

HOUSE BILL 1150

J3

11r1494
CF SB 556

By: **Delegates Hubbard, Costa, Cullison, Kach, Lee, Pena–Melnyk, Reznik, and Tarrant**

Introduced and read first time: February 14, 2011

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Mental Hygiene Administration – Facilities – Trauma–Informed Care**

3 FOR the purpose of requiring certain facilities to provide staff with certain training
4 and to conform with certain trauma–informed care principles; requiring certain
5 individuals to report certain abuse under certain circumstances; requiring
6 certain facilities to report complaints of certain sexual abuse and sexual
7 harassment to the State designated protection and advocacy system; requiring a
8 law enforcement agency to submit certain findings to the State designated
9 protection and advocacy system under certain circumstances; requiring the
10 Mental Hygiene Administration to develop certain policies and to develop and
11 oversee certain training and education related to trauma–informed care;
12 prohibiting State facilities from locating male and female bedrooms on the same
13 hallway and requiring the facilities to provide for a certain barrier; requiring
14 State facilities to use certain screening tools in a certain manner; requiring
15 State facilities to make certain reassignments under certain circumstances;
16 requiring State facilities to establish a certain female–only unit; requiring State
17 facilities to provide certain patients with certain treatment and education
18 related to sexual abuse; requiring State facilities to ensure that certain staff
19 receive certain training related to trauma recovery; requiring the
20 Administration to request technical assistance from a certain group to
21 implement certain provisions of this Act; requiring the Administration to
22 convene a certain committee to provide certain advice and make certain
23 recommendations; requiring the Administration to make a certain report to the
24 Governor and General Assembly on or before a certain date; making certain
25 technical changes; defining certain terms; and generally relating to mental
26 health facilities and trauma–informed care.

27 BY repealing and reenacting, with amendments,
28 Article – Health – General
29 Section 10–701 and 10–705

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2009 Replacement Volume and 2010 Supplement)

3 Preamble

4 WHEREAS, The Mental Hygiene Administration has a duty to protect patients
5 in State–operated or licensed facilities from abuse and sexual harassment; and

6 WHEREAS, There are high rates of trauma histories involving sexual abuse
7 and exploitation among individuals receiving public mental health services, leaving
8 these individuals vulnerable to further victimization and hindering their ability to
9 recover; and

10 WHEREAS, It is the mission of the Mental Hygiene Administration to provide
11 services in a safe and supportive environment; now, therefore,

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

14 **Article – Health – General**

15 10–701.

16 (a) (1) In this subtitle the following words have the meanings indicated.

17 (2) (i) “Advocate” means a person who provides support and
18 guidance to an individual in a facility.

19 (ii) “Advocate” includes a family member or friend.

20 (iii) “Advocate” does not include an attorney acting in the
21 capacity of legal counsel to an individual in a facility during the treatment planning
22 and discharge planning process.

23 (3) “Facility” does not include an acute general care hospital that does
24 not have a separately identified inpatient psychiatric service.

25 (4) (i) “Mental abuse” means any persistent course of conduct
26 resulting in or maliciously intended to produce emotional harm.

27 (ii) “Mental abuse” does not include the performance of an
28 accepted clinical procedure.

29 (5) (i) “Prone restraint” means restricting the free movement of all
30 or a portion of an individual’s body through the use of physical force or mechanical
31 devices while the individual is in a prone position.

1 (ii) “Prone restraint” does not include a technique for
2 transitioning an individual to a restraint position that involves momentarily placing
3 the individual face down.

4 (6) “STATE FACILITY” MEANS A FACILITY THAT IS MAINTAINED
5 UNDER THE DIRECTION OF THE MENTAL HYGIENE ADMINISTRATION.

6 (7) “TRAUMA-INFORMED CARE” MEANS MENTAL HEALTH
7 TREATMENT THAT INCLUDES:

8 (I) AN APPRECIATION FOR THE HIGH PREVALENCE OF
9 TRAUMA EXPERIENCED BY INDIVIDUALS RECEIVING MENTAL HEALTH
10 SERVICES;

11 (II) AN UNDERSTANDING OF THE NEUROLOGICAL,
12 BIOLOGICAL, PSYCHOLOGICAL, AND SOCIAL EFFECTS OF TRAUMA AND
13 VIOLENCE, INCLUDING SEXUAL ABUSE AND EXPLOITATION, ON AN INDIVIDUAL;
14 AND

15 (III) AN UNDERSTANDING OF THE ENVIRONMENT,
16 PRACTICES, AND TREATMENTS THAT MAY NEED TO BE MODIFIED TO ADDRESS
17 TRAUMA ISSUES.

