

SENATE BILL 799

E1, E2

2lr1871
CF HB 776

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

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2012

CHAPTER _____

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,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Criminal Law
2 Section 3–307 and 3–308
3 Annotated Code of Maryland
4 (2002 Volume and 2011 Supplement)

5 BY adding to
6 Article – Criminal Law
7 Section 3–308.1
8 Annotated Code of Maryland
9 (2002 Volume and 2011 Supplement)

10 BY repealing and reenacting, with amendments,
11 Article – Criminal Procedure
12 Section 11–701 and 11–713
13 Annotated Code of Maryland
14 (2008 Replacement Volume and 2011 Supplement)

15 BY adding to
16 Article – Criminal Procedure
17 Section 11–704.3
18 Annotated Code of Maryland
19 (2008 Replacement Volume and 2011 Supplement)

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

22 **Article – Courts and Judicial Proceedings**

23 5–106.

24 (z) A prosecution for a misdemeanor offense under § 3–308(c) or, if the victim
25 was a minor at the time of the offense, [§ 3–308(b)(1)] **§ 3–308(B)** of the Criminal Law
26 Article shall be instituted within 3 years after the offense was committed.

27 **Article – Criminal Law**

28 3–307.

29 (a) A person may not:

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

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

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

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

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

7 (2) engage in sexual contact with another if the victim is a mentally
8 defective individual, a mentally incapacitated individual, or a physically helpless
9 individual, and the person performing the act knows or reasonably should know the
10 victim is a mentally defective individual, a mentally incapacitated individual, or a
11 physically helpless individual;

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

15 (4) engage in a sexual act with another if the victim is 14 or 15 years
16 old, and the person performing the sexual act is at least [21 years old; or] **10 YEARS**
17 **OLDER THAN THE VICTIM;**

18 (5) engage in vaginal intercourse with another if the victim is 14 or 15
19 years old, and the person performing the act is at least [21 years old] **10 YEARS**
20 **OLDER THAN THE VICTIM;**

21 **(6) ENGAGE IN A SEXUAL ACT WITH ANOTHER IF THE VICTIM IS 14**
22 **OR 15 YEARS OLD, AND THE PERSON PERFORMING THE SEXUAL ACT IS AT LEAST**
23 **4 YEARS OLDER THAN THE VICTIM BUT LESS THAN 10 YEARS OLDER THAN THE**
24 **VICTIM, AND HAS BEEN PREVIOUSLY CONVICTED OF A VIOLATION OF THIS**
25 **SUBTITLE OR PREVIOUSLY CONVICTED OF A VIOLATION OF § 3-602, § 11-207, §**
26 **11-208, OR § 11-303(B) OF THIS ARTICLE; OR**

27 **(7) ENGAGE IN VAGINAL INTERCOURSE WITH ANOTHER IF THE**
28 **VICTIM IS 14 OR 15 YEARS OLD, AND THE PERSON PERFORMING THE ACT IS AT**
29 **LEAST 4 YEARS OLDER THAN THE VICTIM BUT LESS THAN 10 YEARS OLDER**
30 **THAN THE VICTIM, AND HAS BEEN PREVIOUSLY CONVICTED OF A VIOLATION OF**
31 **THIS SUBTITLE OR PREVIOUSLY CONVICTED OF A VIOLATION OF § 3-602, §**
32 **11-207, § 11-208, OR § 11-303(B) OF THIS ARTICLE.**

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

36 3-308.

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

2 (1) means a person who:

3 (i) is at least 21 years old;

4 (ii) is employed as a full-time permanent employee by a public
5 or private preschool, elementary school, or secondary school; and

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

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

10 (b) A person may not engage in[:

11 (1)] sexual contact with another without the consent of the other[;

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

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

18 (c) (1) Except as provided in § 3–307(a)(4) **OR (6) OR § 3–308.1** of this
19 subtitle [or subsection (b)(2) of this section], a person in a position of authority may
20 not engage in a sexual act or sexual contact with a minor who, at the time of the
21 sexual act or sexual contact, is a student enrolled at a school where the person in a
22 position of authority is employed.

