

HOUSE BILL 985

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CF SB 722

By: **Delegates Clippinger, Anderson, Arora, Dumais, Guzzone, Hough, Howard, A. Kelly, Lee, Luedtke, McComas, A. Miller, Parrott, Simmons, Valentino-Smith, Waldstreicher, and Wilson**

Introduced and read first time: February 8, 2013

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 19, 2013

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Third Degree Sexual Offense – Burglary**

3 FOR the purpose of establishing that engaging in sexual contact with another without
4 the consent of the other in connection with a first, second, or third degree
5 burglary constitutes sexual offense in the third degree; establishing that, to be
6 convicted under a certain provision of law, the defendant must also be convicted
7 of a certain crime; altering the definitions of “tier I sex offender”, “tier II sex
8 offender”, and “tier III sex offender” applicable to provisions relating to sex
9 offender registration to include certain acts constituting sexual offense in the
10 third degree; providing for the application of this Act; and generally relating to
11 sexual offense in the third degree.

12 BY repealing and reenacting, with amendments,
13 Article – Criminal Law
14 Section 3–307
15 Annotated Code of Maryland
16 (2012 Replacement Volume and 2012 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article – Criminal Procedure
19 Section 11–701(a)
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2012 Supplement)

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 BY repealing and reenacting, with amendments,
2 Article – Criminal Procedure
3 Section 11–701(o), (p), and (q)
4 Annotated Code of Maryland
5 (2008 Replacement Volume and 2012 Supplement)

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

8 **Article – Criminal Law**

9 3–307.

10 (a) A person may not:

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

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

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

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

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

21 **OR**

22 **5. COMMIT THE CRIME IN CONNECTION WITH A**
23 **BURGLARY IN THE FIRST DEGREE UNDER § 6–202 OF THIS ARTICLE, A**
24 **BURGLARY IN THE SECOND DEGREE UNDER § 6–203 OF THIS ARTICLE, OR A**
25 **BURGLARY IN THE THIRD DEGREE UNDER § 6–204 OF THIS ARTICLE;**

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

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

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

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

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

8 **(C) TO BE CONVICTED UNDER SUBSECTION (A)(1)(II)5 OF THIS**
9 **SECTION, THE DEFENDANT MUST ALSO BE CONVICTED OF BURGLARY IN THE**
10 **FIRST DEGREE UNDER § 6-202 OF THIS ARTICLE, BURGLARY IN THE SECOND**
11 **DEGREE UNDER § 6-203 OF THIS ARTICLE, OR BURGLARY IN THE THIRD**
12 **DEGREE UNDER § 6-204 OF THIS ARTICLE.**

13 Article – Criminal Procedure

14 11-701.

15 (a) In this subtitle the following words have the meanings indicated.

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

17 (1) conspiring to commit, attempting to commit, or committing a
18 violation of § 3-308 of the Criminal Law Article;

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

21 **(3) CONSPIRING TO COMMIT, ATTEMPTING TO COMMIT, OR**
22 **COMMITTING A VIOLATION OF § 3-307(A)(1)(II)5 OF THE CRIMINAL LAW**
23 **ARTICLE, IF THE VICTIM IS NOT A MINOR;**

24 **[(3)] (4)** a crime committed in a federal, military, tribal, or other
25 jurisdiction that, if committed in this State, would constitute one of the crimes listed
26 in **[item (1) or (2)] ITEMS (1) THROUGH (3)** of this subsection;

27 **[(4)] (5)** any of the following federal offenses:

28 (i) misleading domain names on the Internet under 18 U.S.C. §
29 2252B;

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

1 (iii) engaging in illicit conduct in foreign places under 18 U.S.C.
2 § 2423(c);

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

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

7 (vi) sex trafficking by force, fraud, or coercion under 18 U.S.C. §
8 1591; or

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

11 **[(5)] (6)** any military offense specified by the Secretary of Defense
12 under Section 115(A)(8)(C)(i) of Public Law 105–119 (codified at 10 U.S.C. § 951 Note)
13 that is similar to those offenses listed in item **[(4)] (5)** of this subsection; or

14 **[(6)] (7)** a crime in a court of Canada, Great Britain, Australia, New
15 Zealand, or any other foreign country where the United States Department of State
16 has determined in its Country Reports on Human Rights Practices that an
17 independent judiciary generally or vigorously enforced the right to a fair trial during
18 the year in which the conviction occurred that, if the crime were committed in this
19 State, would constitute one of the crimes listed in items (1) through **[(5)] (6)** of this
20 subsection.

