

HOUSE BILL 346

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CF SB 384

By: **Delegates Donoghue, Costa, Glenn, Haynes, Kach, Nathan-Pulliam, Pena-Melnyk, Tarrant, ~~and V. Turner~~ V. Turner, Bromwell, Cullison, Elliott, Frank, Hammen, A. Kelly, Kipke, Krebs, McDonough, Morhaim, Murphy, Oaks, Pendergrass, Ready, and Reznik**

Introduced and read first time: February 2, 2011

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2011

CHAPTER _____

1 AN ACT concerning

2 **Health – State Facilities and Residential Centers – Definition of Abuse ~~and~~**
3 **~~Required Guidelines for Employees~~**

4 FOR the purpose of altering certain definitions of “abuse” for purposes of certain
5 reporting requirements by specifying that “abuse” does not include certain
6 actions ~~taken by certain employees; requiring the Department of Health and~~
7 ~~Mental Hygiene to develop certain guidelines in consultation with certain~~
8 ~~employee organizations and to provide training on implementation of the~~
9 ~~guidelines to certain employees; requiring the Department to report to certain~~
10 ~~committees of the General Assembly on or before a certain date; requiring the~~
11 ~~Department to complete implementation of certain guidelines on or before a~~
12 ~~certain date that comply with certain State and federal laws and certain~~
13 ~~Department policies; and generally relating to State facilities and residential~~
14 centers.

15 BY repealing and reenacting, with amendments,
16 Article – Health – General
17 Section 7–1005 and 10–705
18 Annotated Code of Maryland
19 (2009 Replacement Volume and 2010 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

7–1005.

(a) (1) In this section, “abuse” means:

(i) Any physical injury that is inflicted willfully or with gross recklessness;

(ii) Inhumane treatment; or

(iii) Any of the following kinds of sexual abuse:

1. A sexual act, as defined in § 3–301 of the Criminal Law Article;

2. Sexual contact, as defined in § 3–301 of the Criminal Law Article; or

3. Vaginal intercourse, as defined in § 3–301 of the Criminal Law Article.

(2) In this section, “abuse” does not include:

(I) [the] THE performance of:

[(i)] 1. An accepted medical procedure that a physician orders; [or]

[(ii)] 2. An accepted behavioral procedure that a licensed psychologist or psychiatrist, as appropriate, orders; OR

(II) ~~APPROPRIATE ACTIONS TAKEN BY AN EMPLOYEE OF A STATE RESIDENTIAL CENTER TO PROTECT THE EMPLOYEE OR OTHER INDIVIDUALS IN THE RESIDENTIAL CENTER THAT INVOLVE THE LEAST AMOUNT OF RESTRICTION REQUIRED TO PROVIDE THE NECESSARY PROTECTION AN ACTION TAKEN BY AN EMPLOYEE THAT COMPLIES WITH APPLICABLE STATE AND FEDERAL LAWS AND APPLICABLE DEPARTMENT POLICIES ON THE USE OF PHYSICAL INTERVENTION.~~

(b) (1) In addition to any other reporting requirement of law, a person who believes that an individual with developmental disability has been abused

1 promptly shall report the alleged abuse to the executive officer or administrative head
2 of the licensee.

3 (2) The executive officer or administrative head shall report the
4 alleged abuse to an appropriate law–enforcement agency.

5 (3) A report to the executive officer or administrative head:

6 (i) May be oral or written; and

7 (ii) Shall contain as much information as the reporter is able to
8 provide.

9 (c) (1) The law–enforcement agency shall:

10 (i) Investigate thoroughly each report of an alleged abuse; and

11 (ii) Attempt to ensure the protection of the alleged victim.

12 (2) The investigation shall include:

13 (i) A determination of the nature, extent, and cause of the
14 abuse;

15 (ii) The identity of the alleged abuser or abusers; and

16 (iii) Any other pertinent fact or matter.

