

SB 21_ Criminal Law - Person in a Position of Auth

Uploaded by: Alexa Thomas

Position: FAV



Mary Pat Fannon, Executive Director
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BILL: SB 21

TITLE: Criminal Law - Person in a Position of Authority - Sexual Offenses With a Minor

DATE: February 1, 2023

POSITION: Support

COMMITTEE: Judicial Proceedings

CONTACT: Mary Pat Fannon, Executive Director, PSSAM

The Public School Superintendents' Association of Maryland (PSSAM), on behalf of all twenty-four Maryland local school superintendents, **supports** Senate Bill 21.

Since the passage of the State's initial "person in a position of authority" legislation in 2004, which prohibits certain persons employed in public or private schools from engaging in a sexual act with a minor enrolled at the school that employs the perpetrator, PSSAM continues to strongly support the criminalization of sexual activity between minor students and educators not prohibited under other provisions of state law.

In the absence of the "person in position of authority" law, a school employee may be charged with child abuse if the conduct occurs on school property or while the student is engaged in school activities. However, sexual conduct occurring outside this custodial relationship would not constitute a charge of child abuse and no other criminal charge may be available. Per the legislation passed in 2004, violators can be found guilty of the misdemeanor of fourth degree sexual offense and subject to maximum penalties of a fine of \$1,000 and imprisonment for one year.

Maryland statute defines "person in a position of authority" as a person who is employed by or works as a volunteer in a public or private school and, because of the person's position or occupation, exercises supervision and influence over a minor who attends the school. The law further clarifies that this definition includes a principal, vice principal, teacher, or school counselor. School systems are more suited to administer internal discipline and discharge educators engaging in sexual conduct with students; however, outside of public schools,

communities are not fully protected from perpetrators without the assurance that criminal penalties are available to prosecutors.

Criminal penalties also better ensure that a record of the employee's conduct will be available to future prospective employers, thereby more effectively protecting the safety and welfare of all students. The same rationale that garnered support for the "person in position of authority" law described above should support the updating and expansion of this approach to criminalizing sexual activities between adults and the youth they supervise in other service sectors. Just as school employees, these adults that are entrusted to supervise youth should be held criminally responsible for engaging in sexual conduct with the minors in their care.

For these reasons, PSSAM **supports** Senate Bill 29 and requests a favorable report.

SB 21 West FAV.pdf

Uploaded by: Christopher West

Position: FAV

CHRIS WEST
Legislative District 42
Baltimore and Carroll Counties

Judicial Proceedings Committee



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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February 1, 2023

The Honorable William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East Miller Senate Building
11 Bladen Street
Annapolis, Maryland 21401

Re: Senate Bill – 21 – Criminal Law – Person in a Position of Authority – Sexual Misconduct With a Minor

Dear Chairman Smith and Members of the Committee,

Section 3-308 of the current Maryland Criminal Law Article precludes a narrow class of individuals who are in a position of authority over a minor from engaging in sexual conduct with that minor. It's limited to employees of schools who exercise supervision over students, and the protected class merely consists of minor students, who are students under the age of 18. This definition is far too narrow.

A recent case in Montgomery County exposed the loophole in this law. The victim, then age 17, was receiving private music lessons from a teacher in his 50s. The lessons were conducted in the teacher's home, and the victim's father remained in an adjoining room during the lessons. Behind that closed door, the teacher engaged in sexual conduct, and ultimately sexual intercourse, with the victim. Even though the private music teacher was just as much a person of authority as a music teacher in a school would have been, because the offender was not employed by a school, no prosecution was possible under Section 3-308. The Montgomery County State's Attorney's Office properly examined the case and concluded that it could not prosecute.

Senate Bill 21 aims to close this loophole. It revises the definition of a person in a position of authority to include a person at least 21 years old who is employed or under contract with, or volunteering at, a school, a childcare program, an after-school program, an instructional program for music, dance, art, tutoring, academic enrichment or martial arts or any other program with a similar purpose, a sports, scouting or recreational program, a camp or a religious institution. This list represents an attempt to cover the waterfront of situations in which minors (children under 18 years old) are being supervised by persons over 21 years old in a position of authority.

The bill then provides that if such a person in a position of authority engages in a sexual act, sexual contact or vaginal intercourse with a minor who at the time of the conduct is enrolled or participating in the institution, program, or activity where the person in a position of authority is employed, such a person in a position of authority is guilty of the misdemeanor of sexual offense in the fourth degree and is subject to a year in jail or a fine up to \$1,000 or both. The bill goes on to provide that even if the minor has ceased to be enrolled or participating in the institution, the person in authority still may not engage in a sexual act, sexual conduct, or vaginal intercourse with the minor so long as the minor has not turned 18 years old.

