

CHAPTER 494

(Senate Bill 413)

AN ACT concerning

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

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

BY repealing and reenacting, with amendments,
 Article – Criminal Law
 Section 3–303 through ~~3–307~~ 3–306
 Annotated Code of Maryland
 (2002 Volume and 2006 Supplement)

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

Article – Criminal Law

3–303.

(a) A person may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3-304.

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

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

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

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

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

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

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

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

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

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

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

3-305.

(a) A person may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3–306.

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

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

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

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

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

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

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

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

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

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

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

~~§ 307.~~

~~(a) A person may not:~~

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

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

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

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

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

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

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

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

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

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

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

~~(2) (I) SUBJECT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH, A PERSON 18 YEARS OF AGE OR OLDER WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS GUILTY OF THE FELONY OF SEXUAL OFFENSE IN THE THIRD DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 2 YEARS AND NOT EXCEEDING 10 YEARS.~~

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

~~(III) THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING THE MANDATORY MINIMUM SENTENCE.~~

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

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

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

Approved by the Governor, May 17, 2007.