

# HOUSE BILL 822

E1, E4

6lr2703

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By: **Delegates Atterbeary, Dumais, Kittleman, McComas, Moon, Morales, Rosenberg, Sanchez, Smith, Sydnor, Valentino-Smith, and B. Wilson**

Introduced and read first time: February 8, 2016

Assigned to: Judiciary

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Committee Report: Favorable

House action: Adopted

Read second time: March 8, 2016

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

1 AN ACT concerning

2 **Criminal Law – Altering References From Mentally Defective to Substantially**  
3 **Cognitively Impaired Individual**

4 FOR the purpose of altering references to the term “mentally defective” individual to  
5 “substantially cognitively impaired” individual in provisions of law concerning  
6 certain sexual offenses and in provisions of law concerning the licensing of certain  
7 individuals to engage in business as an explosives manufacturer or dealer or to  
8 possess explosives for certain purposes; making stylistic changes; and generally  
9 relating to the term “mentally defective individual”.

10 BY repealing and reenacting, with amendments,  
11 Article – Criminal Law  
12 Section 3–301, 3–304(a)(2), 3–306(a)(2), and 3–307(a)(2)  
13 Annotated Code of Maryland  
14 (2012 Replacement Volume and 2015 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – Public Safety  
17 Section 11–107(b)(7)  
18 Annotated Code of Maryland  
19 (2011 Replacement Volume and 2015 Supplement)

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

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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.



**Article – Criminal Law**

1

2 3–301.

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

4 (b) [“Mentally defective individual” means an individual who suffers from mental  
5 retardation or a mental disorder, either of which temporarily or permanently renders the  
6 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)] “Mentally incapacitated individual” means an individual who, because of the  
12 influence of a drug, narcotic, or intoxicating substance, or because of an act committed on  
13 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)] (C) “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; and21 (ii) is physically unable to resist, or communicate unwillingness to  
22 submit to, vaginal intercourse, a sexual act, or sexual contact.23 [(e)] (D) (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;

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

3 (v) an act:

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

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

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

9 (i) vaginal intercourse; or

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

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

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

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

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

18 **(F) "SUBSTANTIALLY COGNITIVELY IMPAIRED INDIVIDUAL" MEANS AN**  
19 **INDIVIDUAL WHO SUFFERS FROM AN INTELLECTUAL DISABILITY OR A MENTAL**  
20 **DISORDER, EITHER OF WHICH TEMPORARILY OR PERMANENTLY RENDERS THE**  
21 **INDIVIDUAL SUBSTANTIALLY INCAPABLE OF:**

22 **(1) APPRAISING THE NATURE OF THE INDIVIDUAL'S CONDUCT;**

23 **(2) RESISTING VAGINAL INTERCOURSE, A SEXUAL ACT, OR SEXUAL**  
24 **CONTACT; OR**

25 **(3) COMMUNICATING UNWILLINGNESS TO SUBMIT TO VAGINAL**  
26 **INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT.**

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

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

1 3–304.

2 (a) A person may not engage in vaginal intercourse with another:

3 (2) if the victim is a [mentally defective] **SUBSTANTIALLY COGNITIVELY**  
4 **IMPAIRED** individual, a mentally incapacitated individual, or a physically helpless  
5 individual, and the person performing the act knows or reasonably should know that the  
6 victim is a [mentally defective] **SUBSTANTIALLY COGNITIVELY IMPAIRED** individual, a  
7 mentally incapacitated individual, or a physically helpless individual; or

8 3–306.

9 (a) A person may not engage in a sexual act with another:

10 (2) if the victim is a [mentally defective] **SUBSTANTIALLY COGNITIVELY**  
11 **IMPAIRED** individual, a mentally incapacitated individual, or a physically helpless  
12 individual, and the person performing the sexual act knows or reasonably should know that  
13 the victim is a [mentally defective] **SUBSTANTIALLY COGNITIVELY IMPAIRED** individual,  
14 a mentally incapacitated individual, or a physically helpless individual; or

15 3–307.

16 (a) A person may not:

17 (2) engage in sexual contact with another if the victim is a [mentally  
18 defective] **SUBSTANTIALLY COGNITIVELY IMPAIRED** individual, a mentally  
19 incapacitated individual, or a physically helpless individual, and the person performing the  
20 act knows or reasonably should know the victim is a [mentally defective] **SUBSTANTIALLY**  
21 **COGNITIVELY IMPAIRED** individual, a mentally incapacitated individual, or a physically  
22 helpless individual;

23 **Article – Public Safety**

24 11–107.

25 (b) Subject to subsection (c) of this section, the State Fire Marshal shall deny an  
26 application for a license or permit if the State Fire Marshal finds that:

27 (7) the applicant, or an officer, agent, or employee of the applicant who will  
28 be handling explosives, has been adjudicated [mentally defective] **SUBSTANTIALLY**  
29 **COGNITIVELY IMPAIRED** as defined in § 3–301 of the Criminal Law Article;

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
31 October 1, 2016.