

Support for SB 250 Dardis.pdf

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Position: FAV



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.

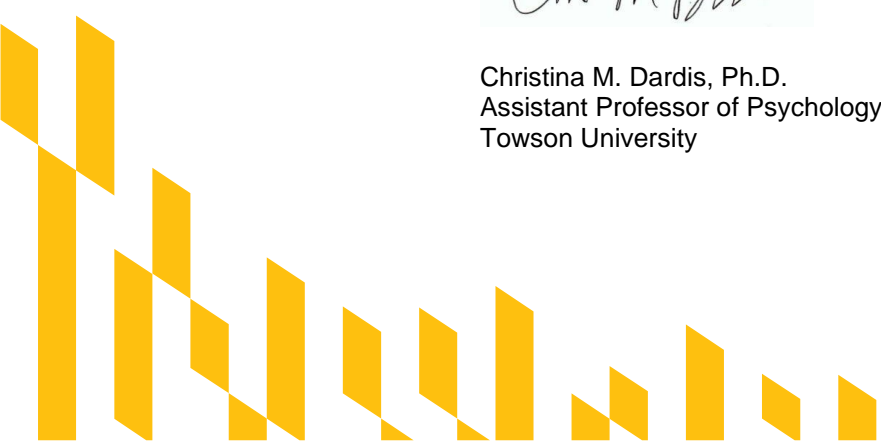
Second, sexual violence in the presence of mental or physical incapacitation is no less serious or injurious than is forcible rape. The current Maryland law exempts spousal sexual violence in cases where the victim is “incapacitated,” deemed “mentally defective” or “physically helpless”. However, **disabled 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,



Christina M. Dardis, Ph.D.
Assistant Professor of Psychology
Towson University



Letter of Support Love is No Defense Bill.pdf

Uploaded by: Drew, Nicole

Position: FAV



COMMISSION FOR WOMEN

January 18, 2021

The Honorable William C. Smith, Jr., Chair
Senate Judicial Proceedings
2 East, Miller Senate Office Building
Annapolis, MD 21401

The Honorable Susan Lee
James Senate Office Building, Room 223
11 Bladen St., Annapolis, MD 21401

RE: Letter in Support of SB0250 – Criminal Law – Sexual Crimes –
Repeal of Spousal Defense (Love is No Defense to Sexual Crimes)

Dear Chairman Smith, Senator Lee and the Members of the Committee:

On behalf of the Montgomery County Commission for Women (“Commission”), I write to express our strong support of SB0250 – Criminal Law – Sexual Crimes – Repeal of Spousal Defense (Love is No Defense to Sexual Crimes) (cross-filed with HB0147) and to urge the Committee to issue a favorable report on this bill. The bill closes loopholes and provides protection to women who are faced with a spouse who engages in nonconsensual touching for sexual gratification or abuse.

Our Commission represents the interests of women in our County who constitute more than half of the residents in Montgomery County. The safety and security of Montgomery County women is one of the Commission’s top priorities. As a former domestic violence prosecutor, my caseload involved a large number of sexual assaults between married persons. A married person does not give up their right to bodily autonomy just because they get married. We believe that sex should always be consensual regardless of the relationship between the parties. On a personal level, I have witnessed this type of nonconsensual sexual assault with my own family members. I watched how it continued to victimize my relatives, physically, mentally, and emotionally, because these non-consensual sexual encounters were essentially rape.

We are aware that there were concerns that this bill could cause a “chilling effect” on spouses who engage in normal familial interactions between a married couple. However, this does not prevent such consensual engagement. We note that Maryland’s law under fourth-degree sexual offenses excludes this kind of touching. This bill is to remove a consent for a spouse who engages in nonconsensual touching for sexual gratification or abuse.

We also want to address the argument it would cause false reports of rape. To the contrary, most rape survivors don’t make a police report. Only 36 percent of all rape survivors make police reports, and the report rate is lowest for spousal rape. Survivors of spousal rape are likely to

endure additional non-sexual violence in their marriages and experience [high rates](#) of mental and physical health issues.

