
By: Senators Stone, Boozer, and Middlebrooks (Committee to Revise Article 27)

Introduced and read first time: February 2, 1996

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Assault Laws - Revision**

3 FOR the purpose of revising and restating the laws concerning crimes involving physical
4 injury and threatened physical injury; repealing provisions of law on assault with
5 intent to commit certain offenses and third persons aiding one being assaulted;
6 establishing the crimes of first and second degree assault; allowing a charge of
7 reckless endangerment to be brought for each person endangered; providing for
8 certain defenses; providing a short form charging document and procedures related
9 to charging a person with certain offenses; allowing assault cases to be dismissed
10 under certain circumstances; providing that certain testimony is admissible but not
11 required to prove certain injuries; repealing crimes related to mayhem and
12 maiming; making stylistic, conforming, and substantive changes to statutory
13 provisions that include references to assault-related offenses; making into felonies
14 the attempt offenses of attempt to commit murder, rape, sexual offense, robbery,
15 and robbery with a dangerous or deadly weapon; altering a certain penalty;
16 repealing an obsolete reference; providing that certain Committee Notes and
17 catchlines contained in this Act are not law; providing for the application of this
18 Act; defining certain terms; and generally relating to the law of assault and crimes
19 involving threatened and actual physical injury.

20 BY repealing

21 Article 10 - Legal Officials
22 Section 37
23 Annotated Code of Maryland
24 (1994 Replacement Volume and 1995 Supplement)

25 BY repealing

26 Article 27 - Crimes and Punishments
27 Section 12 and the subheading "Assault with Intent to Murder, Ravish or Rob";
28 12A and the subheading "Assault - Third Person Aiding One Being
29 Assaulted"; 120; 384 through 386 and the subheading "Maiming"; and the
30 subheading designation "Assault by Inmates"
31 Annotated Code of Maryland
32 (1992 Replacement Volume and 1995 Supplement)

33 BY adding to

2

1 Article 27 - Crimes and Punishments
2 Section 12 through 12A-7 to be under the new subheading "Assault"; 411A and
3 464F
4 Annotated Code of Maryland
5 (1992 Replacement Volume and 1995 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article 27 - Crimes and Punishments
8 Section 11E, 372, 441(e), 461B, 486, 487, 488, 594B(f)(1), 616 1/2(c), 643B(a), and
9 692A(a)
10 Annotated Code of Maryland
11 (1992 Replacement Volume and 1995 Supplement)

12 BY repealing and reenacting, without amendments,
13 Article - Courts and Judicial Proceedings
14 Section 3-804(e)(1)
15 Annotated Code of Maryland
16 (1995 Replacement Volume and 1995 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - Courts and Judicial Proceedings
19 Section 3-804(e)(4), 9-103.1(b)(1), 9-106, and 10-916
20 Annotated Code of Maryland
21 (1995 Replacement Volume and 1995 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article - Family Law
24 Section 4-501(b)(1)
25 Annotated Code of Maryland
26 (1991 Replacement Volume and 1995 Supplement)

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

29 COMMITTEE NOTE: The Committee to Revise Article 27 - Crimes and
30 Punishments of the Annotated Code of Maryland has included Committee Notes as a
31 guide to the Committee's reasoning in revising the law on assault-related crimes. These
32 notes have not been adopted by the General Assembly and may not be considered to be
33 a part of the law.

34 **Article 10 - Legal Officials**

35 [37.

36 In cases where recognizances to prosecute have been entered into, and before
37 presentment or indictment found, the several courts of this State having jurisdiction of
38 crimes and offenses, upon the motion of the State's Attorney, with the consent of the
39 parties injured and accused, may compromise any assault and battery, the party accused

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1 paying the same costs as would have been incurred by the finding a truebill and plea of
2 guilty; provided, such court shall consider it proper in reference to the peace of the State
3 so to do.]

4 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): For current
5 provisions dealing with compromising cases of assault, see Article 27, § 12A-5.

6 **Article 27 - Crimes and Punishments**

7 [Assault with Intent to Murder, Ravish or Rob]

8 [12.

9 Every person convicted of the crime of an assault with intent to rob, is guilty of a
10 felony and shall be sentenced to imprisonment for not less than two years or more than
11 ten years. Every person convicted of the crime of an assault with intent to murder is guilty
12 of a felony and shall be sentenced to imprisonment for not less than two years nor more
13 than 30 years. Every person convicted of the crime of an assault with intent to commit a
14 rape in any degree or a sexual offense in the first or second degree is guilty of a felony
15 and shall be sentenced to imprisonment for not less than two years nor more than 15
16 years.]

17 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): For current
18 provisions dealing with this offense, see the Assault subheading in this article. See also,
19 Article 27, § 411A (attempted murder), § 464F (attempted rape or sexualoffense), and §§
20 486 and 488 (attempted robbery and attempted robbery with a dangerous or deadly
21 weapon).

22 [Assault - Third Person Aiding One Being Assaulted]

23 [12A.

24 Any person witnessing a violent assault upon the person of another may lawfully aid
25 the person being assaulted by assisting in that person's defense. The force exerted upon
26 the attacker or attackers by the person witnessing the assault may be that degree of force
27 which the assaulted person is allowed to assert in defending himself.]

