

Risk Research Bulletin

# The Campus SaVE Act: A Compliance Guide



The Campus Sexual Violence Elimination Act imposes expanded crime reporting obligations, and even more significant in the long run, it requires institutions to implement specific policies, procedures, and training related to sexual violence and intimate partner violence. The act's language is detailed, very prescriptive, and creates additional burdens for institutions that may already be struggling to meet compliance requirements.

The Campus Sexual Violence Elimination Act (SaVE Act or act) was passed in March 2013 as part of the Violence Against Women Reauthorization Act (VAWA). The Campus SaVE Act applies to almost all institutions of higher education since it is directed toward those that participate in financial aid programs under Title IV of the Higher Education Act of 1965 — which most do.

## What Does the Campus SaVE Act Do?

The Campus SaVE Act amends the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (known as the Clery Act), which requires higher education institutions to report crime statistics and disclose security-related information, in several important ways:

- It adds offenses involving domestic violence, dating violence, and stalking to the crimes that institutions must report and include in their annual security reports (ASR)
- It expands the categories of reportable “hate crimes” to include those based on bias against gender identity or national origin
- The policy statements filed as part of the ASR must now include detailed descriptions of the institution's internal procedures in cases of domestic violence, dating violence, or stalking, as well as descriptions of its education and prevention programs

Who is protected by VAWA? VAWA has been expanded in significant ways: It now protects gays, lesbians, and transgender individuals, as well as Native Americans and immigrants. Furthermore, its name notwithstanding, VAWA protects male victims of domestic violence, dating violence, sexual assault, and stalking.

The Campus SaVE Act also codifies some, but not all, provisions of the April 2011 “Dear Colleague” letter (DCL) addressing Title IX compliance that was issued by the U.S. Department of Education’s (ED) Office for Civil Rights (OCR). For example, the SaVE Act incorporates the DCL’s mandate for prompt and impartial internal investigation and resolution procedures and its requirement that alleged sexual assault victims be advised of their right to file internal complaints, criminal complaints, or both. By contrast, whereas the DCL stated that institutions must use the “preponderance of the evidence” standard in internal disciplinary hearings related to sexual harassment and violence, the SaVE Act states only that institutions must specify the standard of evidence they will use.

## How Will the Campus SaVE Act Be Enforced?

The SaVE Act became effective March 7, 2014. However, proposed regulations, which would give institutions guidance on how the ED will interpret and enforce the Act, are unlikely to be available until, at best, later in 2014. A negotiated rulemaking process is typically required to develop proposed regulations for programs under Title IV of the Higher Education Act of 1965, including the Campus SaVE Act.

# Key Definitions

Some important terms used in the Campus SaVE Act are defined in another section of VAWA. In determining what offenses to report under the Clery Act, institutions should use the following definitions:

## Domestic violence

“Felony or misdemeanor crimes of violence committed by a current or former spouse 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, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction . . . 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.”

## Dating violence

“Violence committed by a person—

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (i) the length of the relationship
- (ii) the type of relationship
- (iii) the frequency of interaction between the persons involved in the relationship”

## Stalking

“Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) fear for his or her safety or the safety of others; or

(B) suffer substantial emotional distress”

## Sexual assault

The Campus SaVE Act defines sexual assault, which—unlike domestic violence, dating violence, or stalking—was previously included as a Clery-reportable crime, as “an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.”

*Caution: The definitions of these terms used for reporting criminal offenses and training students and employees are not necessarily identical. Institutions should keep in mind that to satisfy the separate training mandates of the SaVE Act (see [Education and Training](#) section in the Checklist), training programs must incorporate the definitions of domestic violence, dating violence, sexual assault, and stalking used by their respective jurisdictions.*

# Future “best practices” guidance

In the Campus SaVE Act, Congress directed the ED to seek the assistance of the U.S. attorney general and the secretary of Health and Human Services to develop and provide for institutions “best practices information about preventing and responding to incidents of domestic violence, dating violence, sexual assault and stalking, including elements of institutional policies that have been proven successful based on evidence-based outcome measurements.” This provision indicates that institutions can expect future guidance on the types of prevention and education programs, as well as response procedures, that ED considers most effective and thus “best practices.”