In summary, this bill is a robust measure that truly protects all minors (not just school students) from predatory sexual advances by persons in a position of authority.

I appreciate the Committee's consideration of Senate Bill 21 and am more than happy to

Feinstein Letter of Support SB21.pdf

Uploaded by: Debbie Feinstein

Position: FAV



STATE'S ATTORNEY
JOHN J. MCCARTHY

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DEPUTY STATE'S ATTORNEYS
PETER A. FEENEY
RYAN S. WECHSLER

January 31, 2023

The Honorable William C. Smith, Jr.
Chairperson, Senate Judicial Proceedings Committee
11 Bladen Street
Annapolis, MD 21401

Dear Chairperson Smith:

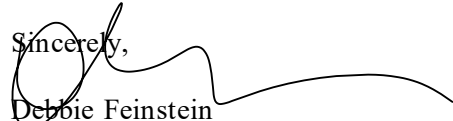
I write in support of SB21—Person in Position of Authority—Sexual Offenses With a Minor. I am the Chief of the Special Victims Division for the Montgomery County State's Attorney's Office and a member of the Montgomery County's Child Advocacy Center's Multidisciplinary Team and Sexual Assault Response Team. I also chair Choose Respect Montgomery, an initiative aimed at reducing teen dating violence and sexual assault. Lastly, I co-chair the Maryland State's Attorneys Association's Special Victims Subcommittee.

Section 3-308 of the Maryland Criminal Law Article currently precludes certain individuals who are in a position of authority over a minor from engaging in sexual conduct with that minor. The current law, however, narrowly defines person in a position of authority. Specifically, a person in a position of authority is defined as: a person who is (i) is at least 21 years old; (ii) is employed 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.

The Montgomery County State's Attorney's Office handled a case that exposed a loophole in this law. The victim, then age 17, was receiving private music lessons from a teacher in his 50s. The lessons were conducted in the teacher's home and the victim's father remained immediately outside the room during the lessons. The adult offender engaged in sexual conduct, and ultimately sexual intercourse, with the victim. Because the offender was not employed by or under contract with a public or private preschool, elementary school, or secondary school, we were unable to prosecute him under 3-308 for the sexual offenses he perpetrated against the victim.

This private music teacher was no less a person in a position of authority than a music teacher working in a school. Many persons in positions of authority over minors are excluded from the current law. SB21 expands the definition of person in position of authority to include teachers, coaches, counselors, and others who work with children outside of the traditional school setting. Individuals who are in any of the roles included in this bill hold positions of trust, and any exploitation of that trust should be criminalized. I strongly urge this Committee to issue a favorable report on SB21.

Sincerely,


Debbie Feinstein
Chief, Special Victims Division
Senior Assistant State's Attorney

SB0021 - FAV - MSAA PGSAO.pdf

Uploaded by: Jessica Garth

Position: FAV

AISHA N. BRAVEBOY
STATE'S ATTORNEY



JASON B. ABBOTT
PRINCIPAL DEPUTY STATE'S ATTORNEY

State's Attorney for Prince George's County
14735 Main Street, Suite M3403
Upper Marlboro, Maryland 20772
301-952-3500

February 1, 2023

Testimony in **Support** of

SB 0021 – Criminal Law – Person in a Position of Authority –
Sexual Offenses with a Minor

Dear Chairman Smith, Vice Chairman Waldstreicher, and Members of the Committee:

I am writing to show my strong support for Senate Bill 0021 on behalf of State's Attorney Aisha Braveboy and the Maryland State's Attorneys' Association, and to urge a favorable report. Passage of Senate Bill 0021 would serve to provide justice to some of the most vulnerable victims in our community.

I serve as the Chief of the Special Victims & Family Violence Unit in Prince George's County. My staff and I carry an extensive caseload of cases involving sexual abuse of children. Unfortunately, there is still a group of cases that we are unable to prosecute because the abuse is not currently prohibited by Maryland law. SB0021 would allow prosecutors to pursue justice in this group of cases.

