

CHANGES IN THE  
MARYLAND  
STATUTORY RAPE LAWS  
DURING  
THE PROGRESSIVE ERA

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## Introduction

Setting out to study the evolution of the statutory rape laws in the state of Maryland several months ago, I had the impression that the laws, passed by a majority of the states during late nineteenth century, which raised the 'age of consent' for sexual intercourse were based on a combination of Progressive Era paternalism and Christian ideology, culminating in the social and legal requirement that a bride be chaste.<sup>1</sup> My second theory, perhaps derived from modern ideas, on why the legislators differentiated between the crime of rape and that of statutory rape was that by removing the question of the girl's consent (her youth and innocence, in addition to any supposedly natural lack of interest in sexual matters, render her incapable of the level of experience and maturity necessary for legally binding consent) it was easier to obtain a conviction for what was deemed as essentially a forced or at least coerced sexual intercourse with a young woman or child.

As my studies unfolded, other goals hoped to be attained through raising the age of consent became apparent. The Christian morality prohibiting premarital sexual relations as sinful, what I had considered to be the crux of the issue, was

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1. A wife's unchastity prior to marriage, if unknown to her husband at the time of their marriage, was grounds for divorce, Henry D. Harlan, The Law of Domestic Relations in Maryland at 33 (1909).

still a consideration, but became overshadowed by other concerns. Instead, the Progressive Era changes raising the age of consent for statutory rape seem to have been based largely on widespread fears that thousands of rural young women were abducted and sold into prostitution, or were lured from their farms into the cities with hopes of obtaining employment and, once there, were tricked by devious, conniving and often married men into engaging in sexual relations based upon false promises of marriage. They were then robbed and abandoned. Left "defiled" and penniless, the young women and girls had few or no alternatives but to turn to prostitution in order to survive.

#### The Common Law Age of Consent

Part of the British common law definition of rape, codified in the British Statute of Elizabeth, chapter 7, section 4, was an 'age of consent', established to include the carnal knowledge of a female under ten years of age, in which the question of the female's consent to sexual intercourse was irrelevant to a conviction for rape.<sup>2</sup> Prosecutions for rape were made under this British statute while Maryland was still a province and later as a state. In 1642, the government opposed the official extension of the British statutes to apply

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2.75 C.J.S. Rape 1 (1959). The carnal knowledge of a female under the age of ten years, with or without her consent, was held a felony under British common law.

in Maryland. Instead they passed an act which set punishments for particular "less capital offences", including rape, to be judicially determined as closely as possible to the British laws.

However, offenders were still being capitally convicted, presumably under the Statute of Elizabeth, up until the passage of the Act concerning crimes and punishments in 1809. Chapter 138 of this act allowed judicial discretion between sentencing either capital punishment or incarceration for those convicted of the carnal knowledge of a female under the age of ten years.<sup>3</sup> The law remained virtually unchanged until the late 1800's.<sup>4</sup> Then, near the end of the nineteenth century, the Maryland legislature began a series of enactments raising the age of consent from under ten years of age to fourteen years, adding the insane to those females deemed incapable of consent, and creating a lesser crime, a misdemeanor, for the carnal knowledge of a female between the ages of fourteen and sixteen

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3.W. Kilty, A Report of all such English Statutes as Existed at the Time of the First Emigration of the People of Maryland, and Which by Experience Have Been Found Applicable to Their Local and Other Circumstances; and of such Others as Have Been Made in England or Great-Britain, and Have Been Introduced, Used or Practised, by the Courts of Law or Equity; and also all such Parts of the Same as may be Proper to be Introduced and Incorporated into the Body of the Statute Law of the State 213 (1811). See also 'Carnal Knowledge' in the appendix for a more complete description of the statutes and subsequent history.

4.Md. Code Pub. Gen. Laws, art. 30, secs. 161-62 (Scott and McCullough 1860) indicates the minimum sentence was increased from one year to eighteen months.

years who is not the perpetrator's wife.<sup>5</sup> These laws were codified by 1904 and again remained virtually unchanged until sometime after 1961, with the most comprehensive reforms occurring with the enactment of the Sexual Offense Statute in 1976.<sup>6</sup>

### Early Public Sentiment

Prostitution during the Colonial days was small-scale and hardly noticed by society. Only periodic unofficial outbreaks of harassment by gangs predated the Progressive Era reformers and their activities. As such an insignificant problem, most of society viewed prostitution as a necessary evil; necessary to alleviate the sexual desires of men without disturbing the sanctity of the home, and treated it with quiet tolerance.<sup>7</sup>

Still maintaining the quiet tolerance in the middle of the nineteenth century, police departments began to attack prostitution. Through arrests of prostitutes, madams and procurers based on charges of "lewdness, vagrancy or keeping a disorderly house," they were able to force prostitution into hiding, either in wealthy neighborhoods or in the slums.

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5. See Appendix for carnal knowledge statutes enacted during the Maryland General Assembly Sessions of 1888 and 1892.

