

SENATE BILL 607

F2

8lr2835
CF HB 913

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

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CHAPTER _____

1 AN ACT concerning

2 **Higher Education – Sexual Assault Policy – Disciplinary Proceedings ~~Policy~~**
3 **Provisions**

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

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 BY repealing and reenacting, with amendments,
2 Article – Education
3 Section 11–601
4 Annotated Code of Maryland
5 (2014 Replacement Volume and 2017 Supplement)

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

8 **Article – Education**

9 11–601.

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

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

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

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

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

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

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

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

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

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

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

(7) Prohibiting the imposition of a campus conduct action, except for a mandatory intervention for substance abuse, for a violation of the alcohol or drug use policies of the institution of higher education for a student who reports to the institution or a law enforcement officer an incidence of sexual assault or who participates in an investigation of a sexual assault as a witness if:

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

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

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

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

(9) Pursuing formalized agreements with:

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

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

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

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

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

(I) TREATMENT WITH DIGNITY, RESPECT, AND SENSITIVITY BY OFFICIALS OF THE INSTITUTION OF HIGHER EDUCATION DURING ALL PHASES OF THE DISCIPLINARY PROCEEDINGS;

(II) A ~~TIMELY~~ FAIR AND IMPARTIAL INVESTIGATION;

(III) DISCIPLINARY PROCEEDINGS AND RESOLUTIONS THAT ARE ~~FAIR AND IMPARTIAL~~ PROMPT AND EQUITABLE AND PROVIDE ~~A MEANINGFUL~~ AN OPPORTUNITY FOR THE ALLEGED VICTIM AND THE ALLEGED VIOLATOR TO BE HEARD;

(IV) TIMELY WRITTEN NOTICE OF:

1. THE REPORTED VIOLATION ~~OF THE INSTITUTION'S SEXUAL ASSAULT POLICY~~, INCLUDING THE DATE, TIME, AND LOCATION OF THE ALLEGED VIOLATION, AND THE RANGE OF POTENTIAL SANCTIONS ASSOCIATED WITH THE ALLEGED VIOLATION;

2. THE STUDENT'S RIGHTS AND RESPONSIBILITIES UNDER THE SEXUAL ASSAULT POLICY AND ~~APPLICABLE LAW~~ INFORMATION REGARDING OTHER CIVIL AND CRIMINAL OPTIONS;

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

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

5. ANY SANCTION IMPOSED; AND

1 **6. THE STUDENT'S RIGHTS TO APPEAL AND A**
2 **DESCRIPTION OF THE APPEAL PROCESS;**

3 **(V) PARTICIPATION IN THE DISCIPLINARY PROCEEDINGS,**
4 **INCLUDING:**

5 1. ACCESS TO THE CASE FILE AND EVIDENCE
6 REGARDING THE INCIDENT OBTAINED BY THE INSTITUTION OF HIGHER EDUCATION
7 DURING THE INVESTIGATION OR CONSIDERED BY THE ADJUDICATING OFFICIAL OR
8 BODY, WITH PERSONALLY IDENTIFIABLE OR OTHER INFORMATION REDACTED ~~IF~~
9 ~~REQUIRED BY LAW~~ AS REQUIRED BY APPLICABLE LAW;

10 2. OFFERING TESTIMONY AT A HEARING OR, IF THE
11 INSTITUTION'S PROCESS DOES NOT INCLUDE A HEARING, TO THE ADJUDICATING
12 OFFICIAL;

13 3. SUBMITTING EVIDENCE, WITNESS LISTS, AND
14 SUGGESTED SPECIFIC QUESTIONS TO BE POSED TO THE OTHER STUDENT INVOLVED
15 IN THE DISCIPLINARY PROCEEDINGS BY INVESTIGATORS OR THE ADJUDICATING
16 OFFICIAL OR BODY;

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

20 5. REVIEWING AND PROVIDING WRITTEN RESPONSES TO
21 REPORTS AND PROPOSED FINDINGS; AND

22 6. APPEALING A DETERMINATION OR A SANCTION;

23 (VI) ASSISTANCE BY A LICENSED ATTORNEY, AN ADVOCATE
24 SUPERVISED BY AN ATTORNEY, OR ~~AN ADVOCATE CERTIFIED BY THE FEDERALLY~~
25 ~~RECOGNIZED STATE SEXUAL ASSAULT COALITION~~ A TRAINED ADVOCATE
26 THROUGHOUT THE DISCIPLINARY PROCEEDINGS, INCLUDING BY THE ATTORNEY OR
27 ADVOCATE'S:

28 1. ATTENDANCE AT HEARINGS, MEETINGS, AND
29 INTERVIEWS WITH THE STUDENT;

30 2. PRIVATE CONSULTATIONS WITH THE STUDENT
31 DURING HEARINGS, MEETINGS, AND INTERVIEWS, EXCEPT DURING QUESTIONING OF
32 THE STUDENT AT A HEARING; AND

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

(VII) ~~THE~~ NOTWITHSTANDING THE CHOICE THAT A STUDENT
MAKES UNDER PARAGRAPH (4)(V) OF THIS SUBSECTION, THE PRESENCE OF NO
MORE THAN TWO PEOPLE, INCLUDING A PERSONAL SUPPORTER OF THE STUDENT'S
CHOICE, ~~IN ADDITION TO~~ AN ATTORNEY, OR AN ADVOCATE, AT ANY HEARING,
MEETING, OR INTERVIEW DURING THE DISCIPLINARY PROCEEDINGS.