28 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): For the
29 current provision dealing with defenses in assault cases, see Article 27, § 12A-3.

30 **ASSAULT**

31 12. DEFINITIONS.

32 (A) IN THIS SUBHEADING THE FOLLOWING WORDS HAVE THE MEANINGS
33 INDICATED.

34 (B) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBHEADING, "ASSAULT"
35 MEANS THE OFFENSES OF ASSAULT, BATTERY, AND ASSAULT AND BATTERY, WHICH
36 TERMS RETAIN THEIR JUDICIALLY DETERMINED MEANINGS.

37 (C) "SERIOUS PHYSICAL INJURY" MEANS PHYSICAL INJURY WHICH:

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1 (1) CREATES A SUBSTANTIAL RISK OF DEATH;

2 (2) CAUSES SERIOUS, PERMANENT OR PROTRACTED DISFIGUREMENT;

3 (3) CAUSES SERIOUS, PERMANENT OR PROTRACTED LOSS OF THE
4 FUNCTION OF ANY BODILY MEMBER OR ORGAN; OR

5 (4) CAUSES SERIOUS, PERMANENT OR PROTRACTED IMPAIRMENT OF
6 THE FUNCTION OF ANY BODILY MEMBER OR ORGAN.

7 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): Similar to the
8 revision of the burglary laws, the Committee has chosen to retain the judicially
9 determined meanings of the terms "assault", "battery", and "assault and battery". The
10 meaning of these terms has been extensively developed at common law and case law. See
11 e.g., Lamb v. State, 93 Md. App. 422 (1992). Also, as with the burglary revision, the
12 Committee does not intend to "freeze" the meanings of these terms, but expects that they
13 will continue to be clarified when appropriate in future case law.

14 The definition of "serious physical injury" is based on the definition proposed by the
15 Model Penal Code and adopted by New York. The Committee modified the definition to
16 add the word "protracted" in reference to disfigurement in subsection (f)(2). A
17 disfigurement that can be remedied through medical treatment may be considered
18 protracted. Also, in subsection (f)(3) and (4), the word "permanent" was added to clarify
19 that the loss or impairment could be permanent as well as protracted.

20 12A. SECOND DEGREE ASSAULT.

21 (A) A PERSON MAY NOT COMMIT AN ASSAULT.

22 (B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE
23 MISDEMEANOR OF ASSAULT IN THE SECOND DEGREE AND ON CONVICTION IS
24 SUBJECT TO A FINE OF NOT MORE THAN \$2,500 OR IMPRISONMENT FOR NOT MORE
25 THAN 10 YEARS OR BOTH.

26 12A-1. FIRST DEGREE ASSAULT.

27 (A) (1) A PERSON MAY NOT INTENTIONALLY CAUSE OR ATTEMPT TO CAUSE
28 SERIOUS PHYSICAL INJURY TO ANOTHER.

29 (2) A PERSON MAY NOT COMMIT AN ASSAULT WITH A FIREARM,
30 INCLUDING:

31 (I) A HANDGUN, ANTIQUE FIREARM, RIFLE, SHOTGUN,
32 SHORT-BARRELED SHOTGUN, OR SHORT-BARRELED RIFLE, AS THOSE TERMS ARE
33 DEFINED IN § 36F OF THIS ARTICLE;

34 (II) AN ASSAULT PISTOL, AS DEFINED IN § 36H-1 OF THIS ARTICLE;

35 (III) A PISTOL, REVOLVER, OR ANTIQUE PISTOL OR REVOLVER, AS
36 THOSE TERMS ARE DEFINED IN § 441 OF THIS ARTICLE;

37 (IV) AN ASSAULT WEAPON, AS DEFINED IN § 481E OF THIS ARTICLE;
38 AND

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1 (V) A MACHINE GUN, AS DEFINED IN § 372 OF THIS ARTICLE.

2 (B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF
3 ASSAULT IN THE FIRST DEGREE AND ON CONVICTION IS SUBJECT TO
4 IMPRISONMENT FOR NOT MORE THAN 25 YEARS.

5 12A-2. RECKLESS ENDANGERMENT.

6 (A) ANY PERSON WHO RECKLESSLY ENGAGES IN CONDUCT THAT CREATES A
7 SUBSTANTIAL RISK OF DEATH OR SERIOUS PHYSICAL INJURY TO ANOTHER PERSON
8 IS GUILTY OF THE MISDEMEANOR OF RECKLESS ENDANGERMENT AND ON
9 CONVICTION IS SUBJECT TO A FINE OF NOT MORE THAN \$5,000 OR IMPRISONMENT
10 FOR NOT MORE THAN 5 YEARS OR BOTH.

11 (B) THIS SECTION DOES NOT APPLY TO ANY CONDUCT INVOLVING:

12 (1) THE USE OF A MOTOR VEHICLE AS DEFINED IN § 11-135 OF THE
13 TRANSPORTATION ARTICLE; OR

14 (2) THE MANUFACTURE, PRODUCTION, OR SALE OF ANY PRODUCT OR
15 COMMODITY.

16 (C) IF MORE THAN ONE PERSON IS ENDANGERED BY THE CONDUCT OF THE
17 DEFENDANT, A SEPARATE CHARGE MAY BE BROUGHT FOR EACH PERSON
18 ENDANGERED.

