

SENATE BILL 556

J3

(11r1560)

ENROLLED BILL

— Finance/Health and Government Operations —

Introduced by **Senators Pugh, Benson, Forehand, Jacobs, Jones-Rodwell, Kelley, King, Klausmeier, and Montgomery**

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.

President.

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of requiring certain facilities to provide certain staff with certain
4 training and to conform with certain trauma-informed care principles under
5 certain circumstances; requiring certain individuals to report certain abuse
6 under certain circumstances; requiring certain facilities to report complaints of
7 certain sexual abuse and sexual harassment to the State designated protection
8 and advocacy system; requiring a law enforcement agency to submit certain
9 findings to the State designated protection and advocacy system under certain
10 circumstances; requiring the Mental Hygiene Administration to develop certain
11 policies and to develop and oversee certain training and education related to
12 trauma-informed care; ~~prohibiting State facilities from locating male and~~
13 ~~female bedrooms on the same hallway and requiring the facilities to provide for~~
14 ~~a certain barrier~~; requiring the Administration to develop and implement a

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 certain plan to secure the sleeping quarters of male and female patients at State
 2 facilities; requiring State facilities to use certain screening tools in a certain
 3 manner; requiring State facilities to make certain reassignments under certain
 4 circumstances; ~~requiring State facilities to establish a certain female-only unit;~~
 5 requiring State facilities to provide certain patients with certain treatment and
 6 education related to sexual abuse; requiring State facilities to ensure that
 7 certain staff receive certain training related to trauma recovery; requiring the
 8 Administration to utilize a certain team to develop and conduct a certain
 9 survey; requiring the Administration to design and implement a certain pilot
 10 program; requiring the Administration to assess the current design of units at
 11 each State facility in a certain manner; requiring the Administration to request
 12 technical assistance from a certain group to implement certain provisions of this
 13 Act; requiring the Administration to convene a certain committee to provide
 14 certain advice and make certain recommendations; requiring the
 15 Administration to make a certain report to the Governor and General Assembly
 16 on or before a certain date; making certain technical changes; defining certain
 17 terms; and generally relating to mental health facilities and trauma-informed
 18 care.

19 BY repealing and reenacting, with amendments,
 20 Article – Health – General
 21 Section 10–701 and 10–705
 22 Annotated Code of Maryland
 23 (2009 Replacement Volume and 2010 Supplement)

24 Preamble

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

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

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

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

35 **Article – Health – General**

36 10–701.

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

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

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

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

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

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

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

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

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

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

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

23 **(I) AN APPRECIATION FOR THE HIGH PREVALENCE OF**
24 **TRAUMA EXPERIENCED BY INDIVIDUALS RECEIVING MENTAL HEALTH**
25 **SERVICES;**

26 **(II) AN UNDERSTANDING OF THE NEUROLOGICAL,**
27 **BIOLOGICAL, PSYCHOLOGICAL, AND SOCIAL EFFECTS OF TRAUMA AND**
28 **VIOLENCE, INCLUDING SEXUAL ABUSE AND EXPLOITATION, ON AN INDIVIDUAL;**
29 **AND**

30 **(III) AN UNDERSTANDING OF THE ENVIRONMENT,**
31 **PRACTICES, AND TREATMENTS THAT MAY NEED TO BE MODIFIED TO ADDRESS**
32 **TRAUMA ISSUES.**

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

4 (c) Each individual in a facility shall:

5 (1) Receive appropriate humane treatment and services in a manner
6 that restricts the individual's personal liberty within a facility only to the extent
7 necessary and consistent with the individual's treatment needs and applicable legal
8 requirements;

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

12 (3) Be free from restraints or seclusions except for restraints or
13 seclusions that are:

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

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

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

19 (4) Be free from prone restraint;

20 (5) Be free from restraint that:

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

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

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

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

26 (6) Be free from mental abuse;

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

28 (8) Except as provided in subsection [(d)] (E) of this section, and
29 subject to subsection [(j)] (K) of this section, have the right to an advocate of the

1 individual's choice **TO** participate in the treatment planning and discharge planning
2 process; and

3 (9) Subject to the provisions of § 10–708 of this subtitle, if the
4 individual has an advance directive for mental health services provided for in §
5 5–602.1 of this article, receive treatment in accordance with the preferences in the
6 advance directive.