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

(I) REQUIRE THE INSTITUTION OF HIGHER EDUCATION TO
PROVIDE EACH STUDENT INVOLVED IN DISCIPLINARY PROCEEDINGS WITH NOTICE,
~~AT LEAST 10 DAYS~~ PRESENTED IN A CULTURALLY APPROPRIATE AND SENSITIVE
FORMAT, BEFORE THE START OF THE DISCIPLINARY PROCEEDINGS, OF:

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

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

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

(II) REQUIRE THE USE OF THE SAME STANDARD OF PROOF USED
IN OTHER DISCIPLINARY PROCEEDINGS AT THE INSTITUTION OF HIGHER
EDUCATION FOR ALLEGATIONS OF CODE OF CONDUCT VIOLATIONS INVOLVING
DISCRIMINATION OR HARM TO ANOTHER INDIVIDUAL;

(III) ~~PROHIBIT~~ EXCEPT AS PROVIDED IN PARAGRAPH (5) OF
THIS SUBSECTION, PROHIBIT THE INSTITUTION OF HIGHER EDUCATION FROM
USING MEDIATION TO RESOLVE AN ALLEGATION OF A VIOLATION OF THE
INSTITUTION'S SEXUAL ASSAULT POLICY;

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

1. ~~AN ALLEGED VICTIM'S~~ A STUDENT'S PRIOR SEXUAL
HISTORY WITH AN INDIVIDUAL OTHER THAN ~~THE STUDENT ALLEGED TO HAVE
COMMITTED THE VIOLATION~~ A PARTY TO THE PROCEEDINGS, EXCEPT TO:

1 A. ~~PROVE~~ PROVE THE SOURCE OF INJURY OR;

2 B. PROVE PRIOR SEXUAL MISCONDUCT;

3 C. SUPPORT A CLAIM THAT A STUDENT HAS AN
4 ULTERIOR MOTIVE; OR

5 D. IMPEACH A STUDENT'S CREDIBILITY; AND

6 2. A STUDENT'S HISTORY OF MENTAL HEALTH
7 COUNSELING, TREATMENT, OR DIAGNOSIS, UNLESS THE STUDENT CONSENTS; AND

8 ~~(V) PROHIBIT THE ADJUDICATING OFFICIAL OR BODY FROM~~
9 ~~FINDING THAT ALL STUDENTS INVOLVED IN THE DISCIPLINARY PROCEEDINGS~~
10 ~~VIOLATED THE SEXUAL ASSAULT POLICY, UNLESS THE ADJUDICATING OFFICER OR~~
11 ~~BODY FINDS THAT;~~

12 ~~1. NO STUDENT ACTED TO DOMINATE ANY OTHER~~
13 ~~INDIVIDUAL; AND~~

14 ~~2. EVERY STUDENT INTENTIONALLY DISREGARDED THE~~
15 ~~OTHER STUDENTS' LACK OF CONSENT; AND~~

16 ~~(VI) UNLESS AN ADJUDICATING OFFICIAL OR BODY MAKES~~
17 ~~WRITTEN FINDINGS AND A DETERMINATION THAT THE DISCIPLINARY PROCEEDINGS~~
18 ~~UNDER THIS SECTION WILL NOT RESULT IN THE EXPULSION OF A STUDENT, REQUIRE~~
19 ~~THAT;~~

20 ~~1. COUNSEL SHALL BE PROVIDED FOR EACH STUDENT~~
21 ~~ALLEGING A VIOLATION AND EACH STUDENT RESPONDING TO AN ALLEGATION OF~~
22 ~~THE SEXUAL ASSAULT POLICY; AND~~

23 (V) REQUIRE THAT COUNSEL BE PROVIDED AND PAID FOR BY
24 THE COMMISSION, AS DESCRIBED UNDER PARAGRAPH (6) OF THIS SUBSECTION,
25 FOR:

26 1. A STUDENT WHO MAKES A COMPLAINT ON WHICH A
27 FORMAL A TITLE IX INVESTIGATION IS INITIATED, UNLESS THE STUDENT
28 KNOWINGLY AND VOLUNTARILY CHOOSES NOT TO HAVE COUNSEL; AND

29 2. A STUDENT WHO RESPONDS TO A COMPLAINT,
30 UNLESS THE STUDENT KNOWINGLY AND VOLUNTARILY CHOOSES NOT TO HAVE
31 COUNSEL.

