

# SENATE BILL 758

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4lr1051  
CF HB 496

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By: **Senators Kelly, Smith, James, Salling, Guzzone, Augustine, Feldman,  
Lewis Young, Elfreth, McKay, Hettleman, Sydnor, King, Waldstreicher,  
Muse, Beidle, Folden, West, and Kagan**

Introduced and read first time: February 1, 2024

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 19, 2024

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Law – Sexual Crimes – Definition of Consent and Repeal of Force**

3 FOR the purpose of requiring certain facts to be considered when determining whether a  
4 lack of consent exists for the purposes of certain sexual crimes; altering the elements  
5 of second-degree rape; requiring the Maryland Judiciary to annually report certain  
6 information to the General Assembly until a certain date; and generally relating to  
7 sexual crimes.

8 BY adding to

9 Article – Criminal Law

10 Section 3–301.1

11 Annotated Code of Maryland

12 (2021 Replacement Volume and 2023 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article – Criminal Law

15 Section 3–304(a)

16 Annotated Code of Maryland

17 (2021 Replacement Volume and 2023 Supplement)

18 BY adding to

19 Article – Criminal Procedure

20 Section 1–212

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland  
2 (2018 Replacement Volume and 2023 Supplement)

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

5 **Article – Criminal Law**

6 **3–301.1.**

7 (A) IN THIS SUBTITLE, “CONSENT” MEANS THE CLEAR AND VOLUNTARY  
8 AGREEMENT BY AN INDIVIDUAL TO ENGAGE IN VAGINAL INTERCOURSE, A SEXUAL  
9 ACT, OR SEXUAL CONTACT.

10 (B) ~~FOR PURPOSES OF DETERMINING WHETHER A LACK OF CONSENT~~  
11 ~~EXISTS WHEN IT IS AN ELEMENT OF A VIOLATION OF A PROVISION OF THIS SUBTITLE,~~  
12 ~~THE FOLLOWING SHALL BE CONSIDERED~~ IN THIS SUBTITLE:

13 (1) THE EXISTENCE OF CONSENT, LACK OF CONSENT, OR  
14 WITHDRAWAL OF CONSENT MAY BE INFERRED FROM WORDS OR CONDUCT AND IS  
15 BASED ON THE TOTALITY OF CIRCUMSTANCES SHALL BE DETERMINED BASED ON A  
16 TOTALITY OF THE CIRCUMSTANCES, INCLUDING THE WORDS AND CONDUCT OF THE  
17 VICTIM AND THE DEFENDANT;

18 (2) CONSENT MAY BE WITHDRAWN BEFORE OR DURING VAGINAL  
19 INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT;

20 (3) THE LACK OF CONSENT MAY BE COMMUNICATED THROUGH  
21 WORDS OR CONDUCT;

22 (4) A CURRENT OR PREVIOUS DATING, SOCIAL, OR SEXUAL  
23 RELATIONSHIP BY ITSELF DOES NOT CONSTITUTE CONSENT;

24 (5) SUBMISSION AS A RESULT OF FEAR, THREAT, OR COERCION DOES  
25 NOT CONSTITUTE CONSENT IF THE INDIVIDUAL ALLEGED TO HAVE PERFORMED THE  
26 ACT IN VIOLATION OF THIS SUBTITLE KNOWS OR REASONABLY SHOULD KNOW THAT  
27 THE VICTIM WOULD SUBMIT AS A RESULT OF FEAR, THREAT, OR COERCION; AND

28 (6) THE MANNER OF DRESS OF AN INDIVIDUAL DOES NOT  
29 CONSTITUTE CONSENT.

30 (C) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE DOCUMENTATION  
31 OF CONSENT.

32 3–304.

1 (a) A person may not engage in vaginal intercourse or a sexual act with another:

2 (1) [by force, or the threat of force,] without the consent of the other;

3 (2) if the victim is a substantially cognitively impaired individual, a  
4 mentally incapacitated individual, or a physically helpless individual, and the person  
5 performing the act knows or reasonably should know that the victim is a substantially  
6 cognitively impaired individual, a mentally incapacitated individual, or a physically  
7 helpless individual; or

8 (3) if the victim is under the age of 14 years, and the person performing the  
9 act is at least 4 years older than the victim.

10 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
11 as follows:

12 Article – Criminal Procedure

13 1-212.

14 BEGINNING OCTOBER 1, 2024, AND EACH OCTOBER 1 THEREAFTER, THE  
15 MARYLAND JUDICIARY SHALL REPORT TO THE GENERAL ASSEMBLY, IN  
16 ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE  
17 FOLLOWING DATA FOR THE PRECEDING CALENDAR YEAR, DISAGGREGATED BY  
18 COUNTY AND OFFENDER AGE, RACE, AND SEX:

19 (1) THE NUMBER OF CHARGES FILED IN THE STATE FOR VIOLATIONS  
20 OF §§ 3-303 THROUGH 3-308 OF THE CRIMINAL LAW ARTICLE, DISAGGREGATED BY  
21 THE MODALITY BY WHICH THE OFFENSE WAS COMMITTED; AND

22 (2) THE NUMBER OF CONVICTIONS IN THE STATE FOR VIOLATIONS OF  
23 §§ 3-303 THROUGH 3-308 OF THE CRIMINAL LAW ARTICLE, DISAGGREGATED BY  
24 THE MODALITY BY WHICH THE OFFENSE WAS COMMITTED.

25 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2024. Section 2 of this Act shall remain effective for a period of 5 years and 7  
27 months and, at the end of April 30, 2029, Section 2 of this Act, with no further action  
28 required by the General Assembly, shall be abrogated and of no further force and effect.