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DRAFT

## **Summary and Recommendations: Enhancing Safety and Security at Colleges and Universities in Tennessee by Recording and Saving Calls Reporting Crimes and by Publishing Additional Crime Statistics**

Sending a child off to college can be one of the most stressful decisions a parent makes, and being informed and aware of potential safety risks on campus is an essential part of college preparation. Parents might be surprised to learn that some campus police or security departments in Tennessee don't record incoming calls reporting crimes or other incidents on campus—in contrast to 911 calls answered by outside dispatchers, which are always recorded and saved. Lawmakers in the 112th General Assembly expressed concern that not recording and saving calls reporting crimes could hinder investigations or lead to schools underreporting incidents on their campuses; they observed that some schools direct students (and staff) to call campus police and security departments for emergencies instead of 911. In response to these concerns, Senate Bill 2827 by Senator Hensley and House Bill 2729 by Representative Ogles (see appendix A), as amended, direct the Commission to perform a comprehensive evaluation of the routing and storage of emergency communications on the campuses of colleges and universities in Tennessee, including

- the ability of institutions to
  - store data and recordings relating to emergency communications and
  - store and retrieve complaints of criminal activity alleged to have occurred on campus and
- best policies and procedures, and consistency of messaging in this state, with respect to improving the ability of colleges and universities to store data and recordings relating to emergency communications.

There are no federal or state laws that require postsecondary institutions to record calls to their campus police and security departments; however, they are permitted to do so in Tennessee. According to interviews and a survey of public and private institutions by commission staff, many institutions in Tennessee already record these calls, including nearly all the state's public universities. But none of the community colleges said they currently record incoming calls. And few of the private institutions said that they do. Regardless, most schools direct students and faculty to dial 911 for all emergencies.

Cost could be an inhibiting factor in some cases. The director of campus safety and security for the Tennessee Board of Regents (TBR), which governs the state's community colleges and colleges of applied technology, said it would likely not be "a heavy burden"

to begin recording calls to campus police, though “there would certainly be some cost.” The cost to implement a call-recording system is driven by the number of users, the level of service and features purchased, and need for new or upgraded equipment. Smaller schools that handle infrequent emergency calls can expect to pay less than large universities with significant student housing populations and geographic footprints. In the 2023 Extraordinary Session of the 113th General Assembly, legislators appropriated \$30 million for school safety grants to public and private institutions of higher education, which could be used for call recording systems—among many other school security efforts. Anecdotally, however, institutions have said they intend to pursue this funding for purposes other than call recording.

Although the Commission found no evidence of higher crime rates or other public safety issues at colleges and universities that don’t record calls to their campus police and security departments, recordings of those calls could help police with investigations, help ensure compliance with federal and state crime-reporting requirements, and protect institutions in case of disputes over the facts of a report. For these reasons, **the Commission recommends the state encourage colleges and universities to record and retain recordings of calls reporting crimes and conduct violations to campus police and security departments by providing additional funding to help postsecondary institutions obtain or improve emergency call recording systems.**

Representative Ogles, when interviewed, expressed concern that some crimes might be underreported in college and university crime statistics. Federal and state laws require colleges and universities to report statistics and other information about crime and safety on campus. Federal law requires colleges and universities to publish statistics for specific crimes reported to campus security authorities, which include not only campus police and security but also college and university employees who have significant responsibility for student and campus activities. Tennessee’s College and University Security Information Act directs public and private institutions of higher education to report annual crime statistics to the Tennessee Bureau of Investigation’s (TBI) Tennessee Incident Based Reporting System (TIBRS) for crimes occurring on campus or in student housing; the list of crimes required to be reported under state law is broader than under federal law. Each year, the TBI compiles these statistics and publishes an annual *Crime on Campus* report; there were 4,729 reported crimes on college campuses in Tennessee in 2022. But statistics reported to TBI include only those incidents reported to local law enforcement or campus police and security.

Either way, these crime statistics only capture a portion of criminal activity. According to the US Department of Justice, less than half of all violent victimizations nationwide (not limited to college campuses) were reported to police in 2021. For many reasons,

victims of sexual assault in particular are hesitant to report their assailants to authorities. In a nationwide survey of 458,328 students across 383 colleges and universities in 2022 and 2023, “of the 14% of respondents who said they had experienced unwanted sexual contact, 86% told friends or roommates, and about half told their families. But only 6% told campus or local police, 7% told a university employee, 3% went to an on-campus crisis center, and 16% went to an off-campus crisis center.”

Through Title IX of the Education Amendments of 1972 (“Title IX”), federal law requires schools to “adopt and publish grievance procedures for students to file complaints of sex discrimination, including complaints of sexual harassment or sexual violence.” In addition to or in lieu of reporting sexual misconduct to law enforcement, victims can use the Title IX system to seek protection and disciplinary action through policies established by their institution. But the federal government does not require colleges and universities to publish statistics for the number of Title IX complaints they receive, and only three states—Louisiana, Maryland, and New York—require schools to report this information.

Data from Maryland provide an example of how publishing Title IX reports could give parents and students a more complete view of campus safety:

- During the state’s 2020-2022 reporting cycle, institutions of higher education in Maryland reported 957 incidents categorized as sexual assault.
- Of the 527 reports categorized as Sexual Assault I (rape), only 23% were reported to law enforcement.
- Of the remaining 430 categorized as Sexual Assault II (attempted rape and other non-consensual sexual contact), just 13% were reported to law enforcement.

The data show that more incidents of sexual assault were reported to campus Title IX authorities (957) than to law enforcement (173). The state’s 2022 report notes that even these additional data understate the true prevalence of sexual misconduct on college campuses:

For institutions that collected data on prevalence of sexual violence . . . many found that the incidents of sexual misconduct reported to the college and university represent only a subset of the incidents experienced. In other words, the reports of incidents provided by the institutions for this mandate may underreport incidents of sexual violence.

In 2019, the University of Tennessee system developed a standard format for reporting and tracking Title IX-related data across its institutions. The Title IX statistics reported tell a similar story to those in Maryland. For example, UT-Chattanooga reported 64 incidents of sexual assault through its Title IX office—only three appear in the 2019 *Crime*

*on Campus* published by TBI. Just as it does in Maryland, the apparent discrepancies aren't evidence of deliberate underreporting of crimes by institutions in Tennessee; rather, the discrepancies reflect differences in reporting requirements.

Giving parents and students more information about misconduct on campus can help them make more informed choices. To supplement the crime statistics already required to be reported under federal and state law, **the Commission recommends that the General Assembly require colleges and universities in Tennessee to publish to their websites annual statistics for complaints of sexual misconduct and assault reported to their campus Title IX authorities.**

Campus crime statistics reported under federal and state law exclude many incidents that occur off campus. Under federal law, colleges and universities are required to report only those incidents that occur on campus, on public property within or immediately adjacent to their campuses, or on non-campus buildings or property that the colleges and universities own or control. Under state law, they are required to report only those crimes that occur on campus and in student housing. But as one news story put it, "Parents don't draw the distinction between on-campus and off-campus crime if their child is the victim." A 2005 study by the US Department of Justice found college students were more likely to be victims of violent crime off campus than on campus. A 2009 study at Texas Tech University found 1,600 students were crime victims off campus in Lubbock, compared with only 35 crimes included in the school's federal crime statistics.

In addition to colleges and universities in Tennessee, law enforcement agencies around the state, including those with jurisdictions over or adjacent to college campuses report all crimes in TIBRS as well. Latitude and longitude coordinates are a required part of entering the location of an incident in TIBRS. It might be possible, then, for TBI to provide statistics for crimes reported within a certain distance of college campuses.

