

24101931D

HOUSE BILL NO. 369
Offered January 10, 2024
Prefiled January 6, 2024

A *BILL to amend and reenact §§ 23.1-806 and 23.1-807 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.01-400.3 and by adding in Title 23.1 a chapter numbered 9.1, containing articles numbered 1 through 4, consisting of sections numbered 23.1-910 through 23.1-919, relating to institutions of higher education; sexual misconduct policies; civil penalty.*

Patrons—Martinez and Helmer

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 23.1-806 and 23.1-807 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-400.3 and by adding in Title 23.1 a chapter numbered 9.1, containing articles numbered 1 through 4, consisting of sections numbered 23.1-910 through 23.1-919, as follows:

§ 8.01-400.3. Communications between confidential resource advisors and students and employees.

Except at the request of or with the consent of the student or employee sharing information with a confidential resource advisor, as defined in § 23.1-914, no such confidential resource advisor shall be required in giving testimony as a witness in any civil action to disclose any information communicated to him in a confidential manner, properly entrusted to him in his professional capacity and necessary to enable him to discharge his professional or occupational services according to the usual course of his practice or discipline, wherein such person so communicating such information about himself or another is seeking assistance and advice relative to and growing out of the information so imparted; provided, however, that when the physical or mental condition of the student or employee is at issue in such action, or when a court, in the exercise of sound discretion, deems such disclosure necessary to the proper administration of justice, no fact communicated to, or otherwise learned by, such confidential resource advisor in connection with such assistance or advice shall be privileged, and disclosure may be required.

§ 23.1-806. 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 relating 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 nonprofit private 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 nonprofit private 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

59 campus, in or on a noncampus building or property, or on public property shall report such information to the
60 Title IX coordinator as soon as practicable after addressing the immediate needs of the victim. *Notice to a*
61 *confidential resource advisor of an alleged act of sexual misconduct as set forth in § 23.1-914 shall not be*
62 *considered actual or constructive notice of such alleged act to an institution of higher education as defined in*
63 *§ 23.1-910 at which the confidential resource advisor is employed or provides contracted services.*

64 C. Upon receipt of information pursuant to subsection B, the Title IX coordinator or his designee shall
65 promptly report the information, including any personally identifiable information, to a review committee
66 established pursuant to subsection D. Nothing in this section shall prevent the Title IX coordinator or any
67 other responsible employee from providing any information to law enforcement with the consent of the
68 victim.

69 D. Each public institution of higher education and nonprofit private institution of higher education shall
70 establish a review committee for the purposes of reviewing information relating to acts of sexual violence,
71 including information reported pursuant to subsection C. Such review committee shall consist of three or
72 more persons and shall include the Title IX coordinator or his designee, a representative of law enforcement,
73 and a student affairs representative. If the institution has established a campus police department pursuant to
74 Article 3 (§ 23.1-809 et seq.), the representative of law enforcement shall be a member of such department;
75 otherwise, the representative of law enforcement shall be a representative of campus security. The review
76 committee may be the threat assessment team established under § 23.1-805 or a separate body. The review
77 committee may obtain law-enforcement records, criminal history record information as provided in §§ 19.2-
78 389 and 19.2-389.1, health records as provided in § 32.1-127.1:03, available institutional conduct or
79 personnel records, and known facts and circumstances of the information reported pursuant to subsection C
80 or information or evidence known to the institution or to law enforcement. The review committee shall be
81 considered to be a threat assessment team established pursuant to § 23.1-805 for purposes of (i) obtaining
82 criminal history record information and health records and (ii) the Virginia Freedom of Information Act (§
83 2.2-3700 et seq.). The review committee shall conduct its review in compliance with federal privacy law.

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

87 F. If, based on consideration of all factors, the review committee, or if the committee cannot reach a
88 consensus, the representative of law enforcement on the review committee, determines that the disclosure of
89 the information, including personally identifiable information, is necessary to protect the health or safety of
90 the student or other individuals as set forth in 34 C.F.R. § 99.36, the representative of law enforcement on the
91 review committee shall immediately disclose such information to the law-enforcement agency that would be
92 responsible for investigating the alleged act of sexual violence. Such disclosure shall be for the purposes of
93 investigation and other actions by law enforcement. Upon such disclosure, the Title IX coordinator or his
94 designee shall notify the victim that such disclosure is being made. The provisions of this subsection shall not
95 apply if the law-enforcement agency responsible for investigating the alleged act of sexual violence is located
96 outside the United States.

