

# HOUSE BILL 776

E1, E2

2lr2517  
CF SB 799

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By: **Chair, Judiciary Committee (By Request – Sexual Offender Advisory Board)**

Introduced and read first time: February 9, 2012

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Sex Offenders – Statutory Sex Offense**

3 FOR the purpose of altering the age difference required between a victim and an  
4 offender for the crime of third degree sex offense; prohibiting certain persons  
5 from engaging in certain sexual acts with a person who is a certain age;  
6 providing for penalties for a violation of this Act; requiring a certain person  
7 convicted of engaging in certain sexual acts with a person who is a certain age  
8 to register on the State sex offender registry; requiring the Department of  
9 Public Safety and Correctional Services to maintain a certain nonpublic registry  
10 database for certain persons convicted of a certain crime; establishing the  
11 purpose of a certain registry database; establishing the term of registration for  
12 certain nonpublic registrants; altering the duties of the Department for the  
13 registration of certain sex offenders; requiring a certain registrant to appear in  
14 person at a certain location at certain times and to provide certain information;  
15 making conforming changes; defining certain terms; and generally relating to  
16 sex offenders.

17 BY repealing and reenacting, with amendments,  
18 Article – Courts and Judicial Proceedings  
19 Section 5–106(z)  
20 Annotated Code of Maryland  
21 (2006 Replacement Volume and 2011 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article – Criminal Law  
24 Section 3–307 and 3–308  
25 Annotated Code of Maryland  
26 (2002 Volume and 2011 Supplement)

27 BY adding to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Law  
 2 Section 3–308.1  
 3 Annotated Code of Maryland  
 4 (2002 Volume and 2011 Supplement)

5 BY repealing and reenacting, with amendments,  
 6 Article – Criminal Procedure  
 7 Section 11–701 and 11–713  
 8 Annotated Code of Maryland  
 9 (2008 Replacement Volume and 2011 Supplement)

10 BY adding to  
 11 Article – Criminal Procedure  
 12 Section 11–704.3  
 13 Annotated Code of Maryland  
 14 (2008 Replacement Volume and 2011 Supplement)

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

17 **Article – Courts and Judicial Proceedings**

18 5–106.

19 (z) A prosecution for a misdemeanor offense under § 3–308(c) or, if the victim  
 20 was a minor at the time of the offense, [§ 3–308(b)(1)] **§ 3–308(B)** of the Criminal Law  
 21 Article shall be instituted within 3 years after the offense was committed.

22 **Article – Criminal Law**

23 3–307.

24 (a) A person may not:

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

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

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

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

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

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

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

10                                  (4)       engage in a sexual act with another if the victim is 14 or 15 years  
11 old, and the person performing the sexual act is at least [21 years old; or] **10 YEARS**  
12 **OLDER THAN THE VICTIM;**

13                                  (5)       engage in vaginal intercourse with another if the victim is 14 or 15  
14 years old, and the person performing the act is at least [21 years old] **10 YEARS**  
15 **OLDER THAN THE VICTIM;**

16                                  **(6)       ENGAGE IN A SEXUAL ACT WITH ANOTHER IF THE VICTIM IS 14**  
17 **OR 15 YEARS OLD, AND THE PERSON PERFORMING THE SEXUAL ACT HAS BEEN**  
18 **PREVIOUSLY CONVICTED OF A VIOLATION OF THIS SUBTITLE OR PREVIOUSLY**  
19 **CONVICTED OF A VIOLATION OF § 3-602, § 11-207, § 11-208, OR § 11-303(B) OF**  
20 **THIS ARTICLE; OR**

21                                  **(7)       ENGAGE IN VAGINAL INTERCOURSE WITH ANOTHER IF THE**  
22 **VICTIM IS 14 OR 15 YEARS OLD, AND THE PERSON PERFORMING THE ACT HAS**  
23 **BEEN PREVIOUSLY CONVICTED OF A VIOLATION OF THIS SUBTITLE OR**  
24 **PREVIOUSLY CONVICTED OF A VIOLATION OF § 3-602, § 11-207, § 11-208, OR §**  
25 **11-303(B) OF THIS ARTICLE.**

26                                  (b)       A person who violates this section is guilty of the felony of sexual offense  
27 in the third degree and on conviction is subject to imprisonment not exceeding 10  
28 years.