Under the current version of the Fourth Degree Sexual Offense statute (CR 3-308), a person in a position of authority may not engage in a sexual act, sexual contact, or vaginal intercourse with a minor who at the time of the sexual act, sexual contact, or vaginal intercourse is a student enrolled at a school where the person in a position of authority is employed. A "person in a position of authority" is defined as a person who: (i) is at least 21 years old; (ii) is employed 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. The statute specifically notes that principals, vice principals, teachers, coaches, and school counselors are included in this definition.

While the above listed behavior is abhorrent and is rightly criminalized under the current statute, there are still instances of abuse that cannot be prosecuted. The current statute is limited in its application to abusers who are employed by or under contract with a school. This omits a large population of abusers who are not involved with schools but still have access to and authority over children. For example, after-school programs, art/music/dance tutoring, sports programs, scouting programs, day and overnight camps, religious institutions, and government programs are not currently included under the law. SB0021 expands the definition of a “person in a position of authority” to include these groups and more. The bill also expands the groups to include not just individuals who are employed or under contract, but also those who volunteer and intern.

Importantly, SB0021 also expands the application of the law by allowing the prosecution of abusers in situations where the abuser and the victim were involved in a program at the same time in the past, but the sexual abuse occurred after either the abuser or minor left the program. This expansion directly addresses grooming behavior that occurs when an abuser befriends and prepares his or her victim but waits until the authoritative relationship has formally ended before engaging in sexual abuse.

Abusers are adept at using their positions of authority over minors to build trust and engage in grooming behavior to ultimately cause sexual abuse to these victims. Expansion of CR 3-308 would give prosecutors another tool to address this behavior and seek justice for victims of sexual abuse. For the foregoing reasons, I respectfully urge a favorable report on SB 0021.

Sincerely,



Jessica L. Garth
Chief, Special Victims & Family Violence Unit
State’s Attorney’s Office for Prince George’s County

SB 21.Person in Position of Authority Expansion.pd

Uploaded by: John Woolums

Position: FAV

BILL: Senate Bill 21
TITLE: Criminal Law – Person in a Position of Authority – Sexual Offenses
With a Minor
DATE: February 1, 2023
POSITION: SUPPORT
COMMITTEE: Judicial Proceedings
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE) supports Senate Bill 21.

MABE strongly supported passage of the State’s initial “person in a position of authority” legislation in 2006 to prohibit certain persons employed in public or private schools from engaging in a sexual act or vaginal intercourse with a minor enrolled at the school that employs the perpetrator.

MABE continues to support the law’s criminalization of sexual activity between minor students and educators not prohibited under other provisions of state law. In the absence of the “person in position of authority” law, a school employee may be charged with child abuse if the conduct occurs on school property or while the student is engaged in school activities. However, sexual conduct occurring outside this custodial relationship would not subject to the charge of child abuse and no other criminal charge may be available. Since 2006, violators can be found guilty of the misdemeanor of fourth degree sexual offense and subject to maximum penalties of a fine of \$1,000 and imprisonment for one year.

Maryland statute defines “person in a position of authority” as a person who is employed by or works as a volunteer in a public or private school and, because of the person’s position or occupation, exercises supervision and influence over a minor who attends the school. The law further clarifies that this definition includes a principal, vice principal, teacher, or school counselor. School systems are certainly able to effectively discipline and discharge educators engaging in sexual conduct with students, but communities are not fully protected without the assurance that criminal penalties are available to prosecutors. Criminal penalties also better ensure that a record of the employee’s conduct will be available to prospective employers, thereby more effectively protecting the safety and welfare of all students.

The same rationale that garnered support for the “person in position of authority” law described above should support the updating and expansion of this approach to criminalizing sexual activities between adults and the youth they supervise in other service sectors. Just as school employees, these adults entrusted to supervise youth should be held liable for engaging in sexual conduct with the minors in their care.

For these reasons, MABE requests a favorable report on Senate Bill 21.

SB21 Person in Authority Sexual Offenses with a Mi

Uploaded by: Joyce Lombardi

Position: FAV



Senate Bill 21- Criminal Law – Persons in a Position of Authority - Sexual Offenses With a Minor
Senate Judiciary Committee – February 1, 2023
Testimony of Adam Rosenberg, Executive Director, LifeBridge Health Center for Hope
Position: **SUPPORT**

Center for Hope supports SB21, which would widen the definition of “person in position of authority” under Md. Code, Criminal Law Art. §3- 308 beyond school employees to include several other categories of adults who supervise or instruct minors outside of school, such as private coaches, music tutors, camp counselors, scout leaders, religious instructors, or employees of dance or martial arts programs. SB21 would close the current gap in the criminal law regarding sex offenders who exploit the access, trust, and unequal power dynamic in the leader/student relationship.

