
By: Senator Ferguson

Introduced and read first time: January 10, 1996

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 19, 1996

CHAPTER ____

1 AN ACT concerning

2 **Child Sexual Offenses And Kidnapping - ~~Death Penalty~~ Life Without Possibility of Parole**

3 FOR the purpose of ~~imposing certain penalties, including the death penalty under certain~~
4 ~~circumstances, on~~ establishing a maximum penalty of life without the possibility of
5 parole for any person who commits certain sexual offenses and kidnapping involving
6 a child under a certain age ~~who is not related by blood, marriage, or adoption to~~
7 ~~that person; providing that the penalty for such an offense be imprisonment for life~~
8 ~~unless the State provides certain notice to the defendant; providing that the penalty~~
9 ~~for such an offense be life imprisonment without the possibility of parole under~~
10 ~~certain circumstances; adding to the list of aggravating circumstances that must be~~
11 ~~considered by a court or jury when determining whether to impose a sentence of~~
12 ~~death to include the circumstance in which a defendant commits certain sexual~~
13 ~~offenses and kidnapping involving a child under a certain age who is not related by~~
14 ~~blood, marriage, or adoption to the defendant; requiring a State's Attorney to~~
15 provide a certain notice; providing for the application of this Act; and generally
16 relating to sexual offenses, kidnapping, and ~~the death penalty~~ life without the
17 possibility of parole.

18 BY repealing and reenacting, with amendments,

19 Article 27 - Crimes and Punishments

20 Section 338; 412 and 413 to be under the new subheading "Sentencing Procedures
21 for Offenses Punishable by Death"; and 338, 462, 463, 464, and 464A

22 Annotated Code of Maryland

23 (1992 Replacement Volume and 1995 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

25 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article 27 - Crimes and Punishments**

2 338.

3 (A) Every person, his counsellors, aiders or abettors, who shall be convicted of
4 kidnapping and forcibly or fraudulently stealing, taking or carrying away any child under
5 the age of sixteen years, except by a parent thereof, shall be guilty of a felony and,
6 EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, shall be sentenced to the
7 penitentiary for not more than thirty years.

8 (B) ~~(1) IF THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE WHO IS NOT~~
9 ~~RELATED BY BLOOD, MARRIAGE, OR ADOPTION TO THE DEFENDANT AND THE~~
10 ~~DEFENDANT ALSO WAS CONVICTED IN THE SAME PROCEEDING OF VIOLATING ANY~~
11 ~~OF THE PROVISIONS OF §§ 462 THROUGH 464A OF THIS ARTICLE, ANY PERSON WHO~~
12 ~~VIOLATES THE PROVISIONS OF THIS SECTION IS GUILTY OF A FELONY AND UPON~~
13 ~~CONVICTION IS SUBJECT TO THE PENALTY PRESCRIBED UNDER § 412 OF THIS~~
14 ~~ARTICLE A MAXIMUM SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE.~~

15 (2) IF THE STATE'S ATTORNEY INTENDS TO SEEK A SENTENCE OF LIFE
16 WITHOUT THE POSSIBILITY OF PAROLE UNDER PARAGRAPH (1) OF THIS
17 SUBSECTION, IT SHALL NOTIFY THE PERSON IN WRITING AT LEAST 30 DAYS PRIOR
18 TO TRIAL OF THIS INTENTION.

19 ~~SENTENCING PROCEDURES FOR OFFENSES PUNISHABLE BY DEATH~~

20 ~~412.~~

21 ~~(a) If a person is found guilty of murder, the court or jury that determined the~~
22 ~~person's guilt shall state in the verdict whether the person is guilty of murder in the first~~
23 ~~degree or murder in the second degree.~~

