

HOUSE BILL 822

E1, E4

6lr2703

By: **Delegates Atterbeary, Dumais, Kittleman, McComas, Moon, Morales, Rosenberg, Sanchez, Smith, Sydnor, Valentino-Smith, and B. Wilson**

Introduced and read first time: February 8, 2016

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Altering References From Mentally Defective to Substantially**
3 **Cognitively Impaired Individual**

4 FOR the purpose of altering references to the term “mentally defective” individual to
5 “substantially cognitively impaired” individual in provisions of law concerning
6 certain sexual offenses and in provisions of law concerning the licensing of certain
7 individuals to engage in business as an explosives manufacturer or dealer or to
8 possess explosives for certain purposes; making stylistic changes; and generally
9 relating to the term “mentally defective individual”.

10 BY repealing and reenacting, with amendments,
11 Article – Criminal Law
12 Section 3–301, 3–304(a)(2), 3–306(a)(2), and 3–307(a)(2)
13 Annotated Code of Maryland
14 (2012 Replacement Volume and 2015 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Public Safety
17 Section 11–107(b)(7)
18 Annotated Code of Maryland
19 (2011 Replacement Volume and 2015 Supplement)

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

Article – Criminal Law

22 3–301.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) ["Mentally defective individual" means an individual who suffers from mental
2 retardation or a mental disorder, either of which temporarily or permanently renders the
3 individual substantially incapable of:

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

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

6 (3) communicating unwillingness to submit to vaginal intercourse, a sexual
7 act, or sexual contact.

8 (c) "Mentally incapacitated individual" means an individual who, because of the
9 influence of a drug, narcotic, or intoxicating substance, or because of an act committed on
10 the individual without the individual's consent or awareness, is rendered substantially
11 incapable of:

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

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

14 [(d)] (C) "Physically helpless individual" means an individual who:

15 (1) is unconscious; or

16 (2) (i) does not consent to vaginal intercourse, a sexual act, or sexual
17 contact; and

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

20 [(e)] (D) (1) "Sexual act" means any of the following acts, regardless of
21 whether semen is emitted:

22 (i) analingus;

23 (ii) cunnilingus;

24 (iii) fellatio;

25 (iv) anal intercourse, including penetration, however slight, of the
26 anus; or

27 (v) an act:

28 1. in which an object or part of an individual's body
29 penetrates, however slightly, into another individual's genital opening or anus; and

1 individual, and the person performing the act knows or reasonably should know that the
2 victim is a [mentally defective] **SUBSTANTIALLY COGNITIVELY IMPAIRED** individual, a
3 mentally incapacitated individual, or a physically helpless individual; or

4 3–306.

5 (a) A person may not engage in a sexual act with another:

6 (2) if the victim is a [mentally defective] **SUBSTANTIALLY COGNITIVELY**
7 **IMPAIRED** individual, a mentally incapacitated individual, or a physically helpless
8 individual, and the person performing the sexual act knows or reasonably should know that
9 the victim is a [mentally defective] **SUBSTANTIALLY COGNITIVELY IMPAIRED** individual,
10 a mentally incapacitated individual, or a physically helpless individual; or

11 3–307.

12 (a) A person may not:

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

19 **Article – Public Safety**

20 11–107.

21 (b) Subject to subsection (c) of this section, the State Fire Marshal shall deny an
22 application for a license or permit if the State Fire Marshal finds that:

23 (7) the applicant, or an officer, agent, or employee of the applicant who will
24 be handling explosives, has been adjudicated [mentally defective] **SUBSTANTIALLY**
25 **COGNITIVELY IMPAIRED** as defined in § 3–301 of the Criminal Law Article;

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2016.