

Father blames 'loophole' in Maryland law for allowing alleged molester to walk free

by Kevin Lewis/ABC7

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ROCKVILLE, Md. (ABC7) — A Bethesda father believes a loophole in Maryland's criminal statute allowed an alleged molester to wiggle his way out of criminal charges.

The father, who spoke on condition of anonymity, explains his only daughter wanted to learn how to play the electric bass guitar. It was 2006. His daughter, now 29, was 17-years-old at the time. The father found a highly-rated music instructor in Wheaton. The male instructor was in his 50s and appeared kind, gracious and dedicated to his craft.

Nearly every Saturday for two years, the father drove his daughter to the instructor's modest one-story brick home. The instructor, who ABC7 is not naming, took the teen to a spare bedroom, which he had turned into a soundproof music studio. Each lesson went for one hour, though on occasion he would extend by ten minutes.

The father would relax on the sofa in the adjacent living room, reading magazines, watching television and occasionally napping. Not once did he suspect a sliver of impropriety.

"This was a man I welcomed into my home, we fed him, we went to his concerts at area restaurants and the zoo," the father told ABC7 during a concealed identity interview. "I paid him \$50 for 80 lessons, that's \$4,000, and he was doing terrible things behind my back."

In August 2007, the girl, then 18, applied and was admitted to Montgomery College. Her father sensed she was apprehensive on campus. He convinced her to enroll in two courses, but a week later she dropped out.

In August 2008, the girl re-enrolled at Montgomery College for an online course and stopped taking private music lessons. Her separation with the guitar instructor didn't appear hostile or unfriendly; the arrangement seemed to have simply run its course.

Nearly four years went by before the girl, then in her mid-20s, revealed the heavy, painful secret to her family. It was February 2012.

"We had noticed gradual changes in her behavior such as picky eating, excessive hand washing and brushing of her teeth, irrational fears and disturbing thoughts," the father stated. "But I never expected this."

Full of guilt and shame, the girl explained her former instructor started to inappropriately touch her in his soundproof studio at the age of 17, which became more aggressive and forceful over time. Upon turning 18, the alleged abuse escalated to a full-blown sexual relationship, often taking place outside of normally scheduled lessons. The girl recalled one such meeting where the instructor provided wine and marijuana to ease her mind. She also remembered the instructor advising her to keep quiet as he could get in trouble.

"He noticed that she was very nervous and awkward. She never was with a man before. When her brother found out what had happened, he had a nervous breakdown."

Enraged, the father got behind the wheel of his car and started driving "like a madman" to the instructor's house, but somewhere along the way, sensibilities took hold.

"I've been in this county for 35 years, I've raised three children, I paid all my taxes, no infractions," the father stated. "I decided to turn home and called him from there."

Although that telephone call was not recorded, the father claims the instructor confessed to the sexual conduct, blaming his actions, in part, on loneliness following a breakup. Within a few days, the instructor sent the father an apologetic email, which the family provided to ABC7. That email dated February 20, 2012, said in part:

"I am ashamed of my actions to you and your family for you deserve so much better. I was a weak man and I succumbed. Somehow I let myself become drawn into your family dynamics and lost my way. I realize how fragile she was and how my wrong thinking hurt her deeply. I know you can't forgive me but please understand that I am praying for you [and your daughter] to find the strength to make love the most important thing in our lives."

Armed with evidence — including the seemingly incriminating email — the girl's lawyer contacted the Montgomery County State's Attorney's Office in September 2013, hoping criminal charges could be lodged against the music instructor.

Prosecutors met in person with the girl, and later had an experienced police detective perform a formal screening interview. Yet, much to the family's surprise, the state's attorney's office opted not to pursue the case.

In an October 24, 2013, email to the victim, assistant state's attorney Debbie Feinstein stated that because the alleged abuse started when the girl was 17, Maryland's criminal statute left prosecutors with few options in a court of law.

"First, I have not changed my position and remain concerned that the perpetrator may still have regular access to minors," Feinstein wrote. "While the conduct you described certainly met the definition of exploitation/molestation as required in section 3-602, I did not know if the perpetrator 'had permanent or temporary care or custody or responsibility for the supervision of a minor,' because your father was present outside the room at all of your lessons... After reviewing your interview with the detectives, I concluded that we did not have enough evidence to prove this element beyond a reasonable doubt."

The layman's interpretation being that because the girl's father was inside of the instructor's house during all of the alleged abuse prior to the girl turning 18, he had never relinquished full "care or custody or responsibility." The family was flabbergasted.