23 (2) Except as provided in § 3–307(a)(5) **OR (7) OR § 3–308.1** of this
24 subtitle [or subsection (b)(3) of this section], a person in a position of authority may
25 not engage in vaginal intercourse with a minor who, at the time of the vaginal
26 intercourse, is a student enrolled at a school where the person in a position of
27 authority is employed.

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

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

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

8 **3-308.1.**

9 **(A) EXCEPT AS PROVIDED IN § 3-307(A)(4), (5), (6), OR (7) OF THIS**
10 **SUBTITLE, A PERSON MAY NOT ENGAGE IN A SEXUAL ACT WITH ANOTHER IF:**

11 **(1) THE VICTIM IS 14 OR 15 YEARS OLD;**

12 **(2) THE PERSON PERFORMING THE SEXUAL ACT IS AT LEAST 4**
13 **YEARS OLDER THAN THE VICTIM BUT LESS THAN 10 YEARS OLDER THAN THE**
14 **VICTIM; AND**

15 **(3) THE PERSON PERFORMING THE SEXUAL ACT HAS NOT BEEN**
16 **PREVIOUSLY CONVICTED OF A VIOLATION OF THIS SUBTITLE, A VIOLATION OF §**
17 **3-602, § 11-207, § 11-208, OR § 11-303(B) OF THIS ARTICLE, OR A CRIME**
18 **COMMITTED IN ANOTHER JURISDICTION, FEDERAL OR MILITARY COURT, OR**
19 **FOREIGN COUNTRY THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE**
20 **ONE OF THE CRIMES LISTED IN THIS PARAGRAPH.**

21 **(B) EXCEPT AS PROVIDED IN § 3-307(A)(4), (5), (6), OR (7) OF THIS**
22 **SUBTITLE, A PERSON MAY NOT ENGAGE IN VAGINAL INTERCOURSE WITH**
23 **ANOTHER IF:**

24 **(1) THE VICTIM IS 14 OR 15 YEARS OLD;**

25 **(2) THE PERSON PERFORMING THE ACT IS AT LEAST 4 YEARS**
26 **OLDER THAN THE VICTIM BUT LESS THAN 10 YEARS OLDER THAN THE VICTIM;**
27 **AND**

28 **(3) THE PERSON PERFORMING THE ACT HAS NOT BEEN**
29 **PREVIOUSLY CONVICTED OF A VIOLATION OF THIS SUBTITLE, A VIOLATION OF §**
30 **3-602, § 11-207, § 11-208, OR § 11-303(B) OF THIS ARTICLE, OR A CRIME**
31 **COMMITTED IN ANOTHER JURISDICTION, FEDERAL OR MILITARY COURT, OR**
32 **FOREIGN COUNTRY THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE**
33 **ONE OF THE CRIMES LISTED IN THIS PARAGRAPH.**

1 (iii) release from a correctional facility with no required period of
2 supervision;

3 (iv) work release;

4 (v) placement on home detention; and

5 (vi) the first instance of entry into the community that is part of
6 a supervising authority's graduated release program.

7 (3) "Release" does not include:

8 (i) an escape; or

9 (ii) leave that is granted on an emergency basis.

10 (j) "Sexually violent offense" means:

11 (1) a violation of §§ 3-303 through 3-307 or §§ 3-309 through 3-312 of
12 the Criminal Law Article;

13 (2) assault with intent to commit rape in the first or second degree or
14 a sexual offense in the first or second degree as prohibited on or before September 30,
15 1996, under former Article 27, § 12 of the Code; or

16 (3) a crime committed in another jurisdiction, federal or military
17 court, or foreign country that, if committed in this State, would constitute one of the
18 crimes listed in item (1) or (2) of this subsection.

19 (k) "Sexually violent predator" means a person who:

20 (1) is convicted of a sexually violent offense; and

21 (2) has been determined in accordance with this subtitle to be at risk
22 of committing another sexually violent offense.