6. 18 M.L.E. Rape (1961); R. Gilbert and C. Moylan, Jr., Maryland Criminal Law: Practice and Procedure sec. 3 (1983).

7. R. Rosen, The Lost Sisterhood. Prostitution in America, 1900-1918 at 4-5 (1982).

Madams bought immunity from raids by payment of fines or by keeping silent about their wealthy patrons. In the poor neighborhoods, prostitution was largely ignored and red-light districts were formed in which houses of ill-fame were raided only when they failed to pay off the local police or when society demanded a show of moral authority.<sup>8</sup>

### The Progressive Era in England

Beginning around 1850, industrialization and urbanization skyrocketed in England, with the usual attendant problems of sanitation, health, overcrowding, etc., related to any urban unchecked rapid growth. The British public grew increasingly concerned for the future and fear that civilization was going amok with vice and corruption was widespread. Prostitution, viewed as a symbol of vice and corruption, was also a source of venereal diseases, and became a major social issue in England during the second half of the nineteenth century.<sup>9</sup> The literature of the day greatly exaggerated the numbers of prostitutes in existence, often citing as many as 80,000 in London alone, thus playing on public fears that corruption was pervasive and intractable.<sup>10</sup>

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8. Id.

9. K. Nield, Introduction to Prostitution in the Victorian Age. Debates on the Issue from 19th Century Critical Journals at ii-iii (1973).

10. Id. at iii.

The English government passed a bill in 1849 designed to protect women under the age of twenty-one from fraudulent inducement into prostitution, but by failing to raise the age of consent from age twelve, it actually encouraged juvenile prostitution.<sup>11</sup> The legislature then attempted to attack the problem in 1859 by enforcing the Metropolitan Police Act of 1839, which succeeded in sending the prostitutes off the streets, but into the brothels, pubs and lodging houses, and did nothing to stop the spread of disease.

In 1864, 1866 and 1869, three successive Contagious Diseases Acts were enacted. Aimed at reaching the men in the armed forces where venereal disease was deemed most prevalent, these acts authorized the police to stop any woman in a garrison or port town whom they considered to be a common prostitute potentially suffering from a venereal disease, and to require her to submit to a medical examination every two weeks and a compulsory detention for up to nine months in the 'Lock Ward' of a hospital if disease was found.<sup>12</sup> Although originally slated to be tested as well, most regiments had dropped sailors from compulsory medical examinations by 1859, because it disgusted the medical officers.

Questions of the legality and the usefulness of the Acts soon arose, and by 1869 two groups had formed for their repeal.

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11. Id. at vii.

12. Id. at vii-viii. The statute established Lock Wards specifically for the detention of diseased prostitutes. J. Walkowitz, Prostitution and Victorian Society (1980).

A woman named Josephine Butler quickly rose to the forefront of the movement through her writings and speeches urging repeal, insisting on a single standard of morality for both men and women. Butler attacked the discretion allowed to the police, in determining who was to be subjected to the examinations as potentially subjecting respectable women to wrongful arrest and compulsory medical examination.<sup>13</sup> These "abolitionists" finally succeeded in the repeal of the Acts in 1886, just one year after the Pall Mall Gazette recaptured the public eye by publishing stories detailing cases of child prostitution and international white slavery.<sup>14</sup>

#### Urbanization and Industrialization Set the Scene

After 1850, the demography of the country began to change from principally rural to more urban and industrial, beginning in the northeast and then spreading down along the eastern shore and finally westward.<sup>15</sup> The explosion of industrialization in Maryland occurred primarily between 1870 and 1917, with the men's clothing industry as the largest early employer who provided the greatest income, and flour and grist mill producers as the leading employer of processed

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13. Nield, supra, at x-xi.

14. Id. at vii.

15. Rosen, supra, at 4.



agricultural products.<sup>16</sup> After 1900, canned seafood, vegetables and fruit became the leading agricultural products.<sup>17</sup>

Farm families became increasingly dependent on market-obtained goods, which were paid for with wages earned at hard to find jobs outside the farm. Ceasing to be self-contained economic units, young women were rendered 'superfluous' on the farm. Their families could no longer afford to support them, forcing them to seek employment in the cities as domestic servants, in industry such as the laundries, or, often unable to find any alternative, as prostitutes.<sup>18</sup>

In addition to the large numbers of rural young women seeking employment in the cities, during the 1870's a "new immigration" wave began composed of immigrants from eastern, central and southern Europe, and creating an immigrant population equalling ten percent of the entire Maryland population by the year 1890.<sup>19</sup> The large growth of heavy industry in the 1880's, employing many men and few women, as well as increasing militarization, produced an unbalanced ratio of men to women in the cities, creating a sizeable and regular

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16. See, e.g., S. Chappelle, J. Baker, D. Esslinger, W. Ridgway, J. Russo, C. Schulz, G. Stiverson, and the Johns Hopkins Univ. Press, Maryland, a History of its People 177 (1986) [hereinafter Maryland].

