



TOPIC: Legislative Session Summary

COMMITTEE: Education Policy and Student Life

DATE OF COMMITTEE MEETING: May 12, 2015

SUMMARY: On April 13, 2015, the Maryland General Assembly concluded, with several actions having direct impact on the policies and processes of interest to the EPSL Committee. Nine bills regarding sexual misconduct were introduced, and eight of those that USM opposed, in fact failed. The one piece of legislation that passed was House Bill 571, Institutions of Higher Education – Sexual Assault – Policy and Survey, proposed by freshman Delegate Shelly Hettleman of Baltimore County. Del Hettleman worked very diligently in cooperation with representatives of the higher education community, and, in the end, USM and higher education supported the amended version of the bill. This legislation passed and requires us to: (1) perform a campus climate survey of our design every two years; (2) provide summary data on campus sexual misconduct incidents and their adjudication; and (3) pursue agreements with state rape crisis centers and local law enforcement agencies to develop cooperative processes for investigation and referral of cases. **In consultation with the Office of the Attorney General, the Committee considered amendments to the System’s Policy on Sexual Misconduct (IV-1.60). These amendments are necessary to ensure full compliance with HB 571 - Institutions of Higher Education – Sexual Assault – Policy and Survey. The amendments are attached, and the Committee’s recommendation regarding these amendments is below.**

House Bill 672 (SB 496) is legislation supported by the higher education community that permits the Maryland Higher Education Commission to enter into the State Authorization Reciprocity Agreement (SARA). SARA membership permits universities to provide on-line programs in other SARA reciprocity states without additional cost or approval from the regulatory agency within the other state. This will enable on-line programs from our institutions to enroll students who reside in other SARA states without accruing additional costs of registration or approval of the program in that state, significantly reducing the costs of on-line program administration both in terms of fees and staff resources.

House Bill 934 (SB 210), *Educational Institutions – Personal Electronic Account – Privacy Protection*, also passed during this session. The intent behind this legislation is to protect the privacy of students’ non-institutional online accounts (email, social media, and the like) and to prohibit the institution from compelling a student to allow employees access to their personal electronic accounts for the purpose observing or monitoring the student’s activity. The USM supported this bill with the amendments that also passed, which were aimed at assuring both that the bill did not preclude the use of social media for academic/mentoring purposes and that it did not prevent the institution’s ability to investigate serious health and/or safety threats.

HB0799, *Higher Education - Veterans and Dependents Nonresident Tuition - Compliance With Federal Law*, requires each public institution of higher education in the State to comply with the Veteran’s Access, Choice and Affordability Act (VACA). At the April 10, 2015 meeting, the Board of Regents approved revisions to the *USM Policy VIII-2.70—Policy on Student Classification for Admission and Tuition* to align with VACA requirements to classify as in-state for tuition purposes certain eligible veterans and their spouse or children.

ALTERNATIVE(S): Regarding the USM Policy on Sexual Misconduct (IV-1.60), the regents may not approve the amendments or may request additional information. References to other legislation are for information only.

FISCAL IMPACT: There is no System office fiscal impact associated with this item.

CHANCELLOR'S RECOMMENDATION: That the Committee on Education Policy and Student Life recommend that the Board of Regents approve the amendments to the USM Policy on Sexual Misconduct (IV-1.60) to ensure full compliance with HB 571 - Institutions of Higher Education – Sexual Assault – Policy and Survey.

COMMITTEE RECOMMENDATION: Approval

DATE: May 12, 2015

BOARD ACTION:

DATE:

SUBMITTED BY: Joann A. Boughman

301-445-1992

jboughman@usmd.edu

USM Policy on Sexual Misconduct

IV-1.60 - UNIVERSITY SYSTEM OF MARYLAND POLICY ON SEXUAL MISCONDUCT (Approved by the Board of Regents, June 27, 2014; Amended June __, 2015)

PURPOSE & APPLICABILITY

The University System of Maryland (USM) is committed to providing a working and learning environment free from Sexual Misconduct, including sexual and gender-based harassment, sexual violence, dating violence, domestic violence, sexual exploitation, and sexual intimidation. USM prohibits and will not tolerate Sexual Misconduct. Sexual Misconduct is a form of sex discrimination prohibited by state and federal laws, including Title IX of the Education Amendments of 1972 as amended (“Title IX”) and Title VII of the Civil Rights Act of 1964 as amended, and also may constitute criminal activity.

