

SENATE BILL 578

F2, E1

5lr2294

By: **Senator Pugh**

Introduced and read first time: February 6, 2015

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education – Sexual Assaults – Mandatory Reporting**

3 FOR the purpose of requiring the sexual assault policy of institutions of higher education
4 in the State to include compliance with certain provisions of law relating to
5 mandatory reporting of sexual assaults; requiring a faculty member, an
6 administrator, or a full-time staff member of an institution of higher education who
7 obtains certain information to report the information within a certain time frame to
8 the appropriate law enforcement official; providing that a person who violates a
9 certain provision of law is guilty of a misdemeanor; making certain exceptions to a
10 certain reporting requirement; granting certain immunity for good faith actions
11 taken related to a certain report under certain circumstances; providing that a
12 person who is a victim of sexual assault may not be required to report the violation;
13 and generally relating to mandatory reporting of sexual assaults.

14 BY repealing and reenacting, with amendments,
15 Article – Education
16 Section 11–601
17 Annotated Code of Maryland
18 (2014 Replacement Volume and 2014 Supplement)

19 BY adding to
20 Article – Education
21 Section 11–602
22 Annotated Code of Maryland
23 (2014 Replacement Volume and 2014 Supplement)

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

26 **Article – Education**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11-601.

2 (a) (1) By August 1, 1993, the governing board of each institution of higher
3 education shall adopt and submit to the Commission a written policy on sexual assault.

4 (2) The policy adopted under paragraph (1) of this subsection shall apply
5 to each student, faculty member, and employee of the institution and inform the students,
6 faculty members, and employees of their rights and duties under the policy.

7 (b) (1) Each institution of higher education shall post at appropriate locations
8 on each campus and distribute to its students, faculty members, and employees a copy of
9 the policy adopted under subsection (a) of this section.

10 (2) Each institution of higher education shall implement the policy adopted
11 under subsection (a) of this section.

12 (c) The sexual assault policy required under subsection (a) of this section shall
13 conform with § 485(f) of the Higher Education Act of 1965 as amended by § 486(c)(2) of the
14 Higher Education Amendments of 1992 and shall include procedures for reporting an
15 incident of sexual assault and for taking disciplinary actions against a violator of the policy,
16 including provisions for:

17 (1) Informing a victim of a sexual assault of the right to file criminal
18 charges with the appropriate law enforcement official;

19 (2) The prompt assistance of campus authorities, at the request of the
20 victim, in notifying the appropriate law enforcement officials and disciplinary authorities
21 of an incident of sexual assault;

22 **(3) COMPLIANCE WITH THE PROVISIONS OF § 11-602 OF THIS**
23 **SUBTITLE;**

24 **[(3)] (4)** Designation of the nearest hospitals equipped with the
25 Department of State Police Sexual Assault Evidence Collection Kit;

26 **[(4)] (5)** Full and prompt cooperation from campus personnel in obtaining
27 appropriate medical attention, including transporting the victim to the nearest designated
28 hospital;

29 **[(5)] (6)** Offering counseling to a victim of sexual assault from mental
30 health services provided by the institution, other victim service entities, or the nearest
31 State designated rape crisis program; and

32 **[(6)] (7)** After a campus sexual assault has been reported, and upon the
33 request of the alleged victim, the transfer of the alleged victim to alternative classes or
34 housing, if such alternatives are available and feasible.

1 (d) The Commission shall:

2 (1) Coordinate the development of the sexual assault policies; and

3 (2) Periodically review and make recommendations for changes in these
4 policies.

5 (e) Nothing in this subtitle shall be construed to confer a private cause of action
6 upon any person to enforce the provisions of this subtitle.

7 **11-602.**

8 (A) EXCEPT IF A REPORT IS IN VIOLATION OF A STATE OR FEDERAL LAW,
9 ANY FACULTY MEMBER, ADMINISTRATOR, OR FULL-TIME STAFF MEMBER OF AN
10 INSTITUTION OF HIGHER EDUCATION IN THE STATE WHO, DURING THE COURSE OF
11 EMPLOYMENT, OBTAINS INFORMATION ALLEGING A VIOLATION OF §§ 3-303
12 THROUGH 3-308 OF THE CRIMINAL LAW ARTICLE SHALL REPORT THE
13 INFORMATION WITHIN 24 HOURS AFTER OBTAINING THE INFORMATION TO THE
14 APPROPRIATE LAW ENFORCEMENT OFFICIAL.