Under current Maryland law, if a weekend rec league volleyball coach, for example, were to engage in a sexual relationship with one of his players, the sexual activity could, legally, trigger an investigation of “sexual abuse” under child welfare law, Md Code, Fam. Law §5-701 et seq. The Family Law article includes sexual offenses that are committed by a "person who has responsibility for supervision of the child" or "a person who, because of the person’s position or occupation, exercises authority over the child." Criminal Law §3-308, however, is much narrower: it only applies to school personnel or contractors. Thus, the weekend volleyball coach could not be criminally prosecuted unless the player was under 16 years old. If, on the other hand, a school-based coach engaged in the same relationship with the same 16 or 17 year old student, it would be a prosecutable crime based on the coach’s employment at a public or private school. This bill would thus help protect all 16 and 17 year olds from being exploited from non-school adults in power.

Center for Hope, a subsidiary of LifeBridge Health, provides comprehensive trauma-informed crisis intervention and response services to patients and community members who have experienced child abuse, elder abuse, domestic violence, community/gun violence. Our nationally accredited child advocacy center serves over 1,600 children per year, and operates 24 hours per day, 365 days per year in a multidisciplinary team that, as defined under Md Code, Crim. Proced. Art. § 11-928, responds to children who have been sexually abused or assaulted.

We have assisted children who have been exploited by an array of adults in their lives, ranging from relatives to teachers to private tutors. We applaud the efforts to close the gap in Maryland law and make sure all minors are fully protected by law.

We urge a favorable report on SB21.

Adam Rosenberg, Esq., Executive Director, Center for Hope
arosenberg@lifebridgehealth.org (410) 469-4664

Joyce Lombardi, Esq., Government Relations
Joyce@JRLaw.group (410) 429-7050

VSAB SB21.pdf

Uploaded by: Leslie Frey

Position: FAV



VICTIM SERVICES ADVISORY BOARD

February 1, 2023

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401

Re: Support – SB 21– Criminal Law – Person in Position of Authority

Dear Chairman Smith:

Senate Bill 21 alters Maryland criminal law to expand the categories of individuals who may be prosecuted for engaging in sexual acts with a minor. Specifically, the bill expands the definition of “person in a position of authority” to encompass those working at child-care or other after-school facilities, those tutoring minors or instructing them in music or art, etc. Current law limits the definition of “person in a position of authority,” which creates a loophole where certain abusers can “groom” minors in order to take advantage of them sexually. Senate Bill 21 attempts to close these gaps and expand the protections Maryland law otherwise gives minors by increasing the punishment for those who would use their position to take advantage of minors.

The Victim Services Advisory Board (VSAB) advises the County Council and County Executive on meeting the needs of crime victims. These include victims of a broad range of violent crimes, including rape, domestic violence, sexual assault, and human trafficking. The number and severity of sexual assault and domestic violence cases referred to Montgomery County HHS Trauma Services increased substantially in the last several years when comparing intake data. Therefore, the importance of the VSAB mission is more critical than ever.

In our society there is a fundamental power imbalance between minors and adults in positions of authority. Minors place their trust in these adults based on the assumption that they are looking out for these children’s best interests. This trust should never be violated, but unfortunately it can be and has devastating consequences for the victims. Consequently, expanding the definition of “person in a position of authority” will help to deter such predatory behavior and ensure that those who do commit such crimes are punished fully.

VSAB asks the committee to issue a favorable report on Senate Bill 21.

Sincerely,

Neda Bolourian
VSAB Co-chair

Department of Health and Human Services

SB21 Written testimony -2023.pdf

Uploaded by: Lindsey Carpenter

Position: FAV



CIRCUIT COURT DIVISION
301-600-1523

DISTRICT COURT DIVISION
301-600-2573

CHILD SUPPORT DIVISION
301-600-1538

JUVENILE DIVISION
301-600-2980

J. CHARLES SMITH, III
STATE'S ATTORNEY

STATE'S ATTORNEY'S OFFICE

KIRSTEN N. BROWN
DEPUTY STATE'S ATTORNEY

County Courthouse
100 West Patrick Street
Frederick, Maryland 21701

www.statesattorney.us

DATE: January 31, 2023

BILL NUMBER: SB 21

POSITION: Favorable

Chairman Smith, Vice Chairman Waldstreicher and Members of the Committee:

My name is Lindsey Carpenter and I am an Assistant State's Attorney in the Special Victims Unit at the Frederick County State's Attorney's Office. I am a member of the Frederick County Child Advocacy Center Multi-Disciplinary Team, the Frederick County Sexual Assault Response Team, and a co-chair of the Frederick County Human Trafficking Response Team. I am writing on behalf of the Frederick County State's Attorney's Office and MSAA requesting a favorable report on SB 21.