29 3-308.

30                                  (a)       In this section, “person in a position of authority”:

31                                       (1)       means a person who:

32   (i)       is at least 21 years old;

33   (ii)      is employed as a full-time permanent employee by a public  
34 or private preschool, elementary school, or secondary school; and

1 (iii) because of the person's position or occupation, exercises  
2 supervision over a minor who attends the school; and

3 (2) includes a principal, vice principal, teacher, or school counselor at  
4 a public or private preschool, elementary school, or secondary school.

5 (b) A person may not engage in[:

6 (1)] sexual contact with another without the consent of the other[;

7 (2) except as provided in § 3-307(a)(4) of this subtitle, a sexual act  
8 with another if the victim is 14 or 15 years old, and the person performing the sexual  
9 act is at least 4 years older than the victim; or

10 (3) except as provided in § 3-307(a)(5) of this subtitle, vaginal  
11 intercourse with another if the victim is 14 or 15 years old, and the person performing  
12 the act is at least 4 years older than the victim].

13 (c) (1) Except as provided in § 3-307(a)(4) **OR (6) OR § 3-308.1** of this  
14 subtitle [or subsection (b)(2) of this section], a person in a position of authority may  
15 not engage in a sexual act or sexual contact with a minor who, at the time of the  
16 sexual act or sexual contact, is a student enrolled at a school where the person in a  
17 position of authority is employed.

18 (2) Except as provided in § 3-307(a)(5) **OR (7) OR § 3-308.1** of this  
19 subtitle [or subsection (b)(3) of this section], a person in a position of authority may  
20 not engage in vaginal intercourse with a minor who, at the time of the vaginal  
21 intercourse, is a student enrolled at a school where the person in a position of  
22 authority is employed.

23 (d) (1) Except as provided in paragraph (2) of this subsection, a person  
24 who violates this section is guilty of the misdemeanor of sexual offense in the fourth  
25 degree and on conviction is subject to imprisonment not exceeding 1 year or a fine not  
26 exceeding \$1,000 or both.

27 (2) (i) On conviction of a violation of this section, a person who has  
28 been convicted on a prior occasion not arising from the same incident of a violation of  
29 §§ 3-303 through 3-312 or § 3-315 of this subtitle or § 3-602 of this title is subject to  
30 imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

31 (ii) If the State intends to proceed against a person under  
32 subparagraph (i) of this paragraph, it shall comply with the procedures set forth in the  
33 Maryland Rules for the indictment and trial of a subsequent offender.

34 **3-308.1.**

1           (A) EXCEPT AS PROVIDED IN § 3-307(A)(4), (5), (6), OR (7) OF THIS  
2 SUBTITLE, A PERSON MAY NOT ENGAGE IN A SEXUAL ACT WITH ANOTHER IF:

3                   (1) THE VICTIM IS 14 OR 15 YEARS OLD;

4                   (2) THE PERSON PERFORMING THE SEXUAL ACT IS AT LEAST 4  
5 YEARS OLDER THAN THE VICTIM BUT LESS THAN 10 YEARS OLDER THAN THE  
6 VICTIM; AND

7                   (3) THE PERSON PERFORMING THE SEXUAL ACT HAS NOT BEEN  
8 PREVIOUSLY CONVICTED OF A VIOLATION OF THIS SUBTITLE, A VIOLATION OF §  
9 3-602, § 11-207, § 11-208, OR § 11-303(B) OF THIS ARTICLE, OR A CRIME  
10 COMMITTED IN ANOTHER JURISDICTION, FEDERAL OR MILITARY COURT, OR  
11 FOREIGN COUNTRY THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE  
12 ONE OF THE CRIMES LISTED IN THIS PARAGRAPH.

