

HOUSE BILL 11

E1
HB 1090/09 – JUD

(PRE-FILED)

2lr0941

By: **Delegate Glenn**

Requested: November 15, 2011

Introduced and read first time: January 11, 2012

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Third Degree Sexual Offense – Person in Position of**
3 **Authority**

4 FOR the purpose of repealing the requirement that the prosecution of a misdemeanor
5 offense of the prohibition against a certain person in a position of authority
6 engaging in a sexual act or sexual contact with a minor, under certain
7 circumstances, be instituted within 3 years after the offense was committed;
8 prohibiting a certain person in a position of authority who is at least a certain
9 number of years older than the victim from engaging in sexual contact, a sexual
10 act, or vaginal intercourse with a minor while the minor is enrolled or
11 participating in the institution, program, or activity at which the person in a
12 position of authority works or a minor who was previously enrolled or
13 participating in the institution, program, or activity at the same time the person
14 in a position of authority was working at the institution, program, or activity;
15 establishing penalties for violating this Act; repealing the prohibition against a
16 person in a position of authority engaging in a sexual act or sexual contact with
17 a minor who, at the time of the sexual act or sexual contact, is a student
18 enrolled at a school where the person in a position of authority is employed and
19 the prohibition against a person in a position of authority engaging in vaginal
20 intercourse with a minor who, at the time of the vaginal intercourse, is a
21 student enrolled at a school where the person in a position of authority is
22 employed; defining a certain term; making technical corrections; and generally
23 relating to sexual offenses.

24 BY repealing

25 Article – Courts and Judicial Proceedings

26 Section 5–106(z)

27 Annotated Code of Maryland

28 (2006 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Courts and Judicial Proceedings
3 Section 5–106(aa)
4 Annotated Code of Maryland
5 (2006 Replacement Volume and 2011 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Criminal Law
8 Section 3–301, 3–307, and 3–308
9 Annotated Code of Maryland
10 (2002 Volume and 2011 Supplement)

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

13 **Article – Courts and Judicial Proceedings**

14 5–106.

15 [(z) A prosecution for a misdemeanor offense under § 3–308(c) or, if the victim
16 was a minor at the time of the offense, § 3–308(b)(1) of the Criminal Law Article shall
17 be instituted within 3 years after the offense was committed.]

18 [(aa)] (Z) (1) This subsection applies in Anne Arundel County to an
19 offense that:

20 (i) Occurs in the Chesapeake Bay Critical Area, as defined in §
21 8–1807 of the Natural Resources Article; and

22 (ii) Is a violation of a local law that relates to environmental
23 protection or natural resource conservation, including a local law regulating:

- 24 1. Grading;
- 25 2. Sediment control;
- 26 3. Stormwater management;
- 27 4. Zoning;
- 28 5. Construction; or
- 29 6. Health and public safety.

30 (2) A prosecution for an offense described in paragraph (1) of this
31 subsection shall be instituted within 3 years after the commission of the offense.

1
2 **Article – Criminal Law**

3 3–301.

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

5 (b) “Mentally defective individual” means an individual who suffers from
6 mental retardation or a mental disorder, either of which temporarily or permanently
7 renders the individual substantially incapable of:

8 (1) appraising the nature of the individual’s conduct;

9 (2) resisting vaginal intercourse, a sexual act, or sexual contact; or

10 (3) communicating unwillingness to submit to vaginal intercourse, a
11 sexual act, or sexual contact.12 (c) “Mentally incapacitated individual” means an individual who, because of
13 the influence of a drug, narcotic, or intoxicating substance, or because of an act
14 committed on the individual without the individual’s consent or awareness, is
15 rendered substantially incapable of:

16 (1) appraising the nature of the individual’s conduct; or

17 (2) resisting vaginal intercourse, a sexual act, or sexual contact.

