

# HOUSE BILL 223

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1lr1033

(PRE-FILED)

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By: **Delegate Love**

Requested: October 20, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judiciary

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## A BILL ENTITLED

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; prohibiting a violation of this Act from being considered  
12 a lesser included crime of another crime; and generally relating to persons in a  
13 position of authority and sexual offenses.

14 BY repealing and reenacting, with amendments,  
15 Article – Criminal Law  
16 Section 3–308  
17 Annotated Code of Maryland  
18 (2012 Replacement Volume and 2020 Supplement)

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

21 **Article – Criminal Law**

22 3–308.

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

24 (1) means a person who:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) is at least 21 years old;

2 (ii) is employed by or under contract with:

3 1. a public or private preschool, elementary school, or  
4 secondary school;

5 2. A CHILD CARE FACILITY, INCLUDING AN  
6 AFTER-SCHOOL PROGRAM;

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

10 4. A SPORTS, SCOUTING, OR RECREATIONAL ACTIVITY  
11 OR PROGRAM;

12 5. A DAY OR OVERNIGHT CAMP;

13 6. A RELIGIOUS INSTITUTION; OR

14 7. ANY UNIT OF LOCAL, STATE, OR FEDERAL  
15 GOVERNMENT; and

16 (iii) because of the person's position or occupation, exercises  
17 supervision over a minor who attends [the school] OR PARTICIPATES IN AN  
18 INSTITUTION, A PROGRAM, OR AN ACTIVITY INCLUDED IN PARAGRAPH (1)(II) OF  
19 THIS SUBSECTION OR OPERATED BY ANY UNIT OF LOCAL, STATE, OR FEDERAL  
20 GOVERNMENT; and

21 (2) includes [a principal, vice principal, teacher, coach, or school counselor  
22 at a public or private preschool, elementary school, or secondary school] AN INDIVIDUAL  
23 WHO:

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

29 (II) SUPERVISES ONE OR MORE PERSONS IN A POSITION OF  
30 AUTHORITY WITHIN THE INSTITUTION, PROGRAM, OR ACTIVITY.

1 (b) A person may not engage in:

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

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

6 (3) except as provided in § 3–307(a)(5) of this subtitle, vaginal intercourse  
7 with another if the victim is 14 or 15 years old, and the person performing the act is at least  
8 4 years older than the victim.

9 (c) (1) Except as provided in § 3–307(a)(4) of this subtitle or subsection (b)(2)  
10 of this section, a person in a position of authority may not engage in a sexual act [or], sexual  
11 contact, **OR VAGINAL INTERCOURSE** with a minor who[, ]:

12 (I) at the time of the sexual act or sexual contact, is [a student  
13 enrolled at a school] **ENROLLED OR PARTICIPATING IN THE INSTITUTION, PROGRAM,  
14 OR ACTIVITY** where the person in a position of authority is employed **OR UNDER  
15 CONTRACT; OR**

16 (II) **WAS PREVIOUSLY ENROLLED OR PARTICIPATING IN THE  
17 INSTITUTION, PROGRAM, OR ACTIVITY AT THE SAME TIME THE PERSON IN  
18 AUTHORITY WAS EMPLOYED OR UNDER CONTRACT AT THE INSTITUTION, PROGRAM,  
19 OR ACTIVITY.**

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

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

28 (2) (i) On conviction of a violation of this section, a person who has been  
29 convicted on a prior occasion not arising from the same incident of a violation of § 3–303, §  
30 3–304, §§ 3–307 through 3–310 of this subtitle, § 3–311 or § 3–312 of this subtitle as the  
31 sections existed before October 1, 2017, § 3–315 of this subtitle, or § 3–602 of this title is  
32 subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

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

1           **(E) UNLESS SPECIFICALLY CHARGED BY THE STATE, A VIOLATION OF THIS**  
2 **SECTION MAY NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER**  
3 **CRIME.**

4           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2021.