

# SENATE BILL 556

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CF HB 1150

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By: **Senators Pugh, Benson, Forehand, Jacobs, Jones–Rodwell, Kelley, King, Klausmeier, and Montgomery**

Introduced and read first time: February 4, 2011

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2011

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## 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  
15 certain plan to secure the sleeping quarters of male and female patients at State  
16 facilities; requiring State facilities to use certain screening tools in a certain  
17 manner; requiring State facilities to make certain reassignments under certain  
18 circumstances; ~~requiring State facilities to establish a certain female–only unit~~;  
19 requiring State facilities to provide certain patients with certain treatment and  
20 education related to sexual abuse; requiring State facilities to ensure that  
21 certain staff receive certain training related to trauma recovery; requiring the  
22 Administration to utilize a certain team to develop and conduct a certain  
23 survey; requiring the Administration to design and implement a certain pilot;  
24 requiring the Administration to assess the current design of units at each State

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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.



1 facility in a certain manner; requiring the Administration to request technical  
 2 assistance from a certain group to implement certain provisions of this Act;  
 3 requiring the Administration to convene a certain committee to provide certain  
 4 advice and make certain recommendations; requiring the Administration to  
 5 make a certain report to the Governor and General Assembly on or before a  
 6 certain date; making certain technical changes; defining certain terms; and  
 7 generally relating to mental health facilities and trauma-informed care.

8 BY repealing and reenacting, with amendments,  
 9 Article – Health – General  
 10 Section 10–701 and 10–705  
 11 Annotated Code of Maryland  
 12 (2009 Replacement Volume and 2010 Supplement)

13 Preamble

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

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

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

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

24 **Article – Health – General**

25 10–701.

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

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

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

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

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

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

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

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

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

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

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

15           **(I) AN APPRECIATION FOR THE HIGH PREVALENCE OF**  
16 **TRAUMA EXPERIENCED BY INDIVIDUALS RECEIVING MENTAL HEALTH**  
17 **SERVICES;**

18           **(II) AN UNDERSTANDING OF THE NEUROLOGICAL,**  
19 **BIOLOGICAL, PSYCHOLOGICAL, AND SOCIAL EFFECTS OF TRAUMA AND**  
20 **VIOLENCE, INCLUDING SEXUAL ABUSE AND EXPLOITATION, ON AN INDIVIDUAL;**  
21 **AND**

22           **(III) AN UNDERSTANDING OF THE ENVIRONMENT,**  
23 **PRACTICES, AND TREATMENTS THAT MAY NEED TO BE MODIFIED TO ADDRESS**  
24 **TRAUMA ISSUES.**

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

28           (c) Each individual in a facility shall:

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

1           (2) Receive treatment in accordance with the applicable individualized  
2 plan of rehabilitation or the individualized treatment plan provided for in § 10–706 of  
3 this subtitle;

4           (3) Be free from restraints or seclusions except for restraints or  
5 seclusions that are:

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

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

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

11           (4) Be free from prone restraint;

12           (5) Be free from restraint that:

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

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

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

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

18           (6) Be free from mental abuse;

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

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

24           (9) Subject to the provisions of § 10–708 of this subtitle, if the  
25 individual has an advance directive for mental health services provided for in §  
26 5–602.1 of this article, receive treatment in accordance with the preferences in the  
27 advance directive.

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

29                   **(1) ALL CLINICAL, DIRECT CARE, AND OTHER DESIGNATED STAFF**  
30 **WITH REGULAR PATIENT INTERACTION RECEIVE TRAINING IN**

1 TRAUMA-INFORMED CARE AND DEMONSTRATE COMPETENCY IN PROVIDING  
2 TRAUMA-INFORMED CARE SERVICES WITHIN 3 MONTHS OF BEING HIRED AND  
3 ON AN ANNUAL BASIS;

4 (2) ANY POLICY OR PRACTICE FOLLOWED BY THE FACILITY IS  
5 REVIEWED AND REVISED TO CONFORM WITH TRAUMA-INFORMED CARE  
6 PRINCIPLES; AND

7 (3) THE PHYSICAL ENVIRONMENT OF THE FACILITY IS ASSESSED  
8 AT LEAST ANNUALLY AND MODIFIED IF THE MODIFICATIONS:

9 (I) ARE NECESSARY TO ENSURE CONFORMITY WITH  
10 TRAUMA-INFORMED CARE PRINCIPLES; AND

11 (II) CAN BE FUNDED THROUGH THE STATE'S OPERATING  
12 BUDGET OR CAPITAL BUDGET.

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

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

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

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

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

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

25 [(e)] (F) A facility shall:

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

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

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

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

10                               (i)    Before pursuing any investigation:

11   1.    Shall interview the individual whose rights have been  
12 allegedly violated; and

13   2.    Shall attempt to obtain written consent from the  
14 individual; and

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

17   1.    Shall document this fact; and

18   2.    Shall request, in writing, access to the individual’s  
19 records from the Director of the Mental Hygiene Administration.

20                       (2)    On receipt of the request for access to the individual’s records, the  
21 Director of the Mental Hygiene Administration shall authorize access to the  
22 individual’s records.

23                       (3)    After satisfying the provisions of paragraphs (1) and (2) of this  
24 subsection, the executive director of the protection and advocacy agency, or the  
25 executive director’s designee, may pursue an investigation and, as part of that  
26 investigation, shall continue to have access to the records of the individual whose  
27 rights have been allegedly violated.

