

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 407

(Senator Gile, *et al.*)

Judicial Proceedings

Rules and Executive Nominations

Criminal Law - Sexual Offense by a Person in a Position of Authority

This bill (1) increases the penalty for an existing sexual crime involving a “person in a position of authority” who has specified prior convictions; (2) establishes a new sexual crime involving a person in a position of authority, subject to a specified penalty; (3) requires specified individuals to register as Tier III sex offenders; and (4) designates specified sexual offenses by a person in a position of authority as qualifying crimes for sexual solicitation of a minor.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary:

Person in a Position of Authority – Definitions and Prohibited Acts

The bill *relocates* existing statutory provisions pertaining to sexual crimes committed by a “person in a position of authority,” including the definition of that term, from § 3-308 of the Criminal Law Article (sexual offense in the fourth degree) to a new and independent statutory section (§ 3-308.1 of the Criminal Law Article). Under the bill and current law, a

person convicted of the standard offense (named “misdemeanor sexual offense by a person in a position of authority” under the bill) is guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a \$1,000 maximum fine.

The bill establishes a *new* sexual offense by prohibiting a person from committing sexual offense by a person in a position of authority involving a child younger than age 13. Violators are guilty of felony sexual offense by a person in a position of authority, which is punishable by imprisonment for up to 10 years and/or a \$25,000 maximum fine. The bill designates this offense as a qualifying crime for sexual solicitation of a minor.

A person convicted of the offenses above (including the new offense) who was previously convicted of specified offenses (same prior convictions as under current law), is guilty of a felony, punishable by imprisonment for up to 20 years and/or a \$50,000 maximum fine (currently a misdemeanor, three years/\$1,000). The bill designates this offense as a qualifying crime for sexual solicitation of a minor.

Unless specifically charged by the State, a violation of these provisions may not be considered a lesser included crime of any other crime. A sentence imposed under these provisions may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of these provisions.

Sex Offender Registration

Consistent with existing statute, individuals convicted of misdemeanor sexual offense by a person in a position of authority continue to register as Tier I sex offenders. However, the bill requires individuals convicted of the new crime or under the repeat offender provisions to register as Tier III sex offenders.

Current Law:

Sexual Offense in the Fourth Degree

A “person in a position of authority” is a person who is (1) at least age 21 and works for remuneration or as a volunteer for a public or private preschool, elementary school, or secondary school or (2) at least age 22 and works for remuneration or as a volunteer for a “program” and exercises supervision over or works or interacts with one or more minors who attend the school or participate in the program. A 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.

A “program” means an individual, a business, a religious or faith-based institution, or an organization that provides, on a for-profit or nonprofit basis, instructional, coaching,

recreational, spiritual, character-building, or supervisory services or activities for minors, including (1) sports, music, dance, art, or martial arts coaching or instruction; (2) tutoring or academic enrichment; (3) day care or after school care; (4) scouting; or (5) day or overnight camping. “Program” also means any unit of local, State, or federal government.

The fourth-degree sexual offense statute prohibits a person from (1) engaging in sexual contact with another without the consent of the other or (2) except as prohibited under the third-degree sexual offense statute, engaging in a sexual act or vaginal intercourse with a victim who is age 14 or 15 and the person performing the act is at least 4 years older than the victim.

Except as prohibited under the third-degree sexual offense statute or the prohibitions above, a person in a position of authority may not engage in a sexual act, sexual contact, or vaginal intercourse with a minor who, at the time of the sexual act, sexual contact, or vaginal intercourse (1) is a student enrolled at a school where the person in a position of authority works or (2) is participating in a program for which the person in a position of authority works and is at least six years younger than the person in a position of authority.

