

VIRGINIA ACTS OF ASSEMBLY -- 2015 RECONVENED SESSION

CHAPTER 737

An Act to amend the Code of Virginia by adding in Chapter 1 of Title 23 sections numbered 23-9.2:15, 23-9.2:16, and 23-9.2:17, relating to institutions of higher education; reporting of acts of sexual violence; memoranda of understanding; policy review.

[H 1930]

Approved April 15, 2015

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 23 sections numbered 23-9.2:15, 23-9.2:16, and 23-9.2:17 as follows:

§ 23-9.2:15. Reporting of acts of sexual violence.

A. For purposes of this section:

"Campus" means (i) any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls, and (ii) any building or property that is within or reasonably contiguous to the area described in clause (i) that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes, such as a food or other retail vendor.

"Noncampus building or property" means (i) any building or property owned or controlled by a student organization officially recognized by an institution of higher education or (ii) any building or property owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

"Public property" means all public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

"Responsible employee" means a person employed by a public institution of higher education or private nonprofit institution of higher education who has the authority to take action to redress sexual violence, who has been given the duty of reporting acts of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate institution designee, or whom a student could reasonably believe has this authority or duty.

"Sexual violence" means physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent.

"Title IX coordinator" means an employee designated by a public institution of higher education or private nonprofit institution of higher education to coordinate the institution's efforts to comply with and carry out the institution's responsibilities under Title IX (20 U.S.C. § 1681 et seq.). If no such employee has been designated by the institution, the institution shall designate an employee who will be responsible for receiving information of alleged acts of sexual violence from responsible employees in accordance with subsection B.

B. Any responsible employee who in the course of his employment obtains information that an act of sexual violence may have been committed against a student attending the institution or may have occurred on campus, in or on a noncampus building or property, or on public property shall report such information to the Title IX coordinator as soon as practicable after addressing the immediate needs of the victim.

C. Upon receipt of information pursuant to subsection B, the Title IX coordinator or his designee shall promptly report the information, including any personally identifiable information, to a review committee established pursuant to subsection D. Nothing in this section shall prevent the Title IX coordinator or any other responsible employee from providing any information to law enforcement with the consent of the victim.

D. Each public institution of higher education or private nonprofit institution of higher education shall establish a review committee for the purposes of reviewing information related to acts of sexual violence, including information reported pursuant to subsection C. Such review committee shall consist of three or more persons and shall include the Title IX coordinator or his designee, a representative of law enforcement, and a student affairs representative. If the institution has established a campus police department pursuant to Chapter 17 (§ 23-232 et seq.) of this title, the representative of law enforcement shall be a member of such department, otherwise the representative of law enforcement shall be a representative of campus security. The review committee may be the threat assessment team established under § 23-9.2:10 or a separate body. The review committee may obtain law-enforcement records, criminal history record information as provided in §§ 19.2-389 and 19.2-389.1, health records as provided in § 32.1-127.1:03, available institutional conduct or personnel records, and known facts and

circumstances of the information reported pursuant to subsection C or information or evidence known to the institution or to law enforcement. The review committee shall be considered to be a threat assessment team established pursuant to § 23-9.2:10 for purposes of (i) obtaining criminal history record information and health records and (ii) the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The review committee shall conduct its review in compliance with federal privacy law.

E. Upon receipt of information of an alleged act of sexual violence reported pursuant to subsection C, the review committee shall meet within 72 hours to review the information and shall meet again as necessary as new information becomes available.

F. If, based on consideration of all factors, the review committee, or if the committee cannot reach a consensus, the representative of law enforcement on the review committee, determines that the disclosure of the information, including personally identifiable information, is necessary to protect the health or safety of the student or other individuals as set forth in 34 C.F.R. § 99.36, the representative of law enforcement on the review committee shall immediately disclose such information to the law-enforcement agency that would be responsible for investigating the alleged act of sexual violence. Such disclosure shall be for the purposes of investigation and other actions by law enforcement. Upon such disclosure, the Title IX coordinator or his designee shall notify the victim that such disclosure is being made. The provisions of this subsection shall not apply if the law-enforcement agency responsible for investigating the alleged act of sexual violence is located outside the United States.