17. Id.

18. Rosen, supra, at 3.

19. Maryland, supra, at 181-82.

market for prostitutes.<sup>20</sup>

The steady increase in numbers of prostitutes and "bawdy houses" nationwide reflected this imbalance of single, largely immigrant and lower class men employed in cities such as Baltimore.<sup>21</sup> It has been suggested that the numbers of prostitutes peaked during this period, prior to the public furor over their numbers at the turn of the century.<sup>22</sup>

#### Concern at the Federal Level

Among the crimes enumerated by the Forty-Third Congress in 1874, a rape within the maritime jurisdiction of the United States was punished by death, with no provision allowing for a jail sentence.<sup>23</sup> This is much harsher than the punishment for a rape occurring at the same time in Maryland (providing, at the court's discretion, death or a sentence lasting between eighteen months and twenty-one years).<sup>24</sup> If a female were seduced upon the high seas by a sailor with false promises of marriage, the sailor might be imprisoned or fined, and, at the

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20. Rosen, supra at 4.

21. Id. at 3.

22. Id. It certainly seems reasonable to me that there might be a time lag between the actual crush of prostitutes, and the ability of the public to perceive, discuss and create legislation to try to eradicate the problem.

23. Crimes, sec. 5345, 1873-74 U.S. Rev. Stat. 1043.

24. Md. Code Pub. Gen. Laws, art. 30, sec. 161 (1860).

court's discretion, the fine could be granted to the seduced female for her own use or to care for any resulting offspring.25

In 1875, Congress passed the Alien Prostitution Importation Act26 to prevent importation of foreign women for the purpose

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25. Crimes, sec. 5349-50, 1873-74 U.S. Rev. Stat. 1044, providing:

[e]very master, officer, seaman, or other person employed on board of any American vessel who, during the voyage, under promise of marriage, or by threats, or the exercise of authority, or solicitation, or the making of gifts or presents, seduces and has illicit connection with any female passenger, shall be punished by imprisonment not more than twelve months, or by a fine of not more than one thousand dollars; but subsequent intermarriage of the parties may be pleaded in bar of conviction....When any person is convicted under the provisions of the preceding section, the court may, in its discretion, by an order entered on its minutes, direct the amount of the fine, when imposed and collected, to be paid for the use of the female seduced or her child, if she have any.

26. The Alien Prostitution Importation Act, ch. 141, 18 Stat. 477 (1875) (codified as amended at 18 U.S.C. sec. 1328 (1982)), provides at section 3:

[t]hat the importation into the United States of women for the purposes of prostitution is hereby forbidden; and all contracts and agreements in relation thereto, made in advance or in pursuance of such illegal importation and purposes, are hereby declared void; and whoever shall knowingly and willfully import, or cause any importation of, women into the United States for the purposes of prostitution, or shall knowingly or willfully hold, or attempt to hold, any woman to such purposes, in pursuance of such illegal importation and contract or agreement, shall be deemed guilty of a felony, and, on conviction thereof, shall be imprisoned not exceeding five years and pay a fine not exceeding five thousand dollars.

and further, at section 5:

[t]hat it shall be unlawful for aliens of the following classes to immigrate into the United States, namely, ...women "imported for the purposes of

of prostitution, whether they came willingly or were abducted and sold into prostitution. Over the years, foreign females were increasingly seen as innocent and vulnerable non-English speaking women and girls from Europe and the Orient who were brought to the United States as mistresses, then abandoned and ultimately forced by the sheer necessity of survival into prostitution. Several international conferences for the suppression of vice and prostitution, including several national Women's Christian Temperance Union Conventions, were held during this time.<sup>27</sup>

Congress reacted to these fears and to the reports of Special Immigration Inspector Watchorn, who testified in 1902 that thousands of intimidated and helpless girls were being used as mistresses and then sold into prostitution, left destitute and forced by poverty into prostitution, or simply

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prostitution."

27. E.g., One Women's Christian Temperance Union Convention was held in Chicago, Illinois in 1899. The Women's Christian Temperance Union Convention, 4 Our Day 528 (1889). Another was held in Denver in 1892, wherein Charles Crittenden and Frances Willard met and agreed to form the famous Crittenden Homes for Fallen Women. D. Pivar, Purity Crusade, Sexual Morality and Social Control, 1868-1900 at 154 (1973). The W.C.T.U. was originally dedicated to inducing drinkers to consume with moderation, then to only consume beer and wine and not hard liquors, finally in frustration at their lack of success despite their ever-increasing membership, they changed their policy to strive for the legal enactment of a total prohibition of alcohol. The Women's Christian Temperance Union, 11 Cosmopolitan (between 1886-91).

captured and sold into prostitution.<sup>28</sup> They widened the scope of this act through two amendments to include the importation of girls as well as women and to extend liability to those who imported such females for any other immoral purpose, in addition to prostitution.<sup>29</sup>

