

# HOUSE BILL 24

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(PRE-FILED)

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By: **Delegate Smigiel**

Requested: September 17, 2009

Introduced and read first time: January 13, 2010

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Plea Agreements – Prohibition of Concurrent Sentences for**  
3 **Child Sexual Offenses**

4 FOR the purpose of prohibiting a plea agreement from providing for concurrent  
5 sentencing for a defendant charged with multiple counts of certain child sexual  
6 offenses; and generally relating to plea agreements for defendants charged with  
7 child sexual offenses.

8 BY repealing and reenacting, without amendments,  
9 Article – Criminal Law  
10 Section 3–303 through 3–308  
11 Annotated Code of Maryland  
12 (2002 Volume and 2009 Supplement)

13 BY adding to  
14 Article – Criminal Law  
15 Section 3–325  
16 Annotated Code of Maryland  
17 (2002 Volume and 2009 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article – Criminal Law  
20 Section 3–602  
21 Annotated Code of Maryland  
22 (2002 Volume and 2009 Supplement)

23 BY repealing and reenacting, without amendments,  
24 Article – Criminal Procedure  
25 Section 11–701(c)  
26 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2008 Replacement Volume and 2009 Supplement)

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

4 **Article – Criminal Law**

5 3–303.

6 (a) A person may not:

7 (1) engage in vaginal intercourse with another by force, or the threat  
8 of force, without the consent of the other; and

9 (2) (i) employ or display a dangerous weapon, or a physical object  
10 that the victim reasonably believes is a dangerous weapon;

11 (ii) suffocate, strangle, disfigure, or inflict serious physical  
12 injury on the victim or another in the course of committing the crime;

13 (iii) threaten, or place the victim in fear, that the victim, or an  
14 individual known to the victim, imminently will be subject to death, suffocation,  
15 strangulation, disfigurement, serious physical injury, or kidnapping;

16 (iv) commit the crime while aided and abetted by another; or

17 (v) commit the crime in connection with a burglary in the first,  
18 second, or third degree.

19 (b) A person may not violate subsection (a) of this section while also violating  
20 § 3–503(a)(2) of this title involving a victim who is a child under the age of 16 years.

21 (c) A person 18 years of age or older may not violate subsection (a) of this  
22 section involving a victim who is a child under the age of 13 years.

23 (d) (1) Except as provided in paragraphs (2), (3), and (4) of this  
24 subsection, a person who violates subsection (a) of this section is guilty of the felony of  
25 rape in the first degree and on conviction is subject to imprisonment not exceeding life.

26 (2) A person who violates subsection (b) of this section is guilty of the  
27 felony of rape in the first degree and on conviction is subject to imprisonment not  
28 exceeding life without the possibility of parole.

29 (3) A person who violates subsection (a) or (b) of this section is guilty  
30 of the felony of rape in the first degree and on conviction is subject to imprisonment  
31 not exceeding life without the possibility of parole if the defendant was previously  
32 convicted of violating this section or § 3–305 of this subtitle.

1           (4)   (i)    Subject to subparagraph (iv) of this paragraph, a person 18  
2 years of age or older who violates subsection (c) of this section is guilty of the felony of  
3 rape in the first degree and on conviction is subject to imprisonment for not less than  
4 25 years and not exceeding life without the possibility of parole.

5                   (ii)   A court may not suspend any part of the mandatory  
6 minimum sentence of 25 years.

7                   (iii)   The person is not eligible for parole during the mandatory  
8 minimum sentence.

9                   (iv)   If the State fails to comply with subsection (e) of this section,  
10 the mandatory minimum sentence shall not apply.

11           (e)    If the State intends to seek a sentence of imprisonment for life without  
12 the possibility of parole under subsection (d)(2), (3), or (4) of this section, or  
13 imprisonment for not less than 25 years under subsection (d)(4) of this section, the  
14 State shall notify the person in writing of the State's intention at least 30 days before  
15 trial.

16 3-304.

17           (a)    A person may not engage in vaginal intercourse with another:

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

19                   (2)    if the victim is a mentally defective individual, a mentally  
20 incapacitated individual, or a physically helpless individual, and the person  
21 performing the act knows or reasonably should know that the victim is a mentally  
22 defective individual, a mentally incapacitated individual, or a physically helpless  
23 individual; or

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

26           (b)    A person 18 years of age or older may not violate subsection (a)(1) or (2) of  
27 this section involving a child under the age of 13 years.

28           (c)    (1)    Except as provided in paragraph (2) of this subsection, a person  
29 who violates subsection (a) of this section is guilty of the felony of rape in the second  
30 degree and on conviction is subject to imprisonment not exceeding 20 years.

