HOUSE BILL 839

F2 5lr1699

By: **Delegate Morales**
Introduced and read first time: February 13, 2015
Assigned to: Judiciary and Appropriations

A BILL ENTITLED

AN ACT concerning

Education – Institutions of Higher Learning – Affirmative Consent Standard

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

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

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

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

Article – Education

11–601.

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

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

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

(3) BY SEPTEMBER 1, 2016, A POLICY ADOPTED UNDER THIS SECTION SHALL INCLUDE THE AFFIRMATIVE CONSENT STANDARD DESCRIBED IN § 11–602 OF THIS SUBTITLE.

11–602.

(A) IN THIS SECTION, "AFFIRMATIVE CONSENT" MEANS CLEAR, UNAMBIGUOUS, KNOWING, INFORMED, AND VOLUNTARY AGREEMENT BETWEEN ALL PARTICIPANTS TO ENGAGE IN SEXUAL ACTIVITY.

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

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

(2) A STATEMENT THAT:

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

(II) AFFIRMATIVE CONSENT IS ACTIVE, NOT PASSIVE;

(III) LACK OF PROTEST, RESISTANCE, OR SILENCE DOES NOT MEAN CONSENT;

(IV) AFFIRMATIVE CONSENT MUST BE ONGOING THROUGHOUT A SEXUAL ACTIVITY AND CAN BE REVOKED AT ANY TIME; AND

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

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

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

(I) THE ACCUSED'S BELIEF AROSE FROM THE INTOXICATION OR RECKLESSNESS OF THE ACCUSED;

(II) THE ACCUSED'S BELIEF AROSE FROM A FAILURE TO TAKE REASONABLE STEPS TO ASCERTAIN WHETHER THE COMPLAINANT AFFIRMATIVELY CONSENTED; OR

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

1. ASLEEP OR UNCONSCIOUS;

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

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

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

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