In 1899, through its authority over the District of Columbia, the federal government enacted a law creating a misdemeanor for the seduction and carnal knowledge of an unmarried and previously chaste young woman between the ages of sixteen and twenty-one years in the District of Columbia.<sup>30</sup> In a similar manner and on the same day, Congress enacted the laws defining and punishing the crimes within the district of Alaska. Again the Congress stood ready to imprison men for seducing chaste young women with false promises of marriage.<sup>31</sup>

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28.72 Geo. L.J. 1111, 1114 (citing S. Doc. No. 62, 57th Cong., 2d Sess. 216, 221-23 (1902), reprinted in C. Barnes, The White Slave Traffic Act 12-17 (1946)).

29.The Alien Prostitution Importation Act, supra, was amended twice, first in 1903 to include "girls", and again in 1907 to include "any other immoral purpose" and to include persons who would harbor such a female. 72 Geo. L.J. at 1112-14, (citing the Alien Prostitution Importation Act, ch. 1012, 32 Stat. 1213 (1903) and ch. 1134, sec. 3, 34 Stat. 898, 899-900 (1907)).

30.Act of March 3, 1899, ch. 415, sec. 1, 1899 U.S. Stat. 1010.

31.Act of March 3, 1899, ch. 429, Title I, ch. 7, sec. 123, 1899 U.S. Pub. Laws 1271, providing:

[t]hat if any person, under promise of marriage, shall seduce and have illicit connection with any unmarried female of previous chaste character, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than five

In addition, they defined the carnal knowledge of a female under sixteen years as rape, with the punishment for the carnal knowledge of a female under the age of twelve life imprisonment, for other rape (over the age of twelve or forcible and against her will) between three and twenty years imprisonment.<sup>32</sup>

When thirteen countries in 1908, including the United States, signed an agreement to stop international prostitute trafficking<sup>33</sup>, the nation again turned its attention to the problem of prostitution within our own borders. A second report of the Commissioner General of Immigration concluded that state and local authorities had been unable to prevent the

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years, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than five hundred nor more than one thousand dollars. A subsequent marriage of the parties, or offer to marry in good faith, is a defense to a violation of this section.

32. Act of March 3, 1899, ch. 429, Title I, ch. 2, secs. 14-15, 1899 U.S. Pub. Laws 1254-55, providing:

[t]hat whoever has carnal knowledge of a female person, forcibly and against her will, or, being sixteen years of age, carnally knows and abuses a female person under sixteen years of age, with her consent, is guilty of rape.... That a person convicted of rape upon his daughter, or sister, or a female person under twelve years of age, shall be imprisoned in the penitentiary during life; and a person convicted of rape upon any other female person shall be imprisoned in the penitentiary not more than twenty years nor less than three years.

33. International Agreement for the Repression of the Trade in White Women, June 15, 1908, 35 Stat. 1979, T.S. No. 496.

transportation of great numbers of immigrant girls from their initial disembarkment at Ellis Island to brothels.<sup>34</sup> Shortly thereafter, the Mann Act was passed to abolish commercial vice and the coercion of young women into engaging in sexual acts.<sup>35</sup> The Mann Act was designed to attack "White Slavery," defined as the forced prostitution of native born women and girls. The Mann Act prohibited the interstate traffic of women for purposes of prostitution or any other immoral purpose.<sup>35</sup> These Federal reforms affecting our nation's daughters came largely after the nationwide public concern over the problem of prostitution, temperance and a host of other moral reforms had been causing state and local legislatures to change their laws.

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34.72 Geo. L.J. 1111, 1116 (citing the Suppression of the White Slave Traffic, S. Doc. No. 214 [pt. 2], 61st Cong., 2d Sess. (1910)).

35. *Id.* at 1118. The White Slave Traffic Act, ch. 395, 36 Stat. 825 (1910), (codified as amended at 18 U.S.C. 2421-2424 (1982)) (also known as the Mann Act), provides:

[t]hat any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce...any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice;...shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years; or by both such fine and imprisonment, in the discretion of the court.

35. *Id.*

### The Reformers: of Two Minds

There were two waves of antiprostitution reform that swept the country during the nineteenth century. The first specialized antiprostitution group, the American Society for the Prevention of Licentiousness and Vice and the Promotion of Morality, was formed in the mid-1820's, and formulated with the understanding that alcohol and prostitution are twin evils, it was modeled after the American Temperance Union.<sup>36</sup>

The antiprostitution movement in New York City during the 1830's was led by a divinity student named John McDowell.<sup>37</sup> Inspired by the religious fervor of the Second Great Awakening that was sweeping the nation, McDowell and his followers formed the Magdalen Society, dedicated to exposing vice as a means of increasing obedience to the seventh commandment. The society published a paper entitled the Advocate of Moral Reform, exaggerated the numbers of prostitutes in New York City ("at least ten thousand"), and proclaimed the names of gentlemen who frequented brothels. Their sensationalism offending most of the public, the society was taken over by the New York Female Moral Reform Society, which bought the paper and extended its membership across the nation. By 1839, there were 445 auxiliaries nationwide, with goals of "rescuing" prostitutes

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36. Pivar, supra, at 25.

