

SENATE BILL 368

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1998 Regular Session
(8lr0741)

ENROLLED BILL
-- Judicial Proceedings/Judiciary --

Introduced by **Senators Ferguson and Middleton**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of establishing a ~~maximum~~ penalty of imprisonment for *not more*
5 *than* life without the possibility of parole for a person who commits certain
6 sexual offenses and kidnapping involving a child under a certain age; requiring
7 the State to provide a certain notice; providing for the application of this Act;
8 and generally relating to sexual offenses, kidnapping, and imprisonment for life
9 without the possibility of parole.

10 BY repealing and reenacting, with amendments,
11 Article 27 - Crimes and Punishments
12 Section 338, 462, 463, 464, and 464A *and 464*
13 Annotated Code of Maryland
14 (1996 Replacement Volume and 1997 Supplement)

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

3 **Article 27 - Crimes and Punishments**

4 338.

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

10 (B) (1) IF THE DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF
11 VIOLATING ANY OF THE PROVISIONS OF §§ 462 THROUGH 464A § 462 OR § 464 OF THIS
12 ARTICLE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS GUILTY
13 OF A FELONY AND UPON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT
14 MORE THAN LIFE WITHOUT THE POSSIBILITY OF PAROLE.

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

19 462.

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

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

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

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

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

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

35 (b) (1) [Any] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
36 SUBSECTION, ANY person violating the provisions of this section is guilty of a felony

1 and upon conviction is subject to imprisonment for no more than the period of his
2 natural life.

3 (2) (I) IF THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE AND THE
4 DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 338 OF
5 THIS ARTICLE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS
6 GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO IMPRISONMENT FOR
7 NOT MORE THAN LIFE WITHOUT THE POSSIBILITY OF PAROLE.

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

12 463.

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

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

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

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

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

25 (2) (1) ~~IF THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE AND THE~~
26 ~~DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 338 OF~~
27 ~~THIS ARTICLE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS~~
28 ~~GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO IMPRISONMENT FOR~~
29 ~~LIFE WITHOUT THE POSSIBILITY OF PAROLE.~~

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

34 464.

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

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

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

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

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

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

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

17 (2) (I) IF THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE AND THE
18 DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 338 OF
19 THIS ARTICLE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS
20 GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO IMPRISONMENT FOR
21 NOT MORE THAN LIFE WITHOUT THE POSSIBILITY OF PAROLE.

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

26 ~~464A.~~

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

29 (1) ~~By force or threat of force against the will and without the consent of~~
30 ~~the other person; or~~

31 (2) ~~Who is mentally defective, mentally incapacitated, or physically~~
32 ~~helpless, and the person performing the act knows or should reasonably know the~~
33 ~~other person is mentally defective, mentally incapacitated, or physically helpless; or~~

34 (3) ~~Under 14 years of age and the person performing the sexual act is~~
35 ~~{four} 4 or more years older than the victim.~~

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

4 (2) (1) ~~IF THE VICTIM WAS A CHILD UNDER 16 YEARS OF AGE AND THE~~
5 ~~DEFENDANT WAS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 338 OF~~
6 ~~THIS ARTICLE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS~~
7 ~~GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO IMPRISONMENT FOR~~
8 ~~LIFE WITHOUT THE POSSIBILITY OF PAROLE.~~

9 (H) ~~IF THE STATE INTENDS TO SEEK A SENTENCE OF LIFE~~
10 ~~WITHOUT THE POSSIBILITY OF PAROLE UNDER SUBPARAGRAPH (I) OF THIS~~
11 ~~PARAGRAPH, THE STATE SHALL NOTIFY THE PERSON IN WRITING OF THE STATE'S~~
12 ~~INTENTION AT LEAST 30 DAYS PRIOR TO TRIAL.~~

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

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 1998.