USM endeavors to foster a System-wide climate free from Sexual Misconduct through training, education, prevention programs, and through policies and procedures that promote prompt reporting, prohibit retaliation, and promote timely, fair and impartial investigation and resolution of Sexual Misconduct cases in a manner that eliminates the Sexual Misconduct, prevents its recurrence, and addresses its effects. All students, faculty, and staff of USM institutions (including USM regional centers), as well as the USM Office and third parties and contractors under USM or USM constituent institution control, are subject to this policy, regardless of sex, sexual orientation, gender identity and gender expression. This Policy applies to Sexual Misconduct in connection with any USM institution, office or regional center education programs or activities, including Sexual Misconduct: (1) in any USM institution facility or on any USM institution property; (2) in connection with any USM or USM institution sponsored, recognized or approved program, visit or activity, regardless of location; (3) that impedes equal access to any USM institution education program or activity or adversely impacts the employment of a member of the USM community; or (4) that otherwise threatens the health or safety of a member of the USM community. Nothing in this policy is intended to supersede or conflict with any federal compliance obligation.

I. Definitions

For purposes of this Policy, the following definitions apply. While institutions may adopt their own definitions that do not conflict with the language below, institutions are strongly encouraged, at a minimum, to adopt the elements of these definitions in institution policies/procedures:

- A. Consent** means a knowing, voluntary, and affirmatively communicated willingness to mutually participate in a particular sexual activity or behavior. It must be given by a person with the ability and capacity to exercise free will and make a rational and reasonable judgment. Consent may be expressed either by affirmative words or actions, as long as those words or actions create a mutually understandable permission regarding the conditions of sexual activity. Consent may be withdrawn

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at any time. Consent cannot be obtained by force, threat, coercion, fraud, manipulation, reasonable fear of injury, intimidation, or through the use of one's mental or physical helplessness or incapacity. Consent cannot be implied based upon the mere fact of a previous consensual dating or sexual relationship. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

- B. Dating Violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- C. Domestic Violence** means violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant, or by any other person against an adult or youth complainant protected from those acts by domestic or family violence laws of Maryland.
- D. Interim Measures** means reasonably available steps an institution may take to protect the parties while a Sexual Misconduct investigation is pending.
- E. Responsible Employee** includes any employee who (1) has the authority to take action regarding Sexual Misconduct; (2) is an employee who has been given the duty of reporting Sexual Misconduct; or (3) is someone another individual could reasonably believe has this authority or duty. At a minimum, Responsible Employees must include: the Title IX Coordinator and any Title IX Team members, all institution administrators, all non-confidential employees in their supervisory roles, all faculty, all athletic coaches, institution law enforcement, and all other non-confidential first responders.
- F. Retaliation** means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or USM policy relating to Sexual Misconduct, or because an individual has made a report, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to Sexual Misconduct. Retaliation includes retaliatory harassment.
- G. Sexual Assault**

Sexual Assault I – Non-Consensual Sexual Intercourse

Any act of sexual intercourse with another individual without Consent. Sexual intercourse includes vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth to genital contact.

Sexual Assault II. – Non-Consensual Sexual Contact

Any intentional touching of the intimate parts of another person, causing another to touch one's intimate parts, or disrobing or exposure of another without Consent. Intimate parts may include genitalia, groin, breast, or buttocks, or clothing covering them, or any other body part that is touched in a sexual manner. Sexual contact also includes attempted sexual intercourse.

- H. Sexual Exploitation** means taking non-consensual or abusive sexual advantage of another person for one's own advantage or benefit or for the advantage or benefit of anyone other than the person being exploited.
- I. Sexual Harassment** is any unwelcome sexual advance, unwelcome request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when: (1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a USM or USM institution program or activity; (2) Submission to or rejection of such conduct by an individual is used as the basis for academic, employment, or activity or program participation related decisions affecting an individual; or (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e., it is sufficiently severe or pervasive to create an intimidating, hostile, humiliating, demeaning or sexually offensive working, academic, residential or social environment.
- J. Sexual Intimidation** means (1) threatening to sexually assault another person; (2) gender or sex-based Stalking, including cyber-Stalking; or (3) engaging in indecent exposure.
- K. Sexual Misconduct** is an umbrella term that includes Dating Violence, Domestic Violence, Sexual Exploitation, Sexual Harassment, Sexual Intimidation, Sexual Violence, and Stalking.
- L. Sexual Violence** is a form of Sexual Harassment and refers to physical sexual acts perpetrated without Consent. Sexual Violence includes rape, Sexual Assault, sexual battery, and sexual coercion. Sexual Violence, in any form, is a criminal act.
- M. Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

