

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1558  
Judiciary

(Delegate Valentino-Smith, *et al.*)

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Residential Treatment Centers and Facilities - Sexual Abuse and Harassment -  
Reporting and Prevention

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This bill requires a “covered entity” to report complaints of sexual abuse and sexual harassment to (1) the Behavioral Health Administration (BHA) and the Office of Health Care Quality (OHCQ) within the Maryland Department of Health (MDH); (2) the Child Protective Services unit in the Department of Human Services; and (3) the Maryland Disability Law Center. A covered entity must develop and implement policies and procedures on making and responding to allegations and complaints of sexual abuse or harassment and adopt a written protection plan as a part of a patient’s treatment plan. BHA must ensure that policies and procedures are uniform for State facilities. OHCQ must enforce these requirements. MDH must adopt necessary regulations.

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Fiscal Summary

**State Effect:** The bill’s requirements can be handled with existing budgeted resources. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** “Covered entity” means (1) a State facility; (2) a forensic residential center (FRC); or (3) a residential treatment center for emotionally and disturbed children and adolescents.

## **Current Law:**

### *Covered Entities*

As designated in the Health-General Article, a State facility means an inpatient facility that is maintained under the direction of BHA.

Under Maryland regulations ([COMAR 10.07.13.02](#)), a “forensic residential center” means a facility that is licensed to provide a continuum of integrative services to individuals with an intellectual disability (1) ordered by the court for an evaluation or to be confined; (2) court-committed for care or treatment to MDH as incompetent to stand trial or not criminally responsible, who are dangerous as a result of mental retardation; or (3) on conditional release and returned to the facility either voluntarily or on hospital warrant. An FRC is an organized institution, environment, or home that (1) maintains conditions or facilities and equipment to provide domiciliary, personal, or nursing care for individuals who are dependent upon the subsistence of daily living in a safe, sanitary, and healthful environment and (2) admits or retains the individuals for care overnight. An FRC is not an extended care or comprehensive rehabilitation facility.

Maryland regulations ([COMAR 10.07.04.02](#)) define a “residential treatment center for emotionally disturbed children and adolescents” as a psychiatric institution that provides campus-based intensive and extensive evaluation and treatment of children and adolescents with severe and chronic emotional disturbances who require a self-contained therapeutic, educational, and recreational program in a residential setting.

### *Abuse*

In general, “abuse” means cruel or inhumane treatment that causes any physical injury or any kind of sexual abuse. “Abuse” does not include (1) the performance of an accepted medical procedure that a physician orders or (2) an action taken by an employee that complies with applicable State and federal laws and applicable MDH policies on the use of physical intervention. “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.

For children younger than age 18, “abuse” means the physical or mental injury that indicates the child’s health or welfare is harmed or at substantial risk of being harmed by a (1) parent; (2) family or household member; (3) person who has permanent or temporary custody of the child; (4) person who has responsibility for supervision of the child; or (5) person who exercises authority over the child because of their position or occupation. “Abuse” is also the sexual abuse of a child, whether physical injuries are sustained or not.

“Sexual abuse” of a child can include sex trafficking, sexual molestation, or sexual exploitation.

### *Reporting Abuse*

Mandatory reporters of child abuse include health practitioners, police officers, educators, and human service workers who are acting in a professional capacity and who have reason to believe that a child has been subjected to abuse or neglect. Mandatory reporters must notify the local department of social services or the appropriate law enforcement agency. In general, a person other than a mandatory reporter who has reason to believe that a child has been subjected to abuse or neglect must notify the local department of social services or the appropriate law enforcement agency.

Any employee of an inpatient facility or of MDH who receives a complaint of abuse, or who observes or has reason to believe that abuse has occurred, must promptly report the alleged abuse to an appropriate law enforcement agency or the administrative head of the facility. The administrative head of the facility must report the alleged abuse to an appropriate law enforcement agency. Reports of abuse may be oral or written and must contain as much information as the reporter is able to provide. A State inpatient facility under the direction of BHA must report complaints of sexual abuse and sexual harassment to the State-designated protection and advocacy system.

A law enforcement agency must thoroughly investigate each report of alleged abuse and attempt to ensure the protection of the alleged victim. The investigation must include (1) a determination of the nature, extent, and cause of the abuse, if any; (2) the identity of the alleged abuser; and (3) any other pertinent fact or matter. Within 10 working days after completing the investigation, a law enforcement agency must 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.

A person has immunity from liability for (1) making a report; (2) participating in an investigation arising out of a report; or (3) participating in a judicial proceeding arising out of a report.

### *Abuse Prevention*

BHA must ensure that State inpatient facilities (1) develop and implement uniform policies and procedures on making and responding to allegations and complaints of sexual abuse or sexual harassment; (2) ensure that staff provide assistance to patients who have requested assistance in making complaints about sexual abuse or sexual harassment; (3) 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) develop and oversee patient education on identifying sexual abuse and sexual harassment and on reporting incidents of sexual abuse and sexual harassment. Each State inpatient facility must:

- 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 consider the assessment of risk in making any unit and room assignment;
- reassign any patient accused of sexual assault to another unit and ensure that any alleged victim and the alleged assailant are not housed in the same unit;
- 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
- ensure that designated clinical staff are trained in at least one trauma recovery modality that is considered to be a best practice.

BHA must develop and implement a plan to secure the sleeping quarters of male and female patients at all State inpatient facilities that maximizes the use of available resources and infrastructure.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 818 (Senator Klausmeier) - Finance.

**Information Source(s):** Anne Arundel, Garrett, Howard, and Montgomery counties; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland Department of Health; Department of Human Services; Department of Juvenile Services; Department of Legislative Services

**Fiscal Note History:** First Reader - March 9, 2020  
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