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By: **Delegates ~~Hennessy~~, Maver, Petzold, Jameson, Levy, McComas,  
O'Donnell, Shank, Smigiel, and Sophocleus**

Introduced and read first time: January 31, 2005

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2005

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Crimes - Fourth Degree Sexual Offense - Person in Position of Authority**  
3 **and Student**

4 FOR the purpose of prohibiting a person in a position of authority from engaging in a  
5 sexual act, sexual contact, or vaginal intercourse with a certain person under a  
6 certain age under certain circumstances; defining a certain term; providing for a  
7 certain statute of limitations for the prosecution of certain misdemeanors  
8 created by this Act; and generally relating to a sexual offense involving a person  
9 in a position of authority and a person under a certain age under certain  
10 circumstances.

11 BY adding to  
12 Article - Courts and Judicial Proceedings  
13 Section 5-106(aa)  
14 Annotated Code of Maryland  
15 (2002 Replacement Volume and 2004 Supplement)

16 BY repealing and reenacting, without amendments,  
17 Article - Criminal Law  
18 Section 3-307  
19 Annotated Code of Maryland  
20 (2002 Volume and 2004 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article - Criminal Law

1 Section 3-308  
2 Annotated Code of Maryland  
3 (2002 Volume and 2004 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article - Courts and Judicial Proceedings**

7 5-106.

8 (AA) A PROSECUTION FOR A MISDEMEANOR OFFENSE UNDER § 3-308(C) OF THE  
9 CRIMINAL LAW ARTICLE SHALL BE INSTITUTED WITHIN 3 YEARS AFTER THE  
10 OFFENSE WAS COMMITTED.

11 **Article - Criminal Law**

12 3-307.

13 (a) A person may not:

14 (1) (i) engage in sexual contact with another without the consent of  
15 the other; and

16 (ii) 1. employ or display a dangerous weapon, or a physical object  
17 that the victim reasonably believes is a dangerous weapon;

18 2. suffocate, strangle, disfigure, or inflict serious physical  
19 injury on the victim or another in the course of committing the crime;

20 3. threaten, or place the victim in fear, that the victim, or an  
21 individual known to the victim, imminently will be subject to death, suffocation,  
22 strangulation, disfigurement, serious physical injury, or kidnapping; or

23 4. commit the crime while aided and abetted by another;

24 (2) engage in sexual contact with another if the victim is a mentally  
25 defective individual, a mentally incapacitated individual, or a physically helpless  
26 individual, and the person performing the act knows or reasonably should know the  
27 victim is a mentally defective individual, a mentally incapacitated individual, or a  
28 physically helpless individual;

29 (3) engage in sexual contact with another if the victim is under the age of  
30 14 years, and the person performing the sexual contact is at least 4 years older than  
31 the victim;

32 (4) engage in a sexual act with another if the victim is 14 or 15 years old,  
33 and the person performing the sexual act is at least 21 years old; or

1 (5) engage in vaginal intercourse with another if the victim is 14 or 15  
2 years old, and the person performing the act is at least 21 years old.

3 (b) A person who violates this section is guilty of the felony of sexual offense in  
4 the third degree and on conviction is subject to imprisonment not exceeding 10 years.  
5 3-308.

6 (a) IN THIS SECTION, "PERSON IN A POSITION OF AUTHORITY":

7 (1) MEANS A PERSON WHO:

8 (I) IS AT LEAST 21 YEARS OLD;

9 (II) IS EMPLOYED BY A PUBLIC OR PRIVATE PRESCHOOL,  
10 ELEMENTARY SCHOOL, OR SECONDARY SCHOOL; AND

11 (III) BECAUSE OF THE PERSON'S POSITION OR OCCUPATION,  
12 EXERCISES SUPERVISION OVER A MINOR WHO ATTENDS THE SCHOOL; AND

13 (2) INCLUDES A PRINCIPAL, VICE PRINCIPAL, TEACHER, OR SCHOOL  
14 COUNSELOR AT A PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY SCHOOL, OR  
15 SECONDARY SCHOOL.

16 (B) A person may not engage in:

17 (1) sexual contact with another without the consent of the other;

18 (2) except as provided in § 3-307(a)(4) of this subtitle, a sexual act with  
19 another if the victim is 14 or 15 years old, and the person performing the sexual act is  
20 at least 4 years older than the victim; or

21 (3) except as provided in § 3-307(a)(5) of this subtitle, vaginal  
22 intercourse with another if the victim is 14 or 15 years old, and the person performing  
23 the act is at least 4 years older than the victim.

24 (C) (1) EXCEPT AS PROVIDED IN § 3-307(A)(4) OF THIS SUBTITLE OR  
25 SUBSECTION (B)(2) OF THIS SECTION, A PERSON IN A POSITION OF AUTHORITY MAY  
26 NOT ENGAGE IN A SEXUAL ACT OR SEXUAL CONTACT WITH A MINOR WHO, AT THE  
27 TIME OF THE SEXUAL ACT OR SEXUAL CONTACT, IS A STUDENT ENROLLED AT A  
28 SCHOOL WHERE THE PERSON IN A POSITION OF AUTHORITY IS EMPLOYED.

29 (2) EXCEPT AS PROVIDED IN § 3-307(A)(5) OF THIS SUBTITLE OR  
30 SUBSECTION (B)(3) OF THIS SECTION, A PERSON IN A POSITION OF AUTHORITY MAY  
31 NOT ENGAGE IN VAGINAL INTERCOURSE WITH A MINOR WHO, AT THE TIME OF THE  
32 VAGINAL INTERCOURSE, IS A STUDENT ENROLLED AT A SCHOOL WHERE THE  
33 PERSON IN A POSITION OF AUTHORITY IS EMPLOYED.

34 [(b)] (D) (1) Except as provided in paragraph (2) of this subsection, a person  
35 who violates this section is guilty of the misdemeanor of sexual offense in the fourth

1 degree and on conviction is subject to imprisonment not exceeding 1 year or a fine not  
2 exceeding \$1,000 or both.

3                   (2)       (i)       On conviction of a violation of this section, a person who has  
4 been convicted on a prior occasion not arising from the same incident of a violation of  
5 §§ 3-303 through 3-312 or § 3-315 of this subtitle or § 3-602 of this title is subject to  
6 imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

7                               (ii)       If the State intends to proceed against a person under  
8 subparagraph (i) of this paragraph, it shall comply with the procedures set forth in  
9 the Maryland Rules for the indictment and trial of a subsequent offender.

10       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 2005.