23 (l) "Sex offender" means a person who has been convicted of:

24 (1) an offense that would require the person to be classified as a tier I
25 sex offender, tier II sex offender, or tier III sex offender;

26 (2) an offense committed in another state or in a federal, military, or
27 tribal jurisdiction that, if committed in this State, would require the person to be
28 classified as a tier I sex offender, tier II sex offender, or tier III sex offender; or

29 (3) an offense in a court of Canada, Great Britain, Australia, New
30 Zealand, or any other foreign country when the United States Department of State has

1 determined in its Country Reports on Human Rights Practices that an independent
2 judiciary generally or vigorously enforced the right to a fair trial during the year in
3 which the conviction occurred that, if committed in this State, would require the
4 person to be classified as a tier I sex offender, tier II sex offender, or tier III sex
5 offender.

6 (m) "Student" means an individual who is enrolled in or attends an education
7 institution, including a public or private secondary school, trade or professional school,
8 or an institution of higher education.

9 (n) "Supervising authority" means an agency or person that is responsible for
10 collecting the information for the initial registration of a sex offender and is:

11 (1) the Secretary, if the registrant is in the custody of a correctional
12 facility operated by the Department;

13 (2) the administrator of a local correctional facility, if the registrant,
14 including a participant in a home detention program, is in the custody of the local
15 correctional facility;

16 (3) the court that granted the probation or suspended sentence, except
17 as provided in item (9) of this subsection, if the registrant is granted probation before
18 judgment, probation after judgment, or a suspended sentence;

19 (4) the Director of the Patuxent Institution, if the registrant is in the
20 custody of the Patuxent Institution;

21 (5) the Secretary of Health and Mental Hygiene, if the registrant is in
22 the custody of a facility operated by the Department of Health and Mental Hygiene;

23 (6) the court in which the registrant was convicted, if the registrant's
24 sentence does not include a term of imprisonment or if the sentence is modified to time
25 served;

26 (7) the Secretary, if the registrant is in the State under terms and
27 conditions of the Interstate Compact for Adult Offender Supervision, set forth in Title
28 6, Subtitle 2 of the Correctional Services Article, or the Interstate Corrections
29 Compact, set forth in Title 8, Subtitle 6 of the Correctional Services Article;

30 (8) the local law enforcement unit where the sex offender is a resident,
31 is a transient, or habitually lives on moving from another jurisdiction or foreign
32 country that requires registration if the sex offender is not under the supervision,
33 custody, or control of another supervising authority;

34 (9) the Director of Parole and Probation, if the registrant is under the
35 supervision of the Division of Parole and Probation; or

1 (10) the Secretary of Juvenile Services, if the registrant was a minor at
2 the time the act was committed for which registration is required.

3 (o) “Tier I sex offender” means a person who has been convicted of:

4 (1) conspiring to commit, attempting to commit, or committing a
5 violation of § 3–308 OR § 3–308.1 of the Criminal Law Article;

6 (2) conspiring to commit, attempting to commit, or committing a
7 violation of § 3–902 or § 11–208 of the Criminal Law Article, if the victim is a minor;

8 (3) a crime committed in a federal, military, tribal, or other
9 jurisdiction that, if committed in this State, would constitute one of the crimes listed
10 in item (1) or (2) of this subsection;

11 (4) any of the following federal offenses:

12 (i) misleading domain names on the Internet under 18 U.S.C. §
13 2252B;

14 (ii) misleading words or digital images on the Internet under 18
15 U.S.C. § 2252C;

16 (iii) engaging in illicit conduct in foreign places under 18 U.S.C.
17 § 2423(c);

18 (iv) failure to file a factual statement about an alien individual
19 under 18 U.S.C. § 2424;

20 (v) transmitting information about a minor to further criminal
21 sexual conduct under 18 U.S.C. § 2425;

22 (vi) sex trafficking by force, fraud, or coercion under 18 U.S.C. §
23 1591; or

24 (vii) travel with intent to engage in illicit conduct under 18
25 U.S.C. § 2423(b);