G. In cases in which the alleged act of sexual violence would constitute a felony violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, the representative of law enforcement on the review committee shall inform the other members of the review committee and shall within 24 hours consult with the attorney for the Commonwealth or other prosecutor responsible for prosecuting the alleged act of sexual violence and provide to him the information received by the review committee without disclosing personally identifiable information, unless such information was disclosed pursuant to subsection F. In addition, if such consultation does not occur and any other member of the review committee individually concludes that the alleged act of sexual violence would constitute a felony violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, that member shall within 24 hours consult with the attorney for the Commonwealth or other prosecutor responsible for prosecuting the alleged act of sexual violence and provide to him the information received by the review committee without disclosing personally identifiable information, unless such information was disclosed pursuant to subsection F.

H. At the conclusion of the review, the Title IX coordinator and the law-enforcement representative shall each retain (i) the authority to proceed with any further investigation or adjudication allowed under state or federal law and (ii) independent records of the review team's considerations, which shall be maintained under applicable state and federal law.

I. No responsible employee shall be required to make a report pursuant to subsection B if:

1. The responsible employee obtained the information through any communication considered privileged under state or federal law or the responsible employee obtained the information in the course of providing services as a licensed health care professional, an employee providing administrative support for such health care professionals, a professional counselor, an accredited rape crisis or domestic violence counselor, a campus victim support personnel, a member of clergy, or an attorney; or
2. The responsible employee has actual knowledge that the same matter has already been reported to the Title IX coordinator or to the attorney for the Commonwealth or the law-enforcement agency responsible for investigating the alleged act of sexual violence.

J. Any responsible employee who makes a report required by this section or testifies in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

K. The provisions of this section shall not require a person who is the victim of an alleged act of sexual violence to report such violation.

L. The institution shall ensure that a victim of an alleged act of sexual violence is informed of (i) the available law-enforcement options for investigation and prosecution; (ii) the importance of collection and preservation of evidence; (iii) the available options for a protective order; (iv) the available campus options for investigation and adjudication under the institution's policies; (v) the victim's rights to participate or decline to participate in any investigation to the extent permitted under state or federal law; (vi) the applicable federal or state confidentiality provisions that govern information provided by a victim; (vii) the available on-campus resources and any unaffiliated community resources, including sexual assault crisis centers, domestic violence crisis centers, or other victim support services; and (viii) the importance of seeking appropriate medical attention.

§ 23-9.2:16. Sexual assault; memorandum of understanding; policies.

A. Each public institution of higher education or private nonprofit institution of higher education shall establish and the State Board for Community Colleges shall adopt a policy requiring each community college to establish a written memorandum of understanding with a sexual assault crisis center or other victim support service in order to provide sexual assault victims with immediate access to a confidential, independent advocate who can provide a trauma-informed response that includes an

explanation of options for moving forward.

B. Each public institution of higher education or private nonprofit institution of higher education shall adopt policies to provide to sexual assault victims information on contacting such sexual assault crisis center or other victim support service.

§ 23-9.2:17. Sexual violence policy review.

By October 31 of each year, each public institution of higher education or private nonprofit institution of higher education and the State Board for Community Colleges shall certify to the State Council of Higher Education for Virginia that it has reviewed its sexual violence policy and updated it as appropriate. The State Council of Higher Education for Virginia and the Department of Criminal Justice Services shall establish criteria for the certification process and may request information relating to the policies for the purposes of sharing best practices and improving campus safety. The State Council of Higher Education for Virginia and the Department of Criminal Justice Services shall report to the Secretary of Education on the certification status of each institution and the Virginia Community College System by November 30 of each year.

2. That the Department of Criminal Justice Services shall monitor the impact of the provisions of this act on the workload of local victim witness programs and report its findings to the Chairmen of the House and Senate Committees for Courts of Justice by October 1, 2016.