II. Institutional Obligations

A. Title IX Compliance Oversight

1. Title IX Coordinator

Each Chief Executive Officer of a USM institution shall designate a Title IX Coordinator responsible for coordinating the institution's efforts to comply with and carry out its responsibilities under Title IX.

The Title IX Coordinator must have adequate training on the requirements of Title IX, including what constitutes Sexual Misconduct, Consent, credibility assessments, and counter-intuitive behaviors resulting from Sexual Misconduct. The Coordinator must understand how relevant institution policies and procedures operate and must receive notice of all reports raising Title IX issues at the institution.

2. Title IX Team

Depending on the size and specific needs of the institution, the institution may want to identify a Title IX Team, which may include the Title IX Coordinator, Deputy Title IX Coordinators, Title IX investigators, and representatives from campus safety, Student Affairs, the Provost's Office, and Human Resources. The Title IX Coordinator shall be responsible for coordinating the activities of the Title IX Team.

B. Notice of Nondiscrimination

1. Content

Each institution must publish a notice of nondiscrimination that contains the following content:

- a. Title IX prohibits the institution from discriminating on the basis of sex in its education program and activities;
- b. Inquiries concerning the application of Title IX may be referred to the institution's Title IX Coordinator or the Office for Civil Rights; and
- c. The Title IX Coordinator and any Title IX Team Member's title, office address, telephone number and email address. [The institution's web site must be kept up to date with the name of the institution's current Title IX Coordinator.](#)

2. Dissemination of Notice

The notice must be widely distributed to all students, employees, applicants for admission and employment, and other relevant persons. The notice must be prominently displayed on the institution's web site and at various locations throughout the campus, and must be included in publications of general distribution that provide information to students and employees about the institution's services and policies. The notice should be available and easily accessible on an ongoing basis.

C. Prompt Investigation and Resolution

1. Investigation

Once an institution knows or reasonably should know of possible Sexual Misconduct, it must take immediate and appropriate action, in accordance with its internal procedures, to investigate or otherwise determine what occurred. This obligation applies to Sexual Misconduct covered by this Policy regardless of where the Sexual Misconduct allegedly occurred, regardless of whether a parallel law enforcement investigation or action is pending, and regardless of whether a formal complaint is filed.

2. Prompt Resolution

If the institution determines that Sexual Misconduct has occurred, the institution must take prompt and effective steps to eliminate the Sexual Misconduct, prevent its recurrence, and address its effects.

- a. In this subsection, "prompt" generally means within 60 calendar days from the time a report is brought to the institution's attention until an initial decision is rendered.
- b. There may be circumstances that prevent an institution from meeting the 60-day timeline. When an institution is unable to meet the 60-day timeline, the institution should document the reasons why it was unable to meet the 60 day timeline.

3. Notice of Outcome

As permitted by law, the institution must notify the parties concurrently, in writing, about the outcome of the complaint and whether or not Sexual Misconduct was found to have occurred. The institution must also concurrently inform the parties of any change to the results or outcome that occurs before the results or outcome become final, and the institution must inform the parties when the results or outcome become final.

D. Policy & Procedures

1. General

- a. Each institution shall adopt and publish policies and procedures, as needed, that:
 - i. Prohibit Sexual Misconduct;
 - ii. Prohibit Retaliation against any individual who reports, testifies, assists, or participates in any manner in a Sexual Misconduct investigation, hearing, or proceeding;
 - iii. Maintain employee and student procedures that provide for the prompt and equitable reporting, investigation, and adjudication of Sexual Misconduct and/or Retaliation cases;
 - iv. Require prompt Interim Measures be implemented, as necessary, to protect the parties during the investigation and adjudication processes;
 - v. Apprise the institution community of various USM institution resources and education programs, as well as other community resources and programs, geared to promote the awareness of and eliminate Sexual Misconduct, prevent its recurrence; and, as appropriate, remedy its effects; and
 - vi. Are easily understood, easily located, and widely distributed.
- b. Each institution shall ensure that Sexual Misconduct cases undergo an appropriate legal sufficiency review by counsel prior to any decision.

