

HOUSE BILL 667

F2

5lr0535

By: **Delegates A. Miller, Barron, Fraser-Hidalgo, Frush, Hixson, Jones, Krimm,
Lam, Miele, Platt, Valderrama, C. Wilson, K. Young, and Zucker**

Introduced and read first time: February 12, 2015

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education Institutions – Sexual Assault, Violence, and Stalking –**
3 **Prevention and Outreach Policies**

4 FOR the purpose of requiring the governing board of each public senior higher education
5 institution and the board of trustees of each community college to adopt a written
6 policy on sexual assault, domestic violence, dating violence, and stalking and submit
7 the policy to the Maryland Higher Education Commission on or before a certain date;
8 making the policy applicable to student activity on and off campus; requiring the
9 policy to include certain procedures and a certain statement; requiring certain
10 governing boards and boards of trustees to adopt certain other policies and programs
11 that are aligned with certain standards and to implement certain prevention and
12 outreach programs on or before a certain date; defining certain terms; and generally
13 relating to sexual assault, domestic violence, dating violence, and stalking policies
14 and procedures at institutions of higher education in the State.

15 BY adding to
16 Article – Education
17 Section 11–601, 11–603, and 11–604
18 Annotated Code of Maryland
19 (2014 Replacement Volume and 2014 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Education
22 Section 11–601
23 Annotated Code of Maryland
24 (2014 Replacement Volume and 2014 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Education

11-601.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “AFFIRMATIVE CONSENT” MEANS AFFIRMATIVE, CONSCIOUS, AND VOLUNTARY ORAL AGREEMENT TO ENGAGE IN SEXUAL ACTIVITY.

(C) “COURSE OF CONDUCT” HAS THE MEANING STATED IN § 3-801 OF THE CRIMINAL LAW ARTICLE.

(D) “DATING VIOLENCE” MEANS VIOLENCE COMMITTED BY A PERSON WHO IS OR HAS BEEN IN A ROMANTIC OR INTIMATE RELATIONSHIP WITH THE VICTIM.

(E) “DOMESTIC VIOLENCE” MEANS A FELONY OR A MISDEMEANOR CRIME OF VIOLENCE COMMITTED BY:

(1) A CURRENT OR FORMER SPOUSE OF THE VICTIM;

(2) A PERSON WITH WHOM THE VICTIM SHARES A CHILD IN COMMON;

(3) A PERSON WHO IS COHABITATING WITH OR HAS COHABITATED WITH THE VICTIM AS A SPOUSE, OR A PERSON SIMILARLY SITUATED TO A SPOUSE OF THE VICTIM UNDER THE FAMILY LAW ARTICLE; OR

(4) ANY OTHER PERSON AGAINST AN ADULT OR YOUTH VICTIM WHO IS PROTECTED FROM THAT PERSON’S ACTS UNDER THE FAMILY LAW ARTICLE.

(F) “STALKING” HAS THE MEANING STATED IN § 3-802 OF THE CRIMINAL LAW ARTICLE.

[11-601.] 11-602.

(a) (1) [By August 1, 1993] ON OR BEFORE OCTOBER 1, 2015, the governing board of each [institution of] PUBLIC SENIOR higher education INSTITUTION AND THE BOARD OF TRUSTEES OF EACH COMMUNITY COLLEGE shall adopt and submit to the Commission a written policy on sexual assault, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING.

(2) The policy adopted under paragraph (1) of this subsection shall apply [to]:

1 **(I)** **TO** each student, faculty member, and employee of the
2 institution and inform the students, faculty members, and employees of their rights and
3 duties under the policy; **AND**

4 **(II)** **IN THE CASE OF A STUDENT, TO ACTIVITY THAT OCCURS ON**
5 **OR OFF CAMPUS.**

6 (b) (1) Each institution of higher education shall post at appropriate locations
7 on each campus and distribute to its students, faculty members, and employees a copy of
8 the policy adopted under subsection (a) of this section.

