

SENATE BILL 413

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CF 71r1720

By: **Senators Jacobs, Astle, Brinkley, Colburn, DeGrange, Dyson, Edwards, Greenip, Haines, Harris, Hogan, Hooper, Kasemeyer, Kittleman, Klausmeier, Mooney, Munson, Muse, Peters, Pipkin, Robey, Simonaire, Stoltzfus, Stone, and Zirkin**

Introduced and read first time: February 2, 2007

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Jessica's Law – Sexual Offenses – Parole Eligibility and Mandatory Minimum**
3 **Sentences**

4 FOR the purpose of providing that persons who are convicted of certain sexual offenses
5 are not eligible for parole during certain mandatory minimum sentences;
6 prohibiting a certain person from engaging in certain sexual contact with a child
7 who is under a certain age; establishing a certain penalty; prohibiting a court
8 from suspending any part of a sentence for a certain sexual offense committed
9 against a child under a certain age; requiring the State to provide a certain
10 notification if the State intends to seek a certain sentence under certain
11 circumstances; creating a certain exception; and generally relating to sexual
12 offenses involving children.

13 BY repealing and reenacting, with amendments,
14 Article – Criminal Law
15 Section 3–303 through 3–307
16 Annotated Code of Maryland
17 (2002 Volume and 2006 Supplement)

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

20 **Article – Criminal Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 3–303.

2 (a) A person may not:

3 (1) engage in vaginal intercourse with another by force, or the threat
4 of force, without the consent of the other; and

5 (2) (i) employ or display a dangerous weapon, or a physical object
6 that the victim reasonably believes is a dangerous weapon;

7 (ii) suffocate, strangle, disfigure, or inflict serious physical
8 injury on the victim or another in the course of committing the crime;

9 (iii) threaten, or place the victim in fear, that the victim, or an
10 individual known to the victim, imminently will be subject to death, suffocation,
11 strangulation, disfigurement, serious physical injury, or kidnapping;

12 (iv) commit the crime while aided and abetted by another; or

13 (v) commit the crime in connection with a burglary in the first,
14 second, or third degree.

15 (b) A person may not violate subsection (a) of this section while also violating
16 § 3–503(a)(2) of this title involving a victim who is a child under the age of 16 years.

17 (c) A person 18 years of age or older may not violate subsection (a) of this
18 section involving a victim who is a child under the age of 13 years.

19 (d) (1) Except as provided in paragraphs (2), (3), and (4) of this
20 subsection, a person who violates subsection (a) of this section is guilty of the felony of
21 rape in the first degree and on conviction is subject to imprisonment not exceeding life.

22 (2) A person who violates subsection (b) of this section is guilty of the
23 felony of rape in the first degree and on conviction is subject to imprisonment not
24 exceeding life without the possibility of parole.

25 (3) A person who violates this section is guilty of the felony of rape in
26 the first degree and on conviction is subject to imprisonment not exceeding life without
27 the possibility of parole if the defendant was previously convicted of violating this
28 section or § 3–305 of this subtitle.

1 (4) (i) Subject to subparagraph [(iii)] (IV) of this paragraph, a
2 person 18 years of age or older who violates subsection (c) of this section is guilty of
3 the felony of rape in the first degree and on conviction is subject to imprisonment for
4 not less than 25 years and not exceeding life without the possibility of parole.

5 (ii) A court may not suspend any part of the mandatory
6 minimum sentence of 25 years.

7 **(III) THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING**
8 **THE MANDATORY MINIMUM SENTENCE.**

9 [(iii)] (IV) If the State fails to comply with subsection (e) of this
10 section, the mandatory minimum sentence shall not apply.

11 (e) If the State intends to seek a sentence of imprisonment for life without
12 the possibility of parole under subsection (d)(2), (3), or (4) of this section, or
13 imprisonment for not less than 25 years under subsection (d)(4) of this section, the
14 State shall notify the person in writing of the State's intention at least 30 days before
15 trial.

16 3-304.

