

## **Unfavorable Response to SB407 Criminal Law – Sexual Offense by a Person in a Position of Authority**

Families Advocating Intelligent Registries (FAIR) seeks rational, constitutional sexual offense laws and policies. A provision in the law to ensure that individuals in positions of authority do not abuse that authority by engaging in sexual activity with children in their care is certainly appropriate and laudable, and such a provision already exists in Criminal Law 3-308. SB407, however, introduces sweeping felony penalties without legislative findings or data demonstrating that existing statutes are inadequate or that offenders are escaping accountability.

Maryland's criminal code has historically scaled penalties based on harm, coercion, and age disparity. SB407 disrupts that proportionality by imposing extreme penalties untethered from violence, force, or threat. Under existing law, Criminal Law 3-308 (4<sup>th</sup> degree sexual offense) is punishable as a misdemeanor. The statute properly recognizes the power disparity between a student and an authority figure and forbids sexual contact, sexual acts or vaginal intercourse between those individuals specifically by virtue of that power difference. The statute is also clear, by using the phrase "except as provided in Criminal Law 3-307," that offenses involving greater harm or coercion are intended to be prosecuted under Criminal Law 3-307 (3<sup>rd</sup> degree sexual offense), a felony, as appropriate.

### In Cases Involving a Child Under the Age of 13

The penalty enhancement in cases where the victim is under 13 appears to be an overreach and could lead to excessive sentencing outcomes. Under the Bill (Criminal Law 3-308.1(C)), a person in position of authority who engages in a sexual act or intercourse with someone under 13 would be subject to a felony conviction under this provision and a sentence of up to 15 years and/or \$25,000 fine. But, under existing law, the act governing a sexual act or intercourse between a child under 14 with a 4-year age gap, with elevated penalties for under 13 with any adult is already a felony (2<sup>nd</sup> degree rape) with a minimum sentence of 15 years up to life. Criminal Law 3-304(b) and (c)(2). Under this bill, the sentences imposed could be consecutive.

Similarly, for sexual contact, current Criminal Law 3-307(a)(3) (a 3<sup>rd</sup> degree sexual offense) would apply in the case of sexual contact between a child under 13 and an adult, and that carries a felony penalty of up to 10 years in prison. Significantly, the Bill does not include the language "except as provided in Section 3-307(a)(3)"<sup>1</sup>, meaning that the individual in the position of authority could be charged under both statutes and penalized with *consecutive* 10-year and 15-year sentences.

### In Cases Involving an Individual Who Has Previously Offended

Under current law, an individual who has been convicted of a previous enumerated sexual offense and violates the "Person in a Position of Authority" statute is subject to imprisonment of up to 3 years and/or a \$1,000 fine. Under SB407, the same violation would be elevated to a felony

<sup>1</sup> The Bill uses the "except for" language only to apply to Criminal Law 3-307(a)(4) and 3-307(a)(5).

punishable by up to 25 years imprisonment and/or a \$50,000 fine. As with cases discussed above, existing law already provides felony penalties under Criminal Law 3-307 for cases warranting such prosecution. The addition of this new felony offense is unnecessary and excessive.

#### Lack of Clarity on Minimum Age for Person in a Position of Authority

Under current law, the definition of "Person in a Position of Authority" pertaining to individuals working or volunteering at a school appears in two parts. The first part clearly applies only to individuals who are 21 years of age or older. Criminal Law 3-308(a)(2)(i). However, the second part of the definition relating to school activities - Criminal Law 3-308(a)(2)(ii) - applies to anyone who is a "coach" at a school and that part of the definition is not explicitly limited by age. Given that Maryland high school students perform public services for Student Service Learning (SSL) hours and other forms of volunteering, and the penalty provisions in the Bill would establish new felonies with significantly harsher penalties, if the Bill were to move forward it should be amended to make explicit that the definition applies only to individuals who are 21 years of age or older.

This issue could be addressed by adding the following language to proposed Criminal Law 3-308.1((A)(2)(II):

(II) "Person in a position of authority," as it pertains to subsection (A)(2)(I)(A) above includes a principal, vice principal, teacher, coach, or school counselor . . . ."

SB407 creates a new felony offense under 3-308.1 with significantly increased penalties for authority figures who engage in sexual conduct with individuals under their supervision. Because existing felony provisions - Criminal Law 3-304 and 3-307 - already cover conduct involving younger children or aggravating age differentials, the proposed felony penalties overlap with current law and warrant additional clarification to avoid inviting double-jeopardy challenges. Criminal Law 3-308 already serves as an appropriate safeguard against abusive behavior by individuals in positions of authority over children.

SB407 is unnecessary, creates the potential for excessive punishments for a single act, and FAIR urges the committee to vote NO on this bill.

Sincerely,



Brenda V. Jones, Executive Director  
Families Advocating Intelligent Registries