

SENATE BILL 16

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8lr0836

(PRE-FILED)

By: **Senators Simonaire, Mooney, Jacobs, Haines, Brochin, Stone, and Muse**

Requested: October 5, 2007

Introduced and read first time: January 9, 2008

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Repeat Sexual Offenders – Enhanced Sentencing**

3 FOR the purpose of increasing the maximum sentence for a person who is convicted of
4 the felony of rape in the second degree if the person previously has been
5 convicted of the felony of rape in the first degree, rape in the second degree,
6 sexual offense in the first degree, or sexual offense in the second degree;
7 increasing the maximum sentence for a person who is convicted of the felony of
8 sexual offense in the second degree if the person previously has been convicted
9 of the felony of rape in the first degree, rape in the second degree, sexual offense
10 in the first degree, or sexual offense in the second degree; and generally relating
11 to sentencing for sexual offenses.

12 BY repealing and reenacting, with amendments,

13 Article – Criminal Law

14 Section 3–304 and 3–306

15 Annotated Code of Maryland

16 (2002 Volume and 2007 Supplement)

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

19 **Article – Criminal Law**

20 3–304.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

10 (c) (1) Except as provided in paragraph (2) of this subsection **AND**
11 **SUBSECTION (E) OF THIS SECTION**, a person who violates subsection (a) of this
12 section is guilty of the felony of rape in the second degree and on conviction is subject
13 to imprisonment not exceeding 20 years.

14 (2) (i) Subject to subparagraph (iv) of this paragraph, a person 18
15 years of age or older who violates subsection (b) of this section is guilty of the felony of
16 rape in the second degree and on conviction is subject to imprisonment for not less
17 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 the mandatory
21 minimum sentence.

22 (iv) If the State fails to comply with subsection (d) of this section,
23 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 **(E) EXCEPT AS PROVIDED IN SUBSECTION (C)(2) OF THIS SECTION, A**
28 **PERSON WHO IS CONVICTED UNDER SUBSECTION (A) OR (B) OF THIS SECTION**
29 **SHALL BE SENTENCED TO IMPRISONMENT NOT EXCEEDING 25 YEARS IF THE**
30 **PERSON PREVIOUSLY HAS BEEN CONVICTED UNDER SUBSECTION (A) OR (B) OF**
31 **THIS SECTION OR § 3-303, § 3-305, OR § 3-306 OF THIS SUBTITLE.**

32 3-306.

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

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

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

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

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

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

14 (2) (i) Subject to subparagraph (iv) of this paragraph, a person 18
15 years of age or older who violates subsection (b) of this section is guilty of the felony of
16 sexual offense in the second degree and on conviction is subject to imprisonment for
17 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 the mandatory
21 minimum sentence.

22 (iv) If the State fails to comply with subsection (d) of this section,
23 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 **(E) EXCEPT AS PROVIDED IN SUBSECTION (C)(2) OF THIS SECTION, A**
28 **PERSON WHO IS CONVICTED UNDER SUBSECTION (A) OR (B) OF THIS SECTION**
29 **SHALL BE SENTENCED TO IMPRISONMENT NOT EXCEEDING 25 YEARS IF THE**
30 **PERSON PREVIOUSLY HAS BEEN CONVICTED UNDER SUBSECTION (A) OR (B) OF**
31 **THIS SECTION OR § 3-303, § 3-304, OR § 3-305 OF THIS SUBTITLE.**

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2008.