

CAMPUS SECURITY OFFICER PROGRAM

MODULE II. LEGAL AND LIABILITY ISSUES

Module II. Student Guide

Module II. Goal

The goal of Module II is to introduce Campus Security Officer (CSO) to legal and liability issues related to campus security including CSO authority; search and seizure; use of force; legal rights, relationships, and responsibilities in a campus environment; and key state and federal laws with which institutions of higher learning must comply.



NOTE: It is critically important for CSOs to understand the policies and procedures established by their colleges or universities related to authority, detainment, search and seizure, use of force. Your department's policy takes precedence over the general guidelines given in this course.

Module II. Topics

A. Basis and Parameters of CSO Authority

Required Readings: *Authorities, Arrest, Search, and Use of Force*

SAMPLE Guidelines on Pursuit, Use of Force, and Efforts to Detain

B. Rights, Relationships, and Responsibilities on Campus

Required Readings: *Rights, Relationships, and Responsibilities on Campus*

SAMPLE Policy: Student Rights and Responsibilities

C. Key Federal Laws

Required Readings: *Summary of the Clery Act and Campus Sexual Assault Victims' Bill of Rights*

NEWS ARTICLE- Eastern Michigan University Clery Act Fine

FERPA and Other Privacy-Related Laws

Additional Reading: Family Educational Rights and Privacy Act (FERPA) Brochure

Required Assignments

Understanding Your Authority

CSO will identify the basis of his authority and parameters of authority related to arrest, search, and use of force by examining related policies and procedures of his employing/contracting institution.

Rights and Responsibilities in the Campus Environment: Identifying CSO Roles

CSO will identify the roles he or she plays in a) helping his employing/contracting institution exercise "reasonable care" to keep students (and others) safe by identifying and responding to risks and b) implementing college/university disciplinary policy.

Implementing the Clery Act, Campus Sexual Assault Victims' Bill of Rights, and FERPA

CSO will examine how his or her employing/contracting institution implements the Clery Act, the Campus Sexual Assault Victims' Bill of Rights, and FERPA and identifies appropriate CSO roles and responsibilities.




Self Test

Review of Module II

CSO will test himself or herself on information presented in Module II. This will provide preparation and review for the final test, which is required for certification.

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A. Basis and Parameters of CSO Authority

 Readings: [Authorities, Arrest, Search, and Use of Force](#)
[SAMPLE Guidelines on Pursuit, Use of Force and Efforts to Detain](#)

1. Campus Safety and Security Authorities

- The specific authority of campus security officers is not defined in Virginia law, but is derived from English common law and from their employers' authority. Certain roles and responsibilities are defined in state laws and regulations.
- Look briefly at each of the types of campus police and security models and compare the basis of their authority:
 - *Campus Police Officers*

Campus police officers are sworn law enforcement officers having authority set forth in state law, including the authority to arrest. They must meet the same training requirements as all sworn officers in the Commonwealth. Code of VA §23-232 and Code of VA §23-232.1 authorizes both **public and private** institutions of higher learning to establish police departments.
 - *Proprietary Campus Security Officers*

A proprietary security officer is defined generally as an individual (1) who is employed exclusively by a single employer and (2) whose primary duty is to provide security services for that employer. They may be armed or unarmed.

 - Unarmed campus security officers make up the vast majority of security officers on college and university campuses. Campus security officers must comply with Virginia Department of Criminal Justice Services standards and training for CSOs. They do not have sworn or appointed arrest authority.
 - Armed campus security officers must comply with the Virginia Department of Criminal Justice Services standards and training for CSOs. However, armed security officers must also be registered with the Virginia Department of Criminal Justice Services with a separate firearms endorsement. They do not have any sworn or appointed arrest authority.
 - *Special Conservators of the Peace*

Special Conservators of the Peace have been granted by a circuit court judge certain authority prescribed in state law. The authority and jurisdiction of conservators of the peace as well as requirements for registration and bond are set forth in Virginia law and regulations.

 - Some colleges have their proprietary CSOs sworn as Special Conservators of the Peace
 - In general, a circuit court judge designates the length of appointment
 - The court may also limit or prohibit the carrying of weapons by any special conservator of the peace.
 - To be a special conservator of the peace, the individual must register with the Virginia Department of Criminal Justice Services. Authority may include designations as police, use of lights, arrest authority, carrying of firearms, transporting of prisoners and

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other such items. If it is not designated in the appointment letter of the court, it is not allowable.



NOTE: Code of Virginia § 9.1-102, "Powers and duties of the Board and the Department" (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+9.1-102>) provides the authority for CSO hiring, training, and certification standards.

- *Contracted Private Security Officers*

Contracted private security officers are employed by private security services firms with which the colleges and universities have contracted to perform private security services.

- These firms must meet requirements for licensing by the Virginia Department of Criminal Justice Services.
- If private security service firms have a contract with a public or private college or university to provide campus security officers, those individuals assigned to those contracts must also meet the Campus Security Officer training and employment certification requirements.
- Additionally, the individual must meet requirements for registration as an unarmed security officer or armed security officer as defined in state regulations. Notice the differences in the roles that are seen in the definitions:

"Armed security officer" means a natural person employed to (i) safeguard and protect persons and property or (ii) deter theft, loss, or concealment of any tangible or intangible personal property on the premises he is contracted to protect, and who carries or has access to a firearm in the performance of his duties.

"Unarmed security officer" means a natural person who performs the function of observation, detection, reporting, or notification of appropriate authorities or designated agents regarding persons or property on the premises he is contracted to protect, and who does not carry or have access to a firearm in the performance of his duties.

- *In some cases, colleges and universities rely solely on local or state law enforcement agencies.*

NOTE: Your reading contains a table that compares the definition and both bases and parameters of authority of persons providing campus law enforcement and security on Virginia campuses.



2. Arrest Basics

- U.S. Supreme Court has defined arrest as any detention of a person. Once a person is no longer free to move about or leave, "it is an arrest". Even if the person is later released, the court has ruled that he has been placed under arrest.

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- Citizen's arrest is an arrest made by a person who is not a sworn law enforcement official. In common law jurisdictions, the practice dates back to medieval England and the English common law. In general, the law allows citizens to make an arrest and use reasonable force in doing so.
- Unlike police officers, campus security officers are *not* required to ever make an arrest. Most campus security officers simply observe and report and call the police if a crime occurs in their presence.
- In extreme circumstances, campus security officers may intervene with a crime in progress to protect life, however consideration must be given as to the:
 - seriousness of the crime
 - risk of harm for everyone involved
 - immediacy of the situation
 - protocol and policy of the employer
- Arrest incurs liability for unlawful arrest or injury.
- In the private security field, most arrests are made by loss prevention officers making shoplifting arrests followed by trespassing arrests. Virginia law, however, limits the power of arrest by security officers. In general, the offense must occur in his presence on such premises or in the presence of a merchant, agent, or employee of the merchant that the private security business has contracted to protect, or there must be probable cause such as an electronic device being activated. (See Virginia Code section § 9.1-146.)



NOTE: Ahead in this module, you will find **SAMPLE** policy from Drake University, "*Guidelines on Pursuit, Use of Force and Efforts to Detain*". Note that it lists permissible purposes of detaining and circumstances when detention is authorized. This policy provides guidance in making a detention decision and even specifies when handcuffs may be used.

3. Search and Seizure Basics

Fourth Amendment Protections

- Legal issues of search and seizure are grounded in the 4th Amendment of the U.S. Constitution that ensures every individual the right to privacy and the right to be protected from unreasonable search and seizures.
- The 4th Amendment also states that a warrant must be issued in order to allow law enforcement officials to search your home or property and for the warrant to be issued, there must be "probable cause."
- The main circumstance under which a campus security officer may conduct a search is **when notice is given**. For example, vehicles parked on campus may be subject to reasonable search for drugs. Typically, notice is given that as a condition of parking the vehicle on campus, the vehicle is subject to search. On a campus, students agree to abide by university rules as a condition of admission to the university or they agree to abide by housing rules as a condition of living in campus housing.
- An important feature of "notice" is that it allows persons a choice. If the person does not want to comply, he can simply choose not to enter the property, not to enroll at the university, or not to live in campus housing.

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- Law enforcement officers have authority to conduct searches under a number of circumstances. Some of these are listed in your reading and are provided for informational purposes.
- “Pat-downs” are a search-related issue. Although the Supreme Court has recognized the need for police officers to conduct “pat-downs” of suspicious persons, campus security officers may conduct “pat-downs” in very limited circumstances.
 - The United States Supreme Court recognized the need for police officers to conduct “pat-downs” of suspicious persons that they encounter during a traffic stop, investigation or while on patrol. These “pat-downs” are allowed for officer safety to determine if the person is armed.
 - Campus security officers may conduct “pat-downs” in very limited circumstances for the purpose of officer safety and when a situation poses a threat or is of a suspicious nature. A preferred approach is to ask the person to demonstrate he is unarmed by emptying pockets and/or moving clothing for visual inspection.

4. Use of Force Basics

- Campus security officers may find themselves in situations where they are required to restrain a person or to defend themselves. A question that arises is how much force is a campus security officer allowed use in a tense and potentially dangerous situation?
- Both the situation and the duties and authority prescribed in college/university security department policies and procedures will determine the level of force that is appropriate.

Reasonable Force

- “Reasonable force” is typically defined as the amount of force necessary to protect oneself or one's property. It is a term associated with defending one's person or property from a violent attack, theft, or other type of unlawful aggression. It may be used as a defense in a criminal trial or civil suit.
- If the force used is excessive – or more than necessary – a campus security officer and his college or university may be at risk of legal action.

Force Continuum

- The concept of a force continuum has been around for years and is taught at most police academies. The force continuum is broken down by broad levels of force.
- It is extremely important to recognize that the need for force changes as situations evolve; each level is designed to have an elastic factor.
- Two levels of a six-level force continuum are described in your handout (“Authorities, Arrest, Search, and Use of Force”). Use of force is governed by the institution's policies. Specially trained campus security officers working in a medical facility will often have enhanced authority to restrain individuals as necessary in the course of their duties. Since unarmed campus security officers are typically authorized to use only the first two levels on the continuum, let's examine the first two more closely:
 - Level One is officer presence. At this level, the mere presence of a highly visible uniformed campus security officer or marked vehicle is often enough to stop a crime in progress or prevent future crime.
 - Officer presence involves standing, walking, running, and use of vehicle lights, horn, or speaker. Without saying a word, an alert campus security officer can deter crime or direct

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criminals away from a property by use of body language and gestures. At this level gestures should be non-threatening and professional.

- Level Two is verbal communication. At this level visible presence is combined with use of the voice to achieve the desired results.
 - Words can be whispered, used normally, or shouted to be effective. The content of the message is as important as your demeanor. It's always best to start out calm but firm and non-threatening. Choice of words and intensity can be increased as necessary or used in short commands in serious situations.
 - The right combination of words in combination with officer presence can de-escalate a tense situation and prevent the need for a physical altercation. Training and experience improves the ability of a campus security officer to communicate effectively with everyone including the police.
- It is critically important for campus security officers to understand the policies and procedures established by their colleges or universities related to use of force. If any aspects of the policies or procedures are unclear, the campus security officer should promptly ask his supervisor or security director.
- *Any level of force is acceptable in defense of your life.*
- One example of a policy on use of force is the SAMPLE policies from Drake University. Notice that it provides fairly specific guidelines on when to use force including a continuum of action options and lists of factors to be considered in a decision to use force.




Assignment Worksheet II.1: [Understanding Your Authority](#)

This assignment will allow the CSO to identify the basis of his authority and parameters of authority related to arrest, search, and use of force by examining related policies and procedures of his employing/contracting institution.

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B. Rights, Relationships, and Responsibilities on Campus

 Readings: [Rights, Relationships, and Responsibilities on Campus](#)
[SAMPLE POLICY: Student Rights and Responsibilities](#)

Historical Background

- Crime on college and university campuses captured media attention in the mid-1980s when several tragic cases were publicized; these reports put to rest the long-cherished notion that colleges and universities are somehow immune from the threat of crime.
- Civil suits filed by victims and surviving family members of homicide victims against universities and administrators threatened the financial resources of colleges and universities and served as the prelude to federal legislation.
- In a climate of new concern about the safety of students on college campuses, three pieces of federal legislation were introduced and passed in the 1990s: the Campus Security Act of 1990; the Campus Sexual Assault Victims Bill of Rights of 1992; and the Higher Education Amendments of 1998 and the amendments of 2008.

In addition to these events, courts have been re-defining the nature of the relationship between institutions of higher learning and their students.

Student-University Relationships

In loco parentis

- Literally translated, *in loco parentis* means "in place of a parent."
- Until the 1960s, this doctrine dictated courts' vision of the proper relationship between institutions of colleges and their students. The college or university took the place of the parents in the lives of its students and courts largely deferred to the parents' decisions.
- What resulted was that colleges and universities were shielded from liability because courts avoided judging the decisions of colleges.

Contractual relationship

- In the 1960s, the courts began viewing the relationship among colleges/universities, their students, and their students' parents as contractual rather than parental. There was a growing recognition of college students as adults. Courts no longer expected colleges to play a role as surrogate parents.

Duty of Care

- More recently, courts have increasingly found that colleges and universities owed their students a duty of protection from certain specific harms, particularly harm from violent crime and hazing activities.
- Courts have remained reluctant to hold colleges responsible to prevent harm resulting from drug or alcohol use but have recently imposed increased liability in cases of student suicide.
- Duty of care is the obligation to exercise a level of care towards an individual that is reasonable to avoid injury to that person or his property.
- Definition of "reasonable care" - satisfying a legal duty to act as an ordinary, prudent, reasonable person not to do something that will cause injury or fail to do what will prevent such injury.
- Colleges and universities have a number of relationships that may establish the duty of care including students, faculty and staff, and even visitors.

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- Here are some examples of where there is a duty of care --
 - Providing safe, adequate and properly maintained equipment
 - Ensuring health and safety laws and regulations are obeyed and that physical property is safe and maintained properly
 - Performing background checks of prospective employees to screen out those who may represent a threat to the safety of students and/or staff.
- Courts have ruled that colleges are fairly well-positioned to exercise reasonable care to keep students safe from violent crime on campus. One court has found that colleges have “the ability to design and implement a security system, hire and supervise campus security officers, provide security at the entrances of dormitories, install proper locks, and establish a system of announcement for authorized visitors.”
- A breach of the duty of care may occur based on an action or a failure to take action if the failure to act was a) negligent, b) voluntary, and c) had foreseeable and natural harmful consequences.
- Foreseeable Risks --
 - Foreseeing risks has become an extremely important issue in determining liability.
 - In recent years, colleges have focused a great deal more on **risk management** and they have begun to attend to foreseeable risks as a matter of good business -- not just to avoid litigation.
 - A campus security officer can play a very important role in helping his college/university to exercise “reasonable care” to keep students (and others) safe by helping to identify and to respond to risks.

