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SENATE BILL NO. 712

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education
on February 16, 2015)

(Patron Prior to Substitute—Senator Black)

A BILL 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.

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 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 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 made by 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, not including the 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, 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 not established a campus police department pursuant to Chapter 17 (§ 23-232 et seq.) of this title, 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

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

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

68 *F. If, at the conclusion of the review committee meeting, the Title IX coordinator or his designee*
69 *determines that the disclosure of the information, including personally identifiable information, is*
70 *necessary to protect the health or safety of the student or other individuals as set forth in 34 C.F.R.*
71 *§ 99.36, the Title IX coordinator or his designee shall immediately disclose such information to the*
72 *law-enforcement agency that would be responsible for investigating the alleged act of sexual violence.*
73 *The Title IX coordinator or his designee shall notify the victim that such disclosure is being made.*

74 *G. In cases in which the alleged act of sexual violence would constitute a felony violation of Article*
75 *7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, the representative of law enforcement on the review*
76 *committee shall within 24 hours consult with the local attorney for the Commonwealth and provide to*
77 *him the information received by the review committee without disclosing personally identifiable*
78 *information, unless such information was disclosed pursuant to subsection F.*

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

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

84 *1. The responsible employee obtained the information through any communication considered*
85 *privileged under state or federal law, including communications received by licensed health care*
86 *professionals who obtained the information in the course of providing patient care, counselors,*
87 *accredited rape crisis or domestic violence counselors, campus victim support personnel, clergy, or*
88 *attorneys;*

89 *2. The responsible employee obtained such information in the course of providing legal services at*
90 *the institution's student legal services center; or*

91 *3. The responsible employee has actual knowledge that the same matter has already been reported to*
92 *the Title IX coordinator or to the attorney for the Commonwealth or the law-enforcement agency*
93 *responsible for investigating the alleged act of sexual violence.*

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

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

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

108 **§ 23-9.2:16. Sexual assault; memorandum of understanding; policies.**

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

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

118 **§ 23-9.2:17. Sexual misconduct policy review.**

119 *At least biennially, the governing board of each public or private nonprofit institution of higher*
120 *education and the State Board for Community Colleges shall certify to the State Council of Higher*
121 *Education for Virginia that it has reviewed its sexual misconduct policy and updated it as appropriate.*

122 *Such policies shall include organizational policies and environmental interventions that reduce the risk*
123 *of sexual misconduct and strengthen existing policies or services on campus related to reporting and*
124 *responding to sexual misconduct. The State Council of Higher Education for Virginia and the*
125 *Department of Criminal Justice Services shall establish criteria for the certification process and may*
126 *request information relating to the policies for the purposes of sharing best practices and improving*
127 *campus safety. Beginning July 31, 2015, the State Council of Higher Education for Virginia and the*
128 *Department of Criminal Justice Services shall report to the Secretary of Education and the Secretary of*
129 *Public Safety and Homeland Security on the certification status of each institution and the Virginia*
130 *Community College System.*