

(PRE-FILED)

By: **Delegate Boschert**
 Requested: August 12, 2004
 Introduced and read first time: January 12, 2005
 Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Crime Against a Spouse, Child, or Vulnerable Adult - Penalty**

3 FOR the purpose of establishing the crime of spousal assault in the first degree for a
 4 person who causes or attempts to cause serious physical injury to the person's
 5 legal spouse; establishing certain penalties; clarifying language increasing
 6 certain maximum penalties for certain violations of child abuse in the first
 7 degree, sexual abuse of a minor, and abuse or neglect of a vulnerable adult in the
 8 first degree; and generally relating to the crimes of spousal assault in the first
 9 degree, child abuse in the first degree, sexual abuse of a minor, and abuse or
 10 neglect of a vulnerable adult in the first degree.

11 BY repealing and reenacting, without amendments,
 12 Article - Criminal Law
 13 Section 3-201, 3-601(a), 3-602(a) and (b), and 3-604(a) and (b)
 14 Annotated Code of Maryland
 15 (2002 Volume and 2004 Supplement)

16 BY repealing and reenacting, with amendments,
 17 Article - Criminal Law
 18 Section 3-202, 3-601(b) and (c), 3-602(c), and 3-604(c)
 19 Annotated Code of Maryland
 20 (2002 Volume and 2004 Supplement)

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

23 **Article - Criminal Law**

24 3-201.

25 (a) In this subtitle the following words have the meanings indicated.

26 (b) "Assault" means the crimes of assault, battery, and assault and battery,
 27 which retain their judicially determined meanings.

- 1 (c) "Serious physical injury" means physical injury that:
- 2 (1) creates a substantial risk of death; or
- 3 (2) causes permanent or protracted serious:
- 4 (i) disfigurement;
- 5 (ii) loss of the function of any bodily member or organ; or
- 6 (iii) impairment of the function of any bodily member or organ.

7 3-202.

8 (a) (1) A person may not intentionally cause or attempt to cause serious
9 physical injury to another WHO IS NOT THE PERSON'S LEGAL SPOUSE.

10 (2) A PERSON MAY NOT INTENTIONALLY CAUSE OR ATTEMPT TO CAUSE
11 SERIOUS PHYSICAL INJURY TO THE PERSON'S LEGAL SPOUSE.

12 [(2)] (3) A person may not commit an assault with a firearm, including:

13 (i) a handgun, antique firearm, rifle, shotgun, short-barreled
14 shotgun, or short-barreled rifle, as those terms are defined in § 4-201 of this article;

15 (ii) an assault pistol, as defined in § 4-301 of this article;

16 (iii) a machine gun, as defined in § 4-401 of this article; and

17 (iv) a regulated firearm, as defined in § 5-101 of the Public Safety
18 Article.

19 (b) (1) A person who violates SUBSECTION (A)(1) OR (3) OF this section is
20 guilty of the felony of assault in the first degree and on conviction is subject to
21 imprisonment not exceeding 25 years.

22 (2) A PERSON WHO VIOLATES SUBSECTION (A)(2) OF THIS SECTION IS
23 GUILTY OF THE FELONY OF SPOUSAL ASSAULT IN THE FIRST DEGREE AND ON
24 CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 YEARS.

25 3-601.

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

27 (2) "Abuse" means physical injury sustained by a minor as a result of
28 cruel or inhumane treatment or as a result of a malicious act under circumstances
29 that indicate that the minor's health or welfare is harmed or threatened by the
30 treatment or act.

31 (3) "Family member" means a relative of a minor by blood, adoption, or
32 marriage.

1 (4) "Household member" means a person who lives with or is a regular
2 presence in a home of a minor at the time of the alleged abuse.

3 (5) "Severe physical injury" means:

4 (i) brain injury or bleeding within the skull;

5 (ii) starvation; or

6 (iii) physical injury that:

7 1. creates a substantial risk of death; or

8 2. causes permanent or protracted serious:

9 A. disfigurement;

10 B. loss of the function of any bodily member or organ; or

11 C. impairment of the function of any bodily member or organ.

12 (b) (1) A parent or other person who has permanent or temporary care or
13 custody or responsibility for the supervision of a minor may not cause abuse to the
14 minor that:

15 (i) results in the death of the minor; or

16 (ii) causes severe physical injury to the minor.

17 (2) Except as provided in subsection (c) of this section, a person who
18 violates paragraph (1) of this subsection is guilty of the felony of child abuse in the
19 first degree and on conviction is subject to:

20 (i) imprisonment not exceeding [25] 30 years; or

21 (ii) if the violation results in the death of the victim, imprisonment
22 not exceeding [30] 35 years.

