HOUSE BILL 782

E1 4lr2308
HB 985/13 – JUD CF 4lr2466

By: **Delegate Clippinger**
Introduced and read first time: February 3, 2014
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Criminal Law – Third Degree Sexual Offense – Burglary

FOR the purpose of establishing that engaging in sexual contact with another without the consent of the other in connection with a first, second, or third degree burglary constitutes sexual offense in the third degree; establishing that, to be convicted under a certain provision of law, the defendant also must be convicted of a certain crime; altering the definitions of "tier I sex offender", "tier II sex offender", and "tier III sex offender" applicable to provisions relating to sex offender registration to include certain acts constituting sexual offense in the third degree; providing for the application of this Act; and generally relating to sexual offense in the third degree.

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 3–307
Annotated Code of Maryland
(2012 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,
Article – Criminal Procedure
Section 11–701(a)
Annotated Code of Maryland
(2008 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 11–701(o), (p), and (q)
Annotated Code of Maryland
(2008 Replacement Volume and 2013 Supplement)

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

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

Article – Criminal Law

3–307.

(a) A person may not:

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

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

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

3. threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; **[**or**]**

4. commit the crime while aided and abetted by another; **OR**

5. COMMIT THE CRIME IN CONNECTION WITH A BURGLARY IN THE FIRST DEGREE UNDER § 6–202 OF THIS ARTICLE, A BURGLARY IN THE SECOND DEGREE UNDER § 6–203 OF THIS ARTICLE, OR A BURGLARY IN THE THIRD DEGREE UNDER § 6–204 OF THIS ARTICLE;

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

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

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

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

(b) A person who violates this section is guilty of the felony of sexual offense in the third degree and on conviction is subject to imprisonment not exceeding 10 years.

(C) TO BE CONVICTED UNDER SUBSECTION (A)(1)(II)5 OF THIS SECTION, THE DEFENDANT MUST ALSO BE CONVICTED OF BURGLARY IN THE FIRST DEGREE UNDER § 6–202 OF THIS ARTICLE, BURGLARY IN THE SECOND DEGREE UNDER § 6–203 OF THIS ARTICLE, OR BURGLARY IN THE THIRD DEGREE UNDER § 6–204 OF THIS ARTICLE.

Article – Criminal Procedure

11–701.

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

(o) "Tier I sex offender" means a person who has been convicted of:

(1) conspiring to commit, attempting to commit, or committing a violation of § 3–308 of the Criminal Law Article;

(2) conspiring to commit, attempting to commit, or committing a violation of § 3–902 or § 11–208 of the Criminal Law Article, if the victim is a minor;

(3) CONSPIRING TO COMMIT, ATTEMPTING TO COMMIT, OR COMMITTING A VIOLATION OF § 3–307(A)(1)(II)5 OF THE CRIMINAL LAW ARTICLE, IF THE VICTIM IS NOT A MINOR;

[(3)**] (4)** a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in **[**item (1) or (2)**] ITEMS (1) THROUGH (3)** of this subsection;

[(4)**] (5)** any of the following federal offenses:

(i) misleading domain names on the Internet under 18 U.S.C. § 2252B;

(ii) misleading words or digital images on the Internet under 18 U.S.C. § 2252C;

(iii) engaging in illicit conduct in foreign places under 18 U.S.C. § 2423(c);

(iv) failure to file a factual statement about an alien individual under 18 U.S.C. § 2424;

(v) transmitting information about a minor to further criminal sexual conduct under 18 U.S.C. § 2425;

(vi) sex trafficking by force, fraud, or coercion under 18 U.S.C. § 1591; or

(vii) travel with intent to engage in illicit conduct under 18 U.S.C. § 2423(b);

[(5)**] (6)** any military offense specified by the Secretary of Defense under Section 115(A)(8)(C)(i) of Public Law 105–119 (codified at 10 U.S.C. § 951 Note) that is similar to those offenses listed in item **[**(4)**] (5)** of this subsection; or

[(6)**] (7)** a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of the crimes listed in items (1) through **[**(5)**] (6)** of this subsection.

(p) "Tier II sex offender" means a person who has been convicted of:

(1) conspiring to commit, attempting to commit, or committing a violation of § 3–307(a)(4) or (5), § 3–324, § 11–207, or § 11–209 of the Criminal Law Article;

(2) conspiring to commit, attempting to commit, or committing a violation of § 11–303, § 11–305, or § 11–306 of the Criminal Law Article, if the intended prostitute or victim is a minor;

(3) conspiring to commit, attempting to commit, or committing a violation of § 3–314 or § 3–603 of the Criminal Law Article, if the victim is a minor who is at least 14 years old;

(4) CONSPIRING TO COMMIT, ATTEMPTING TO COMMIT, OR COMMITTING A VIOLATION OF § 3–307(A)(1)(II)5 OF THE CRIMINAL LAW ARTICLE, IF THE VICTIM IS A MINOR WHO IS AT LEAST 13 YEARS OLD;

[(4)**] (5)** conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I sex offender after the person was already registered as a tier I sex offender;

[(5)**] (6)** a crime that was committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through **[**(3)**] (4)** of this subsection; or

[(6)**] (7)** a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of the crimes listed in items (1) through **[**(3)**] (4)** of this subsection.

(q) "Tier III sex offender" means a person who has been convicted of:

(1) conspiring to commit, attempting to commit, or committing a violation of:

(i) § 2–201(a)(4)(viii), (x), or (xi) of the Criminal Law Article;

(ii) § 3–303, § 3–304, § 3–305, § 3–306, **[**§ 3–307(a)(1) or (2)**] § 3–307(A)(1)(II)1 THROUGH 4, § 3–307(A)(2)**, § 3–309, § 3–310, § 3–311, § 3–312, § 3–315, § 3–323, or § 3–602 of the Criminal Law Article;

(iii) § 3–502 of the Criminal Law Article, if the victim is a minor;

(iv) § 3–502 of the Criminal Law Article, if the victim is an adult, and the person has been ordered by the court to register under this subtitle; or

(v) the common law offense of sodomy or § 3–322 of the Criminal Law Article if the offense was committed with force or threat of force;

(2) conspiring to commit, attempting to commit, or committing a violation of § 3–307(a)(3), § 3–314, § 3–503, or § 3–603 of the Criminal Law Article, if the victim is under the age of 14 years;

(3) conspiring to commit, attempting to commit, or committing the common law offense of false imprisonment, if the victim is a minor;

(4) CONSPIRING TO COMMIT, ATTEMPTING TO COMMIT, OR COMMITTING A VIOLATION OF § 3–307(A)(1)(II)5 OF THE CRIMINAL LAW ARTICLE, IF THE VICTIM IS A MINOR WHO IS UNDER THE AGE OF 13 YEARS;

[(4)**] (5)** conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I or tier II sex offender after the person was already registered as a tier II sex offender;

[(5)**] (6)** a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through **[**(3)**] (4)** of this subsection; or

[(6)**] (7)** a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of the crimes listed in items (1) through **[**(3)**] (4)** of this subsection.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any acts committed before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.