

HOUSE BILL 767

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CF SB 427

By: **Delegates Schuh, Costa, Dwyer, Eckardt, Elmore, Frank, George, King, Kipke, Krebs, McComas, McConkey, Myers, Norman, O'Donnell, Serafini, Shank, Smigiel, Sossi, Stifler, and Stull**

Introduced and read first time: February 11, 2009

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Sexual Offense in the Second Degree – Penalties**

3 FOR the purpose of increasing the mandatory minimum penalty for a person convicted
4 of a sexual offense in the second degree under certain circumstances;
5 prohibiting a court from suspending any part of the mandatory minimum
6 sentence; requiring the State to notify a certain person in writing of the State's
7 intention to seek a certain sentence; and generally relating to sexual offenses.

8 BY repealing and reenacting, with amendments,
9 Article – Criminal Law
10 Section 3–306
11 Annotated Code of Maryland
12 (2002 Volume and 2008 Supplement)

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

15 **Article – Criminal Law**

16 3–306.

17 (a) A person may not engage in a sexual act 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 sexual act knows or reasonably should know that the victim is a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 mentally defective individual, a mentally incapacitated individual, or a physically
2 helpless individual; or

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

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

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

10 (2) (i) Subject to subparagraph (iv) of this paragraph, a person 18
11 years of age or older who violates subsection (b) of this section is guilty of the felony of
12 sexual offense in the second degree and on conviction is subject to imprisonment for
13 not less than [5] 10 years and not exceeding 20 years.

14 (ii) A court may not suspend any part of the mandatory
15 minimum sentence of [5] 10 years.

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

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

20 (d) If the State intends to seek a sentence of imprisonment for not less than
21 [5] 10 years under subsection (c)(2) of this section, the State shall notify the person in
22 writing of the State's intention at least 30 days before trial.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2009.