

# HOUSE BILL 60

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3lr0854

(PRE-FILED)

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By: **Delegates Smigiel and Dumais**

Requested: November 15, 2012

Introduced and read first time: January 9, 2013

Assigned to: Health and Government Operations

Re-referred to: Judiciary, January 24, 2013

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Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 7, 2013

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Law – Professional Counselors and Therapists – Conduct**  
3 **(Lynette’s Law)**

4 FOR the purpose of prohibiting a certain professional counselor or therapist from  
5 engaging in a sexual act, sexual contact, or vaginal intercourse with a person  
6 who is receiving counseling from the professional counselor or therapist or  
7 received counseling from the professional counselor or therapist within a certain  
8 period of time; ~~prohibiting a certain professional counselor or therapist from~~  
9 ~~knowingly, and with intent to deceive, making a false statement concerning the~~  
10 ~~person’s criminal record on an employment application;~~ providing for a certain  
11 statute of limitations for the prosecution of a violation of this Act; defining  
12 ~~certain terms~~ a certain term; making stylistic changes; and generally relating to  
13 the conduct of professional counselors and therapists.

14 BY repealing and reenacting, without amendments,  
15 Article – Criminal Law  
16 Section 3–307  
17 Annotated Code of Maryland  
18 (2012 Replacement Volume and 2012 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – Criminal Law  
21 Section 3–308

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland  
2 (2012 Replacement Volume and 2012 Supplement)

3 ~~BY adding to~~  
4 ~~Article – Criminal Law~~  
5 ~~Section 9–509~~  
6 ~~Annotated Code of Maryland~~  
7 ~~(2012 Replacement Volume and 2012 Supplement)~~

8 BY repealing and reenacting, with amendments,  
9 Article – Courts and Judicial Proceedings  
10 Section 5–106(z)  
11 Annotated Code of Maryland  
12 (2006 Replacement Volume and 2012 Supplement)

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

15 **Article – Criminal Law**

16 3–307.

17 (a) A person may not:

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

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

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

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

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

28 (2) engage in sexual contact with another if the victim is a mentally  
29 defective individual, a mentally incapacitated individual, or a physically helpless  
30 individual, and the person performing the act knows or reasonably should know the  
31 victim is a mentally defective individual, a mentally incapacitated individual, or a  
32 physically helpless individual;

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

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

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

8           (b)    A person who violates this section is guilty of the felony of sexual offense  
9 in the third degree and on conviction is subject to imprisonment not exceeding 10  
10 years.

11 3–308.

12           (a)    **(1)**    In this section[,] **THE FOLLOWING WORDS HAVE THE MEANINGS**  
13 **INDICATED.**

14                   **(2)**    **(I)**    [“person] **“PERSON in a position of authority”**[:

15                           **(1)]**    means a person who:

16                                   **[(i)]**    **1.**    is at least 21 years old;

17                                   **[(ii)]**   **2.**    is employed as a full–time permanent employee by a  
18 public or private preschool, elementary school, or secondary school; and

19                                   **[(iii)]**   **3.**    because of the person’s position or occupation,  
20 exercises supervision over a minor who attends the school[; and].

21                           **[(2)]**   **(II)**    **“PERSON IN A POSITION OF AUTHORITY”** includes a  
22 principal, vice principal, teacher, or school counselor at a public or private preschool,  
23 elementary school, or secondary school.

24                           **(3)**    **“PROFESSIONAL COUNSELOR OR THERAPIST” MEANS A**  
25 **PERSON WHO IS LICENSED OR CERTIFIED TO PRACTICE ~~MARRIAGE AND FAMILY~~**  
26 **~~THERAPY, ALCOHOL AND DRUG COUNSELING, OR PROFESSIONAL COUNSELING~~**  
27 **~~BY THE STATE BOARD OF PROFESSIONAL COUNSELORS AND THERAPISTS~~**  
28 **~~UNDER TITLE 17 OF THE HEALTH OCCUPATIONS ARTICLE;~~**

29                                   **(I)    UNDER TITLE 14 OF THE HEALTH OCCUPATIONS**  
30 **ARTICLE AND PRACTICES PSYCHIATRY; OR**

1 (II) UNDER TITLES 17 THROUGH 19 OF THE HEALTH  
 2 OCCUPATIONS ARTICLE.

