

From “Rape” to “Criminal Sexual Contact”: The Expanding Definition of Sexual Assault Under the Clery Act and Title IX (1990–2026) [[SAFE Campuses, LLC](#); 08/15/26]

I. Legislative History: From “Rape” to the Statutory Definition of Sexual Assault

1990 – Original Clery Act Uses the Narrow Term “Rape” The Student Right-to-Know and Campus Security Act of 1990 (Pub. L. 101-542), commonly known as the original Clery Act, required institutions of higher education participating in federal student aid programs to collect and disclose campus crime statistics. Among the required categories was the single term “**rape**.” The statute provided no definition of the term and did not use the qualifier “forcible.”

Early implementing guidance from the U.S. Department of Education resolved the ambiguity in a restrictive direction. In Dear Colleague Letter GEN-91-27 (August 1991), the Department instructed institutions to use the definitions contained in the FBI’s *Uniform Crime Reporting Handbook*. At that time, the FBI’s Summary Reporting System defined “Forcible Rape” narrowly as “the carnal knowledge of a female forcibly and against her will.” By directing institutions to the UCR Handbook, the Department effectively limited the 1990 statutory term “rape” to this narrow category. Other sex offenses—such as forcible sodomy, sexual assault with an object, fondling, incest, and statutory rape—were not required to be reported under the original statute as interpreted by the Department.

1991–1992 – Advocacy Pressure and the Push for Broader Coverage Campus safety advocates, including Security On Campus, Inc. and Safe Campuses Now, along with members of Congress, viewed the narrow administrative interpretation of “rape” as inadequate. Representative Jim Ramstad (R-MN) introduced H.R. 2363, the Campus Sexual Assault Victims’ Bill of Rights Act of 1991, which sought to require institutions to adopt meaningful sexual assault policies and to afford basic rights to student victims. Contemporary correspondence from Ramstad’s office documents the active advocacy campaign then underway, noting strong bipartisan cosponsorship and the inclusion of a version of the bill in the House Education and Labor Committee’s Higher Education Act reauthorization measure.

Advocates argued that limiting statistics and institutional attention to the traditional “forcible rape” category significantly understated the incidence of sexual violence on campus and failed to address the full range of conduct that victims experienced. This advocacy occurred against the backdrop of the Department’s 1991 guidance that had locked the statutory term “rape” to the restrictive UCR definition.

1992 – Congress Replaces “Rape” with “Sex Offenses, Forcible or Nonforcible” The Higher Education Amendments of 1992 (Pub. L. 102-325) made two related changes. First, it enacted the Campus Sexual Assault Victims’ Bill of Rights, requiring institutions to develop sexual assault prevention programs, establish disciplinary procedures, and afford certain rights to victims. Second, it amended the crime statistics provision by replacing the single category “rape” with the broader phrase “**sex offenses, forcible or nonforcible**” (now codified at 20 U.S.C. § 1092(f)(1)(F)(i)(II)).

The purpose of the change was explicit: to capture a more complete picture of sexual violence on campus and to align institutional reporting with the classifications then used in the FBI's Uniform Crime Reporting program (particularly the more detailed structure of the National Incident-Based Reporting System). The new language encompassed both forcible sex offenses (rape, sodomy, sexual assault with an object, and fondling) and nonforcible sex offenses (incest and statutory rape). This expansion directly addressed the limitations of the 1990 statute as it had been interpreted by the Department of Education.

2013 – Congress Creates an Express Statutory Definition of “Sexual Assault” and the FBI Eliminates “Forcible/Nonforcible” Terminology

The Violence Against Women Reauthorization Act of 2013 (Pub. L. 113-4), through its Campus Sexual Violence Elimination (Campus SaVE) provisions in Section 304, significantly expanded the Clery Act's requirements related to sexual assault, domestic violence, dating violence, and stalking. Institutions were required to include detailed policy statements, prevention and awareness programs, and disciplinary procedures covering these offenses.

To support these new obligations, Congress added a formal definitional subsection. **20 U.S.C. § 1092(f)(6)(A)(v)** provides:

The term “sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

In the same year, the FBI itself eliminated the terms “forcible” and “nonforcible” from its UCR Program. The Bureau revised the definition of rape, removed the word “forcible” from the offense name, and began the process of consolidating the former “Sex Offenses, Forcible” and “Sex Offenses, Nonforcible” categories. By approximately 2018–2019, the binary “forcible or nonforcible” framing had been fully retired from NIBRS in favor of a single “Sex Offenses” category. Thus, at the very moment Congress wrote the phrase “forcible or nonforcible sex offense” into the Clery Act statute, the FBI was already moving away from that terminology.

2014 – Department of Education Regulatory Implementation In the Violence Against Women Act Final Rule (79 Fed. Reg. 62752, October 20, 2014), the Department of Education operationalized the 2013 statutory definition. It defined “Sexual assault” in 34 CFR § 668.46(a) as an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and included in Appendix A to Subpart D of Part 668. The Department adopted the FBI's recently expanded Summary Reporting System definition of Rape (which was gender-neutral and covered a broader range of penetrative acts) while retaining the NIBRS definitions for fondling, incest, and statutory rape. These regulatory definitions have remained in place without substantive amendment.

2020–2021 – Retirement of the Summary Reporting System The FBI formally retired the Summary Reporting System (SRS) and transitioned the UCR Program to NIBRS as the sole national crime reporting system. Although the transition encountered practical difficulties and some SRS data continued to be accepted for a period, the policy direction was clear: NIBRS became the authoritative source of UCR sex offense definitions. This development further

underscored the growing gap between the 2013 statutory language (which still referenced “forcible or nonforcible” sex offenses) and the FBI’s actual classification system.

