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HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1

FOR

HOUSE BILL 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 a public or nonpublic institution of higher education or institution of postsecondary education.

(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.

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.

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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. Reporting requirements.

(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 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 further inform the victim of their rights pursuant to the Victims' Bill of Rights in Chapter 94 of Title 11. 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. Responsible employees shall document compliance with this section through existing Title IX reporting requirements and shall maintain the victim's right to confidentiality.

(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 reporting 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, such as student athletes, members of Greek fraternities and sororities, and international students 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 shall be liable for a civil penalty not to exceed $10,000 for the first violation, and not to exceed $50,000 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.

(b) The Department of Justice shall receive and investigate complaints regarding violations of this chapter and is empowered to enforce penalties under this section.

§ 9006A. Annual report.

(a) By June 15 of each year, an academic institution is required to make a report to the Office of Higher Education and the Department of Justice detailing the following information:

(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 June 15 of each year, each law enforcement agency in the state shall report to the Office of Higher Education and the Department of Justice the number of reports received involving sexual assault on the campus of an academic institution, or perpetrated by or against a student of an academic institution. The report shall include the nature of the assault, whether criminal charges were filed, and if so the results of any prosecution.

(c) By August 15 of each year, the Office of Higher Education and the Department of Justice shall deliver a report to the Governor and the General Assembly including all the information provided by each academic institution in subsection (a) of this section as well as the information reported by law enforcement agencies under subsection (b) of this section. In addition the report shall include the number and nature of sexual assault reports received per academic institution by the Department of Justice, including information regarding the number of cases in which charges were filed and the outcome of any criminal proceedings. This report shall be a public document and shall be posted on the State of Delaware website.

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

Section 2. Nothing in this Act is intended to contravene or interfere with an academic institution's responsibilities under Title IX of the Education Amendments of 1972, or any regulations or guidance promulgated thereunder.

Section 3. Sections 9001A and 9004A of Title 14 shall be effective one year after the enactment of this bill, and the remainder of the provisions shall be effective two years after enactment.

SYNOPSIS

This bill will require responsible employees of institutions of higher education to offer to victims to report incidents of sexual assault perpetrated by or against a student to the law enforcement authorities or public safety officials serving the institution. Employees are also responsible for informing victims of their rights under the Victims' Bill of Rights in Chapter 11, as well as available confidential medical, counseling, and advocacy services.

Law enforcement agencies shall make reasonable efforts to ensure a victim's privacy when contacting a victim and are required to inform the victim of their rights under the Victims' Bill of Rights, as well as available confidential medical, counseling, and advocacy services.

Exceptions to the reporting requirement are made for persons with privilege against disclosing communications, as well as sexual assault victim advocates. There is also an exception for disclosures made at student-led speak out events.

Institutions will be required to train all staff in the reporting requirement and the nature and prevalence of sexual assaults on campus, as well as their reporting requirements under Title IX. Staff must be trained in trauma-informed best practices with regard to responding to disclosures of sexual assault. Academic institutions will certify compliance with the training requirement to the Office of Higher Education and the Department of Justice. Training is also required for all students regarding sexual assault and the reporting requirement, as well as prevention and awareness training. Additional training is mandated for high risk student groups such as athletes, fraternities and sororities, and international students.

The Department of Justice is empowered to fine academic institutions for failure to comply with the reporting and training requirements. Any penalty collected will go 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.

Academic institutions and law enforcement agencies are required to make annual reports to the Office of Higher Education and the Department of Justice. Schools will report the total number of sexual assault reports made to the institution's Title IX coordinator including the aggregate data regarding the nature of the assault, outcomes of the investigations and penalties enforced by the school against the perpetrator of a sexual assault where the assault was found substantiated. Law enforcement agencies will convey the number and nature of college-related sexual assaults and criminal actions and outcomes related thereto. The Office of Higher Education and the Department of Justice will aggregate the data received and make a report to the General Assembly and the Governor.

The training requirements will be effective one year after enactment and the remainder of the chapter will become effective two years after enactment.