7 (D) **A STATE FACILITY SHALL ENSURE THAT:**

8 (1) **ALL CLINICAL, DIRECT CARE, AND OTHER DESIGNATED STAFF**
9 **WITH REGULAR PATIENT INTERACTION RECEIVE TRAINING IN**
10 **TRAUMA-INFORMED CARE AND DEMONSTRATE COMPETENCY IN PROVIDING**
11 **TRAUMA-INFORMED CARE SERVICES WITHIN 3 MONTHS OF BEING HIRED AND**
12 **ON AN ANNUAL BASIS;**

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

16 (3) **THE PHYSICAL ENVIRONMENT OF THE FACILITY IS ASSESSED**
17 **AT LEAST ANNUALLY AND MODIFIED IF THE MODIFICATIONS:**

18 (I) **ARE NECESSARY TO ENSURE CONFORMITY WITH**
19 **TRAUMA-INFORMED CARE PRINCIPLES; AND**

20 (II) **CAN BE FUNDED THROUGH THE STATE'S OPERATING**
21 **BUDGET OR CAPITAL BUDGET.**

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

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

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

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

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

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

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

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

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

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

12 **[(g)] (H)** (1) Notwithstanding any other provision of law, when the State
13 designated protection and advocacy agency **[for persons with developmental**
14 **disabilities]** has received and documented a request for an investigation of a possible
15 violation of the rights of an individual in a facility that is owned and operated by the
16 Department or under contract to the Department to provide mental health services in
17 the community under this subtitle, the executive director of the protection and
18 advocacy agency or the executive director's designee:

19 (i) Before pursuing any investigation:

20 1. Shall interview the individual whose rights have been
21 allegedly violated; and

22 2. Shall attempt to obtain written consent from the
23 individual; and

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

26 1. Shall document this fact; and

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

29 (2) On receipt of the request for access to the individual's records, the
30 Director of the Mental Hygiene Administration shall authorize access to the
31 individual's records.

32 (3) After satisfying the provisions of paragraphs (1) and (2) of this
33 subsection, the executive director of the protection and advocacy agency, or the

1 executive director's designee, may pursue an investigation and, as part of that
2 investigation, shall continue to have access to the records of the individual whose
3 rights have been allegedly violated.

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

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

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

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

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

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

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

23 10-705.

24 (a) (1) In this [section, "abuse"] **SECTION THE FOLLOWING WORDS**
25 **HAVE THE MEANINGS INDICATED.**

26 **(2) (I)** **"ABUSE"** means cruel or inhumane treatment that causes:

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

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

29 **[1.] A.** A sexual act, as defined in § 3-301 of the
30 Criminal Law Article[.];

31 **[2.] B.** Sexual contact, as defined in § 3-301 of the
32 Criminal Law Article[.]; ~~AND OR~~

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

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

6 (3) “**SEXUAL HARASSMENT**” MEANS INTIMIDATION, BULLYING, OR
7 COERCION OF A SEXUAL NATURE OR UNWELCOME SEXUAL ADVANCES,
8 REQUESTS FOR SEXUAL FAVORS, AND OTHER VERBAL OR PHYSICAL CONDUCT
9 OF A SEXUAL NATURE THAT TENDS TO CREATE A HOSTILE OR OFFENSIVE
10 ENVIRONMENT.

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

15 (i) An appropriate law enforcement agency; or

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

18 (2) A report:

19 (i) May be oral or written; and

20 (ii) Shall contain as much information as the reporter is able to
21 provide.

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

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

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

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

29 (2) The investigation shall include:

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

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

4 (iii) Any other pertinent fact or matter.

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

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

11 (1) Making a report under this section;

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

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

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

17 **(1) DEVELOP UNIFORM POLICIES AND PROCEDURES ON MAKING**
18 **AND RESPONDING TO ALLEGATIONS OF SEXUAL ABUSE OR SEXUAL**
19 **HARASSMENT;**

20 **(2) ENSURE THAT STAFF ~~DO NOT DISCOURAGE PATIENTS FROM~~**
21 **PROVIDE ASSISTANCE TO PATIENTS WHO HAVE REQUESTED ASSISTANCE IN**
22 **MAKING COMPLAINTS ABOUT SEXUAL ABUSE OR SEXUAL HARASSMENT AND DO**
23 **NOT THREATEN OR PUNISH PATIENTS FOR MAKING THE COMPLAINTS;**

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

28 **(4) DEVELOP AND OVERSEE PATIENT EDUCATION ON**
29 **IDENTIFYING SEXUAL ABUSE AND SEXUAL HARASSMENT AND ON REPORTING**
30 **INCIDENTS OF SEXUAL ABUSE AND SEXUAL HARASSMENT.**

31 **(G) ~~(1) A STATE FACILITY MAY NOT LOCATE MALE AND FEMALE~~**
32 **~~BEDROOMS ON THE SAME HALLWAY AND SHALL PROVIDE FOR A BARRIER TO~~**