SB 21 amends the definition of Person in Position of Authority for Fourth Degree Sexual Offenses. Currently, the definition only includes individuals who are employed or contracted by a school, such as teachers, coaches, or administrators. SB 21 recognizes the harsh reality that many sexual predators seek out positions that give them access to children in programs that are not associated with schools such as extracurricular activities, after-school programs, and day camps. Individuals who exploit that power dynamic, are unable to be held accountable under the current law. SB 21 remedies this issue.

In Frederick County, I prosecuted a case involving a martial arts instructor and a student who was 22 years younger than him. The instructor, who was 36 years old, began grooming the student when she was 14 years old. Yet he waited to engage in sexual relations with the student until she turned 16, and he was 38, as he knew that 16 was the age of consent in Maryland. Because the abuse was so frequent, and some incidents occurred during class, I was able to prosecute him under Sexual Abuse of a Minor as he had care and custody of the minor during a few of the incidents. However, there were numerous incidents of abuse that I was unable to prosecute.

SB 21 seeks to close a loophole and protect our children by ensuring that sexual predators are held accountable when they exploit a position where they were entrusted with the safety of our children. When an individual enrolls their child in an after-school program or an extracurricular activity, or sends their child to a day or overnight camp, the last thing that any parent expects is that their child will become a victim of sexual abuse. Yet, these are the locations where sexual predators seek employment, to give them access to children. On behalf of the Frederick County State's Attorney's Office and MSAA I urge this committee to send a clear message to Marylanders that we will protect our children and hold sexual predators accountable by issuing a favorable report on SB 21.

Lindsey M. Carpenter
Assistant State's Attorney
For Frederick County

Person in Authority - testimony - senate 2023 - SB

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

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For more information contact:
Lisae C. Jordan, Esquire
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mcasa.org

Testimony Supporting Senate Bill 21 **Lisae C. Jordan, Executive Director & Counsel** February 1, 2023

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 21.

Senate Bill 21 – Closing the Remaining Loopholes – Sexual Abuse by Persons in Authority

Maryland has gradually amended its laws to protect teenagers from sexual abuse and exploitation by persons in authority. Senate Bill 21 closes the remaining loophole.

This area of the code is complicated. A person with care and custody of a minor (a person under 18) or who is supervising the minor is prohibited from having sex with the minor. Criminal Law §3-602. A law specifically addressing conduct by a "person in authority" is contained in §3-308, defined as a person at least 21 years old; employed by or under contract with a public or private preschool, elementary school, or secondary school; and who because of the person's position or occupation, exercises supervision over a minor who attends the school. Section 3-308 goes on to specify that this includes a principal, vice principal, teacher, coach, or school counselor at a public or private preschool, elementary school, or secondary school. There are also "statutory rape" laws prohibiting sex with minors based on their age, with 14 the age of consent for "sexual contact" (fondling) and 16 the age of consent for acts involving penetration or oral sex. On top of all of that, §3-709 prohibits "sextortion" using a wide range of threats, including threats of emotional distress.

Still, there continues to be loopholes which allow persons in authority to engage in sexual activities with teenagers with impunity (either 14-17 year olds or 16-17 year olds, depending on the activity). These include volunteers, such as Boy Scout leaders; instructors at extracurricular activities, such as gymnastics training facilities; and day care providers. SB21 closes these remaining loopholes.

Children who are sexually abused often have anxiety, poor self-esteem, dysfunctional relationships, eating disorders, and post-traumatic stress syndrome (PTSD). Wilson, D. & Severson, M. "Long-term Health Outcomes of Child Sexual Abuse," American Nurse Today (October 2012). When a teen is sexually exploited by a person in authority, the harm does not vary based on the perpetrator's employment status or location. Maryland should recognize the inherent power imbalance between teens and persons in authority and close the remaining loopholes in our laws.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to report favorably on Senate Bill 21**

Letter of Support SB21.pdf

Uploaded by: Molly Cupid

Position: FAV



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Phone: 240-777-4699 FAX: 240-777-4470
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Where hope and healing take root

