority or perform a governmental function..."); Ohio Rev. code sec. 149.43(A)(1) (defining "public office" to include "any state agency ... or any other ... entity established by the laws of this state for the exercise of any function of government"); 51 Okla. Stat. sec. 24A.3(3) (defining "public body" to include entities "supported in whole or in part by public funds"); S.C. Code Ann. sec. 30-4-20(a)(defining "public body" to include "any

organization...or agency supported in whole or in part by public funds or expending public funds..."); Tenn. Code Ann. sec. 49-7-2206 (specifically including "contract employees" as among those covered by its open police logs law); Utah Code Ann. sec 63G-2-301 (stating that some records created and maintained by an otherwise private entity that contracts with a governmental body may be available for public inspection); Va. Code Ann. sec. 2.2-3701 (defining "public body" to include any organization "supported wholly or principally by public funds"); W. Va. Code sec. 29B-1-2(3) (defining "public body" to include "any other body . . . which is primarily funded by [a] state or local authority"); Wis. Stat. Ann. sec. 19.36 (3) (defining public records to include "any record produced or collected under a contract entered into by a [public] authority.").

29 See, for example, Ala. Code sec. 16-22-1 — 16.22-2; D.C. Muni. Reg. 6a, Chpt. 12; Ga. Code Ann. sec. 20-8-2 (see also Ga. Code Ann. sec. 20-8-7, which requires the disclosure of campus crime records by campus police at public *and* private college and universities); 110 Ill. Comp. Stat. 1020/1; Ind. Code sec. 21-17-5; Ky. Rev. Stat. Ann. sec. 164.948(5) and 164.950-.980 (public and most private schools are also subject to the state's campus crime log law, Ky. Rev. Stat. Ann. sec. 164.9481); La. Rev. Stat. Ann sec. 17:1805; N.Y. Educ. Law sec. 6435 (see also N.Y. Crim. Pro. Law sec. 2.10(72)-(77) (regarding appointment of law enforcement officials at Canisius College, Ithaca College and Syracuse University); N.C. Gen. Stat. sec. 74G-6, see *State v. Ferebee*, 630 S.E.2d 460 (N.C. App. 2006)(finding campus police officers at private Duke University were "public officers" within meaning of statute); Ohio Rev. Stat. Ann. sec. 1713.50; Okla. Stat. Ann. Tit. 74, sec. 360.17(D) (explicitly conferring law enforcement authority on some private school police forces and deeming them "public agencies" for purposes of enforcing state laws); 71 Penn. Stat. Ann. sec. 646 (granting law enforcement authority to state-aided and state related colleges and universities); R.I. Gen. Laws sec. 12-2.1-1; S.C. Code Ann. sec. 59-116-10(2) and 59-116-20 (see also S.C. Code Ann. sec. 59-154-10, known as the Jessica Horton Act, which requires public and private campus police to report cases involving death or sexual assault to state law enforcement officials, presumably subjecting such records to disclosure); Tenn. Code Ann. sec. 49-7-118(f)(1); Tex. Educ. Code Ann. sec. 51.212; Utah Code Ann. Sec. 53-13-103(1)(b)(xi); Va. Code Ann. sec. 23-232.1 (requiring that public *and* private campus "police departments" in Virginia provide public access to criminal incident information under Va. Code Ann. sec. 23-232.2). The Western Association of Campus Law Enforcement Administrators has compiled a list of state statutes applicable to campus law enforcement agencies — including those that confer law enforcement authority status — on their Web site at: <http://www.waclea.org/statelegislation.htm>.

30 Mike Hiestand, "Don't be frightened by HIPAA," Associated Collegiate Press *Trends in College Media* (Jan. 5, 2004), available at: <http://www.studentpress.org/acp/trends/~law0104college.html>

31 *Kirwan v. Diamondback*, 721 A.2d 196 (Md. 1998)

32 <http://www.splc.org/foiletter>

33 Tex. Govt. Code sec. 552.301-.302

34 20 U.S.C. sec. 1232g(a)(4)(B)(ii).

