
By: **Delegates Brown, Amedori, Benson, Boschert, Bronrott, Conroy, Cryor, D. Davis, Doory, Dumais, Eckardt, Feldman, Frush, Gaines, Goldwater, Gutierrez, Haddaway, Harrison, Healey, Impallaria, James, Jameson, Jones, Kaiser, King, Kirk, Krebs, Krysiak, Lee, Love, Madaleno, Malone, Mandel, Marriott, McComas, Menes, Miller, Minnick, Moe, Montgomery, Nathan-Pulliam, Parker, Parrott, Petzold, Quinter, Rosenberg, Sophocleus, Stern, F. Turner, V. Turner, and Walkup**

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Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 26, 2004

CHAPTER 524

1 AN ACT concerning

2 **Sexual Offenses - ~~No Means No~~ Spousal Defense**

3 FOR the purpose of ~~prohibiting a person from engaging in vaginal intercourse with~~
4 ~~another without the consent of the other; prohibiting a person from engaging in~~
5 ~~a sexual act with another without the consent of the other; defining a certain~~
6 ~~term; providing for certain criminal penalties; repealing modifying provisions~~
7 ~~relating to a certain spousal defense; providing that a person may be prosecuted~~
8 ~~under a certain subtitle for a crime against a certain victim under certain~~
9 ~~circumstances; and generally relating to sexual offenses.~~

10 BY repealing and reenacting, with amendments,
11 Article - Criminal Law
12 Section ~~3-301 and 3-307~~ 3-318
13 Annotated Code of Maryland
14 (2002 Volume and 2003 Supplement)

15 ~~BY repealing~~
16 ~~Article - Criminal Law~~
17 ~~Section 3-318~~
18 ~~Annotated Code of Maryland~~
19 ~~(2002 Volume and 2003 Supplement)~~

1 ~~BY adding to~~
 2 ~~Article—Criminal Law~~
 3 ~~Section 3-318~~
 4 ~~Annotated Code of Maryland~~
 5 ~~(2002 Volume and 2003 Supplement)~~

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

8 **Article - Criminal Law**

9 ~~3-301.~~

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

11 (B) ~~"FORCE" DOES NOT REQUIRE PROOF THAT A VICTIM PHYSICALLY~~
 12 ~~RESISTED, BUT OTHERWISE RETAINS ITS JUDICIALLY DETERMINED MEANING.~~

13 ~~[(b)] (C) "Mentally defective individual" means an individual who suffers from~~
 14 ~~mental retardation or a mental disorder, either of which temporarily or permanently~~
 15 ~~renders the individual substantially incapable of:~~

16 (1) ~~appraising the nature of the individual's conduct;~~

17 (2) ~~resisting vaginal intercourse, a sexual act, or sexual contact; or~~

18 (3) ~~communicating unwillingness to submit to vaginal intercourse, a~~
 19 ~~sexual act, or sexual contact.~~

20 ~~[(c)] (D) "Mentally incapacitated individual" means an individual who,~~
 21 ~~because of the influence of a drug, narcotic, or intoxicating substance, or because of an~~
 22 ~~act committed on the individual without the individual's consent or awareness, is~~
 23 ~~rendered substantially incapable of:~~

24 (1) ~~appraising the nature of the individual's conduct; or~~

25 (2) ~~resisting vaginal intercourse, a sexual act, or sexual contact.~~

26 ~~[(d)] (E) "Physically helpless individual" means an individual who:~~

27 (1) ~~is unconscious; or~~

28 (2) (i) ~~does not consent to vaginal intercourse, a sexual act, or sexual~~
 29 ~~contact; and~~

30 (ii) ~~is physically unable to resist, or communicate unwillingness to~~
 31 ~~submit to, vaginal intercourse, a sexual act, or sexual contact.~~

32 ~~[(e)] (F) (1) "Sexual act" means any of the following acts, regardless of~~
 33 ~~whether semen is emitted:~~

