

SENATE BILL 607

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8lr2835
CF 8lr1149

By: **Senators Conway, Zucker, Benson, Guzzone, Jennings, King, Madaleno, Manno, Middleton, Muse, Peters, Pinsky, Ramirez, Robinson, Rosapepe, Smith, and Young**

Introduced and read first time: January 31, 2018

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education – Sexual Assault Policy – Disciplinary Proceedings Policy**

3 FOR the purpose of requiring the governing body of each institution of higher education,
4 on or before a certain date, to adopt and submit to the Maryland Higher Education
5 Commission a revised written policy on sexual assault that includes certain
6 disciplinary proceedings; requiring the disciplinary proceedings policy to include a
7 description of the rights for certain students and to include certain provisions;
8 requiring the disciplinary proceedings policy to require an institution of higher
9 education to provide certain students with a certain notice, to use a certain standard
10 of proof in certain disciplinary proceedings, to prohibit the use of mediation to resolve
11 certain allegations, to prohibit a certain adjudicating official or body from
12 considering certain types of evidence, except in certain circumstances, to prohibit an
13 adjudicating officer or body from making certain findings except in certain
14 circumstances, to require counsel to be provided to certain students under certain
15 circumstances, and to require the Commission to pay certain costs and fees; and
16 generally relating to sexual assault and disciplinary proceedings policies at
17 institutions of higher education.

18 BY repealing and reenacting, with amendments,
19 Article – Education
20 Section 11–601
21 Annotated Code of Maryland
22 (2014 Replacement Volume and 2017 Supplement)

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

25 **Article – Education**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11-601.

2 (a) (1) By August 1, 1993, the governing body of each institution of higher
3 education shall adopt and submit to the Commission a written policy on sexual assault.

4 (2) The policy adopted under paragraph (1) of this subsection shall apply
5 to each student, faculty member, and employee of the institution and inform the students,
6 faculty members, and employees of their rights and duties under the policy.

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

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

12 (c) The sexual assault policy required under subsection (a) of this section shall
13 conform with § 485(f) of the Higher Education Act of 1965 as amended [and], Title IX of
14 the Education Amendments of 1972, and **ANY ADDITIONAL REQUIREMENTS UNDER**
15 **THIS SECTION AND** shall include procedures for reporting an incident of sexual assault
16 and for taking disciplinary actions against a violator of the policy, including provisions for:

17 (1) Informing a victim of a sexual assault of the right to file criminal
18 charges with the appropriate law enforcement official;

19 (2) The prompt assistance of campus authorities, at the request of the
20 victim, in notifying the appropriate law enforcement officials and disciplinary authorities
21 of an incident of sexual assault;

22 (3) Designation of the nearest hospitals equipped with the Department of
23 State Police Sexual Assault Evidence Collection Kit;

24 (4) Full and prompt cooperation from campus personnel in obtaining
25 appropriate medical attention, including transporting the victim to the nearest designated
26 hospital;

27 (5) Offering counseling to a victim of sexual assault from mental health
28 services provided by the institution, other victim service entities, or the nearest State
29 designated rape crisis program;

30 (6) After a campus sexual assault has been reported, and upon the request
31 of the alleged victim, the transfer of the alleged victim to alternative classes or housing, if
32 such alternatives are available and feasible;

33 (7) Prohibiting the imposition of a campus conduct action, except for a
34 mandatory intervention for substance abuse, for a violation of the alcohol or drug use
35 policies of the institution of higher education for a student who reports to the institution or

1 a law enforcement officer an incidence of sexual assault or who participates in an
2 investigation of a sexual assault as a witness if:

3 (i) The institution of higher education determines the violation
4 occurred during or near the time of the alleged sexual assault;

5 (ii) The student is determined to have made the report of sexual
6 assault or is participating in an investigation as a witness in good faith; and

7 (iii) The institution of higher education determines that the violation
8 was not an act that was reasonably likely to place the health or safety of another individual
9 at risk;

10 (8) Prohibiting the institution of higher education from retaliating against
11 a student who files a complaint for sexual assault or who participates as a witness in an
12 investigation of a sexual assault; and

13 (9) Pursuing formalized agreements with:

14 (i) The local law enforcement agency that complies with the
15 relevant provisions of Title IX of the Education Amendments of 1972 and clearly states
16 when a school will refer a matter to local law enforcement; and

17 (ii) A State designated rape crisis program, federally recognized
18 sexual assault coalition, or both that formalizes a commitment to provide trauma-informed
19 services to victims of sexual assault and improve the overall response to sexual assault by
20 the institution of higher education.