January 30, 2023

The Honorable William Smith & Members of the Senate Judicial Proceedings Committee
Chairperson, Senate Judicial Proceedings Committee
11 Bladen Street
Annapolis, MD 21401

Dear Chairperson Smith and JPR Committee Members:

I write in support of SB21 – Person in Position of Authority – Sexual Offenses with a Minor. I am the Clinical Director of the Tree House Child Advocacy Center of Montgomery County, MD. I am a member of the Montgomery County Child Advocacy Center’s Multi Disciplinary Team and the Child Fatality Review Team for Montgomery County. I am certified to provide multiple evidence based trauma informed treatment modalities including Trauma Focused Cognitive Behavioral Therapy (TF-CBT) and Child and Family Traumatic Stress Intervention (CFTSI). I am also a trained forensic interviewer and have previously investigated allegations of child sexual abuse for Montgomery County Child Welfare Services.

Section 3-308 of the Maryland Criminal Law Article currently precludes certain individuals who are in a position of authority over a minor from engaging in sexual conduct with that minor. The current law, however, narrowly defines person in a position of authority. Specifically, a person in a position of authority is defined as: a person who is (i) is at least 21 years old; (ii) is employed 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.

I believe not including persons in authority who are independently employed in this law creates a loophole that allows for ongoing abuse and exploitation of older teens. Sixteen and 17 year old children are a particularly vulnerable segment of the population in that they are often allowed the opportunity for increased independence which results in less supervision and oversight. Also, 16 and 17 year olds often feel they know better than their parents and that their parents couldn’t possibly understand their feelings or difficult situations in which they find themselves, all of which is developmentally appropriate.

When a teenager is involved with an extracurricular activity, it is most likely something they’re interested in and have chosen to pursue despite it not being required, taking away time in their day that they could be spending with friends or online or doing basically anything else, and being logistically more complicated (eg needing transportation to/from, costing additional money, etc).

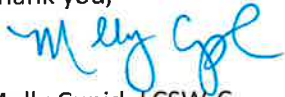
Additionally, by being self-employed, the coaches/teachers/leaders of such activities can avoid background checks that would be required if they were to teach as part of an institution such as Montgomery County Public Schools.

Because these children are voluntarily engaging in these activities with these adults, it can be argued that these adults are, in fact, more influential authority figures than teachers at school with whom teens are required to interact. Older teens, especially, may view these relationships as outside of the usual adult-child relationship making them more open to accepting abusive and exploitative advances and believing they are capable of consenting despite the power imbalance inherent in these relationships.

If these adults are included in the law as persons in authority, it would provide legal recourse to protect the children in our community from predators who exploit the law and our children for their own selfish motives.

I strongly urge this committee to approve SB21.

Thank you,



Molly Cupid, LCSW-C

Clinical Director

The Tree House CAC of Montgomery County, MD

SB0021_DHS_FAV.pdf

Uploaded by: Rachel Sledge

Position: FAV

Date: February 1, 2023

Bill number: SB0021

Committee: Senate Judicial Proceedings Committee

Bill title: Criminal Law – Person in a Position of Authority – Sexual Offenses with a Minor

DHS Position: **FAVORABLE**

The Maryland Department of Human Services (DHS) thanks the Committee for the opportunity to provide written support for Senate Bill 21 (SB 21).

DHS serves as the state’s primary social service provider and child protective services are implemented statewide through the Local Department of Social Services (LDSS). Senate Bill 21 would expand the designation of “person in authority” beyond the current definition of individuals working within the educational arena to a broader array of employees or volunteers that children or adolescents interact with on a daily basis. This may include child care facilities; a commercial or nonprofit instruction program for music, dance, art, tutoring, academic enrichment, martial arts or a program with similar purpose; sports, scouting or recreational activity or program; a day or overnight camp; religious institution; and any unit of local, state, or federal government that supervises children.

DHS is committed to providing protection to children and adolescents and believes that the passage of SB 21 would offer additional protections for child victims of sexual offenses and could work to provide additional support to the families served by the LDSS. By expanding these definitions to provide a broader class of person who can be held criminally liable of a fourth degree sexual offense of children served at the LDSS, offenders have a greater chance of being added to the national registry and having their access to children limited. Additionally, Senate Bill 21 may allow the child/adolescent victims to receive services only offered through the criminal justice system (ex., Victim Assistance and Sexual Assault Program).

The Department is grateful to offer our support for SB 21 and requests a favorable report.