97 G. In cases in which the alleged act of sexual violence would constitute a felony violation of Article 7 (§
98 18.2-61 et seq.) of Chapter 4 of Title 18.2, the representative of law enforcement on the review committee
99 shall inform the other members of the review committee and shall within 24 hours consult with the attorney
100 for the Commonwealth or other prosecutor responsible for prosecuting the alleged act of sexual violence and
101 provide to him the information received by the review committee without disclosing personally identifiable
102 information, unless such information was disclosed pursuant to subsection F. In addition, if such consultation
103 does not occur and any other member of the review committee individually concludes that the alleged act of
104 sexual violence would constitute a felony violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2,
105 that member shall within 24 hours consult with the attorney for the Commonwealth or other prosecutor
106 responsible for prosecuting the alleged act of sexual violence and provide to him the information received by
107 the review committee without disclosing personally identifiable information, unless such information was
108 disclosed pursuant to subsection F.

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

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

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

119 2. The responsible employee has actual knowledge that the same matter has already been reported to the

120 Title IX coordinator or to the attorney for the Commonwealth or the law-enforcement agency responsible for
121 investigating the alleged act of sexual violence.

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

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

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

136 **§ 23.1-807. Sexual assault; memoranda of understanding; policies.**

137 A. ~~Richard Bland College and each baccalaureate public institution of higher education and nonprofit~~
138 ~~private~~ Each institution of higher education as defined in § 23.1-910 shall establish, and the State Board shall
139 adopt a policy requiring each comprehensive community college to establish, a written memorandum of
140 understanding with a sexual assault crisis center, domestic violence center, or other victim support service in
141 order to provide sexual assault victims with immediate access to a confidential, independent advocate who
142 can provide a trauma-informed response that includes an explanation of options for moving forward. *In*
143 *establishing such written memorandum of understanding, each such institution shall work with its partner*
144 *sexual assault crisis center, domestic violence center, or other victim support service to (i) assist in*
145 *developing the institution's policies, programming, and training regarding sexual misconduct involving*
146 *students or employees; (ii) provide an off-campus alternative for students and employees of the institution to*
147 *receive free and confidential sexual assault crisis services, including access to a sexual assault nurse*
148 *examiner, if available, or free and confidential domestic violence crisis services in response to sexual*
149 *misconduct; (iii) ensure that students and employees of the institution may access free and confidential*
150 *counseling and advocacy services either on campus or off campus; and (iv) ensure cooperation and*
151 *collaboration on trauma-informed sexual violence awareness training within the institution to ensure an*
152 *understanding of the roles that the institution and crisis center should play in responding to reports and*
153 *disclosures of sexual misconduct against students and employees of the institution, as well as the institution's*
154 *protocols for providing support and services to such students and employees.*

155 B. Each public institution of higher education and nonprofit private institution of higher education as
156 defined in § 23.1-910 shall adopt policies to provide to sexual assault victims information on contacting such
157 sexual assault crisis center, domestic violence center, or other victim support service.

158 C. Each public institution of higher education or nonprofit private institution of higher education as
159 defined in § 23.1-910 may request the cooperation of the primary law-enforcement agency of the locality in
160 which the institution is located to establish a written memorandum of understanding with such law-
161 enforcement agency to address the prevention of and response to criminal sexual assault as set forth in Article
162 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2.

163 D. Any memorandum of understanding entered into pursuant to subsection A may include an agreement,
164 including a fee structure, between the sexual assault crisis center, domestic violence center, or other victim
165 support service and the institution of higher education to provide confidential victim services. Confidential
166 victim services may include case consultation and training fees for confidential resource advisors as set forth
167 in in § 23.1-914, consultation fees for the development and implementation of student education and
168 prevention programs, the development of staff training and prevention curriculum, and confidential onsite
169 office space for an advocate from a sexual assault crisis center, domestic violence center, or other victim
170 support service center to meet with students or employees.

171 E. The Council may waive the requirements set out in subsections A and B in the case of an institution of
172 higher education that demonstrates that it acted in good faith but was unable to enter into a memorandum of
173 understanding.