"Nowhere in the law does it say the parent has to be one mile away, ten miles away or 100 miles away. Should I have gone in a local bar and enjoyed myself while I left 17-year-old daughter with a 50-year-old man," the father asked rhetorically in effort to prove his point. "He molested her while I was sitting about 50 feet away from the studio. He had the audacity to do that and the prosecutor, what did they do? Nothing."

In her 2013 email, Feinstein explained she was "very familiar" with the loophole in Maryland law, which still exists today.

"I, along, with many others, went to Annapolis to testify before legislative committees on the need to change this law to encompass the conduct that you describe. Our efforts were not successful."

For context, Maryland designates 16 as the "age of consent," meaning 16 and 17-year-olds can have consensual sexual relationships with anyone over the age of 18. There is one caveat, however. People in positions of power and trust (i.e. teachers, athletic coaches, music instructors) cannot become romantically involved with anyone under the age of 18 who is in their "care and custody."

Determined to obtain justice, the family appealed the state's attorney's office's initial conclusion. Yet, in a letter dated July 11, 2014, Montgomery County State's Attorney John McCarthy, echoed the conclusion that his subordinates had previously reached.

"I have met with ASA Feinstein and discussed the case at length. I concur with her that based on the facts and circumstances of this case we do not have a prosecutable criminal case... the element of care and custody was not met," McCarthy wrote.

"The responsibility falls upon the parents or the guardian, not the perpetrator," the father suggested. "That's absurd, to be polite."

ABC7 contacted the Montgomery County State's Attorney's Office Wednesday regarding the family's criticism. A spokesman explained the government agency's team of prosecutors take their role as public officials seriously.

"We have upheld our responsibilities in this investigation. There is not enough evidence to pursue a criminal case in this matter. The circumstances do not fit elements required to bring charges in the laws as they are written at this time," spokesman Ramon Korionoff said by email.

"During those two years of lessons, he was grooming her to be his sex slave. She became infatuated with his charms and all the special attention he gave her, and she became very vulnerable," the father suggested. "And I was paying him \$50 per hour!"

<https://wjla.com/news/local/father-poses-loop-hole-in-maryland-sex-abuse-law#:~:text=Father%20blames%20'loop-hole'%20in%20Maryland,alleged%20molester%20to%20walk%20free&text=ROCKVILLE%2C%20Md.,way%20out%20of%20criminal%20charges.&text=The%20father%20found%20a%20highly%20drated%20music%20instructor%20in%20Wheaton>

Sex offense law in Maryland has loophole

+ Add to list

Correction: *An earlier version of this article incorrectly said that Montgomery County teacher Scott Spear remained on paid administrative leave as he sought to get back his job. Spear was placed on leave without pay May 29 after originally being put on paid leave, schools spokesman Dana Tofig said. This version has been corrected.*

By [Mary Pat Flaherty](#)

June 16, 2012

The allegations were nearly the same in both cases: Two Maryland teachers, who also were school coaches, were accused of having sex with high school students.

But because of a gap in Maryland's sex-offense laws, the two recent and separate cases had very different outcomes.

Jeffrey Sears, 30, taught English full time and coached at Glen Burnie High School in Anne Arundel County.

Over two years, he had sexual relations with three female students who attended the school, including sex acts in his classroom with a 16-year-old, police said. During a single month last fall, he sent that girl more than 600 text messages, phone records showed.

He was sentenced in April to seven years in prison and ordered to register as a sex offender.

Scott Spear, 47, worked in Montgomery County and was accused of having sex off campus with a girl from Richard Montgomery High School in Rockville. He taught full time at a nearby middle school, where he had met the girl, but worked only part time as a coach at the girl's high school.

Prosecutors dropped the case against Spear, who denied having sex with the girl, within weeks of his February [arrest](#) because of that part-time status, they said.

"If this sounds absurd, it's because it is. The law has a major flaw," said Kristin Fleckenstein, spokeswoman for the Anne Arundel state's attorney's office.

Maryland law prohibits sexual contact between "full-time permanent" school employees who are in a "position of authority" over a minor student at the school at which they work. The law lists principals,

vice principals, teachers and school counselors as the posts covered.

As a part-timer at the girl's current school, Spear fell outside those lines.

The case is not unique. The same legal hurdle arose last fall in Anne Arundel in the case of a part-time coach at a Catholic high school and in 2010 in Carroll County with a part-time teacher at a public high school. Those teachers were taken to court — but only after investigators discovered evidence of crimes beyond the reported sexual liaisons.

“Bottom line: There is a gap in the law,” said Karla Smith, head of the division that prosecutes child sex-abuse cases in Montgomery.