To provide parents and students with access to more information about crimes on and in the immediate vicinity of college campuses, **the Commission recommends that the Tennessee Bureau of Investigation include statistics for crimes reported within one half mile of each college or university campus—a generally accepted walking distance—in its annual *Crime on Campus* reports and that colleges and universities publish to their websites the statistics for their institutions from this report, which they are already required to make available upon request.**

## **Analysis: How Tennessee’s Colleges and Universities Manage Emergency Calls and Report Crime Statistics**

“Most people don’t realize it, Jeanne shouldn’t have been there.”

—Connie Clery

In 1984 when Howard and Connie Clery were looking at colleges for their daughter Jeanne to attend, there was very little public information about crimes on most university campuses. Jeanne’s two older brothers had graduated from Tulane, in New Orleans, and she had been accepted to play for the school’s tennis team, so it seemed like a sure thing that she would enroll there the next fall. But at a private meeting with the university president in October, they learned that a female student had recently been murdered in her apartment just off campus. Worried about their young daughter’s safety, the Clerys looked for a school closer to their home in Pennsylvania, and chose the small, idyllic campus at Lehigh University, in Bethlehem.<sup>1</sup>

A few days after she returned from spring break in 1986, Jeanne Clery was asleep in her dorm room when Joseph Henry, a 20-year-old sophomore who lived off campus, entered her building, passing freely through several doors that had been propped open by students. (Later, the Clerys would allege that the university knew the doors were regularly being propped open but didn’t take action.) Jeanne woke up to find Henry rifling through her room; she had left the door unlocked for her roommate, who had misplaced her key. Henry slashed Jeanne with a beer bottle, raped her, and strangled her to death. It wasn’t until after Jeanne’s murder that the Clerys learned there had been 38 violent crimes—including rapes, robberies, and assaults—at Lehigh in the past three years.<sup>2</sup> At the time, there were no standards or requirements for campus crime reporting; fewer than 400 of 3,000 institutions then-nationwide were reporting to the FBI’s uniform system.<sup>3</sup> In 1988, Pennsylvania was the first state to pass a campus crime reporting law.<sup>4</sup>

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<sup>1</sup> O’Dell and Ryman 2016.

<sup>2</sup> Ibid.

<sup>3</sup> Beyette 1989.

<sup>4</sup> College and University Security Information Act (P.L. 448, No. 73). Griffaton 1993: “Pennsylvania was the first state to pass such reporting legislation.”

Other states followed suit, including Tennessee in 1989.<sup>5</sup> Federal legislation came in 1990.<sup>6</sup>

Today, there are more than 360,000 students enrolled at 275 colleges, universities, and other postsecondary institutions in Tennessee, with many schools operating multiple campuses.<sup>7</sup> These students and their parents consider many factors before choosing a school. They might be surprised to learn that some campus police or security departments in Tennessee don't record incoming calls reporting crimes or other incidents on campus—in contrast to 911 calls answered by outside dispatchers, which are always recorded and saved. Lawmakers in the 112th General Assembly expressed concern that not recording and saving calls reporting crimes could hinder investigations or lead to schools underreporting incidents on their campuses; they observed that some schools direct students (and staff) to call campus police and security departments for emergencies instead of 911. In response to these concerns, Senate Bill 2827 by Senator Hensley and House Bill 2729 by Representative Ogles (see appendix A), as amended, direct the Commission to perform a comprehensive evaluation of the routing and storage of emergency communications on the campuses of colleges and universities in Tennessee, including

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- best policies and procedures, and consistency of messaging in this state, with respect to improving the ability of colleges and universities to store data and recordings relating to emergency communications.<sup>8</sup>

The bill passed the Senate as amended but was deferred to summer study by the House Finance, Ways, and Means Subcommittee. The Commission voted at its June 2022 meeting to add the study to its work plan. (See appendix A for a copy of the legislation.)

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<sup>5</sup> College and University Security Information Act (Public Chapter 317, Acts of 1989). Tennessee Code Annotated, Section 49-7-2201 et seq.

<sup>6</sup> Crime Awareness and Campus Security Act of 1990. Title II of the Student Right-To-Know and Campus Security Act (Public Law 101-542).

<sup>7</sup> Tennessee Higher Education Commission 2023a and 2023b (Figure 1.1).

<sup>8</sup> See Appendix A.



## ***Policies and messaging regarding emergency calls vary among Tennessee’s colleges and universities.***

At the majority of colleges and universities in Tennessee, students and staff are instructed to dial 911 for emergencies.<sup>9</sup> Tennessee’s 911 system is operated locally only 100 emergency communications districts (ECDs). Each district has one or more call centers, known as public safety answering points (PSAPs), designated to receive 911 calls and route them, either by dispatching, transferring, or relaying, to emergency services personnel.<sup>10</sup> PSAPs are required to have call-recording capabilities,<sup>11</sup> and revenue from a state fee on telecommunications services that connect with 911 is distributed to ECDs to fund their operations.<sup>12</sup> Most districts receive additional local funding.<sup>13</sup> In the 2023 Extraordinary Session of the 113th General Assembly, legislators appropriated \$30 million for school safety grants to public and private institutions of higher education, which could be used for call recording systems—among many other school security efforts. Anecdotally, however, institutions have said that they intend to pursue this funding for purposes other than call recording.

Recorded 911 calls are retained as public records.<sup>14</sup> For local law enforcement and ECDs “The retention and destruction of public records is governed by local record retention schedules developed pursuant to guidelines produced by the Municipal Technical Advisory Service (MTAS), County Technical Assistance Service (CTAS) and Tennessee Secretary of State’s Division of Records Management.”<sup>15</sup> MTAS and CTAS recommend that emergency radio and telephone logs be retained for at least five years; rules of the Tennessee Department of Health’s Emergency Medical Services Division specifically

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<sup>9</sup> Commission staff reviewed institutions’ websites, conducted interviews, and surveyed institutions about their emergency call policies. See appendix B for survey results.

<sup>10</sup> Tennessee Advisory Commission on Intergovernmental Relations 2017.

<sup>11</sup> “As a minimum, each 9-1-1 call must be recorded.” National Emergency Number Association 2018 (p.33).

<sup>12</sup> Tennessee Advisory Commission on Intergovernmental Relations 2017.

<sup>13</sup> Interview with Curtis Sutton, executive director, Tennessee Emergency Communications Board, March 27, 2023.

<sup>14</sup> Tennessee Code Annotated, Section 10-7-301(6). Office of the Attorney General of the State of Tennessee Opinion No. 05-155, October 13, 2005.

