

SENATE BILL 799

E1, E2

2lr1871
CF 2lr2517

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

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

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

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 **BEEEN 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.