It is time to repeal this antiquated law that is based on patriarchal beliefs when women were considered chattel. Maryland is a progressive state and our criminal laws should not allow a person to commit sexual assault crimes against their spouse. For these reasons, the Montgomery County Commission for Women urges a favorable report on this bill.

Sincerely,



Nicole Y. Drew, Esq.
President
Montgomery County Commission for Women

Commissioners:

Donna Rojas – First Vice President
Diana Rubin – Second Vice President
Tiffany Boiman – Recording Secretary
Tazeen Ahmad
Isabel Argoti
Mona-Lee Belizaire
Tonia Bui
Arlinda Clark
Ijeoma Enendu
Patricia Maclay
Chai Shenoy
Patricia Swanson
Angela Whitehead Quigley
Meredith Weisel

Executive Director
Jodi Finkelstein

Testimony - SB 250- Repeal Rape Spousal Defense.pd

Uploaded by: Glickman, Ilene

Position: FAV

To: Members of The Senate Judicial Proceedings Committee

From: Family & Juvenile Law Section Council (FJLSC)
by Ilene Glickman, Esquire and Daniel Renart, Esquire

Date: January 20, 2021

Subject: **Senate Bill 250:**
Criminal Law – Sexual Crimes – Repeal of Spousal Defense

Position: **SUPPORT**

The Maryland State Bar Association (MSBA) FJLSC **supports Senate Bill 250 – Criminal Law – Sexual Crimes – Repeal of Spousal Defense.**

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

Under current law, a person may not be prosecuted for rape or certain sexual offenses committed against a victim who is the person’s legal spouse under what is known as the spousal defense rule. Specifically, Section 3-318 of the Criminal Law Article states that a person cannot be prosecuted for rape in the first degree (Md. Crim. L. §3-303), rape in the second degree (Md. Crim. L. §3-304), sexual offense in the third degree (Md. Crim. L. §3-307) and/or sexual offense in the fourth degree (Md. Crim. L. §3-308) if the person is married to the victim. There are a limited number of exceptions to the “spousal defense,” but only if the parties have obtained a limited divorce decree from a court, or if the parties have been separated for at least three months or under a written separation agreement, or the perpetrator used force or the threat of force. Senate Bill 230 would repeal the outdated prohibition on prosecuting a person for rape or certain sexual offenses against a victim who is the person’s legal spouse.

The origins of Maryland’s spousal defense to rape can be found in centuries-old English common law, where jurists decided that marriage vows equated with perpetual consent.¹ In other words, it is based on the antiquated idea that once a woman marries a man she becomes his property losing her autonomy and ability to take away consent to sex. The precedent established in England was brought to the colonies, and later adopted by courts and legislatures of the United States. The existence of the spousal defense to rape and other sexual offenses sends a message to society that rape is less of a crime when committed against a spouse instead of an acquaintance or stranger. It also sends a message to victims of spousal rape that if they want to be able to seek relief from the courts by way of prosecution, they must take additional and often unavailable steps or be raped in a manner that someone raped by an acquaintance or a stranger does not. Beginning in the 1970’s, there was a growing movement to remove the marital exemption/spousal defense and to make marital rape a crime. Through this movement marital rape is a crime in all fifty (50) states and the District of Columbia, however, loopholes remain that allow marital rape to persist. In the wake of the #MeToo movement, there have been efforts across the United States to get these antiquated laws repealed. Last year, the Minnesota legislature passed, and the governor signed into law, a bill to repeal and thereby eliminate the marital exemption for rape and sexual assault from its laws. Now, it is time for Maryland to repeal the statutory Spousal Defense for perpetrators of marital rape and to bring justice to their spouses/victims.

