

HOUSE BILL 1052

E1

5lr1901

By: **Delegate Morales**

Introduced and read first time: February 13, 2015

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Rape and Sexual Offenses – Consent**

3 FOR the purpose of providing a definition for “consent” as used in provisions of law
4 prohibiting certain sexual crimes; establishing that for certain purposes consent may
5 not be imputed under certain circumstances; providing that for certain purposes
6 consent may be withdrawn at any time; establishing that it is an individual’s
7 responsibility to get a certain consent even if the individual is under the influence of
8 certain substances; establishing that an individual is incapable of providing consent
9 under certain circumstances; and generally relating to sexual crimes and consent.

10 BY repealing and reenacting, with amendments,
11 Article – Criminal Law
12 Section 3–301
13 Annotated Code of Maryland
14 (2012 Replacement Volume and 2014 Supplement)

15 BY adding to
16 Article – Criminal Law
17 Section 3–301.1
18 Annotated Code of Maryland
19 (2012 Replacement Volume and 2014 Supplement)

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

22 **Article – Criminal Law**

23 3–301.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(B) “CONSENT” MEANS A CLEAR, UNAMBIGUOUS, KNOWING, INFORMED,**
2 **AND VOLUNTARY AGREEMENT TO ENGAGE IN VAGINAL INTERCOURSE, A SEXUAL**
3 **ACT, OR SEXUAL CONTACT.**

4 **[(b)] (C)** “Mentally defective individual” means an individual who suffers from
5 mental retardation or a mental disorder, either of which temporarily or permanently
6 renders the individual substantially incapable of:

7 (1) appraising the nature of the individual’s conduct;

8 (2) resisting vaginal intercourse, a sexual act, or sexual contact; or

9 (3) communicating unwillingness to submit to vaginal intercourse, a sexual
10 act, or sexual contact.

11 **[(c)] (D)** “Mentally incapacitated individual” means an individual who, because
12 of the influence of a drug, narcotic, or intoxicating substance, or because of an act committed
13 on the individual without the individual’s consent or awareness, is rendered substantially
14 incapable of:

15 (1) appraising the nature of the individual’s conduct; or

16 (2) resisting vaginal intercourse, a sexual act, or sexual contact.

17 **[(d)] (E)** “Physically helpless individual” means an individual who:

18 (1) is unconscious; or

19 (2) (i) does not consent to vaginal intercourse, a sexual act, or sexual
20 contact; and

21 (ii) is physically unable to resist, or communicate unwillingness to
22 submit to, vaginal intercourse, a sexual act, or sexual contact.

23 **[(e)] (F)** (1) “Sexual act” means any of the following acts, regardless of
24 whether semen is emitted:

25 (i) analingus;

26 (ii) cunnilingus;

27 (iii) fellatio;

28 (iv) anal intercourse, including penetration, however slight, of the
29 anus; or

1 (v) an act:

2 1. in which an object or part of an individual's body
3 penetrates, however slightly, into another individual's genital opening or anus; and

4 2. that can reasonably be construed to be for sexual arousal
5 or gratification, or for the abuse of either party.

6 (2) "Sexual act" does not include:

7 (i) vaginal intercourse; or

8 (ii) an act in which an object or part of an individual's body
9 penetrates an individual's genital opening or anus for an accepted medical purpose.

10 **[(f)] (G)** (1) "Sexual contact", as used in §§ 3-307, 3-308, and 3-314 of this
11 subtitle, means an intentional touching of the victim's or actor's genital, anal, or other
12 intimate area for sexual arousal or gratification, or for the abuse of either party.

13 (2) "Sexual contact" does not include:

14 (i) a common expression of familial or friendly affection; or

15 (ii) an act for an accepted medical purpose.

16 **[(g)] (H)** (1) "Vaginal intercourse" means genital copulation, whether or not
17 semen is emitted.

18 (2) "Vaginal intercourse" includes penetration, however slight, of the
19 vagina.

20 **3-301.1.**

21 **(A) FOR THE PURPOSES OF THIS SUBTITLE, A DETERMINATION OF**
22 **WHETHER CONSENT WAS GIVEN SHALL BE MADE IN ACCORDANCE WITH THIS**
23 **SECTION.**

24 **(B) CONSENT MAY NOT BE IMPUTED FROM SILENCE, INACTION, OR**
25 **PREVIOUS INSTANCES IN WHICH CONSENT WAS OBTAINED.**

26 **(C) IT IS THE RESPONSIBILITY OF AN INDIVIDUAL WHO ENGAGES IN**
27 **VAGINAL INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT WITH ANOTHER**
28 **PERSON TO OBTAIN AFFIRMATIVE CONSENT FROM THAT INDIVIDUAL FOR THE**
29 **ACTIVITY BEFORE ENGAGING IN THE ACTIVITY.**

1 **(D) CONSENT MAY BE WITHDRAWN AT ANY TIME FOR ANY REASON, AT**
2 **WHICH TIME AN INDIVIDUAL ENGAGED IN VAGINAL INTERCOURSE, A SEXUAL ACT,**
3 **OR SEXUAL CONTACT MUST CEASE THE ACTIVITY.**

4 **(E) THE RESPONSIBILITY TO OBTAIN CONSENT AFFIRMATIVELY APPLIES TO**
5 **AN INDIVIDUAL WHO ENGAGES IN VAGINAL INTERCOURSE, A SEXUAL ACT, OR**
6 **SEXUAL CONTACT EVEN IF THAT INDIVIDUAL IS UNDER THE INFLUENCE OF A DRUG**
7 **OR ANOTHER INTOXICATING SUBSTANCE.**

8 **(F) AN INDIVIDUAL IS INCAPABLE OF PROVIDING CONSENT TO ENGAGE IN**
9 **VAGINAL INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT IF THE INDIVIDUAL IS:**

10 **(1) A MENTALLY DEFECTIVE INDIVIDUAL;**

11 **(2) A MENTALLY INCAPACITATED INDIVIDUAL;**

12 **(3) A PHYSICALLY HELPLESS INDIVIDUAL; OR**

13 **(4) OTHERWISE INCAPABLE, PERMANENTLY OR TEMPORARILY, OF**
14 **AFFIRMATIVELY COMMUNICATING THE CONSENT OF THE INDIVIDUAL TO THE**
15 **VAGINAL INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT.**

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2015.