

HOUSE BILL 1142

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HB 839/15 – JUD & APP

6lr1025

By: **Delegates Morales, Hettleman, Lierman, and A. Miller**

Introduced and read first time: February 11, 2016

Assigned to: Judiciary and Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Institutions of Higher Learning – Affirmative Consent Standard**

3 FOR the purpose of requiring, by a certain date, that a policy on sexual assault adopted by
4 the governing body of each institution of higher education include a certain
5 affirmative consent standard; requiring a certain written policy on sexual assault to
6 include a certain standard and certain statements; requiring a certain sexual assault
7 policy to provide that certain circumstances negate a valid excuse to an alleged lack
8 of affirmative consent; providing that the standard used in a certain determination
9 is the preponderance of evidence; defining a certain term; and generally relating to
10 the sexual assault policy at institutions of higher education.

11 BY repealing and reenacting, with amendments,
12 Article – Education
13 Section 11–601(a)
14 Annotated Code of Maryland
15 (2014 Replacement Volume and 2015 Supplement)

16 BY adding to
17 Article – Education
18 Section 11–602
19 Annotated Code of Maryland
20 (2014 Replacement Volume and 2015 Supplement)

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

23 **Article – Education**

24 11–601.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

6 (3) **BY SEPTEMBER 1, 2017, A POLICY ADOPTED UNDER THIS SECTION
7 SHALL INCLUDE THE AFFIRMATIVE CONSENT STANDARD DESCRIBED IN § 11-602 OF
8 THIS SUBTITLE.**

9 **11-602.**

10 (A) IN THIS SECTION, "AFFIRMATIVE CONSENT" MEANS CLEAR,
11 UNAMBIGUOUS, KNOWING, INFORMED, AND VOLUNTARY AGREEMENT BETWEEN ALL
12 PARTICIPANTS TO ENGAGE IN EACH ACT WITHIN THE COURSE OF SEXUAL ACTIVITY.

13 (B) ON OR BEFORE SEPTEMBER 1, 2017, THE GOVERNING BODY OF EACH
14 INSTITUTION OF HIGHER EDUCATION, IN ITS WRITTEN POLICY CONCERNING SEXUAL
15 ASSAULT, SHALL INCLUDE:

16 (1) AN AFFIRMATIVE CONSENT STANDARD IN THE DETERMINATION
17 OF WHETHER CONSENT WAS GIVEN BY BOTH PARTIES TO SEXUAL ACTIVITY; AND

18 (2) A STATEMENT THAT:

19 (i) IT IS THE RESPONSIBILITY OF THE INDIVIDUAL INITIATING
20 A SEXUAL ACT DURING THE COURSE OF THE SEXUAL ACTIVITY TO ENSURE THAT THE
21 INDIVIDUAL HAS THE AFFIRMATIVE CONSENT OF THE OTHER OR OTHERS TO
22 ENGAGE IN THAT SEXUAL ACT;

23 (ii) AFFIRMATIVE CONSENT IS ACTIVE, NOT PASSIVE;

24 (iii) LACK OF PROTEST, LACK OF RESISTANCE, OR SILENCE
25 DOES NOT INDICATE CONSENT;

26 (iv) AFFIRMATIVE CONSENT MUST BE ONGOING THROUGHOUT A
27 SEXUAL ACT AND DURING THE COURSE OF SEXUAL ACTIVITY AND CAN BE REVOKED
28 AT ANY TIME; AND

29 (v) THE EXISTENCE OF A DATING RELATIONSHIP OR PRIOR
30 CONSENSUAL SEXUAL ACTIVITY BETWEEN THE INDIVIDUALS INVOLVED SHOULD
31 NEVER BY ITSELF BE ASSUMED TO BE AN INDICATOR OF CONSENT.

1 **(C) THE POLICY DESCRIBED IN SUBSECTION (B) OF THIS SECTION SHALL**
2 **PROVIDE THAT:**

3 **(1) IT IS NOT A VALID EXCUSE TO AN ACCUSATION THAT THERE WAS**
4 **A LACK OF AFFIRMATIVE CONSENT TO STATE A BELIEF THAT THE COMPLAINANT**
5 **CONSENTED TO THE SEXUAL ACT OR COURSE OF SEXUAL ACTIVITY IF:**

6 **(I) THE ACCUSED'S BELIEF AROSE DURING A STATE OF**
7 **INTOXICATION;**

8 **(II) THE ACCUSED'S BELIEF AROSE FROM A FAILURE TO TAKE**
9 **STEPS A REASONABLE PERSON WOULD HAVE TAKEN TO ASCERTAIN WHETHER THE**
10 **COMPLAINANT AFFIRMATIVELY CONSENTED; OR**

11 **(III) THE ACCUSED KNEW OR REASONABLY SHOULD HAVE**
12 **KNOWN THAT THE COMPLAINANT WAS UNABLE TO CONSENT TO THE SEXUAL ACT OR**
13 **COURSE OF SEXUAL ACTIVITY BECAUSE THE COMPLAINANT WAS:**

14 **1. ASLEEP OR UNCONSCIOUS;**

15 **2. INCAPACITATED DUE TO THE INFLUENCE OF DRUGS,**
16 **ALCOHOL, OTHER INTOXICANT, OR MEDICATION, TO RENDER THE COMPLAINANT**
17 **UNABLE TO UNDERSTAND THE FACT, NATURE, OR EXTENT OF THE SEXUAL ACT OR**
18 **COURSE OF SEXUAL ACTIVITY; OR**

19 **3. UNABLE TO COMMUNICATE AFFIRMATIVE CONSENT**
20 **DUE TO A MENTAL OR PHYSICAL CONDITION;**

21 **(2) (I) CONSENT TO A SEXUAL ACTIVITY MAY BE GIVEN BY WORDS**
22 **OR ACTIONS, PROVIDING THE WORDS OR ACTIONS CREATE CLEAR WILLINGNESS TO**
23 **ENGAGE IN THE SEXUAL ACTIVITY;**

24 **(II) SILENCE OR LACK OF RESISTANCE ALONE DOES NOT**
25 **DEMONSTRATE CONSENT; AND**

26 **(III) THE MEANING OF CONSENT DOES NOT VARY BASED ON A**
27 **PARTICIPANT'S SEX, SEXUAL ORIENTATION, GENDER IDENTITY, OR GENDER**
28 **EXPRESSION; AND**

29 **(3) THE STANDARD USED WITHIN CAMPUS HEARINGS TO DETERMINE**
30 **THE PRESENCE OR LACK OF AFFIRMATIVE CONSENT SHALL BE BY THE**
31 **PREPONDERANCE OF THE EVIDENCE.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2016.