174 CHAPTER 9.1.
175 SEXUAL MISCONDUCT POLICIES.
176 Article 1.
177 General Provisions.

178 **§ 23.1-910. Definitions.**

179 As used in this chapter, unless the context requires a different meaning:

180 "Director" means the chief executive officer of the Council.

181 "Employee" means any individual who works on the property of or is employed by an institution of higher

182 education. This includes employment that is part time or full time.

183 "Institution of higher education" or "institution" means any public institution of higher education or any
184 private institution of higher education.

185 "Reporting party" means a student or employee affiliated with an institution of higher education who
186 reports experiencing an incident of sexual misconduct to the institution of higher education.

187 "Responding party" means a student or employee affiliated with an institution of higher education who
188 has been accused of an alleged incident of sexual misconduct.

189 "Restorative justice" means the process of repairing harm through reconciliation with victims and, if
190 applicable, the community at large. Restorative justice is accomplished through cooperative processes that
191 include all interested parties and requires accountability to be taken for harmful actions in order to create a
192 safer community for all.

193 "Sexual misconduct" means an incident of sexual harassment, sexual violence, intimate partner violence,
194 domestic violence, sexual exploitation, stalking, harassment or violence based on sexual orientation or
195 gender identity or expression, or other gender-based harassment or violence.

196 "Student" means an individual who (i) is enrolled at an institution of higher education part time, full time,
197 or as an extension student; (ii) has been accepted to an institution of higher education and has demonstrated
198 a commitment to attend the institution; or (iii) has taken a leave of absence from the institution of higher
199 education, or has recently withdrawn.

200 "Trauma-informed approach" means a response to sexual misconduct involving an understanding of the
201 complexities of intimate partner violence, domestic violence, sexual assault, and stalking through training
202 centered on the neurobiological impact of trauma, the influence of societal myths and stereotypes
203 surrounding the causes and impacts of trauma, and understanding perpetration methodology and how to
204 conduct an effective investigation.

205 Article 2.

206 Task Force on Combating Sexual Violence; Sexual Misconduct Campus Climate Surveys; External Reviews.

207 **§ 23.1-911. Task Force on Combating Sexual Violence; sexual misconduct campus climate survey.**

208 A. The Council shall appoint and convene a Task Force on Combating Sexual Violence (the Task Force)
209 for the purpose of developing a base sexual misconduct campus climate survey as set out in §§ 23.1-912 and
210 23.1-913 for distribution to institutions of higher education and shall provide such institutions with any
211 related recommendations regarding the content, timing, and application of the survey. The Task Force shall
212 deliver its base survey and related recommendations, including recommendations on achieving statistically
213 valid response rates, to each institution of higher education no less than annually.

214 B. The Task Force shall consist of the following members:

215 1. A representative of the Council;

216 2. The Chancellor of the Virginia Community College System or his designee;

217 3. A representative of the Council of Independent Colleges in Virginia;

218 4. A representative of the Virginia Campus Task Force of the Virginia Sexual and Domestic Violence
219 Action Alliance;

220 5. One Title IX coordinator from one four-year institution of higher education;

221 6. Three student representatives appointed by the Council. At least one student representative shall be a
222 student at a baccalaureate public institution of higher education, at least one student representative shall be
223 a student at a nonprofit private institution of higher education, and at least once student representative shall
224 be a student at a comprehensive community college; and

225 7. Three higher education representatives. At least one higher education representative shall be an
226 employee of a public institution of higher education, and at least one higher education representative shall be
227 an employee of a nonprofit private institution of higher education. At least one higher education
228 representative shall (i) have experience in higher education survey analysis, with preferred experience in
229 research and data on campus sexual violence, or (ii) be a representative of an institution's health services
230 with experience in research and data on campus sexual violence;

231 C. Appointed members to the Task Force shall serve for two-year terms, which shall commence on the
232 date of appointment. Members shall serve until their successors are appointed. Any vacancy shall be filled by
233 the Council. Any vacancy occurring other than by expiration of term shall be filled for the balance of the
234 unexpired term. The members of the Task Force shall serve without compensation, but all members shall be
235 reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided
236 in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be
237 provided by the Council.