By repealing the spousal rape defense, and criminalizing rape without allowing a marriage license to be a loophole it sends a message to both victims and perpetrators that the law will provide the highest level of support and relief for all victims of sexual assault including those married to their perpetrator. Without repealing the spousal defense to rape, it sends a message to possible perpetrators, victims, and society that the conduct exempt from prosecution is tolerated. It is time for our rape and sexual offense laws to catch up to society’s view and understanding that the rape of a spouse is no less a crime than acquaintance or stranger rape, and should not be prosecuted differently. For married victims of rape and sexual offenses, this necessitates a repeal of the spousal defense.

For the reason(s) stated above, the MSBA **supports Senate Bill 250 and urges a favorable committee report.**

Should you have any questions, please contact Michelle Smith by telephone at 410-280-1700 or by e-mail at msmith@lawannapolis.com or Ilene Glickman by telephone at (410) 821-8718 or by e-mail at ilene@lawhj.com.

¹ Sir Matthew Hale *Historia Placitorum Cononæ: The History of the Pleas of Crown, Vol. 1* 628 (1847). “The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.”

2021 SB0250 (HB0147).pdf

Uploaded by: Goldstein, Mathew

Position: FAV



Secular Maryland <http://secularmaryland.us> smd@secularmaryland.us

January 20, 2021

The Honorable William C. Smith, Jr.
Judicial Proceedings Committee
Miller Senate Office Building, 2 East
Annapolis, Maryland 21401

Re: SUPPORT FOR SB0250 Repeal of Spousal Defense

Chairman and Members of the Committee:

According to Criminal Law §3–318 “a person may not be prosecuted under §3-303, §3-304, §3-30 or §3-308 of this subtitle for a crime against a victim who was the person’s legal spouse at the time of the alleged rape or sexual offense.” Your legal relationship to someone else should not give you permission to rape them or alter the criteria for defining rape or sexual offense as a crime. Secular Maryland supports repealing these marital rape and sexual offense prosecution exemptions from Maryland law.

17th-century British common law declared that when the wife signed the marriage contract she automatically conferred unqualified consent forever thereafter to the husband having sex with her. Individuals have self-agency, it is a fiction that everyone so consents continuously and forever in advance from the first day of marriage. Some people cite 1 Corinthians 7:3–5 to defend the existing law. False justifications and the Bible can be convenient anchors for unjust law. All fifty states originally followed this legal tradition and explicitly rejected marital rape as a crime. Today those state laws are mostly gone and either spouse can request a divorce if their partner persists in refusing to consent to sex. It is time for Maryland to also repeal this law so that the law as written acknowledges that respectful mutual consent is a reasonable and proper secular legal requirement both within and outside of marriage.

Marriage as a defense to sex crimes - testimony -

Uploaded by: Jordan, Lisae C

Position: FAV



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 250
Lisae C. Jordan, Executive Director & Counsel
January 20, 2021

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 250.

Senate Bill 250 – Repeal: Marriage as a Defense to Sex Crimes

Like many states, Maryland's law was based on the premise that marriage was consent to sex and that, therefore, a man could not rape his wife. Unlike many states, Maryland has not yet firmly rejected that antiquated and fundamentally disrespectful concept.

Senate Bill 250 brings Maryland into the modern era and eliminates marriage as a defense to all sex crimes. An identical bill passed the House of Delegates last session, supported by men and women, Republicans and Democrats.

Historically, most rape statutes in America included language that specified that rape was forced sexual intercourse with a woman not your wife, reflecting historical views that a wife was a husband's property or that marriage itself was a non-revocable and continual consent to sex.

Currently, Criminal Law §3-318 continues to provide that marriage is a defense to certain sex crimes. It is not absolute bar to prosecution in all sex crimes cases. Prior to 2004, some offenses involving vaginal intercourse could be prosecuted if the parties had met certain separation requirements and the rape involved force or threat of force. In Maryland in 2004, the General Assembly expanded protections for spouses who were not separated, adding provisions so all vaginal rapes involving either force or "threat of force" could be prosecuted regardless of whether the parties were separated. Additionally, if the parties have a limited (or absolute) divorce, marriage is not a defense.