Campus Disciplinary Processes

- Campus disciplinary process is part of the order/maintenance function of the college. It is civil in nature and does not replace criminal sanctions. The student code of conduct is the civil model, and provides for the college’s disciplinary process. Criminal acts fall under law. These are not “mutually exclusive”.
- In general, a college's disciplinary policy is viewed as part of the **learning process**. The goal is correction rather than punishment. Consistent with the contractual relationship discussed previously, courts have ruled that a student entering a college agrees to abide by certain university rules and regulations. This is especially the case at private institutions.
- Courts have decreed that attendance at a college is a **privilege, not a right**; students, who are legally adults, are responsible for lawful conduct.
- The area that colleges must be careful about is that of ensuring that students’ due process rights are not violated.
- It is important for campus security officers to understand what due process rights students at their particular college or university have because “due process” has had many interpretations. There are some important differences in rights at public and private colleges that courts have not yet fully defined, but as a matter of practice in both public and private colleges, students are afforded procedural safeguards.
- Campus security officers are routinely involved in reporting incidents that may be handled through college disciplinary processes. It is very important that campus security officers understand and follow procedures to avoid violations of due process.

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- One example of a statement of student rights and responsibilities is from the University of Virginia.
 - Note that the statement includes an introductory statement referring to the ideals of the university and rights of students. Rights to expression, association, a safe environment, and privacy are all listed as student rights. Then student responsibilities and standards of conduct are set forth. One key sentence is:
 - "Students enrolling in the University assume an obligation to conduct themselves in a manner that is civil and compatible with the University's function as an educational institution."

Here, you can see the "contract" in which a student enrolling assumes an obligation to behave. Another key sentence is:

- ". . . the University has the authority and responsibility to maintain order within the University and to exclude those who are disruptive of the educational process."

Here, the university asserts its authority to take action.

- The standards of conduct listed cover a very broad range of behaviors.
- Possible sanctions, ranging from an oral admonition to expulsion are listed and basic due process procedural safeguards are described.
- Reference is made to many additional rules and regulations governing a broad range of campus activities. The lengthy list reflects just how complex a college campus can be.
- It is critical for campus security officers to have a strong working knowledge of student rights and responsibilities on his particular campus and to be familiar with how the student disciplinary process operates.
- The Virginia Crime Commission's *Study on Campus Safety* (2006) found that the overwhelming majority of referrals to college judicial councils or boards were for alcohol violations, followed by drug offenses, larceny, vandalism, and assault.



Assignment Worksheet II.2:

[Rights and Responsibilities in the Campus Environment: Identifying CSO Roles](#)

In this assignment the CSO will identify the roles he plays in a) helping his employing/contracting institution exercise "reasonable care" to keep students (and others) safe and in identifying and responding to risks and b) implementing college/university disciplinary policy.

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C. Key Federal Laws

 Readings: [Summary of the Jeanne Clery Act and Campus Sexual Assault Victim's Bill of Rights](#)
[NEWS ARTICLE Eastern Michigan University Clery Act Fine](#)
[Family Educational Rights and Privacy Act \(FERPA\) and Other Privacy- Related Laws](#)
[Family Education Rights and Privacy Act \(FERPA\) Brochure](#)



NOTE: CSOs should be familiar with the Clery Act and the campus security officer's role in it. In addition, campus security officers should be familiar with their institutions

Clery Act Annual Report >>

- Where to find it
- How to access it
- Who's on it

Crime Log >>

- Where to find it
- How to access it
- Who's on it
- Individuals have a right to see the crime log without question.

Each institution of higher education has a designated representative that determines if campus actions/events fall under the Clery Act and reporting requirements.

Sexual Offender Notification Registry >>

- Where to find it
- How to access it
- Who's on it

1. The Jeanne Clery Act (The Campus Security Act of 1990)

- The Jeanne Clery Act also known as the Campus Security Act of 1990 is a federal law that requires colleges and universities to disclose certain timely and annual information about campus crime and security policies.
- It is interesting how the Clery Act (known also as the Higher Education Act) came to be enacted, largely through the advocacy of a couple whose daughter was murdered at Lehigh University in 1986. She was a freshman when she was beaten, raped and murdered in her dormitory room. Her assailant was another Lehigh student, whom she did not know, who murdered her during his attempt to commit robbery as she slept. Neither Jeanne Clery, her parents, nor any other students or staff were aware of the large number of violent crimes that were being committed on campus. The Clery Act makes it mandatory for institutions to publicize their crime statistics.
 - It is important that requirements of the Clery Act be well understood. Compliance is a challenge for universities and for campus police and security departments. Training is available and there is a *Handbook for Campus Crime Reporting* from the U.S. Department of Education. Just the basic requirements will be reviewed here.
- *The Annual Report*
 - Schools must publish an annual report that contains 3 years worth of campus crime statistics and certain security policy statements including sexual assault policies which assure basic victims' rights, the law enforcement authority of campus police and where students should go to report crimes.

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- The report is to be made available automatically to all current students and employees while prospective students and employees are to be notified of its existence and afforded an opportunity to request a copy. Most schools post their reports online. A copy of the statistics must also be provided to the U.S. Department of Education.
- Schools must disclose statistics for crimes not only on the campus but also public areas immediately adjacent to or running through the campus as well as some non-campus facilities including fraternity and sorority housing and remote classrooms. The categories of crimes are defined: criminal homicide, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, arsons, fires, larcenies, vandalism, missing person's protocol. Liquor, drug, and weapons violations are also counted.
- *Access to Timely Information*
 - The Clery Act also has requirements that schools provide "timely warnings" when the school considers a crime to pose an ongoing threat to students and employees.
 - Virginia, in the wake of the Virginia Tech shootings, has passed laws requiring colleges to establish first warning notification and emergency broadcast systems.
- *Access to Crime Logs*
 - Campus police and security departments are required to allow public access to logs of any incidents reported. The log is required to include the "nature, date, time, and general location of each crime" as well as its disposition if known. Incidents are to be available for public access within two business days, but certain limited information may be withheld to protect victim confidentiality, ensure the integrity of ongoing investigations, or to keep a suspect from fleeing. Only the most limited information necessary may be withheld and even then it must be released "once the adverse effect...is no longer likely to occur."
 - The log must be publicly available during normal business hours. This means that in addition to students and employees, the general public such as parents or members of the local press may access it. Logs remain open for 60 days and subsequently must be available within 2 business days of a request.
- *1992 amendment to the Clery Act*
 - Institutions must inform members of the campus community of the means by which they can obtain information about registered sex offenders who may be present on campus. The Virginia State Police make available the state's sex offender registry by accessing: <http://sex-offender.vsp.virginia.gov/sor/>
- *2008 amendments to the Clery Act*
 - Require institutions to develop and make public a security plan to respond to emergencies on campus. The plan must provide for:
 - Immediate notification of the campus as soon as an emergency is confirmed.
 - Expanded categories for hate crimes and whistle-blower protections now exist.
 - Requirements for the tracking and reporting of fires in relation to residential housing on campus. (Mandatory policy)
 - New reporting requirements for missing persons under the age of 21. (Mandatory policy)
 - New requirements for a separate database housing confidential contact information to be used in the event of a missing student.

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(For additional information on this act, see the following Code of Virginia Sections: §52-32 and §15.2-1718.)

- *Penalty*
First, colleges can be fined \$35,000 per violation of the Clery Act so there is a very strong incentive to comply and heavy penalty for failure.
- *Campus Security Officer Role*
Campus security officers, through their reporting and recordkeeping, have an important role in helping their college comply with Clery Act reporting requirements. It is important that campus security officers are aware of their responsibilities related to Clery Act compliance and carefully follow established policies and procedures.
- *Eastern Michigan University Violations*
 - In 2008 Eastern Michigan University was required to pay \$350,000 in fines for violating a federal campus crime reporting law - the largest ever imposed by the U.S. Department of Education for Clery Act violations.
 - The U.S. Department of Education had concluded that university officials had not properly notified the campus community that it was investigating the death of a student as a murder. In setting the fine, officials cited the university for "an egregious violation" by failing to warn the public about the murder of a student in her residence hall room in December 2006. The university was also found to have policy shortcomings and to have failed to disclose certain crime statistics in violation of the Clery Act.
 - In addition to the fines, EMU settled a lawsuit with the Dickinson family for \$2.5 million.
 - The experience of Eastern Michigan shows that the stakes are high for colleges and universities.

2. Campus Sexual Assault Victims' Bill Of Rights

- The "Campus Sexual Assault Victims' Bill of Rights" was enacted in 1992 as a part of the Higher Education Amendments of 1992.
- The legislation was developed to combat the re-victimization of rape survivors at college campuses who found that many image conscious schools were more concerned about protecting their image than seeing justice done.
- *Rights*
 - The law requires that all colleges and universities (both public and private) participating in federal student aid programs afford sexual assault victims certain basic rights.
 - Specifically, it requires that:
 - Both the accuser and accused must have the same opportunity to have others present in a college disciplinary hearing.
 - Both parties shall be informed of the outcome of any disciplinary proceeding.
 - Survivors must be informed of their options to report their assault to the proper law enforcement authorities.
 - Survivors must be informed about counseling services.
 - Survivors must be notified of options for changing academic and living situations.

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- *Penalties*
 - Schools violating the law can be fined up to \$27,000 or lose their eligibility to participate in federal student aid programs.
- *Reporting*
 - Schools are required to report on how they comply with the law. They must prepare an annual security report that contains detailed information about programs, policies, and procedures.
- *Campus Security Officer Role*

The Campus Security Officer is responsible for keeping accurate documentation and note taking on all incidents in which they are involved. Prompt reporting of all incidents to your supervisor for inclusion in the Clery Act reporting when necessary is vitally important for your institution.

3. Family Educational Rights and Privacy Act (FERPA) and Other Privacy-Related Laws

FERPA Requirements

- FERPA stands for Family Educational Rights and Privacy Act. It is a federal law designed to protect the privacy of students' education records. It applies to all schools – elementary, secondary, and post-secondary.
- When a student turns 18 or enters college, FERPA rights transfer from the student's parents to the student. In general, students have rights to inspect and review records, to seek to amend or correct information in the record, and to consent to disclosure of information.
- The U.S. Department of Education has identified some conditions under which institutions can share education records on the student with the student's parents. These include when the student is a dependent for tax purposes under the IRS rules; if there is a health or safety emergency; and if the student is under the age of 21 and violates any law/policy related to use or possession of alcohol or a controlled substance.
- There are also provisions for disclosing information from "law enforcement unit records" under certain circumstances.
- Also, nothing prohibits officials from sharing information based on their personal knowledge or observation of the students. Remember, FERPA focuses on privacy of records. It does not prevent communication with parents based on personal knowledge or observations.
- Compliance with FERPA involves many complex considerations. Institutions have established policies and procedures that must be carefully followed.
- *Campus Security Officer Role*

It is important that campus security officers are aware of general policies for protecting student privacy, clearly understand any campus security officer responsibilities related to compliance with FERPA, and carefully follow related policies and procedures.

HIPAA

- HIPAA is the acronym for the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) required the Department of Health and Human Services (HHS) to establish national standards for electronic health care transactions and national identifiers for providers, health plans, and employers. It also addressed the security and privacy of health data.
- The Privacy Rule provides federal protections for personal health information held by covered entities and gives patients an array of rights with respect to that information. At the same time, the

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Privacy Rule is balanced so that it permits the disclosure of personal health information needed for patient care and other important purposes.

- There is a summary of key elements of the Privacy Rule including who is covered, what information is protected, and how protected health information can be used and disclosed at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html>.
- The Office for Civil Rights enforces the HIPAA Privacy Rule, which protects the privacy of individually identifiable health information, and the confidentiality provisions of the Patient Safety Rule, which protect identifiable information being used to analyze patient safety events and improve patient safety.
 - Records that are protected by FERPA are not subject to the HIPAA Privacy Rule and may be shared with parents under the circumstances described above.
- *Campus Security Officer Role*
The campus security officer is responsible for maintaining the confidentiality of all information which they are privy to in the course of handling student incidents. Request for personal information on students with whom you have come in contact during the course of your employment should only be shared within your chain of supervision.

FOIA

- The Virginia Freedom of Information Act (FOIA) was enacted July 1, 1968. The statute ensures citizen access, with certain exceptions, to records and meetings of state and local government.
 - Virginia requires available records be made within 5 days or estimate of when they will be available.
 - A legal request can be made to any employee including SECURITY OFFICERS.
 - Get the name and contact information for the requesting person.
 - Find out exactly what records they want.
 - Immediately report the information to your superior.
- As for the policy behind FOIA, the Act's objective, as declared by the General Assembly, is to guarantee access to public records and the meetings of government officials.
- Also, if you have specific questions about FOIA, contact the Virginia Freedom of Information Advisory Council, toll-free, at 1-866-448-4100 or foiacouncil@leg.state.va.us.
- *Campus Security Officer Role*
It is important for the CSO to remember that any request for information from them constitutes a request for information from their institution. Check with your specific supervision before releasing information specific to students and faculty.



Assignment Worksheet II.3:

[How the Clery Act, Campus Sexual Assault Victims Bill of Rights, and FERPA Are Implemented at My Institution](#)

In this assignment the CSO will examine how his employing/contracting institution implements the Clery Act and FERPA, and identifies appropriate campus security officer roles and responsibilities.

CSO Readings & Assignments

A. Basis and Parameters of CSO Authority

Authorities, Arrest, Search, and Use of Force

Campus Safety and Security Authorities

The specific authority of campus security officers is not defined in Virginia law, but is derived from English common law and from their employers' authority. Certain roles and responsibilities are defined in state laws and regulations.

Campus law enforcement and security responsibilities are carried out in Virginia by campus police officers, persons employed by institutions as proprietary private security officers, which may include persons with special conservator of the peace appointments and contracted private security services (e.g., Wackenhut, Securitas, and Allied Barton). In addition, campuses also rely on state and local law enforcement agencies to provide some services.

The basis of authority for those providing campus law enforcement and security are briefly described below:

Campus Police Officers

Campus police officers are sworn law enforcement officers having authority set forth in state law, including the authority to arrest. They must meet the same training requirements as all sworn officers in the Commonwealth. Code of VA § 23-232 and Code of VA § 23-232.1 authorizes both **public and private** institutions of higher learning to establish police departments.

Proprietary Campus Security Officers

A proprietary security officer is defined generally as an individual (1) who is employed exclusively by a single employer and (2) whose primary duty is to provide security services for that employer. (i.e., a specific college or university, a specific business, or a specific state agency). Campus security officers employed by a college or university are "proprietary officers" whose authority is derived from the parameters and policies set by their employer. They may be armed or unarmed.

