

HOUSE BILL 1558

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CF SB 818

By: **Delegates Valentino-Smith, Atterbeary, Buckel, Cain, Chang, Charkoudian, Corderman, Forbes, Guyton, Lehman, Lierman, and Terrasa**

Introduced and read first time: February 7, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Residential Treatment Centers and Facilities – Sexual Abuse and Harassment –**
3 **Reporting and Prevention**

4 FOR the purpose of defining “covered entity” for the purpose of applying certain provisions
5 of law regarding the reporting and prevention of abuse and harassment in certain
6 State facilities to forensic residential centers and residential treatment centers for
7 emotionally disturbed children and adolescents; requiring certain entities to report
8 certain complaints of sexual abuse and sexual harassment to certain entities;
9 requiring certain entities to develop and implement certain policies and procedures,
10 ensure that staff provide certain assistance, and develop and oversee certain training
11 and education; requiring the Behavioral Health Administration to ensure that
12 certain policies and procedures are uniform for certain facilities; requiring certain
13 entities to adopt a certain plan; altering certain requirements for certain facilities;
14 requiring the Office of Health Care Quality to enforce certain provisions of law;
15 requiring the Maryland Department of Health to adopt certain regulations; making
16 conforming changes; and generally relating to residential treatment centers and
17 facilities and the reporting and prevention of sexual abuse and harassment.

18 BY repealing and reenacting, with amendments,
19 Article – Health – General
20 Section 10–705
21 Annotated Code of Maryland
22 (2019 Replacement Volume)

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

25 **Article – Health – General**

26 10–705.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

(2) (i) “Abuse” means cruel or inhumane treatment that causes:

1. Any physical injury; or

2. Any of the following kinds of sexual abuse:

A. A sexual act, as defined in § 3–301 of the Criminal Law Article;

B. Sexual contact, as defined in § 3–301 of the Criminal Law Article; or

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

(ii) “Abuse” does not include:

1. The performance of an accepted medical procedure that a physician orders in a manner that is consistent with the provisions of this subtitle; or

2. An action taken by an employee that complies with applicable State and federal laws and applicable Department policies on the use of physical intervention.

(3) **“COVERED ENTITY” MEANS:**

(I) A STATE FACILITY;

(II) A FORENSIC RESIDENTIAL CENTER LICENSED UNDER COMAR 10.07.13; OR

(III) A RESIDENTIAL TREATMENT CENTER FOR EMOTIONALLY DISTURBED CHILDREN AND ADOLESCENTS LICENSED UNDER COMAR 10.07.04.

(4) “Sexual harassment” means intimidation, bullying, or coercion of a sexual nature or unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive environment.

(b) (1) A person or any employee of a [facility] **COVERED ENTITY** or of the Department who receives a complaint of abuse, or who observes or has reason to believe that abuse has occurred, shall promptly report the alleged abuse to:

(i) An appropriate law enforcement agency; or

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

(2) A report:

(i) May be oral or written; and

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

(3) A [State facility] **COVERED ENTITY** shall report complaints of sexual abuse and sexual harassment to [the State designated protection and advocacy system]:

(I) THE ADMINISTRATION AND THE OFFICE OF HEALTH CARE QUALITY;

(II) THE CHILD PROTECTIVE SERVICES UNIT IN THE DEPARTMENT OF HUMAN SERVICES; AND

(III) THE MARYLAND DISABILITY LAW CENTER.

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

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

(ii) Attempt to ensure the protection of the alleged victim.

(2) The investigation shall include:

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

(ii) The identity of the alleged abuser; and

(iii) Any other pertinent fact or matter.

(d) As soon as possible, but no later than 10 working days after the completion of the investigation, the law enforcement agency shall submit a written report of its findings to the State's Attorney, the State designated protection and advocacy system, and the administrative head of the facility.

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

(1) Making a report under this section;

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

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

(f) **(1) [The Administration shall ensure that State facilities] A COVERED ENTITY SHALL:**

[(1)] (I) Develop [uniform] AND IMPLEMENT policies and procedures on making and responding to allegations AND COMPLAINTS of sexual abuse or sexual harassment;

[(2)] (II) Ensure that staff provide assistance to patients who have requested assistance in making complaints about sexual abuse or sexual harassment;

[(3)] (III) Develop and oversee training for staff on how to identify and prevent sexual abuse and sexual harassment, how to respond to complaints, and how to support victims in an appropriate manner; and

[(4)] (IV) Develop and oversee patient education on identifying sexual abuse and sexual harassment and on reporting incidents of sexual abuse and sexual harassment.

(2) THE ADMINISTRATION SHALL ENSURE THAT THE POLICIES AND PROCEDURES DEVELOPED AND IMPLEMENTED UNDER PARAGRAPH (1) OF THIS SUBSECTION ARE UNIFORM FOR STATE FACILITIES.

(g) The Administration shall develop and implement a plan to secure the sleeping quarters of male and female patients at all State facilities that maximizes the use of available resources and infrastructure.

(h) Each [State facility] **COVERED ENTITY** shall:

(1) Use evidence-based screening tools to identify on admission a patient's risk of being a victim of sexual or physical abuse, or being a sexual or physical abuser, and shall consider the assessment of risk in making any unit and room assignment;

(2) **ADOPT A WRITTEN PROTECTION PLAN AS PART OF A PATIENT'S TREATMENT PLAN, AS WARRANTED BY THE PATIENT'S RISK OF BEING A VICTIM OF SEXUAL OR PHYSICAL ABUSE OR BEING A SEXUAL OR PHYSICAL ABUSER;**

(3) Reassign any patient accused of sexual assault promptly to another unit and ensure that any alleged victim and the alleged assailant are not housed in the same

1 unit;

2 ~~[(3)]~~ (4) Provide a patient who has a history of sexual trauma with
3 treatment and education that is evidence-based or reflective of best practices to reduce the
4 likelihood of the patient being the victim of repeated sexual abuse; and

5 ~~[(4)]~~ (5) Ensure that designated clinical staff are trained in at least one
6 trauma recovery modality that is considered to be a best practice.

7 **(I) THE OFFICE OF HEALTH CARE QUALITY SHALL ENFORCE THIS**
8 **SECTION.**

9 **(J) THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THIS**
10 **SECTION.**

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2020.