In cases involving the capacity of a victim, marriage continues to be a defense to sex crimes. In 2017, in what one hopes is unintended consequences, when the definition of rape was changed to include all sex crimes involving penetration (not just vaginal intercourse), married people lost

more protections because marriage became a defense to sex crimes involving oral sex, anal sex, and penetration with an object. Prior to the 2017 changes, marriage was a defense only for cases involving vaginal intercourse.

Disparities between prosecution of sex crimes and other types of intimate partner violence are inexplicable. Assault, stalking, sextortion, revenge porn, homicide, and other crimes against a person may be prosecuted without regard to the marital status of the parties. Singling out sexual violence as a type of crime that married people should have less protection from is anomalous. This also 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. Connecticut repealed its law allowing marriage as a defense to sex crimes in 2019, citing concerns about parity between sexual assault in the case of spouses or other intimate partners and the investigation and prosecution of other family violence crimes.

In states across the country, states are changing the outdated and archaic laws that disregard the rights of married people to control their own bodies and sexuality and amending marriage out of sex crimes codes. A 2006 research article found that as of May, 2005, in 20 states, the District of Columbia, and on federal lands, there are no exemptions from rape prosecution granted to husbands. *Marital Rape: New Research and Directions*, Raquel Kennedy Bergen, with contributions from Elizabeth Barnhill, National Online Resource Center on Violence Against Women (February 2006). Some states have not simply repealed laws permitting marital rape, but gone further and affirmed the application of sex crimes protections to married people. *See, e.g.*, Va.Code Ann., §18.2-61: rape statute applies “whether or not” the victim is the spouse of the actor; *State v. Willis*, 223 Neb.844 (1986), there is no “spousal-exclusion” to sexual assault charges. Senate Bill 250 would not make Maryland first in efforts to modernize marital rape laws, however, it would help prevent the state from being last in this historic shift.

Marriage should never be a defense to any sex crime. A little bit of sexual assault is not OK.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 250**

WDC SB250 testimony - FINAL.FINAL.pdf

Uploaded by: Koravos, JoAnne

Position: FAV



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



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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

SB 250 FAV House of Ruth.pdf

Uploaded by: Lennig, Dorothy

Position: FAV



Marjorie Cook Foundation
Domestic Violence Legal Clinic

2201 Argonne Drive • Baltimore, Maryland 21218 • 410-554-8463 • dlennig@hruthmd.org

TESTIMONY IN SUPPORT OF SENATE BILL 250

January 20, 2021

DOROTHY J. LENNIG, LEGAL CLINIC DIRECTOR

The House of Ruth Maryland is a non-profit organization providing shelter, counseling, and legal services to victims of domestic violence throughout the State of Maryland. Senate Bill 250 would repeal the spousal defense to rape. **We urge the Senate Judicial Proceedings Committee to issue a favorable report on Senate Bill 250.**

Under current law, a person may not be prosecuted for rape or certain sexual offenses committed against a victim who is the perpetrator's legal spouse. There are certain limited exceptions to the "spousal defense," but only if the parties have obtained a limited divorce decree from a court, or if the parties have been separated for at least three months or under a written separation agreement, or the perpetrator used force or the threat of force.

The continued existence of the spousal defense to rape and other sexual offenses supports society's view that spousal rape is somehow a less important crime than stranger or acquaintance rape. When conduct is criminalized, it sends a message to potential perpetrators and society that certain acts are unacceptable; when that same conduct is not criminalized, it sends a message that the conduct is tolerated. Such is the case with the spousal defense to rape – conduct that is criminalized, and therefore not tolerated, when it is committed against a stranger, is not criminalized, and therefore deemed acceptable, when it is committed against a spouse. This state of the law cannot be allowed to persist.

The spousal defense to rape is rooted in antiquated notions of women being the property of their husbands and irrevocably consenting to sex at the time of marriage. Although as a society our views have grown beyond these concepts, our laws have not. It is long past time to repeal the spousal defense to rape.

