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By: **Delegates Petzold, Hecht, Grosfeld, and Snodgrass**  
Introduced and read first time: January 28, 2002  
Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Sex Offenses - Person in Position of Authority**

3 FOR the purpose of establishing that it is a felony for a certain person in a position of  
4 authority to engage in a sexual act, sexual contact, or vaginal intercourse with a  
5 minor or to take advantage of or unjustly or improperly use a minor for certain  
6 purposes; making certain provisions related to sexual offenses applicable to the  
7 offense; defining a certain term; altering a certain definition; establishing  
8 certain penalties; and generally relating to the commission of a sexual offense  
9 against a minor by a person in a position of authority.

10 BY renumbering

11 Article - Criminal Law  
12 Section 3-314 through 3-321, respectively  
13 to be Section 3-315 through 3-322, respectively  
14 Annotated Code of Maryland  
15 (As enacted by Chapter \_\_\_\_\_ (H.B. 11) of the Acts of the General Assembly of  
16 2002)

17 BY repealing and reenacting, without amendments,

18 Article - Criminal Law  
19 Section 3-301(e) and (g)  
20 Annotated Code of Maryland  
21 (As enacted by Chapter \_\_\_\_\_ (H.B. 11) of the Acts of the General Assembly of  
22 2002)

23 BY repealing and reenacting, with amendments,

24 Article - Criminal Law  
25 Section 3-301(f)  
26 Annotated Code of Maryland  
27 (As enacted by Chapter \_\_\_\_\_ (H.B. 11) of the Acts of the General Assembly of  
28 2002)

29 BY adding to

1 Article - Criminal Law  
 2 Section 3-314  
 3 Annotated Code of Maryland  
 4 (As enacted by Chapter \_\_\_\_\_ (H.B. 11) of the Acts of the General Assembly of  
 5 2002)

6 BY repealing and reenacting, with amendments,  
 7 Article - Criminal Law  
 8 Section 3-315 through 3-319  
 9 Annotated Code of Maryland  
 10 (As enacted by Chapter \_\_\_\_\_ (H.B. 11) of the Acts of the General Assembly of  
 11 2002)  
 12 (As enacted by Section 1 of this Act)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 14 MARYLAND, That Section(s) 3-314 through 3-321, respectively, of Article - Criminal  
 15 Law of the Annotated Code of Maryland (as enacted by Chapter \_\_\_\_ (H.B. 11) of the  
 16 Acts of the General Assembly of 2002) be renumbered to be Section(s) 3-315 through  
 17 3-322, respectively.

18 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
 19 read as follows:

20 **Article - Criminal Law**

21 3-301.

22 (e) (1) "Sexual act" means any of the following acts, regardless of whether  
 23 semen is emitted:

24 (i) analingus;

25 (ii) cunnilingus;

26 (iii) fellatio;

27 (iv) anal intercourse, including penetration, however slight, of the  
 28 anus; or

29 (v) an act:

30 1. in which an object penetrates, however slightly, into  
 31 another individual's genital opening or anus; and

32 2. that can reasonably be construed to be for sexual arousal  
 33 or gratification, or for the abuse of either party.

34 (2) "Sexual act" does not include:

1 (i) vaginal intercourse; or

2 (ii) an act in which an object penetrates an individual's genital  
3 opening or anus for an accepted medical purpose.

4 (f) (1) "Sexual contact", as used in [ §§ 3-307 and 3-308 ] §§ 3-307, 3-308,  
5 AND 3-314 of this subtitle, means an intentional touching of the victim's or actor's  
6 genital, anal, or other intimate area for sexual arousal or gratification, or for the  
7 abuse of either party.

8 (2) "Sexual contact" includes an act:

9 (i) in which a part of an individual's body, except the penis, mouth,  
10 or tongue, penetrates, however slightly, into another individual's genital opening or  
11 anus; and

12 (ii) that can reasonably be construed to be for sexual arousal or  
13 gratification, or for the abuse of either party.

14 (3) "Sexual contact" does not include:

15 (i) a common expression of familial or friendly affection; or

16 (ii) an act for an accepted medical purpose.

17 (g) (1) "Vaginal intercourse" means genital copulation, whether or not  
18 semen is emitted.

19 (2) "Vaginal intercourse" includes penetration, however slight, of the  
20 vagina.

21 3-314.

22 (A) (1) IN THIS SECTION, "PERSON IN A POSITION OF AUTHORITY" MEANS A  
23 PERSON WHO IS AT LEAST 21 YEARS OLD AND WHO BECAUSE OF POSITION OR  
24 OCCUPATIONAL STATUS EXERCISES SUPERVISION OR INFLUENCE OVER A MINOR.

25 (2) "PERSON IN A POSITION OF AUTHORITY" INCLUDES A PAID OR  
26 UNPAID WORKER AT AN EDUCATIONAL INSTITUTION THAT A MINOR ATTENDS OR  
27 ATTENDED.

