

# HOUSE BILL 860

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By: **Delegates Glenn, Anderson, Beidle, Braveboy, Conaway, Dumais, Gaines, Gutierrez, Harrison, Haynes, Hecht, Hucker, James, Kaiser, Krysiak, Lafferty, Lee, McKee, Nathan-Pulliam, Oaks, Robinson, Rosenberg, Smigiel, and Weldon**

Introduced and read first time: February 9, 2007

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Third Degree Sexual Offense – Person in a Position of**  
3 **Authority**

4 FOR the purpose of repealing a certain statute of limitations for the prosecution of a  
5 certain misdemeanor; expanding the offense of sexual offense in the third  
6 degree to prohibit a certain person in a position of authority from engaging in  
7 sexual contact, a sexual act, or vaginal intercourse with a certain person under  
8 a certain age under certain circumstances; establishing that a certain penalty  
9 applies to a certain offense; repealing certain provisions making the prohibition  
10 on a certain person in a position of authority from engaging in sexual contact, a  
11 sexual act, or vaginal intercourse with a certain person under a certain age  
12 under certain circumstances a sexual offense in the fourth degree; defining a  
13 certain term; repealing a certain definition; making certain conforming changes;  
14 and generally relating to a sexual offense involving a person in a position of  
15 authority and a person under a certain age under certain circumstances.

16 BY repealing

17 Article – Courts and Judicial Proceedings  
18 Section 5–106(aa)  
19 Annotated Code of Maryland  
20 (2006 Replacement Volume)

21 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Law  
2 Section 3–307 and 3–308  
3 Annotated Code of Maryland  
4 (2002 Volume and 2006 Supplement)

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

7 **Article – Courts and Judicial Proceedings**

8 5–106.

9 [(aa) A prosecution for a misdemeanor offense under § 3–308(c) of the Criminal  
10 Law Article shall be instituted within 3 years after the offense was committed.]

11 **Article – Criminal Law**

12 3–307.

13 (A) (1) IN THIS SECTION, “PERSON IN A POSITION OF AUTHORITY”  
14 MEANS A PERSON WHO:

15 (I) IS 21 YEARS OF AGE OR OLDER; AND

16 (II) WORKS AT A:

17 1. PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY  
18 SCHOOL, OR SECONDARY SCHOOL;

19 2. CHILD CARE FACILITY, INCLUDING AN  
20 AFTER–SCHOOL PROGRAM;

21 3. COMMERCIAL OR NONPROFIT INSTRUCTIONAL  
22 PROGRAM FOR MUSIC, DANCE, ART, TUTORING, ACADEMIC ENRICHMENT,  
23 MARTIAL ARTS, OR A SIMILAR PURPOSE;

24 4. SPORTS OR RECREATIONAL FACILITY OR  
25 PROGRAM;

26 5. DAY OR OVERNIGHT CAMP;

1                                   **6. RELIGIOUS INSTITUTION; OR**

2                                   **7. UNIT OF LOCAL, STATE, OR FEDERAL**  
3 **GOVERNMENT.**

4                   **(2) “PERSON IN A POSITION OF AUTHORITY” INCLUDES AN**  
5 **INDIVIDUAL WHO IS A VOLUNTEER, INTERN, OR PAID EMPLOYEE OF AN**  
6 **INSTITUTION, PROGRAM, OR ACTIVITY SPECIFIED IN ITEM (1)(II) OF THIS**  
7 **SUBSECTION.**

8                   **[(a)](B)**       A person may not:

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

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

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

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

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

19                                   (2)   engage in sexual contact with another if the victim is a mentally  
20 defective individual, a mentally incapacitated individual, or a physically helpless  
21 individual, and the person performing the act knows or reasonably should know the  
22 victim is a mentally defective individual, a mentally incapacitated individual, or a  
23 physically helpless individual;

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

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

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

1           **(C) A PERSON IN A POSITION OF AUTHORITY MAY NOT ENGAGE IN**  
2 **SEXUAL CONTACT, A SEXUAL ACT, OR VAGINAL INTERCOURSE WITH A MINOR:**

3           **(1) WHILE THE MINOR IS ENROLLED OR PARTICIPATING IN THE**  
4 **INSTITUTION, PROGRAM, OR ACTIVITY AT WHICH THE PERSON IN A POSITION OF**  
5 **AUTHORITY WORKS; OR**

6           **(2) WHO WAS ENROLLED OR PARTICIPATING IN AN INSTITUTION,**  
7 **PROGRAM, OR ACTIVITY SPECIFIED IN SUBSECTION (A)(1)(II) OF THIS SECTION**  
8 **AT THE TIME THE PERSON IN A POSITION OF AUTHORITY WAS WORKING AT THE**  
9 **INSTITUTION, PROGRAM, OR ACTIVITY.**

10           **[(b)](D)** A person who violates this section is guilty of the felony of sexual  
11 offense in the third degree and on conviction is subject to imprisonment not exceeding  
12 10 years.

13 3–308.

14           (a) [In this section, “person in a position of authority”:

15                   (1) means a person who:

16                           (i) is at least 21 years old;

17                           (ii) is employed as a full–time permanent employee by a public  
18 or private preschool, elementary school, or secondary school; and

19                           (iii) because of the person’s position or occupation, exercises  
20 supervision over a minor who attends the school; and

21                   (2) includes a principal, vice principal, teacher, or school counselor at  
22 a public or private preschool, elementary school, or secondary school.

23           (b)] A person may not engage in:

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

25                   (2) except as provided in [§ 3–307(a)(4)] **§ 3–307(B)(4)** of this subtitle,  
26 a sexual act with another if the victim is 14 or 15 years old, and the person performing  
27 the sexual act is at least 4 years older than the victim; or

1           (3)     except as provided in [~~§ 3-307(a)(5)~~] **§ 3-307(B)(5)** of this subtitle,  
2 vaginal intercourse with another if the victim is 14 or 15 years old, and the person  
3 performing the act is at least 4 years older than the victim.

4           [(c) (1)     Except as provided in § 3-307(a)(4) of this subtitle or subsection  
5 (b)(2) of this section, a person in a position of authority may not engage in a sexual act  
6 or sexual contact with a minor who, at the time of the sexual act or sexual contact, is a  
7 student enrolled at a school where the person in a position of authority is employed.

8           (2)     Except as provided in § 3-307(a)(5) of this subtitle or subsection  
9 (b)(3) of this section, a person in a position of authority may not engage in vaginal  
10 intercourse with a minor who, at the time of the vaginal intercourse, is a student  
11 enrolled at a school where the person in a position of authority is employed.

12           (d)](B)     (1)     Except as provided in paragraph (2) of this subsection, a  
13 person who violates this section is guilty of the misdemeanor of sexual offense in the  
14 fourth degree and on conviction is subject to imprisonment not exceeding 1 year or a  
15 fine not exceeding \$1,000 or both.

16           (2)     (i)     On conviction of a violation of this section, a person who has  
17 been convicted on a prior occasion not arising from the same incident of a violation of  
18 §§ 3-303 through 3-312 or § 3-315 of this subtitle or § 3-602 of this title is subject to  
19 imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

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

23           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2007.