9 (2) Each institution of higher education shall implement the policy adopted
10 under subsection (a) of this section.

11 (c) **(1)** The [sexual assault] policy required under subsection (a) of this section
12 shall conform with § 485(f) of the Higher Education Act of 1965 as amended by § 486(c)(2)
13 of the Higher Education Amendments of 1992 and shall include **THE INFORMATION**
14 **REQUIRED UNDER THIS SUBSECTION.**

15 **(2)** **THE POLICY SHALL INCLUDE** procedures for reporting an incident of
16 sexual assault, **DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING** and for taking
17 disciplinary actions against a violator of the policy, including provisions for:

18 **[(1)] (I)** Informing a victim of a sexual assault, **DOMESTIC VIOLENCE,**
19 **DATING VIOLENCE, OR STALKING** of the right to file criminal charges with the
20 appropriate law enforcement official;

21 **(II)** **PROVIDING WRITTEN INFORMATION TO A VICTIM OF**
22 **SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING ABOUT**
23 **THE IMPORTANCE OF PRESERVING EVIDENCE AND IDENTIFYING WITNESSES;**

24 **[(2)] (III)** The prompt assistance of campus authorities, at the request of
25 the victim, in notifying the appropriate law enforcement officials and disciplinary
26 authorities of an incident of sexual assault, **DOMESTIC VIOLENCE, DATING VIOLENCE,**
27 **OR STALKING;**

28 **(IV)** **CONDUCTING A PRELIMINARY VICTIM INTERVIEW,**
29 **INCLUDING THE DEVELOPMENT OF A VICTIM INTERVIEW PROTOCOL AND A**
30 **COMPREHENSIVE FOLLOW-UP VICTIM INTERVIEW;**

31 **(V)** **CONTACTING AND INTERVIEWING AN ACCUSED**
32 **INDIVIDUAL;**

33 **(VI)** **IDENTIFYING AND LOCATING WITNESSES;**

1 **(VII) THE PARTICIPATION OF VICTIM ADVOCATES AND OTHER**
2 **SUPPORTING INDIVIDUALS IN THE ADJUDICATION PROCESS;**

3 **(VIII) INVESTIGATING ALLEGATIONS THAT ALCOHOL OR DRUGS**
4 **WERE INVOLVED IN AN INCIDENT OF SEXUAL ASSAULT, DOMESTIC VIOLENCE,**
5 **DATING VIOLENCE, OR STALKING;**

6 **[(3)] (IX) Designation of the nearest hospitals equipped with the**
7 **Department of State Police Sexual Assault Evidence Collection Kit;**

8 **[(4)] (X) Full and prompt cooperation from campus personnel in obtaining**
9 **appropriate medical attention, including transporting [the] A victim OF SEXUAL ASSAULT,**
10 **DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING to the nearest designated**
11 **hospital;**

12 **[(5)] (XI) Offering counseling to a victim of sexual assault, DOMESTIC**
13 **VIOLENCE, DATING VIOLENCE, OR STALKING from mental health services provided by**
14 **the institution, other victim service entities, or the nearest State designated rape crisis**
15 **program; and**

16 **[(6)] (XII) After a campus sexual assault, DOMESTIC VIOLENCE, DATING**
17 **VIOLENCE, OR STALKING has been reported, and upon the request of the alleged victim,**
18 **the transfer of the alleged victim to alternative classes or housing, if such alternatives are**
19 **available and feasible.**

20 **(3) THE POLICY SHALL INCLUDE PROCEDURES FOR EVALUATING**
21 **AFFIRMATIVE CONSENT AND THE PROCESS FOR DETERMINING WHETHER**
22 **AFFIRMATIVE CONSENT WAS PRESENT DURING A SEXUAL ACTIVITY.**

23 **(4) THE POLICY SHALL INCLUDE A STATEMENT THAT:**

24 **(I) AN AFFIRMATIVE CONSENT STANDARD WILL BE USED IN**
25 **DETERMINING WHETHER CONSENT WAS GIVEN BY EACH PARTY TO A SEXUAL**
26 **ACTIVITY;**