37. Rosen, supra, at 7.



and reforming male sexual habits.<sup>38</sup>

The female reformers had different ideas of the cause of prostitution than the male reformers; the men blamed prostitutes for leading young men into vice, while the women blamed male seducers, adulterers and customers. Although they blamed the men for causing prostitutes' fall into vice, female reformers distributed Bibles to prostitutes, held prayer meetings and taught morality and religion, indicating a belief that prostitutes were morally ignorant. During the 1840's and 1850's, the female reformers began to advocate the opening of male occupations to women as well as higher (livable) wages for women, in recognition of the economic hardships placed on legally employed women. Reformers also opened homes and refuges to prostitutes, taught them trades and sought employment for them.<sup>39</sup>

During the late 1860's and the early 1870's there was a reform movement pushing for the legalization of prostitution. Led by doctors and police officers, they were called reglementationists, for they sought the regulation of

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38. Id.

39. Examples of refuges for fallen women and girls include the Crittenden Homes for Fallen Women, the Bristol Women's Mission, the Female House of Refuge in Baltimore, and in the District of Columbia: shelters run by the Women's Christian Association, the National Association for the Relief of Destitute Colored Women and Children, the House of the Good Shepherd, the Industrial Home School, the Association for 'Works and Mercy', the Female Orphan Asylum and many others. Note: while some refuges for fallen women existed mid-century, the vast majority were established during the second wave of antiprostitution reform in the 1880's and 90's.

prostitution through state registration of prostitutes and surveillance by both doctors and the police, with mandatory medical examinations and hospitalization if venereal disease was diagnosed, as the only solution to an ineradicable problem, where the spread of disease could be controlled and the age and health of the prostitute watched over.<sup>40</sup> Many states considered the legalization of prostitution during this period, but after a few decades of debate, the prostitution abolitionists won out, in Baltimore having to squash the reglementarians in their push for the regulation of prostitution more than once.<sup>41</sup>

The second wave of antiprostitution began in 1870 as a response to the campaign for the regulation of prostitution. These two ideologies competed for control over the laws affecting prostitution; on the one side, the reglementarians viewed prostitution as a necessary evil, and that society should simply regulate it. On the other side, using descriptions for the regulation of prostitution as "the legalization of female slavery", and of prostitution as reducing human relationships to a "mere economic exchange", abolitionists fought to eradicate prostitution, since regulating prostitution was an implicit acceptance of it.<sup>42</sup> The abolitionists were made up of a coalition of feminist,

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40. *Id.* at 9.

41. Pivar, *supra*, at 62.

42. *Id.* at 18.

religious and civil libertarian groups all joined in the effort for achieving "social purity", requiring more than just the elimination of prostitution, but also the censorship of pornography, sex education (?), and the assertion of a woman's right to refuse sex within her marriage.<sup>43</sup>

### Conclusion

The weight of the evidence indicates that the legislative changes raising the age of consent for statutory rape in the state of Maryland during the late 1800's arose from the nationwide concerns that thousands of innocent young American and immigrant women were being captured and sold into prostitution, coerced or misled by false promises of marriage, then robbed of their money (if they had any) and abandoned, penniless, forced thereafter into a life of prostitution and vice. These fears seem to have arisen from Victorian theories of women's character as pure and chaste until corrupted and defiled by exposure to and experience with sexual intercourse and other corrupting influences. When these theories of womanhood were contrasted with the reported 'thousands' of prostitutes lurking in the cities, Victorian society (Maryland and the majority of other states which changed their age of

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43. Rosen, supra, at 10-11.

consent laws)<sup>44</sup> held onto their notions and blamed evil men for causing the problem. While this may be partly true, and who knows how much, economic factors making prostitution more lucrative, attainable and less time-consuming than any other employment alternatives a young woman might have, if any, made at least some choose to become a prostitute. The primary source materials available from this time period in Maryland did not prove helpful in trying to obtain the local sentiments of the people. Several months of the Baltimore Sun produced only scanty legislative histories,<sup>45</sup> and virtually no commentary on the reform movements. The recorded cases from this time period, all appellate level, involved court discussions of criminal procedure, with nary a mention of policy regarding the age of consent.<sup>46</sup>

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44. Pivar, *supra*, at 141-3. The other states and territory which raised the age of consent at least once between 1886 and 1895 are: Alabama, the Arizona Territory, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. *Id.*

45. *E.g.* The Baltimore Sun Supplement, Feb. 12, 1890, at 1, col. 3, provides "[l]eaves to introduce bills were granted:...To Mr. Norwood,...to extend the scope of the law relating to abduction".