13           (B) EXCEPT AS PROVIDED IN § 3-307(A)(4), (5), (6), OR (7) OF THIS  
14 SUBTITLE, A PERSON MAY NOT ENGAGE IN VAGINAL INTERCOURSE WITH  
15 ANOTHER IF:

16                   (1) THE VICTIM IS 14 OR 15 YEARS OLD;

17                   (2) THE PERSON PERFORMING THE ACT IS AT LEAST 4 YEARS  
18 OLDER THAN THE VICTIM BUT LESS THAN 10 YEARS OLDER THAN THE VICTIM;  
19 AND

20                   (3) THE PERSON PERFORMING THE ACT HAS NOT BEEN  
21 PREVIOUSLY CONVICTED OF A VIOLATION OF THIS SUBTITLE, A VIOLATION OF §  
22 3-602, § 11-207, § 11-208, OR § 11-303(B) OF THIS ARTICLE, OR A CRIME  
23 COMMITTED IN ANOTHER JURISDICTION, FEDERAL OR MILITARY COURT, OR  
24 FOREIGN COUNTRY THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE  
25 ONE OF THE CRIMES LISTED IN THIS PARAGRAPH.

26           (C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE  
27 MISDEMEANOR OF STATUTORY SEXUAL OFFENSE AND ON CONVICTION IS  
28 SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT  
29 EXCEEDING \$1,000 OR BOTH.

30                                   Article – Criminal Procedure

31           11-701.

32           (a) In this subtitle the following words have the meanings indicated.

1 (b) “Board” means the Sexual Offender Advisory Board.

2 (c) “Employment” means an occupation, job, or vocation that is full time or  
3 part time for a period exceeding 14 days or for an aggregate period exceeding 30 days  
4 during a calendar year, whether financially compensated, volunteered, or for the  
5 purpose of government or educational benefit.

6 (d) (1) “Habitually lives” means any place where a person lives, sleeps, or  
7 visits with any regularity, including where a homeless person is stationed during the  
8 day or sleeps at night.

9 (2) “Habitually lives” includes any place where a person visits for  
10 longer than 5 hours per visit more than 5 times within a 30-day period.

11 (e) “Homeless” means having no fixed residence.

12 (f) “Imprisonment” means incarceration pursuant to a conviction, regardless  
13 of the nature of the institution in which the offender serves the sentence.

14 (g) “Jurisdiction” means a state or a Native American tribe that elects to  
15 function as a registration jurisdiction under federal law.

16 (h) “Local law enforcement unit” means the law enforcement unit in a county  
17 that has been designated by resolution of the county governing body as the primary  
18 law enforcement unit in the county.

19 (i) (1) Except as otherwise provided in this subsection, “release” means  
20 any type of release from the custody of a supervising authority.

21 (2) “Release” means:

22 (i) release on parole;

23 (ii) mandatory supervision release;

24 (iii) release from a correctional facility with no required period of  
25 supervision;

26 (iv) work release;

27 (v) placement on home detention; and

28 (vi) the first instance of entry into the community that is part of  
29 a supervising authority’s graduated release program.

30 (3) “Release” does not include:

1 (i) an escape; or

2 (ii) leave that is granted on an emergency basis.

3 (j) “Sexually violent offense” means:

4 (1) a violation of §§ 3–303 through 3–307 or §§ 3–309 through 3–312 of  
5 the Criminal Law Article;

6 (2) assault with intent to commit rape in the first or second degree or  
7 a sexual offense in the first or second degree as prohibited on or before September 30,  
8 1996, under former Article 27, § 12 of the Code; or

9 (3) a crime committed in another jurisdiction, federal or military  
10 court, or foreign country that, if committed in this State, would constitute one of the  
11 crimes listed in item (1) or (2) of this subsection.