II. History of the Divergence Between Clery Act and Title IX Definitions of Sexual Assault

2013 – Common Statutory Foundation Both the Clery Act and, later, the Title IX regulations begin from the identical statutory language in 20 U.S.C. § 1092(f)(6)(A)(v). At the moment of its enactment there was no divergence—although the FBI was simultaneously eliminating the very “forcible/nonforcible” terminology the statute employed.

2014 – Clery Regulations Fix Specific Definitions The 2014 VAWA Final Rule embedded detailed definitions in 34 CFR § 668.46(a) and Appendix A. The definition of “Fondling” in Appendix A has remained unchanged. Because these definitions were placed in regulation, they could be changed only through subsequent notice-and-comment rulemaking. The Clery side of the Department has treated Appendix A as the controlling implementation of the statute.

2020 – Title IX Rule Adopts a Different Drafting Strategy In the 2020 Title IX Final Rule (85 Fed. Reg. 30026, May 19, 2020), the Department defined “sexual harassment” in 34 CFR § 106.30(a) to include “sexual assault” as defined in **20 U.S.C. § 1092(f)(6)(A)(v)**. Critically, the Department chose to cite the Clery Act *statute* rather than the Clery Act *regulations*. In the preamble, the Department explained that this approach would harmonize Title IX and Clery Act obligations, allow the definition to track the FBI’s UCR system, and avoid being tied to future changes in the Clery regulations. The preamble also noted the FBI’s then-imminent retirement of the SRS and transition to NIBRS, observing that the statutory cross-reference would continue to cover the same range of sex offenses regardless of that transition.

June 23, 2025 – FBI Broadens and Renames the Relevant Offense The FBI published the *National Incident-Based Reporting System User Manual 2025.0*. It renamed the offense formerly known as “Fondling” to **“Criminal Sexual Contact”** and substantially expanded its scope to cover the intentional touching of clothed or unclothed body parts, additional purposes (sexual degradation and humiliation), forced touching by the victim of the actor’s body parts, and incapacity due to intoxication.

August 2025 – Clery Side Declines to Adopt the Change The Department’s Clery Help Desk informed NACCOP that institutions must continue to use the definitions as they appear in the Clery Act regulations and Appendix A. Changes in the UCR program do not affect Clery Act reporting until Appendix A itself is amended (NACCOP News Release, August 15, 2025).

July 2026 – OCR Adopts the Updated NIBRS Definition for Title IX OCR’s Program Legal Group stated that the 2020 Title IX regulations incorporate the FBI’s current NIBRS definitions through the statutory cross-reference and that the June 2025 change to “criminal sexual contact (previously fondling)” applies to conduct occurring on or after June 23, 2025 (OCR email, July 6, 2026).

Current Result Two offices within the same Department now apply the identical statutory language to reach different operative definitions. The Clery side remains bound by the 2014 regulatory text; the Title IX side follows the current FBI NIBRS definitions. The statutory phrase “forcible or nonforcible,” already eliminated by the FBI in 2013 and rendered further obsolete by the retirement of the SRS, continues to appear in the U.S. Code while no longer corresponding to the FBI’s actual classification system.

III. Assessment: Progressive Inclusivity of the Definition

The operative definition of sexual assault has become progressively more inclusive from 1990 to 2026:

- **1990:** Implemented as the narrow UCR “Forcible Rape” definition.
- **1992:** Expanded to “sex offenses, forcible or nonforcible.”
- **2013–2014:** Statutory definition enacted; regulations adopt the broader, gender-neutral SRS Rape definition plus NIBRS offenses; FBI simultaneously eliminates “forcible/nonforcible” terminology.
- **2020–2021:** SRS retired; NIBRS becomes the sole UCR system.
- **2025–2026 (Title IX/OCR):** NIBRS 2025.0 “Criminal Sexual Contact” further broadens the non-penetrative offense.

Textual Note The 1990 statute used “rape” rather than “forcible rape.” The Department’s 1991 guidance treated them as equivalent. Congress’s 1992 amendment, the FBI’s 2013 elimination of the forcible/nonforcible distinction, the retirement of the SRS, and the 2025 NIBRS expansion all illustrate a sustained movement away from the original narrow formulation.

IV. Conclusion

Congress began in 1990 with the narrow term “rape,” which the Department of Education limited to the FBI’s restrictive “Forcible Rape” definition. Advocacy by organizations including Security On Campus, Inc. and Safe Campuses Now contributed to the 1992 expansion to “sex offenses, forcible or nonforcible.” In 2013 Congress codified “sexual assault” by cross-reference to the FBI’s UCR system—the same year the FBI itself eliminated the “forcible/nonforcible” terminology. The Department’s 2014 Clery regulations fixed specific definitions in Appendix A, while the 2020 Title IX Rule cited the statute so the definition could track future FBI updates. The subsequent retirement of the Summary Reporting System and the 2025 NIBRS expansion of “Fondling” into “Criminal Sexual Contact” widened the gap. OCR has followed the updated NIBRS definitions for Title IX purposes; the Clery regulations have not. The same statutory language now produces two different operative definitions within the Department of Education, and the overall trajectory from 1990 to 2026 has been one of progressive expansion in the scope of covered sexual misconduct.