

SENATE BILL 105

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3lr0315

By: **Senators Brochin and Raskin**

Introduced and read first time: January 14, 2013

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 22, 2013

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Sexual Contact with Minors – School Employees**

3 FOR the purpose of altering the definition of a “person in a position of authority”
4 relating to prohibiting an individual from engaging in a sexual act, sexual
5 contact, or vaginal intercourse with a minor under certain circumstances ~~to~~
6 ~~remove a limitation to full-time employees; prohibiting a certain person from~~
7 engaging in a sexual act, sexual contact, or vaginal intercourse with a minor
8 under certain circumstances; providing that a certain violation under this Act is
9 not included within a certain definition for a certain registry; and generally
10 relating to a sexual offense involving a person in a position of authority and a
11 minor under certain circumstances.

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

17 BY repealing and reenacting, with amendments,
18 Article – Criminal Law
19 Section 3–308
20 Annotated Code of Maryland
21 (2012 Replacement Volume and 2012 Supplement)

22 BY repealing and reenacting, without amendments,

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 Article – Criminal Procedure
2 Section 11–701(a)
3 Annotated Code of Maryland
4 (2008 Replacement Volume and 2012 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article – Criminal Procedure
7 Section 11–701(o)
8 Annotated Code of Maryland
9 (2008 Replacement Volume and 2012 Supplement)

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

12 **Article – Criminal Law**

13 3–307.

14 (a) A person may not:

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

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

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

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

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

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

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

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

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

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

6 3–308.

7 (a) In this section, “person in a position of authority”:

8 (1) means a person who:

9 (i) is at least 21 years old;

10 (ii) is employed as a [full–time] permanent employee by a public
11 or private preschool, elementary school, or secondary school; and

12 (iii) because of the person’s position or occupation, exercises
13 supervision over a minor who attends the school; and

14 (2) includes a principal, vice principal, teacher, or school counselor at
15 a public or private preschool, elementary school, or secondary school.

16 (b) A person may not engage in:

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

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

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

24 (c) (1) Except as provided in § 3–307(a)(4) of this subtitle or subsection
25 (b)(2) of this section, a person **WHO IS EMPLOYED FULL–TIME AS A PERSON** in a
26 position of authority may not engage in a sexual act or sexual contact with a minor
27 who **THE PERSON KNOWS**, at the time of the sexual act or sexual contact, is a student
28 enrolled at a school where the person in a position of authority is employed.

29 (2) Except as provided in § 3–307(a)(5) of this subtitle or subsection
30 (b)(3) of this section, a person **WHO IS EMPLOYED FULL–TIME AS A PERSON** in a
31 position of authority may not engage in vaginal intercourse with a minor who **THE**

1 PERSON KNOWS, at the time of the vaginal intercourse, is a student enrolled at a
2 school where the person in a position of authority is employed.

3 (D) EXCEPT AS PROVIDED IN § 3-307(A) OF THIS SUBTITLE OR
4 SUBSECTIONS (B) OR (C) OF THIS SECTION, A PERSON WHO IS EMPLOYED
5 PART-TIME AS A PERSON IN A POSITION OF AUTHORITY WHO IS AT LEAST 8
6 YEARS OLDER THAN THE VICTIM MAY NOT ENGAGE IN SEXUAL CONTACT, A
7 SEXUAL ACT, OR VAGINAL INTERCOURSE WITH A MINOR WHO THE PERSON
8 KNOWS, AT THE TIME OF THE SEXUAL CONTACT, SEXUAL ACT, OR VAGINAL
9 INTERCOURSE, IS A STUDENT ENROLLED AT A SCHOOL WHERE THE PERSON IN A
10 POSITION OF AUTHORITY IS EMPLOYED.

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

15 (2) (i) On conviction of a violation of this section, a person who has
16 been convicted on a prior occasion not arising from the same incident of a violation of
17 §§ 3-303 through 3-312 or § 3-315 of this subtitle or § 3-602 of this title is subject to
18 imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

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

22 Article – Criminal Procedure

23 11-701.

24 (a) In this subtitle the following words have the meanings indicated.

25 (o) “Tier I sex offender” means a person who has been convicted of:

26 (1) conspiring to commit, attempting to commit, or committing a
27 violation of § 3-308(B) OR (C) of the Criminal Law Article;

28 (2) conspiring to commit, attempting to commit, or committing a
29 violation of § 3-902 or § 11-208 of the Criminal Law Article, if the victim is a minor;

30 (3) a crime committed in a federal, military, tribal, or other
31 jurisdiction that, if committed in this State, would constitute one of the crimes listed
32 in item (1) or (2) of this subsection;

33 (4) any of the following federal offenses:

- 1 (i) misleading domain names on the Internet under 18 U.S.C. §
2 2252B;
- 3 (ii) misleading words or digital images on the Internet under 18
4 U.S.C. § 2252C;
- 5 (iii) engaging in illicit conduct in foreign places under 18 U.S.C.
6 § 2423(c);
- 7 (iv) failure to file a factual statement about an alien individual
8 under 18 U.S.C. § 2424;
- 9 (v) transmitting information about a minor to further criminal
10 sexual conduct under 18 U.S.C. § 2425;
- 11 (vi) sex trafficking by force, fraud, or coercion under 18 U.S.C. §
12 1591; or
- 13 (vii) travel with intent to engage in illicit conduct under 18
14 U.S.C. § 2423(b);
- 15 (5) any military offense specified by the Secretary of Defense under
16 Section 115(A)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 Note) that is
17 similar to those offenses listed in item (4) of this subsection; or
- 18 (6) a crime in a court of Canada, Great Britain, Australia, New
19 Zealand, or any other foreign country where the United States Department of State
20 has determined in its Country Reports on Human Rights Practices that an
21 independent judiciary generally or vigorously enforced the right to a fair trial during
22 the year in which the conviction occurred that, if the crime were committed in this
23 State, would constitute one of the crimes listed in items (1) through (5) of this
24 subsection.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 June 1, 2013.