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SB0758 - Criminal Law - Sexual Crimes - Definition of Consent and Repeal of Force - INFO

Try to imagine what kind of refusal or withdrawal of consent does not use words or language, but also does not require force to overcome. Can you think of a specific example? And if you can, how effectively do you think that refusal or withdrawal of consent is communicated to another person?

So often we focus on the maximum or most egregious conduct that falls under a statute. In this case, I would like to have a conversation about the minimum conduct. It is important not to lose sight that a second degree rape conviction carries with it up to a 20-year sentence of incarceration and a lifetime on the sex offender registry. This is an extremely severe punishment, so it is important that the crime be equally severe. So under SB0758, what would that minimum threshold be?

SB0758 removes force from the statute and changes the definition of consent in a way that I find to be worrisome, because I cannot imagine a specific type of communication that does not involve words or language or physical resistance of any kind, but would also effectively communicate a refusal or objection. And I do not think that the punishment for misreading social cues should be 20 years in prison, nor do I think the sex offender registration should be populated by individuals who failed to read someone's mind. Rape is a serious and stigmatizing crime, and the most basic element of it is ignoring a clearly communicated objection to sexual conduct or obvious inability to object such as unconsciousness or mental impairment. That is the core of the violation, and without clear communication or incapacitation, I would argue that no crime occurred. This bill goes out of its way to argue that it does not require written consent to sexual activity, however I would argue that is exactly what it does. In fact, because somebody could claim coercion in a signature, perhaps it even requires video evidence of consent.

I understand the urge to take swift and decisive action, particularly in the wake of a high profile case, however the clear legacy of such action can be seen in the disastrous life means life policy produced by Governor Glendening. I interact with those impacted by life means life in my daily work, and I fear if SB0758 passes, in another decade, I will be working with people who failed to get clearly documented consent before engaging in

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what they believed to be consensual sexual behavior. I agree that the way in which we handle sex offenses needs review, but I think that we must gather all the information, speak to important stakeholders such as impacted people, victims, clinicians, executive departments, and community organizations, and then come to the table in order to implement an evidence-based course of action with regular review that provides meaningful opportunity for rehabilitation, support for victims, and protection for the community by reducing future crime.