26 (5) any military offense specified by the Secretary of Defense under
27 Section 115(A)(8)(C)(i) of Public Law 105–119 (codified at 10 U.S.C. § 951 Note) that is
28 similar to those offenses listed in item (4) of this subsection; or

29 (6) a crime in a court of Canada, Great Britain, Australia, New
30 Zealand, or any other foreign country where the United States Department of State
31 has determined in its Country Reports on Human Rights Practices that an
32 independent judiciary generally or vigorously enforced the right to a fair trial during
33 the year in which the conviction occurred that, if the crime were committed in this

1 State, would constitute one of the crimes listed in items (1) through (5) of this
2 subsection.

3 (p) “Tier II sex offender” means a person who has been convicted of:

4 (1) conspiring to commit, attempting to commit, or committing a
5 violation of § 3–307(a)(4) [or], (5), **(6)**, **OR (7)**, § 3–324, § 11–207, or § 11–209 of the
6 Criminal Law Article;

7 (2) conspiring to commit, attempting to commit, or committing a
8 violation of § 11–303, § 11–305, or § 11–306 of the Criminal Law Article, if the
9 intended prostitute or victim is a minor;

10 (3) conspiring to commit, attempting to commit, or committing a
11 violation of § 3–314 or § 3–603 of the Criminal Law Article, if the victim is a minor
12 who is at least 14 years old;

13 (4) conspiring to commit, attempting to commit, or committing an
14 offense that would require the person to register as a tier I sex offender after the
15 person was already registered as a tier I sex offender;

16 (5) a crime that was committed in a federal, military, tribal, or other
17 jurisdiction that, if committed in this State, would constitute one of the crimes listed
18 in items (1) through (3) of this subsection; or

19 (6) a crime in a court of Canada, Great Britain, Australia, New
20 Zealand, or any other foreign country where the United States Department of State
21 has determined in its Country Reports on Human Rights Practices that an
22 independent judiciary generally or vigorously enforced the right to a fair trial during
23 the year in which the conviction occurred that, if the crime were committed in this
24 State, would constitute one of the crimes listed in items (1) through (3) of this
25 subsection.

26 (q) “Tier III sex offender” means a person who has been convicted of:

27 (1) conspiring to commit, attempting to commit, or committing a
28 violation of:

29 (i) § 2–201(a)(4)(viii), (x), or (xi) of the Criminal Law Article;

30 (ii) § 3–303, § 3–304, § 3–305, § 3–306, § 3–307(a)(1) or (2), §
31 3–309, § 3–310, § 3–311, § 3–312, § 3–315, § 3–323, § 3–502, or § 3–602 of the Criminal
32 Law Article; or

33 (iii) the common law offense of sodomy or § 3–322 of the
34 Criminal Law Article if the offense was committed with force or threat of force;

1 (2) conspiring to commit, attempting to commit, or committing a
2 violation of § 3-307(a)(3), § 3-314, § 3-503, or § 3-603 of the Criminal Law Article, if
3 the victim is under the age of 14 years;

4 (3) conspiring to commit, attempting to commit, or committing the
5 common law offense of false imprisonment, if the victim is a minor;

6 (4) conspiring to commit, attempting to commit, or committing an
7 offense that would require the person to register as a tier I or tier II sex offender after
8 the person was already registered as a tier II sex offender;

9 (5) a crime committed in a federal, military, tribal, or other
10 jurisdiction that, if committed in this State, would constitute one of the crimes listed
11 in items (1) through (3) of this subsection; or

12 (6) a crime in a court of Canada, Great Britain, Australia, New
13 Zealand, or any other foreign country where the United States Department of State
14 has determined in its Country Reports on Human Rights Practices that an
15 independent judiciary generally or vigorously enforced the right to a fair trial during
16 the year in which the conviction occurred that, if the crime were committed in this
17 State, would constitute one of the crimes listed in items (1) through (3) of this
18 subsection.