The House of Ruth urges the Senate Judicial Proceedings Committee to issue a favorable report on Senate Bill 250.

SB250 marriage as defense to sexual abuse .pdf

Uploaded by: Miicke , Sarah

Position: FAV

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 Organizations of Maryland
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Simon E. Sobeloff Jewish Law Society
Suburban Orthodox Congregation
Temple Beth Shalom
Temple Isaiah
Zionist Organization of America
 Baltimore District



WRITTEN TESTIMONY

Senate Bill 250 - Criminal Law – Sexual Crimes – Repeal of Spousal Defense

Judicial Proceedings Committee - January 20, 2021

SUPPORT

Background: Senate Bill 250, (SB250) would repeal the law allowing marriage as a defense to certain sex crimes. Currently, criminal Law §3-318 provides that marriage is a defense to certain sex crimes. Like many states, Maryland's laws were based on the premise that marriage was consent to sex and that, therefore, a man could not rape his wife. While we have made some progress, including repealing marriage as a defense in a limited divorce or separation, for other sex crimes, marriage is a complete defense. However, marriage should never be a defense to a sex crime.

Written Comments: The Baltimore Jewish Council represents the Associated Jewish Community Federation of Baltimore and its agencies, including CHANA. CHANA is a domestic violence, sexual abuse, and elder abuse agency that serves the citizens of Baltimore County and City. People in abusive marriages come to CHANA because they want to know their options and rights. What underlies all domestic violence is power and control. Our clients experience physical, sexual, psychological, financial, technological and spiritual abuse. Some are hit, kicked, and raped, while others are told daily that they are stupid and worthless. However, current Maryland law protections many abusers for sex crimes when the abuser is married to the victim. SB250 would create more protections for abuse victims by repealing marriage as a defense to certain sex crimes.

With this in mind, the Baltimore Jewish Council urges a favorable report on SB250.

The Baltimore Jewish Council, a coalition of central Maryland Jewish organizations and congregations, advocates at all levels of government, on a variety of social welfare, economic and religious concerns, to protect and promote the interests of The Associated: Jewish Community Federation of Baltimore, its agencies and the Greater Baltimore Jewish community.

BALTIMORE JEWISH COUNCIL

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Member of the Jewish Council for Public Affairs

Baltimore Jewish Council is an agency of The Associated



HB0250 MD NARAL SUPPORT.pdf

Uploaded by: Philip, Diana

Position: FAV



SB0250 Criminal Law - Sexual Crimes - Repeal of Spousal Defense

Presented to the Honorable Will Smith and Members of the Senate Judicial Proceedings Committee
January 20, 2021 11:00 a.m.

POSITION: SUPPORT

NARAL Pro-Choice Maryland urges the Senate Judicial Proceedings Committee to issue a **favorable report on SB0250 Criminal Law - Sexual Crimes - Repeal of Spousal Defense**, sponsored by Senators Susan Lee and Jeff Waldstreicher.

Our organization is an advocate for reproductive health, rights, and justice. We seek to protect every person's freedom to decide if, when, and how to build their families. This freedom relies on respecting the sexual and reproductive agency of every individual. Every person has the right to decide where, when, how, and with whom they engage in sex. Accordingly, we support eliminating Maryland's spousal defense for sexual assault and rape.

Intimate partner violence remains a pervasive but underreported problem. Nationwide, nearly one in ten women have been raped by an intimate partner, and the majority of female victims of intimate partner violence are attacked multiple times by the same perpetrator.ⁱ According to the Centers for Disease Control and Prevention, 20.5 percent of women in Maryland are rape survivors.ⁱⁱ 16.9 percent of women in Maryland have experienced sexual violence from an intimate partner, including a spouse.ⁱⁱⁱ Just 36 percent of all rape survivors make police reports; the report rate is lowest for marital rape.^{iv} Survivors of marital rape are likely to endure additional non-sexual violence in their marriages and experience high rates of posttraumatic stress disorder, depression, gynecological problems, and other physical health issues.^v