18 **(D) (1) “PERSON IN A POSITION OF AUTHORITY” MEANS A PERSON
19 WHO:**20 **(I) IS AT LEAST 21 YEARS OLD; AND**21 **(II) WORKS AT A:**22 **1. PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY
23 SCHOOL, OR SECONDARY SCHOOL;**24 **2. CHILD CARE FACILITY, INCLUDING AN
25 AFTER-SCHOOL PROGRAM;**26 **3. COMMERCIAL OR NONPROFIT INSTRUCTIONAL
27 PROGRAM FOR MUSIC, DANCE, ART, TUTORING, ACADEMIC ENRICHMENT,
28 MARTIAL ARTS, OR A PROGRAM WITH A SIMILAR PURPOSE;**29 **4. SPORTS OR RECREATIONAL FACILITY OR
PROGRAM;**

- 1 **5. DAY OR OVERNIGHT CAMP;**
 2 **6. RELIGIOUS INSTITUTION; OR**
 3 **7. UNIT OF LOCAL, STATE, OR FEDERAL**
 4 **GOVERNMENT.**

5 **(2) “PERSON IN A POSITION OF AUTHORITY” INCLUDES AN**
 6 **INDIVIDUAL WHO:**

7 **(I) IS A VOLUNTEER, INTERN, OR PAID EMPLOYEE OF AN**
 8 **INSTITUTION, PROGRAM, OR ACTIVITY INCLUDED IN PARAGRAPH (1)(II) OF THIS**
 9 **SUBSECTION AND WHO, IN THAT CAPACITY, DIRECTS OR SUPERVISES MINORS**
 10 **ENROLLED OR PARTICIPATING IN THE INSTITUTION, PROGRAM, OR ACTIVITY;**
 11 **OR**

12 **(II) SUPERVISES ONE OR MORE PERSONS IN A POSITION OF**
 13 **AUTHORITY WITHIN THE INSTITUTION, PROGRAM, OR ACTIVITY.**

14 **[(d)] (E)** “Physically helpless individual” means an individual who:

15 (1) is unconscious; or

16 (2) (i) does not consent to vaginal intercourse, a sexual act, or
 17 sexual contact; and

18 (ii) is physically unable to resist, or communicate unwillingness
 19 to submit to, vaginal intercourse, a sexual act, or sexual contact.

20 **[(e)] (F)** (1) “Sexual act” means any of the following acts, regardless of
 21 whether semen is emitted:

22 (i) analingus;

23 (ii) cunnilingus;

24 (iii) fellatio;

25 (iv) anal intercourse, including penetration, however slight, of
 26 the anus; or

27 (v) an act:

1 1. in which an object or part of an individual's body
2 penetrates, however slightly, into another individual's genital opening or anus; and

3 2. that can reasonably be construed to be for sexual
4 arousal or gratification, or for the abuse of either party.

5 (2) "Sexual act" does not include:

6 (i) vaginal intercourse; or

7 (ii) an act in which an object or part of an individual's body
8 penetrates an individual's genital opening or anus for an accepted medical purpose.

9 **[(f)] (G)** (1) "Sexual contact", as used in §§ 3-307, 3-308, and 3-314 of
10 this subtitle, means an intentional touching of the victim's or actor's genital, anal, or
11 other intimate area for sexual arousal or gratification, or for the abuse of either party.

12 (2) "Sexual contact" does not include:

13 (i) a common expression of familial or friendly affection; or

14 (ii) an act for an accepted medical purpose.

15 **[(g)] (H)** (1) "Vaginal intercourse" means genital copulation, whether or
16 not semen is emitted.

17 (2) "Vaginal intercourse" includes penetration, however slight, of the
18 vagina.

19 3-307.

20 (a) A person may not:

21 (1) (i) engage in sexual contact with another without the consent of
22 the other; and

23 (ii) 1. employ or display a dangerous weapon, or a physical
24 object that the victim reasonably believes is a dangerous weapon;

25 2. suffocate, strangle, disfigure, or inflict serious
26 physical injury on the victim or another in the course of committing the crime;

27 3. threaten, or place the victim in fear, that the victim,
28 or an individual known to the victim, imminently will be subject to death, suffocation,
29 strangulation, disfigurement, serious physical injury, or kidnapping; or

30 4. commit the crime while aided and abetted by another;

