

SUSAN C. LEE
Legislative District 16
Montgomery County

MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on
Cybersecurity, Information Technology,
and Biotechnology

Chair Emeritus
Maryland Legislative Asian American
and Pacific Islander Caucus

President Emeritus
Women Legislators of the
Maryland General Assembly, Inc.



James Senate Office Building
11 Bladen Street, Room 223
Annapolis, Maryland 21401
410-841-3124 · 301-858-3124
800-492-7122 Ext. 3124
Susan.Lee@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 20th, 2021

Senate Judicial Proceedings Committee

**Sponsor Testimony SB 0250 - Criminal Law – Sexual Crimes – Repeal of
Spousal Defense (Love Is No Defense to Sexual Crimes)**

Maryland's law to protect spousal rapists originated right around the time we were founded as a colony, or 400 years ago.¹ The notion is steeped in the belief of wife as chattel (property) of the husband. As the notion of wife as property, the defense to sexual assault due to marriage is antiquated, offensive as a concept, and the repeal requires no half-measures or qualifications.

Currently, unwed victims of sexual crimes have more protection than those who are married to their assailant. Maryland Criminal Law §3-318 provides marriage between the parties provide a complete defense to the allegation of sexual assault when the victim is unable to consent. This would most frequently involve instances of being unconscious or drugged. Imagine the horror of finding you have been sexually assaulted while clearly unable to consent and that the perpetrator of the crime cannot be punished because you exchanged vows. The result is a weakening of the notion of marriage as an esteemed institution to be sought as a public policy goal.

This legislation helps drag Maryland's policy in this space from the 17th century and finally in-line with the other 33 states who have fully eliminated the complete defense to spousal sex crimes when the victim is unable to consent.²

For these reasons, I respectfully request your favorable report on Senate Bill 147.

¹ Attributed to Sir Matthew Hale (1607-1676), in *History of the Pleas of the Crown*. "For the husband cannot be guilty of a rape committed by himself upon his lawful wife for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract." Maria Pracher, *The Marital Rape Exception*, 11 GGULR 716, 757 (1981).

² Alabama, Alaska, Connecticut, Idaho, Iowa, Kentucky, Maryland, Michigan, Mississippi, New Hampshire, New York, Ohio, Oklahoma, Rhode Island, South Carolina, Washington, and Wyoming are the 17 states which still provide complete defense for rape to the spouse. Julie Carr Smyth & Steve Karnowski, Associated Press, *Some States Seek to Close Loopholes in Marital Rape Laws*, CHICAGO TRIBUNE, May 4, 2019, <https://www.chicagotribune.com/nation-world/ct-marital-rape-laws-20190504-story.html>.