19 (r) "Transient" means a nonresident registrant who enters a county of this
20 State with the intent to be in the State or is in the State for a period exceeding 14 days
21 or for an aggregate period exceeding 30 days during a calendar year for a purpose
22 other than employment or to attend an educational institution.

23 **11-704.3.**

24 (A) IN THIS SECTION, "NONPUBLIC REGISTRANT" MEANS A PERSON
25 WHO IS REQUIRED TO BE INCLUDED IN THE ~~REGISTRY OF SEX OFFENDERS~~
26 ~~UNDER SUBSECTION (B) OF THIS SECTION~~ SEX OFFENDER REGISTRY UNDER
27 THIS SUBTITLE, BUT WHOSE INFORMATION IS NOT POSTED ON THE PUBLIC
28 REGISTRY WEB SITE AND IS NOT AVAILABLE FOR PUBLIC INSPECTION.

29 (B) A PERSON SHALL BE INCLUDED IN A NONPUBLIC REGISTRY
30 DATABASE THAT IS MAINTAINED BY THE DEPARTMENT SEPARATELY FROM THE
31 PUBLIC SEX OFFENDER REGISTRY WEB SITE IF THE PERSON HAS BEEN
32 CONVICTED OF COMMITTING A VIOLATION OF § 3-308.1 OF THE CRIMINAL LAW
33 ARTICLE.

34 (C) THE NONPUBLIC REGISTRY DATABASE SHALL BE ACCESSIBLE ONLY
35 BY LAW ENFORCEMENT PERSONNEL FOR LAW ENFORCEMENT PURPOSES.

1 (D) ~~THE TERM OF REGISTRATION FOR A NONPUBLIC REGISTRANT IS 10~~
2 ~~YEARS~~ A NONPUBLIC REGISTRANT SHALL REGISTER AS A TIER I SEX OFFENDER
3 UNDER THIS SUBTITLE BUT MAY NOT BE INCLUDED IN THE PUBLIC SEX
4 OFFENDER REGISTRY.

5 (E) ~~A NONPUBLIC REGISTRANT SHALL APPEAR IN PERSON AT A~~
6 ~~LOCATION DESIGNATED BY THE DEPARTMENT EVERY 6 MONTHS TO:~~

7 (1) ~~UPDATE AND VERIFY WITH THE DEPARTMENT THE~~
8 ~~INFORMATION INCLUDED IN THE NONPUBLIC REGISTRY DATABASE UNDER THIS~~
9 ~~SECTION; AND~~

10 (2) ~~ALLOW THE DEPARTMENT TO TAKE A DIGITAL IMAGE OF THE~~
11 ~~NONPUBLIC REGISTRANT.~~

12 11-713.

13 The Department:

14 (1) as soon as possible but not later than 3 working days after
15 receiving the conviction data and fingerprints of a registrant, shall transmit the data
16 and fingerprints to the Federal Bureau of Investigation if the Bureau does not have
17 that information;

18 (2) shall keep a ~~central registry of registrants, A NONPUBLIC~~
19 ~~REGISTRY DATABASE, and a listing of juvenile sex offenders~~ PUBLIC SEX
20 OFFENDER REGISTRY WEB SITE AND A CENTRALIZED NONPUBLIC REGISTRY
21 DATABASE TO BE USED FOR LAW ENFORCEMENT PURPOSES THAT INCLUDES
22 PUBLIC REGISTRANTS, NONPUBLIC REGISTRANTS, AND JUVENILE
23 REGISTRANTS;

24 (3) shall reimburse local law enforcement units for the cost of
25 processing the registration statements of registrants, including the cost of taking
26 fingerprints, palm prints, and digital images;

27 (4) shall reimburse local law enforcement units for the reasonable
28 costs of implementing community notification procedures;

29 (5) shall be responsible for receiving and distributing all intrastate,
30 federal, and foreign government communications relating to the registration of sex
31 offenders; and

32 (6) shall notify all jurisdictions where the registrant will reside, carry
33 on employment, or attend school within 3 days of changes in the registrant's
34 registration.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2012.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.