18 (b) It is the policy of this State that each individual with a mental disorder
19 who receives any service in a facility has, in addition to any other rights, the rights
20 provided in this subtitle.

21 (c) Each individual in a facility shall:

22 (1) Receive appropriate humane treatment and services in a manner
23 that restricts the individual’s personal liberty within a facility only to the extent
24 necessary and consistent with the individual’s treatment needs and applicable legal
25 requirements;

26 (2) Receive treatment in accordance with the applicable individualized
27 plan of rehabilitation or the individualized treatment plan provided for in § 10-706 of
28 this subtitle;

29 (3) Be free from restraints or seclusions except for restraints or
30 seclusions that are:

31 (i) Used only during an emergency in which the behavior of the
32 individual places the individual or others at serious threat of violence or injury; and

33 (ii) 1. Ordered by a physician in writing; or

1 2. Directed by a registered nurse if a physician's order is
2 obtained within 2 hours of the action;

3 (4) Be free from prone restraint;

4 (5) Be free from restraint that:

5 (i) Applies pressure to the individual's back;

6 (ii) Obstructs the airway of the individual or impairs the
7 individual's ability to breathe;

8 (iii) Obstructs a staff member's view of the individual's face; or

9 (iv) Restricts the individual's ability to communicate distress;

10 (6) Be free from mental abuse;

11 (7) Be protected from harm or abuse as provided in this subtitle;

12 (8) Except as provided in subsection [(d)] (E) of this section, and
13 subject to subsection [(j)] (K) of this section, have the right to an advocate of the
14 individual's choice **TO** participate in the treatment planning and discharge planning
15 process; and

16 (9) Subject to the provisions of § 10-708 of this subtitle, if the
17 individual has an advance directive for mental health services provided for in §
18 5-602.1 of this article, receive treatment in accordance with the preferences in the
19 advance directive.

20 **(D) A FACILITY SHALL ENSURE THAT:**

21 **(1) ALL STAFF RECEIVE TRAINING IN TRAUMA-INFORMED CARE**
22 **AND DEMONSTRATE COMPETENCY IN PROVIDING TRAUMA-INFORMED CARE**
23 **SERVICES WITHIN 3 MONTHS OF BEING HIRED AND ON AN ANNUAL BASIS;**

24 **(2) ANY POLICY OR PRACTICE FOLLOWED BY THE FACILITY IS**
25 **REVIEWED AND REVISED TO CONFORM WITH TRAUMA-INFORMED CARE**
26 **PRINCIPLES; AND**

27 **(3) THE PHYSICAL ENVIRONMENT OF THE FACILITY IS ASSESSED**
28 **AT LEAST ANNUALLY AND MODIFIED IF NECESSARY TO ENSURE CONFORMITY**
29 **WITH TRAUMA-INFORMED CARE PRINCIPLES.**

1 **[(d)] (E)** Notwithstanding the provisions of subsection (c)(8) of this section,
2 a facility may prohibit an advocate from participating in the treatment planning or
3 discharge planning process for an individual if:

4 (1) (i) The individual is a minor or an adult under guardianship in
5 accordance with § 13–705 of the Estates and Trusts Article; and

6 (ii) The parent of the minor or the legal guardian of the
7 individual has requested that the advocate not participate; or

8 (2) The advocate has engaged in behavior that:

9 (i) Is disruptive to the individual, other patients, or staff at the
10 facility; or

11 (ii) Poses a threat to the safety of the individual, other patients,
12 or staff at the facility.

13 **[(e)] (F)** A facility shall:

14 (1) Have a written policy specifying the method used to ensure that an
15 individual whose primary language or method of communication is nonverbal is able
16 to effectively communicate distress during a physical restraint or hold; and

17 (2) Ensure that all staff at the facility who are authorized to
18 participate in a physical restraint or hold of individuals are trained in the method
19 specified in the written policy required under item (1) of this subsection.

20 **[(f)] (G)** Subject to the provisions of §§ 4–301 through 4–309 of this article,
21 the records of each individual in a facility are confidential.

22 **[(g)] (H)** (1) Notwithstanding any other provision of law, when the State
23 designated protection and advocacy agency **[for persons with developmental**
24 **disabilities]** has received and documented a request for an investigation of a possible
25 violation of the rights of an individual in a facility that is owned and operated by the
26 Department or under contract to the Department to provide mental health services in
27 the community under this subtitle, the executive director of the protection and
28 advocacy agency or the executive director’s designee:

29 (i) Before pursuing any investigation:

30 1. Shall interview the individual whose rights have been
31 allegedly violated; and

32 2. Shall attempt to obtain written consent from the
33 individual; and

1 (ii) If the individual is unable to give written consent but does
2 not object to the investigation:

3 1. Shall document this fact; and

4 2. Shall request, in writing, access to the individual's
5 records from the Director of the Mental Hygiene Administration.