2. Required Content

At a minimum, policies and procedures must:

- a. Include a statement prohibiting Sexual Misconduct and Retaliation;
- b. Define Consent, Dating Violence, Domestic Violence, Retaliation, Sexual Harassment, Sexual Exploitation, Sexual Intimidation, Sexual Misconduct, Stalking, and Sexual Violence;
- c. Identify Responsible Employees required to report any knowledge of Sexual Misconduct to the Title IX Coordinator;

- d. Identify confidential and non-confidential medical, counseling and advocacy resources on and off campus to assist individuals affected by Sexual Misconduct, including sexual assault centers, victim advocacy offices, women’s centers, and health centers;
- e. Identify options and procedures for immediate and ongoing assistance following an incident of Sexual Misconduct, including encouragement to obtain immediate medical help and notify law enforcement as appropriate (especially to receive guidance in the preservation of evidence needed for proof of criminal assaults and the apprehension and prosecution of assailants), institution resources available to help obtain such medical or law enforcement assistance, and available Interim Measures; and
- f. Detail the following:
 - i. Identify who can file a complaint of Sexual Misconduct with the institution (to include students, institution employees, and third parties);
 - ii. Explain how to file a complaint;
 - iii. Identify to whom such complaints should be directed;
 - iv. Describe any institutional policies governing confidentiality;
 - v. Identify the institution’s amnesty policy for parties or witnesses, who violate drug use, alcohol or other student conduct policies. At a minimum, institutions must have an amnesty policy that prohibits student conduct action (except for a mandatory intervention for substance abuse) for a violation of alcohol or drug use policies by a student who reports Sexual Misconduct to the institution or law enforcement or participates in a Sexual Misconduct matter as a witness, if the institution determines that (1) the violation occurred during or near the time of the alleged Sexual Misconduct; (2) the student made the report of Sexual Misconduct, or is participating in an investigation as a witness, in good faith; and (3) the violation was not an act that was reasonably likely to place the health or safety of another individual at risk;
 - vi. Inform the parties about Interim Measures and how to request them. Each institution must provide notice, in writing, to the parties about options for, and available assistance in, obtaining no contact or protective orders, enforcing existing and lawful no contact or protective orders, and changing academic,

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transportation, residential, and working situations, if such an accommodation is reasonably available. The institution also must advise the parties of existing options for counseling, health, mental health, victim advocacy, legal assistance, and other services available on and off campus;

- vii. Explain the parties' options and rights, as well as institution responsibilities, regarding notification of law enforcement and campus authorities, as well as student conduct options;
- viii. Afford an investigative process and adjudicative process that provides the parties equal opportunity to present relevant witnesses and evidence throughout the process, and affords the parties similar and timely access to information to be used during any process;
- ix. Explain that the parties are entitled to the same opportunities to have others present during an institution disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an adviser of their choice, and explain the scope of any adviser's role or potential involvement;
- x. Specify "preponderance of the evidence" as the standard of review;
- xi. Identify the range of possible employment and student sanctions for those found responsible for Sexual Misconduct, up to and including suspension, dismissal, expulsion and termination of employment;
- xii. Provide an appeal process that is equally available to the parties;
- xiii. Require the institution, after a legal sufficiency review, to inform the parties, concurrently and in writing, as permitted by law, about the outcome of any investigation, adjudication, and appeal conducted under this policy;
- xiv. Designate reasonably prompt timeframes for the major stages of the process, and set forth the procedure for extending such timeframes, to include the timeframes within which (1) the institution will conduct a full investigation, (2) the parties will receive a notice of outcome, and (3) the parties may file an appeal;

- xv. Provide an affirmative statement to the institution community that the institution will take steps to prevent the occurrence of any Sexual Misconduct and remedy its discriminatory effects;
- xvi. Advise the community of institutional programs that endeavor to promote the awareness of Sexual Misconduct and prevent its occurrence; and
- xvii. Advise the community of external options for reporting Sexual Misconduct, including local law enforcement, the Equal Employment Opportunity Commission and the U.S. Department of Education Office for Civil Rights.