12 (k) “Sexually violent predator” means a person who:

13 (1) is convicted of a sexually violent offense; and

14 (2) has been determined in accordance with this subtitle to be at risk  
15 of committing another sexually violent offense.

16 (l) “Sex offender” means a person who has been convicted of:

17 (1) an offense that would require the person to be classified as a tier I  
18 sex offender, tier II sex offender, or tier III sex offender;

19 (2) an offense committed in another state or in a federal, military, or  
20 tribal jurisdiction that, if committed in this State, would require the person to be  
21 classified as a tier I sex offender, tier II sex offender, or tier III sex offender; or

22 (3) an offense in a court of Canada, Great Britain, Australia, New  
23 Zealand, or any other foreign country when the United States Department of State has  
24 determined in its Country Reports on Human Rights Practices that an independent  
25 judiciary generally or vigorously enforced the right to a fair trial during the year in  
26 which the conviction occurred that, if committed in this State, would require the  
27 person to be classified as a tier I sex offender, tier II sex offender, or tier III sex  
28 offender.

29 (m) “Student” means an individual who is enrolled in or attends an education  
30 institution, including a public or private secondary school, trade or professional school,  
31 or an institution of higher education.

1 (n) "Supervising authority" means an agency or person that is responsible for  
2 collecting the information for the initial registration of a sex offender and is:

3 (1) the Secretary, if the registrant is in the custody of a correctional  
4 facility operated by the Department;

5 (2) the administrator of a local correctional facility, if the registrant,  
6 including a participant in a home detention program, is in the custody of the local  
7 correctional facility;

8 (3) the court that granted the probation or suspended sentence, except  
9 as provided in item (9) of this subsection, if the registrant is granted probation before  
10 judgment, probation after judgment, or a suspended sentence;

11 (4) the Director of the Patuxent Institution, if the registrant is in the  
12 custody of the Patuxent Institution;

13 (5) the Secretary of Health and Mental Hygiene, if the registrant is in  
14 the custody of a facility operated by the Department of Health and Mental Hygiene;

15 (6) the court in which the registrant was convicted, if the registrant's  
16 sentence does not include a term of imprisonment or if the sentence is modified to time  
17 served;

18 (7) the Secretary, if the registrant is in the State under terms and  
19 conditions of the Interstate Compact for Adult Offender Supervision, set forth in Title  
20 6, Subtitle 2 of the Correctional Services Article, or the Interstate Corrections  
21 Compact, set forth in Title 8, Subtitle 6 of the Correctional Services Article;

22 (8) the local law enforcement unit where the sex offender is a resident,  
23 is a transient, or habitually lives on moving from another jurisdiction or foreign  
24 country that requires registration if the sex offender is not under the supervision,  
25 custody, or control of another supervising authority;

26 (9) the Director of Parole and Probation, if the registrant is under the  
27 supervision of the Division of Parole and Probation; or

28 (10) the Secretary of Juvenile Services, if the registrant was a minor at  
29 the time the act was committed for which registration is required.

30 (o) "Tier I sex offender" means a person who has been convicted of:

31 (1) conspiring to commit, attempting to commit, or committing a  
32 violation of § 3-308 of the Criminal Law Article;

33 (2) conspiring to commit, attempting to commit, or committing a  
34 violation of § 3-902 or § 11-208 of the Criminal Law Article, if the victim is a minor;



1           (3) a crime committed in a federal, military, tribal, or other  
2 jurisdiction that, if committed in this State, would constitute one of the crimes listed  
3 in item (1) or (2) of this subsection;

4           (4) any of the following federal offenses:

5                   (i) misleading domain names on the Internet under 18 U.S.C. §  
6 2252B;

7                   (ii) misleading words or digital images on the Internet under 18  
8 U.S.C. § 2252C;

