

HOUSE BILL 226

E1
HB 223/22 – JUD

3lr0682
CF SB 21

By: **Delegates Love, Foley, D. Jones, Kelly, Lopez, Palakovich Carr, Patterson, Ruth, Simpson, ~~and Ziegler~~ Ziegler, Arian, Bartlett, Embry, Kaufman, Munoz, Phillips, Taylor, and Williams**

Introduced and read first time: January 23, 2023
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 1, 2023

CHAPTER _____

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~~ applicable to sexual offense in the fourth degree;
7 altering a certain prohibition against a certain person in a position of authority from
8 engaging in certain conduct to prohibit a ~~certain~~ person in a position of authority
9 from engaging in a sexual act, sexual contact, or vaginal intercourse with a minor
10 who is or was enrolled at a school or participating in the institution, program, or
11 activity where a certain program for which the person in a position of authority is or
12 was employed or under contract works or was working at a certain time; prohibiting
13 sexual offense in the fourth degree from being considered a greater inclusive crime
14 of any other crime or a lesser inclusive crime, except under certain circumstances;
15 and generally relating to persons in a position of authority and sexual offenses.

16 BY repealing and reenacting, with amendments,
17 Article – Criminal Law
18 Section 3–308
19 Annotated Code of Maryland
20 (2021 Replacement Volume and 2022 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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. IS AT LEAST 21 YEARS OLD;

2. WORKS FOR REMUNERATION OR AS A VOLUNTEER

FOR:

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

B. A PROGRAM; AND

3. 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 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) SPORTS, MUSIC, DANCE, ART, OR MARTIAL ARTS COACHING OR INSTRUCTION;

(II) TUTORING OR ACADEMIC ENRICHMENT;

(III) DAY CARE OR AFTER SCHOOL CARE;

(IV) SCOUTING; OR

(V) DAY OR OVERNIGHT CAMPING.

(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[.];~~

~~(f) 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~~

~~(g) 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, 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 THE PERSON IN A POSITION OF AUTHORITY WORKS; OR

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

4 (2) Except as provided in § 3–307(a)(5) of this subtitle or subsection (b)(3)
5 of this section, a person in a position of authority may not engage in vaginal intercourse
6 with a minor who[.]:

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

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

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

17 (2) (i) On conviction of a violation of this section, a person who has been
18 convicted on a prior occasion not arising from the same incident of a violation of § 3–303, §
19 3–304, §§ 3–307 through 3–310 of this subtitle, § 3–311 or § 3–312 of this subtitle as the
20 sections existed before October 1, 2017, § 3–315 of this subtitle, or § 3–602 of this title is
21 subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

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

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

28 (E) A VIOLATION OF THIS SECTION:

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.