

MODEL LEGISLATIVE LANGUAGE

The following language is proposed for your consideration in legislation intended to expand **Position of Authority** provisions and to close the **Age of Consent** loophole in both civil and criminal actions:

Section 1.

(a) "Position of trust, authority or supervision over a child" shall include a teacher, substitute teacher, coach, tutor, special educator, paraprofessional, mentor or other person providing instruction or educational services to a child or children, whether such person is compensated, acting as a volunteer, or employed or contracted in any capacity in private or public schools; or a person who is an instructor, tutor or coach of any athletic, artistic, or academic club, team, institution or organization, or an individual tutor or coach; or a parent, stepparent, adoptive parent, legal guardian, foster parent, or any person with custodial authority or supervision of a child or children; or a babysitter, child care provider, or child care aide, whether such person is compensated or acting as a volunteer; or any other person who because of that person's familial relationship, profession, employment, vocation, avocation or volunteer service has regular direct contact with a child or children.

(b) Whoever commits an indecent assault and battery on a child who has attained the age of 14 and is under the age of 18, and who is a mandated reporter as defined in state law, or who is in a position of trust, authority or supervision over a child as defined in this section and who commits the indecent assault and battery in the course of acting in that position or at any time thereafter, shall be punished by imprisonment in the state prison for not more than 10 years, or by imprisonment in the house of corrections for not more than 2 ½ years. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

(c) Whoever commits an indecent assault and battery on a child who is under the age of 14, and who is a mandated reporter as defined in state law, or who is in a position of trust, authority or supervision over a child as defined in this section, and who commits the indecent assault and battery in the course of acting in that position or at any time thereafter, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 10 years. The sentence imposed on such person shall not be reduced to less than 10 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his or her sentence for good conduct until he or she shall have served 10 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

In a prosecution under this section, a child under the age of 18 shall be deemed incapable of consenting to any conduct of the defendant for which such defendant is being prosecuted.

It shall not be a defense to a prosecution under this section that the position of trust, authority or supervision over a child has ended, if the child is under the age of 18 at the time of the offense.

Section 2.

(a) Whoever unlawfully has sexual intercourse or unnatural sexual intercourse with and abuses a child who has attained the age of 16 and is under the age of 18, and who is a mandated reporter as defined in state law, or who is in a position of trust, authority or supervision over a child as defined in state law, and who commits such conduct in the course of acting in that position or at any time thereafter, shall be punished by imprisonment in the state prison for life or for any terms of years or, except as otherwise provided, for any term in a jail or house of correction. A prosecution commenced under this section shall neither be continued without a finding nor placed on file.

(b) Whoever unlawfully has sexual intercourse or unnatural sexual intercourse with and abuses a child who is under the age of 16, and who is a mandated reported as defined in state law, or who is in a position of trust, authority or supervision over a child as defined in state law, and who commits such conduct in the course of acting in that position or at any time thereafter, shall be punished by imprisonment in the state prison for life or for any terms of years, but not less than 10 years. The sentence imposed on such person shall not be reduced to less than 10 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his or her sentence for good conduct until he or she shall have served 10 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

In a prosecution under this section, a child under the age of 18 shall be deemed incapable of consenting to any conduct of the defendant for which such defendant is being prosecuted.

It shall not be a defense to a prosecution under this section that the position of trust, authority or supervision over a child has ended, if the child is under the age of 18 at the time of the offense.

Section 3.

A person over the age of 21 who is employed by or contracts with a public or private school, the department of youth services, the department of children and families, the department of mental health, the department of developmental services or a private institution that provides services to clients of such departments, who is a teacher, administrator or a person in a position of authority or trust and who provides supervisory or disciplinary authority over a student in the school, department or institution and, in the course of such employment or contract or as a result thereof, engages in sexual relations, within or outside of the school, department or institution, with a person who is:

(i) under the age of 19, has not received a high school diploma, general educational development certificate or equivalent document and is served by the school, department or institution; or

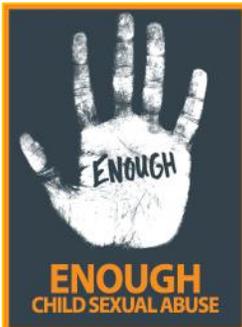
(ii) under the age of 22, has special needs as defined in state law, has not received a high school diploma, general educational development certificate or equivalent document and is served by the school, department or institution, shall have a cause of action against such an employee or contractor, under said state law. **In a civil action** commenced under said law a person served by such school, department or institution shall be deemed incapable of consent to sexual relations with such an employee or contractor.

Section 4.

A person over the age of 21 who is employed by or contracts with a public or private school, the department of youth services, the department of children and families, the department of mental health, the department of developmental services or a private institution that provides services to clients of such departments, who is a teacher, administrator or a person in a position of authority or trust and who provides supervisory or disciplinary authority over a student in the school, department or institution and, in the course of such employment or contract or as a result thereof, engages in sexual relations, within or outside of the school, department or institution, with a person who is:

(i) under the age of 19, has not received a high school diploma, general educational development certificate or equivalent document and is served by the school, department or institution; or

(ii) under the age of 22, has special needs as defined in state law, has not received a high school diploma, general educational development certificate or equivalent document and is served by the school, department or institution, shall be punished by imprisonment in a state prison for not more than X years or in a jail or house of corrections for not more than X years, by a fine of X or by both such fine and imprisonment. **In a prosecution** commenced under this section, an individual served by such a school, department or institution shall be deemed incapable of consent to sexual relations with the person.



For more info on how to strengthen your school's or youth organization's capacity to prevent child sexual abuse, visit:

Enough Abuse Campaign

www.enoughabuse.org ~ info@enoughabuse.org

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