24 ~~(b) Except as provided under subsection (f) of this section, a person WHO IS~~
25 ~~found guilty of murder in the first degree OR WHO, IN A SINGLE PROCEEDING, IS~~
26 ~~FOUND GUILTY OF VIOLATING ANY OF THE PROVISIONS OF §§ 338 AND 462 THROUGH~~
27 ~~464A OF THIS ARTICLE AND THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE WHO~~
28 ~~IS NOT RELATED TO THE PERSON BY BLOOD, MARRIAGE, OR ADOPTION shall be~~
29 ~~sentenced to death, imprisonment for life, or imprisonment for life without the possibility~~
30 ~~of parole. The sentence shall be imprisonment for life unless: (1) (i) the State notified the~~
31 ~~person in writing at least 30 days prior to trial that it intended to seek a sentence of death,~~
32 ~~and advised the person of each aggravating circumstance upon which it intended to rely,~~
33 ~~and (ii) a sentence of death is imposed in accordance with § 413; or (2) the State notified~~
34 ~~the person in writing at least 30 days prior to trial that it intended to seek a sentence of~~
35 ~~imprisonment for life without the possibility of parole under § 412 or § 413 of this article.~~

36 ~~(c) (1) If a State's Attorney files or withdraws a notice of intent to seek a~~
37 ~~sentence of death, the State's Attorney shall file a copy of the notice or withdrawal with~~
38 ~~the Clerk of the Court of Appeals.~~

39 ~~(2) The validity of a notice of intent to seek a sentence of death that is~~
40 ~~served on a defendant in a timely manner shall in no way be affected by the State's~~
41 ~~Attorney's failure to file a copy of the death notice in a timely manner with the Clerk of~~
42 ~~the Court of Appeals.~~

1 (d) A person found guilty of murder in the second degree shall be sentenced to
2 imprisonment for not more than 30 years.

3 (e) Except as provided by § 413 of this article, the court shall decide whether to
4 impose a sentence of life imprisonment or life imprisonment without the possibility of
5 parole.

6 (f) (1) In this section, the following terms have the meanings indicated.

7 (2) "Imprisonment for life without the possibility of parole" means
8 imprisonment for the natural life of an inmate under the custody of a correctional
9 institution, including the Patuxent Institution.

10 (3) "Mentally retarded" means the individual has significantly subaverage
11 intellectual functioning as evidenced by an intelligence quotient of 70 or below on an
12 individually administered intelligence quotient test and impairment in adaptive behavior,
13 and the mental retardation is manifested before the individual attains the age of 22.

14 (g) (1) If a person found guilty of murder in the first degree was, at the time the
15 murder was committed, less than 18 years old or if the person establishes by a
16 preponderance of the evidence that the person was, at the time the murder was
17 committed, mentally retarded, the person shall be sentenced to imprisonment for life or
18 imprisonment for life without the possibility of parole and may not be sentenced to death.

19 (2) The sentence shall be imprisonment for life unless the State notified the
20 person in writing at least 30 days prior to trial that the State intended to seek a sentence
21 of imprisonment for life without the possibility of parole under this section or § 413 of this
22 article.

23 413.

24 (a) If a person is found guilty of murder in the first degree OR IS FOUND, IN A
25 SINGLE PROCEEDING, GUILTY OF VIOLATING ANY OF THE PROVISIONS OF §§ 338
26 AND 462 THROUGH 464A OF THIS ARTICLE AND THE VICTIM WAS A CHILD UNDER 16
27 YEARS OF AGE WHO IS NOT RELATED TO THE PERSON BY BLOOD, MARRIAGE, OR
28 ADOPTION, and if the State had given the notice required under § 412(b), a separate
29 sentencing proceeding shall be conducted as soon as practicable after the trial has been
30 completed to determine whether he shall be sentenced to death.

31 (b) This proceeding shall be conducted:

32 (1) Before the jury that determined the defendant's guilt; or

33 (2) Before a jury impaneled for the purpose of the proceeding if:

34 (i) The defendant was convicted upon a plea of guilty;

35 (ii) The defendant was convicted after a trial before the court sitting
36 without a jury;

37 (iii) The jury that determined the defendant's guilt has been discharged
38 by the court for good cause; or

1 (iv) Review of the original sentence of death by a court of competent
2 jurisdiction has resulted in a remand for resentencing; or

3 (3) Before the court alone, if a jury sentencing proceeding is waived by the
4 defendant.

