

SANTA CLARA UNIVERSITY CLERY ACT CRIME DEFINITIONS

Criminal Offenses

Criminal Homicide, including Murder and Non-negligent Manslaughter, and Manslaughter by Negligence; Sexual Assault, including Rape, Fondling, Incest and Statutory Rape; Robbery; Aggravated Assault; Burglary; Motor Vehicle Theft; and Arson.

Hate Crimes

Any of the above-mentioned offenses, and any incidents of Larceny-Theft, Simple Assault, Intimidation, or Destruction / Damage / Vandalism of Property that were motivated by bias.

VAWA Offenses

Any incidents of Domestic Violence, Dating Violence and Stalking. (Note that Sexual Assault is also a VAWA Offense but is included in the Criminal Offenses category for Clery Act reporting purposes).

Alcohol, Drug and Weapon Violations

The Clery Act requires institutions collect statistics for violations of state law and or ordinances for drug, alcohol and weapons violations.

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

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

In California, the possession and carrying of knives on college campuses are regulated by both state law and individual campus policies. Penal Code Section 626.10(a)(1) prohibits the possession of specific types of knives and weapons on the grounds of any public or private school (K-12) or any campus of a community college, state university, University of California, or private university.

Drug Abuse Violations: Violations of State and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs. The relevant substances include: Opium or Cocaine and their derivatives (Morphine, Heroin, Codeine); Marijuana; synthetic narcotics (Demerol, Methadone); and dangerous non-narcotic drugs (Barbiturates, Benzedrine).

Criminal Homicide: These offenses are separated into two categories: Murder and Non-negligent Manslaughter, and Manslaughter by Negligence.

- Murder and Non-negligent Manslaughter is defined as the willful (non-negligent) killing of one human being by another.
- Include as Murder and Non-negligent Manslaughter: Any death caused by injuries received in a fight, argument.
- Manslaughter by Negligence is defined as the killing of another person through gross negligence. Count one offense per victim.
- Include Manslaughter by Negligence: Any death caused by the gross negligence of another. In other words, it's something that a reasonable and prudent person would not do.

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

- Rape is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
- Include the crime as Rape, regardless of the age of the victim, if the victim did not consent or if the victim was incapable of giving consent. If the victim consented, the offender did not force or threaten the victim, and the victim was under the statutory age of consent, include the crime as Statutory Rape.
- Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. Fondling is recognized as an element of the other sex offenses.
- Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- Statutory Rape is sexual intercourse with a person who is under the statutory age of consent.

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

Essential Elements of a Robbery:

- Committed in the presence of a victim (usually the owner or person having custody of the property).
- Victim is directly confronted by the perpetrator.
- Victim is threatened with force or put in fear that force will be used. • Involves a Theft or Larceny.

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

Include as Aggravated Assaults:

- Assaults or attempts to kill or Murder
- Poisoning (including the use of date rape drugs)
- Assault with a dangerous or deadly weapon
- Maiming
- Mayhem
- Assault with explosives
- Assault with disease (as in cases when the offender is aware that he or she is infected with a deadly disease and deliberately attempts to inflict the disease by biting, spitting, etc.)

Burglary: Burglary is the unlawful entry of a structure to commit a felony or a theft.

Classify as Burglary:

- **Forcible Entry:** All offenses where force of any kind is used to unlawfully enter a structure for the purpose of committing a theft or felony.
- **Unlawful Entry - No Force:** The entry of a structure in this situation is achieved by use of an unlocked door or window.
- **Attempted Forcible Entry:** A situation where a forcible entry into a locked structure is attempted but not completed.

Motor Vehicle Theft: Motor Vehicle Theft is the theft or attempted theft of a motor vehicle

Classify as Motor Vehicle Theft:

- Theft of any self-propelled vehicle that runs on land surface and not on rails, such as sport utility vehicles, automobiles, trucks, buses, motorcycles, motor scooters, trail bikes, mopeds, all-terrain vehicles, self-propelled motor homes, snowmobiles, golf carts and motorized wheelchairs.
- All incidents where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned. Including joyriding.

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

Classify as Arson¹:

- Only fires determined to have been willfully or maliciously set.
- Attempts to burn.
- Any fire that fire department investigations determine to meet the UCR definition of Arson regardless of the value of any property damage.
- Incidents where an individual willfully or maliciously burns his or her own property.

