

Maryland Independent College
and University Association

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TESTIMONY

House Judiciary Committee

HB 1142 – Education – Institutions of Higher Learning – Affirmative Consent Standard

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On behalf of Maryland's independent colleges and universities and the 63,000 students they serve, thank you for the opportunity to submit this written testimony in opposition to *House Bill 1142 – Education – Institutions of Higher Learning – Affirmative Consent Standard*. MICUA and its institutions share the General Assembly's deep concern with respect to sexual assault and misconduct on college campuses. Sexual assault is an extremely serious crime that deserves a strong and focused response from all higher education institutions and everyone on campus.

In response to this deep concern and out of a desire to endure that students are in a safe and secure environment, all MICUA institutions updated sexual assault policies in 2014 and then again in 2015. These policies were adopted by the institutions' governing boards and submitted to the Maryland Higher Education Commission for review and comment. MICUA member policies were found to be in compliance with all relevant State and federal laws.

MICUA member institutions have been working diligently to implement the requirements of HB 571 (CH 436) from the 2015 legislative session. The law has been in effect for less than nine months. To date, MICUA member institutions have:

- Adopted amnesty provisions to encourage more students to report sexual assault;
- Developed and/or identified a campus climate survey to be administered this month to all students on every campus;
- Started collecting the data to report to the General Assembly on types of misconduct, outcomes of complaints, disciplinary actions taken by the institution, accommodations made to students in accordance with its sexual assault policies, and the number of reports involving alleged nonstudent perpetrators; and

- Executed memorandums of understanding with State designated rape crisis centers and local law enforcement or are in the process of executing these agreements.

These are just a few examples of the continuous efforts our campuses have taken to prevent sexual assault and aggressively implement a nine-month old law. The most effective way to combat sexual assault is through heightened awareness, education, and training of higher education staff and students. For example, numerous MICUA campuses utilize “green dot” as a way to increase bystander involvement, and all campuses administer sexual assault prevention programs. MICUA institutions are focused on creating safer, more secure environments where victims feel comfortable coming forward.

MICUA urges the General Assembly to be cautious about placing policy standards into statute. MHEC has statutory authority to review sexual assault policies in Maryland. Currently, no section of the higher education statute codifies campus definitions, procedures, and policies to the extent proposed in HB 1142. MICUA would respectfully suggest that this is a policy arena fraught with complexities and that a one-size-fits-all approach is inappropriate. Codifying sexual assault policies to this level of detail could create conflicts with Title IX and the requirements from the Office for Civil Rights. Placing the affirmative consent policy standard into statute eliminates the flexibility that campuses need to rapidly and proactively update their policies in what is an extremely fast moving and changing legal environment. There are numerous outstanding, potentially precedent-setting cases that might inform and possibly modify the best policies to ensure safe and secure educational communities.

MICUA strongly encourages the General Assembly to not codify the policies that seem most relevant today, but in all likelihood won’t represent the best practices of the future. Just as the “No means No” standard is no longer appropriate today, the affirmative consent standard is likely to evolve. The higher education community should have the flexibility to seamlessly respond without the need to pass legislation. Precisely because the “No means No” standard was never placed in statute, MHEC and Maryland’s higher education institutions were able to adopt the affirmative consent standard prior to the introduction of HB 1142.

We urge the General Assembly to allow the institutions to continue to focus their time, resources, and limited dollars into the efforts that most effectively minimize sexual misconduct and protect victims - training, outreach, and assistance. Moreover, we urge the General Assembly to allow campuses to continue implementing the law passed last year and let campuses receive and learn from the feedback provided by their campus climate surveys.

For these reasons, MICUA respectfully encourages an unfavorable report for HB 1142.