- Unarmed campus security officers make up the vast majority of security officers on college and university campuses. Campus security officers must comply with Virginia Department of Criminal Justice Services standards and training for CSOs. They do not have any sworn or appointed arrest authority. Other limitations and policy issues will be set by the employer.
- Armed campus security officers must comply with the Virginia Department of Criminal Justice Services standards and training for CSOs. However, armed security officers must also be registered with the Virginia Department of Criminal Justice Services with a separate firearms endorsement. They do not have any sworn or appointed arrest authority. Other limitations and policy issues will be set by their employer.

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Special Conservators of the Peace

Special Conservators of the Peace have been granted by a circuit court judge certain authority prescribed in state law. The authority and jurisdiction of conservators of the peace as well as requirements for registration and bond are set forth in Virginia law and regulations.

- Some colleges have their proprietary CSOs sworn as Special Conservators of the Peace
- In general, a circuit court judge designates the length of appointment (up to four years) as well as powers, duties, and authority which may include duties as a “law enforcement officer” for specific purposes.
- The court may also limit or prohibit the carrying of weapons by any special conservator of the peace. Special conservators of the peace must register with the Virginia Department of Criminal Justice Services. Both armed and unarmed special conservators of the peace are defined in state regulations.
- To be a special conservator of the peace, the individual must register with the Virginia Department of Criminal Justice Services. Once registered, the letter of registration is taken to the Circuit Court in order for the individual to be appointed as a Special Conservator of Peace. In the order of appointment, the court will designate the authority of the special conservator in the appointment letter. This may include designations as police, use of lights, arrest authority, carrying of firearms, transporting of prisoners and other such items. If it is not designated in the appointment letter of the court, it is not allowable.

Code of VA § 19.2-13 is the authorizing legislation for Special Conservators of the Peace.

Please Note: Code of Virginia § 9.1-102, “Powers and duties of the Board and the Department” (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+9.1-102>) provide the authority for CSO hiring, training, and certification standards.

Contracted Private Security Officers

- Contracted private security officers are employed by private security services firms with which the colleges and universities have contracted to perform private security services.
- Private security services firms must meet requirements for licensing by the Virginia Department of Criminal Justice Services.
- If private security service firms have a contract with a public or private college or university to provide campus security officers, those individuals assigned to those contracts must also meet the Campus Security Officer training and employment certification requirements. It is the responsibility of the contracting college or university to determine if the individuals assigned to the college or university are in fact performing the duties and responsibilities of a campus security officer but it is the responsibility of the employing private security firm to have those individuals trained and certified.

CSO Readings & Assignments

- Additionally, the individual must meet requirements for registration as an unarmed security officer or armed security officer as defined in state regulations. Notice the differences in the roles that are seen in the definitions:

"Armed security officer" means a natural person employed to (i) safeguard and protect persons and property or (ii) deter theft, loss, or concealment of any tangible or intangible personal property on the premises he is contracted to protect, and who carries or has access to a firearm in the performance of his duties.

"Unarmed security officer" means a natural person who performs the function of observation, detection, reporting, or notification of appropriate authorities or designated agents regarding persons or property on the premises he is contracted to protect, and who does not carry or have access to a firearm in the performance of his duties.

Arrest

U.S. Supreme Court has defined arrest as any detention of a person. Once a person is no longer free to move about or leave, "it is an arrest." Even if the person is later released, the court has ruled that he has been placed under arrest.

A Citizen's Arrest

Citizen's arrest is an arrest made by a person who is not a sworn law enforcement official. In common law jurisdictions, the practice dates back to medieval England and the English common law, when sheriffs encouraged ordinary citizens to help apprehend law breakers. In general, the law allows citizens to make an arrest and use reasonable force in doing so.

Unlike police officers, campus security officers are *not* required to ever make an arrest. Most campus security officers simply observe and report and call the police if a crime occurs in their presence. In deciding to detain someone, the campus security officer must take into consideration the seriousness of the crime, the risk of harm for everyone, and the immediacy of the situation. In addition to not using more force than necessary, anyone who makes a citizen's arrest should not delay in turning the suspect over to the proper authorities and should never mete out any punishment. Making citizen's arrest maliciously or without reasonable basis in belief could lead to civil or criminal penalties. It would obviously be a violation of a suspect's civil rights to use excessive force, to hold in unsafe or cruel conditions, or to invent a reason to arrest for the ulterior motive of settling a private score.

In the private security field, most arrests are made by loss prevention officers making shoplifting arrests followed by trespassing arrests.

Section 9.1-146, Code of Virginia, limits the power of arrest by security officers "to effect an arrest for an offense occurring (i) in his presence on such premises or (ii) in the presence of a merchant, agent, or employee of the merchant the private security business has contracted to protect, if the merchant, agent, or employee had probable cause to believe that the person arrested had shoplifted or committed willful concealment of goods. . ." Other sections of the Code provide for exemption from civil liability in connection with arrest for suspected shoplifting and taking items from a library and define probable cause as the activation of an electronic article surveillance device (§ 8.01-226.9 and § 42.1-73.1).

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Table 1. A Comparison of Definition and Authority of Persons Providing Campus Law Enforcement and Security in Virginia

	Campus Police	Special Conservators of the Peace	Campus Security Officers	Contracted Private Security Officers
Definition	"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth. . ." (§9.1-101., Code of VA)	"Special conservator of the peace" means any individual appointed pursuant to § 19.2-13 on or after September 15, 2004. (§ 9.1-150.1, Code of VA)	"Campus Security Officer" means any person employed by or contracted to a college or university for the sole purpose of maintaining peace and order and who is primarily responsible for ensuring the safety, security, and welfare of students, faculty, staff, and visitors. Certified law enforcement officers as defined in § 9.1-101 are not included in this definition.	"Armed security officer" means a natural person employed to (i) safeguard and protect persons and property or (ii) deter theft, loss, or concealment of any tangible or intangible personal property on the premises he is contracted to protect, and who carries or has access to a firearm in the performance of his duties. "Unarmed security officer" means a natural person who performs the function of observation, detection, reporting, or notification of appropriate authorities or designated agents regarding persons or property on the premises he is contracted to protect, and who does not carry or have access to a firearm in the performance of his duties. (6 VAC 20-171-10.)
Basis of authority	VA Code @§9.1-101. Definitions § 23-232. Establishment authorized; employment of officers § 23-232.1. Authorization for campus police departments in private institutions of higher education. § 23-233. Appointment of officers. § 23-234. Powers and duties; jurisdiction.	VA Code § 19.2-13. Special conservators of the peace; authority; jurisdiction; registration; bond; liability of employers; penalty; report.	Regulation and common law	Regulation and common law

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	Campus Police	Special Conservators of the Peace	Campus Security Officers	Contracted Private Security Officers
Arrest powers	Sworn authority	Appointed authority	Citizen's arrest	Limited by VA law
Parameters of responsibility	"prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth"	Security of property or the peace	"maintaining peace and order" and "primarily responsible for ensuring the safety, security, and welfare of students, faculty, staff, and visitors."	<p>Armed - (i) safeguard and protect persons and property or (ii) deter theft, loss, or concealment of any tangible or intangible personal property on the premises he is contracted to protect.</p> <p>Unarmed - performs the function of observation, detection, reporting, or notification of appropriate authorities or designated agents regarding persons or property on the premises he is contracted to protect.</p>

Search and Seizure

Fourth Amendment Protections

The Fourth Amendment of the U.S. Constitution ensures every individual the right to be protected from unreasonable search and seizures, allowing individuals to uphold their right to privacy. The Fourth Amendment also states that a warrant must be issued in order to allow law enforcement officials to search your home or property. For a warrant to be issued probable cause must be presented and the warrant must contain the exact location to be searched, as well as the property that is approved to be seized.

Campus Security Officer or Private Security Officer Searches

The main circumstance under which campus security officers or private security officers may conduct a search is when **notice is given**.

When notice is given - “Reasonable” searches can be conducted of a person’s vehicle or property while they are on “private property” and notice has been given.

For instance, all vehicles parked on school grounds, both students and staff are subject to reasonable search for drugs. Notice is given as a term of their employment or admission to school. The same holds true for lockers and any other property owned by the school.

Example 1

Company A makes wrenches, screwdrivers and hammers. To cut down on theft, as employees leave, their lunch bags, purses, briefcases, boxes and packages are subject to search. They may even have to walk through metal detectors. A “body search” would not be considered “reasonable” and therefore could result in lawsuit and possibly arrest.

Example 2

The company (or college or university) has posted a sign at the entrance of their property that states “all vehicles entering subject to search.” This may be at a nuclear plant, school, city or state owned property, park or private company.

By entering the property where the sign has been posted in plain view, the person entering is considered to have given “consent” to search and now a reasonable search can be conducted to insure that the driver has no weapons or illegal items in the vehicle.

If the person does not want to comply, he can simply choose not to enter the property. This is often used at housing complexes to stop the flow of narcotics and guns from entering the property. As an agent of the property, the security officer would be authorized to conduct those searches in a manner that the law allows and the employer mandates.

Police Searches

In contrast to most searches by campus or private security officers, police officers have authority to search under these conditions:

Incident To Arrest - Once a police officer has made an arrest, he can search person(s) arrested for weapons and narcotics and other illegal items. If the arrestee was in a vehicle at the time of the

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arrest, the officer can search the immediate area where the arrestee was sitting without a search warrant. For instance, if the driver was arrested, the officer can search under the front seat on the driver's side, the middle console, glove box, driver door pockets and those immediate areas the driver could reach.

Probable Cause - An officer stops a driver for a moving violation and smells marijuana coming from your vehicle. This gives him "probable cause" to look for illegal drugs.

Plain View- While investigating a loud noise complaint at an apartment or house, the officer spots drugs or other illegal items on the coffee table in his plain view. He can legally arrest and make a limited search of that area for other illegal drugs. To conduct a further search of the remaining premises, he needs the owner's consent or a search warrant.

Consent To Search - An officer may request permission from the driver of the vehicle, owner of the house or business for consent to search. Many times during traffic stops, officers will request permission to search a vehicle when they have "no probable cause."

Search Warrant - Police can submit an affidavit to the court based on their investigation, witness statements and other evidence and obtain a search warrant for your premises. This allows them to search for specific items such as stolen merchandise, narcotics, guns etc.

Pat Down or Search

The United States Supreme Court recognized the need for police officers to conduct "pat-downs" of suspicious persons that they encounter during a traffic stop, investigation or while on patrol. These "pat-downs" are allowed for officer safety to determine if the person is armed.

Campus security officers may conduct "pat-downs" in very limited circumstances for the purpose of officer safety and when a situation poses a threat or is of a suspicious nature. A preferred approach is to ask the person to demonstrate he is unarmed by empty pockets and/or moving clothing for visual inspection.

Use of Force Basics

Campus security officers may find themselves in situations where they are required to restrain a person or to defend themselves. A question that arises is how much force is a security officer allowed to use in a tense and potentially dangerous situation? Both the situation and the duties and authority prescribed in college/university security department policies and procedures will determine the level of force that is appropriate.

Reasonable Force

"Reasonable force" is typically defined as the amount of force necessary to protect oneself or one's property. It is a term associated with defending one's person or property from a violent attack, theft, or other type of unlawful aggression. It may be used as a defense in a criminal trial or to defend oneself in a suit alleging tortious conduct. If one uses excessive force, or more than the force necessary for such protection, he or she may be considered to have forfeited the right to defense. Reasonable force is also known as legal force.¹

¹ Source: West's Encyclopedia of American Law, edition 2.

Force Continuum

The concept of a force continuum has been around for years and is taught at most police academies. The force continuum is broken down into six broad levels. Each level is designed to have an elastic factor as the need for force changes as the situation evolves. It is common for the level of force to go from level two, to level three, and back again in a matter of seconds. Use of force is governed by the institution's policies. Specially trained campus security officers working in a medical facility will often have enhanced authority to restrain individuals as necessary in the course of their duties. Since unarmed campus security officers are typically authorized to use only the first two levels on the continuum, we will only be discussing levels one and two.

Level One - Officer Presence

The mere presence of a highly visible uniformed security officer or marked vehicle is often enough to stop a crime in progress or prevent future crime. Included in officer presence are standing, walking, running, and use of vehicle lights, horn, or speaker. Without saying a word, an alert officer can deter crime or direct criminals away from a property by use of body language and gestures. At this level gestures should be non-threatening and professional.

Level Two - Verbal Communication

Used in combination with a visible presence, the use of the voice can usually achieve the desired results. Words can be whispered, used normally, or shouted to be effective. The content of the message is as important as your demeanor. It's always best to start out calm but firm and non-threatening. Choice of words and intensity can be increased as necessary or used in short commands in serious situations. The right combination of words in combination with officer presence can de-escalate a tense situation and prevent the need for a physical altercation. Training and experience improves the ability of a security officer to communicate effectively with everyone including the police.

Levels three through six:

- *Level Three - Control Holds & Restraints*
- *Level Four - Chemical Agents*
- *Level Five - Temporary Incapacitation.*
- *Level Six - Deadly Force*

Training Required

To fully understand the force continuum it must be periodically discussed and reviewed by security supervisors. Practical exercises will help re-enforce the training and cause the reactions to become more appropriate instead of instinctual. Practice and ongoing training exercises are critical.

A. Basis and Parameters of CSO Authority

SAMPLE Guidelines on Pursuit, Use of Force and Efforts to Detain

PLEASE NOTE: These are SAMPLE guidelines only. It is critically important for CSOs to understand AND follow the policies and procedures established by their colleges or universities related to pursuit, use of force, and detention.

Drake University

I. Introduction

The authority to pursue, use force on, and detain individuals carries with it the need for accountability in order to respect the rights of members of the university community and preserve the integrity of the University. Therefore, the information contained herein provides guidance to security officers with respect to pursuit, use of force and efforts to detain individuals. These guidelines are intended to reflect Drake Security's commitment to a community-friendly approach to security services. In applying these guidelines it should be recognized that each situation is unique. Therefore, good judgment and common sense should form the fundamental basis for all decisions pertaining to pursuit, use of force and efforts to detain.

II. Purpose of Guidelines

These guidelines are not intended to be contractual in nature and they should not be construed as creating a legal duty, or a standard of safety or care. They are for internal use only and are not intended for use in any criminal or civil proceeding. Violations of these guidelines may form the basis for decisions internal to Drake University, but only violations of the law may form the basis for civil or criminal sanctions in a recognized court or administrative proceeding. The Director of Campus Security Services is primarily responsible for the implementation of these guidelines.

