

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

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 “person in a position of authority” from 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 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; 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)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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 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, 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

(II) 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.