Though marital rape has been a crime in all 50 states since 1993, Maryland is one of 17 states with remaining loopholes in its laws. Though Maryland has modified its spousal defense law to include exceptions in cases where the perpetrator uses force or the threat of force, this is not enough. Cases involving nonviolent coercion or a sleeping or otherwise incapacitated victim fall outside the scope of current criminal law if the perpetrator and victim are married. Maryland law does not include a spousal exception for assault charges; sex crimes should not be treated any differently. Removing the spousal defense entirely from our criminal law will bring Maryland into line with the majority of states around the country and demonstrate Maryland's commitment to justice for survivors of sexual assault regardless of the perpetrator.

Sexual acts committed without complete, free consent from all parties constitute assault, regardless of marital status. The spousal defense enshrines an antiquated, dangerous understanding of consent and marriage in Maryland law and denies justice to survivors of marital rape. For these reasons, NARAL Pro-Choice Maryland **urges a favorable committee report on SB0250**. Thank you for your time and consideration.

ⁱ *Statistics*. The National Domestic Violence Hotline. Retrieved January 24, 2020, from <https://www.thehotline.org/resources/statistics/>.

ⁱⁱ Black, M. C., Walters, M. L., Chen, J., Stevens, M. R., Merrick, M. T., Basile, K. C., Breiding, M. J., & Smith, S. G. (2011). *National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*. https://www.cdc.gov/violenceprevention/pdf/NISVS_Report2010-a.pdf.

ⁱⁱⁱ Smith, S. G., Patel, N., Chen, J., Basile, K. C., Gilbert, L. K., Merrick, M. T., Walling, M., & Jain, A. (2017). *The National Intimate Partner and Sexual Violence Survey: 2010-2012 State Report*. <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.

^{iv} National Coalition Against Domestic Violence (2017). *Domestic Violence & Sexual Assault*. https://assets.speakcdn.com/assets/2497/sexual_assault_dv.pdf.

^v Martin, E. K., Taft, C. T., & Resick, P. A. (2007). A review of marital rape. *Aggression and Violent Behavior*, 12(3), 329-347. <https://doi.org/10.1016/j.avb.2006.10.003>.

TESTIMONY FOR SB0250 Repeal of Spousal Defense.pdf

Uploaded by: Plante, Cecilia

Position: FAV



TESTIMONY FOR SB0250
Criminal Law – Sexual Crimes – Repeal of Spousal Defense
(Love is No Defense to Sexual Crimes)

Bill Sponsor: Senator Lee

Committee: Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0250 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of individuals and grassroots groups with members in every district in the state with well over 30,000 members.

In situations of marriage, where there is a legal commitment between two parties to remain together, one person should never force themselves upon the other. This is not the spirit of the commitment that they made to each other. We understand that is difficult to prove, even if it is unconscionable. However, we believe that there is no question that in cases where the parties are living separately, forceable sexual aggression or rape should be prosecuted as a criminal offense.

We support this bill and recommend a **FAVORABLE** report in committee.

RICHARDS SB 250 - SUPPORT.pdf

Uploaded by: Richards, Elizabeth

Position: FAV

Testimony Concerning SB 250

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

Submitted to the Senate Judicial Proceedings Committee

January 20, 2021

Position: SUPPORT

Dear Senators Lee and Waldstreicher,

I, Elizabeth Richards, strongly support SB 250. I am a graduate student in Towson University’s Clinical Psychology program, where my studies focus on gender-based violence. This testimony represents my own views based on a review of the available research and does not necessarily represent the views of Towson University.

Spousal rape was first sanctioned in English law with the Hale doctrine in 1736 and codified into United States law with the 1857 Supreme Court ruling in *Commonwealth v. Fogarty*. It took over 100 years for spousal rape laws in the United States to evolve, with all 50 states criminalizing spousal rape either in whole, or in part, by 1993. Maryland is one of 17 states that still only criminalizes spousal rape in part. SB 250 would correct that.

