

**Department of Legislative Services**  
Maryland General Assembly  
2017 Session

**FISCAL AND POLICY NOTE**  
**Third Reader**

Senate Bill 944

(Senator Smith)

Judicial Proceedings

Judiciary

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**Criminal Law - Sexual Offenses - Classification**

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This bill (1) reclassifies criminal conduct currently classified as sexual offense in the first degree and sexual offense in the second degree as rape in the first degree and rape in the second degree, respectively, and (2) makes conforming statutory changes.

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**Fiscal Summary**

**State Effect:** General fund expenditures for the Judiciary increase by \$5,100 in FY 2018 only for computer reprogramming. Enforcement under the bill's altered classifications can be handled with existing resources. Revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	5,100	0	0	0	0
Net Effect	(\$5,100)	\$0	\$0	\$0	\$0

*Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Enforcement under the bill's altered classifications can be handled with existing resources. Local revenues are not affected.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** The first- and second-degree rape and sexual offense statutes contain substantially similar provisions, except that the rape statutes apply to vaginal intercourse and the sexual offense statutes apply to a "sexual act," as defined in the Code. The

first-degree rape and first-degree sexual offense statutes apply the same penalties for their parallel offenses, as do the second-degree rape and second-degree sexual offense statutes.

*First-degree Rape (Section 3-303 of the Criminal Law Article):* A person may not engage in vaginal intercourse with another by force, or the threat of force, without the consent of the other and:

- employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;
- suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another person in the course of committing the crime;
- 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;
- commit the crime while aided and abetted by another; or
- commit the crime in connection with a burglary in the first, second, or third degree.

First-degree rape is a felony and is generally punishable by imprisonment not exceeding life. However, a person who commits rape in the first degree while also violating specified prohibitions on child kidnapping involving a victim who is a child younger than age 16 is subject to imprisonment not exceeding life without the possibility of parole. A person convicted under either of these circumstances is subject to imprisonment for life without the possibility of parole if the person was previously convicted of first-degree rape or first-degree sexual offense.

A person age 18 or older who violates the prohibition on rape in the first-degree with a victim who is a child younger than age 13 is subject to imprisonment for not less than 25 years and not exceeding life without the possibility of parole. A court may not suspend any part of the mandatory minimum sentence of 25 years, and the person is not eligible for parole during the mandatory minimum sentence. If the State does not comply with specified notice requirements, the mandatory minimum sentence does not apply.

Specified notice requirements apply if the State intends to seek a sentence of life imprisonment without the possibility of parole or a mandatory minimum sentence of 25 years for first-degree rape.

*Second-degree Rape (Section 3-304 of the Criminal Law Article):* A person may not engage in vaginal intercourse with another:

- by force, or the threat of force, without the consent of the other;
- if the victim is a substantially cognitively impaired 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 substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; or
- if the victim is younger than age 14, and the person performing the act is at least 4 years older than the victim.

Second-degree rape is a felony and is generally punishable by imprisonment for up to 20 years.

However, a person age 18 or older who commits any of the aforementioned prohibited acts with a child younger than age 13 is subject to imprisonment for not less than 15 years and not exceeding life. The 15-year mandatory minimum sentence is nonsuspendable and nonparolable. The State must comply with specified notice requirements if it intends to seek the 15-year mandatory minimum sentence, and the mandatory minimum sentence does not apply if the State fails to comply with specified notice requirements.

*First-degree Sexual Offense (Section 3-305 of the Criminal Law Article):* A person may not engage in a sexual act with another by force, or the threat of force, without the consent of the other and:

- employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;
- suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another person in the course of committing the crime;
- 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;
- commit the crime while aided and abetted by another; or
- commit the crime in connection with a burglary in the first, second, or third degree.

First-degree sexual offense is a felony and is generally punishable by imprisonment not exceeding life. However, a person who commits sexual offense in the first degree while also violating specified prohibitions on child kidnapping involving a victim who is a child younger than age 16 is subject to imprisonment not exceeding life without the possibility of parole. A person convicted under either of these circumstances is subject to imprisonment for life without the possibility of parole if the person was previously convicted of first-degree sexual offense or first-degree rape.

A person age 18 or older who violates the prohibition on sexual offense in the first-degree with a victim who is a child younger than age 13 is subject to imprisonment for not less than 25 years and not exceeding life without the possibility of parole. A court may not

suspend any part of the mandatory minimum sentence of 25 years, and the person is not eligible for parole during the mandatory minimum sentence. If the State does not comply with specified notice requirements, the mandatory minimum sentence does not apply.

Specified notice requirements apply if the State intends to seek a sentence of life imprisonment without the possibility of parole or a mandatory minimum sentence of 25 years for first-degree sexual offense.

*Second-degree Sexual Offense (Section 3-306 of the Criminal Law Article):* A person may not engage in a sexual act with another:

- by force, or the threat of force, without the consent of the other;
- if the victim is a substantially cognitively impaired 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 substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; or
- if the victim is younger than age 14, and the person performing the sexual act is at least 4 years older than the victim.

Second-degree sexual offense is a felony and is generally punishable by imprisonment for up to 20 years.

However, a person age 18 or older who commits any of the aforementioned prohibited acts with a child younger than age 13 is subject to imprisonment for not less than 15 years and not exceeding life. The 15-year mandatory minimum sentence is nonsuspendable and nonparolable. The State must comply with specified notice requirements if it intends to seek the 15-year mandatory minimum sentence, and the mandatory minimum sentence does not apply if the State fails to comply with specified notice requirements.

**Background:** **Exhibit 1** contains information on the number of guilty dispositions in the State's courts for first-degree sexual offense, second-degree sexual offense, attempted first-degree sexual offense, and attempted second-degree sexual offense.

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**Exhibit 1**  
**Filings and Guilty Dispositions for First- and Second-degree**  
**Sexual Offenses and Attempts**  
**District Court and Circuit Courts – Fiscal 2016**

<b><u>Offense/Statute</u></b>	<b><u>Number of Guilty Dispositions</u></b>
First-degree Sexual Offense	10
Criminal Law Article § 3-305	
Second-degree Sexual Offense	57
Criminal Law Article § 3-306	
First-degree Attempted Sexual Offense	2
Criminal Law Article § 3-311	
Second-degree Attempted Sexual Offense	3
Criminal Law Article § 3-312	

Source: Maryland Judiciary

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**State Expenditures:** General fund expenditures for the Judiciary increase by \$5,070 in fiscal 2018 only for computer reprogramming to incorporate the reclassification of offenses under the bill into system-generated domestic violence forms, including the Petition for Permanent Final Protective Order.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 647 (Delegate Reznik, *et al.*) - Judiciary.

**Information Source(s):** Baltimore, Dorchester, Garrett, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Human Resources; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

**Fiscal Note History:** First Reader - February 19, 2017  
md/kdm Third Reader - March 17, 2017

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