

SENATE BILL 21

E1
SB 49/22 – JPR

(PRE-FILED)

3lr0681
CF HB 226

By: **Senator ~~West~~ Folden**

Requested: November 2, 2022

Introduced and read first time: January 11, 2023

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 7, 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; 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 2022 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**

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.



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~~

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

(1) IN THIS SECTION, "PERSON IN A POSITION OF AUTHORITY" MEANS
A PERSON WHO, BECAUSE OF THE PERSON'S POSITION OR OCCUPATION, EXERCISES
SUPERVISION OVER A MINOR WHO ATTENDS A SCHOOL OR PARTICIPATES IN AN
INSTITUTION, A PROGRAM, OR AN ACTIVITY INCLUDED IN ITEM (II) OF THIS
PARAGRAPH AND IS:

(I) 1. AT LEAST 21 YEARS OLD; AND
2. IS EMPLOYED BY OR UNDER CONTRACT WITH A
PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY SCHOOL, OR SECONDARY SCHOOL;
OR

(II) 1. AT LEAST 6 YEARS OLDER THAN A MINOR WHO IS
ENROLLED OR PARTICIPATING IN THE INSTITUTION, PROGRAM, OR ACTIVITY
WHERE THE PERSON IS EMPLOYED OR UNDER CONTRACT; AND

2. EMPLOYED BY OR UNDER CONTRACT WITH:
A. A CHILD CARE FACILITY, INCLUDING AN
AFTER-SCHOOL PROGRAM;

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

C. A SPORTS, SCOUTING, OR RECREATIONAL ACTIVITY
OR PROGRAM;

D. A DAY OR OVERNIGHT CAMP;

E. A RELIGIOUS INSTITUTION; OR

F. ANY UNIT OF LOCAL, STATE, OR FEDERAL
GOVERNMENT.

(2) "PERSON IN A POSITION OF AUTHORITY" INCLUDES:

(I) FOR A PERSON DESCRIBED UNDER PARAGRAPH (1)(I) OF
THIS SUBSECTION, A PRINCIPAL, VICE PRINCIPAL, TEACHER, COACH, OR SCHOOL
COUNSELOR AT A PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY SCHOOL, OR
SECONDARY SCHOOL; AND

(II) FOR A PERSON DESCRIBED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION, A PERSON WHO:

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

2. SUPERVISES ONE OR MORE PERSONS IN A POSITION OF AUTHORITY WITHIN THE INSTITUTION, PROGRAM, OR ACTIVITY.

(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.

(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, **OR VAGINAL INTERCOURSE** with a minor who ~~is~~

~~(i) at the time of the sexual act or sexual contact~~ **SEXUAL ACT, SEXUAL CONTACT, OR VAGINAL INTERCOURSE**, is ~~a student enrolled at a school~~ **ENROLLED, OR IS 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.

(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.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.