

HOUSE BILL 33

E1
HB 60/13 – JUD

(PRE-FILED)

4lr0672

By: **Delegate Smigiel**

Requested: October 17, 2013

Introduced and read first time: January 8, 2014

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2014

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Professional Counselors and Therapists – Conduct**
3 **(Lynette’s Law)**

4 FOR the purpose of prohibiting a certain professional counselor or therapist from
5 engaging in a sexual act, ~~sexual contact,~~ or vaginal intercourse with a person
6 who is receiving counseling from the professional counselor or therapist or
7 received counseling from the professional counselor or therapist within a certain
8 period of time; ~~prohibiting a certain professional counselor or therapist from~~
9 ~~knowingly, and with intent to deceive, making a false statement concerning the~~
10 ~~person’s criminal record on an employment application;~~ providing for a certain
11 statute of limitations for the prosecution of a violation of this Act; defining
12 certain terms; and generally relating to the conduct of professional counselors
13 and therapists.

14 BY repealing and reenacting, without amendments,
15 Article – Criminal Law
16 Section 3–307
17 Annotated Code of Maryland
18 (2012 Replacement Volume and 2013 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Criminal Law
21 Section 3–308
22 Annotated Code of Maryland

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.



1 (2012 Replacement Volume and 2013 Supplement)

2 ~~BY adding to~~

3 ~~Article – Criminal Law~~

4 ~~Section 9–509~~

5 ~~Annotated Code of Maryland~~

6 ~~(2012 Replacement Volume and 2013 Supplement)~~

7 BY repealing and reenacting, with amendments,
8 Article – Courts and Judicial Proceedings
9 Section 5–106(z)
10 Annotated Code of Maryland
11 (2013 Replacement Volume and 2013 Supplement)

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

14 **Article – Criminal Law**

15 3–307.

16 (a) A person may not:

17 (1) (i) engage in sexual contact with another without the consent of
18 the other; and

19 (ii) 1. employ or display a dangerous weapon, or a physical
20 object that the victim reasonably believes is a dangerous weapon;

21 2. suffocate, strangle, disfigure, or inflict serious
22 physical injury on the victim or another in the course of committing the crime;

23 3. threaten, or place the victim in fear, that the victim,
24 or an individual known to the victim, imminently will be subject to death, suffocation,
25 strangulation, disfigurement, serious physical injury, or kidnapping; or

26 4. commit the crime while aided and abetted by another;

27 (2) engage in sexual contact with another if the victim is a mentally
28 defective individual, a mentally incapacitated individual, or a physically helpless
29 individual, and the person performing the act knows or reasonably should know the
30 victim is a mentally defective individual, a mentally incapacitated individual, or a
31 physically helpless individual;

32 (3) engage in sexual contact with another if the victim is under the age
33 of 14 years, and the person performing the sexual contact is at least 4 years older than
34 the victim;

1 (4) engage in a sexual act with another if the victim is 14 or 15 years
2 old, and the person performing the sexual act is at least 21 years old; or

3 (5) engage in vaginal intercourse with another if the victim is 14 or 15
4 years old, and the person performing the act is at least 21 years old.

5 (b) A person who violates this section is guilty of the felony of sexual offense
6 in the third degree and on conviction is subject to imprisonment not exceeding 10
7 years.

8 3–308.

9 (a) **(1)** In this section[, “person] **THE FOLLOWING WORDS HAVE THE**
10 **MEANINGS INDICATED.**

11 **(2) (I) “PERSON in a position of authority”[**:

12 **(1)]** means a person who:

13 **[(i)] 1.** is at least 21 years old;

14 **[(ii)] 2.** is employed as a full–time permanent employee by a
15 public or private preschool, elementary school, or secondary school; and

16 **[(iii)] 3.** because of the person’s position or occupation,
17 exercises supervision over a minor who attends the school[; and].

18 **[(2)] (II) “PERSON IN A POSITION OF AUTHORITY”** includes a
19 principal, vice principal, teacher, or school counselor at a public or private preschool,
20 elementary school, or secondary school.

