

WILLIAM DONALD SCHAEFER, Governor

(1987 Replacement Volume and 1989 Supplement)

Preamble

~~WHEREAS, The Court of Appeals held in Nightingale v. State, 312 Md. 699 (1988) that if an individual is convicted of child abuse based solely on evidence of a sexual offense for which the individual has also been convicted, a court may not impose separate sentences on the individual for both the child abuse and the sexual offense; and~~

~~WHEREAS, The United States Supreme Court held in Missouri v. Hunter, 459 U.S. 359 (1983) that if a legislature specifically authorizes cumulative punishment under two statutes, a prosecutor may seek and a trial court or jury may impose cumulative punishment under such statutes in a single trial; and~~

~~WHEREAS, The General Assembly intends to overrule the holding in Nightingale v. State so as to permit a court to impose a sentence on an individual convicted of child abuse separate from and consecutive to a sentence for any other offense for which the individual is convicted that is based on the act or acts establishing the abuse; now, therefore,~~

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

Article 27 – Crimes and Punishments

35A.

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

(2) “Abuse” means:

(i) The sustaining of physical injury by a child as a result of cruel or inhumane treatment or as a result of a malicious act by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby; or

(ii) Sexual abuse of a child, whether physical injuries are sustained or not.

(3) “Child” means any individual under the age of 18 years.

(4) (i) “Sexual abuse” means any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child.

(ii) “Sexual abuse” includes, but is not limited to: .

1. Incest, rape, or sexual offense in any degree;
2. Sodomy; and