46. *See, e.g.* Stevens v. State, 66 Md. 202 (1886) (holding that a defendant, charged with rape and assault with intent to rape, and convicted of rape, the higher crime, has the lesser crime merged into the greater).

APPENDIX

Selected Maryland Statutes, Code Provisions  
and Procedural History

## ABDUCTION

- 1876: ch. 324, sec. 1  
(April 6) "That any person or persons, who shall, for purposes of prostitution, forcibly abduct from her home or usual place of abode, or from the custody or control of her parent or parents, or guardian, any female under the age of eighteen years, or be accessory thereto, or who shall, for said purposes, persuade or entice from her usual place of abode, or from the custody and control of her parent or parents or guardian, any such female so abducted, persuaded or enticed as aforesaid, against the consent of her parent or parents, or guardian, or the person or persons who have the temporary care, custody or control of such female, or be accessory thereto, shall, upon conviction, be deemed guilty of a misdemeanor, and shall undergo imprisonment in the penitentiary, in the discretion of the court, not exceeding a term of eight years."
- (April 8) sec. 2  
"That any person or persons, who shall, without the color of right, forcibly abduct, take or carry away any child under the age of twelve years, from the home or usual place of abode of such child, or from the custody and control of the parent or parents, or lawful guardian or guardians of such child, or be accessory thereto, or who shall, without such color of right, and against the consent of the parent or parents, or lawful guardian or guardians of such child, persuade or entice from the usual place of abode or house of such child, or from the custody and control of the parent or parents, or guardian or guardians of such child, or be accessory thereto, or who shall knowingly secrete or harbor such child, or be accessory thereto, with the intent to deprive such parent or parents, guardian or guardians, or any person who may be in lawful possession of such child, of the custody, care and control of such child, shall be guilty of a misdemeanor, and upon conviction, shall suffer imprisonment in the penitentiary for a term not exceeding twenty years, in the discretion of the court."
- 1888: art. 27, sec. 1  
forcible abduction of female under 18 years

for purposes of prostitution, fornication or concubinage (includes accessory and harborer) misdemeanor, up to 8 years.

- 1890:  
(Feb. 11) Mr. Norwood introduced bill to repeal and re-enact law with amendments. >Maryland General Assembly House of Delegates' Journal, p. 296-7.
- (Feb. 28) Amendment proposed from standing committee, >House Journal, p. 58.
- (Mar. 5) Second reading, >House Journal, p. 589.
- (Mar. 7) Third reading, passed, sent to Senate, >House Journal, p. 831.
- (Mar. 31) Passed by Senate, >House Journal, p. 1381.
- (April 8) ch. 448  
"Any person who shall for purposes of prostitution, fornication or concubinage, forcibly abduct from her home or usual place of abode, or from the custody and control of her parent or parents or guardian, any female under the age of eighteen years, or be accessory thereto, or who shall for said purpose persuade or entice from her usual place of abode, or from the custody and control of her parent or parents or guardian, any such female so abducted, persuaded or enticed as aforesaid, against the consent of her parent or parents or guardian, or the person or persons who may have the temporary care, custody or control of such female, or be accessory thereto, shall upon conviction be deemed guilty of a misdemeanor, and shall undergo imprisonment in the penitentiary, in the discretion of the court, not exceeding the term of eight years; provided, that nothing contained in this act shall apply to cases pending nor to violations of the law which have heretofore occurred, but all such cases and violations shall be prosecuted as if the law hereby repealed were still in force."

ASSAULT WITH INTENT TO ROB, MURDER OR COMMIT A RAPE

- 1809: CODE: ch. 138, sec. 4(9)  
"Every person duly convicted of the crime of an assault, with an intent to rob, murder, or commit a rape, shall be sentenced to undergo a confinement in the said penitentiary house for a time not less than two nor more than ten years, under the conditions herein after prescribed."
- 1860: CODE: art. 30, sec. 10  
essentially the SAME as ch. 138, sec. 4(9).
- 1888: CODE: art. 27, sec. 16  
SAME.  
State v. Dent, 3 G. & J. 8  
State v. Sutton, 4 Gill 497  
Manly v. State, 7 Md. 135  
State v. Bell, 27 Md. 675  
State v. Elborn, 27 Md. 483  
Lewis v. State, 32 Md. 12  
Hollohan v. State, 32 Md. 399.
- 1904: CODE: art. 27, sec. 17, SESSION LAW: ch. 76  
(Mar. 18) "Every person convicted of the crime of an assault with intent to rob, murder, commit a rape or have carnal knowledge of female child under the age of fourteen years, shall be sentenced to confinement in the penitentiary for not less than two nor more than ten years. Nothing herein contained shall be construed to exempt from punishment any person now under indictment for the perpetration of any of the offenses herein before named at the time of the passage of this act, to wit, March 18, 1904, upon conviction thereof in any of the courts of the State; but all such persons shall be liable upon conviction to punishment in accordance with the provisions of law in force prior to the passage hereof."
- 1908: SESSION LAW: ch. 366  
(April 6) "Every person convicted of crime of an assault with intent to rob, murder, or have carnal knowledge of a female child under age of fourteen years, shall be sentenced to confinement in the penitentiary for not less than two years, nor more than ten years; and every person convicted of the crime of an



assault with intent to commit a rape shall be punished with death, or, in the discretion of the court, he shall be sentenced to confinement in the penitentiary for not less than two years nor more than twenty years; and that nothing in this Act shall be construed to interfere with any prosecution that has or may hereafter be commenced for any violation of the section hereby repealed, happening previous to the passage of this Act."

