

# SENATE BILL 217

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CF HB 429

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By: **Senators Kelley, Astle, Benson, Cassilly, Conway, Currie, DeGrange, Eckardt, Ferguson, Guzzone, Kagan, Kasemeyer, King, Klausmeier, Lee, Madaleno, Manno, McFadden, Middleton, Nathan-Pulliam, Pinsky, Ready, Reilly, Robinson, Rosapepe, Simonaire, ~~and Smith~~ Smith, Zirkin, Hough, Muse, Norman, Brochin, and Ramirez**

Introduced and read first time: January 19, 2017

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 21, 2017

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Law – Sexual Offenses – Physical Resistance**

3 FOR the purpose of establishing that evidence of physical resistance by a certain victim is  
4 not required to prove that a certain sexual crime was committed; establishing that a  
5 certain provision of this Act may not be construed to affect the admissibility of  
6 evidence of actual physical resistance by a certain victim; ~~altering certain definitions;~~  
7 and generally relating to sexual offenses.

8 ~~BY repealing and reenacting, with amendments,~~  
9 ~~Article – Criminal Law~~  
10 ~~Section 3–301~~  
11 ~~Annotated Code of Maryland~~  
12 ~~(2012 Replacement Volume and 2016 Supplement)~~

13 BY adding to  
14 Article – Criminal Law  
15 Section 3–319.1  
16 Annotated Code of Maryland  
17 (2012 Replacement Volume and 2016 Supplement)

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### 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.



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

**Article – Criminal Law**

~~§ 301.~~

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

(b) ~~“Mentally incapacitated individual” means an individual who, because of the influence of a drug, narcotic, or intoxicating substance, or because of an act committed on the individual without the individual’s consent or awareness, is rendered substantially incapable of:~~

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

(2) ~~[resisting] COMMUNICATING ABOUT vaginal intercourse, a sexual act, or sexual contact.~~

(c) ~~“Physically helpless individual” means an individual who:~~

(1) ~~is unconscious; or~~

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

(ii) ~~is physically unable to [resist, or communicate unwillingness to submit to,] COMMUNICATE ABOUT vaginal intercourse, a sexual act, or sexual contact.~~

(d) (1) ~~“Sexual act” means any of the following acts, regardless of whether semen is emitted:~~

(i) ~~analingus;~~

(ii) ~~cunnilingus;~~

(iii) ~~fellatio;~~

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

(v) ~~an act:~~

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

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

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

~~(i) vaginal intercourse; or~~

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

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

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

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

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

~~(f) "Substantially cognitively impaired individual" means an individual who suffers from an intellectual disability or a mental disorder, either of which temporarily or permanently renders the individual substantially incapable of:~~

~~(1) appraising the nature of the individual's conduct; OR~~

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

~~(3) communicating unwillingness to submit to] COMMUNICATING ABOUT vaginal intercourse, a sexual act, or sexual contact.~~

~~(g) (1) "Vaginal intercourse" means genital copulation, whether or not semen is emitted.~~

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

### **3-319.1.**

**(A) EVIDENCE OF PHYSICAL RESISTANCE BY THE VICTIM IS NOT REQUIRED TO PROVE THAT A CRIME UNDER THIS SUBTITLE WAS COMMITTED.**

**(B) THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION MAY NOT BE CONSTRUED TO AFFECT THE ADMISSIBILITY OF EVIDENCE OF ACTUAL PHYSICAL RESISTANCE BY THE VICTIM.**

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2017.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.