Fourth-degree sexual offense is a misdemeanor, punishable by imprisonment for up to one year and/or a \$1,000 maximum fine. However, an increased penalty of imprisonment for up to three years and/or a \$1,000 maximum fine applies to a person who has been convicted on a prior occasion not arising from the same incident of violations of specified sexual crimes under State law. The specified crimes are: first-degree rape; second-degree rape; third-degree sexual offense; fourth-degree sexual offense; attempted rape in the first degree; attempted rape in the second degree; attempted sexual offense in the first-degree (as it existed before October 1, 2017); attempted sexual offense in the second degree (as it existed before October 1, 2017); continuing course of conduct with a child; and sexual abuse of a minor.

Imposition of the subsequent offender penalty is subject to specified procedural requirements. Unless specifically charged by the State, a violation of the fourth-degree sexual offense statute may not be considered a lesser included crime of any other crime. There is a three-year statute of limitations for prosecution of a fourth-degree sexual offense involving a person in a position of authority or sexual contact with a minor without the consent of the minor.

Sexual Solicitation of a Minor – § 3-324 of the Criminal Law Article

“Solicit” means to command, authorize, urge, entice, request, or advise a person by any means, including (1) in person; (2) through an agent or agency; (3) over the telephone; (4) through any print medium; (5) by mail; (6) by computer or Internet; or (7) by any other electronic means.

A person may not, with the intent to commit any of the crimes listed below, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under the laws on (1) rape in the second degree; (2) sexual offense in the third degree; (3) engaging in prostitution; (4) receiving the earnings of a prostitute; (5) abduction of a child younger than age 16 for the commission of a sexual crime; (6) procuring or soliciting prostitution; (7) maintaining a house of prostitution; or (8) production or distribution of child pornography.

Statute also prohibits a person who intends to commit any of the crimes listed above from knowingly soliciting the consent of a parent, guardian, or custodian of a minor, or a law enforcement officer posing as such a person, to engage in activities with the minor that would be unlawful for the person to engage in under the laws corresponding to those crimes.

A violation of either prohibition is a felony with a maximum penalty of (1) imprisonment for up to 10 years and/or a fine of up to \$25,000 for a first offense or (2) imprisonment for up to 20 years and/or a fine of up to \$50,000 for a second or subsequent offense.

Sex Offender Registration

Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment, is required to register with the State sex offender registry upon release from incarceration or release from court if the person did not receive a sentence with a term of incarceration. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland.

A Tier I sex offender must register in person every six months with a local law enforcement unit for 15 years. A Tier II sex offender must register in person every six months with a local law enforcement unit for 25 years. A Tier III sex offender must register in person every three months with a local law enforcement unit for the life of the registrant.

State and Local Fiscal Effect:

Misdemeanors to Felonies

Generally, changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to more stringent penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that

this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense. However, as the data below indicates, this analysis assumes that the bill’s changes do not materially affect State or local operations or finances

Relevant Offense Data

Exhibit 1 contains information on the number of violations and guilty dispositions in the District Court and the circuit courts over the last two fiscal years for sexual offense in the fourth degree by a person in a position of authority.

Exhibit 1
Violations and Guilty Dispositions
Sexual Offense in the Fourth Degree – Person in a Position of Authority
Fiscal 2024 and 2025

	Fiscal 2024		Fiscal 2025	
	<u>Violations</u>	<u>Guilty Dispositions</u>	<u>Violations</u>	<u>Guilty Dispositions</u>
<u>District Court</u>				
Sexual Act/Conduct with a Minor	19	0	7	0
Vaginal Intercourse with a Minor	2	0	3	1
<u>Circuit Courts</u>				
Sexual Act/Conduct with a Minor	34	10	25	0
Vaginal Intercourse with a Minor	1	0	3	0

Source: Maryland Judiciary

Other Impacts of the Bill

The bill is not anticipated to materially affect the operations or finances of the Maryland State Commission on Criminal Sentencing Policy, Office of the Public Defender, the Judiciary, and the Department of Public Safety and Correctional Services.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 501 (Delegate Bartlett, *et al.*) - Judiciary.

Information Source(s): Anne Arundel, Baltimore, Cecil, Frederick, Montgomery, and Somerset counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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