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HOUSE BILL NO. 1930

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education
on February 5, 2015)

(Patron Prior to Substitute—Delegate Bell, Robert B.)

A *BILL to amend and reenact § 23-9.2:10 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 1 of Title 23 sections numbered 23-9.2:15 and 23-9.2:16, relating to institutions of higher education; reporting of certain acts of violence; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That § 23-9.2:10 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1 of Title 23 sections numbered 23-9.2:15 and 23-9.2:16 as follows:

§ 23-9.2:10. Violence prevention committee; threat assessment team.

A. Each public college or university shall have in place policies and procedures for the prevention of violence on campus, including assessment and intervention with individuals whose behavior poses a threat to the safety of the campus community.

B. The board of visitors or other governing body of each public institution of higher education shall determine a committee structure on campus of individuals charged with education and prevention of violence on campus. Each committee shall include representatives from student affairs, law enforcement, human resources, counseling services, residence life, and other constituencies as needed. Such committee shall also consult with legal counsel as needed. Once formed, each committee shall develop a clear statement of: (i) mission, (ii) membership, and (iii) leadership. Such statement shall be published and available to the campus community.

C. Each committee shall be charged with: (i) providing guidance to students, faculty, and staff regarding recognition of threatening or aberrant behavior that may represent a physical threat to the community; (ii) identifying members of the campus community to whom threatening behavior should be reported; (iii) establishing policies and procedures that outline circumstances under which all faculty and staff are to report behavior that may represent a physical threat to the community, consistent with state and federal law; and (iv) establishing policies and procedures for the assessment of individuals whose behavior may present a threat, appropriate means of intervention with such individuals, and sufficient means of action, including interim suspension, referrals to community services boards or health care providers for evaluation or treatment, medical separation to resolve potential physical threats, or notification of family members or guardians, or both, unless such notification would prove harmful to the individual in question, consistent with state and federal law.

D. The board of visitors or other governing body of each public institution of higher education shall establish a specific threat assessment team that shall include members from law enforcement, mental health professionals, representatives of student affairs and human resources, and, if available, college or university counsel. Such team shall implement the assessment, intervention and action policies set forth by the committee pursuant to subsection C.

E. Each threat assessment team shall establish relationships or utilize existing relationships with local and state law-enforcement agencies as well as mental health agencies to expedite assessment and intervention with individuals whose behavior may present a threat to safety. Upon a preliminary determination that an individual poses a threat of violence to self or others, or exhibits significantly disruptive behavior or need for assistance, a threat assessment team may obtain criminal history record information, as provided in §§ 19.2-389 and 19.2-389.1, and health records, as provided in § 32.1-127.1:03. No member of a threat assessment team shall redisclose any criminal history record information or health information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose for which such disclosure was made to the threat assessment team.

F. *Upon receipt of a report of sexual violence, including a report from the Title IX coordinator, as defined in subsection A of § 23-9.2:15, made pursuant to subsection C of § 23-9.2:15, the threat assessment team shall include the Title IX coordinator or his designee and, if available, the local attorney for the Commonwealth or his designee. If the report comes from the victim of the sexual violence and the victim has requested that the report be confidential, the review of the report by the threat assessment team shall occur without the release of the victim's personally identifiable information. However, if disclosure of the information, including personally identifiable information, in such report is necessary to protect the health or safety of the student or other individuals as set forth in 34 C.F.R. § 99.36, such information shall be disclosed. At the conclusion of the assessment, the attorney for the Commonwealth, any representative from a law-enforcement agency, and the Title IX coordinator shall each retain (i) the authority to proceed with any further investigation, prosecution, or adjudication*

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60 allowed under state or federal law and (ii) independent records of the threat assessment team's
61 considerations, which shall be maintained under applicable state and federal law.