17 (a) A person may not engage in vaginal intercourse with another:

18 (1) by force, or the threat of force, without the consent of the other;

19 (2) if the victim is a mentally defective individual, a mentally
20 incapacitated individual, or a physically helpless individual, and the person
21 performing the act knows or reasonably should know that the victim is a mentally
22 defective individual, a mentally incapacitated individual, or a physically helpless
23 individual; or

24 (3) if the victim is under the age of 14 years, and the person
25 performing the act is at least 4 years older than the victim.

26 (b) A person 18 years of age or older may not violate subsection (a)(1) or (2) of
27 this section involving a child under the age of 13 years.

28 (c) (1) Except as provided in paragraph (2) of this subsection, a person
29 who violates subsection (a) of this section is guilty of the felony of rape in the second
30 degree and on conviction is subject to imprisonment not exceeding 20 years.

1 (2) (i) Subject to subparagraph [(iii)] (IV) of this paragraph, a
2 person 18 years of age or older who violates subsection (b) of this section is guilty of
3 the felony of rape in the second degree and on conviction is subject to imprisonment for
4 not less than 5 years and not exceeding 20 years.

5 (ii) A court may not suspend any part of the mandatory
6 minimum sentence of 5 years.

7 **(III) THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING**
8 **THE MANDATORY MINIMUM SENTENCE.**

9 [(iii)](IV) If the State fails to comply with subsection (d) of this
10 section, the mandatory minimum shall not apply.

11 (d) If the State intends to seek a sentence of imprisonment for not less than 5
12 years under subsection (c)(2) of this section, the State shall notify the person in
13 writing of the State's intention at least 30 days before trial.

14 3-305.

15 (a) A person may not:

16 (1) engage in a sexual act with another by force, or the threat of force,
17 without the consent of the other; and

18 (2) (i) employ or display a dangerous weapon, or a physical object
19 that the victim reasonably believes is a dangerous weapon;

20 (ii) suffocate, strangle, disfigure, or inflict serious physical
21 injury on the victim or another in the course of committing the crime;

22 (iii) threaten, or place the victim in fear, that the victim, or an
23 individual known to the victim, imminently will be subject to death, suffocation,
24 strangulation, disfigurement, serious physical injury, or kidnapping;

25 (iv) commit the crime while aided and abetted by another; or

26 (v) commit the crime in connection with a burglary in the first,
27 second, or third degree.

28 (b) A person may not violate subsection (a) of this section while also violating
29 § 3-503(a)(2) of this title involving a victim who is a child under the age of 16 years.

1 (c) A person 18 years of age or older may not violate subsection (a) of this
2 section involving a victim who is a child under the age of 13 years.

3 (d) (1) Except as provided in paragraphs (2), (3), and (4) of this
4 subsection, a person who violates subsection (a) of this section is guilty of the felony of
5 sexual offense in the first degree and on conviction is subject to imprisonment not
6 exceeding life.

7 (2) A person who violates subsection (b) of this section is guilty of the
8 felony of sexual offense in the first degree and on conviction is subject to imprisonment
9 not exceeding life without the possibility of parole.

10 (3) A person who violates this section is guilty of the felony of sexual
11 offense in the first degree and on conviction is subject to imprisonment not exceeding
12 life without the possibility of parole if the defendant was previously convicted of
13 violating this section or § 3–303 of this subtitle.

14 (4) (i) Subject to subparagraph [(iii)] (IV) of this paragraph, a
15 person 18 years of age or older who violates subsection (c) of this section is guilty of
16 the felony of sexual offense in the first degree and on conviction is subject to
17 imprisonment for not less than 25 years and not exceeding life without the possibility
18 of parole.

19 (ii) A court may not suspend any part of the mandatory
20 minimum sentence of 25 years.

21 (iii) **THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING**
22 **THE MANDATORY MINIMUM SENTENCE.**

23 [(iii)](IV) If the State fails to comply with subsection (e) of this
24 section, the mandatory minimum sentence shall not apply.

25 (e) If the State intends to seek a sentence of imprisonment for life without
26 the possibility of parole under subsection (d)(2), (3), or (4) of this section, or
27 imprisonment for not less than 25 years under subsection (d)(4) of this section, the
28 State shall notify the person in writing of the State's intention at least 30 days before
29 trial.

