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

FROM: Jer Welter, Assistant Attorney General
Division Chief, Criminal Appeals Division, Office of the Attorney General

RE: SB 758 – Criminal Law – Sexual Crimes – Definition of Consent and
Repeal of Force – **SUPPORT**

The Office of the Attorney General supports Senate Bill 758 and urges a favorable report. Senator Kelly's bill would prescribe pertinent considerations for how "consent" to sexual activity is determined, and would repeal the requirement of "force or threat of force" for second-degree rape, such that second-degree rape would include having vaginal intercourse or committing a "sexual act" (i.e., oral sex, anal sex, or penetration with a body part or object) with a person without the person's consent. (Force or threat of force would remain an element of first-degree rape.)

Senate Bill 758 would eliminate a longstanding gap in Maryland sexual offense law where currently, there is no criminal offense that simply consists of subjecting a person to sex without that person's consent. Rape in any degree additionally requires either the use or threat of force, or a scenario where consent is legally impossible, *i.e.* statutory rape/incapacitation. Fourth-degree sex offense includes "sexual contact" without consent, but "sexual contact" is defined under the statute as intentional touching of intimate areas of the body, not vaginal

intercourse or other penetrative sex acts. *Travis v. State*, 218 Md. App. 410, 464–65 (2014). Marylanders understand that subjecting someone to sex without their consent is rape, and our State’s criminal law should reflect that understanding.

The bill’s prescribed considerations for how “consent” is determined are consistent with existing state law. *See, e.g., State v. Baby*, 400 Md. 220 (2008) (holding that rape includes the continuation of sex after consent has been withdrawn).

For these reasons, the Office of the Attorney General urges a favorable report on Senate Bill 758.

cc: Committee Members