27 **(II) EACH PERSON INVOLVED IN A SEXUAL ACTIVITY IS**
28 **RESPONSIBLE FOR ENSURING THAT HE OR SHE HAS THE AFFIRMATIVE CONSENT OF**
29 **EACH PARTY TO ENGAGE IN THE SEXUAL ACTIVITY;**

30 **(III) LACK OF PROTEST, LACK OF RESISTANCE, OR SILENCE**
31 **DOES NOT CONSTITUTE AFFIRMATIVE CONSENT;**

32 **(IV) AFFIRMATIVE CONSENT MUST BE ONGOING THROUGHOUT A**
33 **SEXUAL ACTIVITY AND CAN BE REVOKED AT ANY TIME;**

1 **(V) THE EXISTENCE OF A DATING RELATIONSHIP OR OF A PAST**
2 **SEXUAL RELATIONSHIP IS NOT BY ITSELF AN INDICATION OF AFFIRMATIVE**
3 **CONSENT;**

4 **(VI) IT IS NOT AN EXCUSE OR A DEFENSE TO AN ALLEGED LACK**
5 **OF AFFIRMATIVE CONSENT THAT THE ACCUSED BELIEVED THAT A COMPLAINANT**
6 **CONSENTED TO THE SEXUAL ACTIVITY BECAUSE THE ACCUSED WAS INTOXICATED;**

7 **(VII) THE INSTITUTION WILL USE A PREPONDERANCE OF THE**
8 **EVIDENCE STANDARD WHEN INVESTIGATING AN INCIDENT OF SEXUAL ASSAULT,**
9 **DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING;**

10 **(VIII) IT IS NOT AN EXCUSE OR A DEFENSE THAT THE ACCUSED**
11 **BELIEVED THAT THE COMPLAINANT AFFIRMATIVELY CONSENTED TO THE SEXUAL**
12 **ACTIVITY IF THE ACCUSED KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE**
13 **COMPLAINANT WAS UNABLE TO AFFIRMATIVELY CONSENT TO THE SEXUAL ACTIVITY**
14 **BECAUSE THE COMPLAINANT WAS:**

15 **1. ASLEEP OR UNCONSCIOUS;**

16 **2. INCAPACITATED DUE TO THE INFLUENCE OF DRUGS,**
17 **ALCOHOL, OR MEDICATION; OR**

18 **3. UNABLE TO COMMUNICATE DUE TO A MENTAL OR**
19 **PHYSICAL CONDITION; AND**

20 **(IX) WHEN DETERMINING WHETHER A DATING RELATIONSHIP**
21 **EXISTED AT THE TIME OF SEXUAL ACTIVITY, THE FOLLOWING CRITERIA WILL BE**
22 **TAKEN INTO CONSIDERATION:**

23 **1. THE LENGTH OF THE RELATIONSHIP;**

24 **2. THE TYPE OF RELATIONSHIP; AND**

25 **3. THE FREQUENCY OF INTERACTION BETWEEN THE**
26 **INDIVIDUALS INVOLVED IN THE RELATIONSHIP.**

27 (d) The Commission shall:

28 (1) Coordinate the development of the [sexual assault] policies; and

29 (2) Periodically review and make recommendations for changes in these
30 policies.

1 (e) Nothing in this subtitle shall be construed to confer a private cause of action
2 upon any person to enforce the provisions of this subtitle.