28 (B) A PERSON IN A POSITION OF AUTHORITY MAY NOT:

29 (1) ENGAGE IN SEXUAL CONTACT, A SEXUAL ACT, OR VAGINAL  
30 INTERCOURSE WITH A MINOR; OR

31 (2) TAKE ADVANTAGE OF OR IMPROPERLY USE A MINOR FOR THE  
32 PERSON'S OWN SEXUAL PLEASURE, AMUSEMENT, GRATIFICATION, OR INTEREST.

1 (C) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY  
2 AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A  
3 FINE NOT EXCEEDING \$10,000 OR BOTH.

4 (2) THE SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE  
5 FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME  
6 BASED ON THE ACT OR ACTS ESTABLISHING THE VIOLATION OF THIS SECTION.

7 3-315.

8 If a person is transported with the intent to violate a provision of §§ 3-303  
9 through [3-313] 3-314 of this subtitle, and the intent is followed by actual violation of  
10 a provision of §§ 3-303 through [3-313] 3-314 of this subtitle, the defendant may be  
11 tried in the appropriate court in a county where the transportation was offered,  
12 solicited, begun, continued, or ended.

13 3-316.

14 (a) An indictment, information, or warrant for a crime under §§ 3-303 through  
15 [3-313] 3-314 of this subtitle is sufficient if it substantially states:

16 "(name of defendant) on (date) in (county) committed a rape or sexual offense on  
17 (name of victim) in violation of (section violated) against the peace, government, and  
18 dignity of the State."

19 (b) In a case in which the general form of indictment, information, or warrant  
20 described in subsection (a) of this section is used, the defendant is entitled to a bill of  
21 particulars specifically setting forth the allegations against the defendant.

22 3-317.

23 (a) Except as provided in subsections (b) and (c) of this section, a person may  
24 not be prosecuted under § 3-303, § 3-304, § 3-307, [or] § 3-308, OR § 3-314 of this  
25 subtitle for a crime against a victim who was the person's legal spouse at the time of  
26 the alleged rape or sexual offense.

27 (b) A person may be prosecuted under § 3-303(a), § 3-304(a)(1), [or] §  
28 3-307(a)(1)(i) and (ii) 1 or 2, OR § 3-314 of this subtitle for a crime against the person's  
29 legal spouse if:

30 (1) at the time of the alleged crime the person and the person's legal  
31 spouse have lived apart, without cohabitation and without interruption:

32 (i) under a written separation agreement executed by the person  
33 and the spouse; or

34 (ii) for at least 3 months immediately before the alleged rape or  
35 sexual offense; or

1           (2)     the person in committing the crime uses force and the act is without  
2 the consent of the spouse.

3           (c)     A person may be prosecuted under § 3-303, § 3-304, § 3-307, [or] § 3-308,  
4 OR § 3-314 of this subtitle for a crime against the person's legal spouse if at the time of  
5 the alleged crime the person and the spouse live apart, without cohabitation and  
6 without interruption, under a decree of limited divorce.

7 3-318.

8           (a)     Evidence relating to a victim's reputation for chastity and opinion evidence  
9 relating to a victim's chastity may not be admitted in a prosecution for rape, a sexual  
10 offense in the first or second degree, attempted rape, or an attempted sexual offense  
11 in the first or second degree, OR A PROSECUTION UNDER § 3-314 OF THIS SUBTITLE.

12          (b)     Evidence of a specific instance of a victim's prior sexual conduct may be  
13 admitted in a prosecution for rape, a sexual offense in the first or second degree,  
14 attempted rape, or an attempted sexual offense in the first or second degree, OR A  
15 PROSECUTION UNDER § 3-314 OF THIS SUBTITLE, only if the judge finds that:

16                 (1)     the evidence is relevant;

17                 (2)     the evidence is material to a fact in issue in the case;

18                 (3)     the inflammatory or prejudicial nature of the evidence does not  
19 outweigh its probative value; and

20                 (4)     the evidence:

21                         (i)     is of the victim's past sexual conduct with the defendant;

22                         (ii)    is of a specific instance of sexual activity showing the source or  
23 origin of semen, pregnancy, disease, or trauma;

24                         (iii)   supports a claim that the victim has an ulterior motive to  
25 accuse the defendant of the crime; or

26                         (iv)    is offered for impeachment after the prosecutor has put the  
27 victim's prior sexual conduct in issue.

28          (c)     (1)     Evidence described in subsection (a) or (b) of this section may not be  
29 referred to in a statement to a jury or introduced in a trial unless the court has first  
30 held a closed hearing under paragraph (2) of this subsection and determined that the  
31 evidence is admissible.

32                 (2)     The court may reconsider a ruling excluding the evidence and hold an  
33 additional closed hearing if new information is discovered during the course of the  
34 trial that may make the evidence admissible.

1 3-319.

2 In a criminal prosecution under §§ 3-303 through [3-313] 3-314 of this subtitle,  
3 a judge may not instruct the jury:

4 (1) to examine the testimony of the prosecuting witness with caution,  
5 solely because of the nature of the charge;

6 (2) that the charge is easily made or difficult to disprove, solely because  
7 of the nature of the charge; or

8 (3) to follow another similar instruction, solely because of the nature of  
9 the charge.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 2002.