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

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

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

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

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

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

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

14     10–705.

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

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

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

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

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

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

24   **[3.] C.**     Vaginal intercourse, as defined in § 3–301 of  
 25 the Criminal Law Article.

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

29                   **(3)**     **“SEXUAL HARASSMENT” MEANS INTIMIDATION, BULLYING, OR**  
 30 **COERCION OF A SEXUAL NATURE OR UNWELCOME SEXUAL ADVANCES,**  
 31 **REQUESTS FOR SEXUAL FAVORS, AND OTHER VERBAL OR PHYSICAL CONDUCT**

1 **OF A SEXUAL NATURE THAT TENDS TO CREATE A HOSTILE OR OFFENSIVE**  
2 **ENVIRONMENT.**

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

7 (i) An appropriate law enforcement agency; or

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

10 (2) A report:

11 (i) May be oral or written; and

12 (ii) Shall contain as much information as the reporter is able to  
13 provide.

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

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

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

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

21 (2) The investigation shall include:

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

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

25 (iii) Any other pertinent fact or matter.

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



1 (e) A person shall have the immunity from liability described under § 5-626  
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 (F) THE ADMINISTRATION SHALL ENSURE THAT STATE FACILITIES:

9 (1) DEVELOP UNIFORM POLICIES AND PROCEDURES ON MAKING  
10 AND RESPONDING TO ALLEGATIONS OF SEXUAL ABUSE OR SEXUAL  
11 HARASSMENT;

12 (2) ENSURE THAT STAFF ~~DO NOT DISCOURAGE PATIENTS FROM~~  
13 PROVIDE ASSISTANCE TO PATIENTS WHO HAVE REQUESTED ASSISTANCE IN  
14 MAKING COMPLAINTS ABOUT SEXUAL ABUSE OR SEXUAL HARASSMENT AND DO  
15 NOT THREATEN OR PUNISH PATIENTS FOR MAKING THE COMPLAINTS;

16 (3) DEVELOP AND OVERSEE TRAINING FOR STAFF ON HOW TO  
17 IDENTIFY AND PREVENT SEXUAL ABUSE AND SEXUAL HARASSMENT, HOW TO  
18 RESPOND TO COMPLAINTS, AND HOW TO SUPPORT VICTIMS IN AN APPROPRIATE  
19 MANNER; AND

20 (4) DEVELOP AND OVERSEE PATIENT EDUCATION ON  
21 IDENTIFYING SEXUAL ABUSE AND SEXUAL HARASSMENT AND ON REPORTING  
22 INCIDENTS OF SEXUAL ABUSE AND SEXUAL HARASSMENT.

23 (G) ~~(1) A STATE FACILITY MAY NOT LOCATE MALE AND FEMALE~~  
24 ~~BEDROOMS ON THE SAME HALLWAY AND SHALL PROVIDE FOR A BARRIER TO~~  
25 ~~PREVENT UNAUTHORIZED ACCESS TO THE BEDROOM HALLWAY OF THE~~  
26 ~~OPPOSITE GENDER.~~

27 ~~(2) IN PROVIDING ANY PHYSICAL MODIFICATIONS THAT MAY BE~~  
28 ~~REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, A FACILITY SHALL~~  
29 ~~MAXIMIZE THE USE OF EXISTING RESOURCES AND INFRASTRUCTURE~~ THE  
30 ADMINISTRATION SHALL DEVELOP AND IMPLEMENT A PLAN TO SECURE THE  
31 SLEEPING QUARTERS OF MALE AND FEMALE PATIENTS AT ALL STATE  
32 FACILITIES THAT MAXIMIZES THE USE OF AVAILABLE RESOURCES AND  
33 INFRASTRUCTURE.

34 (H) EACH STATE FACILITY SHALL:

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

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

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

13           (4) PROVIDE A PATIENT WHO HAS A HISTORY OF SEXUAL TRAUMA  
14 WITH ~~EVIDENCE-BASED~~ TREATMENT AND EDUCATION THAT IS  
15 EVIDENCE-BASED OR REFLECTIVE OF BEST PRACTICES TO REDUCE THE  
16 LIKELIHOOD OF THE PATIENT BEING THE VICTIM OF REPEATED SEXUAL ABUSE;  
17 AND

18           (5) (4) ENSURE THAT DESIGNATED CLINICAL STAFF ARE  
19 TRAINED IN AT LEAST ONE TRAUMA RECOVERY MODALITY THAT IS CONSIDERED  
20 TO BE A BEST PRACTICE.

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

22           (a) The Mental Hygiene Administration shall:

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

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

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

30           (4) request technical assistance and a consultant from the National  
31 Association of State Mental Health Program Directors to implement the requirements  
32 of Section 1 of this Act and to conduct the assessment of relevant factors and draft a  
33 report of observations and recommendations for implementing the pilot for a single  
34 gender unit at a State facility.

1 (b) (1) The Mental Hygiene Administration shall convene a committee to  
2 advise the Administration on the development and implementation of Section 1 of this  
3 Act and of the pilot of a single gender unit required under this section and to make  
4 additional recommendations as appropriate.

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

7 (i) The Maryland Disability Law Center;

8 (ii) On Our Own of Maryland;

9 (iii) The Mental Health Association of Maryland;

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

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

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.