
By: **Delegates Pendergrass and Rosenberg**
Introduced and read first time: January 25, 2006
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Sexual Offenses by Health Care Practitioners**

3 FOR the purpose of prohibiting certain health care practitioners from engaging in
4 nonconsensual sexual contact with a patient or client under certain
5 circumstances; making certain criminal penalties relating to a sexual offense in
6 the third degree apply to nonconsensual sexual contact with a patient or client
7 by a health care practitioner under certain circumstances; and generally
8 relating to sexual offenses by health care practitioners.

9 BY repealing and reenacting, without amendments,
10 Article - Criminal Law
11 Section 3-301
12 Annotated Code of Maryland
13 (2002 Volume and 2005 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - Criminal Law
16 Section 3-307
17 Annotated Code of Maryland
18 (2002 Volume and 2005 Supplement)

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

21 **Article - Criminal Law**

22 3-301.

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

24 (b) "Mentally defective individual" means an individual who suffers from
25 mental retardation or a mental disorder, either of which temporarily or permanently
26 renders the individual substantially incapable of:

27 (1) appraising the nature of the individual's conduct;

1 (2) resisting vaginal intercourse, a sexual act, or sexual contact; or

2 (3) communicating unwillingness to submit to vaginal intercourse, a
3 sexual act, or sexual contact.

4 (c) "Mentally incapacitated individual" means an individual who, because of
5 the influence of a drug, narcotic, or intoxicating substance, or because of an act
6 committed on the individual without the individual's consent or awareness, is
7 rendered substantially incapable of:

8 (1) appraising the nature of the individual's conduct; or

9 (2) resisting vaginal intercourse, a sexual act, or sexual contact.

10 (d) "Physically helpless individual" means an individual who:

11 (1) is unconscious; or

12 (2) (i) does not consent to vaginal intercourse, a sexual act, or sexual
13 contact; and

14 (ii) is physically unable to resist, or communicate unwillingness to
15 submit to, vaginal intercourse, a sexual act, or sexual contact.

16 (e) (1) "Sexual act" means any of the following acts, regardless of whether
17 semen is emitted:

18 (i) anilingus;

19 (ii) cunnilingus;

20 (iii) fellatio;

21 (iv) anal intercourse, including penetration, however slight, of the
22 anus; or

23 (v) an act:

24 1. in which an object penetrates, however slightly, into
25 another individual's genital opening or anus; and

26 2. that can reasonably be construed to be for sexual arousal
27 or gratification, or for the abuse of either party.

28 (2) "Sexual act" does not include:

29 (i) vaginal intercourse; or

30 (ii) an act in which an object penetrates an individual's genital
31 opening or anus for an accepted medical purpose.

1 (f) (1) "Sexual contact", as used in §§ 3-307 and 3-308 of this subtitle,
2 means an intentional touching of the victim's or actor's genital, anal, or other
3 intimate area for sexual arousal or gratification, or for the abuse of either party.

4 (2) "Sexual contact" includes an act:

5 (i) in which a part of an individual's body, except the penis, mouth,
6 or tongue, penetrates, however slightly, into another individual's genital opening or
7 anus; and

8 (ii) that can reasonably be construed to be for sexual arousal or
9 gratification, or for the abuse of either party.

10 (3) "Sexual contact" does not include:

11 (i) a common expression of familial or friendly affection; or

12 (ii) an act for an accepted medical purpose.

13 (g) (1) "Vaginal intercourse" means genital copulation, whether or not
14 semen is emitted.

15 (2) "Vaginal intercourse" includes penetration, however slight, of the
16 vagina.

17 3-307.

18 (a) A person may not:

19 (1) (i) engage in sexual contact with another without the consent of
20 the other; and

21 (ii) 1. employ or display a dangerous weapon, or a physical object
22 that the victim reasonably believes is a dangerous weapon;

23 2. suffocate, strangle, disfigure, or inflict serious physical
24 injury on the victim or another in the course of committing the crime;

25 3. threaten, or place the victim in fear, that the victim, or an
26 individual known to the victim, imminently will be subject to death, suffocation,
27 strangulation, disfigurement, serious physical injury, or kidnapping; or

28 4. commit the crime while aided and abetted by another;

29 (2) engage in sexual contact with another if the victim is a mentally
30 defective individual, a mentally incapacitated individual, or a physically helpless
31 individual, and the person performing the act knows or reasonably should know the
32 victim is a mentally defective individual, a mentally incapacitated individual, or a
33 physically helpless individual;

1 (3) engage in sexual contact with another if the victim is under the age of
2 14 years, and the person performing the sexual contact is at least 4 years older than
3 the victim;

4 (4) engage in a sexual act with another if the victim is 14 or 15 years old,
5 and the person performing the sexual act is at least 21 years old; [or]

6 (5) engage in vaginal intercourse with another if the victim is 14 or 15
7 years old, and the person performing the act is at least 21 years old; OR

8 (6) ENGAGE IN SEXUAL CONTACT WITH A PATIENT OR CLIENT WITHOUT
9 THE CONSENT OF THE OTHER AND UNDER THE PRETENSE OF DIAGNOSTIC OR
10 THERAPEUTIC INTENT OR BENEFIT IF THE PERSON ENGAGING IN SEXUAL CONTACT
11 IS A HEALTH CARE PRACTITIONER, AS DEFINED IN § 1-301 OF THE HEALTH
12 OCCUPATIONS ARTICLE.

13 (b) A person who violates this section is guilty of the felony of sexual offense in
14 the third degree and on conviction is subject to imprisonment not exceeding 10 years.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2006.