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

~~A. IS ENTITLED TO COUNSEL UNDER THIS SUBSECTION;
AND~~

~~B. IS INDIGENT AND UNABLE TO RETAIN COUNSEL.~~

(5) THE DISCIPLINARY PROCEEDINGS PROVISIONS REQUIRED UNDER
PARAGRAPH (1) OF THIS SUBSECTION SHALL AUTHORIZE AN INSTITUTION TO USE
MEDIATION OR OTHER INFORMAL MECHANISMS FOR RESOLVING A COMPLAINT
RELATING TO THE INSTITUTION'S SEXUAL ASSAULT POLICY IF:

(I) THE COMPLAINING STUDENT REQUESTS AN INFORMAL
MECHANISM;

(II) ALL PARTIES TO THE COMPLAINT, AND THE INSTITUTION,
AGREE TO THE USE OF THE INFORMAL MECHANISM;

(III) THE INSTITUTION PARTICIPATES IN THE INFORMAL
MECHANISM BY PROVIDING TRAINED STAFF;

(IV) ANY PARTY MAY END THE INFORMAL MECHANISM AT ANY
TIME IN FAVOR OF A FORMAL RESOLUTION PROCEEDING; AND

(V) THE ALLEGED MISCONDUCT DOES NOT INVOLVE SEXUAL
ASSAULT OR SEXUAL COERCION.

(6) (I) THE DISCIPLINARY PROCEEDINGS PROVISIONS REQUIRED
UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL, UNLESS A STUDENT WAIVES
COUNSEL UNDER PARAGRAPH (4)(V) OF THIS SUBSECTION, REQUIRE THE
COMMISSION TO PAY REASONABLE COSTS AND ATTORNEY'S FEES FOR STUDENTS
PROVIDED COUNSEL UNDER PARAGRAPH (4)(V) OF THIS SUBSECTION, AS PROVIDED
UNDER THIS PARAGRAPH.

(II) IN CONSULTATION WITH STATE AND LOCAL BAR
ASSOCIATIONS AND LEGAL SERVICES PROVIDERS WITH EXPERTISE ABOUT SEXUAL
MISCONDUCT, THE COMMISSION SHALL DEVELOP A LIST OF ATTORNEYS AND LEGAL
SERVICES PROGRAMS WILLING TO REPRESENT STUDENTS ON A PRO BONO BASIS OR
AT FEES EQUIVALENT TO THOSE PAID TO ATTORNEYS UNDER CIVIL LEGAL SERVICES
PROGRAMS ADMINISTERED BY THE MARYLAND LEGAL SERVICES CORPORATION,
ESTABLISHED UNDER TITLE 11 OF THE HUMAN SERVICES ARTICLE.

1 (III) A STUDENT MAY SELECT AN ATTORNEY FROM THE LIST
2 DEVELOPED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH.

3 (IV) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS
4 SUBPARAGRAPH, A STUDENT SHALL SELECT AND RETAIN AN ATTORNEY WITHIN 30
5 DAYS OF THE NOTICE PROVIDED TO THE STUDENT OF THE STUDENT'S RIGHT TO
6 COUNSEL.

7 2. IF A STUDENT DOES NOT SELECT AND RETAIN AN
8 ATTORNEY WITHIN 30 DAYS, THE COMMISSION SHALL SELECT AND RETAIN AN
9 ATTORNEY FOR THE STUDENT.

10 (V) IF A STUDENT SELECTS AND RETAINS AN ATTORNEY WHO IS
11 NOT ON THE LIST DEVELOPED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH,
12 THE COMMISSION SHALL PAY FEES TO THE ATTORNEY SELECTED BY THE STUDENT
13 THAT ARE EQUIVALENT TO THOSE PAID TO ATTORNEYS UNDER CIVIL LEGAL
14 SERVICES PROGRAMS ADMINISTERED BY THE MARYLAND LEGAL SERVICES
15 CORPORATION.

16 (7) THIS SUBSECTION MAY NOT BE CONSTRUED TO PROHIBIT AN
17 INSTITUTION OF HIGHER EDUCATION FROM IMPOSING INTERIM SAFETY MEASURES.

18 [(d)] (E) The Commission shall:

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

20 (2) Periodically review and make recommendations for changes in these
21 policies.

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

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

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

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

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

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

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

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

7 1. Types of misconduct;

8 2. Outcome of each complaint;

9 3. Disciplinary actions taken by the institution;

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

12 5. Number of reports involving alleged nonstudent
13 perpetrators.

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

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

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

22 (1) Report to the Governor and, in accordance with § 2-1246 of the State
23 Government Article, the Senate Education, Health, and Environmental Affairs Committee,
24 the Senate Budget and Taxation Committee, the House Health and Government
25 Operations Committee, and the House Appropriations Committee on the reports required
26 under subsection **[(g)] (H)** of this section; and

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.