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SB 127/96 - JPR

1997 Regular Session
7r0239

By: Senators Ferguson, Stone, and Colburn
Introduced and read first time: January 15, 1997
Assigned to: Judicial Proceedings

Committee Report: Favorable
Senate action: Adopted with floor amendments
Read second time: February 12, 1997

CHAPTER ____

1 AN ACT concerning

2 **Child Sexual Offenses, Sexual Offenses, and Kidnapping - ~~Imprisonment for Life~~**
3 **~~Without Possibility of Parole~~ Mandatory Penalties**

4 FOR the purpose of establishing a maximum penalty of imprisonment for life without the
5 possibility of parole for a person who commits certain sexual offenses and
6 kidnapping involving a child under a certain age; requiring the State to provide a
7 certain notice; imposing a mandatory minimum term of imprisonment on a person
8 who is convicted of first degree rape or first degree sexual offense; providing for the
9 application of this Act; and generally relating to sexual offenses, kidnapping, and
10 imprisonment for life without the possibility of parole.

11 BY repealing and reenacting, with amendments,
12 Article 27 - Crimes and Punishments
13 Section 338, 462, 463, 464, and 464A
14 Annotated Code of Maryland
15 (1996 Replacement Volume)

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

18 **Article 27 - Crimes and Punishments**

19 338.

20 (A) Every person, his counsellors, aiders or abettors, who shall be convicted of
21 kidnapping and forcibly or fraudulently stealing, taking or carrying away any child under
22 the age of [sixteen] 16 years, except by a parent thereof, shall be guilty of a felony and,
23 EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, shall be sentenced to the
24 penitentiary for not more than [thirty] 30 years.

1 (B) (1) IF THE DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF
2 VIOLATING ANY OF THE PROVISIONS OF §§ 462 THROUGH 464A OF THIS ARTICLE,
3 ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS GUILTY OF A
4 FELONY AND UPON CONVICTION IS SUBJECT TO IMPRISONMENT FOR LIFE WITHOUT
5 THE POSSIBILITY OF PAROLE.

6 (2) IF THE STATE INTENDS TO SEEK A SENTENCE OF IMPRISONMENT
7 FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE UNDER PARAGRAPH (1) OF THIS
8 SUBSECTION, THE STATE SHALL NOTIFY THE PERSON IN WRITING OF THE STATE'S
9 INTENTION AT LEAST 30 DAYS PRIOR TO TRIAL.

10 462.

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

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

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

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

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

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

26 (b) (1) [Any] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
27 SUBSECTION, ANY person violating the provisions of this section is guilty of a felony and
28 upon conviction is subject to imprisonment for NOT LESS THAN 10 YEARS AND no more
29 than the period of his natural life AND:

30 (I) IT IS MANDATORY ON A COURT TO IMPOSE NO LESS THAN THE
31 MINIMUM SENTENCE OF 10 YEARS;

32 (II) THE COURT MAY NOT SUSPEND ALL OR PART OF THE
33 MANDATORY 10-YEAR SENTENCE REQUIRED UNDER THIS PARAGRAPH; AND

34 (III) THE PERSON IS NOT ELIGIBLE FOR PAROLE EXCEPT IN
35 ACCORDANCE WITH THE PROVISIONS OF ARTICLE 31B, § 11 OF THE CODE.

36 (2) (I) IF THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE AND
37 THE DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 338
38 OF THIS ARTICLE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS
39 GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO IMPRISONMENT FOR
40 LIFE WITHOUT THE POSSIBILITY OF PAROLE.

3

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

5 463.

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

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

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

13 (3) Who is under 14 years of age and the person performing the act is at
14 least [four] 4 years older than the victim.

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

18 (2) (I) IF THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE AND
19 THE DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 338
20 OF THIS ARTICLE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS
21 GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO IMPRISONMENT FOR
22 LIFE WITHOUT THE POSSIBILITY OF PAROLE.

23 (II) IF THE STATE INTENDS TO SEEK A SENTENCE OF LIFE
24 WITHOUT THE POSSIBILITY OF PAROLE UNDER SUBPARAGRAPH (I) OF THIS
25 PARAGRAPH, THE STATE SHALL NOTIFY THE PERSON IN WRITING OF THE STATE'S
26 INTENTION AT LEAST 30 DAYS PRIOR TO TRIAL.

27 464.

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

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

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

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

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

4

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

3 (b) (1) [Any] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
4 SUBSECTION, ANY person violating the provisions of this section is guilty of a felony and
5 upon conviction is subject to imprisonment for NOT LESS THAN 10 YEARS AND no more
6 than the period of his natural life AND:

7 (I) IT IS MANDATORY ON A COURT TO IMPOSE NO LESS THAN THE
8 MINIMUM SENTENCE OF 10 YEARS;

9 (II) THE COURT MAY NOT SUSPEND ALL OR PART OF THE
10 MANDATORY 10-YEAR SENTENCE REQUIRED UNDER THIS PARAGRAPH; AND

11 (III) THE PERSON IS NOT ELIGIBLE FOR PAROLE EXCEPT IN
12 ACCORDANCE WITH THE PROVISIONS OF ARTICLE 31B, § 11 OF THE CODE.

13 (2) (I) IF THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE AND
14 THE DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 338
15 OF THIS ARTICLE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS
16 GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO IMPRISONMENT FOR
17 LIFE WITHOUT THE POSSIBILITY OF PAROLE.

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

22 464A.

23 (a) A person is guilty of a sexual offense in the second degree if the person
24 engages in a sexual act 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) Under 14 years of age and the person performing the sexual act is
31 [four] 4 or more 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 AND
36 THE DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 338
37 OF THIS ARTICLE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS
38 GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO IMPRISONMENT FOR
39 LIFE WITHOUT THE POSSIBILITY OF PAROLE.

5

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

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

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 1997.