



2601 N. HOWARD STREET BALTIMORE, MD 21218

TEL (410) 625-LGBT (5428)

FAX (410) 625-7423

www.freestate-justice.org

Lauren Pruitt, Esq.

Legal Director

LPruitt@freestate-justice.org

The Honorable Luke Clippinger House Judiciary Committee
Room 101
House Office Building
Annapolis, Maryland 21401

February 17, 2023

Testimony of FreeState Justice in Support of

HB0412: Criminal Law – Sexual Crimes – Consent and Second–Degree Rape

To the Honorable Luke Clippinger, Vice Chair David Moon, and the esteemed committee: FreeState Justice is Maryland’s civil rights advocacy organization for lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA+) Marylanders. We also provide pro bono legal services each year to hundreds of LGBTQIA+ Marylanders who could not otherwise afford an attorney and we advocate more broadly on behalf of the LGBTQIA+ community.

We write today supporting House Bill 412. Currently, when a person has sex with someone without consent Maryland’s rape law requires proof of lack of consent and threat of force or force. The threat of force or force is proven by focusing on the victim and whether they resisted the sexual assault. House Bill 412 changes the focus to whether there is fear and voluntary agreement to have a sexual encounter between the individuals involved. Under House Bill 412, the definition of consent includes: a clear and voluntary agreement; the right to withdraw consent; and the communication of consent through words or conduct and based on the totality of the circumstances. The bill also defines what consent is not including what someone is wearing, the existence of a prior relationship, or as the result of fear, threat, or coercion. Documentation of consent is also not required under this bill. Leading victim advocates, Maryland Coalition Against Sexual Assault | MCASA, agree that this change will promote accessibility and compassionate care for survivors of sexual violence and will increase efforts to hold offenders accountable.

FreeState Justice, Inc. (formerly FreeState Legal Project, Inc., merging with Equality Maryland) is a social justice organization that works through direct legal services, legislative and policy advocacy, and community engagement to enable Marylanders across the spectrum of lesbian, gay, bisexual, transgender, and queer identities to be free to live authentically, with safety and dignity, in all communities throughout our state.

Additionally, FreeState Justice supports the amendment that will strike deception from §3-301.1.(B)(5) as we believe the term could unfairly target the LGBTQIA+ community members providing an unwarranted defense to sexual violence stemming from the internalized homophobia and shame of potential aggressors.

Sexual violence affects all people of every gender identity and sexual orientation. People who identify as a member of the LGBTQIA+ community face additional challenges in accessing legal, medical, law enforcement or other resources than other populations. This bill provides additional opportunities for a victim to be heard and shifts the burden of proving the victim resisted the attack to whether the defendant received consent. This burden shifting will hopefully contribute to more individuals feeling supported and validated through the process of reporting sexual violence and reduce feelings of not being believed or being responsible or at fault.

According to the Centers for Disease Control and Prevention (CDC), lesbian, gay and bisexual people experience sexual violence at similar or higher rates than heterosexual people, this includes assaults by prior or current intimate partners as well. The National Coalition of Anti-Violence Projects (NCAVP) estimates that one in ten LGBTQ survivors of intimate partner violence (IPV) has experienced sexual assault from those partners. Studies suggest that around half of transgender people and bisexual women will experience sexual violence at some point in their lifetimes. The LGBTQIA+ community faces higher rates of poverty, discrimination, stigma, and marginalization, which put the community at greater risk for sexual assault. We also face higher rates of hate-motivated violence, which can often take the form of sexual assault. This bill gives survivors of sexual violence a new voice to speak out against the perpetrators of this type of violence. For these reasons, FreeState Justice urges a favorable report on House Bill 412.

Lauren Pruitt, Esq.

Legal Director, FreeState Justice