

Chapter 170

(Senate Bill 460)

AN ACT concerning

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

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

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

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

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

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

~~Article – Courts and Judicial Proceedings~~~~5-106.~~

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

Article – Criminal Law

3-308.

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

(1) means a person who:

(i) is at least 21 years old;

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

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

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

~~¶~~(b) ~~(A)~~ A person may not engage in:

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

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

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

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

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

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

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

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

~~3-325.~~

~~(A) (1) IN THIS SECTION, "PERSON IN A POSITION OF AUTHORITY" MEANS A PERSON WHO:~~

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

~~(II) WORKS AT:~~

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, April 14, 2014.