

# HOUSE BILL 1075

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CF SB 657

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By: **Delegates Clippinger, Glenn, Anderson, Dumais, Lee, McComas, Mitchell,  
Sophocleus, Valderrama, Valentino-Smith, and Waldstreicher**

Introduced and read first time: February 8, 2013

Assigned to: Judiciary

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## 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 providing that a certain sexual offense under this Act may not be considered a  
16 lesser-included offense of another crime; providing that a prosecution under  
17 this Act does not preclude prosecution under a certain statute; establishing  
18 penalties for violating this Act; repealing the prohibition against a person in a  
19 position of authority engaging in a sexual act or sexual contact with a minor  
20 who, at the time of the sexual act or sexual contact, is a student enrolled at a  
21 school where the person in a position of authority is employed and the  
22 prohibition against a person in a position of authority engaging in vaginal  
23 intercourse with a minor who, at the time of the vaginal intercourse, is a  
24 student enrolled at a school where the person in a position of authority is  
25 employed; defining a certain term; making technical corrections; and generally  
26 relating to sexual offenses.

27 BY repealing

28 Article – Courts and Judicial Proceedings

29 Section 5–106(z)

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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 2012 Supplement)

3 BY repealing and reenacting, with amendments,  
4 Article – Courts and Judicial Proceedings  
5 Section 5–106(aa), (bb), and (cc)  
6 Annotated Code of Maryland  
7 (2006 Replacement Volume and 2012 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 (2012 Replacement Volume and 2012 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) or, if the victim  
18 was a minor at the time of the offense, § 3–308(b)(1) of the Criminal Law Article shall  
19 be instituted within 3 years after the offense was committed.]

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

22 (i) Occurs in the Chesapeake Bay Critical Area, as defined in §  
23 8–1807 of the Natural Resources Article; and

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

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



1                           **2. A CHILD CARE FACILITY, INCLUDING AN**  
2 **AFTER-SCHOOL PROGRAM;**

3                           **3. A COMMERCIAL OR NONPROFIT INSTRUCTIONAL**  
4 **PROGRAM FOR MUSIC, DANCE, ART, TUTORING, ACADEMIC ENRICHMENT,**  
5 **MARTIAL ARTS, OR A PROGRAM WITH A SIMILAR PURPOSE;**

6                           **4. A SPORTS OR RECREATIONAL FACILITY OR**  
7 **PROGRAM;**

8                           **5. A DAY OR OVERNIGHT CAMP;**

9                           **6. A RELIGIOUS INSTITUTION; OR**

10                          **7. A UNIT OF LOCAL, STATE, OR FEDERAL**  
11 **GOVERNMENT.**

12                          **(2) “PERSON IN A POSITION OF AUTHORITY” INCLUDES AN**  
13 **INDIVIDUAL WHO:**

14                           **(I) IS A VOLUNTEER, AN INTERN, OR A PAID EMPLOYEE OF**  
15 **AN INSTITUTION, A PROGRAM, OR AN ACTIVITY INCLUDED IN PARAGRAPH (1)(II)**  
16 **OF THIS SUBSECTION AND WHO, IN THAT CAPACITY, DIRECTS OR SUPERVISES**  
17 **MINORS ENROLLED OR PARTICIPATING IN THE INSTITUTION, PROGRAM, OR**  
18 **ACTIVITY; OR**

19                           **(II) SUPERVISES ONE OR MORE PERSONS IN A POSITION OF**  
20 **AUTHORITY WITHIN THE INSTITUTION, PROGRAM, OR ACTIVITY.**

21                          **[(d)] (E) “Physically helpless individual” means an individual who:**

22                           (1) is unconscious; or

23                           (2) (i) does not consent to vaginal intercourse, a sexual act, or  
24 sexual contact; and

25                           (ii) is physically unable to resist, or communicate unwillingness  
26 to submit to, vaginal intercourse, a sexual act, or sexual contact.

27                          **[(e)] (F) (1) “Sexual act” means any of the following acts, regardless of**  
28 **whether semen is emitted:**

29                           (i) analingus;

1 (ii) cunnilingus;

2 (iii) fellatio;

3 (iv) anal intercourse, including penetration, however slight, of  
4 the anus; or

5 (v) an act:

6 1. in which an object or part of an individual's body  
7 penetrates, however slightly, into another individual's genital opening or anus; and

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

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

11 (i) vaginal intercourse; or

12 (ii) an act in which an object or part of an individual's body  
13 penetrates an individual's genital opening or anus for an accepted medical purpose.

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

17 (2) "Sexual contact" does not include:

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

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

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

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

24 3-307.

25 (a) A person may not:

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

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

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

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

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

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

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

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

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

21                   **(B) (1) A PERSON IN A POSITION OF AUTHORITY WHO IS AT LEAST 4**  
22 **YEARS OLDER THAN THE VICTIM MAY NOT ENGAGE IN SEXUAL CONTACT, A**  
23 **SEXUAL ACT, OR VAGINAL INTERCOURSE WITH A MINOR:**

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

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

31                   **(2) (I) UNLESS SPECIFICALLY CHARGED BY THE STATE, A**  
32 **SEXUAL OFFENSE BY A PERSON IN A POSITION OF AUTHORITY UNDER THIS**  
33 **SUBSECTION MAY NOT BE CONSIDERED A LESSER-INCLUDED OFFENSE OF**  
34 **ANOTHER CRIME.**

1                   **(II) PROSECUTION UNDER THIS SUBSECTION DOES NOT**  
2 **PRECLUDE PROSECUTION UNDER § 3-602 OF THIS TITLE.**

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

6 3-308.

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

8                   (1)     means a person who:

9                           (i)     is at least 21 years old;

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

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

14                   (2)     includes a principal, vice principal, teacher, or school counselor at  
15 a public or private preschool, elementary school, or 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  
19 with another if the victim is 14 or 15 years old, and the person performing the sexual  
20 act is 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 subsection  
25 (b)(2) of this section, a person in a position of authority may not engage in a sexual act  
26 or sexual contact with a minor who, at the time of the sexual act or sexual contact, is a  
27 student enrolled at a school where the person in a position of authority is employed.

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

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

5                     (2)     (i)     On conviction of a violation of this section, a person who has  
6 been convicted on a prior occasion not arising from the same incident of a violation of  
7 §§ 3–303 through 3–312 or § 3–315 of this subtitle or § 3–602 of this title is subject to  
8 imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

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

12                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2013.