238 D. A majority of the Task Force shall constitute a quorum for the transaction of any business.

239 E. Administrative staff support shall be provided by the Council.

240 F. In developing the base sexual misconduct campus climate survey, the Task Force shall (i) utilize best
241 practices from peer-reviewed research and consult with individuals with expertise in the development and
242 use of sexual misconduct climate surveys by institutions of higher education, (ii) review sexual misconduct

243 campus climate surveys that have been developed and previously utilized by institutions of higher education,
 244 (iii) provide ample opportunities for written comment from organizations that work directly with victims and
 245 survivors of sexual misconduct to ensure the adequacy and appropriateness of the proposed content, (iv)
 246 consult with institutions of higher education on strategies for optimizing the effectiveness of the survey, and
 247 (v) account for the diverse needs and differences of the institutions of higher education.

248 **§ 23.1-912. Sexual misconduct campus climate surveys; overview.**

249 Each institution of higher education shall annually conduct a sexual misconduct campus climate survey of
 250 all students. Each institution of higher education's sexual misconduct campus climate survey shall include a
 251 base set of common questions generated by the Task Force as set out in § 23.1-911 and approved by the
 252 Director. The Director shall provide a copy of the base sexual misconduct campus climate survey to all
 253 institutions of higher education annually. Each institution of higher education shall be permitted to append
 254 campus-specific questions to the base survey, provided that such questions (i) do not require the disclosure of
 255 any personally identifiable information, (ii) are created with trauma-informed language and processes, and
 256 (iii) are subject to approval by the institution's confidential resource advisor as designated pursuant to §
 257 23.1-914. Within 120 days after completion of a sexual misconduct campus climate survey, each institution of
 258 higher education shall submit a summary of the results to the Director and shall post a summary of the
 259 results on the institution's website in an easily accessible manner.

260 **§ 23.1-913. Sexual misconduct campus climate surveys; content.**

261 A. Each institution of higher education shall provide students with the opportunity to complete the sexual
 262 misconduct campus climate survey. The purpose of the base sexual misconduct campus climate survey
 263 created by the Task Force shall be to gather information on topics that may include the following:

264 1. The number of incidents, both reported and unreported, of sexual misconduct at the institution of
 265 higher education;

266 2. When and where incidents of sexual misconduct occurred;

267 3. Student awareness of institution policies and procedures related to campus sexual misconduct;

268 4. Whether a student reported the sexual misconduct; if so, to which campus resource or law-enforcement
 269 agency such report was made and, if not, the reason for the student's decision to not report;

270 5. Whether a student was informed of or referred to local, state, campus, or other resources, or victim
 271 support services, including appropriate medical care and legal services;

272 6. Whether a student was provided with information regarding protection from retaliation, access to
 273 school-based accommodations, and criminal justice remedies;

274 7. Contextual factors, such as the involvement of force, incapacitation, or coercion;

275 8. Demographic information that could be used to identify at-risk groups, including gender, gender
 276 identity or expression, race, and sexual orientation;

277 9. Perceptions of campus safety among members of the campus community and confidence in the
 278 institution's ability to protect against and respond to incidents of sexual misconduct;

279 10. Whether a student has chosen to withdraw or has taken a leave of absence from the institution or
 280 transferred to another institution due to being either the reporting party or the responding party in an
 281 allegation of sexual misconduct;

282 11. Whether a student has withdrawn from any classes or been placed on academic probation as a result
 283 of the incident; and

284 12. Any other information determined relevant by the Task Force.

285 B. The base sexual misconduct campus climate survey shall collect anonymous responses and shall not
 286 disclose any personally identifiable information.

287 C. There shall be established with the Council a data repository for all summaries of sexual misconduct
 288 campus climate surveys submitted by institutions of higher education to the Council in accordance with this
 289 chapter. An institution of higher education shall submit its sexual misconduct campus climate survey,
 290 accompanied by the anonymized raw data supporting such a survey, to the Council. The Director shall
 291 ensure that the sexual misconduct campus climate survey data submitted by each institution of higher
 292 education is made available to the public on the Council's website in a manner compliant with Title II of the
 293 federal Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

294 D. Each institution of higher education shall publish on its website in an easily accessible manner (i) the
 295 results of its sexual misconduct campus climate survey; (ii) the annual security report required under the
 296 federal Clery Act, 20 U.S.C. § 1092, if such institutions are subject to the requirements under the Clery Act;
 297 and (iii) a link to the Council's website page containing statewide data information on the sexual misconduct
 298 campus climate survey data as set forth in subsection C.