19 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): This is the
20 current reckless endangerment statute with mainly stylistic changes. It does not
21 distinguish between whether any injury actually occurs and the instrumentality used, if
22 any, in creating the risk of death or serious physical injury.

23 Subsection (c) is new language. This change is intended to clarify that the
24 appropriate unit of prosecution may be based on the number of individuals in danger. For
25 example, a single act endangering 20 individuals could result in 20 convictions.
26 Alternatively, the State may choose to charge only one count for an occurrence, even
27 though many persons were endangered. It is up to the State to decide how to charge and
28 for the court to decide the appropriate punishment if a large number of individuals are
29 endangered by the same act. See also § 12A-4(d) concerning charging documents for
30 reckless endangerment.

31 12A-3. DEFENSES.

32 A PERSON CHARGED WITH AN OFFENSE UNDER THIS SUBHEADING IS
33 ENTITLED TO ASSERT ANY JUDICIALLY RECOGNIZED DEFENSE.

34 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): This revision
35 repeals the former Article 27, § 12A which provided immunity for going to the defense of
36 others. The case of Alexander v. State, 52 Md. App. 171, 447 A.2d 880 (1982), however,
37 extended this immunity to circumstances where a person reasonably believes that another
38 is being assaulted. Additionally, there are other defenses available in assault and battery
39 cases, including self-defense and imperfect self-defense, that were not specified in this
40 statute.

1 In the arson and burglary revisions, there is no section dealing with available
 2 defenses. It was implicit in the Committee's draft of the arson and burglary subheadings
 3 that no change was intended to any defenses currently available to a defendant.

4 The Committee felt that the repeal of former Article 27, § 12A, without any
 5 mention of available defenses, could be interpreted as intending the repeal of those
 6 defenses provided by this section and the Alexander case. The Committee intends under
 7 this revision of the assault laws that the defenses provided by the previous Article 27, §
 8 12A and the Alexander case remain available to a defendant. In addition, the Committee
 9 intends that all other defenses will also remain unchanged under this revision.

10 12A-4. CHARGING DOCUMENTS.

11 (A) IN ANY INDICTMENT, INFORMATION, WARRANT, OR OTHER CHARGING
 12 DOCUMENT FOR ASSAULT OR ANY OTHER OFFENSE UNDER THIS SUBHEADING, IT IS
 13 SUFFICIENT TO USE A FORMULA SUBSTANTIALLY TO THE FOLLOWING EFFECT:
 14 "THAT A-B ON THE ... DAY OF, IN THE COUNTY (CITY) AFORESAID, DID
 15 UNLAWFULLY ASSAULT C-D IN THEDEGREE OR DID (DESCRIBE OTHER
 16 VIOLATION OF THIS SUBHEADING) IN VIOLATION OF ARTICLE 27, SECTION (HERE
 17 STATE SECTION VIOLATED) OF THE ANNOTATED CODE OF MARYLAND; CONTRARY
 18 TO THE FORM OF THE ACT OF THE ASSEMBLY IN SUCH CASE MADE AND PROVIDED
 19 AND AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE."

20 (B) IN ANY CASE IN THE CIRCUIT COURT IN WHICH THIS GENERAL FORM OF
 21 INDICTMENT OR INFORMATION IS USED TO CHARGE AN OFFENSE UNDER THIS
 22 SUBHEADING, THE DEFENDANT ON TIMELY DEMAND IS ENTITLED TO A BILL OF
 23 PARTICULARS.

24 (C) A CHARGE OF ASSAULT IN THE FIRST DEGREE ALSO CHARGES A
 25 DEFENDANT WITH ASSAULT IN THE SECOND DEGREE.

26 (D) IN ORDER TO BE FOUND GUILTY OF RECKLESS ENDANGERMENT UNDER §
 27 12A-2 OF THIS SUBHEADING, A DEFENDANT MUST BE SPECIFICALLY CHARGED WITH
 28 RECKLESS ENDANGERMENT.

29 (E) A CHARGING DOCUMENT CONTAINING A CHARGE OF RECKLESS
 30 ENDANGERMENT UNDER § 12A-2 OF THIS SUBHEADING MAY:

31 (1) INCLUDE A COUNT FOR EACH PERSON ENDANGERED BY THE
 32 DEFENDANT'S CONDUCT; OR

33 (2) CONTAIN A SINGLE COUNT BASED ON THE DEFENDANT'S CONDUCT,
 34 REGARDLESS OF THE NUMBER OF PERSONS ENDANGERED BY THE DEFENDANT'S
 35 CONDUCT.

36 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): Subsection (e)
 37 is intended to be read in conjunction with § 12A-2(c) to clarify the unit of prosecution
 38 issue. The State has the option to charge either based on the number of persons
 39 endangered or on the occurrence. If only one charge is brought for an occurrence, a
 40 defendant may only be convicted on one count, regardless of the number of persons that
 41 were endangered.

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1 12A-5. COMPROMISING ASSAULT CASES.

2 (A) ON MOTION OF THE STATE'S ATTORNEY, A COURT MAY DISMISS A
3 CHARGE OF ASSAULT IF:

4 (1) THE VICTIM AND THE ACCUSED AGREE TO THE DISMISSAL; AND

5 (2) THE COURT CONSIDERS THE DISMISSAL PROPER.

