

Dating Violence, Domestic Violence, Sexual Assault, and Stalking:

New Policy and Training Requirements under the
Violence Against Women Act Reauthorization 2013

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Dating Violence

Definition

VAWA amended the HEA to specify that under HEA, the term “dating violence” shall be given the same definition as given in VAWA, which is

“Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; where the existence of such a relationship is determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.”

Section 304 of VAWA also amended the Clery Act to require to require institutions include statistics on dating violence in their ASR’s. For this reason, a new definition of “dating violence” has been added to the regulations for Clery reporting purposes.

The definition of “dating violence” for Clery compliance purposes is

“Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship would be determined based on **the reporting party’s statement** and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.” [emphasis added]

The principle difference between the definitions is the phrase “the reporting party’s statement” added by the regulations. This phrase was added to allow an institution to determine whether a “dating relationship” existed. For the purposes of this Clery definition, dating violence includes, but is not limited to sexual or physical abuse or the threat of such abuse. The regulations also state that dating violence does not include acts that meet the definition of “domestic violence.”

Was there a Dating Relationship?

Negotiators believed it was important to consider whether individuals were involved in a dating relationship. Three possible approaches were suggested to determining whether a dating relationship exists:

- (1) Accepting the determination of campus safety officials,
- (2) Using a “reasonable person” standard, or
- (3) Basing the determination on the victim’s perspective.

By considering the reporting party’s statement, as well as other factors included in the statutory definition, the institution may give considerable weight to the victim’s view or, if someone else reported the incident, to the view of the reporting party. The regulations also clarify that, for the purposes of complying with the requirements of the Clery Act, including for statistical purposes, any incident that meets this definition of dating violence would be considered a crime.

What constitutes violent behavior?

Sexual or Physical Abuse

For Clery reporting purposes, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

- **Statutory Rape** (from NIBRS):
Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Stalking

As with sexual assault, VAWA also amended the HEA to specify the term “stalking” as having the same meaning given in VAWA which is

“Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.”

The final regulations include definitions, from the Model Stalking Code to clarify what is meant by “Course of conduct”, “Substantial emotional stress” and “Reasonable person”.

“Course of conduct” is be defined to mean two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property. Importantly, this definition recognize the broad range of potential stalking behaviors include such things as cyberstalking and online publication of personal or intimate material intended to humiliate or degrade the victim.

“Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

“Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim. The definition of stalking does not require a victim to actually suffer substantial emotional distress, but instead only that the course of conduct would cause a reasonable person to suffer distress

Finally, the regulations clarify that, for the purpose of complying with the requirements of the Clery Act, including for statistics purposes, any incident that meets this definition of stalking would be considered a crime.

Programs to Prevent Dating Violence, Domestic Violence, Sexual Assault, and Stalking

Prior to VAWA, the HEA required an institution’s ASR include a statement of policy regarding its sexual assault programs to prevent sex offenses, and related procedures. The statement was required to include a description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses.

VAWA amended the HEA to now require each higher education institution to develop and distribute as part of its ASR, a policy statement describing the institution’s programs to prevent dating violence, domestic violence, sexual assault, and stalking; and the procedures that the institution will follow once an incident of dating violence, domestic violence, sexual assault, or stalking has been reported, including