

# HOUSE BILL 226

E1

(3lr0682)

## ENROLLED BILL

— Judiciary/Judicial Proceedings —

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

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

### 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~~

---

#### 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.

*Italics indicate opposite chamber/conference committee amendments.*



1 ~~of any other crime or a~~ lesser inclusive crime, ~~except~~ *of any other crime, except* under  
 2 certain circumstances; authorizing the imposition of a certain sentence in a certain  
 3 manner; and generally relating to persons in a position of authority and sexual  
 4 offenses.

5 BY repealing and reenacting, with amendments,  
 6 Article – Criminal Law  
 7 Section 3–308  
 8 Annotated Code of Maryland  
 9 (2021 Replacement Volume and 2022 Supplement)

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

12 **Article – Criminal Law**

13 3–308.

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

15 (1) ~~means a person who:~~

16 (i) ~~is at least 21 years old;~~

17 (ii) ~~is employed by or under contract with:~~

18 ~~1. a public or private preschool, elementary school, or~~  
 19 ~~secondary school;~~

20 ~~2. A CHILD CARE FACILITY, INCLUDING AN~~  
 21 ~~AFTER SCHOOL PROGRAM;~~

22 ~~3. A COMMERCIAL OR NONPROFIT INSTRUCTIONAL~~  
 23 ~~PROGRAM FOR MUSIC, DANCE, ART, TUTORING, ACADEMIC ENRICHMENT, MARTIAL~~  
 24 ~~ARTS, OR A PROGRAM WITH A SIMILAR PURPOSE;~~

25 ~~4. A SPORTS, SCOUTING, OR RECREATIONAL ACTIVITY~~  
 26 ~~OR PROGRAM;~~

27 ~~5. A DAY OR OVERNIGHT CAMP;~~

28 ~~6. A RELIGIOUS INSTITUTION; OR~~

29 ~~7. ANY UNIT OF LOCAL, STATE, OR FEDERAL~~  
 30 ~~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 (H) 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)(H) 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.~~

(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. A. IS AT LEAST 21 YEARS OLD;

~~2.~~ AND WORKS FOR REMUNERATION OR AS A VOLUNTEER FOR;

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

B. ~~A~~ IS AT LEAST 22 YEARS OLD AND WORKS FOR REMUNERATION OR AS A VOLUNTEER FOR A PROGRAM; AND

~~3.~~ 2. 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:

1 (I) AN INDIVIDUAL, A BUSINESS, A RELIGIOUS OR FAITH-BASED  
 2 INSTITUTION, OR AN ORGANIZATION THAT PROVIDES, ON A FOR-PROFIT OR  
 3 NONPROFIT BASIS, INSTRUCTIONAL, COACHING, RECREATIONAL, SPIRITUAL,  
 4 CHARACTER-BUILDING, OR SUPERVISORY SERVICES OR ACTIVITIES FOR MINORS,  
 5 INCLUDING:

6 ~~(I)~~ 1. SPORTS, MUSIC, DANCE, ART, OR MARTIAL ARTS  
 7 COACHING OR INSTRUCTION;

8 ~~(II)~~ 2. TUTORING OR ACADEMIC ENRICHMENT;

9 ~~(III)~~ 3. DAY CARE OR AFTER SCHOOL CARE;

10 ~~(IV)~~ 4. SCOUTING; OR

11 ~~(V)~~ 5. DAY OR OVERNIGHT CAMPING; OR

12 (II) ANY UNIT OF LOCAL, STATE, OR FEDERAL GOVERNMENT.

13 (b) A person may not engage in:

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

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

18 (3) except as provided in § 3-307(a)(5) of this subtitle, vaginal intercourse  
 19 with another if the victim is 14 or 15 years old, and the person performing the act is at least  
 20 4 years older than the victim.