21 **(3) “PROFESSIONAL COUNSELOR OR THERAPIST” MEANS A**
22 **PERSON WHO IS LICENSED OR CERTIFIED TO PRACTICE MARRIAGE AND FAMILY**
23 **THERAPY, ALCOHOL AND DRUG COUNSELING, OR PROFESSIONAL COUNSELING**
24 **BY THE STATE BOARD OF PROFESSIONAL COUNSELORS AND THERAPISTS**
25 **UNDER TITLE 17 OF THE HEALTH OCCUPATIONS ARTICLE.**

26 (b) A person may not engage in:

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

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

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

4 (c) (1) Except as provided in § 3-307(a)(4) of this subtitle or subsection
 5 (b)(2) of this section, a person in a position of authority may not engage in a sexual act
 6 or sexual contact with a minor who, at the time of the sexual act or sexual contact, is a
 7 student enrolled at a school where the person in a position of authority is employed.

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

12 **(D) (1) EXCEPT AS PROVIDED IN § 3-307(A)(4) OF THIS SUBTITLE OR**
 13 **SUBSECTION (B)(2) OF THIS SECTION, A PROFESSIONAL COUNSELOR OR**
 14 **THERAPIST MAY NOT ENGAGE IN A SEXUAL ACT ~~OR SEXUAL CONTACT~~ WITH A**
 15 **PERSON WHO:**

16 **(I) AT THE TIME OF THE SEXUAL ACT ~~OR SEXUAL CONTACT~~,**
 17 **IS RECEIVING COUNSELING OR THERAPY FROM THE PROFESSIONAL**
 18 **COUNSELOR OR THERAPIST; OR**

19 **(II) RECEIVED COUNSELING OR THERAPY FROM THE**
 20 **PROFESSIONAL COUNSELOR OR THERAPIST WITHIN THE 2 YEARS PRECEDING**
 21 **THE SEXUAL ACT ~~OR SEXUAL CONTACT~~.**

22 **(2) EXCEPT AS PROVIDED IN § 3-307(A)(5) OF THIS SUBTITLE OR**
 23 **SUBSECTION (B)(3) OF THIS SECTION, A PROFESSIONAL COUNSELOR OR**
 24 **THERAPIST MAY NOT ENGAGE IN VAGINAL INTERCOURSE WITH A PERSON WHO:**

25 **(I) AT THE TIME OF THE VAGINAL INTERCOURSE, IS**
 26 **RECEIVING COUNSELING OR THERAPY FROM THE PROFESSIONAL COUNSELOR**
 27 **OR THERAPIST; OR**

28 **(II) RECEIVED COUNSELING OR THERAPY FROM THE**
 29 **PROFESSIONAL COUNSELOR OR THERAPIST WITHIN THE 2 YEARS PRECEDING**
 30 **THE VAGINAL INTERCOURSE.**

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

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

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

8 ~~9-509.~~

9 ~~(A) IN THIS SECTION, “PROFESSIONAL COUNSELOR OR THERAPIST”~~
10 ~~MEANS A PERSON WHO IS LICENSED OR CERTIFIED TO PRACTICE MARRIAGE~~
11 ~~AND FAMILY THERAPY, ALCOHOL AND DRUG COUNSELING, OR PROFESSIONAL~~
12 ~~COUNSELING BY THE STATE BOARD OF PROFESSIONAL COUNSELORS AND~~
13 ~~THERAPISTS UNDER TITLE 17 OF THE HEALTH OCCUPATIONS ARTICLE.~~

14 ~~(B) A PROFESSIONAL COUNSELOR OR THERAPIST MAY NOT~~
15 ~~KNOWINGLY, AND WITH INTENT TO DECEIVE, MAKE A FALSE STATEMENT~~
16 ~~CONCERNING THE PERSON’S CRIMINAL RECORD ON AN EMPLOYMENT~~
17 ~~APPLICATION.~~

18 ~~(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A~~
19 ~~MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT~~
20 ~~EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING \$500 OR BOTH.~~

21 Article – Courts and Judicial Proceedings

22 5-106.

23 (z) A prosecution for a misdemeanor offense under § 3-308(c) OR (D) or, if
24 the victim was a minor at the time of the offense, § 3-308(b)(1) of the Criminal Law
25 Article shall be instituted within 3 years after the offense was committed.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2014.