

# HOUSE BILL 346

J3

(1lr1537)

## ENROLLED BILL

— Health and Government Operations/Finance —

Introduced 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**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

### 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

**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.

*Italics indicate opposite chamber/conference committee amendments.*



1 Department of Health and Mental Hygiene policies; and generally relating to  
2 State facilities and residential centers.

3 BY repealing and reenacting, with amendments,  
4 Article – Health – General  
5 Section 7–1005 and 10–705  
6 Annotated Code of Maryland  
7 (2009 Replacement Volume and 2010 Supplement)

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

10 **Article – Health – General**

11 7–1005.

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

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

15 (ii) Inhumane treatment; or

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

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

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

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

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

24 (I) [the] **THE** performance of:

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

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

29 (II) ~~APPROPRIATE ACTIONS TAKEN BY AN EMPLOYEE OF A~~  
30 ~~STATE RESIDENTIAL CENTER TO PROTECT THE EMPLOYEE OR OTHER~~

~~1 INDIVIDUALS IN THE RESIDENTIAL CENTER THAT INVOLVE THE LEAST AMOUNT~~  
~~2 OF RESTRICTION REQUIRED TO PROVIDE THE NECESSARY PROTECTION AN~~  
~~3 ACTION TAKEN BY AN EMPLOYEE THAT COMPLIES WITH APPLICABLE STATE~~  
~~4 AND FEDERAL LAWS AND APPLICABLE DEPARTMENT POLICIES ON THE USE OF~~  
~~5 PHYSICAL INTERVENTION.~~

6 (b) (1) In addition to any other reporting requirement of law, a person  
7 who believes that an individual with developmental disability has been abused  
8 promptly shall report the alleged abuse to the executive officer or administrative head  
9 of the licensee.

10 (2) The executive officer or administrative head shall report the  
11 alleged abuse to an appropriate law-enforcement agency.

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

13 (i) May be oral or written; and

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

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

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

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

19 (2) The investigation shall include:

20 (i) A determination of the nature, extent, and cause of the  
21 abuse;

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

23 (iii) Any other pertinent fact or matter.

24 (d) As soon as possible, but no later than 10 working days after the  
25 completion of the investigation, the law-enforcement agency shall submit a written  
26 report of its findings to the State's Attorney, the Director, the State-designated  
27 protection and advocacy agency, and the executive officer or administrative head of the  
28 licensee.

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

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

3 (1) Making a report under this section;

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

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

8 10–705.

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

11 (i) Any physical injury; or

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

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

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

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

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

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

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

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

31 (i) An appropriate law enforcement agency; or

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

3 (2) A report:

4 (i) May be oral or written; and

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

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

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

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

10 (2) The investigation shall include:

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

13 (ii) The identity of the alleged abuser; and

14 (iii) Any other pertinent fact or matter.

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

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

21 (1) Making a report under this section;

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

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

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

28 ~~(1) (i) shall develop guidelines regarding appropriate methods of~~  
29 ~~protection and restraint to be used by employees of State facilities under the Mental~~

1 ~~Hygiene Administration and State residential centers under the Developmental~~  
2 ~~Disabilities Administration, in consultation with employee organizations that~~  
3 ~~represent the employees; and~~

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

6 ~~(2) on or before September 1, 2011, shall report to the Senate Finance~~  
7 ~~Committee and the House Health and Government Operations Committee, in~~  
8 ~~accordance with § 2-1246 of the State Government Article, on the progress made in~~  
9 ~~developing and implementing the guidelines; and~~

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

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.