1 ~~PREVENT UNAUTHORIZED ACCESS TO THE BEDROOM HALLWAY OF THE~~
2 ~~OPPOSITE GENDER.~~

3 ~~(2) IN PROVIDING ANY PHYSICAL MODIFICATIONS THAT MAY BE~~
4 ~~REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, A FACILITY SHALL~~
5 ~~MAXIMIZE THE USE OF EXISTING RESOURCES AND INFRASTRUCTURE. THE~~
6 ADMINISTRATION SHALL DEVELOP AND IMPLEMENT A PLAN TO SECURE THE
7 SLEEPING QUARTERS OF MALE AND FEMALE PATIENTS AT ALL STATE
8 FACILITIES THAT MAXIMIZES THE USE OF AVAILABLE RESOURCES AND
9 INFRASTRUCTURE.

10 (H) EACH STATE FACILITY SHALL:

11 (1) USE EVIDENCE-BASED SCREENING TOOLS TO IDENTIFY ON
12 ADMISSION A PATIENT'S RISK OF BEING A VICTIM OF SEXUAL OR PHYSICAL
13 ABUSE, OR BEING A SEXUAL OR PHYSICAL ABUSER, AND SHALL ~~MAKE~~ CONSIDER
14 THE ASSESSMENT OF RISK IN MAKING ANY UNIT AND ROOM ASSIGNMENT ~~BASED~~
15 ~~ON THE ASSESSMENT OF RISK;~~

16 (2) REASSIGN ANY PATIENT ACCUSED OF SEXUAL ASSAULT
17 PROMPTLY TO ANOTHER UNIT AND ENSURE THAT, ~~REGARDLESS OF THE~~
18 ~~OUTCOME OF THE INVESTIGATION,~~ ANY ALLEGED VICTIM AND THE ALLEGED
19 ASSAILANT ARE NOT HOUSED IN THE SAME UNIT ~~AT ANY TIME;~~

20 (3) ~~HAVE AT LEAST ONE FEMALE ONLY UNIT AVAILABLE ON A~~
21 ~~VOLUNTARY BASIS TO ANY FEMALE PATIENT AND ASSIGN ONLY FEMALE STAFF~~
22 ~~TO THE UNIT;~~

23 ~~(4)~~ PROVIDE A PATIENT WHO HAS A HISTORY OF SEXUAL TRAUMA
24 WITH ~~EVIDENCE-BASED~~ TREATMENT AND EDUCATION THAT IS
25 EVIDENCE-BASED OR REFLECTIVE OF BEST PRACTICES TO REDUCE THE
26 LIKELIHOOD OF THE PATIENT BEING THE VICTIM OF REPEATED SEXUAL ABUSE;
27 AND

28 ~~(5)~~ (4) ENSURE THAT DESIGNATED CLINICAL STAFF ARE
29 TRAINED IN AT LEAST ONE TRAUMA RECOVERY MODALITY THAT IS CONSIDERED
30 TO BE A BEST PRACTICE.

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

32 (a) The Mental Hygiene Administration shall:

33 (1) utilize the Maryland Consumer Quality Team to develop and
34 conduct a survey of female patients at each State facility;

1 (2) design and implement a 3-year pilot program ~~of~~ for a voluntary
2 single gender unit at a State facility, with a priority toward a voluntary all-female
3 unit;

4 (3) assess the current design of units at each State facility, including
5 an assessment of the separation of sleeping quarters by gender and mechanisms to
6 prevent unauthorized access to sleeping quarters and individual bedrooms; and

7 (4) request technical assistance and a consultant from the National
8 Association of State Mental Health Program Directors to implement the requirements
9 of Section 1 of this Act and to conduct the assessment of relevant factors and draft a
10 report of observations and recommendations for implementing the pilot program for a
11 single gender unit at a State facility.

12 (b) (1) The Mental Hygiene Administration shall convene a committee to
13 advise the Administration on the development and implementation of Section 1 of this
14 Act and of the pilot program ~~of~~ for a single gender unit required under this section and
15 to make additional recommendations as appropriate.

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

18 (i) The Maryland Disability Law Center;

19 (ii) On Our Own of Maryland;

20 (iii) The Mental Health Association of Maryland;

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

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

23 (c) On or before June 1, 2012, the Mental ~~Health~~ Hygiene Administration
24 shall report to the Governor and, in accordance with § 2-1246 of the State
25 Government Article, the General Assembly on the implementation of Section 1 of this
26 Act, the pilot program for a single gender unit required under this section, and any
27 further recommendations made by the committee convened under subsection (b) of
28 this section.

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