State of Maryland
Office of the Attorney General

April 1, 2021

TO: The Honorable Luke Clippinger, Chair, Judiciary Committee

FROM: Carrie J. Williams, Assistant Attorney General

RE: Attorney General's Support with amendments for SB250

The Attorney General urges the Judiciary Committee to report favorably with amendments on Senate Bill 250. The original version of Senate Bill 250, cross filed with House Bill 147, 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.

House Bill 147 was voted out of committee without amendment. Senate Bill 250, however, was amended to add a different definition of "sexual contact" for persons "in an ongoing sexual consensual sexual relationship." This definition excludes from "sexual contact" "physical contact commonly engaged in by two individuals in a sexual relationship, unless one of the individuals has reasonably indicated to the other that further physical contact is unwanted."

Under current law, in order to prove a sex offense, the State must prove, at a minimum, that the contact or act occurred without consent. "[M]ere passivity on the victim's part will not establish a lack of consent." *Travis v. State*, 218 Md. App. 410, 428 (2014). There must be proof that the victim either expressly denied consent or implicitly denied consent "by either some degree of resistance or rational fear of resisting." *Id*.

The definition of "sexual contact" for purposes of sexual offenses should not depend upon whether the victim was in a relationship with the perpetrator at the time of the sexual offense. The Attorney General supports Senate Bill 250 with amendments that strike the Senate's amendments and return the bill to its original form.

Today, 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.

“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 Judiciary Committee to report favorably with amendments on Senate Bill 250.

cc: Members of the Committee

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[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).