23 (c) A person who violates this section after being convicted of a previous
24 violation of this section is guilty of a felony and on conviction is subject to:

25 (1) imprisonment not exceeding [25] 30 years; or

26 (2) if the violation results in the death of the victim, imprisonment not
27 exceeding [30] 35 years.

28 3-602.

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

30 (2) "Family member" has the meaning stated in § 3-601 of this subtitle.

1 (3) "Household member" has the meaning stated in § 3-601 of this
2 subtitle.

3 (4) (i) "Sexual abuse" means an act that involves sexual molestation
4 or exploitation of a minor, whether physical injuries are sustained or not.

5 (ii) "Sexual abuse" includes:

- 6 1. incest;
- 7 2. rape;
- 8 3. sexual offense in any degree;
- 9 4. sodomy; and
- 10 5. unnatural or perverted sexual practices.

11 (b) (1) A parent or other person who has permanent or temporary care or
12 custody or responsibility for the supervision of a minor may not cause sexual abuse to
13 the minor.

14 (2) A household member or family member may not cause sexual abuse
15 to a minor.

16 (c) A person who violates this section is guilty of a felony and on conviction is
17 subject to imprisonment not exceeding [25] 30 years.

18 3-604.

19 (a) (1) In this section and §§ 3-605 and 3-606 of this subtitle the following
20 words have the meanings indicated.

21 (2) (i) "Abuse" means the sustaining of physical pain or injury by a
22 vulnerable adult as a result of cruel or inhumane treatment or as a result of a
23 malicious act under circumstances that indicate that the vulnerable adult's health or
24 welfare is harmed or threatened.

25 (ii) "Abuse" includes the sexual abuse of a vulnerable adult.

26 (iii) "Abuse" does not include an accepted medical or behavioral
27 procedure ordered by a health care provider authorized to practice under the Health
28 Occupations Article or § 13-516 of the Education Article acting within the scope of the
29 health care provider's practice.

30 (3) "Caregiver" means a person under a duty to care for a vulnerable
31 adult because of a contractual undertaking to provide care.

32 (4) "Family member" means a relative of a vulnerable adult by blood,
33 marriage, adoption, or the marriage of a child.

1 (5) "Household" means the location:

2 (i) in which the vulnerable adult resides;

3 (ii) where the abuse or neglect of a vulnerable adult is alleged to
4 have taken place; or

5 (iii) where the person suspected of abusing or neglecting a
6 vulnerable adult resides.

7 (6) "Household member" means an individual who lives with or is a
8 regular presence in a home of a vulnerable adult at the time of the alleged abuse or
9 neglect.

10 (7) (i) "Neglect" means the intentional failure to provide necessary
11 assistance and resources for the physical needs of a vulnerable adult, including:

12 1. food;

13 2. clothing;

14 3. toileting;

15 4. essential medical treatment;

16 5. shelter; or

17 6. supervision.

18 (ii) "Neglect" does not include the provision of nonmedical remedial
19 care and treatment for the healing of injury or disease that is:

20 1. given with the consent of the vulnerable adult; and

21 2. recognized by State law in place of medical treatment.

22 (8) "Serious physical injury" means physical injury that:

23 (i) creates a substantial risk of death; or

24 (ii) causes permanent or protracted serious:

25 1. disfigurement;

26 2. loss of the function of any bodily member or organ; or

27 3. impairment of the function of any bodily member or organ.

28 (9) (i) "Sexual abuse" means an act that involves sexual molestation
29 or exploitation of a vulnerable adult.

30 (ii) "Sexual abuse" includes:

- 1 1. incest;
- 2 2. rape;
- 3 3. sexual offense in any degree;
- 4 4. sodomy; and
- 5 5. unnatural or perverted sexual practices.

6 (10) "Vulnerable adult" means an adult who lacks the physical or mental
7 capacity to provide for the adult's daily needs.

8 (b) (1) A caregiver, a parent, or other person who has permanent or
9 temporary care or responsibility for the supervision of a vulnerable adult may not
10 cause abuse or neglect of the vulnerable adult that:

- 11 (i) results in the death of the vulnerable adult;
- 12 (ii) causes serious physical injury to the vulnerable adult; or
- 13 (iii) involves sexual abuse of the vulnerable adult.

14 (2) A household member or family member may not cause abuse or
15 neglect of a vulnerable adult that:

- 16 (i) results in the death of the vulnerable adult;
- 17 (ii) causes serious physical injury to the vulnerable adult; or
- 18 (iii) involves sexual abuse of the vulnerable adult.

19 (c) A person who violates this section is guilty of the felony of abuse or neglect
20 of a vulnerable adult in the first degree and on conviction is subject to imprisonment
21 not exceeding [10] 30 years or a fine not exceeding \$10,000 or both.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2005.