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HB 844/95 - JUD

1996 Regular Session
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By: Senators Stone, Boozer, and Middlebrooks (Committee to Revise Article 27)

Introduced and read first time: February 2, 1996

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: March 13, 1996

CHAPTER ____

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

2

1 Section 12 and the subheading "Assault with Intent to Murder, Ravishor Rob";
2 12A and the subheading "Assault - Third Person Aiding One Being
3 Assaulted"; 120; 384 through 386 and the subheading "Maiming"; and the
4 subheading designation "Assault by Inmates"
5 Annotated Code of Maryland
6 (1992 Replacement Volume and 1995 Supplement)

7 BY adding to

8 Article 27 - Crimes and Punishments
9 Section 12 through 12A-7 to be under the new subheading "Assault"; 411A and
10 464F
11 Annotated Code of Maryland
12 (1992 Replacement Volume and 1995 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article 27 - Crimes and Punishments
15 Section 11E, 372, 441(e), 461B, 486, 487, 488, 594B(f)(1), 616 1/2(c), 643B(a), and
16 692A(a)
17 Annotated Code of Maryland
18 (1992 Replacement Volume and 1995 Supplement)

19 BY repealing and reenacting, without amendments,

20 Article - Courts and Judicial Proceedings
21 Section 3-804(e)(1)
22 Annotated Code of Maryland
23 (1995 Replacement Volume and 1995 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article - Courts and Judicial Proceedings
26 Section 3-804(e)(4), 9-103.1(b)(1), 9-106, and 10-916
27 Annotated Code of Maryland
28 (1995 Replacement Volume and 1995 Supplement)

29 BY repealing and reenacting, with amendments,

30 Article - Family Law
31 Section 4-501(b)(1)
32 Annotated Code of Maryland
33 (1991 Replacement Volume and 1995 Supplement)

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

36 COMMITTEE NOTE: The Committee to Revise Article 27 - Crimes and
37 Punishments of the Annotated Code of Maryland has included Committee Notes as a
38 guide to the Committee's reasoning in revising the law on assault-related crimes. These

3

1 notes have not been adopted by the General Assembly and may not be considered to be
2 a part of the law.

3 **Article 10 - Legal Officials**

4 [37.

5 In cases where recognizances to prosecute have been entered into, and before
6 presentment or indictment found, the several courts of this State having jurisdiction of
7 crimes and offenses, upon the motion of the State's Attorney, with the consent of the
8 parties injured and accused, may compromise any assault and battery, the party accused
9 paying the same costs as would have been incurred by the finding a truebill and plea of
10 guilty; provided, such court shall consider it proper in reference to the peace of the State
11 so to do.]

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

14 **Article 27 - Crimes and Punishments**

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

16 [12.

17 Every person convicted of the crime of an assault with intent to rob, is guilty of a
18 felony and shall be sentenced to imprisonment for not less than two years or more than
19 ten years. Every person convicted of the crime of an assault with intent to murder is guilty
20 of a felony and shall be sentenced to imprisonment for not less than two years nor more
21 than 30 years. Every person convicted of the crime of an assault with intent to commit a
22 rape in any degree or a sexual offense in the first or second degree is guilty of a felony
23 and shall be sentenced to imprisonment for not less than two years nor more than 15
24 years.]

25 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): For current
26 provisions dealing with this offense, see the Assault subheading in this article. See also,
27 Article 27, § 411A (attempted murder), § 464F (attempted rape or sexualoffense), and §§
28 486 and 488 (attempted robbery and attempted robbery with a dangerous or deadly
29 weapon).

30 [Assault - Third Person Aiding One Being Assaulted]

31 [12A.

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

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

4

1 ASSAULT

2 12. DEFINITIONS.

3 (A) IN THIS SUBHEADING THE FOLLOWING WORDS HAVE THE MEANINGS
4 INDICATED.

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

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

9 (1) CREATES A SUBSTANTIAL RISK OF DEATH;

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

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

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

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

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

28 12A. SECOND DEGREE ASSAULT.

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

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

34 12A-1. FIRST DEGREE ASSAULT.

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

37 (2) A PERSON MAY NOT COMMIT AN ASSAULT WITH A FIREARM,
38 INCLUDING:

5

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

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

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

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

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

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

13 12A-2. RECKLESS ENDANGERMENT.

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

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

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

22 (2) THE MANUFACTURE, PRODUCTION, OR SALE OF ANY PRODUCT OR
23 COMMODITY.

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

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

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

6

1 12A-3. DEFENSES.

