

Chapter 730

(House Bill 226)

AN ACT concerning

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

FOR the purpose of altering the definition of “person in a position of authority” ~~for purposes of a certain prohibition against engaging in a sexual act, sexual contact, or vaginal intercourse with a certain minor applicable to sexual offense in the fourth degree;~~ altering a certain prohibition against a certain person in a position of authority ~~from~~ engaging in certain conduct to prohibit a ~~certain~~ person in a position of authority from engaging in a sexual act, sexual contact, or vaginal intercourse with a minor who is ~~or was~~ enrolled at a school or participating in ~~the institution, program, or activity where~~ a certain program for which the person in a position of authority ~~is or was employed or under contract works or was working at a certain time;~~ prohibiting sexual offense in the fourth degree from being considered a ~~greater inclusive crime of any other crime or a~~ lesser inclusive crime, ~~except of any other crime, except under certain circumstances;~~ authorizing the imposition of a certain sentence in a certain manner; and generally relating to persons in a position of authority and sexual offenses.

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 3–308
Annotated Code of Maryland
(2021 Replacement Volume and 2022 Supplement)

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

Article – Criminal Law

3–308.

- (a) ~~In this section, “person in a position of authority”:~~
 - (1) ~~means a person who:~~
 - (i) ~~is at least 21 years old;~~
 - (ii) ~~is employed by or under contract with:~~

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

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

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

~~4. A SPORTS, SCOUTING, OR RECREATIONAL ACTIVITY OR PROGRAM;~~

~~5. A DAY OR OVERNIGHT CAMP;~~

~~6. A RELIGIOUS INSTITUTION; OR~~

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

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

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

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

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

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "PERSON IN A POSITION OF AUTHORITY" MEANS A PERSON WHO:

1. A. IS AT LEAST 21 YEARS OLD;

~~2.~~ AND WORKS FOR REMUNERATION OR AS A VOLUNTEER FOR;

~~A.~~ A PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY SCHOOL, OR SECONDARY SCHOOL; OR

B. ~~A~~ IS AT LEAST 22 YEARS OLD AND WORKS FOR REMUNERATION OR AS A VOLUNTEER FOR A PROGRAM; AND

~~2.~~ EXERCISES SUPERVISION OVER OR WORKS OR INTERACTS WITH ONE OR MORE MINORS WHO ATTEND THE SCHOOL OR PARTICIPATE IN THE PROGRAM.

(II) "PERSON IN A POSITION OF AUTHORITY" INCLUDES A PRINCIPAL, VICE PRINCIPAL, TEACHER, COACH, OR SCHOOL COUNSELOR AT A PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY SCHOOL, OR SECONDARY SCHOOL.

(3) "PROGRAM" MEANS:

(I) AN INDIVIDUAL, A BUSINESS, A RELIGIOUS OR FAITH-BASED INSTITUTION, OR AN ORGANIZATION THAT PROVIDES, ON A FOR-PROFIT OR NONPROFIT BASIS, INSTRUCTIONAL, COACHING, RECREATIONAL, SPIRITUAL, CHARACTER-BUILDING, OR SUPERVISORY SERVICES OR ACTIVITIES FOR MINORS, INCLUDING:

~~(I)~~ 1. SPORTS, MUSIC, DANCE, ART, OR MARTIAL ARTS COACHING OR INSTRUCTION;

~~(II)~~ 2. TUTORING OR ACADEMIC ENRICHMENT;

~~(III)~~ 3. DAY CARE OR AFTER SCHOOL CARE;

~~(IV)~~ 4. SCOUTING; OR

~~(V)~~ 5. DAY OR OVERNIGHT CAMPING; OR

(II) ANY UNIT OF LOCAL, STATE, OR FEDERAL GOVERNMENT.

(b) A person may not engage in:

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

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

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

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

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

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

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

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

(I) at the time of the sexual act or sexual contact;

(II) is a student enrolled at a school [where the person in a position of authority is employed], OR IS PARTICIPATING IN A PROGRAM, FOR WHICH WHERE THE PERSON IN A POSITION OF AUTHORITY WORKS; OR

(III) WAS PREVIOUSLY ENROLLED AT A SCHOOL OR PARTICIPATING IN A PROGRAM AT THE SAME TIME THE PERSON IN A POSITION OF AUTHORITY WAS WORKING FOR THE SCHOOL OR PROGRAM

1. IS PARTICIPATING IN A PROGRAM FOR WHICH THE PERSON IN A POSITION OF AUTHORITY WORKS; AND

2. IS AT LEAST 6 YEARS YOUNGER THAN THE PERSON IN A POSITION OF AUTHORITY.

(2) Except as provided in § 3-307(a)(5) of this subtitle or subsection (b)(3) of this section, a person in a position of authority may not engage in vaginal intercourse with a minor who ~~is~~

~~(H) at the time of the vaginal intercourse;~~

~~(I) is a student enrolled at a school [where the person in a position of authority is employed], OR IS PARTICIPATING IN A PROGRAM, FOR WHICH WHERE THE PERSON IN A POSITION OF AUTHORITY WORKS; OR~~

~~(II) WAS PREVIOUSLY ENROLLED AT A SCHOOL OR PARTICIPATING IN A PROGRAM AT THE SAME TIME THE PERSON IN A POSITION OF AUTHORITY WAS WORKING FOR THE SCHOOL OR PROGRAM~~

1. IS PARTICIPATING IN A PROGRAM FOR WHICH THE PERSON IN A POSITION OF AUTHORITY WORKS; AND

2. IS AT LEAST 6 YEARS YOUNGER THAN THE PERSON IN A POSITION OF AUTHORITY.

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

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

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

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

~~(E) A VIOLATION OF THIS SECTION;~~

~~(1) MAY NOT BE CONSIDERED A GREATER INCLUSIVE CRIME OF ANY OTHER CRIME; AND~~

~~(2) UNLESS SPECIFICALLY CHARGED BY THE STATE, MAY NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER CRIME~~

(1) UNLESS SPECIFICALLY CHARGED BY THE STATE, A VIOLATION OF THIS SECTION MAY NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER CRIME.

(2) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE IMPOSED SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.

Approved by the Governor, May 16, 2023.