<sup>15</sup> Open Records Counsel, Tennessee Comptroller of the Treasury, “Records Retention.”

require that ambulance dispatch logs should be retain for at least 10 years.<sup>16</sup> However, none of these apply specifically to the storage of recordings by ECDs.<sup>17</sup>

### **Recent federal regulations made it easier for callers to reach 911 from multi-line telephone systems and for emergency services to locate callers.**

Contacting a 911 call center from a university campus landline has not always been as simple as dialing 911. Large facilities with multiple buildings often have multi-line telephone systems (MLTS), which sometimes require callers to dial a number or code before connecting to an outside line. Kari's Law, which took effect in 2020, was federal legislation to ensure that callers on MLTS can call 911 without a prefix.<sup>18</sup> Section 506 of RAY BAUM'S Act<sup>19</sup> is another federal law, which requires every 911 call to include a dispatchable location—a validated street address of the person calling and additional information such as a room or floor number. Prior to this law, emergency calls from MLTS stations generally only provided a PSAP with a telephone or circuit number of the system's outgoing line and not the emergency caller's individual location.<sup>20</sup> Enhanced 911 (E911) location accuracy rules adopted by the Federal Communications Commission (FCC) apply the same concept to calls from mobile devices. Cellular providers are required to meet dispatchable location requirements or meet horizontal (x/y location within 50 meters) and vertical location (elevation +/- 3 meters) accuracy benchmarks.<sup>21</sup>

### **Some colleges and universities instruct students to call campus police or security instead of 911.**

Calls to campus police and other public safety department numbers are not governed by the same regulations and requirements for dispatchable location or indoor location accuracy as calls to 911.<sup>22</sup> Campus police agencies in Tennessee are not part of ECDs and

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<sup>16</sup> Municipal Technical Advisory Service Reference Number MTAS-525 "Records Retention Schedules" and County Technical Assistance Service Reference Number CTAS-2068 "Current Retention Schedules."

<sup>17</sup> Interview with Curtis Sutton, executive director, Tennessee Emergency Communications Board, March 27, 2023.

<sup>18</sup> 47 USC 623 (Public Law 115-127).

<sup>19</sup> "Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018." 47 USC 609 (Public Law 115-141, Division P).

<sup>20</sup> National 911 Program 2020.

<sup>21</sup> Federal Communications Commission 2021.

<sup>22</sup> 49 CFR Part 9—911 Requirements. These regulations only apply when calling 911 and not other numbers.

therefore do not receive funds from 911 surcharges.<sup>23</sup> Federal law does not require postsecondary institutions to record or save recordings of calls to their campus police and security departments; no state requires this either. However, recording such calls is permitted under most states' laws, including in Tennessee.<sup>24</sup>

According to interviews and a survey of public and private institutions by commission staff, many campus police and security departments in Tennessee do record these calls, including nearly all the state's public universities.<sup>25</sup> However, none of the state's community colleges contacted by commission staff said they currently record incoming calls, although many direct students and staff to contact campus security for emergencies.<sup>26</sup> The state's two largest private universities, Vanderbilt and Belmont, both record calls.<sup>27</sup> Belmont employs state-certified security officers, not a commissioned police force, but instructs students and staff to call campus security first. Overall, 16 of the 22 institutions that responded to the commission's survey question (73%) said that they do not record calls made to campus security. See appendix B for complete survey results.

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<sup>23</sup> Interview with Curtis Sutton, executive director, Tennessee Emergency Communications Board, March 27, 2023.

<sup>24</sup> Tennessee Code Annotated, Section 39-13-601(b)(4): "It is lawful under §§ 39-13-601 — 39-13-603 and title 40, chapter 6, part 3 for a person acting under the color of law to intercept a wire, oral or electronic communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to such interception." Thirty-five states and the District of Columbia allow recording of calls with one-party consent. See Justia 2022 for list of states.

<sup>25</sup> Commission staff emailed 151 Tennessee colleges and universities with a link to an online survey; 23 schools responded. See appendix B.

Austin Peay University, East Tennessee State University, Middle Tennessee State University, University of Tennessee-Knoxville, and University of Tennessee-Martin responded "Yes" to the question, "Do you record calls made to campus security?" Tennessee Technological University responded "No." University of Memphis "Yes," interview with Chief Derek Myers, May 15, 2023. UT Chattanooga "Yes," email from Lieutenant Matt Holzmacher, September 19, 2023. UT Health Science Center "Yes," email from Chief Anthony Berryhill, September 20, 2023. UT Southern and Tennessee State University did not respond to staff inquiries.

<sup>26</sup> Chattanooga State Community College (Email from Daniel Renegar, chief of police, July 7, 2023); Cleveland State Community College (Email from Officer James Oister, September 7, 2023); Northeast State Community College (Email from Brian Johnson, chief of police, September 7, 2023); Nashville State Community College (Email from Tommy Phelps, chief of police, September 8, 2023); Jackson State Community College (Interview with Aaron Patton, chief of police, May 11, 2023).

<sup>27</sup> Belmont responded "Yes" to the commission's survey. Vanderbilt email from Davis Strange, chief of staff and director of general services for Vanderbilt University Public Safety, September 19, 2023.

*Some schools have their own law enforcement agencies and employ commissioned police officers.*

All public institutions of higher education in Tennessee are authorized to establish their own law enforcement agencies and employ commissioned police officers with the power to enforce all state laws as well as rules and regulations of the institutions.<sup>28</sup> But this authority only extends to a limited number of private universities:<sup>29</sup>

- private universities having an enrollment of at least 9,000 students and 9,000 or more employees, located within counties having a metropolitan form of government<sup>30</sup>
- private universities or colleges accredited by the Southern Association of Colleges and Schools and located within a county with a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census<sup>31</sup>
- private universities or colleges having a main campus of one thousand (1,000) acres or more that is located in an incorporated municipality which does not operate a police force<sup>32</sup>
- private universities or colleges that are accredited by the Southern Association of Colleges and Schools and that have an enrollment which is thirty percent (30%) or more of the population of the municipality in which the main campus is located<sup>33</sup>

Campus police officers are subject to training and standards of the Peace Officer Standards and Training Commission (POST), and are authorized to provide police

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<sup>28</sup> Tennessee Code Annotated, Section 49-7-118(a)-(d). The University of Tennessee System, Tennessee Technological University, Austin Peay State University, Tennessee State University, the University of Memphis, East Tennessee State University, Middle Tennessee State University, and the state's community colleges and colleges of applied technology are considered "Public institutions."

<sup>29</sup> Provided that the chief law enforcement officer of the metropolitan government, county, or municipal law enforcement agency in which the private university or college is located has appointed the police officer a special deputy in accordance with Tennessee Code Annotated, Section 8-8-212, or has appointed the police officer a special police officer.

<sup>30</sup> Tennessee Code Annotated, Section 49-7-118(f) applies to Vanderbilt University in Nashville.

<sup>31</sup> Tennessee Code Annotated, Section 49-7-118(f) could apply to several institutions in Shelby County. Christian Brothers University is the only one that currently has a commissioned police force.

<sup>32</sup> Tennessee Code Annotated, Section 49-7-118(g) applies to Lincoln Memorial University in Harrogate (Claiborne County).

<sup>33</sup> Tennessee Code Annotated, Section 49-7-118(h) also applies to Lincoln Memorial University.

services, enforce law, exercise arrest authority, and carry firearms.<sup>34</sup> Security officers are regulated by the Department of Commerce and Insurance under the state's Private Protective Services Licensing and Regulatory Act.<sup>35</sup>

### **Recording emergency calls can benefit postsecondary institutions in many ways.**

Recording calls to campus police and security could help with investigations, help ensure compliance with federal and state crime-reporting requirements and protect institutions in case of disputes over the facts of a report. Law enforcement agencies consider audio recordings of emergency calls to be "critical pieces of information for investigators." Emergency calls "often establish a raw first-hand account and timeline that can later be checked against other evidence."<sup>36</sup> As time passes following an event, "memories become more susceptible to error," making it important to "record a witness' recollection for an event or persons as quickly as possible."<sup>37</sup> Emergency dispatchers can be "trained to ask appropriate and specific questions of callers so that a witness' memory report can be as accurate as possible."<sup>38</sup> Two of the state's larger private universities that don't currently record calls told commission staff that they are actively exploring call-recording systems.<sup>39</sup>

Recordings of 911 calls can be used as evidence in court under very limited circumstances. In 2006, the US Supreme Court upheld a man's domestic violence conviction where evidence from a 911 call was admitted by the court when authorities were unable to locate the victim for trial.<sup>40</sup> The doctrine set forth in that case was cited recently by the Massachusetts Supreme Court in 2021 to allow statements made during a 911 call placed shortly after a domestic assault when the victim was later unable to testify at trial.<sup>41</sup>

Colleges may have reasons to want to record many other types of calls besides emergency calls. One provider of call-recording software said, "Higher education institutions

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<sup>34</sup> Tennessee Code Annotated, Section 49-7-118(i).

