

Clery Act Definitions

The Jeanne Clery Act of 1990 requires educational institutions to publish statistics each calendar year regarding the number of reports to campus security authorities or local police for particular crimes, using various FBI crime definitions. These definitions may differ from the definitions for similar offenses under State law. For Clery reporting purposes, the following gender-based offenses are defined as follows:

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

- ◆ **Rape** is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
- ◆ **Fondling** is the touching of the private body parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because his/her temporary or permanent mental incapacity.
- ◆ **Incest** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- ◆ **Statutory Rape** is sexual intercourse with a person who is under the statutory age of consent.

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

- ◆ Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- ◆ Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence is defined as a felony or misdemeanor crime of violence committed—

- ◆ By a current or former spouse or intimate partner of the victim;
- ◆ By a person with whom the victim shares a child in common;
- ◆ By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- ◆ By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
- ◆ By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

To categorize an incident as Domestic Violence, the relationship between the perpetrator and the victim must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- ◆ Fear for the person's safety or the safety of others; or
- ◆ Suffer substantial emotional distress.

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

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

Nebraska Definitions

State law also provides the following definitions relevant to gender-based offenses. These definitions are also available in the Annual Campus Security and Fire Report, which is updated annually to reflect current law. You may view the most current Annual Campus Security and Fire Report at <https://www.wncc.edu/about-wncc/campuses/campus-safety>.

To review these statutes in their entirety, please see the official site of the Nebraska Unicameral Legislature at the following: <http://nebraskalegislature.gov/laws/browse-statutes.php>

Consent to Sexual Activity (Neb. Rev. Stat. §28-318):

“**Consent**” means agreement, approval, or permission as to some act or purpose, given voluntarily by a competent person.

“**Without consent**” means:

1. The victim was compelled to submit due to the use of force or threat of force or coercion; or
 - a) The victim expressed a lack of consent through words; or
 - b) The victim expressed a lack of consent through conduct; or
 - c) The consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor.
2. The victim need only resist, either verbally or physically, so as to make the person's refusal to consent genuine and real and so as to reasonably make known to the actor the person's refusal to consent; and
3. A victim need not resist verbally or physically where it would be useless or futile to do so.

In the above text, the word “victim” means the individual against whom a wrongful act was allegedly committed, and the word “actor” is the individual alleged to have committed a wrongful act. When the actor knew or should have known that a person was mentally or physically incapable of resisting or understanding the nature of his or her conduct, there is no consent. A person may be incapacitated due to intoxication, mental illness or deficiency or by physical illness or disability to the extent that personal decision-making is impossible. Surprise may also prevent resistance, as where a person is grabbed from behind.

There are some persons who the law presumes are incapable of consenting to sexual contact or penetration by an actor by reason of their age. Under Nebraska law an actor nineteen years of age or older may not subject a person under the age of sixteen years of age to sexual penetration, or a person under fifteen years of age to sexual contact.

Dating Violence (Neb. Rev. Stat. §79-2,140): Dating violence means a pattern of behavior where one person uses threats of, or actually uses, physical, sexual, verbal, or emotional abuse, to control his or her dating partner. Dating partner means any person, regardless of gender, involved in an intimate relationship with another person primarily characterized by the expectation of affectionate involvement, whether casual, serious, or long-term.

Domestic Violence (Neb. Rev. Stat. §28-323): A person intentionally and knowingly causes bodily injury to his/her intimate partner; threatens an intimate partner with imminent bodily injury; or threatens an intimate partner in a menacing manner. Intimate partner, regardless of gender, means a spouse; a former spouse; persons who have a child in common, whether or not they have been married or lived together at any time; and persons who are or were involved in a dating relationship. Dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.

Sexual Assault (Neb. Rev. Stat. §§, 28-317, 28-318, 28-319 and 28-320): Sexual contact and/or sexual penetration without the consent of the victim, regardless of either person's gender, including situations where coercion, force or the threat of force was used; situations where the perpetrator knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his/her conduct (i.e. mentally challenged, disabled, intoxicated, etc.); or where the perpetrator is nineteen years of age or older and the victim is at least twelve but less than sixteen years of age. A victim must simply provide enough resistance, either verbally or physically, to make the perpetrator aware of the lack of consent. A victim need not resist verbally or physically where it would be useless or futile to do so.

Nebraska Definitions (continued)

Sexual Assault (continued)

The following definitions apply:

1. **Actor:** The person accused of sexual assault.
2. **Force or threat of force:** The use of physical force which overcomes the victim's resistance; or the threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.
3. **Intimate parts:** The genital area, groin, inner thighs, buttocks, or breasts.
4. **Serious personal injury:** Great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.
5. **Sexual contact:** The intentional touching of the victim's sexual or intimate parts, or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact also means the touching, by the victim, of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts, when this touching is intentionally caused by the actor. Sexual contact includes only that conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party.
6. **Sexual penetration:** Sexual intercourse in its ordinary meaning, cunnilingus, fellatio and anal intercourse. It also includes the intrusion, however slight, of any part of the perpetrator's or victim's body, or any object manipulated by the actor, into the genital or anal openings of the victim's body. Sexual penetration does not require emission of semen.
7. **Victim:** The person alleging to have been sexually assaulted.

Stalking (Neb. Rev. Stat. §§28-311.02 and 28-311.03): The willful harassment of another person, regardless of gender, or the family or household member of that person, with the intent to injure, terrify, threaten, or intimidate. Actions include, but are not limited to, deliberately following, detaining, contacting, or harassing the person(s), or imposing any restraints on their personal liberty.

- ◆ **Harass:** To engage in a knowing and willful course of conduct directed at a specific person that seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose.
- ◆ **Course of conduct:** A pattern of conduct composed of a series of acts over a period of time, however short, indicating a continuity of purpose, including a series of acts of following, detaining, restraining the personal liberty of, or physically stalking the person or telephoning, texting, contacting, or otherwise communicating with the person.
- ◆ **Family or household member:** Regardless of gender, a spouse or former spouse of the victim, children of the victim, a person presently residing with the victim or who has resided with the victim in the past, a person who had a child in common with the victim, other persons related to the victim by a blood relationship or marriage, or any person presently (or in the past) involved in a dating relationship with the victim.