21 **(D) (1) THE GOVERNING BODY OF EACH INSTITUTION OF HIGHER**
22 **EDUCATION SHALL INCLUDE IN THE SEXUAL ASSAULT POLICY REQUIRED UNDER**
23 **SUBSECTION (A) OF THIS SECTION A DISCIPLINARY PROCEEDINGS POLICY FOR**
24 **ALLEGED VIOLATIONS OF THE SEXUAL ASSAULT POLICY.**

25 **(2) ON OR BEFORE AUGUST 1, 2019, THE GOVERNING BODY OF EACH**
26 **INSTITUTION OF HIGHER EDUCATION SHALL ADOPT AND SUBMIT A REVISED SEXUAL**
27 **ASSAULT POLICY THAT INCLUDES THE DISCIPLINARY PROCEEDINGS POLICY**
28 **REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

29 **(3) THE DISCIPLINARY PROCEEDINGS POLICY REQUIRED UNDER**
30 **PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE A DESCRIPTION OF THE**
31 **RIGHTS OF A STUDENT WHO ALLEGES A VIOLATION OF OR A STUDENT WHO**
32 **RESPONDS TO AN ALLEGATION OF A VIOLATION OF THE INSTITUTION'S SEXUAL**
33 **ASSAULT POLICY, INCLUDING:**

34 **(1) TREATMENT WITH DIGNITY, RESPECT, AND SENSITIVITY BY**

1 OFFICIALS OF THE INSTITUTION OF HIGHER EDUCATION DURING ALL PHASES OF
2 THE DISCIPLINARY PROCEEDINGS;

3 (II) A TIMELY INVESTIGATION;

4 (III) DISCIPLINARY PROCEEDINGS THAT ARE FAIR AND
5 IMPARTIAL AND PROVIDE A MEANINGFUL OPPORTUNITY FOR THE ALLEGED VICTIM
6 AND THE ALLEGED VIOLATOR TO BE HEARD;

7 (IV) TIMELY WRITTEN NOTICE OF:

8 1. THE REPORTED VIOLATION OF THE INSTITUTION'S
9 SEXUAL ASSAULT POLICY, INCLUDING THE DATE, TIME, AND LOCATION OF THE
10 ALLEGED VIOLATION;

11 2. THE STUDENT'S RIGHTS AND RESPONSIBILITIES
12 UNDER THE SEXUAL ASSAULT POLICY AND APPLICABLE LAW;

13 3. THE DATE, TIME, AND LOCATION OF EACH HEARING,
14 MEETING, OR INTERVIEW THAT THE STUDENT IS REQUIRED OR PERMITTED TO
15 ATTEND;

16 4. ANY DETERMINATION MADE BY THE ADJUDICATING
17 OFFICIAL OR BODY REGARDING WHETHER A SEXUAL ASSAULT POLICY VIOLATION
18 OCCURRED AND THE BASIS FOR THE DETERMINATION;

19 5. ANY SANCTION IMPOSED; AND

20 6. THE STUDENT'S RIGHTS TO APPEAL AND A
21 DESCRIPTION OF THE APPEAL PROCESS;

22 (V) PARTICIPATION IN THE DISCIPLINARY PROCEEDINGS,
23 INCLUDING:

24 1. ACCESS TO THE CASE FILE AND EVIDENCE OBTAINED
25 BY THE INSTITUTION OF HIGHER EDUCATION DURING THE INVESTIGATION OR
26 CONSIDERED BY THE ADJUDICATING OFFICIAL OR BODY, WITH PERSONALLY
27 IDENTIFIABLE OR OTHER INFORMATION REDACTED IF REQUIRED BY LAW;

28 2. OFFERING TESTIMONY AT A HEARING;

29 3. SUBMITTING EVIDENCE, WITNESS LISTS, AND
30 SUGGESTED SPECIFIC QUESTIONS TO BE POSED TO THE OTHER STUDENT INVOLVED

1 IN THE DISCIPLINARY PROCEEDINGS BY INVESTIGATORS OR THE ADJUDICATING
2 OFFICIAL OR BODY;

3 4. PROVIDING AND REVIEWING TESTIMONY
4 ELECTRONICALLY OR IN A WAY IN WHICH THE STUDENTS ARE NOT REQUIRED TO BE
5 IN THE PHYSICAL PRESENCE OF THE OTHER;

