

3-304. RAPE IN THE SECOND DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT ENGAGE IN VAGINAL INTERCOURSE WITH ANOTHER:

(1) BY FORCE, OR THE THREAT OF FORCE, WITHOUT THE CONSENT OF THE OTHER;

(2) IF THE VICTIM IS A MENTALLY DEFECTIVE INDIVIDUAL, A MENTALLY INCAPACITATED INDIVIDUAL, OR A PHYSICALLY HELPLESS INDIVIDUAL, AND THE PERSON PERFORMING THE ACT KNOWS OR REASONABLY SHOULD KNOW THAT THE VICTIM IS A MENTALLY DEFECTIVE INDIVIDUAL, A MENTALLY INCAPACITATED INDIVIDUAL, OR A PHYSICALLY HELPLESS INDIVIDUAL; OR

(3) IF THE VICTIM IS UNDER THE AGE OF 14 YEARS, AND THE PERSON PERFORMING THE ACT IS AT LEAST 4 YEARS OLDER THAN THE VICTIM.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF RAPE IN THE SECOND DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 463.

In this section and throughout this subtitle, the references to "against the will" are deleted as included with references to "without the consent". The Court of Appeals has determined that "against the will" and "without the consent" are synonymous in the law of rape. See, e.g., *State v. Rusk*, 289 Md. 230 (1981).

In subsection (a)(2) of this section, the references to the "victim" are substituted for the former references to the "other person" for clarity and consistency within this subtitle.

Defined terms: "Mentally defective individual" § 3-301

"Mentally incapacitated individual" § 3-301

"Person" § 1-101

"Physically helpless individual" § 3-301

"Vaginal intercourse" § 3-301

3-305. SEXUAL OFFENSE IN THE FIRST DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) ENGAGE IN A SEXUAL ACT WITH ANOTHER BY FORCE, OR THE THREAT OF FORCE, WITHOUT THE CONSENT OF THE OTHER; AND

(2) (I) EMPLOY OR DISPLAY A DANGEROUS WEAPON, OR A PHYSICAL OBJECT THAT THE VICTIM REASONABLY BELIEVES IS A DANGEROUS WEAPON;