6 (B) THE ACCUSED SHALL PAY THE SAME COSTS AS WOULD HAVE BEEN
7 INCURRED IF THE ACCUSED HAD BEEN FOUND GUILTY.

8 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): This section is
9 based on the former Article 10, § 37. The Committee intends that both first and second
10 degree assaults be covered by this section. It was felt that the requirement that all parties
11 must consent to any compromise adequately protects both the victim and the accused. In
12 addition, the Committee has introduced legislation that would provide for a District
13 Court assault provision, which also would be subject to the provisions of this section. In
14 light of this, the Committee recommended that this section refer simply to "assault", and
15 not to the specific degrees provided by this subheading.

16 [Assault by Inmates]

17 [11E.] 12A-6.

18 (a) Every inmate convicted of assault IN ANY DEGREE on another inmate or on
19 an employee of the Division of Correction, the Patuxent Institution, the Baltimore City
20 Detention Center, or any county jail or detention center, regardless of employment
21 capacity, shall be sentenced [for the crime of assault] under this section.

22 (b) A sentence imposed under this section shall run consecutively to any sentence
23 that was being served at the time of the assault, or that had been imposed but was not yet
24 being served at the time of sentencing.

25 (c) A sentence imposed under this section may not be suspended.

26 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): This section
27 was formally Article 27, § 11E. The only changes are in style.

28 12A-7. MISCELLANEOUS.

29 (A) UNLESS A SPECIFIC DEGREE OR DEGREES OF ASSAULT ARE SPECIFIED,
30 THE TERM "ASSAULT" WHEN USED ELSEWHERE IN THE CODE SHALL MEAN ASSAULT
31 IN ANY DEGREE.

32 (B) EXPERT TESTIMONY IS ADMISSIBLE TO PROVE, BUT IS NOT REQUIRED TO
33 PROVE, SERIOUS PHYSICAL INJURY.

34 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): There are a
35 variety of provisions in the Code that use the word "assault", sometimes in the
36 nontechnical sense of meaning offensive physical contact (see e.g., Article 33, § 24-18 and
37 § 2-104 of the Agriculture Article) and others where it is clear that the common law
38 meanings were intended. Several provisions using this term were amended by the

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1 Committee. In order to avoid any confusion, however, to sections that the Committee did
2 not amend, it was felt that the generic term "assault" should include all degrees of
3 assault.

4 [120.

5 (a) Any person who recklessly engages in conduct that creates a substantial risk of
6 death or serious physical injury to another person is guilty of the misdemeanor of reckless
7 endangerment and on conviction is subject to a fine not exceeding \$5,000 or
8 imprisonment not exceeding 5 years or both.

9 (b) This section does not apply to any conduct involving the use of a motor vehicle
10 as defined in § 11-135 of the Transportation Article.

11 (c) This section does not apply to any conduct involving the manufacture,
12 production, or sale of any product or commodity.]

13 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): See § 12A-2 of
14 this article for the current statute on reckless endangerment.

15 372.

16 "Machine gun" as used in this subtitle, means a weapon, of any description, by
17 whatever name known, loaded or unloaded, from which more than one shot or bullet may
18 be automatically discharged from a magazine, by a single function of the firing device.

19 "Crime of violence" applies to and includes any of the following crimes or an
20 attempt to commit any of the same, namely, murder of any degree, manslaughter,
21 kidnapping, rape in any degree, [mayhem, assault with intent to do great bodily harm,
22 assault with intent to murder, assault with intent to rape] ASSAULT IN THE FIRST
23 DEGREE, robbery, burglary in any degree, and theft.

24 "Person" applies to and includes firm, partnership, association, or corporation.

25 [Maiming]

26 [384.

27 Every person, his aiders and abettors, who shall be convicted of the crime of
28 mayhem, or of tarring and feathering, shall be sentenced to the penitentiary for not more
29 than ten years nor less than eighteen months.]

30 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): For current
31 provisions dealing with this offense, see the Assault subheading in this article.

32 [385.

33 Every person, his aiders, abettors and counsellors, who shall be convicted of the
34 crime of cutting out or disabling the tongue, putting out an eye, slitting the nose, cutting
35 or biting off the nose, ear or lip, or cutting or biting off or disabling any limb or member
36 of any person, of malice aforethought, with intention in so doing to mark or disfigure such
37 person, shall be guilty of a felony and upon conviction are subject to imprisonment for not
38 more than 15 years.]

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1 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): For current
2 provisions dealing with this offense, see the Assault subheading in this article.

3 [386.

4 If any person shall unlawfully shoot at any person, or shall in any manner unlawfully
5 and maliciously attempt to discharge any kind of loaded arms at any person, or shall
6 unlawfully and maliciously stab, cut or wound any person, or shall assault or beat any
7 person, with intent to maim, disfigure or disable such person, or with intent to prevent the
8 lawful apprehension or detainer of any party for any offense for which the said party may
9 be legally apprehended or detained, every such offender, and every person counselling,
10 aiding or abetting such offender shall be guilty of a felony and, upon conviction are
11 subject to imprisonment for not more than 15 years.]

12 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): For current
13 provisions dealing with this offense, see the Assault subheading in this article.