299 E. Pursuant to § 2.2-4103, the Director shall adopt rules, including deadlines for dissemination and
 300 collection of survey information, consistent with the purposes of this chapter and shall promote the effective
 301 solicitation of the sexual misconduct campus climate survey to achieve the highest practical response rate,
 302 collection, and publication of statistical information gathered from institutions of higher education.

303 Article 3.

304 Policies; Training; Support.

305 **§ 23.1-914. Confidential resource advisors.**

306 A. Each institution of higher education shall include in its campus security policy the designation of at
307 least one confidential resource advisor. The role of a confidential resource advisor shall be to serve as a
308 confidential resource for students and employees to discuss alleged acts of sexual misconduct and receive
309 information on resources available to such students or employees. A confidential resource advisor:

310 1. Shall not be (i) a student, (ii) a Title IX coordinator or an employee in a role that oversees the
311 reporting and determination of alleged instances of sexual misconduct, (iii) an administrator or official
312 authorized to carry out disciplinary processes on behalf of the institution, or (iv) a member of campus police
313 or law enforcement;

314 2. Shall not have any other job responsibilities that may create a conflict of interest, including a general
315 counsel, director of athletics, dean of students, or any employee who serves on a disciplinary hearing board;
316 and

317 3. Shall be appointed by the institution on the basis of the individual's experience and demonstrated
318 ability to effectively provide victim services related to sexual misconduct.

319 B. An institution of higher education may partner with a national, state, or local victim advocacy
320 organization to provide a confidential resource advisor under this section. An institution of higher education
321 that enrolls fewer than 1,000 residential students may partner with another institution of higher education or
322 sexual assault crisis center within the Commonwealth to provide the services under this section. An
323 institution of higher education shall ensure that any partnership entered into under this section shall result in
324 the designation of a confidential resource advisor who is available to students within a reasonable distance
325 from the institution and any services provided by a confidential resource advisor shall be administered for
326 free.

327 C. The confidential resource advisor shall receive training in the awareness and prevention of sexual
328 misconduct and in trauma-informed approaches to sexual misconduct, Title IX of the Education Amendments
329 of 1972, and the relevant policies of the institution of higher education, and shall coordinate with on-campus
330 and off-campus sexual assault crisis centers and domestic violence centers within a reasonable time after
331 being designated as a confidential resource advisor.

332 D. When a student or employee contacts a confidential resource advisor about an alleged instance of
333 sexual misconduct, the confidential resource advisor shall inform the student or employee of, or provide
334 resources about how to obtain, including in a written format, the following information:

335 1. Reporting options and the processes and effects of each options;

336 2. Local and institution-provided counseling resources and local sexual assault crisis centers or domestic
337 violence centers;

338 3. An explanation of restorative justice and alternatives to the formal processes provided by the institution
339 and its Title IX process;

340 4. Medical and health services available on campus and off campus;

341 5. Transportation services for student or employee security;

342 6. Available academic and residence life accommodations;

343 7. Student loan counseling regarding loan deferment, forbearance, or other student loan programs for
344 students considering temporary or permanent withdrawal or part-time enrollment;

345 8. The investigative and disciplinary and non-disciplinary processes of the institution;

346 9. The legal process carried out through federal, state, and local levels. If the institution cannot provide
347 such information, the institution shall connect students with the proper local legal services that can provide
348 advice regarding such processes;

349 10. An explanation that the institution's disciplinary process is not to be considered a substitute for the
350 criminal justice process;

351 11. Any limits on the confidential resource advisor's ability to ensure privacy or confidentiality to the
352 student; and

353 12. Any other relevant information.

