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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

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Senate Judicial Proceedings Committee

**Senate Bill 230 – Criminal Law – Sexual Crimes – Repeal of Spousal Defense  
(Love Is No Defense to Sexual Crimes)**

Marriage is an essential institution that we should respect and promote – but the laudable goals of this institution risk being undermined by antiquated laws in our State that give a spouse a complete defense to sex crimes committed against their partner, including rape, when the victim is unable to give consent. We must send this horrendous policy back to the bygone era from where it came.

As criminal sexual offenses, the burden of beyond a reasonable doubt is so high that normal routine consensual contact and touching between a loving couple would never be put in question. This bill is not about criminalizing a love tap, it is about provide a full defense to allegations of sexual crimes. A full legal defense against rape is disgraceful.

Over time, Maryland has chipped away at this legally enshrined principle that marriage constitutes lifelong consent to any sexual acts the man wanted. Unfortunately, our law still provides a complete defense to sexual crimes when the spouse is unable to give consent, such as when they are drugged and unconscious. Criminal Law Article §3–318.14(a) still applies to § 3–303 or First Degree Rape with all of its elements including using force, a weapon or strangulation, §3–304 Second Degree Rape, § 3–307 Third Degree Rape that include employing something the victim believes is a weapon, or § 3–308 Fourth Degree Sexual Assault that includes sexual contact with the other without the consent of the other. Keep in mind that these criminal laws are only applicable in this context when the other party is unconscious, and to prove guilt you would need evidence of this that proves your case beyond a reasonable doubt. There would have to be witnesses or substantial evidence of this crime and the lack of consent for any prosecution to be successful.

Imagine if you find a video of yourself online unconscious and clearly not participating in a sexual act you would consent to, then finding out that the perpetrator would be completely immune from prosecution for that sex crime. Who would want to get married if they knew they were opening themselves up to this type of abuse, especially if you might not even be aware it is occurring? With easy access to many sleep drugs and the internet, this is not the legally binding compact we sign-up for when we get married.

Senate Bill 230 fixes this problem by eliminating the arcane spousal defense once and for all. I respectfully request your favorable vote on SB 230.