3. Prohibited Content

Policies and procedures may not include any of the following content:

- a. Requirement that the parties attempt to resolve any Sexual Misconduct matter informally;
- b. Requirement for or allowance of mediation in Sexual Assault cases;
- c. Allowing a party to personally cross-examine the other party, if an institution allows cross-examination;
- d. Allowing or requiring the institution to wait until a concurrent law enforcement proceeding concludes to begin any Sexual Misconduct investigation, Interim Measures or adjudication;
- e. Allowing questioning or evidence about the complainant's sexual history with anyone other than the respondent during any adjudication proceeding (in a proceeding where such evidence or questioning may be appropriate); and
- f. Discouraging a reporter from notifying local law enforcement of alleged Sexual Misconduct.

III. Clery Act Compliance

In handling Sexual Misconduct reports, each institution remains responsible for complying with the requirements of the Crime Awareness and Campus Security Act of 1990 ("Clery Act") and its amendments. Institutions must comply with Clery Act requirements, including crime recording and reporting requirements, where compliance is not otherwise reached by actions under this policy.

IV. Agreements with Local Law Enforcement & Rape Crisis Programs

Each institution must, at a minimum, pursue formalized agreements with (1) the institution's local law enforcement agency and (2) a State designated rape crisis program and/or federally recognized sexual assault coalition. Agreements with law enforcement agencies must comply with Title IX and clearly state when an institution will refer a matter to a local law enforcement agency. Agreements with rape crisis or sexual assault programs must formalize a commitment to provide trauma-informed services to victims of sexual assault and to improve the institution's overall response to sexual assault.

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V. **Training**

A. Prevention and Awareness Education

Each institution must develop and implement preventive education, directed toward both employees and students, to help reduce the occurrence of Sexual Misconduct. At a minimum, these educational initiatives must contain information regarding what constitutes Sexual Misconduct, definitions of consent and prohibited conduct, the institution's procedures, bystander intervention, risk reduction, and the consequences of engaging in Sexual Misconduct. These educational initiatives shall be for all incoming students and new employees. Each institution also must develop ongoing prevention and awareness campaigns for all students and employees addressing, at a minimum, the same information.

B. Training for Persons Involved in Sexual Misconduct Cases

All persons involved in any way in responding to, investigating, or adjudicating Sexual Misconduct reports, including but not limited to, the Title IX Team, Responsible Employees, law enforcement, pastors, counselors, health professionals, resident advisers, and complainant advocates, must have annual training in receiving, reporting and handling complaints of Sexual Misconduct; must be familiar with the institution's procedures; and must understand the parameters of confidentiality.

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VI. Campus Sexual Assault Climate Survey

On or before March 1, 2016, and at least every two (2) years thereafter, each institution shall: (1) develop an appropriate Sexual Assault campus climate survey using nationally recognized best practices for research and climate surveys; and (2) administer the Sexual Assault campus climate survey to students in accordance with the procedures set by the Maryland Higher Education Commission (MHEC). On or before June 1, 2016, and at least every two (2) years thereafter, each institution shall submit to MHEC a report in accordance with the requirements set forth in Md. Code Annotated, Education Article, Section 11-601(g).

VII. Record Keeping

Each institution must keep records of Sexual Misconduct matters, including, but not limited to records of any (1) complaints/ reports of Sexual Misconduct; (2) investigation, adjudication and resolution of complaints; (3) training (including, but not limited to, lists of trainees, training dates and content); and (4) related surveys and reports. Records must be maintained in accordance with the institution's Records Retention Schedule.

VIII. Implementation

Each Chief Executive Officer shall promptly communicate this policy and applicable procedures to his/her institutional community after the Board of Regents approves the policy. Each Chief Executive Officer also shall promptly identify his/her Title IX Coordinator and other designee(s), as appropriate for this policy. No later than December 31, 2014, each institution must develop procedures as necessary to implement this policy; and shall forward a copy of its Title IX designations and procedures, and any subsequent changes in such designations and procedures, to the Chancellor.

(This policy replaces USM VI-1.20 USM Policy on Sexual Harassment and USM VI-1.30 USM Policy on Sexual Assault in their entirety. This policy should be cross-referenced with USM BOR VI-1.50 – Policy on the Reporting of Child Abuse & Neglect.)

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HOUSE BILL 571

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(5lr2070)

ENROLLED BILL

— Appropriations/Education, Health, and Environmental Affairs —

Introduced by **Delegates Hettleman, Barron, McIntosh, Jones, and Morales**

Read and Examined by Proofreaders:

Proofreader.