6 (2) On receipt of the request for access to the individual's records, the
7 Director of the Mental Hygiene Administration shall authorize access to the
8 individual's records.

9 (3) After satisfying the provisions of paragraphs (1) and (2) of this
10 subsection, the executive director of the protection and advocacy agency, or the
11 executive director's designee, may pursue an investigation and, as part of that
12 investigation, shall continue to have access to the records of the individual whose
13 rights have been allegedly violated.

14 **[(h)] (I)** (1) On admission to a facility, an individual shall be informed of
15 the rights provided in this subtitle in language and terms that are appropriate to the
16 individual's condition and ability to understand.

17 (2) A facility shall post notices in locations accessible to the individual
18 and to visitors describing the rights provided in this subtitle in language and terms
19 that may be readily understood.

20 **[(i)] (J)** A facility shall implement an impartial, timely complaint
21 procedure that affords an individual the ability to exercise the rights provided in this
22 subtitle.

23 **[(j)] (K)** This section may not be construed to:

24 (1) Grant the advocate of an individual legal authority that the
25 advocate does not otherwise have under law to make decisions on behalf of the
26 individual regarding treatment or discharge;

27 (2) Grant the advocate access to the medical records of the individual
28 or other confidential information that the advocate does not otherwise have access to
29 under law; or

30 (3) Limit the legal authority that an attorney or other person
31 otherwise has under law to participate in the treatment planning and discharge
32 planning process or to otherwise act on behalf of an individual in a facility.

33 10-705.

1 (a) (1) In this [section, “abuse”] **SECTION THE FOLLOWING WORDS**
2 **HAVE THE MEANINGS INDICATED.**

3 (2) (I) **“ABUSE”** means cruel or inhumane treatment that causes:

4 [(i)] 1. Any physical injury; or

5 [(ii)] 2. Any of the following kinds of sexual abuse:

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

8 [2.] B. Sexual contact, as defined in § 3–301 of the
9 Criminal Law Article[.]; AND

10 [3.] C. Vaginal intercourse, as defined in § 3–301 of
11 the Criminal Law Article.

12 [(2)] (II) [In this section, “abuse”] **“ABUSE”** does not include the
13 performance of an accepted medical procedure that a physician orders in a manner
14 that is consistent with the provisions of this subtitle.

15 (3) **“SEXUAL HARASSMENT” MEANS INTIMIDATION, BULLYING, OR**
16 **COERCION OF A SEXUAL NATURE OR UNWELCOME SEXUAL ADVANCES,**
17 **REQUESTS FOR SEXUAL FAVORS, AND OTHER VERBAL OR PHYSICAL CONDUCT**
18 **OF A SEXUAL NATURE THAT TENDS TO CREATE A HOSTILE OR OFFENSIVE**
19 **ENVIRONMENT.**

20 (b) (1) A [person who believes that an individual in a facility has been
21 abused] **PERSON OR ANY EMPLOYEE OF A FACILITY OR OF THE DEPARTMENT**
22 **WHO RECEIVES A COMPLAINT OF ABUSE, OR WHO OBSERVES OR HAS REASON TO**
23 **BELIEVE THAT ABUSE HAS OCCURRED,** shall promptly report the alleged abuse to:

24 (i) An appropriate law enforcement agency; or

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

27 (2) A report:

28 (i) May be oral or written; and

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

1 **(3) A STATE FACILITY SHALL REPORT COMPLAINTS OF SEXUAL**
2 **ABUSE AND SEXUAL HARASSMENT TO THE STATE DESIGNATED PROTECTION**
3 **AND ADVOCACY SYSTEM.**

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

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

6 (ii) Attempt to [insure] **ENSURE** the protection of the alleged
7 victim.

8 (2) The investigation shall include:

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

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

12 (iii) Any other pertinent fact or matter.

13 (d) As soon as possible, but no later than 10 working days after the
14 completion of the investigation, the law enforcement agency shall submit a written
15 report of its findings to the State's Attorney, **THE STATE DESIGNATED PROTECTION**
16 **AND ADVOCACY SYSTEM**, and the administrative head of the facility.

