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SENATE BILL NO. 712

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 27, 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 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

60 provided in § 32.1-127.1:03, available institutional conduct or personnel records, and known facts and
61 circumstances of the information reported pursuant to subsection C or information or evidence known to
62 the institution or to law enforcement. The review committee shall be considered to be a threat
63 assessment team established pursuant to § 23-9.2:10 for purposes of (i) obtaining criminal history
64 record information and health records and (ii) the Virginia Freedom of Information Act (§ 2.2-3700 et
65 seq.). The review committee shall conduct its review in compliance with federal privacy law.

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

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

77 G. In cases in which the alleged act of sexual violence would constitute a felony violation of Article
78 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, the representative of law enforcement on the review
79 committee shall inform the other members of the review committee and shall within 24 hours consult
80 with the local attorney for the Commonwealth and provide to him the information received by the
81 review committee without disclosing personally identifiable information, unless such information was
82 disclosed pursuant to subsection F. In addition, if such consultation does not occur and any other
83 member of the review committee individually concludes that the alleged act of sexual violence would
84 constitute a felony violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, that member shall
85 within 24 hours consult with the local attorney for the Commonwealth and provide to him the
86 information received by the review committee without disclosing personally identifiable information,
87 unless such information was disclosed pursuant to subsection F.

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

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

93 1. The responsible employee obtained the information through any communication considered
94 privileged under state or federal law or the responsible employee obtained the information in the course
95 of providing services as a licensed health care professional, an employee providing administrative
96 support for such health care professionals, a professional counselor, an accredited rape crisis or
97 domestic violence counselor, a campus victim support personnel, a member of clergy, or an attorney.

98 2. The responsible employee has actual knowledge that the same matter has already been reported to
99 the Title IX coordinator or to the attorney for the Commonwealth or the law-enforcement agency
100 responsible for investigating the alleged act of sexual violence.

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

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

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

115 **§ 23-9.2:16. Sexual assault; memorandum of understanding; policies.**

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

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

125 **§ 23-9.2:17. Sexual violence policy review.**

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

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