It has been suggested that survivors of spousal sexual violence can use available resources, such as the police and protective orders, and pre-existing laws, to prosecute their perpetrators. This perspective overlooks the barriers survivors already face in accessing resources as well as shortfalls in existing laws. A joint 2007 review of spousal rape in the United States by researchers at the National Center for Post-Traumatic Stress Disorder and Boston University identified self-blame, embarrassment, the fear of not being believed or taken seriously and the fear of retaliation by the perpetrator as common barriers to help seeking behaviors by survivors of spousal rape. These barriers are reinforced by laws that deny spousal rape is a crime. Additionally, research suggests that when spousal rape is not viewed as a legitimate crime within a society, formal resources, such as medical professionals, mental health care providers, and law enforcement, might not screen for or inquire about spousal rape and may minimize reports of it from survivors. Finally, existing laws may not be sufficient to prosecute perpetrators. This was a lesson lawmakers in Minnesota learned. In 2017, after Jenny Teeson discovered video tapes her husband made where he drugged and sexually assaulted. Though he was initially charged with third-degree criminal sexual assault, those charges were later dropped against Teeson’s husband due to the spousal rape exemption in Minnesota. He plead guilty to invasion of privacy and served 30 days in the county jail for videotaping the act, but not for the rape itself. This case motivated lawmakers in Minnesota to update their laws, and in 2019, Minnesota repealed its spousal rape exemption. Maryland should follow Minnesota’s example and do the same.

Laws reflect the values of a society. Refusing to criminalize rape that occurs within marriage minimizes the violence survivors experience. This minimization negates the seriousness of the

crime and is a barrier to help seeking for survivors. Passing SB 250 will signify that rape is a serious crime, no matter the context in which it occurs.

For these reasons, I urge your favorable consideration of SB 250.

Respectfully,

Elizabeth Richards

SB 250.pdf

Uploaded by: Shellenberger, Scott

Position: FAV

Bill Number: SB 250

**Scott D. Shellenberger, State's Attorney for Baltimore County
Support**

**WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT OF SENATE BILL 250
COMMON LAW OF RAPE**

I write in support of Senate Bill 250 that eliminates a law that was designed to repeal some elements of the common law of rape but only repealed some elements of the common law, and only to a limited extent.

At common law, one could not be charged with rape of their spouse even in the case of forcible rape. It was a complete defense as long as the couple was married. Criminal Law (CL) §3-318 was created to permit a spouse to be charged and convicted of rape if their separation fell under the well-defined limits of the statute. At the time CL §3-318 passed it was moving the State forward into a more modern era. Now is the time to completely move forward. Rape is rape and if the elements of the crime have been proven (i.e. force or threat of force) then the status of the parties should not matter. It should not be a bar to charging and proving rape if the parties have only legally been separated for two months thus falling 30 days short of the requirements of the statute.

This change is no different then what the Legislature did in 2017 when you passed CL §3-319.1 by eliminating the need to prove victim resistance to the crime of rape. That was a modernization of our sexual offense laws.

Passing Senate Bill 250 will modernize us once more and eliminate one more ancient remnant of the common law.

SB0250SponsorTestimony.pdf

Uploaded by: Volodin, Stacey

Position: FAV

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.



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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>.

SB250 (spousal defense) AG Testimony in Support.pd

Uploaded by: Williams, Carrie

Position: FAV



State of Maryland
Office of the Attorney General

January 18, 2021

TO: The Honorable William C. Smith, Jr., Chair, Judicial Proceedings
Committee

FROM: Carrie J. Williams, Assistant Attorney General

RE: Attorney General's Support for SB 250

The Attorney General urges the Judicial Proceedings Committee to report favorably on Senate Bill 250. Senate Bill 250 repeals Criminal Law Article, Section 3-318, which provides that, with exceptions, a person cannot be charged for sexually assaulting his or her legal spouse.

