

HOUSE BILL 781

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CF SB 460

By: **Delegates Clippinger, Glenn, Arora, Cluster, Dumais, Glass, Lee, McComas, McDermott, Mitchell, Parrott, Smigiel, Sophocleus, Valderrama, Valentino-Smith, and Waldstreicher**

Introduced and read first time: February 3, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Person in a Position of Authority – Sexual Offenses With a**
3 **Minor**

4 FOR the purpose of altering a certain prohibition against a certain “person in a
5 position of authority” from engaging in certain conduct to prohibit a certain
6 person in a position of authority from engaging in sexual contact, a sexual act,
7 or vaginal intercourse with a minor who is at least a certain number of years
8 younger than the person in a position of authority and who the person in a
9 position of authority knows is or was enrolled or participating in the institution,
10 program, or activity at which the person in a position of authority works;
11 defining a certain term; making a certain conforming change; providing a
12 certain statute of limitations for a violation of this Act; providing penalties for a
13 violation of this Act; providing that a violation of this Act may not be considered
14 a lesser-included offense of another crime, with a certain exception; providing
15 that a prosecution under this Act does not preclude a certain other prosecution;
16 and generally relating to persons in a position of authority and sexual offenses.

17 BY repealing and reenacting, with amendments,
18 Article – Courts and Judicial Proceedings
19 Section 5–106(z)
20 Annotated Code of Maryland
21 (2013 Replacement Volume and 2013 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Criminal Law
24 Section 3–308
25 Annotated Code of Maryland
26 (2012 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Criminal Law
3 Section 3–325
4 Annotated Code of Maryland
5 (2012 Replacement Volume and 2013 Supplement)

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

8 **Article – Courts and Judicial Proceedings**

9 5–106.

10 (z) A prosecution for a misdemeanor offense under [§ 3–308(c)] **§ 3–325** or, if
11 the victim was a minor at the time of the offense, § 3–308(b)(1) of the Criminal Law
12 Article shall be instituted within 3 years after the offense was committed.

13 **Article – Criminal Law**

14 3–308.

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

16 (1) means a person who:

17 (i) is at least 21 years old;

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

20 (iii) because of the person’s position or occupation, exercises
21 supervision over a minor who attends the school; and

22 (2) includes a principal, vice principal, teacher, or school counselor at
23 a public or private preschool, elementary school, or secondary school.]

24 [(b) (A) A person may not engage in:

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

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

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

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

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

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

13 (2) (i) On conviction of a violation of this section, a person who has
14 been convicted on a prior occasion not arising from the same incident of a violation of
15 §§ 3–303 through 3–312 or § 3–315 of this subtitle or § 3–602 of this title is subject to
16 imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

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

20 **3–325.**

21 (A) (1) **IN THIS SECTION, “PERSON IN A POSITION OF AUTHORITY”**
22 **MEANS A PERSON WHO:**

23 (I) **IS AT LEAST 21 YEARS OLD; AND**

24 (II) **WORKS AT:**

25 1. **A PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY**
26 **SCHOOL, OR SECONDARY SCHOOL; OR**

27 2. **A SPORTS OR RECREATIONAL FACILITY OR**
28 **PROGRAM.**

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

31 (I) **IS A VOLUNTEER WITH, UNDER CONTRACT WITH, OR A**
32 **PAID EMPLOYEE OF AN INSTITUTION, A PROGRAM, OR AN ACTIVITY DESCRIBED**

1 IN PARAGRAPH (1)(II) OF THIS SUBSECTION AND WHO, IN THAT CAPACITY,
2 DIRECTS OR SUPERVISES MINORS ENROLLED OR PARTICIPATING IN THE
3 INSTITUTION, PROGRAM, OR ACTIVITY; OR

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

6 (B) A PERSON IN A POSITION OF AUTHORITY MAY NOT ENGAGE IN
7 SEXUAL CONTACT, A SEXUAL ACT, OR VAGINAL INTERCOURSE WITH A MINOR
8 WHO IS AT LEAST 7 YEARS YOUNGER THAN THE PERSON IN A POSITION OF
9 AUTHORITY AND WHO THE PERSON IN A POSITION OF AUTHORITY KNOWS:

10 (1) IS ENROLLED OR PARTICIPATING IN THE INSTITUTION,
11 PROGRAM, OR ACTIVITY AT WHICH THE PERSON IN A POSITION OF AUTHORITY
12 WORKS; OR

13 (2) WAS PREVIOUSLY ENROLLED OR PARTICIPATING IN THE
14 INSTITUTION, PROGRAM, OR ACTIVITY AT THE SAME TIME THE PERSON IN A
15 POSITION OF AUTHORITY WAS WORKING AT THE INSTITUTION, PROGRAM, OR
16 ACTIVITY.

17 (C) (1) UNLESS SPECIFICALLY CHARGED BY THE STATE, A
18 VIOLATION OF THIS SECTION MAY NOT BE CONSIDERED A LESSER-INCLUDED
19 OFFENSE OF ANOTHER CRIME.

20 (2) A PROSECUTION OF A VIOLATION OF THIS SECTION DOES NOT
21 PRECLUDE A PROSECUTION UNDER § 3-602 OF THIS TITLE.

22 (D) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
23 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
24 EXCEEDING 5 YEARS.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2014.