In this case, the negotiating committee held three public meetings in January, February, and March of 2014. ED stated that the primary goal was “to prepare proposed regulations to address the changes made by the VAWA to the campus safety and security reporting requirements in the Clery Act,” but noted that the department “may propose additional changes to clarify and update the existing campus safety and security reporting requirements.”

In May 2013, ED issued preliminary guidance clarifying that the new crime reporting rules will become effective with the ASR due under the Clery Act on Oct. 1, 2014, and stating that while institutions await regulations, the department expects them to make a “good faith effort” to comply with the new law.

## UE Compliance Recommendations

UE recommends that institutions take the following steps to comply with the Campus SaVE Act:

- Because compliance with the Campus SaVE Act will require effective campus-wide collaboration, institutions should publicize the act as widely as possible. For example, campus constituents who need to know the SaVE Act’s requirements include students, the president and cabinet, faculty, campus security, risk management, student affairs, academic affairs, human resources, residence life, and counseling and health services staff.
- Institutions should collect data about the new categories of crimes (including hate crimes based on gender identity or national origin) that must be reported in the ASR due Oct. 1, 2014.
- In consultation with their counsel, institutions should review all:
  - Policies, procedures, and practices related to sexual misconduct to determine what revisions are needed to comply with the act
  - Education and training programs for students and employees to decide if they must be expanded to comply with the act
- Although the act does not prescribe a particular standard of proof for internal disciplinary proceedings related to sexual assault or other forms of sexual misconduct, but rather simply requires institutions to specify the standard they will use, at least for the present institutions should use the “preponderance of the evidence” standard as explained in the 2011 DCL. In passing the SaVE Act, Congress could have disavowed the preponderance standard favored by OCR, but it did not.

# Compliance Checklist

## Actions Needed

### 1 General Requirements of the SaVE Act

- In the annual security report (ASR) required under the Clery Act, does your institution:

- Report incidents of domestic violence, dating violence, or stalking that were reported to campus security authorities or local police? ☐ Yes ☐ No
- Report as additional "hate crimes" offenses that were motivated by the victim's actual or perceived gender identity or national origin? ☐ Yes ☐ No

- Does your institution include in the ASR a statement of policy regarding the institution's:

- Programs to prevent domestic violence, dating violence, sexual assault, and stalking? ☐ Yes ☐ No
- Procedures for responding to a report of domestic violence, dating violence, sexual assault, or stalking, including a statement of the standard of evidence that will apply during an internal conduct proceeding? ☐ Yes ☐ No

- When issuing "timely warnings" under the Clery Act, does your institution withhold as confidential the names of victims? ☐ Yes ☐ No

- If a student or employee reports that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking—regardless of where the offense occurred—does your institution provide the person with a written explanation of his or her rights and options? ☐ Yes ☐ No

- Does your institution prohibit retaliation by its officers, employees, or agents against a person who exercises his or her rights or responsibilities under any provision of the Campus SaVE Act? ☐ Yes ☐ No

### 2 Procedural Notifications

- Does your institution include in the ASR:

- Possible sanctions and protective measures that the institution may impose after a final determination regarding rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking? ☐ Yes ☐ No

- Does your institution include in the ASR procedures victims should follow after a sex offense, incident of domestic violence, dating violence, sexual assault, or stalking, including written information about:

- The importance of preserving evidence for proof of criminal domestic violence, dating violence, sexual assault, or stalking, or for obtaining a protection order? ☐ Yes ☐ No

## ② Procedural Notifications (Continued)

- To whom offenses should be reported?

☐ Yes

☐ No
- Options regarding notifying police and campus authorities, including the victim's right to:
  - Notify either police or campus authorities?

