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By: **Delegates Petzold, Amedori, Dumais, Eckardt, Kirk, Lee, Madaleno,  
Mandel, Menes, Montgomery, Murray, O'Donnell, Rudolph, and Stern**  
Introduced and read first time: February 6, 2003  
Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Sexual Crimes and Reporting Requirements - Person in**  
3 **Position of Authority**

4 FOR the purpose of establishing that it is a felony for a certain person in a position of  
5 authority to engage in a sexual act, sexual contact, or vaginal intercourse with a  
6 minor or to take advantage of or unjustly or improperly use a minor for certain  
7 purposes; providing that a sentence imposed for a certain crime may be separate  
8 from and consecutive to or concurrent with a sentence for certain crimes;  
9 establishing that it is a misdemeanor for a person who has reason to believe that  
10 a certain crime has been committed not to report that crime to a local law  
11 enforcement agency except under certain circumstances; establishing certain  
12 penalties; making certain provisions relating to sexual crimes applicable to a  
13 certain crime; defining a certain term; altering a certain definition; and  
14 generally relating to sexual crimes and reporting requirements.

15 BY renumbering  
16 Article - Criminal Law  
17 Section 3-314 through 3-323, respectively  
18 to be Section 3-316 through 3-325, respectively  
19 Annotated Code of Maryland  
20 (2002 Volume)

21 BY repealing and reenacting, without amendments,  
22 Article - Criminal Law  
23 Section 3-301(e) and (g)  
24 Annotated Code of Maryland  
25 (2002 Volume)

26 BY repealing and reenacting, with amendments,  
27 Article - Criminal Law  
28 Section 3-301(f)  
29 Annotated Code of Maryland

1 (2002 Volume)

2 BY adding to

3 Article - Criminal Law

4 Section 3-314 and 3-315

5 Annotated Code of Maryland

6 (2002 Volume)

7 BY repealing and reenacting, with amendments,

8 Article - Criminal Law

9 Section 3-318 through 3-322

10 Annotated Code of Maryland

11 (2002 Volume)

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 3-323, respectively, of Article - Criminal  
15 Law of the Annotated Code of Maryland be renumbered to be Section(s) 3-316  
16 through 3-325, respectively.

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

19 **Article - Criminal Law**

20 3-301.

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

23 (i) analingus;

24 (ii) cunnilingus;

25 (iii) fellatio;

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

28 (v) an act:

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

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

33 (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], 3-308, AND 3-314  
5 of this subtitle, means an intentional touching of the victim's or actor's genital, anal,  
6 or other intimate area for sexual arousal or gratification, or for the abuse of either  
7 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) IN THIS SECTION, "PERSON IN A POSITION OF AUTHORITY":

23 (1) MEANS A PERSON AT LEAST 21 YEARS OF AGE AND WHO, BECAUSE  
24 OF POSITION OR OCCUPATIONAL STATUS, EXERCISES SUPERVISION OR INFLUENCE  
25 OVER A MINOR; AND

26 (2) INCLUDES A PAID OR UNPAID WORKER AT AN EDUCATIONAL  
27 INSTITUTION THAT A MINOR ATTENDS OR 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) A 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 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON  
9 WHO HAS REASON TO BELIEVE THAT A MINOR HAS BEEN SUBJECTED TO A  
10 VIOLATION OF § 3-314 OF THIS SUBTITLE SHALL NOTIFY A LOCAL LAW  
11 ENFORCEMENT UNIT.

12 (B) (1) A PERSON IS NOT REQUIRED TO PROVIDE NOTICE UNDER  
13 SUBSECTION (A) OF THIS SECTION:

14 (I) IN VIOLATION OF A PRIVILEGE UNDER § 9-108 OF THE COURTS  
15 ARTICLE;

16 (II) IF THE NOTICE WOULD DISCLOSE MATTER COMMUNICATED IN  
17 CONFIDENCE BY A CLIENT TO THE CLIENT'S ATTORNEY OR OTHER INFORMATION  
18 RELATING TO THE REPRESENTATION OF A CLIENT; OR

19 (III) IN VIOLATION OF ANY CONSTITUTIONAL RIGHT TO ASSISTANCE  
20 OF COUNSEL.

21 (2) A MINISTER, CLERGYMAN, OR PRIEST OF AN ESTABLISHED CHURCH  
22 OF ANY DENOMINATION IS NOT REQUIRED TO PROVIDE NOTICE UNDER SUBSECTION  
23 (A) OF THIS SECTION IF THE NOTICE WOULD DISCLOSE MATTER IN RELATION TO ANY  
24 COMMUNICATION DESCRIBED IN § 9-111 OF THE COURTS ARTICLE AND:

25 (I) THE COMMUNICATION WAS MADE TO THE MINISTER,  
26 CLERGYMAN, OR PRIEST IN A PROFESSIONAL CHARACTER IN THE COURSE OF  
27 DISCIPLINE ENJOINED BY THE CHURCH TO WHICH THE MINISTER, CLERGYMAN, OR  
28 PRIEST BELONGS; AND

29 (II) THE MINISTER, CLERGYMAN, OR PRIEST IS BOUND TO  
30 MAINTAIN THE CONFIDENTIALITY OF THAT COMMUNICATION UNDER CANON LAW,  
31 CHURCH DOCTRINE, OR PRACTICE.

32 (C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR  
33 AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$ 1,000.

34 3-318.

35 If a person is transported with the intent to violate a provision of §§ 3-303  
36 through 3-312, § 3-314, [or § 3-315] § 3-316, OR § 3-317 of this subtitle, and the  
37 intent is followed by actual violation of a provision of §§ 3-303 through 3-312, §

1 3-314, [or § 3-315] § 3-316, OR § 3-317 of this subtitle, the defendant may be tried in  
2 the appropriate court in a county where the transportation was offered, solicited,  
3 begun, continued, or ended.

4 3-319.

5 (a) An indictment, information, or warrant for a crime under §§ 3-303 through  
6 3-312 [or § 3-314], § 3-314, OR § 3-316 of this subtitle is sufficient if it substantially  
7 states:

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

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

14 3-320.

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

19 (b) A person may be prosecuted under § 3-303(a), § 3-304(a)(1), [or] §  
20 3-307(a)(1)(i) and (ii)1 or 2, OR § 3-314 of this subtitle for a crime against the person's  
21 legal spouse if:

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

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

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

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

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

34 3-321.

35 (a) Evidence relating to a victim's reputation for chastity and opinion evidence  
36 relating to a victim's chastity may not be admitted in a prosecution for rape, a sexual

1 offense in the first or second degree, attempted rape, [or] an attempted sexual  
2 offense in the first or second degree, OR A VIOLATION OF § 3-314 OF THIS SUBTITLE.

3 (b) Evidence of a specific instance of a victim's prior sexual conduct may be  
4 admitted in a prosecution for rape, a sexual offense in the first or second degree,  
5 attempted rape, [or] an attempted sexual offense in the first or second degree, OR A  
6 VIOLATION OF § 3-314 OF THIS SUBTITLE only if the judge finds that:

7 (1) the evidence is relevant;

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

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

11 (4) the evidence:

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

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

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

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

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

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

26 3-322.

27 In a criminal prosecution under §§ 3-303 through 3-312, § 3-314, [or § 3-315]  
28 § 3-316, OR § 3-317 of this subtitle, a judge may not instruct the jury:

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

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

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

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 October 1, 2003.