¹ The Clery Act requires institutions to disclose all Arsons that occur on their Clery Act geography. This includes seemingly minor fires such as burning waste baskets or bulletin boards, regardless of whether they are discovered while burning or after being extinguished.

Hate Crime: A criminal offense that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim.

Race: A preformed negative attitude toward a group of persons who possess common physical characteristics, e.g., color of skin, eyes, and/or hair; facial features, etc., genetically transmitted by descent and heredity which distinguish them as a distinct division of humankind, e.g., Asians, blacks or African Americans, whites.

Religion: A preformed negative opinion or attitude toward a group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being, e.g., Catholics, Jews, Protestants, atheists.

Sexual Orientation: A preformed negative opinion or attitude toward a group of persons based on their actual or perceived sexual orientation. Sexual Orientation is the term for a person's physical, romantic, and/or emotional attraction to members of the same and/or opposite sex, including lesbian, gay, bisexual, and heterosexual (straight) individuals.

Gender: A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender, e.g., male or female.

Gender Identity: A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender non-conforming individuals. Gender non-conforming describes a person who does not conform to the gender-based expectations of society, e.g., a woman dressed in traditionally male clothing or a man wearing makeup. A gender non-conforming person may or may not be a lesbian, gay, bisexual, or transgender person but may be perceived as such.

Ethnicity: A preformed negative opinion or attitude toward a group of people whose members identify with each other, through a common heritage, often consisting of a common language, common culture (often including a shared religion) and/or ideology that stresses common ancestry. The concept of ethnicity differs from the closely related term "race" in that "race" refers to a grouping based mostly upon biological criteria, while "ethnicity" also encompasses additional cultural factors.

National Origin: A preformed negative opinion or attitude toward a group of people based on their actual or perceived country of birth. This bias may be against people that have a name or accent associated with a national origin group, participate in certain customs associated with a national origin group, or because they are married to or associate with people of a certain national origin.

Disability: A preformed negative opinion or attitude toward a group of persons based on their physical or mental impairments, whether such disability is temporary or permanent, congenital or acquired by heredity, accident, injury, advanced age or illness.

For Clery Act purposes, Hate Crimes include any of the following offenses that are motivated by bias:

- Murder and Non-negligent Manslaughter
- Sexual Assault
- Robbery
- Aggravated Assault
- Burglary
- Motor Vehicle Theft
- Arson
- Larceny-Theft*
- Simple Assault*
- Intimidation*
- Destruction/Damage/Vandalism of Property*

*Included as a Clery Act statistic ONLY if they are classified as “Hate Crimes”.

Larceny-Theft: The unlawful taking, carrying, leading or riding away of property from the possession or constructive possession of another. (Constructive possession is the condition in which a person does not have physical custody or possession, but is in a position to exercise dominion or control over a thing).

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

Does not involve the use of a firearm, knife, cutting instrument or other dangerous weapon, and in which the victim did not sustain serious or aggravated injuries

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

A person is assumed to be placed in “reasonable fear” if he or she reports threatening words or other conduct to law enforcement personnel. To be the victim of Intimidation, one doesn’t have to be the intended target of the offender. For example, a person who reports seeing anti-gay threats on a bathroom wall to law enforcement is considered a victim. (For the Intimidation to be considered a Hate Crime there would have to be other supporting evidence of bias as well.

Destruction/Damage/Vandalism of Property: To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

California Definition of a Hate Crime (Penal Code 422.55):

“Hate crime” means a criminal act committed, in whole or in part*, because of one or more of the following actual or perceived characteristics of the victim:

- Disability
- Gender
- Nationality
- Race or ethnicity
- Religion
- Sexual orientation or an association with a person or group who has one of these characteristics, even if the victim doesn't have that characteristic him/herself
- Association with a person or group with one or more of these actual or perceived characteristics

*In whole or in part because of” means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic.

In California, for a crime to be considered a “hate crime” there must be proof that the motivation of the perpetrator who committed the crime was biased against a person or persons in a protected category, and that this bias was a “substantial factor” (and not an incidental factor) in the crime.

Violence Against Women Act: Included are - Dating Violence, Domestic Violence, Sexual Assault and Stalking.

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

Domestic Violence: A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person’s safety or the safety of others; or (2) suffer substantial emotional distress.

Course of conduct means 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.

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.