BAWDY HOUSES AND HOUSES OF ILL FAME

- 1853: SESSION LAW: ch. 305  
(May 27) "Be it enacted by the General Assembly of Maryland, That the amount of all fines hereafter imposed by the criminal court of Baltimore city, on persons convicted of keeping houses of ill-fame, shall be divided equally between such dispensaries of the city of Baltimore, as shall have had under their charge during the year preceding, at least fifteen hundred patients."
- 1888: leave to introduce bill against bawdy houses,  
(Feb. 3) >House Journal, p.239.
- (?) report of steering committee, acted unfavorably, >House Journal, p. 1450.
- 1892: SESSION LAW: ch. 522, sec. 16 A  
(April 7) "Any person who shall be convicted of the crime of keeping a bawdy house or house of ill-fame shall be fined a sum not exceeding five hundred dollars or imprisoned in jail or the House of Correction for a period not exceeding one year, or both fined and imprisoned in the discretion of the court, and upon the trial of any person charged with keeping a bawdy house or house of ill-fame, it shall be competent for the prosecution to offer in evidence, the general reputation of the house kept by the person on trial in support of the charge."
- 1904: CODE: art. 27, sec. 18  
SAME as ch. 522, sec. 16 A.

## CARNAL KNOWLEDGE

- common law: Statute of Elizabeth, ch. 7, sec. 4  
carnal knowledge of female under 10 years,  
with or without her consent  
75 C.J.S. 462, 18 West's M.L.E. Rape (1961).
- 1809: CODE: ch. 138, sec. 4(7) <Crimes and Punishments>  
"If any person shall carnally know and  
abuse any woman-child under the age of  
ten years, every such carnal knowledge  
shall be deemed felony, and the offender,  
being convicted thereof, shall, at the  
discretion of the court, suffer death  
by hanging by the neck, or undergo a  
confinement for a period not less than  
one year nor more than twenty-one years,  
to be dealt with according to law."
- 1860: CODE: art. 30, sec. 162  
"If any person shall carnally know and  
abuse any woman child under the age of  
ten years, every such carnal knowledge  
shall be deemed felony, and the offender,  
being convicted thereof, shall, at the  
discretion of the court, suffer death, or  
undergo a confinement in the penitentiary  
for not less than eighteen months nor  
more than twenty-one years."
- 1888: CODE: art. 27, sec. 233 <Rape>  
SAME as art. 30, sec. 162.
- (Mar. 4) leave to introduce bill to repeal and  
reenact with amendments, >House Journal,  
p.839.
- (?) report of standing committee adopted,  
>House Journal, p. 923.
- 1890:  
(April 8) SESSION LAW: ch. 410  
"If any person shall carnally know and  
abuse any woman-child under the age of  
fourteen years, every such carnal knowledge  
shall be deemed felony, and the offender  
being convicted thereof, shall at the  
discretion of the court suffer death or  
imprisonment for life in the penitentiary,  
or for a definite period not less than  
eighteen months not more than twenty-one  
years."
- 1892: SESSION LAW: ch. 204

(March 24) "If any person shall carnally know and abuse any woman child under the age of fourteen years, or knowingly carnally know and abuse any woman who is an imbecile, non compos mentis, or insane, of any age whatever, every such carnal knowledge, shall be deemed felony, and the offender being convicted thereof, shall, at the discretion of the court suffer death, or imprisonment for life in the penitentiary, or for a definite period, not less than eighteen months not more than twenty-one years."

1904: CODE: art. 27, sec. 369 <Rape>  
SAME as ch. 204 above.  
(essentially law as of 1961).

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1898: SESSION LAW: ch. 218, sec. 233 A  
(April 7) "If any person shall carnally know any female, not his wife, between the ages of fourteen and sixteen years, such carnal knowledge shall be deemed a misdemeanor, and the offender, being convicted thereof, shall be punished by imprisonment in the Maryland House of Correction for a term not exceeding two years, or be fined in a sum not exceeding five hundred dollars, or be both fined and imprisoned in the discretion of the Court; provided, that nothing in this Act contained shall be construed to affect or interfere with the law relating to the crime of rape, as now in force in this State; provided, that the provisions of this Act shall not apply to male persons under the age of eighteen years."