<sup>35</sup> Tennessee Code Annotated, Section 62-35-101 et seq.

<sup>36</sup> Murphy 2022.

<sup>37</sup> Kosziollek 2019.

<sup>38</sup> Kassis 2017.

<sup>39</sup> Email from John D. Lotrionte, director of campus police and safety, Christian Brothers University, September 19, 2023. Email from Jeffrey Dale, chief of campus security, Lipscomb University, September 19, 2023.

<sup>40</sup> Greenhouse 2006. *Davis v. Washington*, 547 U.S. 813, 126 S. Ct. 2266 (2006).

<sup>41</sup> *Commonwealth v. Rand*, 487 Mass. 811, 170 N.E.3d 324 (2021)

should consider recording interactions for a variety of reasons,” including potential for dispute resolution over issues like “tuition assistance, billing questions, scholarship inquiries, housing service needs, admissions, records/transcripts and more.” This provider also said recording calls “protects the institution and the student/parent.”<sup>42</sup> New York University has adopted a comprehensive policy for customer service call monitoring across its various schools and colleges.<sup>43</sup>

### ***Federal and state laws require schools to report crime statistics.***

Schools that participate in federal financial aid programs are required by federal law to report crime statistics and publish information about campus safety policies. Tennessee had already enacted similar requirements, predating federal law by a year, and was among the first states to do so. Commission staff identified 19 other states with their own campus crime reporting laws in addition to federal law;<sup>44</sup> colleges and universities in the remaining 30 states are only required to follow federal law. Crime reporting laws at the federal and state level provide students and parents with valuable safety information, but there are some aspects that get left out.

### **Federal Law: The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)**

Following the 1986 rape and murder Jeanne Clery in her dorm room at Lehigh University, Clery’s parents advocated for laws that required universities to disclose their crime rates having discovered that there had been 38 violent crimes on Lehigh’s campus in the preceding three years.<sup>45</sup> In 1990, Congress passed the Student Right-to-Know and Campus Security Act, which amended Title IV of the Higher Education Act of 1965 by requiring that all colleges and universities participating in federal financial aid programs under that title report crime statistics.<sup>46</sup> In 1998, the law was renamed The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) and was amended to increase the reporting requirements, adding to the types of crimes to be reported, expanded the area within which crimes must be reported, and improved

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<sup>42</sup> Numonix 2019.

<sup>43</sup> New York University 2022.

<sup>44</sup> California, Colorado, Connecticut, Delaware, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Maine, Michigan, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Utah, Virginia, and West Virginia.

<sup>45</sup> Holder 2017.

<sup>46</sup> Holder 2017. Title IV contains federal financial aid programs that provide grant, work-study, and loan funds to students attending college or career school.

accessibility of the reports.<sup>47</sup> Requirements to report hate crimes and emergency response practices were added under the Higher Education Opportunity act of 2008, and additional crimes against women were added to reporting requirements following the reauthorization of the Violence Against Women Act in 2013.<sup>48</sup>

#### *Who is Required to Report under the Clery Act?*

Regulations for who must report are not defined in statute but are identified in federal regulations as campus security authorities' or CSAs.<sup>49</sup> Under these guidelines, a campus security authority includes any of the following:

- (i) A campus police department or a campus security department of an institution.
- (ii) Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department under paragraph (i) of this definition, such as an individual who is responsible for monitoring entrance into institutional property.
- (iii) Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.
- (iv) An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. If such an official is a pastoral or professional counselor as defined below, the official is not considered a campus security authority when acting as a pastoral or professional counselor.<sup>50</sup>

Additionally, determining who constitutes a CSA is partially at the institution's discretion. Regulations do not require that employees with minimal responsibilities, such as a part-time professor, be considered CSAs. According to the *Clery Act Appendix for FSA Handbook*, "If paragraphs (i)-(iii) of the definition of CSAs are not applicable, institutions should focus on the 'significant responsibilities' of an employee when

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<sup>47</sup> Holder 2017.

<sup>48</sup> Ibid.

<sup>49</sup> US Department of Education 2021. 34 CFR 668.46 (a).

<sup>50</sup> 34 CFR 668.46(a).

determining whether that employee is a CSA.”<sup>51</sup> Crimes reported to a pastoral or professional counselor are not required to be reported.<sup>52</sup>

### *What is Required to be Reported?*

Under the Clery Act, criminal offenses including criminal homicide, rape and other sexual assaults, robbery, aggravated assaults, burglary, motor vehicle theft, and arson—as well as arrests and disciplinary referrals for violations of drug, liquor, and weapons laws—must be reported.<sup>53</sup> In addition, any criminal offenses against persons and property and incidents of larceny-theft, simple assault, intimidation or destruction/damage/vandalism of property, in which an individual or group is intentionally targeted because of their actual or perceived race, gender, religion, national origin, sexual orientation, gender identity, ethnicity, or disability must also be included, using definitions from the Hate Crime Statistics Act.<sup>54</sup> Following the 2013 reauthorization of the Violence Against Women Act, statistics regarding incidents of dating violence, domestic violence, and stalking must also be included.<sup>55</sup> All reported crimes must be recorded, but Clery Act reporting does not require initiating an investigation.<sup>56</sup>

If a reported crime is fully investigated by a sworn or commissioned law enforcement officer and is formally determined to be false or baseless (“unfounded”), then the institution is not required to report, or may remove, that reported crime from its statistics. The number of crime reports that were “unfounded” must still be disclosed to the Department of Education and in the institution’s Annual Security Report.<sup>57</sup>

### *Clery Geography*

There are three recognized categories of geographic locations wherein crimes must be reported under the Clery Act:

1. “Campus” is defined as “(i) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by

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<sup>51</sup> US Department of Education 2021.

<sup>52</sup> 34 CFR 668.46(c)(8).

<sup>53</sup> White House Task Force to Protect Students from Sexual Assault 2014.

<sup>54</sup> Ibid and 20 USC Section 1092(f)(7).

<sup>55</sup> As defined within 20 USC Sections 1092(f)(1)(F)(iii) and 1092(f)(7). White House Task Force to Protect Students from Sexual Assault 2014.

<sup>56</sup> 34 CFR 668.46(c)(2)(i).

<sup>57</sup> US Department of Education 2021.



the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and (ii) Any building or property that is within or reasonably contiguous to the area identified in paragraph (i) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).” “Reasonably contiguous geographic area” is not defined, but additional locations, branch campuses, or administrative locations not within a ‘reasonably contiguous area’ as determined by the institution, are typically considered a separate campus for reporting purposes.<sup>58</sup>

2. “Noncampus buildings and property” is defined as “(i) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or (ii) Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.”<sup>59</sup> Officially recognized fraternity and sorority-owned houses and apartment buildings owned and controlled by the university would be considered noncampus buildings. Event facilities located off campus and utilized for campus activities, such as athletic facilities used for campus sporting events, would also be included.<sup>60</sup>
3. “Public property” is defined as “All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus or immediately adjacent to and accessible from the campus.”<sup>61</sup>

Crimes that aren't located within these three categories are not included in Clery Act reporting.