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

22 (1) conspiring to commit, attempting to commit, or committing a
23 violation of § 3–307(a)(4) or (5), § 3–324, § 11–207, or § 11–209 of the Criminal Law
24 Article;

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

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

31 **(4) CONSPIRING TO COMMIT, ATTEMPTING TO COMMIT, OR**
32 **COMMITTING A VIOLATION OF § 3–307(A)(1)(II)5 OF THE CRIMINAL LAW**
33 **ARTICLE, IF THE VICTIM IS A MINOR WHO IS AT LEAST 13 YEARS OLD;**

1 [(4)] (5) conspiring to commit, attempting to commit, or committing
2 an offense that would require the person to register as a tier I sex offender after the
3 person was already registered as a tier I sex offender;

4 [(5)] (6) a crime that was committed in a federal, military, tribal, or
5 other jurisdiction that, if committed in this State, would constitute one of the crimes
6 listed in items (1) through [(3)] (4) of this subsection; or

7 [(6)] (7) a crime in a court of Canada, Great Britain, Australia, New
8 Zealand, or any other foreign country where the United States Department of State
9 has determined in its Country Reports on Human Rights Practices that an
10 independent judiciary generally or vigorously enforced the right to a fair trial during
11 the year in which the conviction occurred that, if the crime were committed in this
12 State, would constitute one of the crimes listed in items (1) through [(3)] (4) of this
13 subsection.

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

15 (1) conspiring to commit, attempting to commit, or committing a
16 violation of:

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

18 (ii) § 3–303, § 3–304, § 3–305, § 3–306, [§ 3–307(a)(1) or (2)] §
19 **3–307(A)(1)(II)1 THROUGH 4, § 3–307(A)(2)**, § 3–309, § 3–310, § 3–311, § 3–312, §
20 3–315, § 3–323, or § 3–602 of the Criminal Law Article;

21 (iii) § 3–502 of the Criminal Law Article, if the victim is a minor;

22 (iv) § 3–502 of the Criminal Law Article, if the victim is an
23 adult, and the person has been ordered by the court to register under this subtitle; or

24 (v) the common law offense of sodomy or § 3–322 of the
25 Criminal Law Article if the offense was committed with force or threat of force;

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

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

31 (4) **CONSPIRING TO COMMIT, ATTEMPTING TO COMMIT, OR**
32 **COMMITTING A VIOLATION OF § 3–307(A)(1)(II)5 OF THE CRIMINAL LAW**
33 **ARTICLE, IF THE VICTIM IS A MINOR WHO IS UNDER THE AGE OF 13 YEARS;**

1 **[(4)] (5)** conspiring to commit, attempting to commit, or committing
 2 an offense that would require the person to register as a tier I or tier II sex offender
 3 after the person was already registered as a tier II sex offender;

4 **[(5)] (6)** a crime committed in a federal, military, tribal, or other
 5 jurisdiction that, if committed in this State, would constitute one of the crimes listed
 6 in items (1) through **[(3)] (4)** of this subsection; or

7 **[(6)] (7)** a crime in a court of Canada, Great Britain, Australia, New
 8 Zealand, or any other foreign country where the United States Department of State
 9 has determined in its Country Reports on Human Rights Practices that an
 10 independent judiciary generally or vigorously enforced the right to a fair trial during
 11 the year in which the conviction occurred that, if the crime were committed in this
 12 State, would constitute one of the crimes listed in items (1) through **[(3)] (4)** of this
 13 subsection.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
 15 construed to apply only prospectively and may not be applied or interpreted to have
 16 any effect on or application to any acts committed before the effective date of this Act.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
 18 October 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.