

A009-0304

10 AN ACT CONCERNING

20 CRIMINAL LAW-MAKING THIRD TRIMESTER ABORTIONS A
30 CRIMINAL OFFENSE WITH EXCEPTIONS

40 FOR the purpose of making third trimester abortions illegal in the State of
50 Maryland except for cases of physical endangerment of the mother, physical endangerment to
60 the fetus, or where the fetus cannot survive outside the womb less than a year after birth.

70 BY adding to
80 Article-Criminal Law
90 Section 2
100 Annotated Code of Maryland
110 (2003 Replacement Volume)

130 AND repealing and reenacting, with amendments,
140 Article-Health General
150 Section 20-209
160 Annotated Code of Maryland
170 (2003 Replacement Volume)

180 **SECTION 1. BE IT ENACTED BY THE MARYLAND STUDENT LEGISLATURE,**
190 that the laws of Maryland read as follows:

200 **Article - Criminal Law**

210 § 2-210

220 (A) *“ABORTION” DEFINED.* – IN THIS SECTION, “ABORTION” SHALL BE DEFINED AS THE
230 TERMINATION OF A PREGNANCY AFTER, ACCOMPANIED BY, RESULTING IN, OR
240 CLOSELY FOLLOWED BY THE DEATH OF THE FETUS.

250 (B) *“THIRD TRIMESTER” DEFINED* – IN THIS SECTION, “THIRD TRIMESTER” SHALL BE
260 DEFINED AS THE TWENTY-EIGHTH WEEK OF GESTATION OF THE FETUS
270 UNTIL THE LIVE BIRTH OF THE FETUS.

280 (C) *“BIRTH MOTHER” DEFINED* – IN THIS SECTION, “BIRTH MOTHER” SHALL BE
290 DEFINED AS THE FEMALE WHO IS BEARING IN THEIR UTERUS A FETUS.

300 (D) IN *GENERAL* - A MURDER IS IN THE THIRD DEGREE IF IT IS:

310 (1) AN ABORTION DELIBERATELY PERFORMED ON A FETUS BEING IN THE THIRD
320 TRIMESTER; OR

330 (2) A DELIBERATE ATTEMPT TO PERFORM AN ABORTION ON A FETUS BEING IN THE
340 THIRD TRIMESTER; OR

350 (3) AN ABORTION WHICH OCCURS DURING OR AN ATTEMPT TO PERPETRATE:

360 (I) ARSON IN THE FIRST DEGREE; OR

370 (II) BURNING A BARN, STABLE, TOBACCO HOUSE, WAREHOUSE, OR OTHER
380 OUTBUILDING THAT:

390 1. IS NOT PARCEL TO A DWELLING; AND

400 2. CONTAINS CATTLE, GOODS, WARES, MERCHANDISE, HORSES, GRAIN, HAY, OR
410 TOBACCO;

420 (III) BURGLARY IN THE FIRST, SECOND, OR THIRD DEGREE;

430 (IV) CARJACKING OR ARMED CARJACKING;

440 (V) ESCAPE IN THE FIRST DEGREE FROM A STATE CORRECTIONAL FACILITY OR A
450 LOCAL CORRECTIONAL FACILITY;

460 (VI) KIDNAPPING UNDER § 3-502 OR § 3-503(A)(2) OF THE MARYLAND CRIMINAL CODE;

470 (VII) MAYHEM;

480 (VIII) RAPE;

490 (IX) ROBBERY UNDER § 3-402 OR § 3-403 OF THE MARYLAND CRIMINAL CODE;

500 (X) SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE;

510 (XI) SODOMY; OR

520 (XII) A VIOLATION OF § 4-503 OF THE MARYLAND CRIMINAL CODE.

530 (E) *PENALTY* –

540 1. A PERSON WHO COMMITS A MURDER IN THE THIRD DEGREE UNDER ITEM (D)(1) OR
550 ITEM (D)(2) OF THIS SECTION IS GUILTY OF A
560 MISDEMEANOR AND ON CONVICTION SHALL BE SENTENCED TO:

570 (I) NOT MORE THEN ONE YEAR IN A MARYLAND STATE CORRECTIONAL FACILITY OR
580 A LOCAL CORRECTIONAL FACILITY; AND

590 (II) A FINANCIAL PENALTY OF NOT MORE THAN \$1,000.

600 2. A PERSON WHO COMMITS A MURDER IN THE THIRD DEGREE UNDER ITEM (D)(3)
610 OF THIS SUBSECTION IS GUILY OF A FELONY AND ON CONVICTION SHALL BE
620 SENTENCED TO:

630 (I) NOT MORE THEN 10 YEARS IN A MARYLAND STATE CORRECTIONAL FACILITY
640 OR A LOCAL CORRECTIONAL FACILITY; AND

650 (II) A FINANCIAL PENALTY OF NOT MORE THAN \$50,000.