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

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

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

14 The Committee felt that the repeal of former Article 27, § 12A, without any
15 mention of available defenses, could be interpreted as intending the repeal of those
16 defenses provided by this section and the Alexander case. The Committee intends under
17 this revision of the assault laws that the defenses provided by the previous Article 27, §
18 12A and the Alexander case remain available to a defendant. In addition, the Committee
19 intends that all other defenses will also remain unchanged under this revision.

20 12A-4. CHARGING DOCUMENTS.

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

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

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

36 (D) IN ORDER TO BE FOUND GUILTY OF RECKLESS ENDANGERMENT UNDER §
37 12A-2 OF THIS SUBHEADING, A DEFENDANT MUST BE SPECIFICALLY CHARGED WITH
38 RECKLESS ENDANGERMENT.

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

7

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

3 (2) CONTAIN A SINGLE COUNT BASED ON THE DEFENDANT'S CONDUCT,
4 REGARDLESS OF THE NUMBER OF PERSONS ENDANGERED BY THE DEFENDANT'S
5 CONDUCT.

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

12 12A-5. COMPROMISING ASSAULT CASES.

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

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

16 (2) THE COURT CONSIDERS THE DISMISSAL PROPER.

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

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

27 [Assault by Inmates]

28 [11E.] 12A-6.

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

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

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

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

8

1 12A-7. MISCELLANEOUS.

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

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

7 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): There are a
8 variety of provisions in the Code that use the word "assault", sometimes in the
9 nontechnical sense of meaning offensive physical contact (see e.g., Article 33, § 24-18 and
10 § 2-104 of the Agriculture Article) and others where it is clear that the common law
11 meanings were intended. Several provisions using this term were amended by the
12 Committee. In order to avoid any confusion, however, to sections that the Committee did
13 not amend, it was felt that the generic term "assault" should include all degrees of
14 assault.

15 [120.

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

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

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

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

26 372.

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

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

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

9

1 [Maiming]

2 [384.

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

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

8 [385.

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

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

17 [386.

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

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

28 411A. ATTEMPTED MURDER.

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

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

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

10

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

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

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

13 441.

14 (e) The term "crime of violence" means abduction; arson in the firstdegree;
15 ASSAULT IN THE FIRST OR SECOND DEGREE; burglary in the first, second, or third
16 degree; escape; kidnapping; manslaughter, excepting involuntary manslaughter;
17 [mayhem;] murder; rape; robbery; robbery with a deadly weapon; carjacking or armed
18 carjacking; sexual offense in the first degree; and sodomy; or an attempt to commit any of
19 the aforesaid offenses[; or assault with intent to commit any other offense punishable by
20 imprisonment for more than one year].

21 461B.

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

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

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

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

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

35 464F. ATTEMPTED RAPE OR SEXUAL OFFENSE.

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

11

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

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

9 486.

10 Every person convicted of the crime of robbery OR ATTEMPT TO ROB, or as
11 accessory thereto before the fact, IS GUILTY OF A FELONY, shall restore the thing robbed
12 or taken to the owner, or shall pay to him the full value thereof, and be sentenced to [the
13 penitentiary for not less than three nor] IMPRISONMENT FOR NOT more than [ten] 15
14 years.

15 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): The
16 Committee recommends that attempted robbery and attempted robbery with a dangerous
17 or deadly weapon be made felonies in order to indicate the seriousness of these crimes
18 and to provide that there be no statute of limitations for these offenses. The reference to
19 "the penitentiary" is stricken as obsolete since sentencing currently is to the local jail or
20 to the Division of Correction, depending on the length of the sentence, under the
21 provisions of Article 27, § 690.

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

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

31 487.

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

39 488.

40 Every person convicted of the crime of robbery or attempt to rob with a dangerous
41 or deadly weapon or accessory thereto IS GUILTY OF A FELONY, shall restore to the
42 owner thereof the thing robbed or taken, or shall pay him the full value thereof, and be

12

1 sentenced to imprisonment [in the Maryland Penitentiary] for not more than [twenty]
2 20 years.

3 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): See
4 Committee Note to Article 27, § 486. The phrase "in the Maryland Penitentiary" is
5 stricken as obsolete since sentencing currently is to the local jail or to the Division of
6 Correction, depending on the length of the sentence, under the provisions of Article 27,
7 § 690.

8 594B.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 616 1/2.

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

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

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

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

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

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

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

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

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

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

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

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

38 [(12)] (11) Section 388 (relating to manslaughter by automobile, motorboat,
 39 etc.);

14

1 [(13)] (12) Section 407 (relating to first degree murder);

2 [(14)] (13) Section 408 (relating to murder committed in perpetration of
3 arson);

4 [(15)] (14) Section 409 (relating to murder committed in burning barns, etc.);

5 [(16)] (15) Section 410 (relating to murder committed in perpetration of rape
6 in any degree, sexual offense in the first or second degree, sodomy, etc.);

7 [(17)] (16) Section 411 (relating to second degree murder);

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

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

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

13 [(19)] (20) Section 486 (relating to robbery generally); and

14 [(20)] (21) Section 488 (relating to robbery with a deadly weapon).