Under current law, a person can engage in non-consensual “sexual contact” with his or her spouse without fear of prosecution. Likewise, a person can have vaginal intercourse or engage in a “sexual act” with his or her spouse, even if the spouse is substantively cognitively impaired, mentally incapacitated, or physically helpless, and the State cannot prosecute that act as a sexual offense.

“Spousal defense” laws are archaic. They stem from the 18th century belief that “marriage constituted permanent consent that could not be retracted.”¹ That belief has since been rightly rejected. People do not sacrifice their bodily autonomy when they marry. A relationship with the victim should not be a defense to sexual assault. The Attorney General urges the Judicial Proceedings Committee to report favorably on Senate Bill 250.

cc: Members of the Committee

¹ Rothman, Lily, “When Spousal Rape First Became a Crime in the U.S.”, *Time Magazine*, July 28, 2015, available at time.com/3975175/spousal-rape-case-history/ (last visited Jan. 29, 2020).

SB0250 - TurnAround Inc Testimony on Repeal of Spo

Uploaded by: Winklbauer, Kelly

Position: FAV



BILL NUMBER: SB0250

TITLE: Criminal Law – Sexual Crimes – Repeal of Spousal Defense (Love Is No Defense to Sexual Crimes)

COMMITTEE: Judicial Proceedings

HEARING DATE: January 20, 2021

POSITION: Support

TurnAround, Inc. respectfully requests a favorable report on Senate Bill 0250. This bill would support survivors of sexual violence who were victimized by their spouse.

SB0250 repeals Maryland’s prohibition on prosecuting a person for rape or other sexual offenses against a victim who was the person's legal spouse at the time of the alleged rape or sexual offense.

TurnAround, Inc. supports and advocates for survivors of sexual violence, intimate partner violence, and human trafficking. In the agency’s last fiscal year, approximately half of clients were survivors of sexual violence. According to the Rape, Abuse, and Incest National Network (RAINN), 33% of rapes and other sexual assaults are committed by a current or former spouse or partner. This bill has significant implications for many survivors across Maryland who were victimized by their legal spouse at the time of the alleged rape or sexual offense.

Currently, these survivors have limited recourse for pursuing criminal charges against their perpetrator. Exceptions include:

- Those who were living apart for at least three months prior to the offense or under a written separation agreement. However, having the ability to legally separate from one’s spouse and secure separate living arrangements disproportionately impacts low-income survivors, many of whom are survivors of color who already face significant barriers and disparities to accessing the criminal justice system. These survivors may not have the financial means to move or family/social support network to rely on during this process. Over half of TurnAround’s client population report low or no income, and financial stress has only been exacerbated by the COVID-19 pandemic, forcing many survivors to remain in violent relationships.
- The person in committing the crime uses force or threat of force **and** the act is without the consent of the spouse. Rape and sexual assault are inherently nonconsensual, and

force or threat of force are not the only ways in which perpetrators commit acts of sexual violence. Perpetrators may also utilize emotional manipulation, threat of reputational damage, threats related to custody of shared children, immigration status, or drug and/or alcohol facilitated assault to commit acts of violence against their legal spouse.

SB0250 is critical to offering a pathway to safety and justice for survivors of sexual violence who were victimized by their legal spouse.

About TurnAround, Inc TurnAround, Inc. is the designated rape crisis center for Baltimore City and Baltimore County, and a comprehensive domestic violence center. The agency's mission is to educate, advocate for, and empower all people impacted by intimate partner violence, sexual violence, and human trafficking. Crisis response, victim-centered advocacy, legal referrals, trauma therapy, and community education are core components of the agency's work. TurnAround is a member of the Maryland Coalition Against Sexual Assault (MCASA) and the Maryland Network Against Domestic Violence (MNADV).

For further questions, please contact Jean Henningsen, Director of Development and Special Projects at jhenningsen@turnaroundinc.org and Angeles Evans, Community Engagement Manager at aevans@turnaroundinc.org.