III. Definitions

A. Public offense - That which is prohibited by statute and is punishable by fine or imprisonment.

See Iowa Code section 701.2

B. Felony - Those public offenses defined as such by law.

See Iowa Code section 701.7

IV. Pursuit

A. A pursuit is an active attempt to catch an individual.

B. If an individual fails to obey an officer's visible or audible signal(s) to stop, and flees or otherwise

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attempts to elude apprehension, a Drake security officer may pursue the individual if one of the following situations exist:

1. A public offense has been committed or attempted in the officer's presence;
2. A felony has been committed and the officer has reasonable grounds to believe that the person being pursued committed it; or
3. The officer reasonably believes pursuit is necessary to prevent serious injury to the individual, the officer or other(s).

See Iowa Code sections 804.9-10

C. When initiating a pursuit, a Drake security officer should notify the Communications Center. The officer's supervisor should be notified as soon as circumstances allow.

D. Security personnel should weigh various factors when deciding to initiate, continue or cancel a pursuit.

Some factors to consider are:

1. Does the offense warrant a pursuit?
2. What is the possibility of apprehension?
3. What are the weather conditions?
4. Is immediate assistance available?
5. Is the identity of the individual to be pursued known to the point that later apprehension is possible?
6. How familiar is the officer with the neighborhood when the pursuit is likely to extend beyond the campus?
7. What is the time of day and what are the lighting conditions?
8. What is the population density of the immediate area of the pursuit?
9. What are other environmental conditions? (Inside v. outside, vacant area or building v. occupied area or building)
10. Is the individual armed?

V. Use of Force

A. Use of force refers to those responses, set forth in section II.C. herein, which Drake security officers generally employ to address the events described in section II.B herein.

B. A Drake security officer should use only that force which the officer reasonably believes is necessary:

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1. To detain an individual when a public offense has been committed or attempted in the officer's presence;
2. To detain an individual when a felony has been committed and the officer has reasonable grounds to believe that the person being detained has committed it; or
3. When the officer reasonably believes use of force is necessary to prevent serious injury to the individual, the officer or other(s).

See Iowa Code sections 804.9-10

C. Individual circumstances will govern the appropriate order, combination(s) and level(s) of force to be applied to any given situation. However, a security officer should only use that level of force which the officer reasonably believes is necessary under the circumstances. The following continuum generally describes the types of force employed by Drake security officers.

1. Physical presence of a Drake security officer in uniform
2. Assessment of situation, call for other security or police assistance if appropriate and notify Communications Center
3. Verbal persuasion
4. Verbal command
5. Soft hands
6. Hard hands used in a manner designed for greatest likelihood of compliance with least likelihood of injury
7. Pepper Spray
8. ASP baton

Under unique circumstances it may be necessary and appropriate to consider other methods or instruments force, but only when the officer reasonably believes they are necessary to protect the individual, the officer, or other(s) from injury or harm.

Disengagement is also an option which may be considered depending on the circumstances.

D. The following factors provide a framework for a Drake security officer's assessment of whether use of force is necessary and for determining the level(s) and order of force to apply to a given situation:

1. The nature and scope of the offense,
2. Whether the individual poses an immediate risk to self, the officer or other(s), if known,
3. The level of the individual's resistance,

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4. Whether the individual is armed,
5. Whether the use of force would pose an unnecessary risk to the officer, or other(s),
6. Whether local law enforcement officials are present, on the way, or in the vicinity,
7. Whether the individual is identifiable or it is likely they can be identified or located.

VI. Efforts to Detain

A. To detain means to stop and hold an individual, when one of the events described in section III.B. presents itself, for the purpose of obtaining information through questioning the individual, issuing a citation, referring the individual to another authority or turning the individual over to law enforcement.

B. A Drake security officer may detain an individual when:

1. A public offense has been committed or attempted in the officer's presence;
2. A felony has been committed and the officer has reasonable grounds to believe that the person being detained has committed it, or
3. The officer reasonably believes detention is necessary to prevent serious injury to the individual, the officer or other(s).

See Iowa Code sections 804.9-10

C. In the event of a detention, the officer should utilize only that level of force the officer reasonably believes to be necessary, based on the continuum and factors articulated above in section II, "Use of Force", to make an arrest, sustain the detention, overcome resistance, or prevent injury to the individual, the officer or other(s). In addition, handcuffs may be used when the officer reasonably believes they are necessary to protect the individual, the officer, or other(s) from risk of injury or harm.

VII. Reports

A. A Drake security officer shall immediately submit a written report to the Director of Security Services whenever there is a use of force beyond the use of soft hands on the use of force continuum. See attachment A for report form. (Attachment A is in development and will be posted as soon as available.)

B. The report shall contain:

1. Officer's name
2. Date and time of event
3. Location of event
4. Description of individual(s) involved in event
5. Names of University personnel responding to event
6. Description of all facts and circumstances surrounding event
7. The order, level(s) and justification for force used
8. Description of injury or alleged injury
9. Names of independent witnesses if available

B. Rights, Relationships, and Responsibilities on Campus

Rights, Relationships, and Responsibilities on Campus*Historical Background*

- Crime on college and university campuses captured media attention in the mid-1980s when several tragic cases were publicized; these reports put to rest the long-cherished notion that colleges and universities are somehow far removed from the threat of crime.
- Civil suits filed by victims and surviving family members of homicide victims against universities and administrators threatened the financial resources of colleges and universities and served as the prelude to federal legislation.
- In a climate of new concern about the safety of students on college campuses, three pieces of federal legislation were introduced and passed in the 1990s: the Campus Security Act of 1990; the Campus Sexual Assault Victims Bill of Rights of 1992; and the Higher Education Amendments of 1998.

In addition to these events, courts have been re-defining the nature of the relationship between institutions of higher learning and their students.

*Student-University Relationships**In loco parentis*

Until the last half-century, the doctrine of *in loco parentis* dictated courts' vision of the proper relationship between institutions of colleges and their students. Literally translated, *in loco parentis* means "in place of a parent." Under this paradigm, the college or university took the place of the parents in the lives of its students. As a result, courts in most circumstances gave great deference to the decisions of colleges and universities just as they would defer to a parent's decision regarding his or her child. The effect of the *in loco parentis* doctrine was to shield colleges and universities from liability by allowing courts to "avoid judging the reasonableness of decisions by college authorities."²

Contractual relationship

In the 1960s, the courts began viewing the relationship among colleges/universities, their students, and their students' parents as contractual rather than parental. The shift was grounded at least in part on a growing recognition of college students as bona fide adults. Courts now generally accept that the law does not expect colleges to play a role as surrogate parents.

Duty of care

More recently, courts have increasingly found that colleges and universities owed their students a duty of protection from certain specific harms, particularly harm from violent crime and hazing activities. Courts have remained reluctant to hold colleges responsible to prevent harm resulting from drug or alcohol use but have recently imposed increased liability in cases of student suicide.

² Jane A. Dall, Note, Determining Duty in Collegiate Tort Litigation: Shifting Paradigms of the College-Student Relationship, 29 J.C. & U.L. 485, 487-88 (2003).

Key Concepts

Duty of Care

Duty of care is the obligation to exercise a level of care towards an individual that is *reasonable* to avoid injury to that person or his property. Colleges and universities have a number of relationships that may establish the duty of care including students, faculty and staff, and even visitors. Some examples of where there is a duty of care include the following:

- Providing safe, adequate and properly maintained equipment
- Ensuring health and safety laws and regulations are obeyed and that physical property is safe and maintained properly
- Performing background checks of prospective employees to screen out those who may represent a threat to the safety of students and/or staff.

Courts have ruled that colleges are fairly well-positioned to exercise reasonable care to keep students safe from violent crime on campus because they have “the ability to design and implement a security system, hire and supervise security guards, provide security at the entrances of dormitories, install proper locks, and establish a system of announcement for authorized visitors.”³

A breach of duty may occur if the act or omission was a) negligent, b) voluntary, and c) had foreseeable and natural harmful consequences.

Reasonable Care

Definition: satisfying a legal duty to act as an ordinary, prudent, reasonable person not to do something that will cause injury or fail to do what will prevent such injury.

Foreseeable Risks

Foreseeability has become an all-important issue in determining liability. If the event was, in fact, foreseeable, and the college put forth its best effort to avoid the occurrence, it stands a much better chance of defending its case than if it simply pleads ignorance or denies foreseeability. In recent years, colleges have focused a great deal more on risk management and they are typically attending to foreseeable risks as a matter of good business, not just to avoid litigation.

CSO Roles

Campus security officers play important roles in helping colleges/universities to exercise “reasonable care” to keep students (and others) safe and in identifying and responding to risks.

Campus Disciplinary Processes

Campus disciplinary process is part of the order/maintenance function of the college. It is civil in nature and does not replace criminal sanctions. The student code of conduct is the civil model, and provides for the college’s disciplinary process. Criminal acts fall under law. These are not “mutually exclusive”.

³ Mullins v. Pine Manor Coll., 449 N.E.2d 331, 335 (Mass. 1983).

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Generally, a college's disciplinary policy is viewed as part of the learning process. Viewing the relationship among colleges/universities, their students, and their students' parents as contractual, courts have ruled that an entering student agrees to abide by certain university rules and regulations, especially in the case of private institutions. Courts have decreed that attendance at a college is a privilege, not a right; students, who are legally adults, are responsible for lawful conduct.

Courts have generally hesitated to interfere with college disciplinary processes unless there has been a clear violation of constitutional rights. Lack of due process has been the basis for most discipline cases brought into court. "Due process," however, has had many interpretations. "Equal protection" of the laws is also difficult to define.

Although the U.S. Supreme Court has never directly decided that students have liberty or property rights in continuing their college educations, lower courts have assumed or stated that students do have rights under the Fourteenth Amendment's protection of liberty and property. As a result, a student facing suspension or expulsion from a public college must be afforded due process rights. For students in private colleges and universities, constitutional protections do not exist. Rights they may have are found in institutional documents which may form the basis of a legally recognizable contract relationship between the institution and students. As a matter of practice, both public and private institutions afford their students procedural safeguards that exceed those required by law.

The Virginia Crime Commission's *Study on Campus Safety* (2006) found that the overwhelming majority of referrals to college judicial councils or boards were for alcohol violations, followed by drug offenses, larceny, vandalism, and assault.

CSO Roles

Campus security officers are routinely involved in reporting incidents that may be handled through college disciplinary processes. They may also be called upon to provide additional information to administrators or to testify at hearings. It is important that CSOs understand and follow procedures to avoid violations of due process, follow requirements for reporting incidents, and have an understanding of how the campus disciplinary process operates.

B. Rights, Relationships, and Responsibilities on Campus

SAMPLE POLICY: Student Rights and Responsibilities

Available online at <http://www.virginia.edu/vpsa/rights.html>

Introduction

The University of Virginia is a community of scholars in which the ideals of freedom of inquiry, freedom of thought, freedom of expression, and freedom of the individual are sustained. The University is committed to supporting the exercise of any right guaranteed to individuals by the Constitution and the Code of Virginia and to educating students relative to their responsibilities.

Student Rights

The University of Virginia seeks to maintain an environment where students have the following rights:

- *Expression* - Students can freely examine and exchange diverse ideas in an orderly manner inside and outside the classroom;
- *Association* - Students can associate freely with other individuals, groups of individuals and organizations for purposes which do not infringe on the rights of others;
- *Freedom from Discrimination* - Students can expect to participate fully in the University community without discrimination as defined by federal and state law and University regulations;
- *Safe Environment* - Students can function in their daily activities without unreasonable concerns for personal safety;
- *Discipline* - Students can expect discipline to be implemented through established procedures containing all elements of due process for the adjudication of charges, and the opportunity for continued University involvement (as appropriate) until the resolution of the charges;
- *Privacy* - Students are free of unreasonable intrusions into personal records and/or matters relevant to identity, living space and well being;
- *High Quality Resources* - Students have access to high quality resources which support intellectual and social development;
- *Counseling* - Students have access to support in managing personal adjustments, understanding self and others, and career planning and personal decision making;
- *Grievance Process* - Students have access to established procedures for respectfully presenting and addressing their concerns/complaints to the University;
- *Learning Beyond Formal Instruction* - Students have access to a variety activities beyond the classroom, which support intellectual and personal development.
- *Education* - Students have access to excellent faculty, academic technology, classrooms, libraries, presentations and other resources necessary for the learning process.
- *Personal Growth* - Students live and study in a setting that fosters personal growth.
- *Participation in Community Affairs* - Students have opportunities to interact with people and institutions both within and beyond the University community.
- *Student Activity Fee Refunds* - Students may apply for a partial refund of their student activity fee if they do not wish to support the particular speech activities of some student organizations receiving these funds.
- *University Governance* - Students participate in the governance of the University, with opportunities including but not limited to the Honor, Judiciary and Bad Check Committees, allocations of student activities fees, programming (University Programs Council), Residence Life (resident staff and house councils), and through membership on University and school committees.
- *Prompt Responses from Administration* - Students have the right to expect prompt and courteous responses from the University's academic and administrative departments.
- *Academic and Administrative Policies* - Students can expect academic and administrative policies that support intellectual inquiry, learning, and growth.

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Student's Responsibilities

The exercise and preservation of these freedoms and rights require a respect for the rights of all in the community. Students enrolling in the University assume an obligation to conduct themselves in a manner that is civil and compatible with the University's function as an educational institution. It is clear that in a community of learning, willful disruption of the educational process, destruction of property, and interference with the orderly process of the University, or with the rights of other members of the University, cannot be tolerated. In order to fulfill its functions of imparting and gaining knowledge, the University has the authority and responsibility to maintain order within the University and to exclude those who are disruptive of the educational process.

Standards of Conduct

The University of Virginia is a community of scholars in which the ideals of freedom of inquiry, freedom of thought, freedom of expression, and freedom of the individual are sustained. It is committed to preserving the exercise of any right guaranteed to individuals by the Constitution. However, the exercise and preservation of these freedoms and rights require a respect for the rights of all in the community to enjoy them to the same extent. It is clear that in a community of learning, willful disruption of the educational process, destruction of property, and interference with the orderly process of the University or with the rights of other members of the University cannot be tolerated. Students enrolling in the University assume an obligation to conduct themselves in a manner compatible with the University's function as an educational institution. To fulfill its functions of imparting and gaining knowledge, the University retains the power to maintain order within the University and to exclude those who are disruptive of the educational process.