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

19 (1) Making a report under this section;

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

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

24 **(F) THE ADMINISTRATION SHALL ENSURE THAT STATE FACILITIES:**

25 **(1) DEVELOP UNIFORM POLICIES AND PROCEDURES ON MAKING**
26 **AND RESPONDING TO ALLEGATIONS OF SEXUAL ABUSE OR SEXUAL**
27 **HARASSMENT;**

28 **(2) ENSURE THAT STAFF DO NOT DISCOURAGE PATIENTS FROM**
29 **MAKING COMPLAINTS ABOUT SEXUAL ABUSE OR SEXUAL HARASSMENT AND DO**
30 **NOT THREATEN OR PUNISH PATIENTS FOR MAKING THE COMPLAINTS;**

1 **(3) DEVELOP AND OVERSEE TRAINING FOR STAFF ON HOW TO**
2 **IDENTIFY AND PREVENT SEXUAL ABUSE AND SEXUAL HARASSMENT, HOW TO**
3 **RESPOND TO COMPLAINTS, AND HOW TO SUPPORT VICTIMS IN AN APPROPRIATE**
4 **MANNER; AND**

5 **(4) DEVELOP AND OVERSEE PATIENT EDUCATION ON**
6 **IDENTIFYING SEXUAL ABUSE AND SEXUAL HARASSMENT AND ON REPORTING**
7 **INCIDENTS OF SEXUAL ABUSE AND SEXUAL HARASSMENT.**

8 **(G) (1) A STATE FACILITY MAY NOT LOCATE MALE AND FEMALE**
9 **BEDROOMS ON THE SAME HALLWAY AND SHALL PROVIDE FOR A BARRIER TO**
10 **PREVENT UNAUTHORIZED ACCESS TO THE BEDROOM HALLWAY OF THE**
11 **OPPOSITE GENDER.**

12 **(2) IN PROVIDING ANY PHYSICAL MODIFICATIONS THAT MAY BE**
13 **REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, A FACILITY SHALL**
14 **MAXIMIZE THE USE OF EXISTING RESOURCES AND INFRASTRUCTURE.**

15 **(H) EACH STATE FACILITY SHALL:**

16 **(1) USE EVIDENCE-BASED SCREENING TOOLS TO IDENTIFY ON**
17 **ADMISSION A PATIENT'S RISK OF BEING A VICTIM OF SEXUAL OR PHYSICAL**
18 **ABUSE, OR BEING A SEXUAL OR PHYSICAL ABUSER, AND SHALL MAKE ANY UNIT**
19 **AND ROOM ASSIGNMENT BASED ON THE ASSESSMENT OF RISK;**

20 **(2) REASSIGN ANY PATIENT ACCUSED OF SEXUAL ASSAULT**
21 **PROMPTLY TO ANOTHER UNIT AND ENSURE THAT, REGARDLESS OF THE**
22 **OUTCOME OF THE INVESTIGATION, ANY ALLEGED VICTIM AND THE ALLEGED**
23 **ASSAILANT ARE NOT HOUSED IN THE SAME UNIT AT ANY TIME;**

24 **(3) HAVE AT LEAST ONE FEMALE-ONLY UNIT AVAILABLE ON A**
25 **VOLUNTARY BASIS TO ANY FEMALE PATIENT AND ASSIGN ONLY FEMALE STAFF**
26 **TO THE UNIT;**

27 **(4) PROVIDE A PATIENT WHO HAS A HISTORY OF SEXUAL TRAUMA**
28 **WITH EVIDENCE-BASED TREATMENT AND EDUCATION TO REDUCE THE**
29 **LIKELIHOOD OF THE PATIENT BEING THE VICTIM OF REPEATED SEXUAL ABUSE;**
30 **AND**

31 **(5) ENSURE THAT DESIGNATED CLINICAL STAFF ARE TRAINED IN**
32 **AT LEAST ONE TRAUMA RECOVERY MODALITY THAT IS CONSIDERED TO BE A**
33 **BEST PRACTICE.**

34 SECTION 2. AND BE IT FURTHER ENACTED, That:

1 (a) The Mental Hygiene Administration shall request technical assistance
2 from the National Association of State Mental Health Program Directors to implement
3 the requirements of Section 1 of this Act.

4 (b) (1) The Mental Hygiene Administration shall convene a committee to
5 advise the Administration on the development and implementation of Section 1 of this
6 Act and to make additional recommendations as appropriate.

7 (2) The committee convened under paragraph (1) of this subsection
8 shall include representatives from:

9 (i) The Maryland Disability Law Center;

10 (ii) On Our Own of Maryland;

11 (iii) The Mental Health Association of Maryland;

12 (iv) The Maryland Coalition Against Sexual Assault; and

13 (v) The Office of the State's Attorney.

14 (c) On or before June 1, 2012, the Mental Health Administration shall report
15 to the Governor and, in accordance with § 2-1246 of the State Government Article, the
16 General Assembly on the implementation of Section 1 of this Act and any further
17 recommendations made by the committee convened under subsection(b) of this section.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2011.