



Testimony Concerning SB 250

“Criminal Law – Sexual Crimes – Repeal of Spousal Defense”

Submitted to the Senate Judicial Proceedings Committee

January 20, 2021

Department of
Psychology

8000 York Road
Towson, MD 21252-0001

Position: SUPPORT

Dear Senators Lee and Waldstreicher,

I, Christina Dardis, Assistant Professor of Psychology at Towson University, strongly support SB 250. My research examines sexual violence and intimate partner violence. In my career, I have published 38 peer-reviewed papers on this topic and presented my work at professional conferences over 65 times. This testimony represents my own views based on the extant scientific literature and does not represent the views of Towson University.

The marital exemption for sexual crimes dates back to 18th century English common law (known as the Hale doctrine). It was sustained by Blackstone’s unities theory (1765), which asserts that “husband and wife are legally one person. The legal existence of the wife is suspended during marriage, incorporated into that of the husband” and that, thus, “if a wife is injured, she cannot take action without her husband’s concurrence.” In contrast to these doctrines, the State of Maryland already recognizes that spouses should not be exempt from some sex crimes (including forcible rape) and can be held criminally liable. Based on the literature, I strongly support the proposed legislation, which would close the exemption for cases (a) of unwanted sexual contact and (b) in cases of sexual violence due to incapacitation, or in the context of “mental defect” or “physical helplessness.” I urge you to support this bill for several reasons.

First, marital sexual violence (including unwanted sexual contact) is common and no less injurious than non-marital sexual violence. In all, 10-14% of all women are raped by their husbands in their lifetime, and approximately 12% experience forcible fondling from their spouses (Martin et al., 2007; Kreinert & Walsh, 2018). Marital sexual violence also leads to a range of negative consequences for survivors; results of a national study indicate that marital sexual violence (including incidents of forcible fondling) resulted in significantly more physical injuries to survivors than did sexual violence from a non-marital intimate partner (Kreinert & Walsh, 2018)—in fact, 39% of survivors of marital sexual violence reported some type of injury in this national study. Survivors of marital sexual violence also experience psychological injuries, including depression, anxiety, fear, decreases in self-esteem, and long-term difficulties with trust and intimacy. Some research even indicates that survivors of marital sexual violence experienced more severe posttraumatic stress disorder

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(PTSD) than those who experience sexual violence from non-marital partners or strangers (Plichta & Falik, 2001). Marital sexual violence is also often perpetrated within a broader pattern of intimate partner violence, frequently co-occurring with physical and psychological abuse, stalking, and financial control (Mahoney & Williams, 1998); thus, curbing marital sexual violence, in all of its forms, must be considered part of the formula for curbing intimate partner violence more broadly.

Second, sexual violence in the presence of mental or physical incapacitation is no less serious or injurious than is forcible rape. The current Maryland law exempts spousal sexual violence in cases where the victim is “incapacitated,” deemed “mentally defective” or “physically helpless”. However, **disabled women (including those with mental disabilities) are more likely to experience marital sexual violence than are non-disabled women (Brownridge, 2006), and are disproportionately negatively affected by spousal violence** (Coston, 2019). This is even more concerning, given that disabled partners experience disproportionately high rates of co-occurring intimate partner violence and coercive control from their partners, and at times by nature of their disability status, may experience serious barriers to care (Barrett et al., 2009). By failing to remove the exemption, disabled spouses’ rights are severely limited. In addition, The State of Maryland already considers offenses due to incapacitation, including offenses perpetrated through drug- and alcohol-facilitated incapacitation, to be a crime *if the perpetrator and victim are not married*; thus, unless the State believes that married individuals’ legal rights have been “suspended” (Blackstone, 1765), there is simply no reason why a different standard should apply to married individuals.

In sum, acts of marital sexual violence, including unwanted sexual contact and incapacitated sexual violence, are common, frequently co-occur with other forms of intimate partner violence, and lead to deleterious negative physical and psychological outcomes for survivors. These crimes should be treated no less seriously than forcible marital rape, which is currently criminalized. It is long past time to change this archaic exemption to move Maryland forward--as long as there is a marital exemption for any sexual offense, the legacies of Hale and Blackstone persist, and married partners’ rights to body autonomy and personhood in the State of Maryland will continue to be imperiled.

Thank you for your consideration,



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