35 34 C.F.R. 99.8(a)(1).

36 *Red & Black Publishing Co. v. Board of Regents*, 427 S.E.2d 257, 263 (Ga. 1993), and *Doe v. Red & Black Publishing Co.*, No. SU-93-CV-0847-S (May 6, 1993 Ga. Superior Ct. of Athens-Clark County), *aff'd*, 437 S.E.2d 274 (Ga. 1993).

37 *Miami Student v. Miami University*, 680 N.E.2d 956 (Ohio 1997).

38 *United States v. Miami University*, et al., 91 F. Supp. 2d 1132 (S.D. Ohio 2000), *aff'd* 294 F.3d. 797 (2002). Based on the Ohio Supreme Court's 1997 decision in *The Miami Student* case, the *Chronicle of Higher Education*, a weekly journalistic publication covering higher education issues, sought

access to student disciplinary records for the calendar years 1995 and 1996 from Miami University and Ohio State University under the Ohio open records law. The *Chronicle* obtained records covering a two-month period. Faced with the *Chronicle's* request, the schools notified the U.S. Department of Education, which filed a lawsuit against the schools seeking to prevent them from releasing further records. The *Chronicle* subsequently joined the case as a party. In March 2000, the federal district issued a permanent injunction prohibiting the schools from "releasing student disciplinary records or any 'personally identifiable information' contained therein..." The court ruled that the records sought — which included personally identifiable information — were "education records" protected by FERPA. The decision was subsequently upheld by the Sixth Circuit U.S. Court of Appeals.

39 Caitlin Wells, "Sweeping under rugs," Student Press Law Center *Report*, Winter 2008-09, available at: splc.org/report_detail.asp?id=1464&edition=48.

40 Caitlin Wells, "Education department rules UVA former policy incorrectly interpreted FERPA," Student Press Law Center *News Flash* (December 4, 2008), available at: splc.org/newsflash.asp?id=1843&year=2008.

41 20 U.S.C. sec. 1232g(b)(6)(B).

42 *Board of Governors of Southwest Missouri State University v. Nolan*, No. 198CC4344 (Greene Cty. Cir. Ct. Jan. 26, 1999) (copy on file with Student Press Law Center).

43 34 CFR 99.31(a)(14).

44 34 CFR 99.39.

45 *Id.*

46 *Id.*

47 *Id.*

48 60 Fed. Reg. 3464, 3465 (1995).

49 In the case of *Student Bar Association v. Byrd*, 239 S.E.2d 415, 419 (N.C. 1977), North Carolina's highest court said that the Buckley Amendment does not "forbid disclosure" of documents — it simply creates a penalty that may or may not be imposed if documents are disclosed. The *Byrd* ruling strongly suggests that, in the view of at least one state court, a college cannot excuse refusal to disclose a document covered by state open-records law by pointing to FERPA. *But see United States v. Miami University*, 91 F. Supp. 2d 1132 (S.D. Ohio 2000), *aff'd* 294 F.3d. 797 (2002).

50 See, e.g., M.D. State Gov't Code Ann. sec. 10-614(b)(3)(iii) (stating that if a records custodian denies public access to any record, it shall permit inspection of any part of the record that is subject to inspection and is reasonably severable).

51 685 P.2d 1193 (Cal. 1984).