14 411A. ATTEMPTED MURDER.

15 (A) A PERSON WHO ATTEMPTS TO COMMIT MURDER IN THE SECOND DEGREE
16 IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR
17 NOT MORE THAN 30 YEARS.

18 (B) (1) A PERSON WHO ATTEMPTS TO COMMIT MURDER IN THE FIRST
19 DEGREE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO EITHER LIFE
20 IMPRISONMENT WITHOUT PAROLE OR A TERM OF IMPRISONMENT FOR NOT MORE
21 THAN LIFE.

22 (2) (I) IF THE STATE INTENDS TO SEEK A SENTENCE OF
23 IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE, IT SHALL NOTIFY
24 THE DEFENDANT IN WRITING AT LEAST 30 DAYS PRIOR TO TRIAL.

25 (II) IF THE STATE DOES NOT PROVIDE THE NOTICE REQUIRED
26 UNDER PARAGRAPH (I) OF THIS PARAGRAPH, THE COURT MAY NOT IMPOSE A
27 SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE.

28 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): The
29 Committee to Revise Article 27 of the Annotated Code recommends that attempted
30 murder be made a felony in order to indicate the seriousness of this crime and to provide
31 that there be no statute of limitations for this offense.

32 In subsection (b), the penalty for attempted first degree murder includes the
33 possibility of life without parole. Under current law in Article 27, § 644A the sentence for
34 an attempted crime may not exceed the maximum sentence for the completed crime. This
35 provision will clarify that a sentence of life without parole is possible for attempted first
36 degree murder.

37 441.

38 (e) The term "crime of violence" means abduction; arson in the firstdegree;
39 ASSAULT IN THE FIRST OR SECOND DEGREE; burglary in the first, second, or third
40 degree; escape; kidnapping; manslaughter, excepting involuntary manslaughter;
41 [mayhem;] murder; rape; robbery; robbery with a deadly weapon; carjacking or armed

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1 carjacking; sexual offense in the first degree; and sodomy; or an attempt to commit any of
2 the aforesaid offenses[; or assault with intent to commit any other offense punishable by
3 imprisonment for more than one year].

4 461B.

5 In any criminal prosecution for rape, attempted rape, [assault with intent to commit
6 a rape, assault with intent to commit a sexual offense,] ATTEMPTED SEXUAL OFFENSE,
7 or any other sexual offense, the jury may not be instructed:

8 (1) To examine with caution the testimony of the prosecuting witness, solely
9 because of the nature of the charge;

10 (2) That the charge is easily made or difficult to disprove, solely because of
11 the nature of the charge; or

12 (3) As to any other similar instruction, solely because of the nature of the
13 charge.

14 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): The revision of
15 the assault laws repeals the statutory crimes of assault with intent torape and assault with
16 intent to commit sexual offense. Attempted rape and attempted sexual offense are made
17 felonies under § 464F of this subheading by the revision.

18 464F. ATTEMPTED RAPE OR SEXUAL OFFENSE.

19 (A) A PERSON WHO ATTEMPTS TO COMMIT RAPE IN THE SECOND DEGREE OR
20 SEXUAL OFFENSE IN THE SECOND DEGREE IS GUILTY OF A FELONY AND ON
21 CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT MORE THAN 20 YEARS.

22 (B) A PERSON WHO ATTEMPTS TO COMMIT RAPE IN THE FIRST DEGREE OR
23 SEXUAL OFFENSE IN THE FIRST DEGREE IS GUILTY OF A FELONY AND ON
24 CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT MORE THAN LIFE.

25 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): The
26 Committee to Revise Article 27 of the Annotated Code recommends that attempted rape
27 and attempted sexual offense in the first and second degrees be made felonies in order to
28 indicate the seriousness of these crimes and to provide that there be no statute of
29 limitations for these offenses. No other changes are intended.

30 486.

31 Every person convicted of the crime of robbery OR ATTEMPT TO ROB, oras
32 accessory thereto before the fact, IS GUILTY OF A FELONY, shall restorethe thing robbed
33 or taken to the owner, or shall pay to him the full value thereof, and be sentenced to [the
34 penitentiary for not less than three nor] IMPRISONMENT FOR NOT more than [ten] 15
35 years.

36 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): The
37 Committee recommends that attempted robbery and attempted robbery with a dangerous
38 or deadly weapon be made felonies in order to indicate the seriousness of these crimes
39 and to provide that there be no statute of limitations for these offenses. The reference to
40 "the penitentiary" is stricken as obsolete since sentencing currently is to the local jail or

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1 to the Division of Correction, depending on the length of the sentence, under the
2 provisions of Article 27, § 690.

3 Although the current law appears to provide for a mandatory minimum penalty of 3
4 years, under the provisions of Article 27, § 643, a judge is given discretion not to impose
5 the minimum penalty. In addition, there is no mandatory minimum penalty for armed
6 robbery under § 488, which provides for a penalty of not more than 20 years
7 imprisonment. In light of this, the Committee recommends that the language ostensibly
8 providing for a mandatory minimum of 3 years be stricken.

9 In addition, the Committee recommends that the maximum penalty for robbery be
10 increased from 10 to 15 years in order to make the penalty for this offense the same as the
11 current penalty for theft over \$300.