#### *Other Requirements Under the Clery Act*

#### The Annual Security Report

Every year by October 1<sup>st</sup>, institutions must distribute their Annual Security Report that includes:

- Policies regarding alcoholic beverages and underage drinking laws;

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<sup>58</sup> US Department of Education 2021.

<sup>59</sup> 34 CFR 668.46(a).

<sup>60</sup> US Department of Education 2021.

<sup>61</sup> 34 CFR 668.46(a).

- Policies regarding illegal drugs and applicable federal and state drug laws;
- Programs on substance abuse;
- Programs to prevent dating violence, domestic violence, sexual assault and stalking, and the procedures institutions will follow when such crimes are reported;
- Information regarding sex offenders;
- Descriptions of emergency response and evacuation procedures;
- Policies regarding missing student notifications;
- Campus crime statistics;
- Number of crimes that were “unfounded;”
- Policies regarding procedures for reporting criminal actions or emergencies on campus;
- Policies on security of and access to campus facilities;
- Policies on enforcement authority of security personnel, working relationship of campus security personnel with state and local police agencies, accurate and prompt reporting of crimes, and pastoral and professional counselors; and
- Programs on campus security procedures and practices.<sup>62</sup>

Clery Act crime statistics for the three most recent years must be submitted to the US Department of Education through the Campus Safety and Security Survey Website.<sup>63</sup> Notice of availability of The Annual Security Report must be distributed to all current and prospective students and employees. The notice must include a statement of the report’s availability, a statement that a paper copy of the report will be provided upon request, a brief description of the contents, and the exact electronic address of the report. Federal regulations define appropriate distribution methods as: “(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail; (ii) A publication or publications provided directly to each individual; or (iii) Posting on an Internet Web site or an Intranet Web site, subject to paragraph (e)(2) and (3) of this section.”<sup>64</sup>

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<sup>62</sup> US Department of Education 2021.

<sup>63</sup> Ibid.

<sup>64</sup> 34 CFR 668.41(e).

### The Daily Crime Log

Under the Clery Act, any institution that has a campus police and security department must create and maintain a daily crime log. The nature, date, time, and general location of every crime that occurs within defined Clery geography must be included.<sup>65</sup> If known, the disposition of the complaint must be included as well. Crime log entries must be made within two business days of the report. If there is evidence that releasing any of the information required in the daily crime log would jeopardize an ongoing investigation or the safety of an individual, information may be withheld. The crime log for the most recent 60-day period must be open to public inspection during normal business hours and any other portion of the crime log must be made available within two business days.<sup>66</sup>

### Annual Fire Safety Report

Any institution that publishes an Annual Security Report under the Clery Act and maintains on-campus housing must also publish an Annual Fire Safety Report as established by 34 CFR 668.49(b).

### The Fire Log

In addition to the Annual Fire Safety Report, any school with on-campus housing must maintain a fire log under 34 CFR 668.49(d). The nature, date, time, and general location of any fire that occurred in an on-campus student housing facility must be recorded in the log within two business days. The log for the most recent 60-day period must be open to public inspection during normal business hours and any other portion of the log must be made available within two business days.<sup>67</sup>

### Emergency Response, Evacuation Notifications, and Timely Warnings

Descriptions of emergency response and evacuation procedures must be included in an institution's Annual Security Report. The statement must include the methods that the institution will use to immediately notify the campus community of any emergency situation. Emergency notifications or timely warnings are required based upon the circumstances. If a Clery Act crime occurs within an institution's Clery geography and is considered by the institution to represent a serious or continuing threat to students and

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<sup>65</sup> US Department of Education 2021.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

employees, a timely warning must be issued. See Table 1 for the differences between timely warnings and emergency notifications.

**Table 1. Clery Act Emergency Notifications vs. Timely Warnings**

	<b>Emergency Notifications</b>	<b>Timely Warnings</b>
Scope	Significant emergency or dangerous situation	Clery crimes, reported to CSAs
Triggered by?	Event that is currently occurring on or imminently threatening campus	Crimes that occurred and represented an ongoing threat
Where event occurs?	Only on campus	Anywhere on Clery Geography
How soon to issue?	Immediately upon confirmation of situation	As soon as information is available

Source: US Department of Education 2021.

#### *Compliance and Federal Enforcement of the Clery Act*

The Department of Education is responsible for enforcing compliance with the Clery Act through investigations or audits. The Department can perform two types of compliance reviews: a general assessment of an institution’s compliance with Title IV eligibility requirements, including Clery, or a focused investigation of campus security and Clery compliance.<sup>68</sup> Investigations may be initiated in response to a complaint received, in response to a media event regarding potential compliance concerns, or through a random review selection process.<sup>69</sup> The Department then collects information regarding to compliance and issues a preliminary program review report, identifying findings of noncompliance. Once the institution has a chance to respond in writing, the Department issues a final review determination, which is used to determine whether or not to issue a fine and what the fine amount will be. As of January 30,2023, the maximum Clery fine is \$67,544 per violation.<sup>70</sup>

<sup>68</sup> American Council on Education 2023.

<sup>69</sup> US Department of Education “Clery Act Reports.”

<sup>70</sup> American Council on Education 2023.

## Tennessee College and University Security Information Act

The Tennessee College and University Security Information Act says that institutions of higher education that are required to report statistics under the Clery Act must also report crimes to the Tennessee Bureau of Investigation (TBI).<sup>71</sup> . The law directs public and private institutions of higher education to report annual crime statistics to the Tennessee Bureau of Investigation's (TBI) Tennessee Incident Based Reporting System (TIBRS) for crimes occurring on campus and in student housing; the list of crimes required to be reported under state law is broader than under federal law. Each year, the TBI compiles these statistics and publishes an annual *Crime on Campus* report; there were 4,729 reported crimes on college campuses in Tennessee in 2022.

### *What is Required to be Reported?*

The types of crimes required to be reported are outlined in the TIBRS Data Collection Manual. Crimes are classified into Group A and B offenses. Group A offenses include homicide, kidnapping, forcible sex offenses (rape and fondling), robbery, assault, arson, extortion/blackmail, burglary, larceny/theft, motor vehicle theft, counterfeiting/forgery, fraud, embezzlement, stolen property, destruction/damage/vandalism, drug/narcotic violations, sex offenses (nonforcible), pornography/obscene material, gambling offenses, prostitution, human trafficking, bribery, weapon law violations, and animal cruelty.<sup>72</sup> Group B offenses include bad checks, curfew/vagrancy, disorderly conduct, DUI, drunkenness, family-nonviolent, liquor law violations, peeping tom, trespass, and all other offenses.<sup>73</sup> Colleges and universities must submit crime statistics monthly to the Tennessee Bureau of Investigation Crime Statistics Unit staff.<sup>74</sup>

### *Tennessee's definition of campus geography is different than that of the Clery Act.*

The Tennessee College and University Security Information Act requires crime statistics to be reported for crimes occurring on the campus and in on-campus student housing.<sup>75</sup> State law does not include noncampus and public property definitions comparable to those under the Clery Act. Additionally, the crime statistics shall include data for crimes

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<sup>71</sup> Tennessee Code Annotated, Sections 49-7-2202 and 2203.

<sup>72</sup> Tennessee Bureau of Investigation 2023.

<sup>73</sup> Ibid.