1904: CODE: art. 27, sec. 370  
virtually the SAME as in ch. 218, sec.233 A  
(essentially law as of 1961).

## FEMALE SITTERS

- 1886: SESSION LAW: ch. 171, sec. 1  
(April 1) "Be it enacted by the General Assembly of Maryland, That it shall be unlawful for any variety entertainment or concert hall, after the passage of this act, (whether an admittance fee is charged or not), to employ, engage or allow any female sitters (or by whatever other name they may be called) in or about said entertainment or concert hall, building or premises; and all females who are allowed in or about the said premises who shall drink, smoke or partake of any kind of eatables or refreshments at the expense of others, or solicit others to purchase such things as may be purchased there, upon which they shall receive or expect to receive a commission, or who may be paid a regular salary therefor, or who participate in any way in the profits thereof, shall be deemed sitters under this act."
- 1888: CODE: art. 27, sec. 85
- 1904: CODE: art. 27, sec. 116  
essentially the SAME as ch. 171, sec. 1.
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- 1886: SESSION LAW: ch. 171, sec. 2  
(April 1) "And be it enacted, That any person convicted of a violation of this act, shall be fined not less than two hundred dollars nor more than one thousand dollars, or be confined in Jail or the House of Correction for a period not less than two months nor more than twelve months, or be both fined and imprisoned, in the discretion of the Court, for each offence, and every female sitter employed, engaged or allowed in and about said premises shall be considered a separate offence under this act."
- 1888: CODE: art. 27, sec. 86
- 1904: CODE: art. 27, sec. 1  
essentially the SAME as ch. 171, sec. 2.

## KIDNAPPING

- 1809: CODE: ch. 138, sec. 4(10)  
"Every person, his or her counsellors, aiders or abettors, who shall be duly convicted of the crime of kidnapping, and forcibly or fraudulently carrying, or causing to be carried out of this state, any free person, or any person entitled to freedom at or after a certain age, period or contingency, or of arresting and imprisoning any free person, or any person entitled to freedom at or after any certain age, period or contingency, knowing such person to be free, or entitled to their freedom, as aforesaid, with intent to have such person carried out of this state, shall be sentenced to undergo a confinement in the said penitentiary house for a period of time not less than two nor more than ten years, to be treated as the law directs."
- 1860: CODE: art. 30, sec. 92
- 1867: SESSION LAW: ch. 179  
(Feb. 27) "Every person, his counsellors, aiders or abettors who shall be convicted of the crime of kidnapping and forcibly or fraudulently carrying or causing to be carried out of this State any person with intent to have such person carried out of this State, shall be sentenced to the penitentiary for not less than two nor more than ten years."
- 1888: CODE: art. 27, sec. 154
- 1904: CODE: art. 27, sec. 259  
same as ch. 138, sec. 4(10), except omits "free" requirement and false imprisonment.
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- 1820: SESSION LAW: ch. 132  
(Feb. 7) "That every person, his or her counsellors, aiders or abettors, who shall be duly convicted of kidnapping, and forcibly or fraudulently stealing, taking or carrying away, any white child or children under the age of sixteen years, shall be sentenced to undergo a confinement in the penitentiary for a period of time not less than five years, nor more than twelve years, there to be treated as the law directs."
- 1860: CODE: art. 30, sec. 93

1888: CODE: art. 27, sec. 155

1904: CODE: art. 27, sec. 260

"Every person, his counsellors, aiders or abettors, who shall be convicted of kidnapping, and forcibly or fraudulently stealing, taking or carrying away any child under the age of sixteen years, shall be sentenced to the penitentiary for not less than five not more than twelve years."

RAPE

- 1809: CODE: ch. 138, sec. 4(6) <Crimes and Punishments>  
"Every person duly convicted of the crime of rape, or as being accessory thereto before the fact, shall, at the discretion of the court, suffer death by hanging by the neck, or undergo a confinement in the said penitentiary for a period of time not less than one year nor more than twenty-one years, under the same conditions as are herein after prescribed."
- 1854: SESSION LAW: ch. 89  
(Mar. 1) "Whereas, upon trials for the crime of rape, offenders frequently escape by reason of the difficulty of the proof, which has been required, of the completion of the said crime; for remedy thereof,  
That it shall not be necessary, in such cases, to prove the actual emission of seed, in order to constitute a carnal knowledge, but that the carnal knowledge shall be deemed complete upon proof of penetration only."
- 1860: CODE: art. 30, sec. 161  
"Every person convicted of the crime of rape, or as being accessory thereto before the fact, shall, at the discretion of the court, suffer death, or undergo a confinement in the penitentiary for not less than wighteen months nor more than twenty-one years; and penetration shall be evidence of rape, without proof of emission."  
State v. Sutton, 4 Gill 498  
Stevens v. State, 66 Md. 202
- 1888: CODE: art. 27, sec. 232  
SAME as art. 30, sec. 161.
- 1904: CODE: art. 27, sec. 368  
SAME.