

# HOUSE BILL 138

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By: **Delegate Conaway**

Introduced and read first time: January 27, 2015

Assigned to: Judiciary and Appropriations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education – Sexual Assault Policy – “Yes Means Yes”**

3 FOR the purpose of requiring, by a certain date, that a policy on sexual assault adopted by  
4 the governing board of each institution of higher education include a certain  
5 affirmative consent standard; requiring a certain written policy on sexual assault to  
6 include a certain standard and certain statements; requiring a certain sexual assault  
7 policy to provide that certain circumstances negate a valid excuse to an alleged lack  
8 of affirmative consent; providing that the standard used in a certain determination  
9 is the preponderance of evidence; defining a certain term; and generally relating to  
10 the sexual assault policy at institutions of higher education.

11 BY repealing and reenacting, with amendments,  
12 Article – Education  
13 Section 11–601(a)  
14 Annotated Code of Maryland  
15 (2014 Replacement Volume and 2014 Supplement)

16 BY adding to  
17 Article – Education  
18 Section 11–602  
19 Annotated Code of Maryland  
20 (2014 Replacement Volume and 2014 Supplement)

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

23 **Article – Education**

24 11–601.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

6 (3) **BY AUGUST 1, 2016, A POLICY ADOPTED UNDER THIS SECTION  
7 SHALL INCLUDE THE AFFIRMATIVE CONSENT STANDARD DESCRIBED IN § 11-602 OF  
8 THIS SUBTITLE.**

9 **11-602.**

10 (A) **IN THIS SECTION, “AFFIRMATIVE CONSENT” MEANS AFFIRMATIVE,  
11 CONSCIOUS, AND VOLUNTARY AGREEMENT TO ENGAGE IN SEXUAL ACTIVITY.**

12 (B) **ON OR BEFORE AUGUST 1, 2016, THE GOVERNING BOARD OF EACH  
13 INSTITUTION OF HIGHER EDUCATION, IN ITS WRITTEN POLICY CONCERNING SEXUAL  
14 ASSAULT, SHALL INCLUDE:**

15 (1) **AN AFFIRMATIVE CONSENT STANDARD IN THE DETERMINATION  
16 OF WHETHER CONSENT WAS GIVEN BY BOTH PARTIES TO SEXUAL ACTIVITY; AND**

17 (2) **A STATEMENT THAT:**

18 (I) **IT IS THE RESPONSIBILITY OF EACH INDIVIDUAL INVOLVED  
19 IN THE SEXUAL ACTIVITY TO ENSURE THAT THE INDIVIDUAL HAS THE AFFIRMATIVE  
20 CONSENT OF THE OTHER OR OTHERS TO ENGAGE IN THE SEXUAL ACTIVITY;**

21 (II) **LACK OF PROTEST, RESISTANCE, OR SILENCE DOES NOT  
22 MEAN CONSENT;**

23 (III) **AFFIRMATIVE CONSENT MUST BE ONGOING THROUGHOUT A  
24 SEXUAL ACTIVITY AND CAN BE REVOKED AT ANY TIME; AND**

25 (IV) **THE EXISTENCE OF A DATING RELATIONSHIP BETWEEN THE  
26 INDIVIDUALS INVOLVED, OR THE FACT OF PAST SEXUAL ACTIVITY BETWEEN THE  
27 INDIVIDUALS INVOLVED, SHOULD NEVER BY ITSELF BE ASSUMED TO BE AN  
28 INDICATOR OF CONSENT.**

29 (C) **THE POLICY DESCRIBED IN SUBSECTION (B) OF THIS SECTION SHALL  
30 PROVIDE THAT:**

1           **(1) IT IS NOT A VALID EXCUSE TO AN ALLEGED LACK OF AFFIRMATIVE**  
2 **CONSENT THAT THE ACCUSED BELIEVED THAT THE COMPLAINANT CONSENTED TO**  
3 **THE SEXUAL ACTIVITY IF:**

4                   **(I) THE ACCUSED’S BELIEF AROSE FROM THE INTOXICATION**  
5 **OR RECKLESSNESS OF THE ACCUSED;**

6                   **(II) THE ACCUSED’S BELIEF AROSE FROM A FAILURE TO TAKE**  
7 **REASONABLE STEPS TO ASCERTAIN WHETHER THE COMPLAINANT AFFIRMATIVELY**  
8 **CONSENTED; OR**

9                   **(III) THE ACCUSED KNEW OR REASONABLY SHOULD HAVE**  
10 **KNOWN THAT THE COMPLAINANT WAS UNABLE TO CONSENT TO THE SEXUAL**  
11 **ACTIVITY BECAUSE THE COMPLAINANT WAS:**

12                           **1. ASLEEP OR UNCONSCIOUS;**

13                           **2. INCAPACITATED DUE TO THE INFLUENCE OF DRUGS,**  
14 **ALCOHOL, OR MEDICATION, SO THAT THE COMPLAINANT COULD NOT UNDERSTAND**  
15 **THE FACT, NATURE, OR EXTENT OF THE SEXUAL ACTIVITY; OR**

16                           **3. UNABLE TO COMMUNICATE DUE TO A MENTAL OR**  
17 **PHYSICAL CONDITION; AND**

18           **(2) THE STANDARD USED TO DETERMINE WHETHER THE ELEMENTS**  
19 **OF THE COMPLAINT AGAINST THE ACCUSED HAVE BEEN DEMONSTRATED IS THE**  
20 **PREPONDERANCE OF THE EVIDENCE.**

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