6 5. REVIEWING AND PROVIDING WRITTEN RESPONSES TO
7 REPORTS AND PROPOSED FINDINGS; AND

8 6. APPEALING A DETERMINATION OR A SANCTION;

9 (VI) ASSISTANCE BY A LICENSED ATTORNEY, AN ADVOCATE
10 SUPERVISED BY AN ATTORNEY, OR AN ADVOCATE CERTIFIED BY THE FEDERALLY
11 RECOGNIZED STATE SEXUAL ASSAULT COALITION THROUGHOUT THE DISCIPLINARY
12 PROCEEDINGS, INCLUDING BY THE ATTORNEY OR ADVOCATE'S:

13 1. ATTENDANCE AT HEARINGS, MEETINGS, AND
14 INTERVIEWS WITH THE STUDENT;

15 2. PRIVATE CONSULTATIONS WITH THE STUDENT
16 DURING HEARINGS, MEETINGS, AND INTERVIEWS, EXCEPT DURING QUESTIONING OF
17 THE STUDENT AT A HEARING; AND

18 3. ASSISTANCE WITH THE STUDENT'S EXERCISE OF ANY
19 RIGHT DURING THE DISCIPLINARY PROCEEDINGS; AND

20 (VII) THE PRESENCE OF A PERSONAL SUPPORTER OF THE
21 STUDENT'S CHOICE, IN ADDITION TO AN ATTORNEY OR ADVOCATE, AT ANY HEARING,
22 MEETING, OR INTERVIEW DURING THE DISCIPLINARY PROCEEDINGS.

23 (4) THE DISCIPLINARY PROCEEDINGS POLICY REQUIRED UNDER
24 PARAGRAPH (1) OF THIS SUBSECTION SHALL:

25 (I) REQUIRE THE INSTITUTION OF HIGHER EDUCATION TO
26 PROVIDE EACH STUDENT INVOLVED IN DISCIPLINARY PROCEEDINGS WITH NOTICE,
27 AT LEAST 10 DAYS BEFORE THE START OF THE DISCIPLINARY PROCEEDINGS, OF:

28 1. THE STUDENT'S RIGHT TO THE ASSISTANCE OF AN
29 ATTORNEY OR ADVOCATE;

30 2. THE LEGAL SERVICE ORGANIZATIONS AND REFERRAL
31 SERVICES AVAILABLE TO THE STUDENT; AND

1 **3. THE STUDENT'S RIGHT TO HAVE A PERSONAL**
2 **SUPPORTER OF THE STUDENT'S CHOICE AT ANY HEARING, MEETING, OR INTERVIEW**
3 **DURING THE DISCIPLINARY PROCEEDINGS;**

4 **(II) REQUIRE THE USE OF THE SAME STANDARD OF PROOF USED**
5 **IN OTHER DISCIPLINARY PROCEEDINGS AT THE INSTITUTION OF HIGHER**
6 **EDUCATION FOR ALLEGATIONS OF DISCRIMINATION OR HARM TO ANOTHER**
7 **INDIVIDUAL;**

8 **(III) PROHIBIT THE INSTITUTION OF HIGHER EDUCATION FROM**
9 **USING MEDIATION TO RESOLVE AN ALLEGATION OF A VIOLATION OF THE**
10 **INSTITUTION'S SEXUAL ASSAULT POLICY;**

11 **(IV) PROHIBIT THE ADJUDICATING OFFICIAL OR BODY FROM**
12 **CONSIDERING CERTAIN EVIDENCE, INCLUDING:**

13 **1. AN ALLEGED VICTIM'S PRIOR SEXUAL HISTORY WITH**
14 **AN INDIVIDUAL OTHER THAN THE STUDENT ALLEGED TO HAVE COMMITTED THE**
15 **VIOLATION, EXCEPT TO PROVE THE SOURCE OF INJURY; AND**