15 643B.

16 (a) As used in this section, the term "crime of violence" means abduction; arson
17 in the first degree; kidnapping; manslaughter, except involuntary manslaughter; mayhem
18 and maiming, AS PREVIOUSLY PROSCRIBED under §§ 384, 385, and 386 of this article;
19 murder; rape; robbery; robbery with a deadly weapon; carjacking or armed carjacking;
20 sexual offense in the first degree; sexual offense in the second degree; use of a handgun
21 in the commission of a felony or other crime of violence; an attempt to commit any of the
22 aforesaid offenses; ASSAULT IN THE FIRST DEGREE; AND assault with intent to
23 murder[;], assault with intent to rape[;], assault with intent to rob[;], assault with
24 intent to commit a sexual offense in the first degree[;], and assault with intent to commit
25 a sexual offense in the second degree, AS THESE CRIMES WERE PREVIOUSLY
26 PROSCRIBED UNDER FORMER § 12 OF THIS ARTICLE .

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

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

35 692A.

36 (a) Any inmate of any penal or treatment institution administered by the Division
37 of Correction who is convicted of a sexual offense under § 464, § 464A, § 464B, or § 464C
38 of this article, or who is convicted of an attempt to commit a sexual offense under those
39 sections OR § 464F OF THIS ARTICLE [, or who is convicted of an assault with intent to

15

1 commit a sexual offense] either as a principal or aider or abettor shall be sentenced to a
2 sentence to run consecutive to the sentence under which the inmate is serving at the time
3 of the commission of the offense.

4 **Article - Courts and Judicial Proceedings**

5 3-804.

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

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

11 (4) A child at least 16 years old alleged to have committed anyof the
12 following crimes, as well as all other charges against the child arising out of the same
13 incident, unless an order removing the proceeding to the court has beenfiled under
14 Article 27, § 594A of the Code:

15 (i) Abduction;

16 (ii) Kidnapping;

17 (iii) Second degree murder;

18 (iv) Manslaughter, except involuntary manslaughter;

19 [(v) Mayhem or maiming in violation of Article 27, § 384, § 385, or §
20 386 of the Code;]

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

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

23 [(viii)] (VII) Second degree sexual offense in violationof Article 27, §
24 464A(a)(1) of the Code;

25 [(ix)] (VIII) Third degree sexual offense in violation ofArticle 27, §
26 464B(a)(1) of the Code;

27 [(x)] (IX) A crime in violation of Article 27, § 36B, § 373, § 374, § 445,
28 § 446, § 481C, or § 481E of the Code;

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

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

33 [(xiii)] (XII) Carjacking or armed carjacking in violation of Article 27, §
34 348A of the Code;

35 [(xiv) Assault with intent to murder;

36 (xv) Assault with intent to rape;

16

1 (xvi) Assault with intent to rob; or

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

4 (XIII) ASSAULT IN THE FIRST DEGREE IN VIOLATION OF ARTICLE 27,
5 § 12A-3 OF THE CODE;

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

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

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

12 COMMITTEE NOTE (COMMITTEE TO REVISE ARTICLE 27): The revision of
13 the assault laws repealed the crimes of mayhem and maiming. Assault in the first degree
14 is currently the most serious assault offense. Also, the assault revision repealed the
15 Article 27, § 12 crimes of assault with intent to murder, rape, rob, or commit sexual
16 offense, and codified the offenses of attempted murder, rape, robbery, and sexual
17 offense.

18 9-103.1.

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

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

27 (ii) Rape or sexual offense, as defined in Article 27, §§ 462 through
28 464B of the Code, inclusive;

29 (iii) [Assault with intent to commit] ATTEMPTED rape or
30 ATTEMPTED sexual offense IN THE FIRST OR SECOND DEGREE, as defined in Article
31 27, [§ 12] § 464F of the Code; or

32 (iv) In a juvenile court proceeding, abuse or neglect as defined in §
33 5-701 of the Family Law Article.

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

17

1 9-106.

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

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

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

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

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

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

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

18 10-916.

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

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

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

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

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

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

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

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

18

1 **Article - Family Law**

2 4-501.

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

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

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

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

8 (iv) rape or sexual offense as defined by Article 27, §§ 462 through
9 464C or attempted rape or sexual offense IN ANY DEGREE; or

10 (v) false imprisonment.

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

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

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