

HOUSE BILL 1090

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CF SB 681

By: **Delegates Glenn, Valderrama, Anderson, Barnes, Bobo, Conaway, Doory, Dumais, Dwyer, Frank, Gilchrist, Gutierrez, Hecht, Hucker, Ivey, Jennings, Kramer, Kullen, Lee, McComas, Mizeur, Montgomery, Pena-Melnyk, Robinson, Schuler, Shank, Shewell, Smigiel, Tarrant, V. Turner, and Waldstreicher**

Introduced and read first time: February 13, 2009

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of repealing the requirement that the prosecution of a misdemeanor
5 offense of the prohibition against a certain person in a position of authority
6 engaging in a sexual act or sexual contact with a minor, under certain
7 circumstances, be instituted within 3 years after the offense was committed;
8 prohibiting a certain person in a position of authority who is at least a certain
9 number of years older than the victim from engaging in sexual contact, a sexual
10 act, or vaginal intercourse with a minor while the minor is enrolled or
11 participating in the institution, program, or activity at which the person in a
12 position of authority works or a minor who was previously enrolled or
13 participating in the institution, program, or activity at the same time the person
14 in a position of authority was working at the institution, program, or activity;
15 establishing penalties for violating this Act; repealing the prohibition against a
16 person in a position of authority engaging in a sexual act or sexual contact with
17 a minor who, at the time of the sexual act or sexual contact, is a student
18 enrolled at a school where the person in a position of authority is employed and
19 the prohibition against a person in a position of authority engaging in vaginal
20 intercourse with a minor who, at the time of the vaginal intercourse, is a
21 student enrolled at a school where the person in a position of authority is
22 employed; defining a certain term; making technical corrections; and generally
23 relating to sexual offenses.

24 BY repealing
25 Article – Courts and Judicial Proceedings
26 Section 5–106(z)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2006 Replacement Volume and 2008 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Courts and Judicial Proceedings
5 Section 5–106(aa)
6 Annotated Code of Maryland
7 (2006 Replacement Volume and 2008 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Criminal Law
10 Section 3–301, 3–307, and 3–308
11 Annotated Code of Maryland
12 (2002 Volume and 2008 Supplement)

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

15 **Article – Courts and Judicial Proceedings**

16 5–106.

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

19 [(aa)] (Z) (1) This subsection applies in Anne Arundel County to an
20 offense that:

21 (i) Occurs in the Chesapeake Bay Critical Area, as defined in §
22 8–1807 of the Natural Resources Article; and

23 (ii) Is a violation of a local law that relates to environmental
24 protection or natural resource conservation, including a local law regulating:

- 25 1. Grading;
- 26 2. Sediment control;
- 27 3. Stormwater management;
- 28 4. Zoning;
- 29 5. Construction; or
- 30 6. Health and public safety.

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

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

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

6 (i) vaginal intercourse; or

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

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

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

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

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

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

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

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

21 **[(g)] (H)** (1) "Vaginal intercourse" means genital copulation, whether or
22 not semen is emitted.

23 (2) "Vaginal intercourse" includes penetration, however slight, of the
24 vagina.

25 3-307.

26 (a) A person may not:

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

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

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

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

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

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

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

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

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

19 **(B) A PERSON IN A POSITION OF AUTHORITY WHO IS AT LEAST 6 YEARS**
20 **OLDER THAN THE VICTIM MAY NOT ENGAGE IN SEXUAL CONTACT, A SEXUAL**
21 **ACT, OR VAGINAL INTERCOURSE WITH A MINOR:**

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

25 **(2) WHO WAS PREVIOUSLY ENROLLED OR PARTICIPATING IN THE**
26 **INSTITUTION, PROGRAM, OR ACTIVITY AT THE SAME TIME THE PERSON IN A**
27 **POSITION OF AUTHORITY WAS WORKING AT THE INSTITUTION, PROGRAM, OR**
28 **ACTIVITY.**

29 **[(b)] (C)** A person who violates this section is guilty of the felony of sexual
30 offense in the third degree and on conviction is subject to imprisonment not exceeding
31 10 years.

32 3-308.

33 (a) [In this section, "person in a position of authority":

1 (1) means a person who:

2 (i) is at least 21 years old;

3 (ii) is employed as a full-time permanent employee by a public
4 or private preschool, elementary school, or secondary school; and

5 (iii) because of the person's position or occupation, exercises
6 supervision over a minor who attends the school; and

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

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

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

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

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

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

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

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

29 (2) (i) On conviction of a violation of this section, a person who has
30 been convicted on a prior occasion not arising from the same incident of a violation of
31 §§ 3-303 through 3-312 or § 3-315 of this subtitle or § 3-602 of this title is subject to
32 imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

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

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2009.