## HOUSE BILL 412

E1, E2

3lr1226

By: Delegates Shetty, Allen, Atterbeary, Bagnall, B. Barnes, Bartlett, Bhandari, Boyce, Charkoudian, Crutchfield, Cullison, Davis, Embry, Fair, Feldmark, Fraser-Hidalgo, Grossman, Guyton, Guzzone, Hill, Ivey, D. Jones, Kaufman, Kelly, J. Long, Lopez, Love, Mireku-North, Moon, Palakovich Carr, Pena-Melnyk, Reznik, Ruth, Simpson, Solomon, Stewart, Terrasa, Toles, Valderrama, Vogel, Washington, Wells, Wilkins, Williams, and Ziegler
Introduced and read first time: January 30, 2023
Assigned to: Judiciary

## A BILL ENTITLED

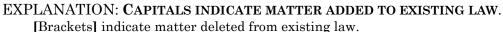
1 AN ACT concerning

## 2 Criminal Law – Sexual Crimes – Consent and Second–Degree Rape

- FOR the purpose of requiring certain facts to be considered when determining whether a
   lack of consent exists for the purposes of certain sexual crimes; altering the elements
   of second-degree rape; and generally relating to sexual crimes.
- 6 BY adding to
- 7 Article Criminal Law
- 8 Section 3–301.1
- 9 Annotated Code of Maryland
- 10 (2021 Replacement Volume and 2022 Supplement)
- 11 BY repealing and reenacting, with amendments,
- 12 Article Criminal Law
- 13 Section 3–304(a)
- 14 Annotated Code of Maryland
- 15 (2021 Replacement Volume and 2022 Supplement)
- 16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
- 17 That the Laws of Maryland read as follows:
- 18

## Article – Criminal Law

19 **3–301.1.** 





1 (A) IN THIS SUBTITLE, "CONSENT" MEANS THE CLEAR AND VOLUNTARY 2 AGREEMENT BY AN INDIVIDUAL TO ENGAGE IN VAGINAL INTERCOURSE, A SEXUAL 3 ACT, OR SEXUAL CONTACT.

4 (B) FOR PURPOSES OF DETERMINING WHETHER A LACK OF CONSENT
5 EXISTS WHEN IT IS AN ELEMENT OF A VIOLATION OF A PROVISION OF THIS SUBTITLE,
6 THE FOLLOWING SHALL BE CONSIDERED:

7 (1) CONSENT, LACK OF CONSENT, OR WITHDRAWAL OF CONSENT MAY
8 BE INFERRED FROM WORDS OR CONDUCT AND IS BASED ON THE TOTALITY OF
9 CIRCUMSTANCES;

10 (2) CONSENT MAY BE WITHDRAWN BEFORE OR DURING VAGINAL 11 INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT;

12 (3) THE LACK OF CONSENT MAY BE COMMUNICATED THROUGH 13 WORDS OR CONDUCT;

14(4) A CURRENT OR PREVIOUS DATING, SOCIAL, OR SEXUAL15RELATIONSHIP BY ITSELF DOES NOT CONSTITUTE CONSENT;

16(5)SUBMISSION AS A RESULT OF FEAR, THREAT, DECEPTION, OR17COERCION DOES NOT CONSTITUTE CONSENT; AND

18(6) THE MANNER OF DRESS OF AN INDIVIDUAL DOES NOT19CONSTITUTE CONSENT.

20 (C) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE DOCUMENTATION 21 OF CONSENT.

22 3–304.

23 (a) A person may not engage in vaginal intercourse or a sexual act with another:

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(1) [by force, or the threat of force,] without the consent of the other;

25 (2) if the victim is a substantially cognitively impaired individual, a 26 mentally incapacitated individual, or a physically helpless individual, and the person 27 performing the act knows or reasonably should know that the victim is a substantially 28 cognitively impaired individual, a mentally incapacitated individual, or a physically 29 helpless individual; or

30 (3) if the victim is under the age of 14 years, and the person performing the 31 act is at least 4 years older than the victim. 1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect 2 October 1, 2023.