Bender Letter of Support SB21.pdf

Uploaded by: Samantha Bender

Position: FAV

SAMANTHA T. BENDER, PH.D., LLC
CLINICAL PSYCHOLOGIST

January 31, 2023

The Honorable William Smith & Members of the Senate Judicial Proceedings Committee
Chairperson, Senate Judicial Proceedings Committee
11 Bladen Street
Annapolis, MD 21401

Dear Chairperson Smith and JPR Committee Members:

I write in support of SB21 –Criminal Law –Fourth Degree Sexual Offense –Person in Position of Authority. I am a psychologist in Montgomery County, MD who works with children, adolescents, and their families. I am also the President of the Board of Directors of the Tree House Child Advocacy Center of Montgomery County, a nonprofit agency dedicated to reducing trauma and promoting healing for child and adolescent victims of sexual abuse, physical abuse, and neglect.

Current Maryland law precludes certain individuals who are in a position of authority of a minor from engaging in sexual conduct with that minor. However, the law defines “person in position of authority” too narrowly, requiring such a person to be employed by or under contract with a public or private preschool, elementary school, or secondary school. The children and adolescents of Maryland, and especially our teens who are 16 and 17, however, come in contact with many adults in positions of authority who are not employed by their schools. Examples of such adults might include those providing private academic tutoring, preparation for high-stakes testing (e.g., SATs, ACTs, AP exams), assistance with college applications, music lessons, art lessons, or athletic coaching, as well as youth group leaders and leaders of extracurricular activities of all kinds occurring outside the school setting. Peer-reviewed studies of teens’ relationships with nonparental adults have shown that those adults exert a strong influence on the teens’ adjustment and therefore, that all such adults are in fact in a position of power over the teens.

Additionally, research has identified that one of the defining factors of such relationships is the way in which they blend the qualities of more traditional adult-teen relationships, such as teaching, advising, or mentoring, with qualities more typically associated with teen peer relationships, such as being nonjudgmental, nonpunitive, and fun. That blend of qualities puts teens at risk for conceptualizing the relationships as peer relationships without recognizing the power differential between themselves and the adults. Older teens of 16 and 17 are at increased risk of that misconceptualization of the relationships because developmentally, those older teens see themselves as if they were adults and are looking to establish their credibility with those around them.

In that context, teens in general and 16- and 17-year-olds in particular, are exquisitely vulnerable to misinterpreting sexual or romantic overtures from the adults as validation of their credibility as young adults. At the same time, those sexual or romantic overtures are dangerous to teens, as the research indicates that teenagers who have been the victims of

those overtures are significantly more likely than their peers to develop mental health problems and to perform poorly in school. Moreover, the research shows that those negative outcomes not only occur immediately following the sexual behavior but also persist for years afterwards.

It is incumbent on all adults who are involved in teens' lives, then, to recognize their position of power and authority over those teens and to ensure that they never abuse that authority. While we, as a society, already recognize that certain adults are in positions of authority, such as family members and school employees, it is also important for us to recognize the position of power and authority that adults outside of teens' school settings hold over our teens and protect teens from those adults who abuse their power through sexual or romantic overtures.

I strongly urge this Committee to issue a favorable report on SB21.

Sincerely,

A handwritten signature in black ink that reads "STBender, Ph.D." The signature is written in a cursive, slightly slanted style.

Samantha T. Bender, Ph.D.
Licensed Psychologist

SB 21 - Scott Shellenberger.pdf

Uploaded by: Scott Shellenberger

Position: FAV

Bill Number: SB 21

**Scott D. Shellenberger, State's Attorney for Baltimore County
Support**

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT OF SENATE BILL 21
PERSON IN POSITION OF AUTHORITY – SEXUAL OFFENSES WITH MINOR

I write in support of Senate Bill 21 that expands the definition of person in a position of authority with regard to sex offenses committed against minors.

Criminal Law § 3-308 has made unlawful sexual acts with a minor when committed by a "person in a position of authority," a crime. That statute limited those persons in a position of authority to those who work for schools.

The reality of this day and age is that our minor children often have contact with many adults who are not connected to a school but who oversee their sports teams, music groups, art groups, scout troops and the list can go on and on. These adults exercise as much authority over our children as school employees.

In Baltimore County we have had just such cases. A fencing coach – at a private fencing facility. The fencing coach offered to drive a 16 year old female home after practice was over. The parents agreed. He would drive her to a remote area where they would have sex and then drop her off at her house. He was found not guilty of sexual offenses. We could not use Criminal Law § 3-308 because he did not fall in the group of authorized persons and there was a debate about consent. Clearly the age difference and his position as her coach put him in a position of authority. Had he been a teacher, CR § 3-308 could have been applied.