12 487.

13 In any indictment or warrant for robbery, it shall be sufficient to use a formula
14 substantially to the following effect: "That A-B on the day of, 19, in the
15 County (City) aforesaid feloniously did rob C-D (OR DID ATTEMPT TO ROB C-D, AS THE
16 CASE MAY BE) and violently did steal (OR ATTEMPT TO STEAL, AS THE CASE MAY BE)
17 from him dollars (here list the property stolen); contrary to the form of the Act of
18 Assembly in such cases made and provided and against the peace, government and dignity
19 of the State."

20 488.

21 Every person convicted of the crime of robbery or attempt to rob with a dangerous
22 or deadly weapon or accessory thereto IS GUILTY OF A FELONY, shall restore to the
23 owner thereof the thing robbed or taken, or shall pay him the full value thereof, and be
24 sentenced to imprisonment [in the Maryland Penitentiary] for not more than [twenty]
25 20 years.

26 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): See
27 Committee Note to Article 27, § 486. The phrase "in the Maryland Penitentiary" is
28 stricken as obsolete since sentencing currently is to the local jail or to the Division of
29 Correction, depending on the length of the sentence, under the provisions of Article 27,
30 § 690.

31 594B.

32 (f) The offenses referred to in subsection (e) of this section are:

33 (1) Those offenses specified in the following sections of Article 27, as they
34 may be amended from time to time:

35 (i) Section 8(a) (relating to malicious burning);

36 (II) SECTION 12A-1 (RELATING TO ASSAULT IN THE SECOND
37 DEGREE);

38 [(ii)] (III) Section 36 (relating to carrying or wearing weapon);

39 [(iii)] (IV) Section 111 (relating to destroying, injuring, etc., property of
40 another);

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1 [(iv)] (V) Section 156 (relating to giving a false alarm of a fire);

2 [(v)] (VI) Section 287 (relating to possession of hypodermic syringes,
3 etc., restricted);

4 [(vi)] (VII) Sections 342 through 344 (theft) where the value of the
5 property stolen was less than \$300;

6 [(vii)] Section 33A (relating to breaking into building or boat with intent
7 to steal);

8 (viii) The common-law crime of assault when committed with intent to
9 do great bodily harm;]

10 [(ix)] (VIII) Sections 276 through 302 (relating to drugs and other
11 dangerous substances) as they shall be amended from time to time;

12 [(x)] (IX) Section 36B (relating to handguns);

13 [(xi)] (X) Section 388 (relating to manslaughter by automobile,
14 motorboat, etc.); and

15 [(xii)] (XI) Section 335A (relating to indecent exposure).

16 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): The
17 Committee recommends that a law enforcement officer be able to make a warrantless
18 arrest for assault in the second degree. The provision concerning common law assault
19 when committed with intent to do great bodily harm is repealed.

20 In addition, the provision relating to Article 27, § 33A is repealed as being obsolete
21 under the revision of the burglary laws (Ch. 712 of 1994). Under the new law, this offense
22 would either be first or second degree burglary. These offenses are both felonies, and the
23 warrantless arrest provisions of Article 27, § 594B(c) already allow warrantless arrests for
24 felonies.

25 616 1/2.

26 (c) Any person charged with an offense hereinafter enumerated committed
27 during the time that person had been released on bail or his own recognizance for
28 committing an offense hereinafter enumerated, is ineligible to give bail or be released on
29 recognizance on the subsequent charge, until all prior charges hereunder have finally
30 been determined by the courts. But a person charged with a subsequent crime hereinafter
31 set forth, may rebut his ineligibility for release on bail before determination of the prior
32 charge. If, after consideration of the matters presented in rebuttal, the court hearing the
33 application for bail is persuaded that the applicant would not pose a danger to any other
34 person or to the community, and would appear at the time set for trial, the court may
35 allow release pending trial on suitable bail and on such other conditions as will reasonably
36 assure that the person charged will not flee. For the purposes of this subsection, court
37 does not mean District Court commissioners and the offenses are those specified in the
38 following sections of Article 27 of the Annotated Code of Maryland (1967 Repl. Vol.) as
39 they may be amended from time to time:

13

1 (1) Section 6 (relating to arson in the first degree) and attempting, aiding,
2 counseling, or procuring arson in the first degree;

3 (2) Section 7 (relating to arson in the second degree) and attempting,
4 aiding, counseling, or procuring arson in the second degree;

5 (3) Section 12 (relating to assault [with intent to murder, ravish or rob] IN
6 THE FIRST DEGREE);

7 (4) Section 29 (relating to burglary in the first degree);

8 (5) Section 30 (relating to burglary in the second degree);

9 (6) Section 31 (relating to burglary in the third degree);

10 (7) Section 35A (causing abuse to child under 18);

11 (8) Section 286 (relating to the manufacture, distribution, etc., or to the
12 counterfeiting, etc., of a controlled dangerous substance or of certain equipment relating
13 thereto and relating to the keeping of a common nuisance as related to drug abuse);

14 (9) Section 337 (relating to kidnapping generally);

15 (10) Section 338 (relating to kidnapping children under sixteen);

16 [(11) Section 386 (relating to unlawful shooting, stabbing, assaulting, etc., with
17 intent to maim, disfigure or disable or to prevent lawful apprehension);]