31                   (2)    (i)    Subject to subparagraph (iv) of this paragraph, a person 18  
32 years of age or older who violates subsection (b) of this section is guilty of the felony of  
33 rape in the second degree and on conviction is subject to imprisonment for not less  
34 than 5 years and not exceeding 20 years.

1 (ii) A court may not suspend any part of the mandatory  
2 minimum sentence of 5 years.

3 (iii) The person is not eligible for parole during the mandatory  
4 minimum sentence.

5 (iv) If the State fails to comply with subsection (d) of this section,  
6 the mandatory minimum shall not apply.

7 (d) If the State intends to seek a sentence of imprisonment for not less than 5  
8 years under subsection (c)(2) of this section, the State shall notify the person in  
9 writing of the State's intention at least 30 days before trial.

10 3–305.

11 (a) A person may not:

12 (1) engage in a sexual act with another by force, or the threat of force,  
13 without the consent of the other; and

14 (2) (i) employ or display a dangerous weapon, or a physical object  
15 that the victim reasonably believes is a dangerous weapon;

16 (ii) suffocate, strangle, disfigure, or inflict serious physical  
17 injury on the victim or another in the course of committing the crime;

18 (iii) threaten, or place the victim in fear, that the victim, or an  
19 individual known to the victim, imminently will be subject to death, suffocation,  
20 strangulation, disfigurement, serious physical injury, or kidnapping;

21 (iv) commit the crime while aided and abetted by another; or

22 (v) commit the crime in connection with a burglary in the first,  
23 second, or third degree.

24 (b) A person may not violate subsection (a) of this section while also violating  
25 § 3–503(a)(2) of this title involving a victim who is a child under the age of 16 years.

26 (c) A person 18 years of age or older may not violate subsection (a) of this  
27 section involving a victim who is a child under the age of 13 years.

28 (d) (1) Except as provided in paragraphs (2), (3), and (4) of this  
29 subsection, a person who violates subsection (a) of this section is guilty of the felony of  
30 sexual offense in the first degree and on conviction is subject to imprisonment not  
31 exceeding life.

1           (2) A person who violates subsection (b) of this section is guilty of the  
2 felony of sexual offense in the first degree and on conviction is subject to imprisonment  
3 not exceeding life without the possibility of parole.

4           (3) A person who violates subsection (a) or (b) of this section is guilty  
5 of the felony of sexual offense in the first degree and on conviction is subject to  
6 imprisonment not exceeding life without the possibility of parole if the defendant was  
7 previously convicted of violating this section or § 3–303 of this subtitle.

8           (4) (i) Subject to subparagraph (iv) of this paragraph, a person 18  
9 years of age or older who violates subsection (c) of this section is guilty of the felony of  
10 sexual offense in the first degree and on conviction is subject to imprisonment for not  
11 less than 25 years and not exceeding life without the possibility of parole.

12                   (ii) A court may not suspend any part of the mandatory  
13 minimum sentence of 25 years.

14                   (iii) The person is not eligible for parole during the mandatory  
15 minimum sentence.

16                   (iv) If the State fails to comply with subsection (e) of this section,  
17 the mandatory minimum sentence shall not apply.

18           (e) If the State intends to seek a sentence of imprisonment for life without  
19 the possibility of parole under subsection (d)(2), (3), or (4) of this section, or  
20 imprisonment for not less than 25 years under subsection (d)(4) of this section, the  
21 State shall notify the person in writing of the State's intention at least 30 days before  
22 trial.

23 3–306.

24           (a) A person may not engage in a sexual act with another:

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

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

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

33           (b) A person 18 years of age or older may not violate subsection (a)(1) or (2) of  
34 this section involving a child under the age of 13 years.

1 (c) (1) Except as provided in paragraph (2) of this subsection, a person  
2 who violates this section is guilty of the felony of sexual offense in the second degree  
3 and on conviction is subject to imprisonment not exceeding 20 years.

4 (2) (i) Subject to subparagraph (iv) of this paragraph, a person 18  
5 years of age or older who violates subsection (b) of this section is guilty of the felony of  
6 sexual offense in the second degree and on conviction is subject to imprisonment for  
7 not less than 5 years and not exceeding 20 years.

8 (ii) A court may not suspend any part of the mandatory  
9 minimum sentence of 5 years.

10 (iii) The person is not eligible for parole during the mandatory  
11 minimum sentence.

12 (iv) If the State fails to comply with subsection (d) of this section,  
13 the mandatory minimum shall not apply.

14 (d) If the State intends to seek a sentence of imprisonment for not less than 5  
15 years under subsection (c)(2) of this section, the State shall notify the person in  
16 writing of the State's intention at least 30 days before trial.

17 3-307.