Senate Bill 21 is a common sense approach to how those in authority in our children's lives should be held to the same standards as teachers when it comes to violations of trust.

I urge a favorable report.

SB21 FAIR FWA.pdf

Uploaded by: Brenda Jones

Position: FWA

Favorable with Amendments SB-21
Criminal Law – Person in a Position of Authority – Sexual Offenses With a Minor

Families Advocating Intelligent Registries (FAIR) seeks rational, constitutional sexual offense laws and policies for persons accused and convicted of sexual offenses. We have no concerns with expanding the range of situations in which a person can be considered as having a position of authority, but have one very serious concern which we hope can be addressed.

The proposed addition of 3-308 (c)(1)(ii) sets no outer time limit for applying the additional “position of authority” penalty.

Here is an example: A teenager was a paid assistant in a gym or county day camp for several years, until they left for college. Now that person is over 21, and it has been five-plus years since their paid assistantship. They start dating and having sex with a teen they knew as a young child in that gym or day camp. The relationship is punishable under current statute, of course, because of the age differential. But should the “position of authority” enhancement still apply with so many years between the former relationship and current transgression?

FAIR recommends that a time limit be added, keeping the “position of authority” enhancement to a more reasonable timeframe, during and only shortly after the teacher, coach, or counselor role exists.

Sincerely,



Brenda V. Jones, Executive Director
Families Advocating Intelligent Registries
Cell: 301-318-8964

2023-02-01 SB 21 (Support with Amendment).pdf

Uploaded by: Jer Welter

Position: FWA

ANTHONY G. BROWN
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February 1, 2023

TO: The Honorable William C. Smith, Jr., Chair, Judicial Proceedings Committee

FROM: Jer Welter, Assistant Attorney General

RE: SB 21 - Criminal Law - Person in a Position of Authority - Sexual Offenses With a Minor
(SUPPORT WITH AMENDMENT)

The Office of the Attorney General asks the Judicial Proceedings Committee to issue a favorable with amendment report on Senate Bill 21.

The Office of the Attorney General fully supports Senator West's bill, which expands the definition of a "person in a position of authority" over a minor for purposes of the prohibition of sexual activity by such persons with minors under the fourth-degree sexual offense statute (§ 3-308 of the Criminal Law Article). Under the bill, the statute would more clearly cover a variety of adults in positions of authority, such as coaches, extracurricular instructors, childcare providers, and camp counselors, who under no circumstances should be permitted to engage in sexual activity with the children in their care.

We suggest one amendment, which will clarify the statute and avoid unintended consequences when prosecuting fourth-degree sexual offenses, including by persons in positions of authority over minors. In *State v. Frazier*, 468 Md. 627 (2020), the Supreme Court of Maryland held that fourth-degree sexual offense is a greater-inclusive offense of second-degree assault. Second-degree assault can include any offensive touching without consent or justification, and need not be sexual. It carries a potential sentence of up to 10 years' imprisonment—higher than the one-year potential sentence for the "greater" offense of fourth-degree sexual offense.

What the decision in *Frazier* means in practice is that, if a prosecutor charges a defendant with both fourth-degree sexual offense and second-degree assault, it can have the paradoxical effect of capping the potential maximum penalty to only the lower one-

The Honorable William C. Smith, Jr., Chair, Judicial Proceedings Committee
February 1, 2023
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year sentence that is allowed for fourth degree sexual offense. Therefore, in order to preserve appropriate sentencing discretion by the court for particularly serious sexual crimes, the prosecutor must *avoid* charging fourth-degree sexual offense and instead charge only second-degree assault—which fails to acknowledge the distinctively sexual nature of such offenses, including when committed by a person in a position of authority over a minor.

The practical solution is to include an anti-merger provision in the fourth-degree sexual offense statute. This would ensure that courts may sentence separately for fourth-degree sexual offense and take full account of the sexual nature of this form of violation, including by persons in positions of authority. This could be accomplished by amending the proposed new subsection (e) in the first reader of Senate Bill 21 (page 3, lines 35–36 and page 4, line 1) to read: “A violation of this section may not be considered a greater inclusive crime of any other crime and, unless specifically charged by the State, may not be considered a lesser included crime of any other crime.”

The Office of the Attorney General urges the Committee to favorably report Senate Bill 21 with that amendment.

cc: Members of the Committee