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Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Institutions of Higher Education – Sexual Assault – Policy and Survey**

3 FOR the purpose of requiring a certain sexual assault policy adopted by the governing
4 ~~board~~ body of each institution of higher education to conform with the requirements
5 of a certain federal law; requiring a certain sexual assault policy to include a
6 prohibition ~~of~~ against the imposition of certain ~~sanctions~~ campus conduct actions,
7 except for a certain type of mandatory intervention, for a certain violation of the
8 institution of higher education's ~~student conduct policy~~ alcohol and drug use policies
9 for certain students ~~except if a certain determination is made~~ under certain
10 circumstances, a prohibition on retaliation by the institution of higher education
11 against a student, and a provision regarding the entering pursuing of a
12 ~~memorandum of understanding~~ certain formalized agreements with certain entities;
13 requiring the Maryland Higher Education Commission, in consultation with ~~the~~
14 ~~Department of Health and Mental Hygiene and the Governor's Office of Crime~~
15 ~~Control and Prevention~~ institutions of higher education, to establish certain

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.

Italics indicate opposite chamber/conference committee amendments.



1 procedures for the administration of certain sexual assault campus climate surveys
 2 by certain institutions of higher education, on or before certain dates, beginning in a
 3 certain year; requiring certain institutions of higher education to ~~use a certain~~
 4 ~~survey as a model or~~ develop a certain survey; ~~requiring certain institutions of higher~~
 5 ~~education and to administer a certain sexual assault~~ the survey every year to certain
 6 students in accordance with certain procedures; requiring certain institutions of
 7 higher education, on or before a certain date every other year, to report
 8 ~~school-specific results of a certain sexual assault survey~~ submit to the Commission
 9 ~~a certain report that includes~~ certain reports that include certain information;
 10 requiring institutions of higher education to make certain efforts to protect student
 11 privacy in reporting certain data; requiring institutions of higher education to report
 12 certain data together with other reporting requirements under a certain federal law;
 13 ~~requiring certain institutions of higher education to include~~
 14 ~~school-specific survey results in a certain annual security report~~; requiring the
 15 Commission to report certain ~~sexual assault campus climate survey results~~ reports
 16 to the Governor and certain committees of the General Assembly on or before certain
 17 dates, beginning in a certain year; requiring the Commission to publish certain
 18 ~~sexual assault campus climate survey results~~ reports in a certain manner; and
 19 generally relating to a policy and survey relating to sexual assault and institutions
 20 of higher education.

21 BY repealing and reenacting, with amendments,
 22 Article – Education
 23 Section 11–601
 24 Annotated Code of Maryland
 25 (2014 Replacement Volume and 2014 Supplement)

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

28 Article – Education

29 11–601.

30 (a) (1) By August 1, 1993, the governing ~~board~~ **BODY** of each institution of
 31 higher education shall adopt and submit to the Commission a written policy on sexual
 32 assault.

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

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

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

3 (c) The sexual assault policy required under subsection (a) of this section shall
4 conform with § 485(f) of the Higher Education Act of 1965 as amended [by § 486(c)(2) of the
5 Higher Education Amendments of 1992] **AND TITLE IX OF THE EDUCATION**
6 **AMENDMENTS OF 1972** and shall include procedures for reporting an incident of sexual
7 assault and for taking disciplinary actions against a violator of the policy, including
8 provisions for:

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

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

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

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

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

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

25 **(7) PROHIBITING THE IMPOSITION OF ~~DISCIPLINARY SANCTIONS A~~**
26 **CAMPUS CONDUCT ACTION, EXCEPT FOR A MANDATORY INTERVENTION FOR**
27 **SUBSTANCE ABUSE, FOR A VIOLATION OF THE ~~STUDENT CONDUCT POLICY~~ ALCOHOL**
28 **OR DRUG USE POLICIES OF THE INSTITUTION OF HIGHER EDUCATION FOR A**
29 **STUDENT WHO ~~FILES A COMPLAINT FOR~~ REPORTS TO THE INSTITUTION OR A LAW**
30 **ENFORCEMENT OFFICER AN INCIDENT OF SEXUAL ASSAULT OR WHO**
31 **PARTICIPATES IN AN INVESTIGATION OF A SEXUAL ASSAULT AS A WITNESS IF:**