3 (b) A person may not engage in:

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

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

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

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

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

19 **(D) (1) EXCEPT AS PROVIDED IN § 3–307(A)(4) OF THIS SUBTITLE OR**  
 20 **SUBSECTION (B)(2) OF THIS SECTION, A PROFESSIONAL COUNSELOR OR**  
 21 **THERAPIST MAY NOT ENGAGE IN A SEXUAL ACT OR SEXUAL CONTACT WITH A**  
 22 **PERSON WHO:**

23 **(I) AT THE TIME OF THE SEXUAL ACT OR SEXUAL CONTACT,**  
 24 **IS RECEIVING COUNSELING OR THERAPY FROM THE PROFESSIONAL**  
 25 **COUNSELOR OR THERAPIST; OR**

26 **(II) RECEIVED COUNSELING OR THERAPY FROM THE**  
 27 **PROFESSIONAL COUNSELOR OR THERAPIST WITHIN THE ~~2 YEARS~~ 6 MONTHS**  
 28 **PRECEDING THE SEXUAL ACT OR SEXUAL CONTACT.**

29 **(2) EXCEPT AS PROVIDED IN § 3–307(A)(5) OF THIS SUBTITLE OR**  
 30 **SUBSECTION (B)(3) OF THIS SECTION, A PROFESSIONAL COUNSELOR OR**  
 31 **THERAPIST MAY NOT ENGAGE IN VAGINAL INTERCOURSE WITH A PERSON WHO:**

32 **(I) AT THE TIME OF THE VAGINAL INTERCOURSE, IS**  
 33 **RECEIVING COUNSELING OR THERAPY FROM THE PROFESSIONAL COUNSELOR**  
 34 **OR THERAPIST; OR**

1 (II) RECEIVED COUNSELING OR THERAPY FROM THE  
 2 PROFESSIONAL COUNSELOR OR THERAPIST WITHIN THE ~~2 YEARS~~ 6 MONTHS  
 3 PRECEDING THE VAGINAL INTERCOURSE.

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

8 (2) (i) On conviction of a violation of this section, a person who has  
 9 been convicted on a prior occasion not arising from the same incident of a violation of  
 10 §§ 3-303 through 3-312 or § 3-315 of this subtitle or § 3-602 of this title is subject to  
 11 imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

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

15 ~~9-509.~~

16 ~~(A) IN THIS SECTION, "PROFESSIONAL COUNSELOR OR THERAPIST"~~  
 17 ~~MEANS A PERSON WHO IS LICENSED OR CERTIFIED TO PRACTICE MARRIAGE~~  
 18 ~~AND FAMILY THERAPY, ALCOHOL AND DRUG COUNSELING, OR PROFESSIONAL~~  
 19 ~~COUNSELING BY THE STATE BOARD OF PROFESSIONAL COUNSELORS AND~~  
 20 ~~THERAPISTS UNDER TITLE 17 OF THE HEALTH OCCUPATIONS ARTICLE.~~

21 ~~(B) A PROFESSIONAL COUNSELOR OR THERAPIST MAY NOT~~  
 22 ~~KNOWINGLY, AND WITH INTENT TO DECEIVE, MAKE A FALSE STATEMENT~~  
 23 ~~CONCERNING THE PERSON'S CRIMINAL RECORD ON AN EMPLOYMENT~~  
 24 ~~APPLICATION.~~

25 ~~(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A~~  
 26 ~~MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT~~  
 27 ~~EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING \$500 OR BOTH.~~

## 28 Article – Courts and Judicial Proceedings

29 5-106.

30 (z) A prosecution for a misdemeanor offense under § 3-308(c) OR (D) or, if  
 31 the victim was a minor at the time of the offense, § 3-308(b)(1) of the Criminal Law  
 32 Article shall be instituted within 3 years after the offense was committed.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 October 1, 2013.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.