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HOUSE BILL NO. 1930

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Bell, Robert B.

on February 9, 2015)

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

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 institutions of higher education; reporting of acts of sexual violence.

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 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 circumstances of the information reported pursuant to subsection C or information or evidence known to

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

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

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

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

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

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

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

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

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

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

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

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

107 **§ 23-9.2:16. Sexual assault; memorandum of understanding; policies.**

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

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