

SENATE BILL 815

J3
SB 818/20 – FIN

1lr1611
CF HB 881

By: **Senator Klausmeier**

Introduced and read first time: February 9, 2021

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Mental Health Facilities – Sexual Abuse and Harassment – Reporting and**
3 **Prevention**

4 FOR the purpose of requiring certain mental health facilities to report certain complaints
5 of sexual abuse and sexual harassment to certain entities; requiring certain mental
6 health facilities to develop and implement certain policies and procedures, ensure
7 that staff provide certain assistance, and develop and oversee certain training and
8 education; requiring the Behavioral Health Administration to ensure that certain
9 policies and procedures are uniform for certain State facilities; requiring certain
10 mental health facilities to use certain screen-tools for a certain purpose, reassign
11 certain patients under certain circumstances, provide a certain patient with certain
12 treatment and education, and ensure that certain staff are trained in a certain
13 trauma recovery modality; requiring certain entities to adopt a certain plan; altering
14 certain requirements relating to sexual abuse and sexual harassment reporting and
15 prevention for certain State facilities; requiring the Office of Health Care Quality to
16 enforce certain provisions of law; requiring the Maryland Department of Health to
17 adopt certain regulations; and generally relating to mental health facilities and the
18 reporting and prevention of sexual abuse and harassment.

19 BY repealing and reenacting, without amendments,
20 Article – Health – General
21 Section 10–101(a), (g), and (k) and 10–701(a)(1) and (3)
22 Annotated Code of Maryland
23 (2019 Replacement Volume and 2020 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Health – General
26 Section 10–705
27 Annotated Code of Maryland
28 (2019 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

Article – Health – General

10–101.

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

(g) (1) Except as otherwise provided in this title, “facility” means any public or private clinic, hospital, or other institution that provides or purports to provide treatment or other services for individuals who have mental disorders.

(2) “Facility” does not include a Veterans’ Administration hospital.

(k) “State facility” means a facility that is owned or operated by the Department.

10–701.

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

(3) “Facility” does not include an acute general care hospital that does not have a separately identified inpatient psychiatric service.

10–705.

(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.

(b) (1) A person or any employee of a facility 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:

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

(i) May be oral or written; and

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

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

(II) IF THE COMPLAINT INVOLVES A MINOR, THE CHILD PROTECTIVE SERVICES UNIT IN THE DEPARTMENT OF HUMAN SERVICES; AND

(III) THE STATE DESIGNATED PROTECTION AND ADVOCACY SYSTEM.

(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:

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

3 (ii) The identity of the alleged abuser; and

4 (iii) Any other pertinent fact or matter.

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

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

11 (1) Making a report under this section;

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

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

16 (f) **(1) [The Administration shall ensure that State facilities] A FACILITY**
17 **SHALL:**

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

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

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

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

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

32 (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 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] **IF POSSIBLE, 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 unit;

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.