

CHAPTER 345

(Senate Bill 16)

AN ACT concerning

Crimes – ~~Repeat~~ Sexual Offenders – ~~Enhanced~~ Sentencing

FOR the purpose of ~~increasing the maximum sentence for a person who is convicted of the felony of rape in the second degree if the person previously has been convicted of the felony of rape in the first degree, rape in the second degree, sexual offense in the first degree, or sexual offense in the second degree; increasing the maximum sentence for a person who is convicted of the felony of sexual offense in the second degree if the person previously has been convicted of the felony of rape in the first degree, rape in the second degree, sexual offense in the first degree, or sexual offense in the second degree~~ clarifying that an adult who has been convicted for a second time of first degree rape or sexual offense involving a victim under the age of 13 years is subject to the mandatory minimum sentence provided for that crime; and generally relating to sentencing for sexual offenses.

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

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

Article – Criminal Law

~~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 AND SUBSECTION (E) OF THIS SECTION, 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 (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.~~

~~(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.~~

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

~~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.~~

~~(e) (1) Except as provided in paragraph (2) of this subsection AND SUBSECTION (E) OF THIS SECTION, 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 (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.~~

~~(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.~~

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

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 **SUBSECTIONS (A) AND (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 if the defendant was previously convicted of violating this section or § 3-305 of this subtitle.

(4) (i) Subject to subparagraph (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.

(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.

3-305.

(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 SUBSECTIONS (A) OR (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 if the defendant was previously convicted of violating this section or § 3-303 of this subtitle.

(4) (i) Subject to subparagraph (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.

(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.

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

Approved by the Governor, May 13, 2008.