

Violence Against Women Act, Clery Act, & Title IX

How the Campus SAVE provision affects all three bodies of law.

Title IX – Enacted in 1972 as part of larger educational package by the federal government. Pertinent provision requires that no person, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. Because the language of the law is very brief and raised more questions than it answered, then President Nixon assigned the Dept. of Education to be in charge of resolving questions and giving schools guidance on how to comply. The Dept. of Education occasionally issues directives or letters to schools providing them with guidance. One of these letters was published in 2011 and is known as the “Dear Colleague Letter” (DCL) and it specifically stated that the requirements of Title IX cover sexual violence and reminded schools of their responsibilities to take immediate and effective steps to respond.

- *Title IX applies only to institutions of higher education.*

Clery Act - Enacted in 1990 to require all schools receiving federal monies to collect and publish information about crime occurring on campus. Schools must publish a yearly report of all crimes reported and must immediately notify students of any reported attacks when they occur on campus. Federal law definitions (and NOT the state of Texas penal code) determines what constitutes a crime.

- *The Clery Act applies only to institutions of higher education.*

Violence Against Women Act (VAWA) – Enacted in 1994 to raise awareness of domestic violence and assault crimes against women. Some of its provisions mandated that states create separate criminal statutes for domestic violence, provided additional protections to victims like quicker access to restraining orders, ability to break housing contracts without penalty, and provided funding for safe houses. It’s been updated and modified numerous times, most notably to expand the coverage to include basically all humans (men, transgender, transsexual, etc.)

- *VAWA applies to everyone in America.*

How do these laws overlap and work together?

VAWA was updated (again) in 2013 with changes to become effective Oct. 1, 2014. One of the updates is the Campus SAVE provision which modifies the Clery Act by putting new requirements on schools about what to report and how to report it. The implementation of VAWA’s SAVE provision and the new Clery reporting requirements must comply with Title IX’s equal protection clauses.

What does the SAVE provision require a University to do?

Provide educational training on sex assault and similar topics to all new students and employees, create written procedures and methods for reporting and handling on-campus sex crimes, and include additional types of crimes in Clery reports.

What are the new educational requirements for universities under the SAVE provision?

All new students and new employees must go through a training seminar that must include:

- A statement that the university prohibits these offenses
- Define the offenses per jurisdiction (give Texas laws)
- Define consent with reference to sexual offenses (under Texas law)
- “Safe and positive” options for bystander intervention that someone may take to “prevent harm or intervene” in risky situations
- How to recognize signs of abusive behavior and how to avoid potential attacks
- Ongoing prevention and awareness campaigns for students and faculty on all of the above

What reporting requirements were added to Clery by SAVE?

- Schools must notify victim about how to seek assistance from law and campus authorities, AND
- Notify victims of their rights and the institution’s responsibilities regarding judicial no-contact, restraining, and protective orders, AND
- Prescribe clear standards for investigating and conducting student discipline hearings on domestic violence, dating violence, stalking, and sexual assault cases.

What are the new Clery investigation and conduct hearing standards required by SAVE?

- University must have a stated “standard of evidence”. The implication from the OCR guidance letter is that the standard should be “preponderance of the evidence.” Preponderance of the evidence means it is more likely to be true than not true.
- Hearing/conduct officers must be trained to handle the investigation and hearing in a manner that “protects the safety of victims” and “promotes accountability”
- Must identify “sanctions or protective measures” the institution will impose after making a final determination of rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking
- Hearing must be open to both parties (accused and accuser) and each party can bring an advisor of their choice
- Notices must be simultaneously to both parties of the outcome, appeal procedures, any changes to the result, and when it become final
- Mandates that written procedures exist to protect victim’s confidentiality and record keeping will exclude personally identifiable info on victims

What crimes were added to Clery reporting statistics by the SAVE provision?

- Adds two new groups to the Hate crimes section of Clery: national origin and gender identity
- Creates a new category of reportable offenses which include domestic violence, dating violence, and stalking
- Prohibits schools from releasing the victim’s name, but does not bar universities from identifying the accused.