15 (B) A PERSON WHO KNOWINGLY AND INTENTIONALLY VIOLATES THE
16 PROVISIONS OF THIS SECTION IS GUILTY OF A MISDEMEANOR.

17 (C) A PERSON MAY NOT BE REQUIRED TO MAKE A REPORT UNDER THIS
18 SECTION IF:

19 (1) (I) THE PERSON IS AN ATTORNEY WHO OBTAINED THE
20 INFORMATION IN THE COURSE OF PROVIDING LEGAL REPRESENTATION TO A
21 CLIENT; OR

22 (II) THE OBTAINED INFORMATION WOULD BE SUBJECT TO §
23 9-108 OF THE COURTS ARTICLE IF OFFERED AS EVIDENCE IN COURT;

24 (2) (I) THE PERSON IS A MINISTER, A PRIEST, A RABBI, AN IMAM,
25 OR A DULY ACCREDITED PRACTITIONER OF ANY RELIGIOUS ORGANIZATION OR
26 DENOMINATION AND THE OBTAINED INFORMATION IS REQUIRED BY THE DOCTRINE
27 OF THE RELIGIOUS ORGANIZATION OR DENOMINATION TO BE KEPT IN A
28 CONFIDENTIAL MANNER; OR

29 (II) THE OBTAINED INFORMATION WOULD BE SUBJECT TO §
30 9-111 OF THE COURTS ARTICLE IF OFFERED AS EVIDENCE IN COURT; OR

31 (3) (I) THE PERSON IS A HEALTH CARE PRACTITIONER WHO:

1 **1. IS LICENSED, CERTIFIED, OR EXEMPTED FROM**
2 **LICENSURE OR CERTIFICATION UNDER THE HEALTH OCCUPATIONS ARTICLE**
3 **WHOSE OFFICIAL RESPONSIBILITIES INCLUDE PROVIDING MENTAL HEALTH**
4 **COUNSELING, INCLUDING CRISIS COUNSELING, TO MEMBERS OF THE INSTITUTION'S**
5 **COMMUNITY;**

6 **2. IS PRACTICING WITHIN THE SCOPE OF THE LICENSE**
7 **OR CERTIFICATE OF THE HEALTH CARE PRACTITIONER; AND**

8 **3. OBTAINED THE INFORMATION IN THE COURSE OF**
9 **PROVIDING MENTAL HEALTH COUNSELING TO A CLIENT; OR**

10 **(II) THE OBTAINED INFORMATION WOULD BE SUBJECT TO §**
11 **9-109 OR § 9-109.1 OF THE COURTS ARTICLE IF OFFERED AS EVIDENCE IN COURT.**

12 **(D) IF A PERSON HAS ACTUAL KNOWLEDGE THAT THE MATTER HAS BEEN**
13 **REPORTED TO THE APPROPRIATE LAW ENFORCEMENT OFFICIALS, THE PERSON MAY**
14 **NOT BE REQUIRED TO MAKE A REPORT UNDER THIS SECTION.**

15 **(E) ANY PERSON MAKING A REPORT REQUIRED BY THIS SECTION OR**
16 **TESTIFYING IN A JUDICIAL OR ADMINISTRATIVE PROCEEDING AS A RESULT OF THE**
17 **REPORT SHALL BE IMMUNE FROM CIVIL LIABILITY FOR GOOD FAITH ACTIONS TAKEN**
18 **RELATED TO THE REPORT OF A SEXUAL ASSAULT UNLESS THE PERSON ACTED IN**
19 **BAD FAITH OR WITH MALICIOUS INTENT.**

20 **(F) THE PROVISIONS OF THIS SECTION MAY NOT REQUIRE A PERSON WHO**
21 **IS A VICTIM OF §§ 3-303 THROUGH 3-308 OF THE CRIMINAL LAW ARTICLE TO**
22 **REPORT THE VIOLATION.**

23 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July**
24 **1, 2015.**