5 (e) (1) The following type of evidence is admissible in this proceeding:

6 (i) Evidence relating to any mitigating circumstance listed in
7 subsection (g) of this section;

8 (ii) Evidence relating to any aggravating circumstance listed in
9 subsection (d) of this section of which the State had notified the defendant pursuant to §
10 412(b) of this article;

11 (iii) Evidence of any prior criminal convictions, pleas of guilty or nolo
12 contendere, or the absence of such prior convictions or pleas, to the same extent
13 admissible in other sentencing procedures;

14 (iv) Any presentence investigation report. However, any
15 recommendation as to sentence contained in the report is not admissible; and

16 (v) Any other evidence that the court deems of probative value and
17 relevant to sentence, provided the defendant is accorded a fair opportunity to rebut any
18 statements.

19 (2) The State and the defendant or his counsel may present argument for or
20 against the sentence of death.

21 (3) After presentation of the evidence in a proceeding before a jury, in
22 addition to any other appropriate instructions permitted by law, the court shall instruct
23 the jury as to the findings it must make in order to determine whether the sentence shall
24 be death, imprisonment for life without the possibility of parole, or imprisonment for life,
25 and the burden of proof applicable to these findings in accordance with subsection (f) or
26 subsection (h) of this section.

27 (d) In determining the sentence, the court or jury, as the case may be, shall first
28 consider whether, beyond a reasonable doubt, any of the following aggravating
29 circumstances exist:

30 (1) The victim was a law enforcement officer who was murdered while in the
31 performance of his duties;

32 (2) The defendant committed the murder at a time when he was confined in
33 any correctional institution;

34 (3) The defendant committed the murder in furtherance of an escape or an
35 attempt to escape from or evade the lawful custody, arrest, or detention of or by an officer
36 or guard of a correctional institution or by a law enforcement officer;

37 (4) The victim was taken or attempted to be taken in the course of a
38 kidnapping or abduction or an attempt to kidnap or abduct;

39 (5) The victim was a child abducted in violation of § 2 of this article;

1 ~~(6) The defendant committed the murder pursuant to an agreement or~~
2 ~~contract for remuneration or the promise of remuneration to commit the murder;~~

3 ~~(7) The defendant engaged or employed another person to commit the~~
4 ~~murder and the murder was committed pursuant to an agreement or contract for~~
5 ~~remuneration or the promise of remuneration;~~

6 ~~(8) At the time of the murder, the defendant was under sentence of death or~~
7 ~~imprisonment for life;~~

8 ~~(9) The defendant committed more than one offense of murder in the first~~
9 ~~degree arising out of the same incident; or~~

10 ~~(10) The defendant committed the murder while committing or attempting to~~
11 ~~commit a carjacking, armed carjacking, robbery, arson in the first degree, rape or sexual~~
12 ~~offense in the first degree.~~

13 ~~(11) THE DEFENDANT COMMITTED, IN THE SAME INCIDENT, A~~
14 ~~VIOLATION OF ANY OF THE PROVISIONS OF §§ 338 AND 462 THROUGH 464A OF THIS~~
15 ~~ARTICLE AND THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE WHO IS NOT~~
16 ~~RELATED BY BLOOD, MARRIAGE, OR ADOPTION TO THE DEFENDANT.~~

17 ~~(e) As used in this section, the following terms have the meanings indicated unless~~
18 ~~a contrary meaning is clearly intended from the context in which the term appears:~~

19 ~~(1) The terms "defendant" and "person", except as those terms appear in~~
20 ~~subsection (d)(7) of this section, include only a principal in the first degree.~~

21 ~~(2) The term "correctional institution" includes any institution for the~~
22 ~~detention or confinement of persons charged with or convicted of a crime, including~~
23 ~~Patuxent Institution, any institution for the detention or confinement of juveniles charged~~
24 ~~with or adjudicated as being delinquent, and any hospital in which the person was~~
25 ~~confined pursuant to an order of a court exercising criminal jurisdiction.~~