354 E. If requested by a student or employee, a confidential resource advisor, upon receiving prior written
355 consent of the student or employee and using only the student or employee's identifying information, shall
356 coordinate with the appropriate institutional personnel to arrange possible school-provided supportive
357 measures, including (i) changes in classes, dining, housing, transportation, or on-campus employment; (ii)
358 access to counseling and other mental health services; (iii) excused absences, academic counseling, and
359 tutoring; (iv) academic coursework accommodations; (v) financial resources, including if a student
360 withdraws from a class or the institution entirely due to an alleged instance of sexual misconduct, the
361 institution shall provide tuition credit, opportunities to withdraw or re-enroll in a course without academic or
362 financial penalty, and the continued eligibility for scholarships and honors at the institution; and (vi)
363 supportive measures available through memoranda of understanding pursuant to § 23.1-807. Such support
364 measures may also be obtained, when appropriate, through disability services or a Title IX coordinator.

365 F. When a student or employee contacts a confidential resource advisor about an alleged instance of

366 sexual misconduct, the confidential resource advisor (i) shall notify, in writing, the duties required by all
 367 personnel involved in providing or enforcing supportive measures pursuant to subsection E to such
 368 personnel; (ii) may, if appropriate, and if directed by the reporting party, assist the reporting party in
 369 contacting or reporting to campus or local law-enforcement agencies; (iii) shall notify the student or
 370 employee of his rights and the institution's responsibilities regarding a protection order, no contact order,
 371 and any other lawful orders issued by the institution or by a criminal, civil, or tribal court; (iv) shall not be
 372 required to report an incident to the institution or a law-enforcement agency unless otherwise required to do
 373 so by state or federal law and shall provide confidential services to students and employees; (v) may attend
 374 an administrative or institution-based adjudication proceeding as the advisor or support person of the
 375 student or employee's choice; (vi) shall not disclose any confidential information, including personally
 376 identifiable information, without the prior written consent of the student or employee who shared the
 377 information; and (vii) shall not provide services to both a reporting party and responding party involved in
 378 the same incident.

379 G. Nothing in this section shall be construed to limit either party's right to cross-examination of the
 380 confidential resource advisor in a civil or criminal proceeding if the confidential resource advisor testifies
 381 after written consent has been given by the student or employee who shares information with the confidential
 382 resource advisor in compliance with § 8.01-400.3. A confidential resource advisor shall not act as a
 383 counselor or therapist.

384 H. Notice to a confidential resource advisor of an alleged act of sexual misconduct or a confidential
 385 resource advisor's performance of a service under this section shall not be considered actual or constructive
 386 notice of such an alleged act to the institution of higher education at which the confidential resource advisor
 387 is employed or provides contracted services.

388 I. If a conflict of interest arises in which a confidential resource advisor is advocating for a reporting
 389 party's need for sexual assault crisis services or campus or law-enforcement services, the institution of higher
 390 education shall not discipline, penalize, or otherwise retaliate against the confidential resource advisor for
 391 representing the interests of the reporting party.

392 J. No confidential resource advisor or any other individual or center at an institution of higher education
 393 providing services to victims of domestic violence, dating violence, sexual assault, sexual harassment, or
 394 stalking shall (i) disclose any personally identifiable information collected in connection with services
 395 requested, utilized, or denied through the confidential resource advisor for alleged victims of domestic
 396 violence, dating violence, sexual assault, or stalking or (ii) reveal an individual's information without the
 397 informed and written consent of the person about whom information is sought as such information is
 398 privileged pursuant to § 8.01-400.3.

399 **§ 23.1-915. Annual awareness programming and training.**

400 A. For purposes of this section, "student" means an individual who is enrolled at an institution of higher
 401 education part time, full time, or as an extension student.

402 B. An institution of higher education, with guidance from its Title IX coordinator or employee in a role
 403 that oversees the reporting and determination of alleged instances of sexual misconduct, local law-
 404 enforcement, and a sexual assault crisis center, domestic violence center, or other victim support service
 405 center with whom the institution enters into a memorandum of understanding pursuant to § 23.1-807, shall
 406 provide mandatory annual trauma-informed and LGBTQ+ inclusive sexual misconduct primary prevention
 407 and awareness programming for all students and all employees of the institution that shall include the
 408 following:

409 1. Age-appropriate elements of effective and evidence-based programs on the law and meaning of
 410 consent. Such age-appropriate elements of effective and evidence-based programs on the prevention of
 411 sexual violence may include instruction that increases awareness of the fact that consent is required before
 412 sexual activity;

413 2. The role drugs and alcohol play in an individual's ability to consent;

414 3. Information on options relating to the reporting of an incident of sexual misconduct, the effects of each
 415 option, and the methods to report an incident of sexual misconduct, including confidential and anonymous
 416 disclosure;

417 4. Information on the institution's procedures for resolving sexual misconduct complaints and the range of
 418 sanctions or penalties the institution may impose on students and employees found responsible for a
 419 violation;

420 5. The name, contact information, and role of the confidential resource advisor at the institution; and

421 6. A description of opportunities for ongoing sexual misconduct prevention and awareness training and
 422 programming.