30 3–306.

31 (a) A person may not engage in a sexual act with another:

1 (1) by force, or the threat of force, without the consent of the other;

2 (2) if the victim is a mentally defective individual, a mentally
3 incapacitated individual, or a physically helpless individual, and the person
4 performing the sexual act knows or reasonably should know that the victim is a
5 mentally defective individual, a mentally incapacitated individual, or a physically
6 helpless individual; or

7 (3) if the victim is under the age of 14 years, and the person
8 performing the sexual act is at least 4 years older than the victim.

9 (b) A person 18 years of age or older may not violate subsection (a)(1) or (2) of
10 this section involving a child under the age of 13 years.

11 (c) (1) Except as provided in paragraph (2) of this subsection, a person
12 who violates this section is guilty of the felony of sexual offense in the second degree
13 and on conviction is subject to imprisonment not exceeding 20 years.

14 (2) (i) Subject to subparagraph [(iii)] (IV) of this paragraph, a
15 person 18 years of age or older who violates subsection (b) of this section is guilty of
16 the felony of sexual offense in the second degree and on conviction is subject to
17 imprisonment for not less than 5 years and not exceeding 20 years.

18 (ii) A court may not suspend any part of the mandatory
19 minimum sentence of 5 years.

20 **(III) THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING**
21 **THE MANDATORY MINIMUM SENTENCE.**

22 [(iii)] (IV) If the State fails to comply with subsection (d) of this
23 section, the mandatory minimum shall not apply.

24 (d) If the State intends to seek a sentence of imprisonment for not less than 5
25 years under subsection (c)(2) of this section, the State shall notify the person in
26 writing of the State's intention at least 30 days before trial.

27 3-307.

28 (a) A person may not:

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

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

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

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

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

11 (2) engage in sexual contact with another if the victim is a mentally
12 defective individual, a mentally incapacitated individual, or a physically helpless
13 individual, and the person performing the act knows or reasonably should know the
14 victim is a mentally defective individual, a mentally incapacitated individual, or a
15 physically helpless individual;

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

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

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

23 **(B) A PERSON 18 YEARS OF AGE OR OLDER MAY NOT VIOLATE**
24 **SUBSECTION (A)(1) OR (2) OF THIS SECTION INVOLVING A VICTIM WHO IS A**
25 **CHILD UNDER THE AGE OF 13 YEARS.**

26 **[(b)] (C) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
27 **SUBSECTION, A person who violates SUBSECTION (A) OF this section is guilty of the**
28 **felony of sexual offense in the third degree and on conviction is subject to**
29 **imprisonment not exceeding 10 years.**

30 **(2) (I) SUBJECT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH,**
31 **A PERSON 18 YEARS OF AGE OR OLDER WHO VIOLATES SUBSECTION (B) OF THIS**

1 **SECTION IS GUILTY OF THE FELONY OF SEXUAL OFFENSE IN THE THIRD DEGREE**
2 **AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 2**
3 **YEARS AND NOT EXCEEDING 10 YEARS.**

4 **(II) A COURT MAY NOT SUSPEND ANY PART OF THE**
5 **MANDATORY MINIMUM SENTENCE OF 2 YEARS.**

6 **(III) THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING**
7 **THE MANDATORY MINIMUM SENTENCE.**

8 **(IV) IF THE STATE FAILS TO COMPLY WITH SUBSECTION (D)**
9 **OF THIS SECTION, THE MANDATORY MINIMUM SENTENCE SHALL NOT APPLY.**

10 **(D) IF THE STATE INTENDS TO SEEK A SENTENCE OF IMPRISONMENT**
11 **FOR NOT LESS THAN 2 YEARS UNDER SUBSECTION (C)(2) OF THIS SECTION, THE**
12 **STATE SHALL NOTIFY THE PERSON IN WRITING OF THE STATE'S INTENTION AT**
13 **LEAST 30 DAYS BEFORE TRIAL.**

14 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
15 **October 1, 2007.**