52 See, for example, *Shivers v. Univ. of Cincinnati*, 2006 WL 3008478 at *1 (Ohio App. 2006) (finding that "a university has a duty to warn or protect its students from the criminal conduct of third persons"); *Kleisch v. Cleveland State University*, 2006 WL 701047 at *7 (Ohio App. 2006) (examining public university's compliance with federal Clery Act campus crime reporting requirements as part of student rape victim's claim the school had failed to adequately warn campus community of crime risks); *Bell v. University of Virgin Islands*, 2003 WL 23517144 at *4 (D.V.I. 2003) (allowing student assaulted by professor to pursue claim that university failed to warn of professor's propensity for dangerous conduct); *Furek v. University of Delaware*, 594 A.2d 506 (Del. 1991) (university liable for injuries suffered as the result of fraternity hazing because incident was foreseeable and fraternity was under university's control); *Mullins v. Pine Manor College*, 449 N.E.2d 331 (Mass. 1983) (college liable for on-campus rape of student where school officials had foreseen risk of crime); *Brown v. North Carolina Wesleyan College*, 309 S.E.2d 701 (N.C. 1983) (school not liable for abduction, rape and murder of student where no "repeated course of criminal activity" existed to render crime foreseeable).

53 *Nero v. Kansas State University*, 861 P.2d 768, 782 (Kan. 1993).

Disclosure of campus security policy and campus crime statistics.

(1) Each eligible institution participating in any program under this title, other than a foreign institution of higher education, shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution’s response to such reports.

(B) A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(C) A statement of current policies concerning campus law enforcement, including--

(i) the law enforcement authority of campus security personnel;

(ii) the working relationship of campus security personnel with State and local law enforcement agencies, including whether the institution has agreements with such agencies, such as written memoranda of understanding, for the investigation of alleged criminal offenses; and

(iii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate law enforcement agencies.

(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(E) A description of programs designed to inform students and employees about the prevention of crimes.

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available--

(i) of the following criminal offenses reported to campus security authorities or local police agencies:

(I) murder;

(II) sex offenses, forcible or nonforcible;

(III) robbery;

(IV) aggravated assault;

(V) burglary;

(VI) motor vehicle theft;

(VII) manslaughter;

(VIII) arson; and

(IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and

(ii) of the crimes described in subclauses (I) through (VIII) of clause (i), of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of other crimes involving bodily injury to any person, in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice.

(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

(H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under section 120 of this Act [20 USCS § 1011i].

(I) A statement advising the campus community where law enforcement agency information provided by a State under section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(j)), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

(J) A statement of current campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication (if appropriate), which policies shall include procedures to--

(i) 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 staff occurring on the campus, as defined in paragraph (6), unless issuing a notification will compromise efforts to contain the emergency;

(ii) publicize emergency response and evacuation procedures on an annual basis in a manner designed to reach students and staff; and

(iii) test emergency response and evacuation procedures on an annual basis.

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

(3) Each institution participating in any program under this title, other than a foreign institution of higher education, shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

(4) (A) Each institution participating in any program under this title, other than a foreign institution of higher education, that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including--

(i) the nature, date, time, and general location of each crime; and

(ii) the disposition of the complaint, if known.

(B) (i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security authority.

(ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department.

(iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.

(5) On an annual basis, each institution participating in any program under this title, other than a foreign institution of higher education, shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall--

(A) review such statistics and report to the authorizing committees on campus crime statistics by September 1, 2000;

(B) make copies of the statistics submitted to the Secretary available to the public; and

(C) in coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(6) (A) In this subsection:

(i) The term "campus" means--

(I) any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(II) property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

(ii) The term "noncampus building or property" means--

(I) any building or property owned or controlled by a student organization recognized by the institution; and

(II) any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

(iii) The term "public property" means all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.

(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

(7) The statistics described in paragraphs (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act [28 USCS § 534 note]. Such statistics shall not identify victims of crimes or persons accused of crimes.

(8) (A) Each institution of higher education participating in any program under this title, other than a foreign institution of higher education, shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding--

(i) such institution's campus sexual assault programs, which shall be aimed at prevention of sex offenses; and

(ii) the procedures followed once a sex offense has occurred.

(B) The policy described in subparagraph (A) shall address the following areas:

- (i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.
 - (ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible.
 - (iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.
 - (iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that--
 - (I) the accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and
 - (II) both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.
 - (v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.
 - (vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community.
 - (vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.
- (C) Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.