<sup>74</sup> Rules of the Tennessee Bureau of Investigation, Chapter 1395-1-7-.04.

<sup>75</sup> Tennessee Code Annotated, Section 49-7-2203(a).

against the students of institutions of higher education that are committed within the county where the school is located.<sup>76</sup>

#### *Other Tennessee College and University Security Information Act Requirements*

##### The Annual Report

Each institution is required to publish an annual report that includes crime statistics and crime rates for the most recent three-year period. Statistics must be reported to the TBI and each report submitted must be certified by the president or chancellor of an institution.<sup>77</sup> Crime rates are based on the numbers and categories of crimes and the number of full time equivalent undergraduate and graduate students and full-time equivalent employees.<sup>78</sup> The report must be provided to every person who submits an application for admission to the institution, each new employee, and any current student or employee upon request. If an institution has more than one campus, it must provide a report for each campus. The institution must also provide information regarding security procedures and policies to every person who submits an application for admission to the institution, each new employee, and any current student or employee upon request and must notify applicants of the availability of such information. The information for the most recent school year shall include, but is not limited to the following:

- The number of undergraduate and graduate students enrolled;
- The number of undergraduate and graduate students living in student housing;
- The total number of nonstudent employees working on the campus;
- The administrative office responsible for security on the campus;
- A description of the type and number of security personnel utilized by the institution, including a description of their training;
- The enforcement authority of security personnel, including their working relationship with state and local law enforcement agencies;
- Policy on reporting criminal incidents to state and local law enforcement agencies;

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<sup>76</sup> Tennessee Code Annotated, Section 49-7-2205(b)(1).

<sup>77</sup> Tennessee Code Annotated, Section 49-7-2203(a).

<sup>78</sup> Tennessee Code Annotated, Section 49-7-2203(b).

- Policy regarding access to institutional facilities and programs by students, employees, guests and other individuals;
- 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 the reports;
- A statement of policy regarding the possession, use and sale of alcoholic beverages;
- A statement of policy regarding the possession, use and sale of illegal drugs;
- A statement of policy regarding the possession and use of weapons by security personnel and any other person;
- Any policy regarding students or employees with criminal records;
- Security considerations used in the maintenance of campus facilities, including landscaping, groundskeeping and outdoor lighting; and
- A description of the communication media used to inform the campus community about security matters as well as the frequency with which the information is usually provided.<sup>79</sup>

Institutions that maintain student housing facilities must also include the following:

- Types of student housing available, such as on-campus, off-campus; single room, double, group; single sex, coed; undergraduate, graduate, married, or other types of student housing;
- Policies on housing assignments and requests by students for assignment changes;
- Policies concerning the identification and admission of visitors in student housing facilities;
- Measures to secure entrances to student housing facilities;
- Standard security features used to secure doors and windows in students' rooms;
- A description of the type and number of employees, including security personnel, assigned to the student housing facilities, which shall include a description of their security training;

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<sup>79</sup> Tennessee Code Annotated, Section 49-7-2203(c).

- The type and frequency of programs designed to inform student housing residents about housing security and enforcement procedures;
- Policy and any special security procedures for housing students during low-occupancy periods such as holidays and vacation periods; and
- Policy on the housing of guests and others not assigned to the student housing or not regularly associated with the institution of higher education.<sup>80</sup>

### Report to Governor and General Assembly

The TBI director must provide an annual report from all campus reports to the governor and to the State and Local Government and Education committees of the Senate and to the State Government and Education administrative committees of the House.<sup>81</sup>

### Daily Crime Log

Under the College and University Security Information Act, each institution that has a police or security department must keep and maintain a daily log, recording all crimes against persons or property reported to the department. The date, time, and general location of the crime must be included and, if an arrest has been made, the names and addresses of all persons arrests and the charges against them. All entries in the log shall be open to public inspection without charge during regular business hours.<sup>82</sup>

### *State Enforcement and Compliance*

There are several ways in which a college or university may be classified as non-compliant with the requirements of the TIBRS Program including:

- “Failure to submit data to the TBI Crime Statistics Unit (CSU) for three (3) consecutive months in a format accepted by the repository;
- Failure to submit by the 10th of the following month for four (4) consecutive months;
- Failure to have a Reporting Agency Coordinator (RAC) or alternate RAC (if applicable) receive the mandatory hours of TIBRS Program training annually;

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<sup>80</sup> Tennessee Code Annotated, Section 49-7-2203(d).

<sup>81</sup> Tennessee Code Annotated, Section 49-7-2205(a).

<sup>82</sup> Tennessee Code Annotated, Section 49-7-2206



- Failure to implement corrective actions outlined in a report of findings from a Quality Assurance Review performed by the TBI CSU staff within sixty (60) days of receipt of the report by the college/university;
- Failure to submit a written response to the TBI CSU detailing steps taken to implement suggested recommendations within sixty (60) days of receipt of the Quality Assurance Review report;
- Failure to correct errors identified in error reports sent back to the college/university within sixty (60) days of receipt of the report;
- Failure to appoint a RAC, in writing from the administrator, within thirty (30) days of starting reporting to the TIBRS Program;
- Failure to appoint a new RAC, in writing from the administrator, within thirty (30) days after the position has become vacant;
- Failure to produce all records requested for Quality Assurance Reviews; or
- Failure to submit four (4) consecutive months of data with an error rate of less than four (4.0%) percent after the college/university has been certified.”<sup>83</sup>

Institutions that do not correct any of the incidents listed above within thirty days after notification will result in the loss of certification status. There is no fine associated with noncompliance.<sup>84</sup>

### ***Crime statistics only capture a portion of criminal activity.***

Representative Ogles, who introduced House Bill 2729, expressed concern when interviewed by commission staff that some crimes might be underreported in college and university crime statistics.<sup>85</sup> While laws requiring colleges and universities to report crimes on campus provide students and the public with important information, these reports have their limitations. First and foremost is the fact that many crimes aren't reported at all. Or, when victims do report something, they choose to report it through institutional systems instead of the criminal system. Lastly, crimes involving students that happen outside the laws' defined campus geography aren't included with campus statistics.

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<sup>83</sup> Rules of the Tennessee Bureau of Investigation, Chapter 1395-1-7-.07.

<sup>84</sup> Ibid.

<sup>85</sup> Interviewed May 22, 2022.

## **Crime victims—particularly victims of sexual assaults—report less than half of crimes to law enforcement.**

The Bureau of Justice Statistics *National Crime Victimization Survey* (NCVS) “is the nation’s primary source of information on criminal victimization.” According to the survey, only 42% of violent victimizations were reported to police in 2022. Percentages range from 81% of motor vehicle thefts reported to just 21% of rape and sexual assaults.<sup>86</sup> The NCVS covers all crime victims nationwide, not just those on college campuses. But underreporting of sexual assaults in particular has long been documented among college students. A nationwide survey of 458,328 students across 383 colleges and universities in 2022 and 2023 showed that 14% of respondents said they had experienced unwanted sexual contact at some point in their lives—19% for female-identifying students and 27% for LGBTQ+. Of those experiencing sexual violence, one in three didn’t tell anyone about it at all. For those who did tell someone, 86% told friends or roommates and 49% told their families. But only 6% told campus or local police, 7% told a university employee, and 3% went to an on-campus crisis center.<sup>87</sup> In 2019, the Association of American Universities surveyed 181,752 students at 33 public and private institutions “to examine the prevalence of, and assess the campus climate regarding, sexual assault and misconduct at colleges and universities.” One in four (25.9%) undergraduate women and 10% of female graduate and professional students reported experiencing “nonconsensual sexual contact by physical force or inability to consent” during their time in school. However, these women “made contact with a program or resource” for only 30% of incidents.<sup>88</sup>

To put this in perspective, TBI data show 266,056 undergraduate and graduate full-time equivalent enrollments at postsecondary institutions in 2021. Assuming half of are women, an estimated 27,138 (20.4% overall AAU survey rate for women) will experience nonconsensual sexual contact while enrolled in school—6,784 in a given year (assuming one-fourth of the total). Using percentages from the 2022-23 Vector Solutions survey, an estimated 407 (6%) would be reported to law enforcement. According to data from Clery reports filed by Tennessee institutions, there were 214 forcible sex offenses (rape and fondling) reported by 28 schools (of 151) in 2021.<sup>89</sup> Numbers reported by TBI in the 2021 *Crime on Campus* report are even lower; only 97 nonconsensual sex offenses on campus

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<sup>86</sup> Bureau of Justice Statistics 2023.