Similar Virginia and District laws do not restrict bans to “permanent” school employees, according to prosecutors in those jurisdictions. They focus on the supervisory role of the adult and include acts by coaches.

Parents “don’t send their kids to school to have to worry about being hit on by coaches and teachers — whether they work 20 hours part time or 40 hours full time,” said David Daggett, former deputy state’s attorney in Carroll. “The impact is just as devastating in these situations. The law should be that if you’re employed by the school, it’s hands-off the students.”

Part time or full time

Spear was a full-time teacher at Julius West Middle School in Rockville when he was arrested in February. He had met and taught the girl in his case there, a police affidavit says.

But Spear was only a part-time coach at the high school the 16-year-old attended when the alleged sex took place in 2011 .

At the age of 16, the girl had reached Maryland’s age for consensual sex. The two alleged acts with Spear occurred at a private home after school hours with the girl’s agreement, a police report says.

That combination of circumstances put Spear’s case outside the definition of the fourth-degree sex offense for which he had been arrested, prosecutors said.

Dropping the Spear case “was not done due to an inability to move forward on the evidence. Rather, it is solely due to a technicality in Maryland’s law,” the Anne Arundel state’s attorney’s office said. Anne Arundel took on the Spear case to avoid a conflict of interest; Montgomery State’s Attorney John J. McCarthy knows Spear, said Seth Zucker, a spokesman for McCarthy.

When Spear spoke with police before his February arrest, he denied having intercourse with the girl, according to a police affidavit.

Spear told a detective that “the victim and he were very close and did communicate frequently during school hours, after school hours and on weekends,” including times when he drove the girl home after track practice, the affidavit states.

Steven VanGrack, Spear’s attorney, said prosecutors “are certainly correct to say that the case was dropped due to a technicality, and nobody likes a loophole. So on the one hand, we are thrilled the case did not go forward. But he also would have liked the chance to confront his accuser.”

VanGrack declined to allow Spear to be interviewed for this report but said Spear was “a revered coach in the community and is devastated by these accusations.”

Spear “has said to me that he has done nothing illegal or inappropriate with any student or with any athlete,” said VanGrack, who is trying to have the police file that led to the charge released under the state’s open-records law.

A 19-year veteran of Montgomery public schools, Spear [has asked to return to his classroom](#), VanGrack said. He was placed on leave without pay May 29 after originally being put on paid leave, schools spokesman Dana Tofig said.

‘A perennial problem’

The [gap in the law](#) was created in 2006 after the state Senate Judicial Proceedings Committee sponsored a [one-line amendment](#) to a [House bill on sexual contact with students](#). The amendment passed in a rapid-fire and unanimous floor vote, according to an audio recording of the vote.

The amendment added the description “full-time permanent employee” — restrictive wording that advocates against sexual assault have said is inadequate and have repeatedly tried to change.

“It’s a perennial problem,” said Lisae Jordan, director of the Sexual Assault Legal Institute of the Maryland Coalition Against Sexual Assault. “When I give speeches to the public and talk about this, they are certain I must be wrong.”

Prosecutors in the Spear case said that “while what happened in this case [is] not a crime under the Maryland statutes, we believe the legislature did not intend to exempt coaches from manipulating students in this fashion.”

Reconsidering law

There have been attempts to recast Maryland law to include part-time teachers and coaches, but those have failed, partly because of concerns that volunteers might avoid giving their time if they risked false accusations, according to three lawyers and an advocate.

A Senate bill introduced this year by Sen. Verna L. Jones-Rodwell (D-Baltimore) would have expanded penalties to coaches, including volunteers, who have sexual contact with minor students.

Her bill would have covered coaches as young as 18 — an age threshold that previously tripped up legislation. By setting an age so low, the state would criminalize relationships between teenagers that otherwise would not be a crime, such as might occur between a 19-year-old high school graduate who volunteers to coach a recreational school team that includes his 16-year-old girlfriend.

Bryan Alston, Jones-Rodwell's legislative director, said the office "pulled the bill to rework it." Among the changes being weighed, Alston said, is whether the bill should set 21 as the age for coaches who would be covered.

Several Maryland prosecutors said they have pushed their state legislative delegations to address the legal gap. But "it may take the public and schools getting in there, too, since legislators get tired hearing from prosecutors," said Daggett, the former Carroll prosecutor.

"We can talk about this as a crime," Daggett said, "but it would be even more effective if the argument was coming from groups pushing for it as a way to protect students. "

Staff writer Dan Morse contributed to this report.

 **48 Comments**

Mary Pat Flaherty

Mary Pat Flaherty works on investigative and long-range stories. Her work has won numerous national awards, including the Pulitzer Prize. [Follow](#) 