62 **§ 23-9.2:15. Reporting of acts of violence; penalty.**

63 A. For purposes of this section:

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

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

75 "Public property" means all public property that is within the same reasonably contiguous
76 geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility,
77 and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution
78 in direct support of, or in a manner related to, the institution's educational purposes.

79 "Title IX coordinator" means an employee designated by a public institution of higher education or
80 private nonprofit institution of higher education to coordinate the institution's efforts to comply with and
81 carry out the institution's responsibilities under Title IX (20 U.S.C. § 1681 et seq.). If no such employee
82 has been designated by the institution, the institution shall designate an employee who will be
83 responsible for receiving reports of sexual violence made by faculty members or administrators in
84 accordance with subsection B.

85 B. Any faculty member or administrator employed by a public institution of higher education or
86 private nonprofit institution of higher education who in the course of his employment obtains
87 information that an act of violence as defined in § 19.2-297.1 may have been committed against a
88 student attending the institution or occurring on campus, a noncampus building or property, or public
89 property shall report such information immediately after addressing the immediate needs of the victim,
90 unless such reporting would be a violation of applicable state or federal law to the attorney for the
91 Commonwealth or the primary law-enforcement agency serving the locality in which the alleged act of
92 violence occurred. However, if the act of violence involves sexual violence and the information was
93 provided by the victim, this information shall be reported to the Title IX coordinator.

94 C. Upon receipt of a report pursuant to subsection B, the Title IX coordinator shall immediately
95 report the information, not including the personally identifiable information, to the threat assessment
96 team established under § 23-9.2:10 or for a private nonprofit institution of higher education as
97 otherwise established by the institution.

98 D. No faculty member or administrator shall be required to make a report pursuant to subsection B
99 if:

100 1. The faculty member or administrator obtained the information through any communication
101 considered privileged under state or federal law, including communications received by licensed health
102 care professionals who obtained the information in the course of providing patient care, counselors,
103 certified rape crisis or domestic violence counselors, clergy, or attorneys;

104 2. The faculty member or administrator obtained such information in the course of providing legal
105 services at the institution's student legal services center; or

106 3. The faculty member or administrator has actual knowledge that the same matter has already been
107 reported to the Title IX coordinator or to the attorney for the Commonwealth or primary
108 law-enforcement agency serving the locality in which the alleged act of violence occurred.

109 E. Any faculty member or administrator who knowingly and intentionally violates the provisions of
110 this section is subject to a civil penalty of not more than \$500 for the first violation and not more than
111 \$1,000 for each subsequent violation. Such penalty shall be collected by the attorney for the
112 Commonwealth for the locality where the violation occurred and shall be deposited in the Literary
113 Fund.

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

117 G. The provisions of this section shall not require a person who is the victim of an act of violence to
118 report such violation.

119 H. The institution shall ensure that a victim of an alleged act of sexual violence is informed of (i)
120 the applicable federal or state confidentiality provisions that govern information provided by a victim;
121 (ii) the available on-campus resources and any unaffiliated community resources, including sexual

122 assault crisis centers, domestic violence crisis centers, or other victim support services; (iii) the
123 importance of seeking appropriate medical attention; (iv) the importance of collection and preservation
124 of evidence; (v) the available law-enforcement options for investigation and prosecution; (vi) the
125 available options for a protective order; (vii) the available campus options for investigation and
126 adjudication under the institution's policies; and (viii) the victim's rights to participate or decline to
127 participate in any investigation to the extent permitted under state or federal law.

128 **§ 23-9.2:16. Sexual assault; memorandum of understanding; policies.**

129 A. The governing board of each public institution of higher education shall establish a written
130 memorandum of understanding with a local sexual assault crisis center or other victim support service
131 in order to provide sexual assault victims with immediate access to a confidential, independent advocate
132 who can provide a trauma-informed response that includes an explanation of options for moving
133 forward.

134 B. The governing board of each public institution of higher education shall adopt policies to provide
135 to sexual assault victims information on contacting such local sexual assault crisis center or other victim
136 support service.