<sup>87</sup> Vector Solutions 2023.

<sup>88</sup> Association of American Universities 2019.

<sup>89</sup> Commission staff analysis of data from the US Department of Education “Campus Safety and Security Data Analysis Cutting Tool” at <https://ope.ed.gov/campussafety/>.

were reported in 2021, which took place at just 22 schools.<sup>90</sup> According to the AAU, “there was no relationship between official crime statistics and the prevalence rates from the survey.”

*Strategies to increase reporting need to be tailored towards the reasons victims give for not reporting.*

The most common reasons victims give for not reporting sexual assaults include:

- they could handle it themselves (AAU) / I wanted to deal with it on my own (Vector)
- incident was not serious enough to contact a program or resource (AAU) / I didn't think what happened was serious enough to talk about (Vector)
- the person felt embarrassed, ashamed, or that it would be too emotionally difficult to report (AAU) / I was ashamed/embarrassed (Vector)
- I wanted to forget it happened (Vector)<sup>91</sup>

Results from the AAU report show improvements at schools surveyed. “For schools that participated in both the 2015 and 2019 surveys, there were significant increases in student reports of their knowledge about school definitions and procedures related to sexual assault and other sexual misconduct.”<sup>92</sup>

**Title IX is a federal law that requires colleges and universities to respond promptly to reports of sexual violence but does not require them to publish Title IX statistics.**

Title IX of the Education Amendments of 1972 is a civil rights law that protects individuals from sex-based discrimination in educational programs and activities that receive federal funding. It requires that educational institutions must respond promptly and effectively to sexual harassment and sexual violence that creates a hostile environment.<sup>93</sup> Title IX does not apply to an educational institution that is controlled by a religious organization to the extent that application of Title IX would be inconsistent with the religious tenets of the organization.<sup>94</sup> Title IX also does not apply to an education

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<sup>90</sup> Tennessee Bureau of Investigation 2023.

<sup>91</sup> Association of American Universities 2019 and Vector Solutions 2023.

<sup>92</sup> Association of American Universities 2019.

<sup>93</sup> White House Task Force to Protect Students from Sexual Assault 2014.

<sup>94</sup> 20 USC, Section 1681(a)(3); 34 CFR, Section 106.12(a).

institution whose primary purpose is the training of individuals for the military services of the United States or merchant marine.<sup>95</sup>

There is significant overlap between Title IX requirements and the Clery Act in relation to institutional response to incidents of dating violence, domestic violence, sexual assault, and stalking. Schools must have a designated Title IX coordinator and must “prominently display on their websites” the coordinator’s contact information. Applicants for admission and employment, parents or legal guardians, students and employees must be notified of the name or title, office address, e-mail address, and telephone number of the Title IX coordinator.

Institutions can choose whether to have mandatory reporting for all employees, or to designate some employees to be confidential resources for college students to discuss sexual harassment without automatically triggering a report to the Title IX office. For all schools, notice to a Title IX coordinator, or to an official with authority to institute corrective measures on the recipient's behalf, charges a school with actual knowledge and triggers the school's mandatory response obligations.

Schools must offer supportive measures to the person alleged to be the victim (referred to as the “complainant.”)

- The Title IX coordinator must promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.
- Supportive measures are individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

Schools must follow a grievance process that complies with federal rules before imposing any disciplinary sanctions or other actions that are not supportive measures against the accused (“respondent.”) A school’s grievance process must:

- Treat complainants equitably by providing remedies any time a respondent is found responsible;

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<sup>95</sup> 20 USC, Section 1681(a)(4); 34 CFR, Section 106.13.

- Treat respondents equitably by not imposing disciplinary sanctions without following the grievance process prescribed;
- Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;
- Include reasonably prompt time frames for conclusion of the grievance process, including appeals and informal resolutions, with allowance for short-term, good cause delays or extensions of the time frames;
- Describe the range, or list, the possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent, following determinations of responsibility;
- State whether the school has chosen to use the preponderance of the evidence standard, or the clear and convincing evidence standard, for all formal complaints; and
- Describe the school's appeal procedures, and the range of supportive measures available to complainants and respondents.

Remedies, which are required to be provided to a complainant when a respondent is found responsible:

- Must be designed to maintain the complainant's equal access to education;
- May include the same individualized services described as supportive measures;
- Need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.<sup>96</sup>

Title IX personnel (Title IX coordinators, investigators, decision-makers, and people who facilitate any informal resolution process) must be free from conflicts of interest or bias for or against complainants or respondents and must receive training on the definition of sexual harassment in the Final Rule, the scope of the school's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

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<sup>96</sup> US Department of Education 2020.

Recipients must post materials used to train Title IX personnel on their websites, if any, or make materials available for members of the public to inspect.

*Federal law does not require schools to publish Title IX statistics.*

The federal government does not require colleges and universities to publish statistics for the number of Title IX complaints they receive, and only three states—Louisiana,<sup>97</sup> Maryland,<sup>98</sup> and New York<sup>99</sup>—require schools to report this information. Data from Maryland provide an example of how publishing Title IX reports could give parents and students a more complete view of campus safety:

- During the state’s 2020-2022 reporting cycle, institutions of higher education in Maryland reported 957 incidents categorized as sexual assault.
- Of the 527 reports categorized as Sexual Assault I (i.e. rape), only 23% were reported to law enforcement.
- Of the remaining 430 categorized as Sexual Assault II (attempted rape and other non-consensual sexual contact), just 13% were reported to law enforcement.

The data show that more incidents of sexual assault were reported to campus Title IX authorities (957) than to law enforcement (173). The state’s 2022 report notes that even this additional data understates the true prevalence of sexual misconduct on college campuses:

For institutions that collected data on prevalence of sexual violence . . . many found that the incidents of sexual misconduct reported to the college and university represent only a subset of the incidents experienced. In other words, the reports of incidents provided by the institutions for this mandate may underreport incidents of sexual violence.<sup>100</sup>

In the spring of 2019, the University of Tennessee System developed a standard format for reporting and tracking Title IX-related data across all UT institutions. The Title IX statistics reported tell a similar story to those in Maryland. UT Chattanooga reported 64 incidents of sexual assault through its Title IX office—only three appear in the 2019 *Crime on Campus* published by TBI.<sup>101</sup> In 2021, UT Knoxville reported 20 rape and 24 fondling

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<sup>97</sup> Act 472 of the 2021 Regular Legislative Session of the Louisiana Legislature.

<sup>98</sup> Education Article § 11-601.