(9) The Secretary shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.

(10) Nothing in this section shall be construed to require the reporting or disclosure of privileged information.

(11) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

(12) For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur--

- (A) on campus;
- (B) in or on a noncampus building or property;
- (C) on public property; and
- (D) in dormitories or other residential facilities for students on campus.

(13) Upon a determination pursuant to section 487(c)(3)(B) [20 USCS § 1094(c)(3)(B)] that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this subsection, the Secretary shall impose a civil penalty upon the institution in the same amount and pursuant to the same procedures as a civil penalty is imposed under section 487(c)(3)(B) [20 USCS § 1094(c)(3)(B)].

(14) (A) Nothing in this subsection may be construed to--

- (i) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or
- (ii) establish any standard of care.

(B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

(15) The Secretary shall annually report to the authorizing committees regarding compliance with this subsection by institutions of higher education, including an up-to-date report on the Secretary's monitoring of such compliance.

(16) The Secretary may seek the advice and counsel of the Attorney General concerning the development, and dissemination to institutions of higher education, of best practices information about campus safety and emergencies.

(17) Nothing in this subsection shall be construed to permit an institution, or an officer, employee, or agent of an institution, participating in any program under this title to retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual with respect to the implementation of any provision of this subsection.

(18) This subsection may be cited as the "Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act".

[Current as of Oct. 1, 2009]

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STATE OPEN RECORD AND OPEN MEETING LAWS