9                   (iii) engaging in illicit conduct in foreign places under 18 U.S.C.  
10 § 2423(c);

11                   (iv) failure to file a factual statement about an alien individual  
12 under 18 U.S.C. § 2424;

13                   (v) transmitting information about a minor to further criminal  
14 sexual conduct under 18 U.S.C. § 2425;

15                   (vi) sex trafficking by force, fraud, or coercion under 18 U.S.C. §  
16 1591; or

17                   (vii) travel with intent to engage in illicit conduct under 18  
18 U.S.C. § 2423(b);

19           (5) any military offense specified by the Secretary of Defense under  
20 Section 115(A)(8)(C)(i) of Public Law 105–119 (codified at 10 U.S.C. § 951 Note) that is  
21 similar to those offenses listed in item (4) of this subsection; or

22           (6) a crime in a court of Canada, Great Britain, Australia, New  
23 Zealand, or any other foreign country where the United States Department of State  
24 has determined in its Country Reports on Human Rights Practices that an  
25 independent judiciary generally or vigorously enforced the right to a fair trial during  
26 the year in which the conviction occurred that, if the crime were committed in this  
27 State, would constitute one of the crimes listed in items (1) through (5) of this  
28 subsection.

29           (p) “Tier II sex offender” means a person who has been convicted of:

30                   (1) conspiring to commit, attempting to commit, or committing a  
31 violation of § 3–307(a)(4) [or], (5), **(6)**, **OR (7)**, § 3–324, § 11–207, or § 11–209 of the  
32 Criminal Law Article;

1 (2) conspiring to commit, attempting to commit, or committing a  
2 violation of § 11–303, § 11–305, or § 11–306 of the Criminal Law Article, if the  
3 intended prostitute or victim is a minor;

4 (3) conspiring to commit, attempting to commit, or committing a  
5 violation of § 3–314 or § 3–603 of the Criminal Law Article, if the victim is a minor  
6 who is at least 14 years old;

7 (4) conspiring to commit, attempting to commit, or committing an  
8 offense that would require the person to register as a tier I sex offender after the  
9 person was already registered as a tier I sex offender;

10 (5) a crime that was committed in a federal, military, tribal, or other  
11 jurisdiction that, if committed in this State, would constitute one of the crimes listed  
12 in items (1) through (3) of this subsection; or

13 (6) a crime in a court of Canada, Great Britain, Australia, New  
14 Zealand, or any other foreign country where the United States Department of State  
15 has determined in its Country Reports on Human Rights Practices that an  
16 independent judiciary generally or vigorously enforced the right to a fair trial during  
17 the year in which the conviction occurred that, if the crime were committed in this  
18 State, would constitute one of the crimes listed in items (1) through (3) of this  
19 subsection.

20 (q) “Tier III sex offender” means a person who has been convicted of:

21 (1) conspiring to commit, attempting to commit, or committing a  
22 violation of:

23 (i) § 2–201(a)(4)(viii), (x), or (xi) of the Criminal Law Article;

24 (ii) § 3–303, § 3–304, § 3–305, § 3–306, § 3–307(a)(1) or (2), §  
25 3–309, § 3–310, § 3–311, § 3–312, § 3–315, § 3–323, § 3–502, or § 3–602 of the Criminal  
26 Law Article; or

27 (iii) the common law offense of sodomy or § 3–322 of the  
28 Criminal Law Article if the offense was committed with force or threat of force;

29 (2) conspiring to commit, attempting to commit, or committing a  
30 violation of § 3–307(a)(3), § 3–314, § 3–503, or § 3–603 of the Criminal Law Article, if  
31 the victim is under the age of 14 years;

32 (3) conspiring to commit, attempting to commit, or committing the  
33 common law offense of false imprisonment, if the victim is a minor;

