



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

**SB250-Repeal of Spousal Defense
(Love is No Defense to Sexual Crimes)
Judicial Proceedings Committee – January 20, 2021
SUPPORT**

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club** (WDC) for the 2021 legislative session. WDC is one of the largest and most active Democratic Clubs in our County, with hundreds of politically active women and men, including many elected officials.

WDC urges the passage of SB250. This bill would bring Maryland into the third decade of the 21st century by eliminating marriage as a defense to ALL sex crimes. Your action will free the Free State from the last vestiges of 17th century English jurist Matthew Hale's pronouncement that rape could not happen in marriage because marriage vows imply ongoing sexual consent.

Currently, Criminal Law §3-318 provides that marriage is a defense to certain sex crimes. It is not an absolute barrier to prosecution in all sex crimes cases. (To be clear, rape involving force or threat of force CAN be prosecuted without regard to the marital status of the victim and the accused.)

Rape or sexual offenses involving the following three categories CANNOT be prosecuted if the victim and offender are married:

- 1) rape involving capacity (e.g., victims is highly intoxicated, victim has substantial cognitive impairment, victim is physically helpless)
- 2) charges based on age
- 3) "sexual contact" without consent

Sexual contact without consent is a misdemeanor 4th degree sex offense [Crim.Law §3-308(b)(1)]. "Sexual contact" is a defined term in the statute (Crim.Law §3-301) and requires:

- intentional touching of genital, anal, or other intimate area
- for purposes of sexual arousal or gratification or abuse

And, the touching of those areas are not prohibited if they are:

- a common expression of familial or friendly affections OR
- for an accepted medical purpose

Thus, Maryland criminal law leads to disparities between prosecution of sex crimes and other



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047. Bethesda. MD 20827

www.womensdemocraticclub.org

make no distinction as to whether the assailant and victim are married; there should be NO exceptions to prosecution based on marital status.

As Lisae Jordan, Executive Director of the Maryland Coalition Against Sexual Assault wrote in her 2020 testimony to the House Judiciary Committee, “Singling out sexual violence as a type of crime from which married people should have less protection creates striking inequalities between couples who have chosen to marry and those who have not. For example, a person who rapes their unconscious spouse could not be prosecuted for rape, but a person who raped their unconscious domestic partner could be – even if the married couple had been together for a matter of days and the domestic partners had been cohabiting for decades.” Marriage should not be a defense to sex crimes, ever.

AEquitas, a resource for prosecutors, reported in 2019 that 17 states still maintain some form of the exemption for spouses who rape partners when they are drugged or otherwise incapacitated.

WDC encourages the State of Maryland to reduce this shameful number to 16 by allowing prosecution based on ALL sexual crimes involving married people. Full repeal of these archaic laws is a must; a partial repeal is unacceptable.

We ask for your support for SB250 and strongly urge a favorable Committee report.

Respectfully,

Diana Conway
President