☐ Yes

☐ No
  - Obtain assistance from campus authorities to notify the police?

☐ Yes

☐ No
  - Decline to notify police or campus authorities?

☐ Yes

☐ No
- Rights of victims and the institution's responsibilities regarding orders of protection, no-contact orders, restraining orders, or similar orders issued by a criminal, civil, or tribal court?

☐ Yes

☐ No

## ③ Disciplinary Procedures

■ Does your institution include in the ASR its procedures for internal disciplinary action in cases of alleged domestic violence, dating violence, sexual assault, or stalking, including statements that:

- The procedures will provide prompt, fair, and impartial investigation and resolution?

☐ Yes

☐ No
- The procedures will be conducted by officials who receive annual training on issues related to domestic violence, dating violence, sexual assault, and stalking, as well as how to conduct a hearing process that protects victim safety and promotes accountability?

☐ Yes

☐ No
- Both accuser and accused are entitled to the same opportunity to have others present during an internal disciplinary proceeding, including the opportunity to be accompanied to any related meeting by an advisor of their choice?

☐ Yes

☐ No
- Both accuser and accused will receive simultaneous written notice of:
  - The outcome of the disciplinary hearing

☐ Yes

☐ No
  - The institution's appeal procedures

☐ Yes

☐ No
  - Any change to the results before the results are final

☐ Yes

☐ No
  - When the results become final

☐ Yes

☐ No

## Actions Needed

### ③ Disciplinary Procedures (Continued)

- |                                                                                                                                                                                                                                                                                                            |                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| • Information about how the institution will protect victim confidentiality, including how publicly available records will be kept without disclosing identity, to the extent permissible by law?                                                                                                          | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| • Written notification to students and employees about counseling, health, mental health, victim advocacy, legal assistance, and other services available on and off campus?                                                                                                                               | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| • Written notification to victims about options for, and available assistance in, changing academic, living, transportation, and working situations if those changes are requested by the victim and reasonably available, regardless of whether the victim reports the offense to campus or local police? | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |

### ④ Education and Training

- |                                                                                                                                                                                                         |                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| ■ Has your institution implemented, and described in the ASR, education programs to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking? | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| ■ Do these education programs include:                                                                                                                                                                  |                                                             |
| • Primary prevention programs for incoming students and new employees?                                                                                                                                  | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| • Ongoing prevention and awareness campaigns for current students and faculty?                                                                                                                          | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| ■ Do your institution's education programs include:                                                                                                                                                     |                                                             |
| • A statement prohibiting domestic violence, dating violence, sexual assault, and stalking?                                                                                                             | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| • The applicable jurisdiction's definition of domestic violence, dating violence, sexual assault, and stalking?                                                                                         | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| • The jurisdiction's definition of consent with regard to sexual activity?                                                                                                                              | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| • Safe and positive options that a bystander can take when he or she witnesses potential domestic violence, dating violence, sexual assault, or stalking?                                               | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| • Information about risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks?                                                                                   | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |

### Actions Needed

## Acknowledgment

This edition of United Educators' *Risk Research Bulletin*, "The Campus SaVE Act: A Compliance Guide," was written by Hillary L. Pettegrew, JD, risk counsel for UE.

## Resources

- Violence Against Women Reauthorization Act of 2013; the Campus SaVE Act is contained in Section 304 of the law.
- U.S. Department of Education: Negotiated Rulemaking 2013-2014 – Violence Against Women Act Committee
  - "The Negotiated Rulemaking Process for Title IV Regulations - Frequently Asked Questions"
  - 78 Federal Register 57571, Sept. 19, 2013, Proposed Rule, Notice of "Intention To Establish Negotiated Rulemaking Committee"
- Members of VAWA Negotiated Rulemaking Committee (as of December 2013)
- United Educators webinar, "Today's Top Clery Act Compliance Concerns"
  - Reference Materials
  - Audio file



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