

SENATE BILL 758

E1

4lr1051
CF HB 496

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

A BILL ENTITLED

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; and generally relating to sexual crimes.

6 BY adding to

7 Article – Criminal Law

8 Section 3–301.1

9 Annotated Code of Maryland

10 (2021 Replacement Volume and 2023 Supplement)

11 BY repealing and reenacting, with amendments,

12 Article – Criminal Law

13 Section 3–304(a)

14 Annotated Code of Maryland

15 (2021 Replacement Volume and 2023 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

17 That the Laws of Maryland read as follows:

18 **Article – Criminal Law**

19 **3–301.1.**

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(B) FOR PURPOSES OF DETERMINING WHETHER A LACK OF CONSENT**
2 **EXISTS WHEN IT IS AN ELEMENT OF A VIOLATION OF A PROVISION OF THIS SUBTITLE,**
3 **THE FOLLOWING SHALL BE CONSIDERED:**

4 **(1) CONSENT, LACK OF CONSENT, OR WITHDRAWAL OF CONSENT MAY**
5 **BE INFERRED FROM WORDS OR CONDUCT AND IS BASED ON THE TOTALITY OF**
6 **CIRCUMSTANCES;**

7 **(2) CONSENT MAY BE WITHDRAWN BEFORE OR DURING VAGINAL**
8 **INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT;**

9 **(3) THE LACK OF CONSENT MAY BE COMMUNICATED THROUGH**
10 **WORDS OR CONDUCT;**

11 **(4) A CURRENT OR PREVIOUS DATING, SOCIAL, OR SEXUAL**
12 **RELATIONSHIP BY ITSELF DOES NOT CONSTITUTE CONSENT;**

13 **(5) SUBMISSION AS A RESULT OF FEAR, THREAT, OR COERCION DOES**
14 **NOT CONSTITUTE CONSENT; AND**

15 **(6) THE MANNER OF DRESS OF AN INDIVIDUAL DOES NOT**
16 **CONSTITUTE CONSENT.**

17 **(C) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE DOCUMENTATION**
18 **OF CONSENT.**

19 3-304.

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

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

22 (2) if the victim is a substantially cognitively impaired individual, a
23 mentally incapacitated individual, or a physically helpless individual, and the person
24 performing the act knows or reasonably should know that the victim is a substantially
25 cognitively impaired individual, a mentally incapacitated individual, or a physically
26 helpless individual; or

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

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2024.