



State of Maryland
Office of the Attorney General

February 13, 2020

TO: The Honorable Luke Clippinger., Chair, Judiciary Committee
FROM: Carrie J. Williams, Assistant Attorney General
RE: Attorney General's Support for HB 590

The Attorney General urges the Judiciary Committee to report favorably on House Bill 590. House Bill 590 repeals Criminal Law Article, Section 3-318, which provides that, with exceptions, a person cannot be charged for sexually assaulting his or her legal spouse.

Under current law, a person can engage in non-consensual “sexual contact”¹ with his or her spouse without fear of prosecution. Likewise, a person can have vaginal intercourse or engage in a “sexual act” with his or her spouse, even if the spouse is substantively cognitively impaired, mentally incapacitated, or physically helpless, and the State cannot prosecute that act.

Fourth degree sex offense prohibits, in part, having sexual contact with someone without that person’s consent. Md. Code Ann., Crim. Law § 3-308(b)(1). To successfully prosecute someone for fourth degree sex offense requires more than an incidental touching of another’s intimate area. It requires more than an expression of affection from one spouse to another, even if that expression of affection was not reciprocated. It requires the State to prove, beyond a reasonable doubt, that 1) the defendant touched the victim’s genital, anal, or other intimate area; 2) without consent; 3) for either sexual gratification or abuse.

¹ “Sexual contact,” is the “intentional touching of [a person’s] genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party.” Md. Code Ann., Crim. Law, § 3-301(e). Sexual contact does not include “a common expression of familial or friendly affection[.]” *Id.*

“Spousal defense” laws are archaic. They stem from the 18th century belief that “marriage constituted permanent consent that could not be retracted.”² That belief has since been rightly rejected. People do not sacrifice their bodily autonomy when they marry. A marital relationship with the victim should not be a defense to sexual assault. The Attorney General urges the Judiciary Proceedings Committee to report favorably on House Bill 590.

cc: Members of the Committee

² Rothman, Lily, “When Spousal Rape First Became a Crime in the U.S.”, *Time Magazine*, July 28, 2015, available at time.com/3975175/spousal-rape-case-history/ (last visited Jan. 29, 2020).