
By: **Senators Green and Mitchell**
Introduced and read first time: January 28, 2002
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Sexual Acts Between Employers or Supervisors and Minor**
3 **Employees**

4 FOR the purpose of prohibiting an employer or a person who regularly exercises
5 supervisory authority over an employee from engaging in certain sexual acts
6 and forms of sexual contact with certain minor employees; making the offense a
7 misdemeanor; making certain provisions related to sexual offenses applicable to
8 the offense; altering a certain definition; establishing certain penalties; and
9 generally relating to the commission of a sexual offense against a minor
10 employee by an employer or a person who regularly exercises supervisory
11 authority over an employee.

12 BY renumbering
13 Article - Criminal Law
14 Section 3-314 through 3-321, respectively
15 to be Section 3-315 through 3-322, respectively
16 Annotated Code of Maryland
17 (As enacted by Chapter _____ (H.B. 11) of the Acts of the General Assembly of
18 2002)

19 BY repealing and reenacting, without amendments,
20 Article - Criminal Law
21 Section 3-301(e) and (g)
22 Annotated Code of Maryland
23 (As enacted by Chapter _____ (H.B. 11) of the Acts of the General Assembly of
24 2002)

25 BY repealing and reenacting, with amendments,
26 Article - Criminal Law
27 Section 3-301(f)
28 Annotated Code of Maryland
29 (As enacted by Chapter _____ (H.B. 11) of the Acts of the General Assembly of
30 2002)

1 BY adding to
 2 Article - Criminal Law
 3 Section 3-314
 4 Annotated Code of Maryland
 5 (As enacted by Chapter _____ (H.B. 11) of the Acts of the General Assembly of
 6 2002)

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

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 15 MARYLAND, That Section(s) 3-314 through 3-321, respectively, of Article - Criminal
 16 Law of the Annotated Code of Maryland (as enacted by Chapter ____ (H.B. 11) of the
 17 Acts of the General Assembly of 2002) be renumbered to be Section(s) 3-315 through
 18 3-322, respectively.

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

21 **Article - Criminal Law**

22 3-301.

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

25 (i) analingus;

26 (ii) cunnilingus;

27 (iii) fellatio;

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

30 (v) an act:

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

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

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

2 (i) vaginal intercourse; or

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

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

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

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

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

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

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

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

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

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

22 3-314.

23 (A) AN EMPLOYER OR A PERSON WHO REGULARLY EXERCISES SUPERVISORY
24 AUTHORITY OVER AN EMPLOYEE MAY NOT ENGAGE IN A SEXUAL ACT, SEXUAL
25 CONTACT, OR VAGINAL INTERCOURSE WITH AN EMPLOYEE IF:

26 (1) THE EMPLOYEE IS A MINOR; AND

27 (2) THE EMPLOYER OR PERSON WHO REGULARLY EXERCISES
28 SUPERVISORY AUTHORITY OVER THE EMPLOYEE IS AT LEAST 4 YEARS OLDER THAN
29 THE EMPLOYEE.

30 (B) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
31 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
32 EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING \$1,000 OR BOTH.

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

4 3-315.

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

10 3-316.

11 (a) An indictment, information, or warrant for a crime under §§ 3-303 through
12 [3-313] 3-314 of this subtitle is sufficient if it substantially states:

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

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

19 3-317.

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

24 (b) A person may be prosecuted under § 3-303(a), § 3-304(a)(1), [or] §
25 3-307(a)(1)(i) and (ii)1 or 2, OR § 3-314 of this subtitle for a crime against the person's
26 legal spouse if:

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

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

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

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

35 (c) A person may be prosecuted under § 3-303, § 3-304, § 3-307, [or] § 3-308,
36 OR § 3-314 of this subtitle for a crime against the person's legal spouse if at the time of

1 the alleged crime the person and the spouse live apart, without cohabitation and
2 without interruption, under a decree of limited divorce.

3 3-318.

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

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

12 (1) the evidence is relevant;

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

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

16 (4) the evidence:

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

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

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

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

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

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

31 3-319.

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

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

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

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

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