3 **11-603.**

4 **ON OR BEFORE OCTOBER 1, 2015, THE GOVERNING BOARD OF EACH PUBLIC**
5 **SENIOR HIGHER EDUCATION INSTITUTION AND THE BOARD OF TRUSTEES OF EACH**
6 **COMMUNITY COLLEGE SHALL:**

7 **(1) ADOPT DETAILED AND VICTIM-CENTERED POLICIES AND**
8 **PROGRAMS REGARDING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING**
9 **VIOLENCE, AND STALKING INVOLVING A STUDENT THAT ARE ALIGNED WITH BEST**
10 **PRACTICES AND CURRENT PROFESSIONAL STANDARDS, INCLUDING:**

11 **(I) A STATEMENT ON HOW THE INSTITUTION WILL PROVIDE**
12 **AND IMPLEMENT APPROPRIATE PRIVACY AND CONFIDENTIALITY PROTECTIONS FOR**
13 **A STUDENT INVOLVED IN OR REPORTING AN INCIDENT OF SEXUAL ASSAULT,**
14 **DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING;**

15 **(II) A COMPREHENSIVE, TRAUMA-INFORMED TRAINING**
16 **PROGRAM FOR CAMPUS OFFICIALS INVOLVED IN INVESTIGATING AND**
17 **ADJUDICATING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, AND**
18 **STALKING CASES; AND**

19 **(III) A POLICY THAT AN INDIVIDUAL WHO REPORTS AN INCIDENT**
20 **OF SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING MAY**
21 **NOT BE SUBJECT TO DISCIPLINARY SANCTIONS FOR A VIOLATION OF THE**
22 **INSTITUTION'S STUDENT CONDUCT POLICY AT THE TIME OF THE INCIDENT UNLESS**
23 **THE INSTITUTION DETERMINES THAT THE VIOLATION WAS EGREGIOUS; AND**

24 **(2) ENTER INTO MEMORANDA OF UNDERSTANDING, AGREEMENTS,**
25 **OR COLLABORATIVE PARTNERSHIPS WITH EXISTING ON-CAMPUS AND**
26 **COMMUNITY-BASED ORGANIZATIONS TO PROVIDE ASSISTANCE AND SERVICES TO**
27 **STUDENTS INVOLVED IN AN INCIDENT OF SEXUAL ASSAULT, DOMESTIC VIOLENCE,**
28 **DATING VIOLENCE, OR STALKING, INCLUDING:**

29 **(I) COUNSELING SERVICES;**

30 **(II) PHYSICAL AND MENTAL HEALTH SERVICES;**

31 **(III) VICTIM ADVOCACY; AND**

32 **(IV) LEGAL ASSISTANCE.**

1 11-604.

2 (A) ON OR BEFORE OCTOBER 1, 2015, THE GOVERNING BOARD OF EACH
3 PUBLIC SENIOR HIGHER EDUCATION INSTITUTION AND THE BOARD OF TRUSTEES OF
4 EACH COMMUNITY COLLEGE SHALL IMPLEMENT COMPREHENSIVE PREVENTION
5 AND OUTREACH PROGRAMS THAT ADDRESS SEXUAL ASSAULT, DOMESTIC VIOLENCE,
6 DATING VIOLENCE, AND STALKING.

7 (B) A COMPREHENSIVE PREVENTION PROGRAM SHALL INCLUDE A RANGE
8 OF PREVENTION STRATEGIES, INCLUDING:

9 (1) EMPOWERMENT PROGRAMMING FOR VICTIM PREVENTION;

10 (2) AWARENESS-RAISING CAMPAIGNS;

11 (3) BYSTANDER INTERVENTION; AND

12 (4) RISK-REDUCTION TECHNIQUES.

13 (C) AN OUTREACH PROGRAM SHALL:

14 (1) INFORM STUDENTS OF THE INSTITUTION'S POLICY ON SEXUAL
15 ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING;

16 (2) INCLUDE A PROCESS FOR CONTACTING AND INFORMING THE
17 STUDENT BODY, CAMPUS ORGANIZATIONS, ATHLETIC PROGRAMS, AND STUDENT
18 GROUPS OF THE IMPLICATIONS OF AN AFFIRMATIVE CONSENT STANDARD AND THE
19 RIGHTS AND RESPONSIBILITIES OF STUDENTS UNDER THE POLICY; AND

20 (3) BE INCLUDED AS PART OF EACH INCOMING STUDENT'S
21 ORIENTATION PROGRAM.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
23 1, 2015.