26 ~~(3) (i) The term "law enforcement officer" has the meaning given in~~
27 ~~Section 727 of Article 27.~~

28 ~~(ii) The term "law enforcement officer", as used in subsection (d) of~~
29 ~~this section, includes:~~

30 ~~1. An officer serving in a probationary status;~~

31 ~~2. A parole and probation officer;~~

32 ~~3. A law enforcement officer of a jurisdiction outside of~~
33 ~~Maryland; and~~

34 ~~4. If the law enforcement officer is wearing the uniform worn by~~
35 ~~the law enforcement officer while acting in an official capacity or is prominently~~
36 ~~displaying his official badge or other insignia of office, a law enforcement officer privately~~
37 ~~employed as a security officer or special policeman under the provisions of Article 41, §§~~
38 ~~4-901 through 4-913 of the Code.~~

1 ~~(4) "Imprisonment for life without the possibility of parole" means~~
2 ~~imprisonment for the natural life of an inmate under the custody of a correctional~~
3 ~~institution, including the Patuxent Institution.~~

4 ~~(f) If the court or jury does not find, beyond a reasonable doubt, that one or more~~
5 ~~of these aggravating circumstances exist, it shall state that conclusion in writing, and a~~
6 ~~sentence of death may not be imposed.~~

7 ~~(g) If the court or jury finds, beyond a reasonable doubt, that one or more of~~
8 ~~these aggravating circumstances exist, it shall then consider whether, based upon a~~
9 ~~preponderance of the evidence, any of the following mitigating circumstances exist:~~

10 ~~(1) The defendant has not previously (i) been found guilty of a crime of~~
11 ~~violence; (ii) entered a plea of guilty or nolo contendere to a charge of a crime of~~
12 ~~violence; or (iii) had a judgment of probation on stay of entry of judgment entered on a~~
13 ~~charge of a crime of violence. As used in this paragraph, "crime of violence" means~~
14 ~~abduction, arson in the first degree, escape, kidnapping, manslaughter, except involuntary~~
15 ~~manslaughter, mayhem, murder, robbery, carjacking or armed carjacking, or rape or~~
16 ~~sexual offense in the first or second degree, or an attempt to commit any of these~~
17 ~~offenses, or the use of a handgun in the commission of a felony or another crime of~~
18 ~~violence.~~

19 ~~(2) The victim was a participant in the defendant's conduct or consented to~~
20 ~~the act which caused the victim's death.~~

21 ~~(3) The defendant acted under substantial duress, domination or~~
22 ~~provocation of another person, but not so substantial as to constitute a complete defense~~
23 ~~to the prosecution.~~

24 ~~(4) The murder was committed while the capacity of the defendant to~~
25 ~~appreciate the criminality of his conduct or to conform his conduct to the requirements of~~
26 ~~law was substantially impaired as a result of mental incapacity, mental disorder or~~
27 ~~emotional disturbance.~~

28 ~~(5) The youthful age of the defendant at the time of the crime.~~

29 ~~(6) The act of the defendant was not the sole proximate cause of the victim's~~
30 ~~death.~~

31 ~~(7) It is unlikely that the defendant will engage in further criminal activity~~
32 ~~that would constitute a continuing threat to society.~~

33 ~~(8) Any other facts which the jury or the court specifically sets forth in~~
34 ~~writing that it finds as mitigating circumstances in the case.~~

35 ~~(h) (1) If the court or jury finds that one or more of these mitigating~~
36 ~~circumstances exist, it shall determine whether, by a preponderance of the evidence, the~~
37 ~~aggravating circumstances outweigh the mitigating circumstances.~~

38 ~~(2) If it finds that the aggravating circumstances outweigh the mitigating~~
39 ~~circumstances, the sentence shall be death.~~

1 ~~(3) If it finds that the aggravating circumstances do not outweigh the~~
 2 ~~mitigating circumstances, a sentence of death may not be imposed.~~

3 ~~(i) The determination of the court or jury shall be in writing, and, if a jury, shall~~
 4 ~~be unanimous and shall be signed by the foreman.~~

