

From: [Campus Safety Help](#)
To: [Clery](#)
Subject: RE: Seeking Clarification on Incident Categorization
Date: Tuesday, May 7, 2024 7:40:59 AM
Attachments: [image001.png](#)

Hello,

For Clery Act purposes you should follow the FBI and Clery Act definitions of crimes, not your local laws. The only exceptions to this is when counting weapon, drug, and liquor law arrests and disciplinary actions, and when determining if a relationship falls within the protection of family or domestic violence laws.

Re: How should we categorize the following: Victim reports feeling nauseous, shaking and rambling that would be more than would be expected from the number of drinks they had alone.

Did the victim report that they think they were drugged, or did a third party (e.g., witness, doctor) report that they think the victim was drugged? If so, then this is a reported aggravated assault. It doesn't matter if there is a positive or negative drug test to support the validity of the reported crime. The Clery Act requires institutions to disclose the number of reported crimes, not the results of an investigation. Institutions are not required to investigate or gather evidence to confirm a reported crime for it to be considered reported. A crime is considered reported when it is brought to the attention of local law enforcement or a Campus Safety Authority (CSA).

In a situation where a person is drugged and the victim of a sexual assault in the same incident, you should only count the sexual assault in your Clery Act disclosures.

Rachel
Campus Safety Help
800-435-5985

From: Clery <clery@uoregon.edu>
Sent: Thursday, April 25, 2024 8:54 PM
To: Campus Safety Help <campussafetyhelp@westat.com>
Subject: Seeking Clarification on Incident Categorization

CAUTION: External Email *

Dear Help Desk – We spoke to someone named Karen a few weeks ago about categorizing allegations of intoxication, and she recommended we submit our request in writing. So here it is.

How should we categorize the following: Victim reports feeling nauseous, shaking and rambling that would be more than would be expected from the number of drinks they had alone.

- Variation 1: victim tests positive for date rape drugs. (We would likely categorize this as aggravated assault using the language in the 2016 Handbook.)
- Variation 2: victim suffers another sex offense (Under the hierarchy rule we would count the

most serious offense.)

- Variation 3: there's no positive drug test or other crime (We lean toward counting this as a drug or alcohol referral, unless the Office of Student Conduct investigation makes a finding of responsibility that would suggest some culpability. This wouldn't be aggravated assault in Oregon as there's no intentional or knowing cause of serious injury, and no substantiation that a weapon, e.g. drug, was actually used.)
- Variation 4: same as #3, but the victim is so sick they require medical attention. (Is there a point at which the injury is so severe we presume intent for the purposes of aggravated assault, even without a positive drug test?)

Our Clery policy defines aggravated assault as “An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could or probably would result in a serious potential injury if the crime were successfully completed. Aggravated assault includes poisoning (date rape drug or other poison).” This language is taken from the 2016 Clery Handbook, since rescinded.

The closest Oregon law analog is assault in the first degree at ORS 163.185 (“A person commits the crime of assault in the first degree if the person: (a) Intentionally causes serious physical injury to another by means of a deadly or dangerous weapon; (b) Intentionally or knowingly causes serious physical injury to a child under six years of age; (c) Violates ORS 163.175 (Assault in the second degree) knowing that the victim is pregnant; or (d) Intentionally, knowingly or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants in violation of ORS 813.010 (Driving under the influence of intoxicants)...”) and assault in the second degree at ORS 162.175 (“A person commits the crime of assault in the second degree if the person: (a) Intentionally or knowingly causes serious physical injury to another; (b) Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon; or (c) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.”). These can be differentiated from assault in the third degree which includes the reckless causing of physical injury including by means of a deadly or dangerous weapon, see ORS 163.165, or assault in the fourth degree which uses the criminal negligence standard for intent, see ORS 163.160.

Oregon law also criminalizes causing another person to ingest a controlled substance at ORS 475.908.

The 2016 Clery Handbook states at p. 3-10: “Count all assaults by one person upon another with the intent to kill, maim or inflict severe bodily injury with the use of any dangerous weapon.... In making determinations about whether or not an assault that is carried out using a body part such as hands and feet is aggravated, the institution must consider not only the intent of the attacker but also the extent of the injuries. If an attack results in broken bones, a loss of consciousness or significant blood loss, or requires medical treatment or hospitalization, such as stitches or casting (regardless of whether or not the victim accepts such assistance), the incident must be classified as an Aggravated Assault. The use of drugs to subdue a victim, such as the use of date rape drugs, should be

counted as Aggravated Assault because it can be assumed that the intent was to inflict aggravated bodily harm. However, if the use of the drugs results in Rape or Murder within the same incident, follow the Hierarchy Rule, and count the more serious offenses. (The Hierarchy Rule is discussed on pages 3-24 and 3-25.)”

We appreciate your thoughts on this matter.

Warmly,
Shelly Clark

Shelly Clark | Threat Assessment and Clery Coordinator ([she/her/hers](#))

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