660 (F) *LIMITATIONS*.-

670 (1) A DEFENDANT MAY NOT BE PROSECUTED UNDER THIS SECTION IF:

680 (I) THE ABORTION OCCURRED OR WAS ATTEMPTED BECAUSE OF THE PHYSICAL
690 ENDANGEREMENT OF THE MOTHER; OR,

700 (II) THE ABORTION OCCURRED OR WAS ATTEMPTED BECAUSE THE
710 FETUS HAD A LIFE EXPECTANCY OF LESS THEN ONE YEAR SUBSEQUENT TO
720 THE BIRTH OF THE FETUS AS DETERMINED BY THE BEST JUDGEMENT OF THE
730 ATTENDING PHYSICIAN; OR

740 (III) THE DEFENDANT WAS THE BIRTH MOTHER OF THE ABORTED FETUS.

750 **Article – Health General**

760 § 20-209

770 ~~(a) *Definition.* – In this section, "viable" means that stage when, in the best medical judgment of the~~
780 ~~attending physician based on the particular facts of the case before the physician, there is a reasonable~~
790 ~~likelihood of the fetus's sustained survival outside the womb.~~

800 ~~(b)~~ (A) *State intervention.* - Except as otherwise provided in this subtitle, the State may not interfere
810 with the decision of a woman to terminate a pregnancy BEFORE THE TWENTY-EIGHTH WEEK OF
820 GESTATION OF THE FETUS.

830 ~~(1) Before the fetus is viable; or~~

840 ~~(2) At any time during the woman's pregnancy, if:~~

850 ~~(1) The termination procedure is necessary to protect the life or health of the woman; or~~

860 ~~(ii) The fetus is affected by genetic defect or serious deformity or abnormality.~~

870 ~~(c)~~ (B) *Regulations.* - The Department may adopt regulations that:

880 (1) Are both necessary and the least intrusive method to protect the life or health of the woman; and

890 (2) Are not inconsistent with established medical practice.

900 ~~(d) *Liability.* – The physician is not liable for civil damages or subject to a criminal penalty for a~~
910 ~~decision to perform an abortion under this section made in good faith and in the physician's best~~
920 ~~medical judgment in accordance with accepted standards of medical practice.~~

930 **SECTION 2. AND BE IT FURTHER ENACTED**, That this act shall take effect on August
940 5, 2004.

950 **MANDATES:** Governor Robert L. Ehrlich Jr.
960 Lt. Governor Michael S. Steele
970 Attorney General J. Joseph Curran, Jr.
980 Senate President Thomas V. "Mike" Miller, Jr.
990 Speaker of the House of Delegates Michael E. Busch
1000 Senate Minority Leader J. Lowell Stoltzfus

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§ 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;
(ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;
(iii) 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;
(iv) commit the crime while aided and abetted by another; or
(v) commit the crime in connection with a burglary in the first, second, or third degree.

§ 3-306. Sexual offense in the second degree.

(a) *Prohibited.*- A person may not engage in a sexual act 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 sexual 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 sexual act is at least 4 years older than the victim.

§ 3-502. Kidnapping.

(a) *Prohibited.*- A person may not, by force or fraud, carry or cause a person to be carried in or outside the State with the intent to have the person carried or concealed in or outside the State.

(c) *Exception.*- Kidnapping does not include the act of a parent in carrying a minor child of that parent in or outside the State.

§ 3-503. Child kidnapping.

(a) *Prohibited.*-

(1) A person may not, without color of right:

(i) forcibly abduct, take, or carry away a child under the age of 12 years from:

1. the home or usual place of abode of the child; or
2. the custody and control of the child's parent or legal guardian;

(ii) without the consent of the child's parent or legal guardian, persuade or entice a child under the age of 12 years from:

1. the child's home or usual place of abode; or
2. the custody and control of the child's parent or legal guardian; or

(iii) with the intent of depriving the child's parent or legal guardian, or any person lawfully possessing the child, of the custody, care, and control of the child, knowingly secrete or harbor a child under the age of 12 years.

(2) In addition to the prohibitions provided under paragraph (1) of this subsection, a person may not, by force or fraud, kidnap, steal, take, or carry away a child under the age of 16 years.

§ 3-402. Robbery.

(a) *Prohibited.*- A person may not commit or attempt to commit robbery.

§ 3-403. Robbery with dangerous weapon.

(a) *Prohibited.*- A person may not commit or attempt to commit robbery under [§ 3-402 of this](#) subtitle with a dangerous weapon.

§ 4-503. Manufacture or possession of destructive device.

(a) *Prohibited.*- A person may not knowingly:

- (1) manufacture, transport, possess, control, store, sell, distribute, or use a destructive device; or
- (2) possess explosive material, incendiary material, or toxic material with intent to create a destructive devices.