5 ~~(j) The determination of the court or jury shall state, specifically:~~

6 ~~(1) Which, if any, aggravating circumstances it finds to exist;~~

7 ~~(2) Which, if any, mitigating circumstances it finds to exist;~~

8 ~~(3) Whether any aggravating circumstances found under subsection (d) of~~
 9 ~~this section outweigh the mitigating circumstances found under subsection (g) of this~~
 10 ~~section;~~

11 ~~(4) Whether the aggravating circumstances found under subsection (d) do~~
 12 ~~not outweigh mitigating circumstances under subsection (g); and~~

13 ~~(5) The sentence, determined in accordance with subsection (f) or (h).~~

14 ~~(k) (1) If the jury determines that a sentence of death shall be imposed under~~
 15 ~~the provisions of this section, then the court shall impose a sentence of death.~~

16 ~~(2) If the jury, within a reasonable time, is not able to agree as to whether a~~
 17 ~~sentence of death shall be imposed, the court may not impose a sentence of death.~~

18 ~~(3) If the sentencing proceeding is conducted before a court without a jury,~~
 19 ~~the court shall determine whether a sentence of death shall be imposed under the~~
 20 ~~provisions of this section.~~

21 ~~(4) If the court or jury determines that a sentence of death may not be~~
 22 ~~imposed, and the State did not give the notice required under § 412(b) of this article of~~
 23 ~~intention to seek a sentence of life imprisonment without the possibility of parole, the~~
 24 ~~court shall impose a sentence of life imprisonment.~~

25 ~~(5) If the State gives the notice required under § 412(b) of this article of~~
 26 ~~intention to seek a sentence of imprisonment for life without the possibility of parole but~~
 27 ~~does not give notice of intention to seek the death penalty, the court shall conduct a~~
 28 ~~separate sentencing proceeding as soon as practicable after the trial has been completed~~
 29 ~~to determine whether to impose a sentence of imprisonment for life or imprisonment for~~
 30 ~~life without the possibility of parole.~~

31 ~~(6) If the State gives the notice required under § 412(b) of this article of~~
 32 ~~intention to seek the death penalty in addition to the notice of intention to seek a~~
 33 ~~sentence of imprisonment for life without the possibility of parole, and the court or jury~~
 34 ~~determines that a sentence of death may not be imposed under the provisions of this~~
 35 ~~section, that court or jury shall determine whether to impose a sentence of imprisonment~~
 36 ~~for life or imprisonment for life without the possibility of parole.~~

37 ~~(7) (i) In determining whether to impose a sentence of imprisonment for~~
 38 ~~life without the possibility of parole, a jury shall agree unanimously on the imposition of~~
 39 ~~a sentence of imprisonment for life without the possibility of parole.~~

1 (ii) If the jury agrees unanimously to impose a sentence of
2 imprisonment for life without the possibility of parole, the court shall impose a sentence
3 of imprisonment for life without the possibility of parole.

4 (iii) If the jury, within a reasonable time, is not able to agree
5 unanimously on the imposition of a sentence of imprisonment for life without the
6 possibility of parole, the court shall dismiss the jury and impose a sentence of
7 imprisonment for life.

8 (8) If the State gives the notice required under § 412 of this article of the
9 State's intention to seek a sentence of imprisonment for life without the possibility of
10 parole, the court shall conduct a separate sentencing proceeding as soon as practicable
11 after the trial has been completed to determine whether to impose a sentence of
12 imprisonment for life or imprisonment for life without the possibility of parole.

13 (1) The Court of Appeals may adopt rules of procedure to govern the conduct of
14 a sentencing proceeding conducted pursuant to this section, including any forms to be
15 used by the court or jury in making its written findings and determinations of sentence.

16 (m) (1) A judge shall appoint at least 2 alternate jurors when impaneling a jury
17 for any proceeding:

18 (i) In which the defendant is being tried for a crime for which the
19 death penalty may be imposed; or

20 (ii) Which is held under the provisions of this section.

