

SENATE BILL 460

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4r1984
CF HB 781

By: **Senators Raskin, Forehand, and King**
Introduced and read first time: January 27, 2014
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 8, 2014

CHAPTER _____

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

19 ~~BY repealing and reenacting, with amendments,~~
20 ~~Article — Courts and Judicial Proceedings~~
21 ~~Section 5-106(z)~~
22 ~~Annotated Code of Maryland~~
23 ~~(2013 Replacement Volume and 2013 Supplement)~~

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 BY repealing and reenacting, with amendments,
 2 Article – Criminal Law
 3 Section 3–308
 4 Annotated Code of Maryland
 5 (2012 Replacement Volume and 2013 Supplement)

6 ~~BY adding to~~
 7 ~~Article – Criminal Law~~
 8 ~~Section 3–325~~
 9 ~~Annotated Code of Maryland~~
 10 ~~(2012 Replacement Volume and 2013 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(e)] § 3–325 or, if~~
 16 ~~the victim was a minor at the time of the offense, § 3–308(b)(1) of the Criminal Law~~
 17 ~~Article shall be instituted within 3 years after the offense was committed.~~

18 **Article – Criminal Law**

19 3–308.

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

21 (1) means a person who:

22 (i) is at least 21 years old;

23 (ii) is employed ~~as a full-time permanent employee~~ by a public
 24 or private preschool, elementary school, or secondary school; and

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

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

29 ~~[(b)] (A)~~ (b) A person may not engage in:

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

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

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

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

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

15 ~~¶(d) ¶(B)~~ (1) Except as provided in paragraph (2) of this subsection, a
 16 person who violates this section is guilty of the misdemeanor of sexual offense in the
 17 fourth degree and on conviction is subject to imprisonment not exceeding 1 year or a
 18 fine not exceeding \$1,000 or both.

19 (2) (i) On conviction of a violation of this section, a person who has
 20 been convicted on a prior occasion not arising from the same incident of a violation of
 21 §§ 3–303 through 3–312 or § 3–315 of this subtitle or § 3–602 of this title is subject to
 22 imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

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

26 ~~3–325.~~

27 ~~(A) (1) IN THIS SECTION, “PERSON IN A POSITION OF AUTHORITY”~~
 28 ~~MEANS A PERSON WHO:~~

29 ~~(I) IS AT LEAST 21 YEARS OLD; AND~~

30 ~~(II) WORKS AT:~~

31 ~~1. A PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY~~
 32 ~~SCHOOL, OR SECONDARY SCHOOL; OR~~

33 ~~2. A SPORTS OR RECREATIONAL FACILITY OR~~
 34 ~~PROGRAM.~~

1 ~~(2) "PERSON IN A POSITION OF AUTHORITY" INCLUDES AN~~
2 ~~INDIVIDUAL WHO:~~

3 ~~(I) IS A VOLUNTEER WITH, UNDER CONTRACT WITH, OR A~~
4 ~~PAID EMPLOYEE OF AN INSTITUTION, A PROGRAM, OR AN ACTIVITY DESCRIBED~~
5 ~~IN PARAGRAPH (1)(II) OF THIS SUBSECTION AND WHO, IN THAT CAPACITY,~~
6 ~~DIRECTS OR SUPERVISES MINORS ENROLLED OR PARTICIPATING IN THE~~
7 ~~INSTITUTION, PROGRAM, OR ACTIVITY; OR~~

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

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

14 ~~(1) IS ENROLLED OR PARTICIPATING IN THE INSTITUTION,~~
15 ~~PROGRAM, OR ACTIVITY AT WHICH THE PERSON IN A POSITION OF AUTHORITY~~
16 ~~WORKS; OR~~

17 ~~(2) WAS PREVIOUSLY ENROLLED OR PARTICIPATING IN THE~~
18 ~~INSTITUTION, PROGRAM, OR ACTIVITY AT THE SAME TIME THE PERSON IN A~~
19 ~~POSITION OF AUTHORITY WAS WORKING AT THE INSTITUTION, PROGRAM, OR~~
20 ~~ACTIVITY.~~

21 ~~(C) (1) UNLESS SPECIFICALLY CHARGED BY THE STATE, A~~
22 ~~VIOLATION OF THIS SECTION MAY NOT BE CONSIDERED A LESSER INCLUDED~~
23 ~~OFFENSE OF ANOTHER CRIME.~~

24 ~~(2) A PROSECUTION OF A VIOLATION OF THIS SECTION DOES NOT~~
25 ~~PRECLUDE A PROSECUTION UNDER § 3-602 OF THIS TITLE.~~

26 ~~(D) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A~~
27 ~~MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT~~
28 ~~EXCEEDING 5 YEARS.~~

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