Generally, prohibited conduct for which a student is subject to discipline is defined as follows (not including violations of the Honor System and motor vehicle regulations):

1. **Physical or sexual assault** of any person on University-owned or leased property, at any University sanctioned function, at the permanent or temporary local residence of a University student, faculty member, employee, or visitor, or in the city of Charlottesville or Albemarle County.
2. **Conduct which intentionally or recklessly threatens the health or safety** of any person on University-owned or leased property, at a University sanctioned function, at the permanent or temporary local residence of a University student, faculty member, employee or visitor, or in the city of Charlottesville or Albemarle County.
3. **Unauthorized entry** into or occupation of University facilities which are locked, closed to student activities or otherwise restricted as to use.
4. **Intentional disruption or obstruction** of teaching, research, administration, disciplinary procedures, other University activities, or activities authorized to take place on University property.
5. **Unlawfully blocking or impeding normal pedestrian or vehicular traffic** on or adjacent to University property.
6. Violation of University policies or regulations referenced in **The Record**, including policies concerning residence and the use of University facilities.
7. **Alteration, fabrication, or misuse of, or obtaining unauthorized access** to University identification cards, other documents, or computer files or systems.
8. **Disorderly conduct** on University-owned or leased property or at a University-sanctioned function. Disorderly conduct is defined to include but is not limited to acts that breach the peace, are lewd, indecent, or obscene, and that are not Constitutionally protected speech.
9. **Substantial damage** to University-owned or leased property or to any property in the city of Charlottesville or Albemarle County or to property of a University student, employee, faculty member, or visitor, occurring on University-owned or leased property or at the permanent or temporary local residence of any student, faculty member, employee or visitor.
10. **Any violation of Federal, State, or local law**, if such directly affects the University's pursuit of its proper educational purposes and only to the extent such violations are not covered by other Standards of Conduct and only where a specific provision of a statute or ordinance is charged in the complaint.
11. **Intentional, reckless, or negligent conduct** which obstructs the operations of the Honor or Judiciary Committee, or conduct that violates their rules of confidentiality.
12. **Failure to comply with directions of University officials** acting under provisions 1-11 set above. This shall include failure to give identity in situations concerning alleged violations of sections 1-11.

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Sanctions

One or more of the following sanctions for prohibited conduct may be imposed by the Judiciary Committee upon students, depending upon the gravity of the offense:

1. **Admonition** An oral statement to a student that he or she is violating or has violated institution rules;
Warning Notice, in writing, that continuation or repetition of conduct found wrongful, within a period of time stated in the warning, may be cause for more severe disciplinary action;
Reprimand - A written censure for violation of the specified standards of conduct placed in the student's record, including the possibility of more severe disciplinary sanctions should another violation occur within a stated period of time;
Disciplinary probation - Exclusion from participation in privileged or extracurricular activities as set forth in the notice of probation for a period of time not exceeding two academic semesters;
Restitution - Reimbursement for damage to or misappropriation of property.
2. **Suspension** - Exclusion from classes and other privileges or activities or from the University, as set forth in the notice of suspension, for a definite period of time.
3. **Interim suspension** - Temporary suspension by an official of the University of a student who has engaged or engages in conduct which reasonably threatens the health or safety of other members of the University, University property, or the educational process, pending a hearing of the offense. Upon the student's request, any student so suspended shall be entitled to preliminary review within 24 hours before the Vice President for Student Affairs or designee. If the student is unavailable, such review may be postponed by the Vice President for Student Affairs until he or she is able to attend, or for other good reason. Any student so suspended who thereafter enters upon those areas of the Grounds denied him or her by the terms of the suspension, other than with the permission of or at the request of University officials or of a duly authorized hearing body for purposes of a hearing, is subject to further discipline and prosecution thereafter by civil authorities. Should the interim suspension be found to be without good cause, any notation referring to such shall be stricken from the student's record. Should the Vice President (or designee) affirm or otherwise modify the interim suspension, the student may seek a hearing before the Judiciary Committee. The Vice President or designee shall provide the student with the name and telephone number of the chair of the Judiciary Committee or the office to which the student may seek a hearing which shall be scheduled as soon as practicable, subject to the rules and procedures adopted by the Judiciary Committee. A student so suspended must be given the following warnings by the suspending official:
 - a. You are hereby temporarily suspended and barred from (location-Grounds or portion thereof or specified activities). You may not enter (area) without the permission of or upon the request of University officials or of an authorized hearing body for purposes of a hearing.
 - b. You are entitled to a review within 24 hours (or later for good cause) before the Vice President for Student Affairs or his designee to determine whether this suspension is with good cause and may continue pending a hearing before the Judiciary Committee. It is your responsibility to request such review and subsequent hearing and the suspending official will notify the Vice President for Student Affairs of your wishes.**Suspension held in abeyance** - Exclusion from classes and other privileges or activities or from the University as set forth in the notice of suspension for a definite period of time be enforced should another violation occur.
4. **Expulsion** - Termination of student status for any indefinite period. The condition of readmission, if any, shall be stated in the order of expulsion.

Cases Involving Sexual Assault

The University has established a separate procedure to deal with allegations of sexual assault. Contact the Office of the Dean of Students for full information on the procedure.

Cases Involving Psychiatric Issues

The University has established two separate procedures to deal with allegations of misconduct for certain student cases involving psychiatric and psychological issues: Procedure for Psychological Hearings on Honor Offenses and Procedure for Certain Student Cases Involving Psychiatric Issues. Contact the Office of the Dean of Students (924-7133 or ask-odos@virginia.edu) for full information on the procedures.

Cases Decided By the President

The University President (or his designee) may intervene in and preempt proceedings before any University body when the President (or his designee) determines that established processes are unable to timely or properly adjudicate a case or complaint involving students arrested, charged or convicted of criminal conduct which, in the

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discretion of the President (or his designee), reasonably endangers or threatens to disrupt the University community or University operations.

The foregoing shall include, without limitation, criminal conduct involving the possession or distribution of controlled substances on or off University property, attempted or inflicted bodily injury or other harm to any member of the University community, and destruction or attempted destruction of University property. The President's (or designee's) disciplinary review shall provide affected students with written notice and opportunity to be heard consistent with due process of law, and such further proceedings as he may stipulate appropriate to the circumstances. Disciplinary proceedings before the President (or his designee) shall not be governed by established processes of other University bodies, and shall terminate proceedings before any other University body unless authorized by the President (or his designee). The jurisdiction of University bodies shall be subject to the continuing authority of the President to discipline, suspend and/or expel as provided above.

Conduct in the Residence Area

In addition to the general University regulations described above, there exist policies employed by Resident Staff which govern residence in University Housing. These include a security policy, alcohol policy, living environment policy, and a drug policy. Such policies represent basic areas of emphasis and by no means do they constitute the entire range of Resident Staff policy. There also exist specific regulations which define the terms and conditions of occupancy of University Housing. While such policies and regulations are too lengthy to be listed here, it should be noted that they are encompassed under the University's Standards of Conduct, specifically under standards six and nine. Copies of these policies are available in the Office of Residence Life.

Additional Rules and Regulations

Students at the University of Virginia are subject to the University's academic, financial, and non-academic rules and regulations. In addition, students are subject to the academic policies of the school in which they are enrolled.

The University reserves the right to suspend, enforce the withdrawal of, or expel a student who violates the University's Standards of Conduct or whose academic standing is, in its judgment, unsatisfactory. In addition, the University will automatically enforce the dismissal of a student certified by the Honor Committee to be guilty of a breach of the Honor System, and, where applicable, will consider revocation of a degree already conferred.

There are additional non-academic regulations governing the following:

- Address Changes
- Alcohol and Drug Policy
- Amplified Sound
- Bias Reporting
- Bicycle Policy
- Computer Usage Policy
- Confidentiality of Student Records
- Conflict of Interest: Personal Relationships Between Faculty and Students
- Copyright Law
- Discrimination Complaint Procedures
- Discriminatory Harassment Policy
- Dogs Running at Large
- Firearms
- Food Service Provided by Student Organizations
- Grievance Procedure
- Hazing
- Intellectual Property
- Misuse of Student IDs at Athletic Events
- Open Parties/Dances/Socials Policy and Guidelines
- Parental Notification Policy: Drugs and Alcohol
- Residence Hall Visitation
- Sales, Solicitation, and Student Organization Fundraising
- Security Policy
- Sexual Assault
- Statement of Students' Rights and Responsibilities
- Student Health Requirements
- Use of University Equipment
- Use of University Facilities
- University Services and Activities

C. Key Federal Laws

**SUMMARY of the Jeanne Clery Act
and Campus Sexual Assault Victim's Bill of Rights**

Source: Security on Campus, Inc., a 501(c)(3) non-profit grass roots organization dedicated to safe campuses for college and university students. It was co-founded in 1987 by Connie & Howard Clery, following the murder of their daughter at Lehigh University. Jeanne Clery was a freshman when she was beaten, raped and murdered in her dormitory room on April 5, 1986. Jeanne's assailant was another Lehigh student who murdered Jeanne during his attempt to commit robbery as she slept. They did not know each other. <http://www.securityoncampus.org/schools/cleryact/>

The Jeanne Clery Act, also known as the Campus Security Act of 1990, is a federal law that requires colleges and universities to disclose certain timely and annual information about campus crime and security policies. All public and private institutions of postsecondary education participating in federal student aid programs are subject to it. Violators can be "fined" up to \$27,500 by the U.S. Department of Education, the agency charged with enforcement of the Act and where complaints of alleged violations should be made, or face other enforcement action.

The Clery Act, originally enacted by the Congress and signed into law by President George Bush in 1990 as the Crime Awareness and Campus Security Act of 1990, was championed by Howard & Connie Clery after their daughter Jeanne was murdered at Lehigh University in 1986. They also founded the non-profit Security On Campus, Inc. in 1987. Amendments to the Act in 1998 renamed it in memory of Jeanne Clery.

Annual Report

Schools have to publish an annual report every year by October 1st that contains 3 years worth of campus crime statistics and certain security policy statements including sexual assault policies which assure basic victims' rights, the law enforcement authority of campus police and where students should go to report crimes. The report is to be made available automatically to all current students and employees while prospective students and employees are to be notified of its existence and afforded an opportunity to request a copy. Schools can comply using the Internet so long as the required recipients are notified and provided the exact Internet address where the report can be found and paper copies are available upon request. A copy of the statistics must also be provided to the U.S. Department of Education.

Crime Statistics

Each school must disclose crime statistics for the campus, unobstructed public areas immediately adjacent to or running through the campus, and certain non-campus facilities including Greek housing and remote classrooms. The statistics must be gathered from campus police or security, local law enforcement, and other school officials who have "significant responsibility for student and campus activities" such as student judicial affairs directors. Professional mental health and religious counselors are exempt from reporting obligations, but may refer patients to a confidential reporting system which the school has to indicate whether or not it has.

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Crimes are reported in the following 7 major categories, with several sub-categories:

1. Criminal Homicide broken down by a.) murder and non-negligent manslaughter and b.) negligent manslaughter;
2. Sex Offenses broken down by a.) forcible sex offenses (includes rape) and b.) non-forcible sex offenses;
3. Robbery;
4. Aggravated Assault;
5. Burglary;
6. Motor Vehicle Theft; and
7. Arson.
8. *Fires*(related to residence halls)*
9. *Larcenies**
10. *Vandalism**
11. *Missing Person Protocol**

*(*added in the 2008 Higher Education Act Amendments)*

Schools are also required to report the following three types of incidents if they result in either an arrest or disciplinary referral:

1. Liquor Law Violations;
2. Drug Law Violations; and
3. Illegal Weapons Possession. If both an arrest and referral are made only the arrest is counted.

The statistics are also broken down geographically into "on campus," "residential facilities for students on campus," non-campus buildings, or "on public property" such as streets and sidewalks. Schools can use a map to denote these areas. The report must also indicate if any of the reported incidents, or any other crime involving bodily injury, was a "hate crime."

Access to Timely Information

Schools are also required to provide "timely warnings" and a separate more extensive public crime log. It is these requirements which are most likely to affect the day to day lives of students. The timely warning requirement is somewhat subjective and is only triggered when the school considers a crime to pose an ongoing "threat to students and employees" while the log records all incidents reported to the campus police or security department.

Timely warnings cover a broader source of reports (campus police or security, other campus officials, and off-campus law enforcement) than the crime log but are limited to those crime categories required in the annual report. The crime log includes only incidents reported to the campus police or security department, but covers all crimes not just those required in the annual report, meaning crimes like theft are included in the log. State crime definitions may be used.

Schools that maintain a police or security department are required to disclose in the public crime log "any crime that occurred on campus...or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or security department."

The log is required to include the "nature, date, time, and general location of each crime" as well as its disposition if known. Incidents are to be included within two business days but certain limited information may be withheld to protect victim confidentiality, ensure the integrity of ongoing investigations, or to keep a suspect from fleeing. Only the most limited information necessary may be withheld and even then it must be released "once the adverse effect...is no longer likely to occur."

The log must be publicly available during normal business hours. This means that in addition to students and employees the general public such as parents or members of the local press may access it. Logs remain open for 60 days and subsequently must be available within 2 business days of a request.

The United States Congress enacted the "Campus Sexual Assault Victims' Bill of Rights" in 1992 as a part of the *Higher Education Amendments of 1992* (Public Law: 102-325, section 486(c)). It was signed into law by President George Bush in July of 1992. The legislation was developed to combat the re-victimization of rape survivors at college campuses who found that many image conscious schools were more concerned about protecting their image than seeing justice done.

Rights

This law requires that all colleges and universities (both public and private) participating in federal student aid programs afford sexual assault victims certain basic rights. Specifically,

- Both the accuser and accused must have the same opportunity to have others present in a college disciplinary hearing.
- Both parties shall be informed of the outcome of any disciplinary proceeding.
- Survivors must be informed of their options to report their assault to the proper law enforcement authorities.
- Survivors must be informed about counseling services.
- Survivors must be notified of options for changing academic and living situations.

Penalties

Schools found to have violated this law can be fined up to \$27,500 or lose their eligibility to participate in federal student aid programs. Complaints about schools that have failed to comply with this law should be made with the U.S. Department of Education.

Reporting

Schools must prepare an annual security report that contains, at a minimum, the following:

A statement of policy about the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs, including programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses; procedures students should follow if a sex offense occurs; information on a student's option to notify appropriate law enforcement authorities; notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses; notification that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes; and procedures for campus disciplinary action; and sanctions the institution may impose.

C. Key Federal Laws

Eastern Michigan University to pay \$350,000 in federal fines over Laura Dickinson case

Posted by Geoff Larcom | The Ann Arbor News June 06, 2008 09:25AM

"We're pleased to have arrived at an agreement with the DOE and we appreciate their recognition of the progress and improvements that EMU has made during the past year in regards to Clery Act compliance. EMU will continue its efforts to emphasize safety and security on campus." - EMU Provost Don Loppnow.

Eastern Michigan University will have to pay \$350,000 in fines for violating a federal campus crime reporting law - the largest ever imposed by the U.S. Department of Education for Clery Act violations.

EMU announced today that it agreed to pay the fine, which is slightly less than the original amount - \$357,500 - proposed by the department after it concluded that university officials had not properly notified the campus community that it was investigating the death of a student as a murder.