<sup>99</sup> New York State Education Law Article 129-B (also known as “Enough Is Enough.”)

<sup>100</sup> Maryland Higher Education Commission 2022.

<sup>101</sup> University of Tennessee Chattanooga 2019.

crimes in its Clery report; the Title IX office reported 79 cases of sexual misconduct.<sup>102</sup> Just as it does in Maryland, the apparent discrepancies aren't evidence of deliberate underreporting of crimes by institutions in Tennessee; rather, the discrepancies reflect differences in reporting requirements.

### **Crime affects students off campus as well and isn't part of existing reports**

Campus crime statistics reported under federal and state law exclude many incidents that occur off campus. Under federal law, colleges and universities are required to report only those incidents that occur on campus, on public property within or immediately adjacent to their campuses, or on non-campus buildings or property that the colleges and universities own or control. And under state law they are required to report only those crimes that occur on campus and in student housing. But as one news story put it, "Parents don't draw the distinction between on-campus and off-campus crime if their child is the victim."<sup>103</sup>

A 2005 study by the US Department of Justice found college students were more likely to be victims of violence off campus than on campus between 1995 and 2002. This was true for both students who lived on campus (85%) and those living off campus (95%).<sup>104</sup> A 2009 study at Texas Tech University found 1,600 students were crime victims off campus in Lubbock, compared with only 35 crimes in the school's federal crime statistics.<sup>105</sup>

From the beginning, lawmakers and the Clery family wrestled with how to include off-campus crimes in the statistics. In an interview with *The Republic*, Connie Clery said the bill's sponsor, Sen. Arlen Specter, R-Pa., agonized over how to track off-campus crime. Ultimately, the decision was made to track only crimes on campus so there would be some data available when previously there was none. "That has been the monumental problem forever," Clery said about tracking off-campus crime.<sup>106</sup>

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<sup>102</sup> University of Tennessee Knoxville 2021.

<sup>103</sup> O'Dell 2016.

<sup>104</sup> Bureau of Justice Statistics 2005.

<sup>105</sup> Makris and Ramos 2022.

<sup>106</sup> O'Dell 2016.

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# Appendix A: Senate Bill 2827 House Bill 2729, as amended

Senate State and Local Government 1

Amendment No. 1 to SB2827

Briggs  
Signature of Sponsor

**AMEND Senate Bill No. 2827**

**House Bill No. 2729\***

by deleting all language after the enacting clause and substituting:

SECTION 1.

(a) The Tennessee advisory commission on intergovernmental relations (TACIR) shall perform a comprehensive evaluation of the routing and storage of emergency communications on colleges and universities in this state.

(b) The evaluation must include a review of:

(1) The ability of the institution to store data and recordings relating to emergency communications, and the ability to store and retrieve complaints of criminal activity alleged to have occurred on campus; and

(2) Best policies and procedures, and consistency of messaging in this state, with respect to improving the ability of colleges and universities to store data and recordings relating to emergency communications.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.

## Appendix B: Campus Security Survey Results

Commission staff emailed 151 Tennessee colleges and universities with a link to an online survey; 23 schools responded.<sup>107</sup> Respondents were able to skip questions.

Question 1: Does your institution have a campus police, public safety, or security department?

Yes: 15 (65%)

No: 8 (35%)

Question 2: Does your institution contract with a third-party to provide security services?

Yes: 8 (35%)

No: 15 (65%)

Question 3: In what format do you save information on crimes that have been reported? (Check all that apply)

Hard copies: 15 (65%)

Microsoft Word: 7 (30%)

Microsoft Excel: 2 (9%)

Other record management software: 10 (43%)

Question 4: How long do you save this information? (write-in)

Six schools answered 'indefinitely'/'as long as the school has been operating'

Two schools answered 15 years

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<sup>107</sup> Union University, Belmont University, Franklin Hair Academy School of Cosmetology, East Tennessee State University, Middle Tennessee State University, Image Maker Beauty Institute, Meharry, Goulds Academy, Tennessee College of Applied Technology- Dickson, Memphis Theological Seminary, University of Tennessee- Martin, University of Tennessee- Knoxville, Tennessee Wesleyan University, Arnold's Beauty School, Nossi College of Art & Design, Allied Health Careers Institute, LeMoyne-Owen College, Pentecostal Theological Seminary, Austin Peat State University, Middle Tennessee School of Anesthesia, Johnson University, Tennessee Technological University, Tennessee College of Applied Technology- Harriman.

Five schools answered 10 years

Five schools answered 7 years

One school answered 5 years

One school answered 3 years

One school answered 'minimum of 3 years'

One school answered 'until we switch vendors, then many times it is lost.'

One school answered 'we have not had crimes reported on campus'

Question 5: How often does your campus security staff receive training on Clery Act requirements?

Annually: 19 (86%)

Other: 3 (14%)<sup>108</sup>

Question 6: How often does your campus security staff receive training on the reporting requirements of Tennessee's law, The College and University Security Information Act?

Annually: 18 (82%)

Other: 4 (19%)<sup>109</sup>

Question 7: How often to Campus Security Authorities (CSAs) on your campus receive training on the Clery Act?

Annually: 22 (96%)

Other: 1 (4%)<sup>110</sup>

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<sup>108</sup> 'Other' responses included: 'during their training,' 'N/A,' and 'we do not have hired security staff on campus.'

<sup>109</sup> 'Other' responses included: 'during their training,' 'N/A,' 'we do not have hired security staff on campus,' and 'occasionally.'

<sup>110</sup> 'Other' response stated: 'we are a small stand alone academy we have a very good relation with the local police.'



Question 8: Does your institution have a memorandum of understanding (MOU) with local law enforcement?

Yes: 12 (52%)

No: 11 (47%)

Question 9: Do you report crimes that have occurred on campus to local law enforcement?

Yes: 17 (74%)

No: 6 (26%)

Question 10: If local law enforcement responds to a call made by a student on campus, do they notify your institution?

Yes: 17 (74%)

No: 1 (4%)

Other: 5 (22%)<sup>111</sup>

Question 11: Do you use a software program that notifies your institution when a call is made on campus to local law enforcement?

Yes: 1 (4%)

No: 22 (96%)

Question 12: Are law enforcement agencies cooperative when you request crime statistics from them in order to meet the Clery Act requirements?

Yes: 21 (91%)

No: 0 (0%)

Other: 2 (9%)<sup>112</sup>

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<sup>111</sup> 'Other' responses included: 'I contact local law enforcement monthly to see if any crimes were reported,' 'sometimes, not always,' 'we have not had reported crimes on campus,' and 'we have never had a crime reported.'

<sup>112</sup> 'Other' responses included: 'we have not had reported crimes on campus' and 'yes, but they do not track our campus.'

Question 13: Can students report crimes to the institution online?

Yes: 9 (39%)

No: 14 (61%)

Question 14: Does your institution inform student that they should call 911 if they are victims of a crime?

Yes: 21 (91%)

No: 2 (9%)

Question 15: Does your institution inform students that they should call a campus security phone number only in nonemergency situations?

Yes: 7 (32%)

No: 15 (68%)

Question 16: If a student calls 911 from a cell phone while on-campus, is the call relayed to campus security or is it relayed to local law enforcement?

Campus Security: 0 (0%)

Local Law Enforcement: 23 (100%)

Question 17: Do you record calls made to campus security?

Yes: 6 (27%)<sup>113</sup>

No: 16 (73%)

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<sup>113</sup> Schools answered that they keep their call recordings for 30 days minimum, 90 days, 180 days, and indefinitely.