

SENATE BILL 368

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SB 177/97 - JPR

1998 Regular Session
8lr0741

By: **Senators Ferguson and Middleton**
Introduced and read first time: February 6, 1998
Assigned to: Judicial Proceedings

Committee Report: Favorable
Senate action: Adopted
Read second time: March 25, 1998

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 life without
5 the 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
7 a certain notice; providing for the application of this Act; and generally relating
8 to sexual offenses, kidnapping, and imprisonment for life without the possibility
9 of parole.

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

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

17 **Article 27 - Crimes and Punishments**

18 338.

19 (A) Every person, his counsellors, aiders or abettors, who shall be convicted of
20 kidnapping and forcibly or fraudulently stealing, taking or carrying away any child
21 under the age of [sixteen] 16 years, except by a parent thereof, shall be guilty of a
22 felony and, EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, shall be
23 sentenced to the 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, ANY
3 PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS GUILTY OF A FELONY
4 AND UPON CONVICTION IS SUBJECT TO IMPRISONMENT FOR LIFE WITHOUT THE
5 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
12 vaginal intercourse with another person by force or threat of force against the will
13 and without the consent of the other person and:

14 (1) Employs or displays a dangerous or deadly weapon or an article
15 which 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
18 offense; 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
23 other persons; or

24 (5) The person commits the offense in connection with burglary in the
25 first, 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
28 and upon conviction is subject to imprisonment for no more than the period of his
29 natural life.

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

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

1 463.

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

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

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

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

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

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

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

23 464.

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

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

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

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

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

1 (5) The person commits the offense in connection with burglary in the
2 first, 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
5 and upon conviction is subject to imprisonment for no more than the period of his
6 natural life.

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

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

16 464A.

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

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

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

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

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
28 and upon conviction is subject to imprisonment for a period of not more than 20 years.

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

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

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

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