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HOUSE OF REPRESENTATIVES

148th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1 FOR HOUSE BILL NO. 1 AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SEXUAL ASSAULT REPORTING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 90A. SEXUAL ASSAULT POLICY FOR INSTITUTIONS OF HIGHER EDUCATION

§ 9001A. Definitions.

As used in this chapter:

(1) "Academic institution" means an institution of postsecondary education receiving State funds or a private institution of postsecondary education with campuses physically located in Delaware serving over 1,000 students.

(2) "Advocate" means any of the following:

a. An employee or volunteer at a domestic violence shelter or a telephone crisis line for crime victims.

b. An employee or volunteer at an organization whose primary purpose is to provide services for victims of domestic violence or sexual offenses, including sexual assault, stalking, or any abuse.

c. An employee, whose primary job duties are the provision of services to victims of domestic violence, sexual assault, or other crimes.

(3) "Responsible employee" means persons who are any of the following:

a. Faculty, teachers, or professors.

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b. Employees of the academic institution who, as part of their job duties, regularly interact with students in a teaching, mentoring, advisory, or supervisory capacity.

c. Persons who serve as an appointed trustee or director of the academic institution.

d. Student employees of an academic institution who, as part of their job duties, have teaching, mentoring, advisory, or supervisory responsibilities with respect to other students. This shall include resident advisors, hall directors, and teaching assistants.

(4) "Sexual assault" means physical contact of a sexual nature perpetrated without consent or where consent is unable to be given.

§ 9002A. Duties of responsible employees, law enforcement, and academic institutions.

(a) Any responsible employee of an academic institution who is informed by the victim of an alleged sexual assault upon or by a student of the academic institution, shall immediately make an offer to the victim to notify the law enforcement officers or public safety officials who service the academic institution of the allegation. If the victim requests such a notification, the responsible employee shall make the report to law enforcement or public safety within 24 hours. Where the academic institution does not have law enforcement officers or public safety officials of its own, the responsible employee shall make an offer to notify municipal or state law enforcement officers having jurisdiction over the alleged assault. Such an offer to report is required only where the alleged sexual assault occurred while the victim or perpetrator was on campus, or was enrolled as a student at the academic institution, unless the sexual assault occurred when such victim was a minor, in which case it must be reported consistent with the requirements of Chapter 9 of Title 16. Any responsible employee of an academic institution who is informed by the victim of an alleged sexual assault that occurred on campus even if the victim or perpetrator are not students, shall immediately make an offer to the victim to notify the law enforcement or public safety officials who service the academic institution of the allegation within 24 hours.

(b) The responsible employee shall inform the victim of the alleged sexual assault of the employee's duty to offer to report to law enforcement officers. The responsible employee shall inform the victim that crime victims are afforded certain rights in criminal proceedings in Delaware and provide or direct the victim to a copy of the Victims' Bill of Rights in Chapter 94 of Title 11 or a summary version thereof approved by the Department of Justice. Responsible employees shall provide information regarding confidential medical, counseling, and advocacy services available to victims on campus, as well as appropriate off-campus services available to victims. Academic institutions shall require responsible employees to document compliance with this section as part of the responsible employee's requirement to report to the Title IX

coordinator. Responsible employees shall maintain a victim's confidentiality so far as it does not conflict with any requirements of federal law.

(c) If law enforcement officers or public safety officials serving an academic institution receive a report, pursuant to subsection (a) of this section, of an alleged assault that took place outside of their jurisdiction, they shall within 24 hours of receiving the report notify the municipal or state law enforcement agency having jurisdiction over the offense.

(d) Law enforcement agencies shall make reasonable efforts to ensure a victim's privacy when contacting a victim and shall inform the victim of their rights pursuant to the Victims' Bill of Rights in Chapter 94 of Title 11. Law enforcement agencies shall provide information regarding confidential medical, counseling, and advocacy services available to victims on campus, as well as appropriate off-campus services available to victims.

(e) An academic institution is accountable under § 9005A of this chapter for the compliance of its responsible employees with the requirements of this section, as well as the compliance of any law enforcement or public safety officers who are employees of the academic institution.

§ 9003A. Exceptions.

(a) No responsible employee is required to make an offer to report an alleged sexual assault where the information was obtained through any communication considered privileged or confidential under state or federal law.

(b) No responsible employee is required to make an offer to report an alleged sexual assault if that employee is an advocate.