423 C. Trainings shall be culturally responsive and address the unique experiences and challenges faced by
 424 students based on race, color, ethnicity, national origin, religion, economic status, disability, and sex,
 425 including sexual orientation, gender identity, and pregnancy or parental status.

426 D. Each institution of higher education shall ensure that its Title IX coordinator or employee in a role

427 *that oversees the reporting and determination of alleged instances of sexual misconduct and members of its*
 428 *campus police department and auxiliary police forces are educated in the awareness of sexual misconduct*
 429 *and in trauma-informed response.*

430 **§ 23.1-916. Training for individuals involved in response process.**

431 *An individual who participates in the implementation of an institution of higher education's disciplinary*
 432 *process, including (i) an individual responsible for resolving complaints of reported incidents; (ii) an*
 433 *individual responsible for conducting a meeting, hearing, or other disciplinary proceeding or informal*
 434 *resolution process; and (iii) a confidential resource advisor, shall have training or experience in handling*
 435 *sexual misconduct complaints and the operations of the institution's disciplinary process. The training shall*
 436 *include the following:*

- 437 1. *Information on working with and interviewing persons who have been subjected to sexual misconduct;*
- 438 2. *The effects of trauma, including any neurobiological impact on a person;*
- 439 3. *Cultural competence training regarding how sexual misconduct may affect students differently*
 440 *depending on factors that contribute to a student's cultural background, including national origin, sex,*
 441 *ethnicity, religion, gender identity, gender expression, and sexual orientation;*
- 442 4. *Ways to communicate sensitively and compassionately with a reporting party of sexual misconduct,*
 443 *including an awareness of responding to a reporting party with consideration of that party's diverse cultural*
 444 *background and providing services to or assisting in locating services for the reporting party and ways to*
 445 *communicate sensitively with a responding party, including an awareness of the emotional impact of being*
 446 *wrongly accused; and*
- 447 5. *Training and information regarding how dating violence, domestic violence, sexual assault, and*
 448 *stalking may affect students with developmental or intellectual disabilities.*

449 **§ 23.1-917. Adoption of policy required.**

450 *A. Each institution of higher education shall adopt a policy on sexual misconduct, consistent with*
 451 *applicable state and federal law, that shall be publicly available on campus in locations where students*
 452 *regularly congregate and that shall be publicly available on the institution's website in an accessible format*
 453 *no later than the first week of classes in each academic year. The institution shall update the website*
 454 *annually and accurately and ensure its ongoing compliance with the federal Americans with Disabilities Act,*
 455 *42 U.S.C. § 12101 et seq. The policy shall be trauma-informed and shall be developed in coordination with*
 456 *(i) the institution's Title IX coordinator or employee in a role that oversees the reporting and determination*
 457 *of alleged instances of sexual misconduct; (ii) an individual from a sexual assault crisis center, domestic*
 458 *violence center, or other victim support service with whom an institution enters into a memorandum of*
 459 *understanding pursuant to § 23.1-807; and (iii) at least one confidential resource advisor or student affairs*
 460 *representative. In addition, the institution may consider input from various internal and external entities,*
 461 *including institutional administrators, personnel affiliated with on-campus and off-campus health care*
 462 *centers, other confidential resource advisors, residence life staff, and students. The policy shall be developed*
 463 *in a manner consistent with the diverse needs of all students. The policy shall include the following:*