18 [(12)] (11) Section 388 (relating to manslaughter by automobile, motorboat,
19 etc.);

20 [(13)] (12) Section 407 (relating to first degree murder);

21 [(14)] (13) Section 408 (relating to murder committed in perpetration of
22 arson);

23 [(15)] (14) Section 409 (relating to murder committed in burning barns, etc.);

24 [(16)] (15) Section 410 (relating to murder committed in perpetration of rape
25 in any degree, sexual offense in the first or second degree, sodomy, etc.);

26 [(17)] (16) Section 411 (relating to second degree murder);

27 (17) SECTION 411A (RELATING TO ATTEMPTED MURDER IN THE FIRST OR
28 SECOND DEGREE);

29 (18) Sections 462 and 463 (relating to rape in the first and second degree);

30 (19) SECTION 464F (RELATING TO ATTEMPTED RAPE OR SEXUAL
31 OFFENSE IN THE FIRST OR SECOND DEGREE);

32 [(19)] (20) Section 486 (relating to robbery generally); and

33 [(20)] (21) Section 488 (relating to robbery with a deadly weapon).

14

1 643B.

2 (a) As used in this section, the term "crime of violence" means abduction; arson
3 in the first degree; kidnapping; manslaughter, except involuntary manslaughter; mayhem
4 and maiming, AS PREVIOUSLY PROSCRIBED under §§ 384, 385, and 386 of this article;
5 murder; rape; robbery; robbery with a deadly weapon; carjacking or armed carjacking;
6 sexual offense in the first degree; sexual offense in the second degree; use of a handgun
7 in the commission of a felony or other crime of violence; an attempt to commit any of the
8 aforesaid offenses; ASSAULT IN THE FIRST DEGREE; AND assault with intent to
9 murder[;], assault with intent to rape[;], assault with intent to rob[;], assault with
10 intent to commit a sexual offense in the first degree[;], and assault with intent to commit
11 a sexual offense in the second degree, AS THESE CRIMES WERE PREVIOUSLY
12 PROSCRIBED UNDER FORMER § 12 OF THIS ARTICLE .

13 The term "correctional institution" includes Patuxent Institution and a local or
14 regional jail or detention center.

15 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): The mayhem
16 and maiming crimes under Article 27, §§ 384, 385, and 386 and the felony assault crimes
17 under Article 27, § 12 are being repealed by this revision of the assault laws. The
18 reference to these repealed sections, however, must be retained under this section of law
19 to ensure that they may be used as predicate offenses for the subsequent offender
20 provisions of this statute.

21 692A.

22 (a) Any inmate of any penal or treatment institution administered by the Division
23 of Correction who is convicted of a sexual offense under § 464, § 464A, § 464B, or § 464C
24 of this article, or who is convicted of an attempt to commit a sexual offense under those
25 sections OR § 464F OF THIS ARTICLE [, or who is convicted of an assault with intent to
26 commit a sexual offense] either as a principal or aider or abettor shall be sentenced to a
27 sentence to run consecutive to the sentence under which the inmate is serving at the time
28 of the commission of the offense.

29 **Article - Courts and Judicial Proceedings**

30 3-804.

31 (e) The court does not have jurisdiction over:

32 (1) A child at least 14 years old alleged to have done an act which, if
33 committed by an adult, would be a crime punishable by death or life imprisonment, as
34 well as all other charges against the child arising out of the same incident, unless an order
35 removing the proceeding to the court has been filed under Article 27, §594A of the Code;

36 (4) A child at least 16 years old alleged to have committed any of the
37 following crimes, as well as all other charges against the child arising out of the same
38 incident, unless an order removing the proceeding to the court has been filed under
39 Article 27, § 594A of the Code:

40 (i) Abduction;

41 (ii) Kidnapping;

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15

1 (iii) Second degree murder;

2 (iv) Manslaughter, except involuntary manslaughter;

3 [(v) Mayhem or maiming in violation of Article 27, § 384, § 385, or §
4 386 of the Code;]

5 [(vi)] (V) Second degree rape;

6 [(vii)] (VI) Robbery with a dangerous or deadly weapon;

7 [(viii)] (VII) Second degree sexual offense in violation of Article 27, §
8 464A(a)(1) of the Code;

9 [(ix)] (VIII) Third degree sexual offense in violation of Article 27, §
10 464B(a)(1) of the Code;

11 [(x)] (IX) A crime in violation of Article 27, § 36B, § 373, § 374, § 445,
12 § 446, § 481C, or § 481E of the Code;

13 [(xi)] (X) Using, wearing, carrying, or transporting of firearm during
14 and in relation to a drug trafficking crime in violation of Article 27, § 281A of the Code;

15 [(xii)] (XI) Use of a firearm in violation of Article 27, § 291A of the
16 Code;

17 [(xiii)] (XII) Carjacking or armed carjacking in violation of Article 27, §
18 348A of the Code;

19 [(xiv) Assault with intent to murder;

20 (xv) Assault with intent to rape;

21 (xvi) Assault with intent to rob; or

22 (xvii) Assault with intent to commit a sexual offense in the first or
23 second degree]

24 (XIII) ASSAULT IN THE FIRST DEGREE IN VIOLATION OF ARTICLE 27,
25 § 12A-3 OF THE CODE;

26 (XIV) ATTEMPTED MURDER IN THE SECOND DEGREE IN VIOLATION
27 OF ARTICLE 27, § 411A OF THE CODE;

28 (XV) ATTEMPTED RAPE OR ATTEMPTED SEXUAL OFFENSE IN THE
29 SECOND DEGREE UNDER ARTICLE 27, § 464F OF THE CODE; OR

30 (XVI) ATTEMPTED ROBBERY WITH A DANGEROUS OR DEADLY
31 WEAPON UNDER ARTICLE 27, § 488 OF THE CODE.