(c) No responsible employee is required to make an offer to report an alleged sexual assault disclosed at any student-led speak out events.

§ 9004A. Training.

(a) Academic institutions shall provide training to responsible employees regarding the prevalence and nature of sexual assaults on college campuses, the requirements of this chapter, and the reporting requirements under Title IX of the Education Amendments of 1972, or any regulations or guidance promulgated thereunder. This training shall ensure that responsible employees are trained to respond to disclosures of sexual assaults using best practices with regard to a victim-centered, trauma-informed approach.

(b) Academic institutions shall provide such training to new employees within 3 months of beginning work as a responsible employee.

(c) Academic institutions shall provide refresher training under this section for all responsible employees at least every 2 years.

(d) Academic institutions shall provide training for newly enrolled full-time students in sexual assault prevention, awareness, the requirements of this chapter, and the reporting requirements under Title IX of the Education Amendments of 1972, or any regulations or guidance promulgated thereunder.

(e) Academic institutions shall require at-risk student populations, as designated by the academic institution's Title IX coordinator, to receive additional training in sexual assault prevention, awareness and the requirements of this chapter, oriented specifically to the unique situations of each student population.

§ 9005A. Penalty for violation.

(a) Any academic institution that violates § 9002A, § 9004A, or § 9006A(a) of this chapter may be liable for a civil penalty not to exceed $10,000 for the first violation, and not to exceed $25,000 for each second or subsequent violation within a five year period. Any penalty collected under this provision shall be paid to the Criminal Justice Council, to be deposited in a fund for the benefit of sexual assault survivors at academic institutions, and for use in other sexual assault awareness and prevention programs. To the extent practicable, penalty monies shall be used for the benefit of sexual assault survivors and for programs at the academic institution that paid the penalty, or for generalized Statewide prevention and education programs.

(b) The Department of Justice shall receive and investigate complaints regarding violations of this chapter and is empowered to seek enforcement of penalties under this section in a court of competent jurisdiction or engage with an academic institution to remediate or correct violations.

§ 9006A. Annual report.

(a) By October 1 of each year, an academic institution is required to make a report to the Department of Justice detailing the following information for the prior calendar year:

(1) Certify its compliance with the training requirements of this section. The certification shall include information on training participation rates for faculty, staff, and students, as well as information regarding the format and length of training for each group.

(2) Total number of reports of sexual assault made to the academic institution's Title IX coordinator. The report shall include aggregate data regarding the nature of the assault, the outcomes of any investigation, and any penalties enforced by the school against the perpetrator of a sexual assault where the assault was found substantiated.

(3) Where the academic institution has law enforcement officers or public safety officials of its own, that campus law enforcement agency shall provide the aggregated data of the number and nature of alleged sexual assault reports they received.

(b) By October 1 of each year, the Statistical Analysis Center shall submit to the Department of Justice a report on the outcome or status of complaints of violations of Sections 767-773 of Title 11 where the alleged victim or the alleged perpetrator, or both, is a student of an academic institution and whether the alleged offense occurred on campus at an academic institution. The report shall cover the previous calendar year. The Statistical Analysis Center may work with the Delaware Criminal Justice Information System to create a mechanism for police reports of such complaints to indicate whether the alleged victim or the alleged perpetrator, or both, is a student of an academic institution and whether the alleged offense occurred on campus at an academic institution as defined in this section.

(c) By December 15 of each year, the Department of Justice shall furnish to the Governor and the General Assembly all the information provided by each academic institution in subsection (a) of this section and the statistical information reported by the Statistical Analysis Center under subsection (b) of this section. This report shall be considered a public record and shall be posted on the Department of Justice website.

(d) No reports under this section shall contain any personally identifiable information relating to the alleged victims or perpetrators of a sexual assault.

§ 9007A. Limitations.

(a) Nothing in this chapter is intended to contravene or interfere with an academic institution's responsibilities under Title IX of the Education Amendments of 1972, the Clery Act or any regulations or guidance promulgated thereunder.

(b) A violation of this chapter does not give rise to a private right of action. Nor shall there be a private right of action based on a good faith attempt by any academic institution or responsible employee to comply with the provisions of this chapter.

Section 2. Sections 9001A and 9004A of Title 14 shall be effective one year after enactment, Sections 9002A, 9003A, 9006A, and 9007A shall be effective 2 years after enactment, and Section 9005A shall be effective 3 years after enactment of this bill.

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