"We're pleased to have arrived at an agreement with the DOE and we appreciate their recognition of the progress and improvements that EMU has made during the past year in regards to Clery Act compliance," said Don Loppnow, provost and executive vice president, in a statement released this morning. "EMU will continue its efforts to emphasize safety and security on campus."

In setting the original fine, federal officials cited the university for "an egregious violation" by failing to warn the public about the murder of Laura Dickinson in her residence hall room in December 2006.

The department said in the settlement agreement that EMU "now has procedures in place and a published policy that should substantially improve EMU's ability to make timely warning determinations and issue campus-wide advisories, as needed."

The department said EMU "has taken significant corrective action, and has made strides in curing the deficiencies that led to this finding."

EMU was cited for 13 violations, including failing to issue a timely warning in the death of Dickinson, various policy shortcomings and failing to properly disclose certain crime statistics. In three areas, EMU was cited for violations over three separate years.

The highest fine for Clery Act violations previously was \$250,000, imposed against Salem International University in West Virginia in a case settled on appeal for \$200,000.

In addition to the fines, EMU settled a lawsuit with the Dickinson family for \$2.5 million.

In the original Department of Education letter, Mary Gust, director of administrative actions and appeals, called EMU's failure to warn students and employees of the suspicious nature of Dickinson's death "an egregious violation, which endangered the entire EMU campus community."

EMU was harshly criticized in two earlier reports by the Department of Education and an independent law firm over its initial statement that foul play was not suspected in Dickinson's death. Her partially nude body was found on the floor of her dorm room with a pillow covering her face on Dec. 15, 2006.

The initial statement was not altered until the arrest of a suspect, Orange Taylor III, two months later. Taylor has been convicted of murder in the case and sentenced to life in prison.

The ensuing controversy led to the exit of three top EMU officials: President John Fallon, Vice President of Student Affairs Jim Vick and Public Safety Director Cindy Hall. Fallon, who was fired, has sued the university. Loppnow has said EMU will pay the Clery Act fines from investment proceeds, which had been set aside in this year's budget because sizable penalties were expected.



School Accused of Covering Up Student's Murder

Woman's Parents Say University Misled Them About Murder on Campus

By **RUSSELL GOLDMAN**

June 20, 2007 —

Despite believing that Laura Dickinson had been raped and murdered in her dorm room, administrators at Eastern Michigan University took 10 weeks to tell her parents and university students and staff the truth.

In failing to tell the young woman's family, school safety experts say, the university acted immorally. But in failing to tell Dickinson's fellow students, campus law experts say, the university acted illegally.

On Dec. 16, 2006, the university sent a release out to students and faculty telling them the 22-year-old nutrition major had died but there was "no reason to suspect foul play."

By the time the university released its statement, Dickinson had been dead for four days. After neighbors complained of an odor, a janitor found Dickinson in her room naked, a pillow covering her head, with traces of semen on her leg.

Dickinson's body was found after her family told university officials she had not returned several phone calls.

"I called her on Wednesday and there was no answer," Dickinson's father, Bob Dickinson, told "Good Morning America" today.

Then Bob and her mother, Deb Dickinson, received the news.

"It was pretty devastating," Bob said. "I don't know if there's a gentle way to say that."

The official word from Eastern Michigan University was that Laura had died of natural causes, that somehow the healthy 22-year-old had been killed by a freak accident.

"They said there was no evidence of foul play," Deb said.

It would be 10 weeks before the full story came out. On Feb. 23, Eastern Michigan student Orange Taylor III was arrested. This was how her fellow students and her family learned she had been killed. Taylor has pleaded not guilty. He is scheduled to go on trial for murder in October.

"For 10 weeks we wondered how a healthy 22-year-old girl had died. Now we know that it wasn't just a flukey odd accident. Something had definitely happened and they lied about it," Bob told ABCNEWS.com.

Taylor, 20, faces trial Oct. 15 on murder and criminal sexual conduct charges.

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University administrators, including university president John Fallon, would not comment for this story to ABCNEWS.com.

Fallon issued a statement Tuesday to the Board of Regents concerning the handling of information in the case. "I apologized to you and say & never again will such a confounding series of mistakes be made on my watch," Fallon said.

A Delicate Balance

Dickinson's murder, like the massacre at Virginia Tech in April, sheds light on the delicate balance universities must strike between protecting individual's privacy and protecting the public's safety.

Though the school took proper measures to alert the police, it violated federal law by not informing the school's students, school safety advocates say.

Under the Clery Act, universities are required by federal law to inform students of all crimes that have occurred on or near the campus that post a potential threat to public safety.

"The university lied to the community and they lied to this young woman's family," said Daniel Carter, senior vice president of the watchdog group Security on Campus.

"This is an absolute betrayal of trust," he told ABCNEWS.com. [The Clery Act] is the first step in keeping college campuses safe. It forces colleges to acknowledge security threats and warn the community so students can protect themselves."

Passed in 1990, the law was named for Jeanne Clery, a Lehigh University freshman who was raped and murdered in her college dorm in 1986.

University officials have engaged in a game of finger-pointing, with members of the independent and state-appointed Board of Regents chastising members of the school's administration for not disclosing the details of Dickinson's death.

A recently released report commissioned by the board and conducted by the law firm Butzel-Long alleged that some administrators knowingly had hidden information from the students and Dickinson's family.

According to the report, Fallon routinely denied that a crime had occurred.

Tom Sidlik, chairman of the regents board, however, apologized for the school's failure to be more forthright.

He denied the school had engaged in a cover-up and insisted mistakes were made on account of ignorance of the law.

"I can't say why people took certain actions, but we know what those actions were. Clearly the university violated the Clery Act, which states the obligations of the university," Sidlik said.

"We've had a tragic death that made the university violate federal law and that's pretty serious. We are going to take actions to make sure everyone knows the law," he said.

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Sidlik also said new measures had been taken to improve campus security, including replacing traditional keys with swipe cards. He would not comment on whether Taylor was a known criminal offender or whether the school had taken disciplinary action against him in the past.

Attention Focused on Campus and Clery Act

After the massacre at Virginia Tech, in which student Seung-hui Cho killed 32 people, new attention was focused on campus and the importance as well as the limitations of the Clery Act.

The law was intended in part to help prospective students choose a school based on its commitment to safety. Experts say, however, that students rarely ask schools for their security records or make safety a priority in choosing the school.

"The original intent of the law was to provide a common set of crime statistics that students and parents could use to determine which college to go to based on safety," said Dennis Gregory, an education professor at Old Dominion University in Virginia.

"But the law is an unfunded mandate with no federal support. Money needs to be focused on education programs training for administrators, faculty and students to keep crimes from happening," he said.

Steven Janosik, a professor at Virginia Tech and expert on the Clery Act, has worked with Gregory to study the law's effectiveness. Janosik said schools would sometimes consciously cover up crimes and not report them.

"Most administrators are trying to comply in good faith but they don't always succeed. Occasionally, institutions have clearly ignored the Clery Act and covered up information. Institutions ought to be held responsible for not complying with act," he said.

From 1990 to 2003, the Department of Education, which is tasked with overseeing the act's implementation, has only fined three schools for violations.

Bob told ABC News.com he hoped that his daughter's death would serve as a clarion call to universities to take reporting more seriously and to parents of perspective students when helping their children look at colleges.

"We never knew about the Clery Act or what it was there for," he said. "I'm sure the publicity of this event will bring it to light."

"Parents and kids need to investigate colleges before they go there. & If events occurred once or twice, consider not going there. It could put you in danger," he said.

"It's still hard for me to believe that she's gone. How could this have happened?" Deb told "GMA."

C. Key Federal Laws

Family Educational Rights and Privacy Act (FERPA) and Other Privacy-Related Laws

Source: Summary of Information Privacy Laws and Guidance from the U.S. Department of Education, Appendix H of the Virginia Tech Review Panel Report. Prepared by Skadden, Arps.

GUIDANCE FROM U.S. DEPARTMENT OF EDUCATION - 2008

Disclosure of Information from Education Records to Parents of Students Attending Postsecondary Institutions

Recently many questions have arisen concerning the Family Educational Rights and Privacy Act (FERPA), the federal law that protects the privacy of students' education records. The Department wishes to clarify what FERPA says about postsecondary institutions sharing information with parents.

What are parents' and students' rights under FERPA?

At the K-12 school level, FERPA provides parents with the right to inspect and review their children's education records, the right to seek to amend information in the records they believe to be inaccurate, misleading, or an invasion of privacy, and the right to consent to the disclosure of personally identifiable information from their children's education records. When a student turns 18 years old or enters a postsecondary institution at any age, these rights under FERPA transfer from the student's parents to the student. Under FERPA, a student to whom the rights have transferred is known as an "eligible student." Although the law does say that the parents' rights afforded by FERPA transfer to the "eligible student," FERPA clearly provides ways in which an institution can share education records on the student with his or her parents.

While concerns have been expressed about the limitations on the release of information, there are exceptions to FERPA's general rule that educational agencies and institutions subject to FERPA may not have a policy or practice of disclosing "education records" without the written consent of the parent (at the K-12 level) or the "eligible student."

When may a school disclose information to parents of dependent students?

Under FERPA, schools may release any and all information to parents, without the consent of the eligible student, if the student is a dependent for tax purposes under the IRS rules.

Can a school disclose information to parents in a health or safety emergency?

The Department interprets FERPA to permit schools to disclose information from education records to parents if a health or safety emergency involves their son or daughter.

Can parents be informed about students' violation of alcohol and controlled substance rules?

Another provision in FERPA permits a college or university to let parents of students under the age of 21 know when the student has violated any law or policy concerning the use or possession of alcohol or a controlled substance.

Can a school disclose law enforcement unit records to parents and the public?

Additionally, under FERPA, schools may disclose information from “law enforcement unit records” to anyone – including parents or federal, State, or local law enforcement authorities – without the consent of the eligible student. Many colleges and universities have their own campus security units. Records created and maintained by these units for law enforcement purposes are exempt from the privacy restrictions of FERPA and can be shared with anyone.

Can school officials share their observations of students with parents?

Nothing in FERPA prohibits a school official from sharing with parents information that is based on that official's personal knowledge or observation and that is not based on information contained in an education record. Therefore, FERPA would not prohibit a teacher or other school official from letting a parent know of their concern about their son or daughter that is based on their personal knowledge or observation.

How does HIPAA apply to students' education records?

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a law passed by Congress intended to establish transaction, security, privacy, and other standards to address concerns about the electronic exchange of health information. However, the HIPAA Privacy Rule excludes from its coverage those records that are protected by FERPA at school districts and postsecondary institutions that provide health or medical services to students. This is because Congress specifically addressed how education records should be protected under FERPA. For this reason, records that are protected by FERPA are not subject to the HIPAA Privacy Rule and may be shared with parents under the circumstances described above.

In all programs at the Department of Education, we [U.S. Department of Education] consistently encourage parents' involvement in their children's education. FERPA is no exception. While the privacy rights of all parents and adult students are very important, there are clear and straightforward ways under FERPA that institutions can disclose information to parents and keep them involved in the lives of their sons and daughters at school.

There is a summary of key elements of the Privacy Rule including who is covered, what information is protected, and how protected health information can be used and disclosed at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html>.

Freedom of Information Act (FOIA)

- The Virginia Freedom of Information Act (FOIA) was enacted July 1, 1968. The statute ensures citizen access, with certain exceptions, to records and meetings of state and local government.
 - Virginia requires available records be made within 5 days or estimate of when they will be available.
 - A legal request can be made to any employee including SECURITY OFFICERS.
 - Get the name and contact information for the requesting person.
 - Find out exactly what records they want.
 - Immediately report the information to your superior.
- As for the policy behind FOIA, the Act's objective, as declared by the General Assembly, is to guarantee access to public records and the meetings of government officials.
- Also, if you have specific questions about FOIA, contact the Virginia Freedom of Information Advisory Council, toll-free, at 1-866-448-4100 or foiacouncil@leg.state.va.us .

CSO READINGS & ASSIGNMENTS

C. Key Federal Laws

Supplemental Reading: Family Education Rights and Privacy Act (FERPA) Brochure

- A school official may generally share with a parent information that is based on that official's personal knowledge or observation of the student.

FERPA and Student Health Information

Postsecondary institutions that provide health or medical services to students may share student medical treatment records with parents under the circumstances described above. While these records may otherwise be governed by the *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*, the HIPAA Privacy Rule excludes student medical treatment records and other records protected by FERPA. The Department plans to issue further guidance on the interplay between FERPA and HIPAA.

FERPA and Student and Exchange Visitor Information System (SEVIS)

FERPA permits institutions to comply with information requests from the Department of Homeland Security (DHS) and its Immigration and Customs Enforcement Bureau (ICE) in order to comply with the requirements of SEVIS. Officials who have specific questions about this and other matters involving international students should contact the U.S. Department of Education's Family Policy Compliance Office.

Transfer of Education Records

Finally, FERPA permits school officials to disclose any and all education records, including disciplinary records, to another institution at which the student seeks or intends to enroll. While student consent is not required for transferring education records, the institution's annual FERPA notification should indicate that such disclosures are made. In the absence of information about disclosures in the annual FERPA notification, school officials must

make a reasonable attempt to notify the student about the disclosure, unless the student initiates the disclosure. Additionally, upon request, the institution must provide a copy of the information disclosed and an opportunity for a hearing. See 34 CFR § 99.31(a)(2) and § 99.34(a).

Contact Information

For further information about FERPA, please contact the Family Policy Compliance Office or visit its Web site.

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Ave. S.W.
Washington, DC 20202-5920
202-260-3887

For quick, informal responses to routine questions about FERPA, school officials may e-mail the Family Policy Compliance Office at FERPA@ED.Gov.

For inquiries about FERPA compliance training, contact FERPA.Client@ED.Gov.

Additional information and guidance may be found at FPCO's Web site at: <http://www.ed.gov/policy/gen/guid/fpc/index.html>.



Balancing Student Privacy and School Safety: A Guide to the *Family Educational Rights and Privacy Act* for Colleges and Universities



Postsecondary officials are regularly asked to balance the interests of safety and privacy for individual students. While the *Family Educational Rights and Privacy Act (FERPA)* generally requires institutions to ask for written consent before disclosing a student's personally identifiable information, it also allows colleges and universities to take key steps to maintain campus safety. Understanding the law empowers school officials to act decisively and quickly when issues arise.

Health or Safety Emergency

In an emergency, *FERPA* permits school officials to disclose without student consent education records, including personally identifiable information from those records, to protect the health or safety of students or other individuals. At such times, records and information may be released to appropriate parties such as law enforcement officials, public health officials, and trained medical personnel. See 34 CFR § 99.31(a)(10) and § 99.36. This exception to *FERPA*'s general consent rule is limited to the period of the emergency and generally does not allow for a blanket release of personally identifiable information from a student's education records. In addition, the Department interprets *FERPA* to permit institutions to disclose information from education records to parents if a health or safety emergency involves their son or daughter.