32 **(I) ~~IF THE~~ THE INSTITUTION OF HIGHER EDUCATION**
33 **DETERMINES THE VIOLATION OCCURRED ~~AT~~ DURING OR NEAR THE TIME OF THE**
34 **ALLEGED SEXUAL ASSAULT; ~~UNLESS~~**

1 **(II) THE STUDENT IS DETERMINED TO HAVE MADE THE REPORT**
 2 **OF SEXUAL ASSAULT OR IS PARTICIPATING IN AN INVESTIGATION AS A WITNESS IN**
 3 **GOOD FAITH; AND**

4 ~~**(H) (III)**~~ **THE INSTITUTION OF HIGHER EDUCATION**
 5 **DETERMINES THAT THE VIOLATION WAS NOT AN ACT THAT WAS REASONABLY**
 6 **LIKELY TO PLACE THE HEALTH OR SAFETY OF ANOTHER INDIVIDUAL AT RISK; ~~AND~~**

7 **(8) PROHIBITING THE INSTITUTION OF HIGHER EDUCATION FROM**
 8 **RETALIATING AGAINST A STUDENT WHO FILES A COMPLAINT FOR SEXUAL ASSAULT**
 9 **OR WHO PARTICIPATES AS A WITNESS IN AN INVESTIGATION OF A SEXUAL ASSAULT;**
 10 **AND**

11 ~~**(8) (9) ENTERING INTO PURSUING A MEMORANDUM OF**~~
 12 ~~**UNDERSTANDING FORMALIZED AGREEMENTS WITH:**~~

13 **(I) THE LOCAL LAW ENFORCEMENT AGENCY THAT COMPLIES**
 14 **WITH THE RELEVANT PROVISIONS OF TITLE IX OF THE EDUCATION AMENDMENTS**
 15 **OF 1972 AND CLEARLY STATES WHEN A SCHOOL WILL REFER A MATTER TO LOCAL**
 16 **LAW ENFORCEMENT; AND**

17 **(II) A STATE DESIGNATED RAPE CRISIS PROGRAM, FEDERALLY**
 18 **RECOGNIZED SEXUAL ASSAULT COALITION, OR ~~BOTH ANY OTHER VICTIM SERVICES~~**
 19 **~~ORGANIZATION~~ BOTH THAT FORMALIZES A COMMITMENT TO PROVIDE**
 20 **TRAUMA-INFORMED SERVICES TO VICTIMS OF SEXUAL ASSAULT AND IMPROVE THE**
 21 **OVERALL RESPONSE TO SEXUAL ASSAULT BY THE INSTITUTION OF HIGHER**
 22 **EDUCATION.**

23 (d) The Commission shall:

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

25 (2) Periodically review and make recommendations for changes in these
 26 policies.

27 **(E) (1) THE COMMISSION, IN CONSULTATION WITH ~~THE DEPARTMENT OF~~**
 28 **~~HEALTH AND MENTAL HYGIENE AND THE GOVERNOR'S OFFICE OF CRIME~~**
 29 **~~CONTROL AND PREVENTION~~ INSTITUTIONS OF HIGHER EDUCATION, SHALL**
 30 **ESTABLISH PROCEDURES FOR THE ADMINISTRATION OF A SEXUAL ASSAULT**
 31 **CAMPUS CLIMATE SURVEY ~~EVERY YEAR~~ BY EACH INSTITUTION OF HIGHER**
 32 **EDUCATION.**

1 (2) THE PROCEDURES SHALL REQUIRE EACH INSTITUTION OF
2 HIGHER EDUCATION TO PROVIDE FOR THE COMPLETION OF THE SURVEY BY
3 VARIOUS METHODS, INCLUDING ONLINE.

