

HOUSE BILL 496

E1
HB 412/23 – JUD

4lr1050
CF SB 758

By: **Delegates Shetty, Embry, Acevero, Anderton, Arikan, Attar, Atterbeary, Bagnall, Barnes, Bartlett, Boaf, Boyce, Chang, Charkoudian, Conaway, Crosby, Crutchfield, Cullison, Fair, Feldmark, Foley, Forbes, Grammer, Grossman, Guyton, Guzzone, D. Jones, Kaiser, Kaufman, R. Lewis, Lopez, Love, McCaskill, Mireku–North, Munoz, Palakovich Carr, Pasteur, Pena–Melnyk, Phillips, Roberson, Rosenberg, Ruth, Simmons, Simpson, Smith, Solomon, Spiegel, Stein, Taylor, Terrasa, Toles, Vogel, Wells, White Holland, Williams, Wolek, and Wu**

Introduced and read first time: January 24, 2024

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 7, 2024

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of requiring certain facts to be considered when determining whether a
4 lack of consent exists for the purposes of certain sexual crimes; altering the elements
5 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 2023 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 2023 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 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
2 That the Laws of Maryland read as follows:

3 **Article – Criminal Law**

4 **3–301.1.**

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

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

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

16 (2) CONSENT MAY BE WITHDRAWN BEFORE OR DURING VAGINAL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

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

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

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

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

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

30 3–304.

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

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

2 (2) if the victim is a substantially cognitively impaired individual, a
3 mentally incapacitated individual, or a physically helpless individual, and the person
4 performing the act knows or reasonably should know that the victim is a substantially
5 cognitively impaired individual, a mentally incapacitated individual, or a physically
6 helpless individual; or

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

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2024.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.