21 (2) The alternate jurors shall be retained during the length of the
22 proceedings under such restrictions and regulations as the judge may impose.

23 (3) (i) If any juror dies, becomes incapacitated, or disqualified, or is
24 discharged for any other reason before the jury begins its deliberations on sentencing, an
25 alternate juror becomes a juror in the order in which selected, and serves in all respects
26 as those selected on the regular trial panel.

27 (ii) An alternate juror may not replace a juror who is discharged
28 during the actual deliberations of the jury on the guilt or innocence of the defendant, or
29 on the issue of sentencing.

30 462.

31 (a) A person is guilty of rape in the first degree if the person engages in vaginal
32 intercourse with another person by force or threat of force against the will and without
33 the consent of the other person and:

34 (1) Employs or displays a dangerous or deadly weapon or an article which
35 the other person reasonably concludes is a dangerous or deadly weapon; or

36 (2) Inflicts suffocation, strangulation, disfigurement, or serious physical
37 injury upon the other person or upon anyone else in the course of committing the offense;
38 or

9

1 (3) Threatens or places the victim in fear that the victim or any person
2 known to the victim will be imminently subjected to death, suffocation, strangulation,
3 disfigurement, serious physical injury, or kidnapping; or

4 (4) The person commits the offense aided and abetted by one or more other
5 persons; or

6 (5) The person commits the offense in connection with burglary in the first,
7 second, or third degree.

8 (b) (1) [Any] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
9 SUBSECTION, ANY person violating the provisions of this section is guilty of a felony and
10 upon conviction is subject to imprisonment for no more than the period of his natural life.

11 (2) ~~(I) IF THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE WHO IS~~
12 ~~NOT RELATED BY BLOOD, MARRIAGE, OR ADOPTION TO THE DEFENDANT AND THE~~
13 ~~DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 338 OF~~
14 ~~THIS ARTICLE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS~~
15 ~~GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO THE PENALTY~~
16 ~~PRESCRIBED UNDER § 412 OF THIS ARTICLE A MAXIMUM SENTENCE OF LIFE~~
17 ~~WITHOUT THE POSSIBILITY OF PAROLE.~~

18 (II) IF THE STATE'S ATTORNEY INTENDS TO SEEK A SENTENCE OF
19 LIFE WITHOUT THE POSSIBILITY OF PAROLE UNDER SUBPARAGRAPH (I) OF THIS
20 PARAGRAPH, IT SHALL NOTIFY THE PERSON IN WRITING AT LEAST 30 DAYS PRIOR
21 TO TRIAL OF THIS INTENTION.

22 463.

23 (a) A person is guilty of rape in the second degree if the person engages in vaginal
24 intercourse with another person:

25 (1) By force or threat of force against the will and without the consent of the
26 other person; or

27 (2) Who is mentally defective, mentally incapacitated, or physically helpless,
28 and the person performing the act knows or should reasonably know the other person is
29 mentally defective, mentally incapacitated, or physically helpless; or

30 (3) Who is under 14 years of age and the person performing the act is at
31 least four years older than the victim.

32 (b) (1) [Any] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
33 SUBSECTION, ANY person violating the provisions of this section is guilty of a felony and
34 upon conviction is subject to imprisonment for a period of not more than 20 years.

35 (2) ~~(I) IF THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE WHO IS~~
36 ~~NOT RELATED BY BLOOD, MARRIAGE, OR ADOPTION TO THE DEFENDANT AND THE~~
37 ~~DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 338 OF~~
38 ~~THIS ARTICLE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS~~
39 ~~GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO THE PENALTY~~
40 ~~PRESCRIBED UNDER § 412 OF THIS ARTICLE A MAXIMUM SENTENCE OF LIFE~~
41 ~~WITHOUT THE POSSIBILITY OF PAROLE.~~

10

1 (II) IF THE STATE'S ATTORNEY INTENDS TO SEEK A SENTENCE OF
2 LIFE WITHOUT THE POSSIBILITY OF PAROLE UNDER SUBPARAGRAPH (I) OF THIS
3 PARAGRAPH, IT SHALL NOTIFY THE PERSON IN WRITING AT LEAST 30 DAYS PRIOR
4 TO TRIAL OF THIS INTENTION.

