

# SENATE BILL 16

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8lr0836

(PRE-FILED)

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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

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 21, 2008

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CHAPTER \_\_\_\_\_

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~~ clarifying that an  
11 adult who has been convicted for a second time of first degree rape or sexual  
12 offense involving a victim under the age of 13 years is subject to the mandatory  
13 minimum sentence provided for that crime; and generally relating to sentencing  
14 for sexual offenses.

15 BY repealing and reenacting, with amendments,  
16 Article - Criminal Law  
17 Section ~~3-304 and 3-306~~ 3-303 and 3-305  
18 Annotated Code of Maryland  
19 (2002 Volume and 2007 Supplement)

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

22 **Article - Criminal Law**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~§ 304.~~

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

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

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

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

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

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

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

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

23 (iii) ~~The person is not eligible for parole during the mandatory~~  
24 ~~minimum sentence.~~

25 (iv) ~~If the State fails to comply with subsection (d) of this section,~~  
26 ~~the mandatory minimum shall not apply.~~

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

30 (e) ~~EXCEPT AS PROVIDED IN SUBSECTION (C)(2) OF THIS SECTION, A~~  
31 ~~PERSON WHO IS CONVICTED UNDER SUBSECTION (A) OR (B) OF THIS SECTION~~  
32 ~~SHALL BE SENTENCED TO IMPRISONMENT NOT EXCEEDING 25 YEARS IF THE~~  
33 ~~PERSON PREVIOUSLY HAS BEEN CONVICTED UNDER SUBSECTION (A) OR (B) OF~~  
34 ~~THIS SECTION OR § 3-303, § 3-305, OR § 3-306 OF THIS SUBTITLE.~~

1 ~~§ 306.~~

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

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

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

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

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

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

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

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

23 (iii) ~~The person is not eligible for parole during the mandatory~~  
24 ~~minimum sentence.~~

25 (iv) ~~If the State fails to comply with subsection (d) of this section,~~  
26 ~~the mandatory minimum shall not apply.~~

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

30 (e) ~~EXCEPT AS PROVIDED IN SUBSECTION (C)(2) OF THIS SECTION, A~~  
31 ~~PERSON WHO IS CONVICTED UNDER SUBSECTION (A) OR (B) OF THIS SECTION~~  
32 ~~SHALL BE SENTENCED TO IMPRISONMENT NOT EXCEEDING 25 YEARS IF THE~~  
33 ~~PERSON PREVIOUSLY HAS BEEN CONVICTED UNDER SUBSECTION (A) OR (B) OF~~  
34 ~~THIS SECTION OR § 3-303, § 3-304, OR § 3-305 OF THIS SUBTITLE.~~

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 **SUBSECTIONS (A) AND (B) OF** this section  
26 is guilty of the felony of rape in the first degree and on conviction is subject to  
27 imprisonment not exceeding life without the possibility of parole if the defendant was  
28 previously convicted of violating this section or § 3-305 of this subtitle.

29 (4) (i) Subject to subparagraph (iv) of this paragraph, a person 18  
30 years of age or older who violates subsection (c) of this section is guilty of the felony of  
31 rape in the first degree and on conviction is subject to imprisonment for not less than  
32 25 years and not exceeding life without the possibility of parole.

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

3                   (iii) The person is not eligible for parole during the mandatory  
4 minimum sentence.

5                   (iv) If the State fails to comply with subsection (e) of this section,  
6 the mandatory minimum sentence shall not apply.

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

12 3-305.

13           (a) A person may not:

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

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

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

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

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

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

26           (b) A person may not violate subsection (a) of this section while also violating  
27 § 3-503(a)(2) of this title involving a victim who is a child under the age of 16 years.

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

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

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

4           (3) A person who violates **SUBSECTIONS (A) OR (B) OF** this section is  
5 guilty of the felony of sexual offense in the first degree and on conviction is subject to  
6 imprisonment not exceeding life without the possibility of parole if the defendant was  
7 previously convicted of violating this section or § 3-303 of this subtitle.

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

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

14                   (iii) The person is not eligible for parole during the mandatory  
15 minimum sentence.

16                   (iv) If the State fails to comply with subsection (e) of this section,  
17 the mandatory minimum sentence shall not apply.

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.