1 (4) conspiring to commit, attempting to commit, or committing an  
2 offense that would require the person to register as a tier I or tier II sex offender after  
3 the person was already registered as a tier II sex offender;

4 (5) a crime committed in a federal, military, tribal, or other  
5 jurisdiction that, if committed in this State, would constitute one of the crimes listed  
6 in items (1) through (3) of this subsection; or

7 (6) a crime in a court of Canada, Great Britain, Australia, New  
8 Zealand, or any other foreign country where the United States Department of State  
9 has determined in its Country Reports on Human Rights Practices that an  
10 independent judiciary generally or vigorously enforced the right to a fair trial during  
11 the year in which the conviction occurred that, if the crime were committed in this  
12 State, would constitute one of the crimes listed in items (1) through (3) of this  
13 subsection.

14 (r) "Transient" means a nonresident registrant who enters a county of this  
15 State with the intent to be in the State or is in the State for a period exceeding 14 days  
16 or for an aggregate period exceeding 30 days during a calendar year for a purpose  
17 other than employment or to attend an educational institution.

18 **11-704.3.**

19 (A) **IN THIS SECTION, "NONPUBLIC REGISTRANT" MEANS A PERSON**  
20 **WHO IS REQUIRED TO BE INCLUDED IN THE REGISTRY OF SEX OFFENDERS**  
21 **UNDER SUBSECTION (B) OF THIS SECTION.**

22 (B) **A PERSON SHALL BE INCLUDED IN A NONPUBLIC REGISTRY**  
23 **DATABASE THAT IS MAINTAINED BY THE DEPARTMENT SEPARATELY FROM THE**  
24 **SEX OFFENDER REGISTRY IF THE PERSON HAS BEEN CONVICTED OF**  
25 **COMMITTING A VIOLATION OF § 3-308.1 OF THE CRIMINAL LAW ARTICLE.**

26 (C) **THE NONPUBLIC REGISTRY DATABASE SHALL BE ACCESSIBLE ONLY**  
27 **BY LAW ENFORCEMENT PERSONNEL FOR LAW ENFORCEMENT PURPOSES.**

28 (D) **THE TERM OF REGISTRATION FOR A NONPUBLIC REGISTRANT IS 10**  
29 **YEARS.**

30 (E) **A NONPUBLIC REGISTRANT SHALL APPEAR IN PERSON AT A**  
31 **LOCATION DESIGNATED BY THE DEPARTMENT EVERY 6 MONTHS TO:**

32 (1) **UPDATE AND VERIFY WITH THE DEPARTMENT THE**  
33 **INFORMATION INCLUDED IN THE NONPUBLIC REGISTRY DATABASE UNDER THIS**  
34 **SECTION; AND**

1                   **(2) ALLOW THE DEPARTMENT TO TAKE A DIGITAL IMAGE OF THE**  
2 **NONPUBLIC REGISTRANT.**

3 11-713.

4           The Department:

5                   (1) as soon as possible but not later than 3 working days after  
6 receiving the conviction data and fingerprints of a registrant, shall transmit the data  
7 and fingerprints to the Federal Bureau of Investigation if the Bureau does not have  
8 that information;

9                   (2) shall keep a central registry of registrants, **A NONPUBLIC**  
10 **REGISTRY DATABASE**, and a listing of juvenile sex offenders;

11                   (3) shall reimburse local law enforcement units for the cost of  
12 processing the registration statements of registrants, including the cost of taking  
13 fingerprints, palm prints, and digital images;

14                   (4) shall reimburse local law enforcement units for the reasonable  
15 costs of implementing community notification procedures;

16                   (5) shall be responsible for receiving and distributing all intrastate,  
17 federal, and foreign government communications relating to the registration of sex  
18 offenders; and

19                   (6) shall notify all jurisdictions where the registrant will reside, carry  
20 on employment, or attend school within 3 days of changes in the registrant's  
21 registration.

22           **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
23 **October 1, 2012.**