

SENATE BILL 755

E1, E4

3lr2571
CF HB 748

By: **Senator Muse**

Introduced and read first time: February 6, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Law Enforcement Officers – Sexual Contact With Person in Custody – Penalty**

3 FOR the purpose of altering penalties relating to sexual contact with a person who is under
4 arrest, in detention, or otherwise in the actual custody of a law enforcement officer
5 under certain circumstances; and generally relating to law enforcement officers.

6 BY repealing and reenacting, with amendments,
7 Article – Criminal Law
8 Section 3–307 and 3–314
9 Annotated Code of Maryland
10 (2021 Replacement Volume and 2022 Supplement)

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

13 **Article – Criminal Law**

14 3–307.

15 (a) A person may not:

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

18 (ii) 1. Employ or display a dangerous weapon, or a physical
19 object that the victim reasonably believes is a dangerous weapon;

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

(2) engage in sexual contact with another if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual;

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

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

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

(B) (1) IN THIS SUBSECTION, "LAW ENFORCEMENT OFFICER" HAS THE MEANING STATED IN § 1-101 OF THE PUBLIC SAFETY ARTICLE.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A LAW ENFORCEMENT OFFICER MAY NOT ENGAGE IN SEXUAL CONTACT, VAGINAL INTERCOURSE, OR A SEXUAL ACT WITH A PERSON:

(I) WHO IS A VICTIM, WITNESS, OR SUSPECT IN AN OPEN INVESTIGATION THAT THE LAW ENFORCEMENT OFFICER IS CONDUCTING, SUPERVISING, OR ASSISTING WITH IF THE LAW ENFORCEMENT OFFICER KNEW OR SHOULD HAVE KNOWN THAT THE PERSON IS A VICTIM, WITNESS, OR SUSPECT IN THE INVESTIGATION;

(II) REQUESTING ASSISTANCE FROM OR RESPONDING TO THE LAW ENFORCEMENT OFFICER IN THE COURSE OF THE LAW ENFORCEMENT OFFICER'S OFFICIAL DUTIES; OR

(III) IN THE CUSTODY OF THE LAW ENFORCEMENT OFFICER.

(3) PARAGRAPH (2)(I) AND (II) OF THIS SUBSECTION DOES NOT APPLY IF THE LAW ENFORCEMENT OFFICER:

(I) HAD A PRIOR EXISTING LEGAL SEXUAL RELATIONSHIP WITH
THE PERSON; AND

(II) DID NOT ACT UNDER THE COLOR OR PRETENSE OF OFFICE
OR UNDER COLOR OF OFFICIAL RIGHT WHEN SEEKING CONSENT TO THE VAGINAL
INTERCOURSE, SEXUAL ACT, OR SEXUAL CONTACT.

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

3–314.

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

(2) (i) “Correctional employee” means a:

1. correctional officer, as defined in § 8–201 of the
Correctional Services Article; or

2. managing official or deputy managing official of a
correctional facility.

(ii) “Correctional employee” includes a sheriff, warden, or other
official who is appointed or employed to supervise a correctional facility.

(3) “Court–ordered services provider” means a person who provides
services to an individual who has been ordered by the court, the Division of Parole and
Probation, or the Department of Juvenile Services to obtain those services.

(4) (i) “Inmate” has the meaning stated in § 1–101 of this article.

(ii) “Inmate” includes an individual confined in a community adult
rehabilitation center.

[(5) “Law enforcement officer” has the meaning stated in § 1–101 of the
Public Safety Article.]

(b) (1) This subsection applies to:

(i) a correctional employee;

(ii) any other employee of the Department of Public Safety and
Correctional Services or a correctional facility;

(iii) an employee of a contractor providing goods or services to the
Department of Public Safety and Correctional Services or a correctional facility; and

(iv) any other individual working in a correctional facility, whether on a paid or volunteer basis.

(2) A person described in paragraph (1) of this subsection may not engage in sexual contact, vaginal intercourse, or a sexual act with an inmate.

(c) A person may not engage in sexual contact, vaginal intercourse, or a sexual act with an individual confined in a child care institution licensed by the Department of Juvenile Services, a detention center for juveniles, or a facility for juveniles listed in § 9–226(b) of the Human Services Article.

(d) A court–ordered services provider may not engage in sexual contact, vaginal intercourse, or a sexual act with an individual ordered to obtain services while the order is in effect.

[(e) (1) Except as provided in paragraph (2) of this subsection, a law enforcement officer may not engage in sexual contact, vaginal intercourse, or a sexual act with a person:

(i) who is a victim, witness, or suspect in an open investigation that the law enforcement officer is conducting, supervising, or assisting with if the law enforcement officer knew or should have known that the person is a victim, witness, or suspect in the investigation;

(ii) requesting assistance from or responding to the law enforcement officer in the course of the law enforcement officer’s official duties; or

(iii) in the custody of the law enforcement officer.

(2) Paragraph (1)(i) and (ii) of this subsection does not apply if the law enforcement officer:

(i) had a prior existing legal sexual relationship with the person; and

(ii) did not act under the color or pretense of office or under color of official right when seeking consent to the vaginal intercourse, sexual act, or sexual contact.]

[(f)] (E) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both.

[(g)] (F) A sentence imposed for a violation of this section may be separate from and consecutive to or concurrent with a sentence for another crime under § 3–303, § 3–304, or §§ 3–307 through 3–310 of this subtitle, or § 3–305, § 3–306, § 3–311, or § 3–312 of this subtitle as the sections existed before October 1, 2017.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2023.