1 (2) engage in sexual contact with another if the victim is a mentally
2 defective individual, a mentally incapacitated individual, or a physically helpless
3 individual, and the person performing the act knows or reasonably should know the
4 victim is a mentally defective individual, a mentally incapacitated individual, or a
5 physically helpless individual;

6 (3) engage in sexual contact with another if the victim is under the age
7 of 14 years, and the person performing the sexual contact is at least 4 years older than
8 the victim;

9 (4) engage in a sexual act with another if the victim is 14 or 15 years
10 old, and the person performing the sexual act is at least 21 years old; or

11 (5) engage in vaginal intercourse with another if the victim is 14 or 15
12 years old, and the person performing the act is at least 21 years old.

13 **(B) A PERSON IN A POSITION OF AUTHORITY WHO IS AT LEAST 6 YEARS**
14 **OLDER THAN THE VICTIM MAY NOT ENGAGE IN SEXUAL CONTACT, A SEXUAL**
15 **ACT, OR VAGINAL INTERCOURSE WITH A MINOR:**

16 **(1) WHILE THE MINOR IS ENROLLED OR PARTICIPATING IN THE**
17 **INSTITUTION, PROGRAM, OR ACTIVITY AT WHICH THE PERSON IN A POSITION OF**
18 **AUTHORITY WORKS; OR**

19 **(2) WHO WAS PREVIOUSLY ENROLLED OR PARTICIPATING IN THE**
20 **INSTITUTION, PROGRAM, OR ACTIVITY AT THE SAME TIME THE PERSON IN A**
21 **POSITION OF AUTHORITY WAS WORKING AT THE INSTITUTION, PROGRAM, OR**
22 **ACTIVITY.**

23 **[(b)] (C)** A person who violates this section is guilty of the felony of sexual
24 offense in the third degree and on conviction is subject to imprisonment not exceeding
25 10 years.

26 3–308.

27 (a) [In this section, “person in a position of authority”:

28 (1) means a person who:

29 (i) is at least 21 years old;

30 (ii) is employed as a full–time permanent employee by a public
31 or private preschool, elementary school, or secondary school; and

1 (iii) because of the person's position or occupation, exercises
2 supervision over a minor who attends the school; and

3 (2) includes a principal, vice principal, teacher, or school counselor at
4 a public or private preschool, elementary school, or secondary school.

5 (b)] A person may not engage in:

6 (1) sexual contact with another without the consent of the other;

7 (2) except as provided in § 3-307(a)(4) of this subtitle, a sexual act
8 with another if the victim is 14 or 15 years old, and the person performing the sexual
9 act is at least 4 years older than the victim; or

10 (3) except as provided in § 3-307(a)(5) of this subtitle, vaginal
11 intercourse with another if the victim is 14 or 15 years old, and the person performing
12 the act is at least 4 years older than the victim.

13 [(c) (1) Except as provided in § 3-307(a)(4) of this subtitle or subsection
14 (b)(2) of this section, a person in a position of authority may not engage in a sexual act
15 or sexual contact with a minor who, at the time of the sexual act or sexual contact, is a
16 student enrolled at a school where the person in a position of authority is employed.

17 (2) Except as provided in § 3-307(a)(5) of this subtitle or subsection
18 (b)(3) of this section, a person in a position of authority may not engage in vaginal
19 intercourse with a minor who, at the time of the vaginal intercourse, is a student
20 enrolled at a school where the person in a position of authority is employed.]

21 [(d)] (B) (1) Except as provided in paragraph (2) of this subsection, a
22 person who violates this section is guilty of the misdemeanor of sexual offense in the
23 fourth degree and on conviction is subject to imprisonment not exceeding 1 year or a
24 fine not exceeding \$1,000 or both.

25 (2) (i) On conviction of a violation of this section, a person who has
26 been convicted on a prior occasion not arising from the same incident of a violation of
27 §§ 3-303 through 3-312 or § 3-315 of this subtitle or § 3-602 of this title is subject to
28 imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

29 (ii) If the State intends to proceed against a person under
30 subparagraph (i) of this paragraph, it shall comply with the procedures set forth in the
31 Maryland Rules for the indictment and trial of a subsequent offender.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2012.