4 (F) ~~EACH ON OR BEFORE OCTOBER~~ MARCH 1, 2016, AND AT LEAST EVERY
5 2 YEARS THEREAFTER, EACH INSTITUTION OF HIGHER EDUCATION SHALL:

6 (1) ~~USE THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE~~
7 ~~SURVEY DEVELOPED BY THE NATIONAL CENTER FOR INJURY PREVENTION AND~~
8 ~~CONTROL OF THE CENTERS FOR DISEASE CONTROL AND PREVENTION AS A MODEL~~
9 ~~SURVEY; OR~~

10 ~~(2)~~ DEVELOP AN APPROPRIATE SEXUAL ASSAULT CAMPUS CLIMATE
11 SURVEY, USING NATIONALLY RECOGNIZED BEST PRACTICES FOR RESEARCH AND
12 CLIMATE SURVEYS; AND

13 ~~(G) ON OR BEFORE JUNE 1, 2016, AND EACH YEAR THEREAFTER, EACH~~
14 ~~INSTITUTION OF HIGHER EDUCATION SHALL:~~

15 ~~(1)~~ (2) ADMINISTER THE SEXUAL ASSAULT CAMPUS CLIMATE
16 SURVEY TO STUDENTS IN ACCORDANCE WITH THE PROCEDURES ESTABLISHED
17 UNDER SUBSECTION (E) OF THIS SECTION;

18 ~~(2) REPORT SCHOOL SPECIFIC RESULTS OF THE SEXUAL ASSAULT~~
19 ~~SURVEY TO THE COMMISSION; AND~~

20 ~~(3) INCLUDE SCHOOL SPECIFIC RESULTS OF THE SEXUAL ASSAULT~~
21 ~~SURVEY IN ITS ANNUAL SECURITY REPORT PUBLISHED IN ACCORDANCE WITH THE~~
22 ~~JEANNE CLERY DISCLOSURE OF CAMPUS SECURITY POLICE AND CAMPUS CRIME~~
23 ~~STATISTICS ACT.~~

24 (G) (1) ON OR BEFORE JUNE 1, 2016, AND EVERY 2 YEARS THEREAFTER,
25 EACH INSTITUTION OF HIGHER EDUCATION SHALL SUBMIT TO THE COMMISSION:

26 (I) A REPORT ON SCHOOL SPECIFIC RESULTS OF THE SEXUAL
27 ASSAULT SURVEY; AND

28 (II) ~~A~~ A REPORT SUMMARIZING AGGREGATING THE DATA
29 COLLECTED BY THE INSTITUTION REGARDING SEXUAL ASSAULT COMPLAINTS MADE
30 TO THE INSTITUTION, INCLUDING THE:

31 ~~(H)~~ 1. TYPES OF MISCONDUCT;

32 ~~(H)~~ 2. OUTCOME OF EACH COMPLAINT;

~~(III)~~ 3. DISCIPLINARY ACTIONS TAKEN BY THE INSTITUTION;

~~(IV)~~ 4. ACCOMMODATIONS MADE TO STUDENTS IN ACCORDANCE WITH THE SEXUAL ASSAULT POLICY ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION; AND

~~(V)~~ 5. NUMBER OF REPORTS INVOLVING ALLEGED NONSTUDENT PERPETRATORS.

(2) IN REPORTING THE DATA UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE INSTITUTION OF HIGHER EDUCATION SHALL MAKE REASONABLE EFFORTS TO PROTECT STUDENT PRIVACY.

(3) AN INSTITUTION OF HIGHER EDUCATION SHALL SUBMIT THE DATA REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION TOGETHER WITH THE REPORTING REQUIREMENTS OF THE FEDERAL JEANNE CLERY DISCLOSURE OF CAMPUS SECURITY POLICY AND CRIME STATISTICS ACT, AS AMENDED BY THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013.

(H) ON OR BEFORE ~~SEPTEMBER~~ OCTOBER 1, 2016, AND ~~EACH YEAR~~ EVERY 2 YEARS THEREAFTER, THE COMMISSION SHALL:

(1) REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE, THE SENATE BUDGET AND TAXATION COMMITTEE, THE HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE, AND THE HOUSE APPROPRIATIONS COMMITTEE ON THE ~~RESULTS OF THE SEXUAL ASSAULT CAMPUS CLIMATE SURVEYS ADMINISTERED BY EACH INSTITUTION OF HIGHER EDUCATION~~ REPORTS REQUIRED UNDER SUBSECTION (G) OF THIS SECTION; AND

(2) PUBLISH THE ~~RESULTS OF THE SURVEY~~ REPORTS REQUIRED UNDER SUBSECTION (G) OF THIS SECTION ON THE COMMISSION'S WEB SITE AND IN ANY OTHER LOCATION OR VENUE THE COMMISSION DETERMINES IS NECESSARY OR APPROPRIATE.

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

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