	State Open Records Laws	State Open Meeting Laws
Alabama	Ala. Code §§ 36-12-40 to 36-12-41	Ala. Code §§ 36-25A-1 to 36-25A-11
Alaska	Alaska Stat. §§ 40.25.100 to 40.25.350	Alaska Stat. §§ 44.62.310 to 44.62.312
Arizona	Ariz. Rev. Stat. Ann. §§ 39-121 to 39-122	Ariz. Rev. Stat. Ann §§ 38-431 to 38-431.09
Arkansas	Ark. Code Ann. §§ 25-19-101 to 25-19-109	Ark. Code Ann. §§ 25-19-106
California	Cal. Gov't Code §§ 6250 to 6277	Cal. Gov't Code §§ 9027 to 9031 (assembly & senate); §§ 11123 to 11132 (state agencies); §§ 54950 to 54963 (local agencies)
Colorado	Colo. Rev. Stat. §§ 24-72-100.1 to 24-72-402	Colo. Rev. Stat. §§ 24-6-401, 24-6-402
Connecticut	Conn. Gen. Stat. §§ 1-200 to 1-217	Conn. Gen. Stat. §§ 1-225 to 1-242
Delaware	Del. Code Ann. tit. 29, §§ 10001 to 10005	Del. Code Ann. tit. 29, § 10004
District of Columbia	D.C. Code Ann. §§ 2-531 to 2-540	D.C. Code Ann. § 1-207.42
Florida	Fla. Stat. Ann. §§ 119.01 to 119.15	Fla. Stat. Ann. § 286.011
Georgia	Ga. Code Ann. §§ 50-18-70 to 50-18-77	Ga. Code Ann. §§ 50-14-1 to 50-14-6
Hawaii	Haw. Rev. Stat. §§ 92F-1 to 92F-42	Haw. Rev. Stat. §§ 92-1 to 92-13
Idaho	Idaho Code Ann. §§ 9-337 to 9-350	Idaho Code Ann. §§ 67-2340 to 67-2347
Illinois	5 Ill. Comp. Stat. Ann. 140/1 to 140/11	5 Ill. Comp. Stat. Ann. 120/1 to 120/7
Indiana	Ind. Code Ann. §§ 5-14-3-1 to 5-14-5-12	Ind. Code Ann. §§ 5-14-1.5-1 to 15-14-1.5-8
Iowa	Iowa Code Ann. §§ 22.1 to 22.14	Iowa Code Ann. §§ 21.1 to 21.11
Kansas	Kan. Stat. Ann. §§ 45-215 to 45-250	Kan. Stat. Ann. §§ 75-4317 to 75-4320c
Kentucky	Ky. Rev. Stat. Ann. §§ 61.870 to 61.884	Ky. Rev. Stat. Ann. §§ 61.805 to 61.850
Louisiana	La. Rev. Stat. Ann. §§ 44:1 to 44:41	La. Rev. Stat. Ann. §§ 42:4.1 to 42:13
Maine	Me. Rev. Stat. Ann. tit. 1, §§ 401 to 434	Me. Rev. Stat. Ann. tit. 1, §§ 401 to 412
Maryland	Md. Code Ann., State Gov't Code §§ 10-611 to 10-628	Md. Code Ann., State Gov't Code §§ 10-501 to 10-512
Massachusetts	Mass. Gen. Laws Ann. ch. 66, §§ 1 to 18	Mass. Gen. Laws Ann. ch. 30A, §§ 11A, 11A 1/2 (state) (repealed effective July 1, 2010; See 2009 Mass. Adv. Legis. Serv. 28, § 17). Effective July 1, 2010, the applicable statutory provisions will be Mass. Gen. Laws Ann. ch. 30A, §§ 18 to 25 ch. 34, §§ 9F, 9G (county) (repealed effective July 1, 2010; See 2009 Mass. Adv. Legis. Serv. 28, § 19). Effective July 1, 2010, the applicable statutory provisions will be Mass. Gen. Laws Ann. ch. 30A, §§ 18 to 25 ch. 39, §§ 23A, 23B (municipal) (repealed effective July 1, 2010; See 2009 Mass. Adv. Legis. Serv. 28, § 20). Effective July 1, 2010, the applicable statutory provisions will be Mass. Gen. Laws Ann. ch. 30A, §§ 18 to 25
Michigan	Mich. Comp. Laws §§ 15.231 to 15.246	Mich. Comp. Laws §§ 15.261 to 15.275
Minnesota	Minn. Stat. Ann. §§ 13.01 to 13.99	Minn. Stat. Ann. §§ 13D.01 to 13D.07
Mississippi	Miss. Code Ann. §§ 25-61-1 to 25-61-17	Miss. Code Ann. §§ 25-41-1 to 25-41-17
Missouri	Mo. Rev. Stat. §§ 610.010 to 610.225	Mo. Ann. Stat. §§ 610.010 to 610.035
Montana	Mont. Const. Art. II §§ 9; Mont. Code Ann. §§ 2-6-101 to 2-6-112;; 22-1-1111;	Mont. Const. Art. II §§ 9; Mont. Code Ann. §§ 2-3-201 to 2-3-221
Nebraska	Neb. Rev. Stat. §§ 84-712 to 84-712.09	Neb. Rev. Stat. §§ 84-1408 to 84-1414
Nevada	Nev. Rev. Stat. Ann. §§ 239.001 to 239.330	Nev. Rev. Stat. Ann. §§ 241.010 to 241.040
New Hampshire	N.H. Rev. Stat. Ann. §§ 91-A:1 to 91-A:9	N.H. Rev. Stat. Ann. §§ 91-A:1 to 91-A:9
New Jersey	N.J. Stat. Ann. §§ 47:1-1 to 47:1A-13	N.J. Stat. Ann. §§ 10:4-6 to 10:4-21
New Mexico	N.M. Stat. Ann. §§ 14-2-1 to 14-2-12	N.M. Stat. Ann. §§ 10-15-1 to 10-15-4
New York	N.Y. Pub. Off. Law §§ 84 to 99	N.Y. Pub. Off. Law §§ 100 to 111
North Carolina	N.C. Gen. Stat. §§ 132-1 to 132-10	N.C. Gen. Stat. §§ 143-318.9 to 143-318.18

