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## HOUSE BILL NO. 1830

Offered January 9, 2019

Prefiled January 2, 2019

A *BILL to amend and reenact § 23.1-808 of the Code of Virginia, relating to certain institutions of higher education; sexual violence policies; scope; student rights.*

Patrons—Lindsey, Adams, D.M., Kory, McQuinn, Plum and Tyler

Referred to Committee on Education

**Be it enacted by the General Assembly of Virginia:**

**1. That § 23.1-808 of the Code of Virginia is amended and reenacted as follows:**

**§ 23.1-808. Sexual violence policies; student rights.**

A. *As used in this section, "sexual violence" has the same meaning as provided in § 23.1-806.*

B. *The System, Richard Bland College, each baccalaureate public institution of higher education, and each nonprofit private institution of higher education shall adopt a sexual violence policy.*

C. *By October 31 of each year, the System, Richard Bland College, each baccalaureate public institution of higher education, and each nonprofit private institution of higher education shall certify to the Council that it has reviewed its sexual violence policy adopted pursuant to subsection B and updated it as appropriate. The Council 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 Council and the Department of Criminal Justice Services shall report to the Secretary of Education on the certification status of each such institution by November 30 of each year.*

D. *The System, Richard Bland College, each baccalaureate public institution of higher education, and each nonprofit private institution of higher education shall include in its sexual violence policy adopted pursuant to subsection B the rights of each student who alleges a violation of such policy and each student who is alleged to have violated such policy, including:*

1. *Treatment with dignity, respect, and sensitivity by employees of the institution during each phase of any disciplinary proceeding relating to the alleged violation;*

2. *A fair and impartial investigation of the alleged violation;*

3. *A prompt and equitable disciplinary proceeding relating to the alleged violation in which each student has an opportunity to be heard;*

4. *Timely, sensitive, and appropriate written notice of (i) the alleged violation, including the date, time, and location of the alleged violation and the range of potential sanctions associated with the alleged violation; (ii) the date, time, and location of each hearing, meeting, and interview relating to the alleged violation that the student is required or permitted to attend; (iii) the right to the assistance and presence of other individuals as set forth in subdivision 6 and clause (iii) of subdivision 5, including the referral services available as set forth in subsection F; (iv) the availability of other civil or criminal legal options, as applicable; (v) the final determination as to whether the violation occurred, including the basis for such determination; (vi) the sanctions imposed for any violation that is determined to have occurred; and (vii) the right to appeal the final determination, including a description of the appeal process;*

5. *Participation in any disciplinary proceeding relating to the alleged violation, including an opportunity to (i) access any evidence relating to the alleged violation that is obtained by the institution during its investigation, to the extent permitted by state and federal law relating to the protection of the personally identifiable information of students; (ii) provide oral testimony at any hearing, meeting, or interview relating to the alleged violation or, in cases in which the process does not include such a hearing, meeting, or interview, an opportunity to provide written testimony to the individual or entity responsible for adjudicating the alleged violation; (iii) have up to two additional individuals of the student's choice present at any hearing, meeting, or interview relating to the alleged violation; (iv) submit evidence, witness lists, and questions to be posed to the other student involved in the alleged violation; (v) provide and review testimony using a method that does not require the student to be in the physical presence of the other student involved in the alleged violation; (vi) review and provide written responses to reports and proposed findings relating to the alleged violation; and (vii) appeal any determination made or sanction imposed in any disciplinary proceeding relating to the alleged violation; and*

6. *Assistance by a licensed attorney, an advocate supervised by a licensed attorney, or another trained advocate in any disciplinary proceeding relating to the alleged violation, including (i)*

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59 attendance at any hearing, meeting, or interview relating to the alleged violation; (ii) private  
60 consultations with the student; and (iii) assistance with the student's exercise of any other right set forth  
61 in this subsection.

62 E. No institution of higher education required to adopt a sexual violence policy pursuant to  
63 subsection B shall:

64 1. Use mediation to resolve an alleged violation of such policy;

65 2. Discourage a student from enlisting the assistance of an attorney or advocate pursuant to  
66 subdivision D 6; or

67 3. Permit the individual or entity responsible for adjudicating an allegation of the violation of such  
68 policy to consider (i) the history of mental health diagnosis, treatment, or counseling of either student,  
69 unless such student consents to the consideration of such evidence, or (ii) the prior sexual conduct of  
70 either student with any individual who is not a party to such proceeding, unless such evidence is utilized  
71 to prove the source of injury, prior sexual misconduct, or ulterior motive or impeach the student's  
72 credibility after such student has put such prior sexual conduct at issue.

73 F. The Council shall (i) in consultation with state and local bar associations and legal services  
74 providers with experience and expertise in disciplinary proceedings relating to alleged violations of the  
75 sexual violence policies of institutions, generate and maintain a list of attorneys and advocates who are  
76 qualified and willing to provide assistance to students pursuant to subdivision D 6 on a pro bono basis  
77 or at a reduced-fee rate equivalent to the fee charged by the Legal Services Corporation of Virginia to  
78 provide such assistance and (ii) provide to any attorney or advocate who provides assistance pursuant  
79 to subdivision D 6 funds to provide such assistance at such reduced-fee rate, regardless of whether such  
80 attorney or advocate is on the list generated and maintained by the Council.