- 464 1. *Procedures by which students and employees may report or disclose alleged incidents of sexual*
 465 *misconduct regardless of where the offense occurred.*
- 466 2. *Information on where to receive immediate emergency assistance following an alleged incident of*
 467 *sexual misconduct, which shall include:*
 - 468 a. *The name and location of the nearest medical facility where an individual may request that a medical*
 469 *forensic exam be administered by a trained sexual violence forensic health care provider, including*
 470 *information on transportation options and information on reimbursement for travel costs, if any;*
 - 471 b. *The contact information for a rape crisis center and a domestic violence center and a description of the*
 472 *services provided by such centers; and*
 - 473 c. *The telephone number and website for a national 24-hour hotline, as well as any state or local*
 474 *resources that provides information on sexual misconduct.*
- 475 3. *The rights and obligations of students and employees to (i) notify or decline to notify law enforcement,*
 476 *including campus, local, and state police, of an alleged incident of sexual misconduct; (ii) receive assistance*
 477 *from campus authorities in making any such notification; and (iii) obtain a court or institution-issued*
 478 *protective order against a responding party in an alleged incident of sexual misconduct.*
- 479 4. *The process for requesting supportive measures reasonably available from the institution, which shall*
 480 *include options for changing academic, living, campus transportation, or working arrangements or taking a*
 481 *leave of absence in response to an alleged incident of sexual misconduct, how to request such changes, and*
 482 *the process to have any such measure reviewed.*
- 483 5. *A summary of the institution of higher education's procedures for investigating, adjudicating, and*
 484 *resolving sexual misconduct complaints, including an explanation of all procedures that shall be followed to*
 485 *obtain investigatory reports and gather evidence, and potential sanctions that may be imposed, as well as*
 486 *potential restorative justice options.*
- 487 6. *The range of sanctions or penalties the institution of higher education may impose on students and*

488 employees found responsible for a violation of the applicable institutional policy prohibiting acts of sexual
489 misconduct.

490 B. Each institution of higher education shall provide draft policies and substantive changes by electronic
491 or regular mail to internal and external entities, with instructions on how to comment and a reasonable
492 length of time in which comments will be accepted. However, once an institution has adopted such policies as
493 required by this section, the opportunity for review and comment by internal and external entities shall apply
494 only to substantive changes in those policies.

495 Article 4.

496 Reporting; Miscellaneous Provisions.

497 § 23.1-918. Data reporting requirements.

498 Each institution of higher education shall prepare and submit a report annually and no later than
499 October 1 of each year to the Director, the Secretary of the Department of Health and Human Resources,
500 and the Chairmen of the House Committee on Education and the Senate Committee on Education and Health
501 that includes (i) the total number of allegations of dating violence, domestic violence, sexual assault, sexual
502 harassment, and stalking reported to the institution's Title IX coordinator or employee in a role that oversees
503 the reporting and determination of alleged instances of sexual misconduct by a student or employee of the
504 institution against another student or employee of the institution; (ii) the number of campus, local, or state
505 law-enforcement investigations initiated in response to complaints of sexual misconduct brought forward by
506 students and employees against another student or employee of the institution, if known; (iii) the number of
507 students found responsible for violating an institution's policies prohibiting sexual misconduct; (iv) the
508 number of students found not responsible for violating an institution's policies prohibiting sexual misconduct;
509 and (v) the number of disciplinary actions imposed by the institution as a result of a finding of responsibility
510 for violating an institution's policies prohibiting sexual misconduct. The report shall provide information in
511 an anonymous manner that complies with any state and federal privacy laws.

512 § 23.1-919. Enforcement and penalty.

513 After reasonable notice and opportunity for a hearing, upon determination that an institution of higher
514 education has violated or failed to carry out any provision of this chapter or any rule adopted under this
515 chapter, the Director may impose a civil penalty upon such institution for each violation not to exceed
516 \$150,000, which shall be adjusted for inflation annually, or one percent of an institution's annual operating
517 budget, whichever is lower. The Director shall use any such civil penalty funds to provide oversight of this
518 chapter.

519 2. That each institution of higher education, as defined in § 23.1-910 of the Code of Virginia, as created
520 by this act, shall, pursuant to § 23.1-914 of the Code of Virginia, as created by this act, designate at
521 least one confidential resource advisor per campus within three years of the effective date of this act.

522 3. That each institution of higher education, as defined in § 23.1-910 of the Code of Virginia, as created
523 by this act, shall begin to administer the trainings required pursuant to §§ 23.1-915 and 23.1-916 of the
524 Code of Virginia, as created by this act, within two years of the effective date of this act.