17 (d) As soon as possible, but no later than 10 working days after the
18 completion of the investigation, the law–enforcement agency shall submit a written
19 report of its findings to the State’s Attorney, the Director, the State–designated
20 protection and advocacy agency, and the executive officer or administrative head of the
21 licensee.

22 (e) The Administration shall maintain a central registry of abuse reports and
23 their disposition and shall take appropriate remedial action.

24 (f) A person shall have the immunity from liability described under § 5–625
25 of the Courts and Judicial Proceedings Article for:

26 (1) Making a report under this section;

27 (2) Participating in an investigation arising out of a report under this
28 section; or

29 (3) Participating in a judicial proceeding arising out of a report under
30 this section.

10-705.

(a) (1) In this section, “abuse” means cruel or inhumane treatment that causes:

(i) Any physical injury; or

(ii) Any of the following kinds of sexual abuse:

1. A sexual act, as defined in § 3-301 of the Criminal Law Article.

2. Sexual contact, as defined in § 3-301 of the Criminal Law Article.

3. Vaginal intercourse, as defined in § 3-301 of the Criminal Law Article.

(2) In this section, “abuse” does not include:

(I) [the] **THE** performance of an accepted medical procedure that a physician orders in a manner that is consistent with the provisions of this subtitle; **OR**

(II) ~~APPROPRIATE ACTIONS TAKEN BY AN EMPLOYEE OF A STATE FACILITY TO PROTECT THE EMPLOYEE OR OTHER INDIVIDUALS IN THE FACILITY THAT INVOLVE THE LEAST AMOUNT OF RESTRICTION REQUIRED TO PROVIDE THE NECESSARY PROTECTION~~ AN ACTION TAKEN BY AN EMPLOYEE THAT COMPLIES WITH APPLICABLE STATE AND FEDERAL LAWS AND APPLICABLE DEPARTMENT POLICIES ON THE USE OF PHYSICAL INTERVENTION.

(b) (1) A person who believes that an individual in a facility has been abused shall promptly report the alleged abuse to:

(i) An appropriate law enforcement agency; or

(ii) The administrative head of the facility, who promptly shall report the alleged abuse to an appropriate law enforcement agency.

(2) A report:

(i) May be oral or written; and

(ii) Shall contain as much information as the reporter is able to provide.

(c) (1) The law enforcement agency shall:

(i) Investigate thoroughly each report of an alleged abuse; and

(ii) Attempt to insure the protection of the alleged victim.

(2) The investigation shall include:

(i) A determination of the nature, extent, and cause of the abuse, if any;

(ii) The identity of the alleged abuser; and

(iii) Any other pertinent fact or matter.

(d) As soon as possible, but no later than 10 working days after the completion of the investigation, the law enforcement agency shall submit a written report of its findings to the State's Attorney and the administrative head of the facility.

(e) A person shall have the immunity from liability described under § 5-626 of the Courts and Judicial Proceedings Article for:

(1) Making a report under this section;

(2) Participating in an investigation arising out of a report under this section; or

(3) Participating in a judicial proceeding arising out of a report under this section.

~~SECTION 2. AND BE IT FURTHER ENACTED, That the Department of Health and Mental Hygiene:~~

~~(1) (i) shall develop guidelines regarding appropriate methods of protection and restraint to be used by employees of State facilities under the Mental Hygiene Administration and State residential centers under the Developmental Disabilities Administration, in consultation with employee organizations that represent the employees; and~~

~~(ii) shall provide training to the employees on implementation of the guidelines;~~

~~(2) on or before September 1, 2011, shall report to the Senate Finance Committee and the House Health and Government Operations Committee, in~~

~~accordance with § 2-1246 of the State Government Article, on the progress made in
developing and implementing the guidelines; and~~

~~(3) on or before December 31, 2011, shall complete implementation of
the guidelines.~~

SECTION ~~3.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take
effect July 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.