

Chapter 761

(House Bill 496)

AN ACT concerning

Criminal Law – Sexual Crimes – Definition of Consent and Repeal of Force

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; requiring the Maryland Judiciary to annually report certain information to the General Assembly until a certain date; and generally relating to sexual crimes.

BY adding to

Article – Criminal Law

Section 3–301.1

Annotated Code of Maryland

(2021 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, with amendments,

Article – Criminal Law

Section 3–304(a)

Annotated Code of Maryland

(2021 Replacement Volume and 2023 Supplement)

BY adding toArticle – Criminal ProcedureSection 1–212Annotated Code of Maryland(2018 Replacement Volume and 2023 Supplement)

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

Article – Criminal Law**3–301.1.**

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

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

(1) THE EXISTENCE OF CONSENT, LACK OF CONSENT, OR WITHDRAWAL OF CONSENT MAY BE INFERRED FROM WORDS OR CONDUCT AND IS BASED ON THE TOTALITY OF CIRCUMSTANCES SHALL BE DETERMINED BASED ON A TOTALITY OF THE CIRCUMSTANCES, INCLUDING THE WORDS AND CONDUCT OF THE VICTIM AND THE DEFENDANT;

(2) CONSENT MAY BE WITHDRAWN BEFORE OR DURING VAGINAL INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT;

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

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

(5) SUBMISSION AS A RESULT OF FEAR, THREAT, OR COERCION DOES NOT CONSTITUTE CONSENT IF THE INDIVIDUAL ALLEGED TO HAVE PERFORMED THE ACT IN VIOLATION OF THIS SUBTITLE KNOWS OR REASONABLY SHOULD KNOW THAT THE VICTIM WOULD SUBMIT AS A RESULT OF FEAR, THREAT, OR COERCION; AND

(6) THE MANNER OF DRESS OF AN INDIVIDUAL DOES NOT CONSTITUTE CONSENT.

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

3-304.

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

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

(2) 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

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

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Criminal Procedure1-212.

BEGINNING OCTOBER 1, 2024, AND EACH OCTOBER 1 THEREAFTER, THE MARYLAND JUDICIARY SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE FOLLOWING DATA FOR THE PRECEDING CALENDAR YEAR, DISAGGREGATED BY COUNTY AND OFFENDER AGE, RACE, AND SEX:

(1) THE NUMBER OF CHARGES FILED IN THE STATE FOR VIOLATIONS OF §§ 3-303 THROUGH 3-308 OF THE CRIMINAL LAW ARTICLE, DISAGGREGATED BY THE MODALITY BY WHICH THE OFFENSE WAS COMMITTED; AND

(2) THE NUMBER OF CONVICTIONS IN THE STATE FOR VIOLATIONS OF §§ 3-303 THROUGH 3-308 OF THE CRIMINAL LAW ARTICLE, DISAGGREGATED BY THE MODALITY BY WHICH THE OFFENSE WAS COMMITTED.

SECTION ~~2~~ 3 AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024. Section 2 of this Act shall remain effective for a period of 5 years and 7 months and, at the end of April 30, 2029, Section 2 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Approved by the Governor, May 16, 2024.