

Chapter 633

(House Bill 822)

AN ACT concerning

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

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

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

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

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

Article – Criminal Law

3–301.

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

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

- (1) appraising the nature of the individual’s conduct;
- (2) resisting vaginal intercourse, a sexual act, or sexual contact; or
- (3) communicating unwillingness to submit to vaginal intercourse, a sexual act, or sexual contact.

(c) “Mentally incapacitated individual” means an individual who, because of the influence of a drug, narcotic, or intoxicating substance, or because of an act committed on the individual without the individual’s consent or awareness, is rendered substantially incapable of:

- (1) appraising the nature of the individual’s conduct; or
- (2) resisting vaginal intercourse, a sexual act, or sexual contact.

[(d)] (C) “Physically helpless individual” means an individual who:

- (1) is unconscious; or
- (2) (i) does not consent to vaginal intercourse, a sexual act, or sexual contact; and
 - (ii) is physically unable to resist, or communicate unwillingness to submit to, vaginal intercourse, a sexual act, or sexual contact.

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

- (i) analingus;
- (ii) cunnilingus;
- (iii) fellatio;
- (iv) anal intercourse, including penetration, however slight, of the anus; or
- (v) an act:
 1. in which an object or part of an individual’s body penetrates, however slightly, into another individual’s genital opening or anus; and
 2. that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party.

(2) “Sexual act” does not include:

- (i) vaginal intercourse; or
- (ii) an act in which an object or part of an individual’s body penetrates an individual’s genital opening or anus for an accepted medical purpose.

[(f)] (E) (1) “Sexual contact”, as used in §§ 3–307, 3–308, and 3–314 of this subtitle, means an intentional touching of the victim’s or actor’s genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party.

(2) “Sexual contact” does not include:

- (i) a common expression of familial or friendly affection; or
- (ii) an act for an accepted medical purpose.

(F) “SUBSTANTIALLY COGNITIVELY IMPAIRED INDIVIDUAL” MEANS AN INDIVIDUAL WHO SUFFERS FROM AN INTELLECTUAL DISABILITY OR A MENTAL DISORDER, EITHER OF WHICH TEMPORARILY OR PERMANENTLY RENDERS THE INDIVIDUAL SUBSTANTIALLY INCAPABLE OF:

(1) APPRAISING THE NATURE OF THE INDIVIDUAL’S CONDUCT;

(2) RESISTING VAGINAL INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT; OR

(3) COMMUNICATING UNWILLINGNESS TO SUBMIT TO VAGINAL INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT.

(g) (1) “Vaginal intercourse” means genital copulation, whether or not semen is emitted.

(2) “Vaginal intercourse” includes penetration, however slight, of the vagina.

3–304.

(a) A person may not engage in vaginal intercourse with another:

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

3–306.

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

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

3–307.

(a) A person may not:

(2) engage in sexual contact with another if the victim is a [mentally defective] **SUBSTANTIALLY COGNITIVELY IMPAIRED** 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] **SUBSTANTIALLY COGNITIVELY IMPAIRED** individual, a mentally incapacitated individual, or a physically helpless individual;

Article – Public Safety

11–107.

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

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

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

Approved by the Governor, May 19, 2016.