18 (a) A person may not:

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

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

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

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

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

29 (2) engage in sexual contact with another if the victim is a mentally  
30 defective individual, a mentally incapacitated individual, or a physically helpless  
31 individual, and the person performing the act knows or reasonably should know the  
32 victim is a mentally defective individual, a mentally incapacitated individual, or a  
33 physically helpless individual;

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

4           (4)    engage in a sexual act with another if the victim is 14 or 15 years  
5 old, and the person performing the sexual act is at least 21 years old; or

6           (5)    engage in vaginal intercourse with another if the victim is 14 or 15  
7 years old, and the person performing the act is at least 21 years old.

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

11 3–308.

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

13                   (1)    means a person who:

14                           (i)    is at least 21 years old;

15                           (ii)   is employed as a full–time permanent employee by a public  
16 or private preschool, elementary school, or secondary school; and

17                           (iii) because of the person’s position or occupation, exercises  
18 supervision over a minor who attends the school; and

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

21           (b)    A person may not engage in:

22                   (1)    sexual contact with another without the consent of the other;

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

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

29           (c)    (1)    Except as provided in § 3–307(a)(4) of this subtitle or subsection  
30 (b)(2) of this section, a person in a position of authority may not engage in a sexual act  
31 or sexual contact with a minor who, at the time of the sexual act or sexual contact, is a  
32 student enrolled at a school where the person in a position of authority is employed.

(2) Except as provided in § 3–307(a)(5) of this subtitle or subsection (b)(3) of this section, a person in a position of authority may not engage in vaginal intercourse with a minor who, at the time of the vaginal intercourse, is a student enrolled at a school where the person in a position of authority is employed.

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

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

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

### **3–325.**

**THE TERMS OF ANY PLEA AGREEMENT ENTERED UNDER MARYLAND RULE 4–243 MAY NOT PROVIDE FOR CONCURRENT SENTENCING IF THE AGREEMENT IS ENTERED BY A DEFENDANT CHARGED WITH MULTIPLE COUNTS OF VIOLATING ANY OF THE FOLLOWING:**

**(1) ANY OF THE PROVISIONS OF THE RAPE OR SEXUAL OFFENSE STATUTES UNDER §§ 3–303 THROUGH 3–307 OF THIS SUBTITLE FOR A CRIME INVOLVING A CHILD UNDER THE AGE OF 15 YEARS;**

**(2) THE FOURTH DEGREE SEXUAL OFFENSE STATUTE UNDER § 3–308 OF THIS SUBTITLE FOR A CRIME INVOLVING A CHILD UNDER THE AGE OF 15 YEARS; OR**

**(3) § 3–602 OF THIS TITLE.**

3–602.

(a) (1) In this section the following words have the meanings indicated.

(2) “Family member” has the meaning stated in § 3–601 of this subtitle.

(3) “Household member” has the meaning stated in § 3–601 of this subtitle.



1           (4) (i) “Sexual abuse” means an act that involves sexual  
2 molestation or exploitation of a minor, whether physical injuries are sustained or not.

3                   (ii) “Sexual abuse” includes:

- 4                           1. incest;
- 5                           2. rape;
- 6                           3. sexual offense in any degree;
- 7                           4. sodomy; and
- 8                           5. unnatural or perverted sexual practices.

9           (b) (1) A parent or other person who has permanent or temporary care or  
10 custody or responsibility for the supervision of a minor may not cause sexual abuse to  
11 the minor.

12                   (2) A household member or family member may not cause sexual  
13 abuse to a minor.

14           (c) A person who violates this section is guilty of a felony and on conviction is  
15 subject to imprisonment not exceeding 25 years.

16           (d) **[A] EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A**  
17 sentence imposed under this section may be separate from and consecutive to or  
18 concurrent with a sentence for:

19                   (1) any crime based on the act establishing the violation of this  
20 section; or

21                   (2) a violation of § 3–601 of this subtitle involving an act of abuse  
22 separate from sexual abuse under this section.

23           **(E) THE TERMS OF ANY PLEA AGREEMENT ENTERED UNDER MARYLAND**  
24 **RULE 4–243 MAY NOT PROVIDE FOR CONCURRENT SENTENCING IF THE**  
25 **AGREEMENT IS ENTERED BY A DEFENDANT CHARGED WITH MULTIPLE COUNTS**  
26 **OF VIOLATING ANY OF THE FOLLOWING:**

27                   **(1) SUBSECTION (B) OF THIS SECTION;**

28                   **(2) ANY OF THE PROVISIONS OF THE RAPE OR SEXUAL OFFENSE**  
29 **STATUTES UNDER §§ 3–303 THROUGH 3–307 OF THIS TITLE FOR A CRIME**  
30 **INVOLVING A CHILD UNDER THE AGE OF 15 YEARS; OR**