North Dakota	N.D. Const. Art. XI, § 6 N.D. Cent. Code §§ 44-04-18 to 44-04-18.21;	N.D. Const. Art. XI, § 5; N.D. Cent. Code §§ 44-04-19 to 44-04-21.3
Ohio	Ohio Rev. Code Ann. §§ 149.43 to 149.44	Ohio Rev. Code Ann. § 121.22
Oklahoma	Okla. Stat. Ann. tit. 51, §§ 24A.1 to 24A.29	Okla. Stat. Ann. tit. 25, §§ 301 to 314
Oregon	Or. Rev. Stat. §§ 192.410 to 192.505	Or. Rev. Stat. §§ 192.610 to 192.710
Pennsylvania	65 Pa. Cons. Stat. Ann. §§ 66.2 to 66.3-1	65 Pa. Cons. Stat. Ann. §§ 701 to 716
Rhode Island	R.I. Gen. Laws §§ 38-2-1 to 38-2-15	R.I. Gen. Laws §§ 42-46-1 to 42-46-14
South Carolina	S.C. Code Ann. §§ 30-4-10 to 30-4-165	S.C. Code Ann. §§ 30-4-60 to 30-4-110
South Dakota	S.D. Codified Laws §§ 1-27-1 to 1-27-45	S.D. Codified Laws §§ 1-25-1 to 1-25-9
Tennessee	Tenn. Code Ann. §§ 10-7-503 to 10-7-512; 10-8-101 to 10-8-103	Tenn. Code Ann. §§ 8-44-101 to 8-44-201
Texas	Tex. Gov't Code Ann. §§ 552.001 to 552.353	Tex. Gov't Code Ann. §§ 551.001 to 551.146
Utah	Utah Code Ann. §§ 63G-2-201 to 63G-2-207	Utah Code Ann. §§ 52-4-101 to 52-4-305
Vermont	Vt. Stat. Ann. tit. 1 §§ 315 to 320	Vt. Stat. Ann. tit.1 §§ 310 to 314
Virginia	Va. Code Ann. §§ 2.2-3700 to 2.2-3706	Va. Code Ann. §§ 2.2-3707 to 2.2-3714
Washington	Wash. Rev. Code Ann. §§ 42.56.001 to 42.56.904	Wash. Rev. Code Ann. §§ 42.30.010 to 42.32.030
West Virginia	W.Va. Code §§ 29B-1-1 to 29B-1-7	W.Va. Code §§ 6-9A-1 to 6-9A-12
Wisconsin	Wis. Stat. Ann. §§ 19.31 to 19.37	Wis. Stat. Ann. §§ 19.81 to 19.98
Wyoming	Wyo. Stat. Ann. §§ 16-4-201 to 16-4-205	Wyo. Stat. Ann. §§ 16-4-401 to 16-4-408

	State Open Police Log Laws	State Campus Crime Statistics Laws
California	Cal. Educ. Code §§ 67380 and 94380	Cal. Educ. Code §§ 67380-67381
Connecticut		Conn. Gen. Stat. Ann. §§ 10a-55 to 10a-55c
Delaware		Del. Code Ann. tit. 14, § 9001 to 9007
Florida		Fla. Stat. Ann. §§ 240.2683, 240.3815
Georgia	Ga. Code Ann. §§ 35-3-36	
Kentucky		Ky. Rev. Stat. Ann., § 164.9481
Louisiana		La. Rev. Stat. Ann. § 17:3351
Massachusetts	Mass. Ann. Laws, ch. 41, § 98F	Mass. Ann. Laws, ch. 6 § 168C
New York		NY Educ. Law § 6433
Oklahoma	Okla. Stat. tit. 51, § 24A.8	Okla. Stat. tit. 74, §§ 360.15 to 360.21
Pennsylvania		18 Pa. Stat. Ann. §§ 20.301 to 20.305
Tennessee	Tenn. Code Ann. § 49-7-2206	Tenn. Code Ann. §§ 49-7-2201 to 49-7-2206
Virginia	Va. Code Ann. § 23-232.2	Va. Code Ann. § 23-9.1:1
Washington		Wash. Rev. Code Ann. § 28B.10.569
West Virginia	W. Va. Code § 18B-4-5a	
Wisconsin		Wis. Stat. Ann. § 36.11

