



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

February 27th, 2024

Testimony in Support of SB758

**Criminal Law - Sexual Crimes - Definition of Consent and Repeal of Force**

Dear Chair Smith, Vice Chair Waldstreicher, Members of the Committee,

I am before you today to bring Senate Bill 758 to the committee for consideration.

Thank you Chair Smith for being the lead cosponsor on this bill and thank you to the 7 other members of this committee for joining us.

This bill stands for the very basic principle that no one should have sex with you without your agreement. Currently, this principle is not held up in Maryland law. The use of the word “Force” in current statute essentially creates a duty to refuse, and until someone refuses, “force” is not proven and there can not be a prosecution for rape.

There are at least 3 problems with this. First, human beings should be able to control who has sex with them and the law should focus on what the assailant did, not on whether the victim resisted.

Second, our state law requires us to teach students about consent and the criminal law is inconsistent with what we teach our children. In 2018, at the suggestion of my daughter, Maeve, I was proud to help enact a law that requires consent education. “Consent” is defined in Maryland’s education law as: “the unambiguous and voluntary agreement between all participants in each physical act within the course of interpersonal relationships, including respect for personal boundaries” under Education Article §7-445. Students learn this in school and are then betrayed when the criminal law requires more than a lack of consent before rape can be prosecuted.

Finally, the current rape law does not protect victims who freeze. Many of us have heard of the “fight or flight” response. But it’s not just fight or flight – it’s fight, flight or *freeze*. You’ll hear from experts about this physiological response and you’ll hear about cases where a survivor froze and there could not be a prosecution. Let me be crystal clear: if the assailant threatens bodily harm or death, that can be prosecuted. But absent that, force requires refusal.

Let me also be clear: this is not “affirmative consent”. This bill requires consideration of words and actions and – importantly – requires consideration of the totality of the circumstances

Today, you'll hear from experts and you'll hear the stories of survivors.

At the end of this hearing, I believe you will be confident that SB758 should become law.

I urge a favorable report on SB758.