5 464.

6 (a) A person is guilty of a sexual offense in the first degree if the person engages
7 in a sexual act with another person by force or threat of force against the will and without
8 the consent of the other person and:

9 (1) Employs or displays a dangerous or deadly weapon or an article which
10 the other person reasonably concludes is a dangerous or deadly weapon; or

11 (2) Inflicts suffocation, strangulation, disfigurement, or serious physical
12 injury upon the other person or upon anyone else in the course of committing the offense;
13 or

14 (3) Threatens or places the victim in fear that the victim or any person
15 known to the victim will be imminently subjected to death, suffocation, strangulation,
16 disfigurement, serious physical injury, or kidnapping; or

17 (4) The person commits the offense aided and abetted by one or more other
18 persons; or

19 (5) The person commits the offense in connection with burglary in the first,
20 second, or third degree.

21 (b) (1) [Any] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
22 SUBSECTION, ANY person violating the provisions of this section is guilty of a felony and
23 upon conviction is subject to imprisonment for no more than the period of his natural life.

24 (2) ~~(I) IF THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE WHO IS~~
25 ~~NOT RELATED BY BLOOD, MARRIAGE, OR ADOPTION TO THE DEFENDANT AND THE~~
26 ~~DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 338 OF~~
27 ~~THIS ARTICLE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS~~
28 ~~GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO THE PENALTY~~
29 ~~PRESCRIBED UNDER § 412 OF THIS ARTICLE~~ A MAXIMUM SENTENCE OF LIFE
30 WITHOUT THE POSSIBILITY OF PAROLE.

31 (II) IF THE STATE'S ATTORNEY INTENDS TO SEEK A SENTENCE OF
32 LIFE WITHOUT THE POSSIBILITY OF PAROLE UNDER SUBPARAGRAPH (I) OF THIS
33 PARAGRAPH, IT SHALL NOTIFY THE PERSON IN WRITING AT LEAST 30 DAYS PRIOR
34 TO TRIAL OF THIS INTENTION.

35 464A.

36 (a) A person is guilty of a sexual offense in the second degree if the person
37 engages in a sexual act with another person:

38 (1) By force or threat of force against the will and without the consent of the
39 other person; or

11

1 (2) Who is mentally defective, mentally incapacitated, or physically helpless,
2 and the person performing the act knows or should reasonably know the other person is
3 mentally defective, mentally incapacitated, or physically helpless; or

4 (3) Under 14 years of age and the person performing the sexual act is four
5 or more years older than the victim.

6 (b) (1) [Any] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
7 SUBSECTION, ANY person violating the provisions of this section is guilty of a felony and
8 upon conviction is subject to imprisonment for a period of not more than 20 years.

9 (2) ~~(I) IF THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE WHO IS~~
10 ~~NOT RELATED BY BLOOD, MARRIAGE, OR ADOPTION TO THE DEFENDANT AND THE~~
11 ~~DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 338 OF~~
12 ~~THIS ARTICLE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS~~
13 ~~GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO THE PENALTY~~
14 ~~PRESCRIBED UNDER § 412 OF THIS ARTICLE A MAXIMUM SENTENCE OF LIFE~~
15 ~~WITHOUT THE POSSIBILITY OF PAROLE.~~

16 (II) IF THE STATE'S ATTORNEY INTENDS TO SEEK A SENTENCE OF
17 LIFE WITHOUT THE POSSIBILITY OF PAROLE UNDER SUBPARAGRAPH (I) OF THIS
18 PARAGRAPH, IT SHALL NOTIFY THE PERSON IN WRITING AT LEAST 30 DAYS PRIOR
19 TO TRIAL OF THIS INTENTION.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed
21 only prospectively to offenses that are committed after the effective date of this Act and
22 may not be applied or interpreted to have any effect on or application to any offense
23 committed before the effective date of this Act.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 1996.