

SENATE BILL 49

E1
HB 223/21 – JUD

(PRE-FILED)

2lr0776
CF 2lr0777

By: **Senator West**

Requested: October 15, 2021

Introduced and read first time: January 12, 2022

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Person in a Position of Authority – Sexual Offenses With a**
3 **Minor**

4 FOR the purpose of altering the definition of “person in a position of authority” for purposes
5 of a certain prohibition against engaging in a sexual act, sexual contact, or vaginal
6 intercourse with a certain minor; altering a certain prohibition against a certain
7 person in a position of authority from engaging in certain conduct to prohibit a
8 certain person in a position of authority from engaging in a sexual act, sexual contact,
9 or vaginal intercourse with a minor who is or was enrolled or participating in the
10 institution, program, or activity where the person in a position of authority is or was
11 employed or under contract; and generally relating to persons in a position of
12 authority and sexual offenses.

13 BY repealing and reenacting, with amendments,
14 Article – Criminal Law
15 Section 3–308
16 Annotated Code of Maryland
17 (2021 Replacement Volume and 2021 Supplement)

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

20 **Article – Criminal Law**

21 3–308.

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

23 (1) means a person who:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) is at least 21 years old;

2 (ii) is employed by or under contract with:

3 1. a public or private preschool, elementary school, or
4 secondary school;

5 2. A CHILD CARE FACILITY, INCLUDING AN
6 AFTER-SCHOOL PROGRAM;

7 3. A COMMERCIAL OR NONPROFIT INSTRUCTIONAL
8 PROGRAM FOR MUSIC, DANCE, ART, TUTORING, ACADEMIC ENRICHMENT, MARTIAL
9 ARTS, OR A PROGRAM WITH A SIMILAR PURPOSE;

10 4. A SPORTS, SCOUTING, OR RECREATIONAL ACTIVITY
11 OR PROGRAM;

12 5. A DAY OR OVERNIGHT CAMP;

13 6. A RELIGIOUS INSTITUTION; OR

14 7. ANY UNIT OF LOCAL, STATE, OR FEDERAL
15 GOVERNMENT; and

16 (iii) because of the person's position or occupation, exercises
17 supervision over a minor who attends [the school] OR PARTICIPATES IN AN
18 INSTITUTION, A PROGRAM, OR AN ACTIVITY INCLUDED IN ITEM (II) OF THIS ITEM OR
19 OPERATED BY ANY UNIT OF LOCAL, STATE, OR FEDERAL GOVERNMENT; and

20 (2) includes [a principal, vice principal, teacher, coach, or school counselor
21 at a public or private preschool, elementary school, or secondary school] AN INDIVIDUAL
22 WHO:

23 (I) IS UNDER CONTRACT WITH OR IS A VOLUNTEER, AN INTERN,
24 OR A PAID EMPLOYEE OF AN INSTITUTION, A PROGRAM, OR AN ACTIVITY INCLUDED
25 IN ITEM (1)(II) OF THIS SUBSECTION AND WHO, IN THAT CAPACITY, DIRECTS OR
26 SUPERVISES MINORS ENROLLED OR PARTICIPATING IN THE INSTITUTION,
27 PROGRAM, OR ACTIVITY; OR

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

30 (b) A person may not engage in:

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

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

5 (3) except as provided in § 3–307(a)(5) of this subtitle, vaginal intercourse
6 with another if the victim is 14 or 15 years old, and the person performing the act is at least
7 4 years older than the victim.

8 (c) (1) Except as provided in § 3–307(a)(4) of this subtitle or subsection (b)(2)
9 of this section, a person in a position of authority may not engage in a sexual act [or], sexual
10 contact, **OR VAGINAL INTERCOURSE** with a minor who[.]:

11 (I) at the time of the sexual act or sexual contact, is [a student
12 enrolled at a school] **ENROLLED OR PARTICIPATING IN THE INSTITUTION, PROGRAM,
13 OR ACTIVITY** where the person in a position of authority is employed **OR UNDER
14 CONTRACT; OR**

15 (II) **WAS PREVIOUSLY ENROLLED OR PARTICIPATING IN THE
16 INSTITUTION, PROGRAM, OR ACTIVITY AT THE SAME TIME THE PERSON IN A
17 POSITION OF AUTHORITY WAS EMPLOYED OR UNDER CONTRACT AT THE
18 INSTITUTION, PROGRAM, OR ACTIVITY.**

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

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

27 (2) (i) On conviction of a violation of this section, a person who has been
28 convicted on a prior occasion not arising from the same incident of a violation of § 3–303, §
29 3–304, §§ 3–307 through 3–310 of this subtitle, § 3–311 or § 3–312 of this subtitle as the
30 sections existed before October 1, 2017, § 3–315 of this subtitle, or § 3–602 of this title is
31 subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

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

35 (E) **UNLESS SPECIFICALLY CHARGED BY THE STATE, A VIOLATION OF THIS
36 SECTION MAY NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER**

1 **CRIME.**

2 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
3 October 1, 2022.