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HOUSE BILL NO. 1917

Offered January 13, 2025

Prefiled January 6, 2025

A BILL to amend and reenact § 23.1-806 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 8.01-400.3 and 23.1-807.2, relating to institutions of higher education; confidential resource advisors.

Patrons—Martinez and Shin

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That § 23.1-806 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 8.01-400.3 and 23.1-807.2 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 designated in accordance with § 23.1-807.2, 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. However, 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 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. *Notice to a confidential resource advisor of an alleged act of sexual misconduct as set forth in § 23.1-807.2 shall not be*

59 *considered actual or constructive notice of such alleged act to an institution of higher education at which the*
60 *confidential resource advisor is employed or provides contracted services.*

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

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

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

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

94 G. In cases in which the alleged act of sexual violence would constitute a felony violation of Article 7 (§
95 18.2-61 et seq.) of Chapter 4 of Title 18.2, the representative of law enforcement on the review committee
96 shall inform the other members of the review committee and shall within 24 hours consult with the attorney
97 for the Commonwealth or other prosecutor responsible for prosecuting the alleged act of sexual violence and
98 provide to him the information received by the review committee without disclosing personally identifiable
99 information, unless such information was disclosed pursuant to subsection F. In addition, if such consultation
100 does not occur and any other member of the review committee individually concludes that the alleged act of
101 sexual violence would constitute a felony violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2,
102 that member shall within 24 hours consult with the attorney for the Commonwealth or other prosecutor
103 responsible for prosecuting the alleged act of sexual violence and provide to him the information received by
104 the review committee without disclosing personally identifiable information, unless such information was
105 disclosed pursuant to subsection F.

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

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

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

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

119 J. Any responsible employee who makes a report required by this section or testifies in a judicial or

administrative proceeding as a result of such report is immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

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

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

§ 23.1-807.2. Confidential resource advisors.

A. As used in this section, "institution" means any public institution of higher education or any private institution of higher education.

B. Each institution shall designate at least one confidential resource advisor to serve as a confidential resource for students and employees to discuss alleged acts of sexual misconduct and receive information on resources available to such students or employees. A confidential resource advisor:

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

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

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

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

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

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

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

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

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

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

5. Transportation services for student or employee security;

6. Available academic and residence life accommodations;

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

8. The investigative and disciplinary and nondisciplinary processes of the institution;

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

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

11. Any limits on the confidential resource advisor's ability to ensure privacy or confidentiality to the

181 student; and

182 12. Any other relevant information.

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

194 G. When a student or employee contacts a confidential resource advisor about an alleged instance of
195 sexual misconduct, the confidential resource advisor (i) shall notify, in writing, the duties required by all
196 personnel involved in providing or enforcing supportive measures pursuant to subsection F to such
197 personnel; (ii) may, if appropriate, and if directed by the reporting party, assist the reporting party in
198 contacting or reporting to campus or local law-enforcement agencies; (iii) shall notify the student or
199 employee of his rights and the institution's responsibilities regarding a protection order, no contact order,
200 and any other lawful orders issued by the institution or by a criminal, civil, or tribal court; (iv) shall not be
201 required to report an incident to the institution or a law-enforcement agency unless otherwise required to do
202 so by state or federal law and shall provide confidential services to students and employees; (v) may attend
203 an administrative or institution-based adjudication proceeding as the advisor or support person of the
204 student's or employee's choice; (vi) shall not disclose any confidential information, including personally
205 identifiable information, without the prior written consent of the student or employee who shared the
206 information; and (vii) shall not provide services to both a reporting party and responding party involved in
207 the same incident.

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

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

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

221 K. No confidential resource advisor or any other individual or center at an institution of higher education
222 providing services to victims of domestic violence, dating violence, sexual assault, sexual harassment, or
223 stalking shall (i) disclose any personally identifiable information collected in connection with services
224 requested, utilized, or denied through the confidential resource advisor for alleged victims of domestic
225 violence, dating violence, sexual assault, or stalking or (ii) reveal an individual's information without the
226 informed and written consent of the person about whom information is sought as such information is
227 privileged pursuant to § 8.01-400.3. Further, no individual shall be required to waive such confidentiality,
228 whether verbally or in writing, as a precondition to speaking with a confidential resource advisor.

229 **2. That each public institution of higher education and private institution of higher education in the**
230 **Commonwealth shall, no later than July 1, 2028, designate at least one confidential resource advisor**
231 **pursuant to subsection B of § 23.1-807.2 of the Code of Virginia, as created by this act.**