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SENATE BILL NO. 712

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 9, 2015)

(Patrons Prior to Substitute—Senators Black, Saslaw, Norment, Vogel, and Watkins [SB 734], Favola [SB 981], Deeds [SB 1252], and Barker [SB 1275])

A BILL 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 public institutions of higher education; handling of sexual assault cases.

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 and 23-9.2:16 as follows:

§ 23-9.2:15. Reporting of sexual assault; assessment teams; penalty.

A. Each public institution of higher education shall establish written policies to require a responsible person employed by the institution who in the course of his employment receives information from a person that the person is the alleged victim of a sexual assault to report such information to the Title IX coordinator for the institution within four hours of its receipt. The coordinator shall inform the person that the person has the option to notify proper law-enforcement authorities, including campus police and local police, and the option to be assisted by campus officials in notifying such authorities, if the person so chooses. The coordinator shall inform the person of the assessment team process.

B. Each public institution of higher education shall establish a written memorandum of understanding with each primary law-enforcement agency serving a locality in which the institution is located for the establishment of an assessment team, which memorandum shall provide for the coordination of information and the development of the membership of and protocols for the assessment team and facilitate the implementation of state and federal law. The assessment team shall include, at a minimum, the following individuals or their designees: a designated employee of the institution, the Title IX coordinator for the institution, a representative from the campus police department, and a representative from the local primary law-enforcement agency.

C. The assessment team shall convene a meeting within 48 hours of receipt by the Title IX coordinator of a report of sexual assault. Such meeting may be conducted through telephonic, video, electronic, or other communication means. The assessment team 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 report or information or evidence known to the institution, the attorney for the Commonwealth, or the primary law-enforcement agency. An assessment team established pursuant to this section shall be considered to be a threat assessment team established pursuant to § 23-9.2:10 for purposes of obtaining criminal history record information and health records.

D. If, at the conclusion of the assessment team meeting, the campus police chief or his designee determines that the disclosure of the information, including personally identifiable information, in such report is necessary to protect the health or safety of the person or other individuals as set forth in 34 C.F.R. § 99.36, such determination shall be communicated to the Title IX coordinator for the institution. If the Title IX coordinator agrees with that determination, he shall immediately disclose personally identifiable information to the primary law-enforcement agency serving the locality in which the alleged act of sexual assault occurred. Otherwise, the Title IX coordinator for the institution shall document the reasons for finding that disclosure of personally identifiable information is not necessary. As soon as possible after disclosure of personally identifiable information to the primary law-enforcement agency, the Title IX coordinator shall notify the victim of the alleged sexual assault that personally identifiable information has been released to the law-enforcement agency.

E. A representative from the primary law-enforcement agency and the designated employee from the institution shall each retain (i) the authority to proceed with any further investigation, prosecution, or adjudication allowed under state or federal law and (ii) independent records of the assessment team's considerations, which shall be maintained under applicable state and federal law.

F. For purposes of this section, "Title IX coordinator" means an employee designated by a public 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 reports of sexual assault made in accordance with subsection A.

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

A. Each public institution of higher education shall establish a written memorandum of understanding with a local sexual assault crisis center or other victim support service in order to

60 provide persons who are victims of sexual assault with immediate access to a confidential, independent
61 advocate who can provide a trauma-informed response that includes an explanation of options for
62 moving forward.

63 B. Each public institution of higher education shall adopt policies consistent with Title IX of the
64 Education Amendments of 1972 that require the institution to offer to refer a person who is a victim of
65 sexual assault to the sexual assault crisis center or other victim support service, encourage victims to
66 undergo a sexual assault examination to preserve physical evidence, provide clear guidance on linking
67 victims to other community resources, provide options for victims who do not want to make an official
68 report to make a confidential report to the institution, and provide for nonretaliation against persons
69 who are victims of sexual assault who fear their conduct surrounding the incident may also be
70 questioned or who are concerned that an official report might jeopardize their academic status.

71 C. Nothing in this section shall be construed to require a person who is a victim of sexual assault to
72 take any action against such person's wishes or to prohibit the institution from offering its own support
73 services to the person.