

HOUSE BILL 346

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CF 11r1787

By: **Delegates Donoghue, Costa, Glenn, Haynes, Kach, Nathan-Pulliam,
Pena-Melnyk, Tarrant, and V. Turner**
Introduced and read first time: February 2, 2011
Assigned to: Health and Government Operations

A BILL ENTITLED

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; and generally relating to State facilities and residential centers.

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

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

20 **Article – Health – General**

21 7–1005.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



- 1 (ii) Inhumane treatment; or
- 2 (iii) Any of the following kinds of sexual abuse:
- 3 1. A sexual act, as defined in § 3–301 of the Criminal
4 Law Article;
- 5 2. Sexual contact, as defined in § 3–301 of the Criminal
6 Law Article; or
- 7 3. Vaginal intercourse, as defined in § 3–301 of the
8 Criminal Law Article.

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

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

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

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

15 (II) **APPROPRIATE ACTIONS TAKEN BY AN EMPLOYEE OF A**
16 **STATE RESIDENTIAL CENTER TO PROTECT THE EMPLOYEE OR OTHER**
17 **INDIVIDUALS IN THE RESIDENTIAL CENTER THAT INVOLVE THE LEAST AMOUNT**
18 **OF RESTRICTION REQUIRED TO PROVIDE THE NECESSARY PROTECTION.**

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

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

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

26 (i) May be oral or written; and

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

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

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

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

2 (2) The investigation shall include:

3 (i) A determination of the nature, extent, and cause of the
4 abuse;

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

6 (iii) Any other pertinent fact or matter.

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

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

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

16 (1) Making a report under this section;

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

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

21 10-705.

22 (a) (1) In this section, "abuse" means cruel or inhumane treatment that
23 causes:

24 (i) Any physical injury; or

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

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

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

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

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

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

7 (II) **APPROPRIATE ACTIONS TAKEN BY AN EMPLOYEE OF A**
8 **STATE FACILITY TO PROTECT THE EMPLOYEE OR OTHER INDIVIDUALS IN THE**
9 **FACILITY THAT INVOLVE THE LEAST AMOUNT OF RESTRICTION REQUIRED TO**
10 **PROVIDE THE NECESSARY PROTECTION.**

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

13 (i) An appropriate law enforcement agency; or

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

16 (2) A report:

17 (i) May be oral or written; and

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

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

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

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

23 (2) The investigation shall include:

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

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

27 (iii) Any other pertinent fact or matter.

28 (d) As soon as possible, but no later than 10 working days after the
29 completion of the investigation, the law enforcement agency shall submit a written

1 report of its findings to the State's Attorney and the administrative head of the
2 facility.

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

5 (1) Making a report under this section;

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

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

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

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

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

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

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

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