Disciplinary Records

While student disciplinary records are protected as education records under *FERPA*, there are certain circumstances in which disciplinary records may be disclosed without the student's consent. A postsecondary institution may disclose to an alleged victim of any crime of violence or non-forcible sex offense the final results of a disciplinary proceeding conducted by the institution against the alleged perpetrator of that crime, regardless of whether the institution concluded a violation was committed. An institution may disclose to anyone—not just the victim—the final results of a disciplinary proceeding, if it determines that the student is an alleged

perpetrator of a crime of violence or non-forcible sex offense, and with respect to the allegation made against him or her, the student has committed a violation of the institution's rules or policies. See 34 CFR §§ 99.31(a)(13) and (14).

The Clery Act

The *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* requires postsecondary institutions to provide timely warnings of crimes that represent a threat to the safety of students or employees and to make public their campus security policies. It also requires that crime data be collected, reported, and disseminated to the campus community and to the Department annually. The *Clery Act* is intended to provide students and their families with accurate, complete, and timely information about safety on campuses so that they can make informed decisions. Such disclosures are permitted under *FERPA*. The following Web site provides more information about these and other provisions about campus safety: <http://www.ed.gov/admins/lead/safety/campus.html>.

Law Enforcement Unit Records

Many colleges and universities have their own law enforcement units to monitor safety and security in and around campus. Institutions that do not have specific law enforcement units may designate a particular office or school official to be responsible for referring potential or alleged violations of law to local police authorities. Investigative reports and other records created and maintained by these law enforcement units are not considered education records subject to *FERPA*. Accordingly, institutions may disclose information from law enforcement unit records to anyone, including outside law enforcement authorities, without student consent. See 34 CFR § 99.8.

While an institution has flexibility in deciding how to carry out safety functions, it must also indicate in its policy or in information provided to students which office or school official serves as the college or university's "law enforcement unit." (The institution's notification to students of their rights under *FERPA* can include this designation. As an example, the Department has posted a model notification on its Web site at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/ps-officials.html>.)

Law enforcement unit officials who are employed by the college or university should be designated in the institution's *FERPA* notification as "school officials" with a "legitimate educational interest." As such, they may be given access to personally identifiable information from students' education records. The institution's law enforcement unit officials must protect the privacy of education records it receives and may disclose them only in compliance with *FERPA*. For that reason, it is advisable that law enforcement unit records be maintained separately from education records.

Disclosure to Parents

When a student turns 18 years old or enters a postsecondary institution at any age, all rights afforded to parents under *FERPA* transfer to the student. However, *FERPA* also provides ways in which schools may share information with parents without the student's consent. For example:

- Schools may disclose education records to parents if the student is a dependent for income tax purposes.
- Schools may disclose education records to parents if a health or safety emergency involves their son or daughter.
- Schools may inform parents if the student who is under age 21 has violated any law or its policy concerning the use or possession of alcohol or a controlled substance.

CSO READINGS & ASSIGNMENTS

Assignment II.1. Understanding Your Authority

Your Status
1. Identify your status as a campus security officer. Check one: <input type="checkbox"/> Special Conservator of the Peace – appointment by circuit court judge <input type="checkbox"/> Proprietary Security Officers – employed by college or university to provide security services for the employer. <input type="checkbox"/> Contracted Private Security Officers - Employed by private security services firms with which the colleges and universities have contracted to perform private security services.
Arrest
2. Examine policies, procedures, and guidelines that you are required to follow at your college or university to locate information about detention or arrest.
a. What do policies/procedures/guidelines say about your authority to detain persons?
b. Under what circumstances are you permitted to detain a person?
c. What actions are you expected to take once you have detained a person?

CSO READINGS & ASSIGNMENTS

Use of Force

3. Examine policies, procedures, and guidelines that you are required to follow at your college or university to locate information about use of force.

a. Under what circumstances are CSOs authorized to consider use of force?

b. Using the force continuum that is broken down into six broad levels, identify the level(s) of force that you are authorized to exercise.

Search

4. Examine policies, procedures, and guidelines that you are required to follow at your college or university to locate information about searching persons, vehicles, or other locations.

a. In what ways does your college or university give notice that persons, vehicles, or property may be subject to search?

b. Under what circumstances are CSOs authorized to search a person, a vehicle, or other locations?

c. What guidance is provided about what constitutes a “reasonable” search or what limits there are on searches?

Assignment II.2. Rights and Responsibilities in the Campus Environment: Identifying CSO Roles

I. Exercising “Reasonable Care”

Courts have ruled that colleges are fairly well-positioned to exercise reasonable care to keep students safe from violent crime on campus because they have “the ability to design and implement a security system, hire and supervise security guards, provide security at the entrances of dormitories, install proper locks, and establish a system of announcement for authorized visitors.”⁴

List at least three examples of ways campus security officers on your campus help the college/university to exercise “reasonable care” to keep students (and others) safe.

II. Understanding the Disciplinary Process

Locate and review a copy of your college/university disciplinary policy. Review the rules of conduct that students agree to as a condition of their admission or attendance at your college or university.

1. What is the range of penalties or sanctions that can be imposed for misconduct?
2. What is the disciplinary process? Under what circumstances does a student have the right to certain notice, a hearing, or to have decisions reviewed by or appealed to a higher authority?
3. What responsibilities do CSOs on your campus have in identifying, responding to, and reporting infractions of university rules and regulations?

⁴ Mullins v. Pine Manor Coll., 449 N.E.2d 331, 335 (Mass. 1983).

CSO READINGS & ASSIGNMENTS

Assignment II.3. Worksheet: How the Clery Act, Campus Sexual Assault Victims Bill of Rights, and FERPA Are Implemented at My Institution

Locate and read the most recent reports/materials developed by your institution to comply with Clery Act requirements and to include your institution's annual report.

Basic Policies

1. Reporting:

What are the basic procedures that students or staff are to use to report a crime or emergency?

What methods are available for on- and off-campus reporting of a crime or emergency?

Under what circumstances may reporting be confidential?

2. Security/Access

What are the basic policies concerning security of and access to campus facilities including residences?

Crime Statistics

3. What offenses occurred most frequently?

4. Where did most offenses occur? On campus, non-campus property, residential facilities, or public property?

CSO READINGS & ASSIGNMENTS

Hate Crimes

5. How many hate crimes were reported and for what offenses? Basis of offense(s) being hate crime(s)? (race, gender, religion, etc.)

Sexual Assault

6. In your institution's procedures for responding after a sex offense occurs, who has responsibility for doing what?

7. How many incidents of sexual assault were reported on your campus last year?

Timely Warning

8. What methods does your institution use to provide "timely warnings" to students and employees when a threat is identified?

Access to Crime Log

9. How does your institution log all incidents reported to campus police or security and make the information available to the public? What are the campus security officers responsibilities?

CSO READINGS & ASSIGNMENTS

FERPA

Locate and review a copy of your college/university policy statements about the confidentiality of student records.

10. Identify any CSO roles/responsibilities in protecting the confidentiality of student records.

11. What is your institution's policy regarding release of information?

MODULE II. LEGAL AND LIABILITY ISSUES

Self Test for Module II.

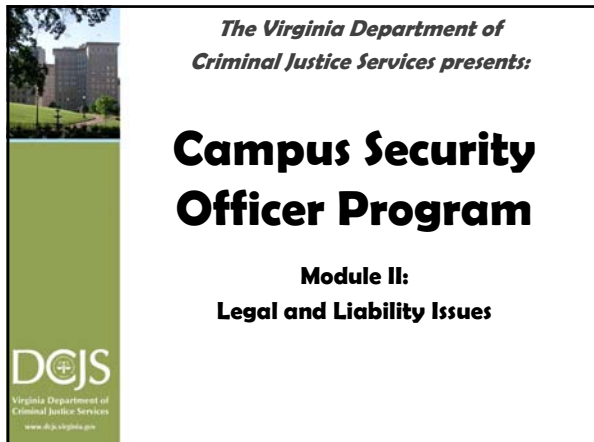
1. **An arrest:**
 - a. always requires a warrant
 - b. can be conducted only by a law enforcement officer
 - c. is any detention of a person
 - d. all of the above
2. **The main circumstance under which security officers may conduct a search is:**
 - a. when a search warrant has been executed
 - b. when there are witnesses
 - c. when notice is given that a person or vehicle are subject to search
 - d. when there is probable cause
3. **Reasonable force is:**
 - a. associated with defending one's person or property
 - b. defined as the amount of force necessary to protect oneself or one's property
 - c. also known as legal force
 - d. all the above
4. **The doctrine of *in loco parentis* is associated with:**
 - a. colleges acting in the place of parents in the lives of its students
 - b. colleges and universities being shielded from liability
 - c. courts deferring to the decisions of colleges and universities
 - d. all the above
5. **Duty of care:**
 - a. involves appropriate emergency medical response
 - b. does not involve the use of security systems
 - c. is the obligation of colleges to exercise a level of care reasonable to avoid injury to the person or his property
 - d. is based on the doctrine of *in loco parentis*
6. **College disciplinary policies:**
 - a. are viewed as part of the learning process
 - b. involve students agreeing to certain rules and regulations as a condition of entering the college/university
 - c. contain due process provisions
 - d. all the above

7. Which of the following is not required by the Clery Act?
 - a. disclosure of crime statistics
 - b. employment of campus security officers
 - c. timely warnings about threats
 - d. public access to crime logs
8. The purpose of the Family Educational Rights and Privacy Act (FERPA) is:
 - a. to protect the privacy of students' medical records
 - b. to provide avenues through which a college can share information with parents
 - c. to protect the privacy of students' education records
 - d. to collect information that is of value in investigations
9. The Campus Sexual Assault Victims' Bill of Rights:
 - a. requires colleges/universities to afford sexual assault victims certain basic rights.
 - b. was enacted to combat the re-victimization of rape survivors.
 - c. requires annual reporting on compliance
 - d. all the above
10. Schools that fail to comply with the Campus Sexual Assault Victims' Bill of Rights are subject to:
 - a. loss of accreditation.
 - b. fine up to \$27,500
 - c. loss of eligibility to participate in federal student aid programs
 - d. b and c
11. What is FOIA:
 - a. Freedom of Information Act
 - b. Federal Officer Invoice Act
 - c. Federal Open Information Act
 - d. Following Ownership in America
12. The 4th Amendment addresses:
 - a. legal issues of search and seizures
 - b. freedom of speech
 - c. Freedom of assembly
 - d. b and c
13. When is any level of force acceptable?
 - a. when a student says hurtful things
 - b. when defending your property
 - c. in defense of your life
 - d. all of the above

CSO SELF TEST

14. The 2008 amendments to the Clery Act did which of the following?
- a. expanded categories for transgendered persons
 - b. expanded categories for hate crimes
 - c. expanded categories for whistle blower protections
 - d. b and c
15. What is HIPAA?
- a. an act to establish national standards for electronic health care transactions
 - b. included the privacy rule which is balances to protect patient privacy and allow for the disclosure of care information
 - c. addressed the security and privacy of health data
 - d. all of the above

Score /15

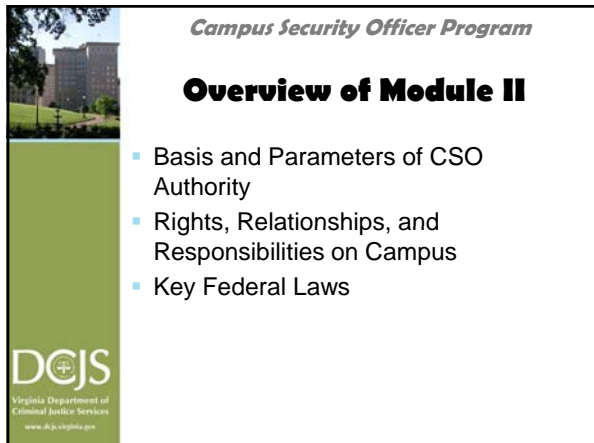


*The Virginia Department of
Criminal Justice Services presents:*

Campus Security Officer Program

**Module II:
Legal and Liability Issues**

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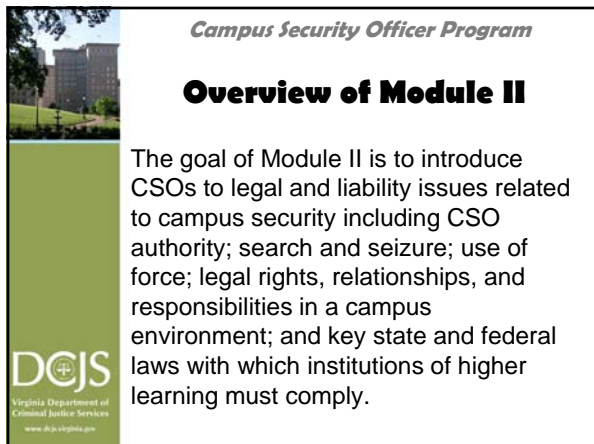


Campus Security Officer Program

Overview of Module II

- Basis and Parameters of CSO Authority
- Rights, Relationships, and Responsibilities on Campus
- Key Federal Laws

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Campus Security Officer Program

Overview of Module II

The goal of Module II is to introduce CSOs to legal and liability issues related to campus security including CSO authority; search and seizure; use of force; legal rights, relationships, and responsibilities in a campus environment; and key state and federal laws with which institutions of higher learning must comply.


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Campus Security Officer Program

Basic Parameters of CSO Authority


- Campus Safety and Security Authorities
- Arrest Basics
- Search and Seizure Basics
- Use of Force Basics



Campus Security Officer Program

Campus Safety and Security Authorities


- Campus Police Officers:
 - sworn law enforcement officers with authority set forth in state law, including the authority to arrest
 - must meet the same training requirements as all sworn officers in the Commonwealth
 - Code of Virginia §23-232 and §23-232.1 authorizes both public and private institutions of higher learning to establish police departments



Campus Security Officer Program

Campus Safety and Security Authorities


- Proprietary Campus Security Officers are:
 - employed exclusively by a single employer, and
 - provide security services for that employer.
 - may be armed or unarmed—vast majority
 - CSOs must comply with DCJS standards, if armed they must also register with DCJS with a firearms enforcement
 - no sworn or appointed arrest authority



Campus Security Officer Program

Campus Safety and Security Authorities


- Special Conservators of the Peace:
 - granted certain authority and jurisdiction by a circuit court judge who determines length of appointment and weapons permissions
 - must register with DCJS
 - authority may include designations as police, use of lights, arrest authority, carrying of firearms, transporting of prisoners, and other such items
 - if not designated by the court, it is not allowable



Campus Security Officer Program

Campus Safety and Security Authorities


- Contracted Private Security Officers:
 - colleges and universities often contract to private security firms to perform private security services
 - firms must meet requirements for licensing by the DCJS
 - individuals assigned to those contracts must also meet the CSO training and employment certification requirements and registration as an unarmed security officer or armed security officer



Campus Security Officer Program

Arrest Basics


- U.S. Supreme Court has defined arrest as any detention of a person. Once a person is no longer free to move about or leave, "it is an arrest".
- Citizen's arrest is an arrest made by a person who is not a sworn law enforcement official.
- Unlike police officers, campus security officers are not required to ever make an arrest. Most campus security officers simply observe and report and call the police if a crime occurs in their presence.



