

HOUSE BILL 33

E1
HB 60/13 – JUD

(PRE-FILED)

4lr0672

By: **Delegate Smigiel**

Requested: October 17, 2013

Introduced and read first time: January 8, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Professional Counselors and Therapists – Conduct**
3 **(Lynette’s Law)**

4 FOR the purpose of prohibiting a certain professional counselor or therapist from
5 engaging in a sexual act, sexual contact, or vaginal intercourse with a person
6 who is receiving counseling from the professional counselor or therapist or
7 received counseling from the professional counselor or therapist within a certain
8 period of time; prohibiting a certain professional counselor or therapist from
9 knowingly, and with intent to deceive, making a false statement concerning the
10 person’s criminal record on an employment application; providing for a certain
11 statute of limitations for the prosecution of a violation of this Act; defining
12 certain terms; and generally relating to the conduct of professional counselors
13 and therapists.

14 BY repealing and reenacting, without amendments,
15 Article – Criminal Law
16 Section 3–307
17 Annotated Code of Maryland
18 (2012 Replacement Volume and 2013 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Criminal Law
21 Section 3–308
22 Annotated Code of Maryland
23 (2012 Replacement Volume and 2013 Supplement)

24 BY adding to
25 Article – Criminal Law
26 Section 9–509
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2012 Replacement Volume and 2013 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article – Courts and Judicial Proceedings
4 Section 5–106(z)
5 Annotated Code of Maryland
6 (2013 Replacement Volume and 2013 Supplement)

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

9 **Article – Criminal Law**

10 3–307.

11 (a) A person may not:

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

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

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

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

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

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

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

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

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

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

4 3–308.

5 (a) (1) In this section[, “person] **THE FOLLOWING WORDS HAVE THE**
6 **MEANINGS INDICATED.**

7 (2) (I) **“PERSON in a position of authority”**[:

8 (1)] means a person who:

9 [(i)] 1. is at least 21 years old;

10 [(ii)] 2. is employed as a full–time permanent employee by a
11 public or private preschool, elementary school, or secondary school; and

12 [(iii)] 3. because of the person’s position or occupation,
13 exercises supervision over a minor who attends the school[; and].

14 [(2)] (II) **“PERSON IN A POSITION OF AUTHORITY”** includes a
15 principal, vice principal, teacher, or school counselor at a public or private preschool,
16 elementary school, or secondary school.

17 (3) **“PROFESSIONAL COUNSELOR OR THERAPIST” MEANS A**
18 **PERSON WHO IS LICENSED OR CERTIFIED TO PRACTICE MARRIAGE AND FAMILY**
19 **THERAPY, ALCOHOL AND DRUG COUNSELING, OR PROFESSIONAL COUNSELING**
20 **BY THE STATE BOARD OF PROFESSIONAL COUNSELORS AND THERAPISTS**
21 **UNDER TITLE 17 OF THE HEALTH OCCUPATIONS ARTICLE.**

22 (b) A person may not engage in:

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

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

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

30 (c) (1) Except as provided in § 3–307(a)(4) of this subtitle or subsection
31 (b)(2) of this section, a person in a position of authority may not engage in a sexual act

1 or sexual contact with a minor who, at the time of the sexual act or sexual contact, is a
2 student enrolled at a school where the person in a position of authority is employed.

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

7 **(D) (1) EXCEPT AS PROVIDED IN § 3–307(A)(4) OF THIS SUBTITLE OR**
8 **SUBSECTION (B)(2) OF THIS SECTION, A PROFESSIONAL COUNSELOR OR**
9 **THERAPIST MAY NOT ENGAGE IN A SEXUAL ACT OR SEXUAL CONTACT WITH A**
10 **PERSON WHO:**

11 **(I) AT THE TIME OF THE SEXUAL ACT OR SEXUAL CONTACT,**
12 **IS RECEIVING COUNSELING OR THERAPY FROM THE PROFESSIONAL**
13 **COUNSELOR OR THERAPIST; OR**

14 **(II) RECEIVED COUNSELING OR THERAPY FROM THE**
15 **PROFESSIONAL COUNSELOR OR THERAPIST WITHIN THE 2 YEARS PRECEDING**
16 **THE SEXUAL ACT OR SEXUAL CONTACT.**

17 **(2) EXCEPT AS PROVIDED IN § 3–307(A)(5) OF THIS SUBTITLE OR**
18 **SUBSECTION (B)(3) OF THIS SECTION, A PROFESSIONAL COUNSELOR OR**
19 **THERAPIST MAY NOT ENGAGE IN VAGINAL INTERCOURSE WITH A PERSON WHO:**

20 **(I) AT THE TIME OF THE VAGINAL INTERCOURSE, IS**
21 **RECEIVING COUNSELING OR THERAPY FROM THE PROFESSIONAL COUNSELOR**
22 **OR THERAPIST; OR**

23 **(II) RECEIVED COUNSELING OR THERAPY FROM THE**
24 **PROFESSIONAL COUNSELOR OR THERAPIST WITHIN THE 2 YEARS PRECEDING**
25 **THE VAGINAL INTERCOURSE.**

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

30 (2) (i) On conviction of a violation of this section, a person who has
31 been convicted on a prior occasion not arising from the same incident of a violation of
32 §§ 3–303 through 3–312 or § 3–315 of this subtitle or § 3–602 of this title is subject to
33 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 **9-509.**

5 (A) IN THIS SECTION, "PROFESSIONAL COUNSELOR OR THERAPIST"
6 MEANS A PERSON WHO IS LICENSED OR CERTIFIED TO PRACTICE MARRIAGE
7 AND FAMILY THERAPY, ALCOHOL AND DRUG COUNSELING, OR PROFESSIONAL
8 COUNSELING BY THE STATE BOARD OF PROFESSIONAL COUNSELORS AND
9 THERAPISTS UNDER TITLE 17 OF THE HEALTH OCCUPATIONS ARTICLE.

10 (B) A PROFESSIONAL COUNSELOR OR THERAPIST MAY NOT
11 KNOWINGLY, AND WITH INTENT TO DECEIVE, MAKE A FALSE STATEMENT
12 CONCERNING THE PERSON'S CRIMINAL RECORD ON AN EMPLOYMENT
13 APPLICATION.

14 (C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
15 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
16 EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING \$500 OR BOTH.

17 **Article - Courts and Judicial Proceedings**

18 **5-106.**

19 (z) A prosecution for a misdemeanor offense under § 3-308(c) OR (D) or, if
20 the victim was a minor at the time of the offense, § 3-308(b)(1) of the Criminal Law
21 Article shall be instituted within 3 years after the offense was committed.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2014.