

SENATE BILL 740

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8lr3140
CF HB 523

By: **Senator Muse**

Introduced and read first time: February 1, 2008

Assigned to: Judicial Proceedings

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 and 2007 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article – Criminal Law
23 Section 3–307 and 3–308
24 Annotated Code of Maryland
25 (2002 Volume and 2007 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Courts and Judicial Proceedings**2 5–106.**

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

5 Article – Criminal Law**6 3–307.**

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

9 (I) IS AT LEAST 21 YEARS OLD; AND

10 (II) WORKS AT A:

11 1. PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY
12 SCHOOL, OR SECONDARY SCHOOL;

13 2. CHILD CARE FACILITY, INCLUDING AN
14 AFTER–SCHOOL PROGRAM;

15 3. COMMERCIAL OR NONPROFIT INSTRUCTIONAL
16 PROGRAM FOR MUSIC, DANCE, ART, TUTORING, ACADEMIC ENRICHMENT,
17 MARTIAL ARTS, OR A SIMILAR PURPOSE;

18 4. SPORTS OR RECREATIONAL FACILITY OR
19 PROGRAM;

20 5. DAY OR OVERNIGHT CAMP;

21 6. RELIGIOUS INSTITUTION; OR

22 7. UNIT OF LOCAL, STATE, OR FEDERAL
23 GOVERNMENT.

24 (2) “PERSON IN A POSITION OF AUTHORITY” INCLUDES AN
25 INDIVIDUAL WHO IS A VOLUNTEER, INTERN, OR PAID EMPLOYEE OF AN
26 INSTITUTION, PROGRAM, OR ACTIVITY SPECIFIED IN PARAGRAPH (1)(II) OF THIS
27 SUBSECTION AND WHO, IN THAT CAPACITY, DIRECTS OR INFLUENCES MINORS
28 ENROLLED OR PARTICIPATING IN THE INSTITUTION, PROGRAM, OR ACTIVITY.

29 [(a)](B) A person may not:

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

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

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

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

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

11 (2) engage in sexual contact with another if the victim is a mentally
 12 defective individual, a mentally incapacitated individual, or a physically helpless
 13 individual, and the person performing the act knows or reasonably should know the
 14 victim is a mentally defective individual, a mentally incapacitated individual, or a
 15 physically helpless individual;

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

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

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

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

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

28 **(2) WHO WAS ENROLLED OR PARTICIPATING IN AN INSTITUTION,**
 29 **PROGRAM, OR ACTIVITY SPECIFIED IN SUBSECTION (A)(1)(II) OF THIS SECTION**
 30 **AT THE TIME THE PERSON IN A POSITION OF AUTHORITY WAS WORKING AT THE**
 31 **INSTITUTION OR WITH THE PROGRAM OR ACTIVITY.**

32 **[(b)](D)** A person who violates this section is guilty of the felony of sexual
 33 offense in the third degree and on conviction is subject to imprisonment not exceeding
 34 10 years.

1 3–308.

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

3 (1) means a person who:

4 (i) is at least 21 years old;

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

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

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

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

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

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

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

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

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

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

31 (2) (i) On conviction of a violation of this section, a person who has
32 been convicted on a prior occasion not arising from the same incident of a violation of

1 §§ 3–303 through 3–312 or § 3–315 of this subtitle or § 3–602 of this title is subject to
2 imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

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

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2008.