16 **2. A STUDENT'S HISTORY OF MENTAL HEALTH**
17 **COUNSELING, TREATMENT, OR DIAGNOSIS, UNLESS THE STUDENT CONSENTS;**

18 **(V) PROHIBIT THE ADJUDICATING OFFICIAL OR BODY FROM**
19 **FINDING THAT ALL STUDENTS INVOLVED IN THE DISCIPLINARY PROCEEDINGS**
20 **VIOLATED THE SEXUAL ASSAULT POLICY, UNLESS THE ADJUDICATING OFFICER OR**
21 **BODY FINDS THAT:**

22 **1. NO STUDENT ACTED TO DOMINATE ANY OTHER**
23 **INDIVIDUAL; AND**

24 **2. EVERY STUDENT INTENTIONALLY DISREGARDED THE**
25 **OTHER STUDENTS' LACK OF CONSENT; AND**

26 **(VI) UNLESS AN ADJUDICATING OFFICIAL OR BODY MAKES**
27 **WRITTEN FINDINGS AND A DETERMINATION THAT THE DISCIPLINARY PROCEEDINGS**
28 **UNDER THIS SECTION WILL NOT RESULT IN THE EXPULSION OF A STUDENT, REQUIRE**
29 **THAT:**

30 **1. COUNSEL SHALL BE PROVIDED FOR EACH STUDENT**
31 **ALLEGING A VIOLATION AND EACH STUDENT RESPONDING TO AN ALLEGATION OF**
32 **THE SEXUAL ASSAULT POLICY; AND**

1 **2. THE COMMISSION SHALL PAY REASONABLE COSTS**
2 **AND ATTORNEY'S FEES FOR A STUDENT THAT:**

3 **A. IS ENTITLED TO COUNSEL UNDER THIS SUBSECTION;**
4 **AND**

5 **B. IS INDIGENT AND UNABLE TO RETAIN COUNSEL.**

6 **[(d)] (E)** The Commission shall:

7 (1) Coordinate the development of the sexual assault policies; and

8 (2) Periodically review and make recommendations for changes in these
9 policies.

10 **[(e)] (F)** (1) The Commission, in consultation with institutions of higher
11 education, shall establish procedures for the administration of a sexual assault campus
12 climate survey by each institution of higher education.

13 (2) The procedures shall require each institution of higher education to
14 provide for the completion of the survey by various methods, including online.

15 **[(f)] (G)** On or before March 1, 2016, and at least every 2 years thereafter, each
16 institution of higher education shall:

17 (1) Develop an appropriate sexual assault campus climate survey using
18 nationally recognized best practices for research and climate surveys; and

19 (2) Administer the sexual assault campus climate survey to students in
20 accordance with the procedures established under subsection **[(e)] (F)** of this section.

21 **[(g)] (H)** (1) On or before June 1, 2016, and every 2 years thereafter, each
22 institution of higher education shall submit to the Commission:

23 (i) A report on school specific results of the sexual assault survey;
24 and

25 (ii) A report aggregating the data collected by the institution
26 regarding sexual assault complaints made to the institution, including the:

27 1. Types of misconduct;

28 2. Outcome of each complaint;

29 3. Disciplinary actions taken by the institution;

1 4. Accommodations made to students in accordance with the
2 sexual assault policy established under subsection (c) of this section; and

3 5. Number of reports involving alleged nonstudent
4 perpetrators.

5 (2) In reporting the data under paragraph (1) of this subsection, the
6 institution of higher education shall make reasonable efforts to protect student privacy.

7 (3) An institution of higher education shall submit the data required under
8 paragraph (1) of this subsection together with the reporting requirements of the federal
9 Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act, as amended
10 by the Violence Against Women Reauthorization Act of 2013.

11 **[(h)] (I)** On or before October 1, 2016, and every 2 years thereafter, the
12 Commission shall:

13 (1) Report to the Governor and, in accordance with § 2–1246 of the State
14 Government Article, the Senate Education, Health, and Environmental Affairs Committee,
15 the Senate Budget and Taxation Committee, the House Health and Government
16 Operations Committee, and the House Appropriations Committee on the reports required
17 under subsection **[(g)] (H)** of this section; and

18 (2) Publish the reports required under subsection **[(g)] (H)** of this section
19 on the Commission’s Web site and in any other location or venue the Commission
20 determines is necessary or appropriate.

21 **[(i)] (J)** Nothing in this subtitle shall be construed to confer a private cause of
22 action upon any person to enforce the provisions of this subtitle.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2018.