21 ~~(c) (1) Except as provided in § 3-307(a)(4) of this subtitle or subsection (b)(2)~~  
 22 ~~of this section, a person in a position of authority may not engage in a sexual act [or], sexual~~  
 23 ~~contact, OR VAGINAL INTERCOURSE with a minor who [;]:~~

24 ~~(I) at the time of the sexual act or sexual contact, is [a student~~  
 25 ~~enrolled at a school] ENROLLED OR PARTICIPATING IN THE INSTITUTION, PROGRAM,~~  
 26 ~~OR ACTIVITY where the person in a position of authority is employed OR UNDER~~  
 27 ~~CONTRACT; OR~~

28 ~~(II) WAS PREVIOUSLY ENROLLED OR PARTICIPATING IN THE~~  
 29 ~~INSTITUTION, PROGRAM, OR ACTIVITY AT THE SAME TIME THE PERSON IN A~~  
 30 ~~POSITION OF AUTHORITY WAS EMPLOYED OR UNDER CONTRACT AT THE~~  
 31 ~~INSTITUTION, PROGRAM, OR ACTIVITY.~~

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

5           (c) (1) Except as provided in § 3-307(a)(4) of this subtitle or subsection (b)(2)  
6 of this section, a person in a position of authority may not engage in a sexual act or sexual  
7 contact with a minor who~~f.†~~

8                   ~~(I)~~ at the time of the sexual act or sexual contact;

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

12                   ~~(II) WAS PREVIOUSLY ENROLLED AT A SCHOOL OR~~  
13 ~~PARTICIPATING IN A PROGRAM AT THE SAME TIME THE PERSON IN A POSITION OF~~  
14 ~~AUTHORITY WAS WORKING FOR THE SCHOOL OR PROGRAM~~

15                           1. IS PARTICIPATING IN A PROGRAM FOR WHICH THE  
16 PERSON IN A POSITION OF AUTHORITY WORKS; AND

17                           2. IS AT LEAST 6 YEARS YOUNGER THAN THE PERSON IN  
18 A POSITION OF AUTHORITY.

19           (2) Except as provided in § 3-307(a)(5) of this subtitle or subsection (b)(3)  
20 of this section, a person in a position of authority may not engage in vaginal intercourse  
21 with a minor who~~f.†~~

22                   ~~(I)~~ at the time of the vaginal intercourse;

23                   (I) is a student enrolled at a school [where the person in a position  
24 of authority is employed], ~~OR IS PARTICIPATING IN A PROGRAM, FOR WHICH~~ WHERE  
25 THE PERSON IN A POSITION OF AUTHORITY WORKS; OR

26                   ~~(II) WAS PREVIOUSLY ENROLLED AT A SCHOOL OR~~  
27 ~~PARTICIPATING IN A PROGRAM AT THE SAME TIME THE PERSON IN A POSITION OF~~  
28 ~~AUTHORITY WAS WORKING FOR THE SCHOOL OR PROGRAM~~

29                           1. IS PARTICIPATING IN A PROGRAM FOR WHICH THE  
30 PERSON IN A POSITION OF AUTHORITY WORKS; AND

31                           2. IS AT LEAST 6 YEARS YOUNGER THAN THE PERSON IN  
32 A POSITION OF AUTHORITY.

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

5 (2) (i) On conviction of a violation of this section, a person who has been  
 6 convicted on a prior occasion not arising from the same incident of a violation of § 3–303, §  
 7 3–304, §§ 3–307 through 3–310 of this subtitle, § 3–311 or § 3–312 of this subtitle as the  
 8 sections existed before October 1, 2017, § 3–315 of this subtitle, or § 3–602 of this title is  
 9 subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

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

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

16 (E) ~~A VIOLATION OF THIS SECTION:~~

17 ~~(1) MAY NOT BE CONSIDERED A GREATER INCLUSIVE CRIME OF ANY~~  
 18 ~~OTHER CRIME; AND~~

19 ~~(2) UNLESS SPECIFICALLY CHARGED BY THE STATE, MAY NOT BE~~  
 20 ~~CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER CRIME~~

21 (1) UNLESS SPECIFICALLY CHARGED BY THE STATE, A VIOLATION OF  
 22 THIS SECTION MAY NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER  
 23 CRIME.

24 (2) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE IMPOSED  
 25 SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR  
 26 ANY CRIME BASED ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

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