32 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): The revision of
33 the assault laws repealed the crimes of mayhem and maiming. Assault in the first degree
34 is currently the most serious assault offense. Also, the assault revision repealed the
35 Article 27, § 12 crimes of assault with intent to murder, rape, rob, or commit sexual

16

1 offense, and codified the offenses of attempted murder, rape, robbery, and sexual
2 offense.

3 9-103.1.

4 (b) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, if
5 a court finds that the requirements of subsection (c) of this section are satisfied, a court
6 may admit into evidence in a juvenile court proceeding or in a criminal proceeding an out
7 of court statement, to prove the truth of the matter asserted in the statement, made by a
8 child victim under the age of 12 years, who is the alleged victim or the child alleged to
9 need assistance in the case before the court, concerning an alleged offense against the
10 child of:

11 (i) Child abuse, as defined under Article 27, § 35A of the Code;

12 (ii) Rape or sexual offense, as defined in Article 27, §§ 462 through
13 464B of the Code, inclusive;

14 (iii) [Assault with intent to commit] ATTEMPTED rape or
15 ATTEMPTED sexual offense IN THE FIRST OR SECOND DEGREE, as defined in Article
16 27, [§ 12] § 464F of the Code; or

17 (iv) In a juvenile court proceeding, abuse or neglect as defined in §
18 5-701 of the Family Law Article.

19 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): The revision of
20 the assault laws repeals the statutory crimes of assault with intent to rape and assault with
21 intent to commit sexual offense. Attempted rape and attempted sexual offense are made
22 felonies under Article 27, § 464F of the Code by the revision.

23 9-106.

24 The spouse of a person on trial for a crime may not be compelled to testify as an
25 adverse witness unless the charge involves:

26 (1) The abuse of a child under 18; or

27 (2) Assault [and battery] IN ANY DEGREE in which the spouse is a victim
28 if:

29 (i) The person on trial was previously charged with ASSAULT IN ANY
30 DEGREE OR assault and battery of the spouse;

31 (ii) The spouse was sworn to testify at the previous trial; and

32 (iii) The spouse refused to testify at the previous trial on the basis of
33 the provisions of this section.

34 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): The revision of
35 the assault laws replaces the common law crime of assault and battery with the statutory
36 crimes of assault in the first or second degree. The Committee to revise Article 27
37 recommends that any degree of assault occurring within a year of any other assault will
38 result in a spouse being compelled to testify. The reference to "assault and battery" is left
39 in paragraph (2)(i) to cover cases arising before the enactment of this revision.

17

1 10-916.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) "Battered Spouse Syndrome" means the psychological condition of a
4 victim of repeated physical and psychological abuse by a spouse, formerspouse,
5 cohabitant, or former cohabitant which is also recognized in the medical and scientific
6 community as the "Battered Woman's Syndrome".

7 (3) "Defendant" means an individual charged with:

8 (i) First degree murder, second degree murder, manslaughter,
9 [maiming,] or attempt to commit any of these crimes; or

10 (ii) Assault [with intent to murder or maim] IN THE FIRST DEGREE.

11 (b) Notwithstanding evidence that the defendant was the first aggressor, used
12 excessive force, or failed to retreat at the time of the alleged offense, when the defendant
13 raises the issue that the defendant was, at the time of the alleged offense, suffering from
14 the Battered Spouse Syndrome as a result of the past course of conduct of the individual
15 who is the victim of the crime for which the defendant has been charged, the court may
16 admit for the purpose of explaining the defendant's motive or state of mind, or both, at
17 the time of the commission of the alleged offense:

18 (1) Evidence of repeated physical and psychological abuse of the defendant
19 perpetrated by an individual who is the victim of a crime for which the defendant has
20 been charged; and

21 (2) Expert testimony on the Battered Spouse Syndrome.

22 **Article - Family Law**

23 4-501.

24 (b) (1) "Abuse" means any of the following acts:

25 (i) an act that causes serious bodily harm;

26 (ii) an act that places a person eligible for relief in fear of imminent
27 serious bodily harm;

28 (iii) [battery or assault and battery] ASSAULT IN ANY DEGREE;

29 (iv) rape or sexual offense as defined by Article 27, §§ 462 through
30 464C or attempted rape or sexual offense IN ANY DEGREE; or

31 (v) false imprisonment.

32 SECTION 2. AND BE IT FURTHER ENACTED, That the Committee Notes and
33 catchlines contained in this Act are not law.

34 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall only apply to
35 offenses committed on or after the effective date of this Act and may not be construed to
36 apply in any way to offenses committed before the effective date of this Act.

1 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 1996.