



Update to NIBRS Appears to Expand and Alter the Definitions of “Fondling” and “Rape”

By: [*Jessica Galanos*](#) & [*Kylie Stryffeler*](#)

On June 23, 2025, the Department of Justice’s Criminal Justice Information Services Division published an [updated User’s Manual for the National Incident Based Reporting System \(NIBRS\)](#), which includes an update to the definitions of “fondling” and “rape.” Title IX and Clery Compliance practitioners should note these changes.

The 2020 Title IX Regulations ([34 C.F.R. 106.30](#)) require that institutions use the definition of sexual assault set forth by the Clery Act ([20 USC 1092 \(f\)\(6\)\(A\)\(v\)](#)). The Clery Act defines sexual assault as an “offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.” The Uniform Crime Reporting System of the FBI is the NIBRS. Both the definition of “fondling” and the definition of “rape” are subcategories under the broader definition of “forcible” types of “sexual assault.”

Fondling

The NIBRS User Manual update replaced the term “fondling” with “criminal sexual contact” and expanded the definition. The new definition of “criminal sexual contact” reads as follows:

The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

The forced touching by the victim of the actor’s clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.



NIBRS had [previously](#) defined fondling as:

The touching of the private body parts of another person for the purpose 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 of his/her temporary or permanent mental or physical incapacity.

What does this mean for purposes of Title IX and Clery?

For Title IX purposes, the updated definition of “criminal sexual contact” appears to expand upon the previous definition of fondling – as the conduct can now also be for the purposes of “sexual degradation” or “sexual humiliation,” in addition to “sexual gratification.” Additionally, there is no longer a requirement that the touching be “of the private body parts” of another person. Instead, the new definition requires a demonstration of “intentional” touching of “clothed or unclothed body parts” without the qualifier that the body part be a “private” part. This means that the changes will potentially include more behavior than what would have previously constituted fondling. Institutions of higher education should consider updating their policy to accommodate this new definition.

For Clery crime statistics reporting purposes, the Clery Act Regulations, which went into effect on July 1, 2015, provide the definition of “fondling” in [Appendix A to 34 CFR 668.46](#). Appendix A contains the then-in-effect UCR definition of “fondling.” This means there is a conflict between the statutory language of the Clery Act (which refers to the UCR), and the Clery Act Regulations (which refers to Appendix A).

With the Clery Act Regulations and the Clery Act statute now apparently in conflict, for crime statistics reporting purposes, institutions should consult with counsel as to which definition of “fondling” to utilize for the purpose of counting crimes under the Clery Act.

Rape

The NIBRS update includes a revised definition of “Rape.” The updated definition is as follows:

Penetration, regardless of how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another individual, or by a sex-related object. This definition covers



cases where the victim cannot provide consent due to temporary or permanent mental or physical incapacity (including resulting from drugs or alcohol) or due to age. Physical resistance by the victim is not required to establish lack of consent.

This definition is likely familiar to many Title IX practitioners, as it echoes the former [Summary Reporting System \(SRS\)](#) definition of Rape. Previously, the NIBRS definition of Rape was: “The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.”

Furthermore, the separate categories of “Sodomy” and “Sexual Assault with an Object” have been subsumed by the broader definition of “Rape.”

The definition, while different, does not appear to affect what behavior would constitute Sexual Assault, either for purposes of Title IX or the Clery Act. Many institutions had already chosen to use similar language for their Title IX policies, so changes may or may not be necessary. Institutions may wish to consult with legal counsel about whether to change their policies under these circumstances.

Conclusion

Stay tuned for more updates on this change, as guidance from the Department of Education – particularly for Clery Act Compliance – may be needed.