- 1 (i) analingus;
- 2 (ii) cunnilingus;
- 3 (iii) fellatio;
- 4 (iv) anal intercourse, including penetration, however slight, of the
5 anus; or
- 6 (v) an act:
- 7 1. in which an object penetrates, however slightly, into
8 another individual's genital opening or anus; and
- 9 2. that can reasonably be construed to be for sexual arousal
10 or gratification, or for the abuse of either party.
- 11 (2) "Sexual act" does not include:
- 12 (i) vaginal intercourse; or
- 13 (ii) an act in which an object penetrates an individual's genital
14 opening or anus for an accepted medical purpose.
- 15 [(f)] (G) (1) "Sexual contact", as used in §§ 3-307 and 3-308 of this subtitle,
16 means an intentional touching of the victim's or actor's genital, anal, or other
17 intimate area for sexual arousal or gratification, or for the abuse of either party.
- 18 (2) "Sexual contact" includes an act:
- 19 (i) in which a part of an individual's body, except the penis, mouth,
20 or tongue, penetrates, however slightly, into another individual's genital opening or
21 anus; and
- 22 (ii) that can reasonably be construed to be for sexual arousal or
23 gratification, or for the abuse of either party.
- 24 (3) "Sexual contact" does not include:
- 25 (i) a common expression of familial or friendly affection; or
- 26 (ii) an act for an accepted medical purpose.
- 27 [(g)] (H) (1) "Vaginal intercourse" means genital copulation, whether or not
28 semen is emitted.
- 29 (2) "Vaginal intercourse" includes penetration, however slight, of the
30 vagina.

1 ~~3-307.~~

2 (a) A person may not:

3 (1) (i) ~~engage in sexual contact with another without the consent of~~
4 ~~the other; and~~

5 (ii) 1- ~~employ or display a dangerous weapon, or a physical object~~
6 ~~that the victim reasonably believes is a dangerous weapon;~~

7 2- ~~suffocate, strangle, disfigure, or inflict serious physical~~
8 ~~injury on the victim or another in the course of committing the crime;~~

9 3- ~~threaten, or place the victim in fear, that the victim, or an~~
10 ~~individual known to the victim, imminently will be subject to death, suffocation,~~
11 ~~strangulation, disfigurement, serious physical injury, or kidnapping; or~~

12 4- ~~commit the crime while aided and abetted by another;~~

13 (2) ~~engage in sexual contact with another if the victim is a mentally~~
14 ~~defective individual, a mentally incapacitated individual, or a physically helpless~~
15 ~~individual, and the person performing the act knows or reasonably should know the~~
16 ~~victim is a mentally defective individual, a mentally incapacitated individual, or a~~
17 ~~physically helpless individual;~~

18 (3) ~~engage in sexual contact with another if the victim is under the age of~~
19 ~~14 years, and the person performing the sexual contact is at least 4 years older than~~
20 ~~the victim;~~

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

23 (5) ~~engage in vaginal intercourse with another if the victim is 14 or 15~~
24 ~~years old, and the person performing the act is at least 21 years old;~~

25 (6) ~~ENGAGE IN VAGINAL INTERCOURSE WITH ANOTHER WITHOUT THE~~
26 ~~CONSENT OF THE OTHER; OR~~

27 (7) ~~ENGAGE IN A SEXUAL ACT WITH ANOTHER WITHOUT THE CONSENT~~
28 ~~OF THE OTHER.~~

29 (b) ~~A person who violates this section is guilty of the felony of sexual offense in~~
30 ~~the third degree and on conviction is subject to imprisonment not exceeding 10 years.~~
31 ~~{3-318.~~

32 (a) Except as provided in subsections (b) and (c) of this section, a person may
33 not be prosecuted under § 3-303, § 3-304, § 3-307, or § 3-308 of this subtitle for a
34 crime against a victim who was the person's legal spouse at the time of the alleged
35 rape or sexual offense.

1 (b) A person may be prosecuted under § 3-303(a), § 3-304(a)(1), or §
2 3-307(a)(1)~~(i) and (ii)~~ or 2 of this subtitle for a crime against the person's legal
3 spouse if:

4 (1) at the time of the alleged crime the person and the person's legal
5 spouse have lived apart, without cohabitation and without interruption:

6 (i) under a written separation agreement executed by the person
7 and the spouse; or

8 (ii) for at least 3 months immediately before the alleged rape or
9 sexual offense; or

10 (2) the person in committing the crime uses force OR THREAT OF FORCE
11 and the act is without the consent of the spouse.

12 (c) A person may be prosecuted under § 3-303, § 3-304, § 3-307, or § 3-308 of
13 this subtitle for a crime against the person's legal spouse if at the time of the alleged
14 crime the person and the spouse live apart, without cohabitation and without
15 interruption, under a decree of limited divorce.}

16 ~~3-318.~~

17 ~~A PERSON MAY BE PROSECUTED UNDER THIS SUBTITLE FOR A CRIME AGAINST~~
18 ~~A VICTIM WHO WAS THE PERSON'S LEGAL SPOUSE AT THE TIME OF THE ALLEGED~~
19 ~~RAPE OR SEXUAL OFFENSE.~~

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
21 effect October 1, 2004.