Campus Security Officer Program

Arrest Basics


- In extreme circumstances, CSOs may intervene with a crime in progress to protect life, however consideration must be given as to the:
 - seriousness of the crime,
 - risk of harm for everyone involved,
 - immediacy of the situation, and
 - protocol and policy of the employer.
- Arrest incurs liability for unlawful arrest or injury.



Campus Security Officer Program

Search and Seizure Basics


- Fourth Amendment Protections:
 - ensures every individual the right to privacy and the right to be protected from unreasonable search and seizures
 - a warrant must be issued in order to allow law enforcement officials to search your home or property and for the warrant to be issued, there must be "probable cause"



Campus Security Officer Program

Search and Seizure Basics


- The main circumstance for CSOs to conduct a search is when notice is given. For example:
 - vehicles parked on campus may be subject to reasonable search for drugs
 - notice is given that as a condition of parking the vehicle on campus, the vehicle is subject to search
 - "Notice" is that it allows persons a choice. If the person does not want to comply, they can simply choose not to enter the property, not to enroll at the university, or not to live in campus housing



Campus Security Officer Program

Search and Seizure Basics


- CSOs may conduct “Pat-downs” in very limited circumstances—for the purpose of officer safety and when a situation poses a threat or is of a suspicious nature.
- A preferred approach is to ask the person to demonstrate he is unarmed by emptying pockets and/or moving clothing for visual inspection.



Campus Security Officer Program

Use of Force Basics


- CSOs may find themselves in situations where they are required to restrain a person or to defend themselves—how much force is a CSO allowed to use in a tense and potentially dangerous situation?
- Reasonable Force:
 - amount of force necessary to protect oneself or one's property
 - if the force used is excessive—more than necessary—a campus security officer and his college or university may be at risk of legal action



Campus Security Officer Program

Use of Force Basics


- Force Continuum—the need for force changes as situations evolve and is governed by the institution's policies.
- Unarmed campus security officers are typically authorized to use only the first two levels on the continuum:
 - Officer Presence
 - Verbal Communication



Campus Security Officer Program

Use of Force Basics


- Level One—Officer Presence:
 - highly visible uniformed CSO or marked vehicle is often enough to stop a crime in progress or prevent future crime
 - includes standing, walking, running, and use of vehicle lights, horn, or speaker
 - body language and gestures should be non-threatening and professional



Campus Security Officer Program

Use of Force Basics


- Level Two—Verbal Communication:
 - visible presence combined with use of the voice to achieve the desired results
 - words can be whispered, used normally, or shouted to be effective
 - content of the message is as important as demeanor
 - best to start out calm but firm and non-threatening
 - increase intensity as necessary



Campus Security Officer Program

Use of Force Basics

- It is critically important for CSOs to understand the policies and procedures established by their colleges or universities related to use of force and ask if anything is unclear.
- Any level of force is acceptable in defense of your life.




Campus Security Officer Program

Rights, Relationships, and Responsibilities on Campus

- Historical Background
- Student-University Relationships
- Campus Disciplinary Processes

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Campus Security Officer Program

Historical Background

- Crime on college and university campuses captured media attention in the mid-1980s when several tragic cases were publicized.
- Civil suits filed by victims and surviving family members of homicide victims against universities and administrators threatened the financial resources of colleges and universities and served as the prelude to federal legislation.

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Historical Background

- Three pieces of federal legislation were introduced and passed in the 1990s:
 - Campus Security Act of 1990,
 - Campus Sexual Assault Victims Bill of Rights of 1992, and
 - Higher Education Amendments of 1998 and 2008.
- In addition to these events, courts have been re-defining the nature of the relationship between institutions of higher learning and their students.

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Campus Security Officer Program

Student-University Relationships

- In loco parentis:
 - in place of parent
 - until the 1960s, doctrine dictated courts' vision on relationship between colleges and students
 - colleges were shielded from liability as courts avoided judging the decisions of colleges

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Student-University Relationships

- Contractual relationship:
 - in the 1960s, the courts began viewing the relationship among colleges/universities, their students, and their students' parents as contractual rather than parental
 - growing recognition of college students as adults
 - courts no longer expected colleges to play a role as surrogate parents

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Campus Security Officer Program

Student-University Relationships

- Duty of Care:
 - obligation to exercise a level of care towards an individual that is reasonable to avoid injury to that person or his property
 - colleges and universities owe students a duty of protection from certain specific harms, particularly harm from violent crime and hazing activities

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Student-University Relationships

- Duty of Care examples:
 - providing safe, adequate and properly maintained equipment
 - ensuring health and safety laws and regulations are obeyed and that physical property is safe and maintained properly
 - performing background checks of prospective employees to screen out those who may represent a threat to the safety of students and/or staff

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Student-University Relationships

- A breach of the Duty of Care may occur based on an action or failure to take action if the action was:
 - negligent,
 - voluntary, and
 - had foreseeable and natural harmful consequences.

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Campus Security Officer Program

Student-University Relationships

- Duty of Care—Foreseeable Risks:
 - In recent years, colleges have focused a great deal more on risk management.
 - A CSO can play a very important role in helping his college/university to exercise “reasonable care” to keep students (and others) safe by helping to identify and to respond to risks.


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Campus Security Officer Program

Student-University Relationships


- Campus Disciplinary Processes:
 - part of the order/maintenance function of the college
 - does not replace criminal sanctions
 - the student code of conduct is the civil model, and provides for the college's disciplinary process
 - the goal is correction rather than punishment
 - courts have decreed that attendance at a college is a privilege, not a right



Campus Security Officer Program

Student-University Relationships


- Campus Disciplinary Processes:
 - colleges must ensure that students' due process rights are not violated
 - CSOs must understand what due process rights students have at their particular college or university
 - there are differences in rights at public and private colleges
 - CSOs must understand and follow procedures to avoid violations of due process



Campus Security Officer Program

Student-University Relationships


- Campus Disciplinary Processes Example:
 - UVA: "Students enrolling in the University assume an obligation to conduct themselves in a manner that is civil and compatible with the University's function as an educational institution...the University has the authority and responsibility to maintain order within the University and to exclude those who are disruptive of the educational process."
 - The University asserts:
 - Standard of Conduct and rules cover broad range of behaviors and sanctions are described




Campus Security Officer Program

Student-University Relationships

- Campus Disciplinary Processes:
 - It is critical for CSOs to have a strong working knowledge of student rights and responsibilities on his or her particular campus and to be familiar with how the student disciplinary process operates.
- The Virginia Crime Commission's Study on Campus Safety (2006) found that the overwhelming majority of referrals to college judicial councils or boards were for alcohol violations, followed by drug offenses, larceny, vandalism, and assault.




Virginia Department of Criminal Justice Services
www.dcps.virginia.gov




Campus Security Officer Program

Key Federal Laws

- The Jeanne Clery Act
- Campus Sexual Assault Victims' Bill of Rights
- Family Educational Rights and Privacy Act




Virginia Department of Criminal Justice Services
www.dcps.virginia.gov




Campus Security Officer Program

The Jeanne Clery Act

- Federal law—also known as the Campus Security Act of 1990
- Enacted largely through the advocacy of a couple whose daughter was murdered at Lehigh University in 1986:
 - freshman—beaten, raped and murdered in her dorm room
 - assailant was another student, whom she did not know
 - large amount of crime on campus which was unknown to students, parents, and public




Virginia Department of Criminal Justice Services
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Campus Security Officer Program

The Jeanne Clery Act


- Federal law that requires colleges and universities to disclose information about campus crime and security policies.
- The Clery Act makes it mandatory for institutions to publicize their crime statistics in an Annual Report, provide timely access to information, and give access to crime logs.



Campus Security Officer Program

The Jeanne Clery Act


- The Annual Report:
 - schools **must** publish an annual report containing three years of campus crime statistics and certain security policy statements including sexual assault policies, the law enforcement authority of campus police, and where students should go to report crimes
 - to be made available automatically to all current students and employees
 - most schools post their reports online
 - statistics must also be provided to the U.S. Department of Education



Campus Security Officer Program

The Jeanne Clery Act


- The Annual Report:
 - schools **must** disclose statistics for crimes on campus and public areas adjacent to or running through the campus and for non-campus facilities including fraternity and sorority housing and remote classrooms
 - the categories of crimes are: criminal homicide, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, arsons, fires, larcenies, vandalism, missing person's protocol, liquor, drug, and weapons violations



Campus Security Officer Program

The Jeanne Clery Act


- Access to Timely Information:
 - the Clery Act also requires that schools provide "timely warnings" when the school considers a crime to pose an ongoing threat to students and employees
 - Virginia, in the wake of the Virginia Tech shootings, has passed laws requiring colleges to establish first warning notification and emergency broadcast systems



Campus Security Officer Program

The Jeanne Clery Act


- Access to Crime Logs:
 - Campus police and security departments are required to allow public access to logs of any incidents reported.
 - The log is required to include the "nature, date, time, and general location of each crime" and are to be available for public access within two business days.
 - Logs remain open for 60 days and subsequently must be available within two business days of a request.



Campus Security Officer Program

The Jeanne Clery Act


- Clery Act Amendments:
 - 1992 amendment: Institutions must inform the campus community how they can obtain information about registered sex offenders on campus. The Virginia State Police make available the state's sex offender registry by accessing:
<http://sexoffender.vsp.virginia.gov/sor/>



Campus Security Officer Program

The Jeanne Clery Act


- Clery Act Amendments:
 - 2008 amendments: institutions must develop and make public a security plan to respond to emergencies on campus.
 - The plan must provide for:
 - immediate notification as soon as an emergency is confirmed
 - mandatory tracking and reporting of fires on campus
 - mandatory reporting for missing persons under the age of 21
 - *Code of Virginia* Sections: §52-32 and §15.2-1718



Campus Security Officer Program

The Jeanne Clery Act


- Penalties:
 - Strong incentive to comply and heavy penalty for failure
 - Colleges can be fined \$35,00 per violation
 - Campus Security Officer Role:
 - Should be aware of their reporting and recordkeeping responsibilities
 - Should follow established policies and procedures



Campus Security Officer Program

Campus Sexual Assault Victims' Bill Of Rights

- Enacted in 1992 as a part of the Higher Education Amendments of 1992.
- The legislation was developed to combat the re-victimization of rape survivors at college campuses who found that many image conscious schools were more concerned about protecting their image than seeing justice done.




Campus Security Officer Program

Campus Sexual Assault Victims' Bill Of Rights

- Colleges and universities must afford sexual assault victims certain basic rights:
 - accuser and accused must have the same opportunity to have others present in a college disciplinary hearing
 - both parties must be informed of the outcome of any disciplinary proceeding
 - survivors must be informed of their options to report their assault to the proper law enforcement authorities, about counseling services, and options for changing academic and living situations

DCJS
Virginia Department of Criminal Justice Services
www.dcj.virginia.gov




Campus Security Officer Program

Campus Sexual Assault Victims' Bill Of Rights

- Penalties:
 - Schools can be fined up to \$35,000 or lose their eligibility to participate in federal student aid programs.
- Reporting:
 - Schools are required to report how they comply with the law—annual security report that contains detailed information about programs, policies, and procedures.

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Campus Security Officer Program

Campus Sexual Assault Victims' Bill Of Rights

- Campus Security Officer Role:
 - Responsible for keeping accurate documentation and note taking on all incidents in which they are involved.
 - Prompt reporting of all incidents to your supervisor for inclusion in the Clery Act reporting when necessary is vitally important for your institution.


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Campus Security Officer Program

Family Educational Rights and Privacy Act


- FERPA is a federal law designed to protect the privacy of students' education records.
- When a student turns 18 or enters college, FERPA rights transfer from the student's parents to the student.
- Students have rights to review records, correct information in the record, and consent to disclosure of information.
- Records can be shared for tax purposes, a health or safety emergency; and if the student is violates any law/policy related to alcohol or drugs.



Campus Security Officer Program

Family Educational Rights and Privacy Act


- FERPA focuses on privacy of records. It does not prevent communication with parents based on personal knowledge or observations.
- Institutions have established policies and procedures that must be carefully followed.
- Campus Security Officer Role:
 - It is important CSOs are aware of general policies for protecting student privacy, clearly understand any responsibilities related to compliance with FERPA, and carefully follow related policies and procedures.



Campus Security Officer Program

Family Educational Rights and Privacy Act

- HIPAA:
 - Health Insurance Portability and Accountability Act of 1996—established national standards for electronic health care transactions and national identifiers for providers, health plans, and employers
 - addressed the security and privacy of health data
- Campus Security Officer Role:
 - check with supervisor before releasing information specific to students and faculty




Campus Security Officer Program

Family Educational Rights and Privacy Act

- HIPAA:
 - Privacy Rule: federal protections for personal health information
 - summary of key elements of the Privacy Rule www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html.
 - the Office for Civil Rights enforces the HIPAA Privacy Rule

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Campus Security Officer Program

Freedom of Information Act

- Virginia Freedom of Information Act (FOIA):
 - enacted July 1, 1968
 - ensures citizen access, with certain exceptions, to records and meetings of state and local government
 - Virginia requires available records be made within five days or estimate of when they will be available
 - a legal request can be made to any employee including SECURITY OFFICERS

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Campus Security Officer Program

Freedom of Information Act

- Virginia Freedom of Information Act (FOIA):
 - get the name and contact information for the requesting person
 - find out exactly what records they want
 - immediately report the information to your superior
 - CSOs should be aware of their campuses policy regarding FOIA
 - Virginia FOIA Council 1-866-448-4100 or foiacouncil@leg.state.va.us


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Campus Security Officer Program

Module II-Review

- Basis and Parameters of CSO Authority:
 - Campus Safety and Security Authorities
 - Arrest Basics
 - Search and Seizure Basics
 - Use of Force Basics
- Rights, Relationships, & Responsibilities:
 - Historical Background
 - Student-University Relationships
 - Campus Disciplinary Processes
- Key Federal Laws:
 - The Jeanne Clery Act
 - Campus Sexual Assault Victims' Bill of Rights
 - Family Educational Rights and Privacy Act





Campus Security Officer Program

Overview of Module II

- Questions?
- Readings
- Assignments
- Self Test
- Module II Test- Must have a 70% to pass!