Current as of Oct. 2009

CAMPUS CRIME REPORTING RESOURCES

Student Press Law Center

The only organization in the country devoted exclusively to protecting and educating the student media about their freedom of expression and freedom of information rights. The nonprofit SPLC provides free legal help to over 1,500 student journalists and advisers each year.

1101 Wilson Blvd., Suite 1100
Arlington, VA 22209
(703) 807-1904
Web site: <http://www.splc.org>

Society of Professional Journalists

The largest professional association of journalists in America. SPJ sponsors student chapters at colleges and universities throughout the country.

3903 N. Meridian St.
Indianapolis, IN 46208
(317) 927-8000
Web site: <http://spj.org>

Freedom of Information Committee

Prof. David Cuillier, chair (as of October 2009)
University of Arizona
(520) 626-9694 (office)
cuillier@email.arizona.edu

Subcommittee On Campus Crime

Dr. Carolyn Carlson, co-chair (as of October 2009)
Kennesaw State University
(678) 797-2437 (office)
profcarlson@earthlink.net

Reporters Committee for Freedom of the Press

Assists reporters and editors for commercial media and produces publications on press law issues.

1101 Wilson Blvd., Suite 1100
Arlington, VA 22209
(703) 807-2100
Web site: <http://www.rcfp.org>

Security on Campus

Nonprofit group working to curb campus violence, promote campus crime awareness and assist crime victims and their families.

133 Ivy Lane, Suite 200
King Of Prussia, PA 19406-2101
(610) 768-9330 or (888) 251-7959
Web site: <http://securityoncampus.org>

Association for Student Conduct Administration (formerly Association for Student Judicial Affairs)

International professional association of student judicial affairs officials.

P.O. Box 2237
College Station, TX 77841-2237
(979) 845-5262
Web site: <http://www.theasca.org>

U.S. Department of Education

For FERPA (Buckley Amendment) Questions:

Director, Family Policy Compliance Office
Dept. of Education
400 Maryland Ave., SW
Washington, D.C. 20202-4605
(202) 260-3887

For Campus Security Act Questions:

Customer Support Branch
Office of Post-Secondary Education
(800) 433-7327

Fax: (202) 260-4199

<http://www.ed.gov/admins/lead/safety/campus.html>

<http://ope.ed.gov/security/>

For Official Comment:

Office of Public Affairs

(202) 401-1576

press@ed.gov

For Other Questions:

(800) 872-5327

To report violations of the Clery Act, use contact information on page 5.

ADDITIONAL ONLINE RESOURCES

Criminal Justice Journalists

Nonprofit organization composed largely of professional crime reporters organized in 1997 to improve the quality and accuracy of news reporting on crime, law enforcement and the judicial system.

Web site: <http://www.reporters.net/cjj>

Cops and Courts Reporters Listserv

Fairly low-traffic discussion list for crime and court reporters managed by Criminal Justice Journalists (mainly commercial media, but welcome college crime reporters or other "lurkers").

To subscribe send a message to: CCR-on@mail.list.com

National Freedom of Information Coalition

A coalition of state freedom of information groups.

Web site: <http://www.nfoic.org>

College Media Advisers Discussion Group ('Cmamembers')

A lively e-mail discussion list of a variety of issues by professional media advisers to college student publications.

Information about signing on to the list is available at:

<http://www.collegemedia.org>

Findlaw.com

An online law library where one can get access to the text of state and federal laws and legislation.

Web site: <http://www.findlaw.com>