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**Working to end sexual violence in Maryland**

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**Testimony Supporting House Bill 590**  
**Lisae C. Jordan, Executive Director & Counsel**  
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The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judiciary Committee to report favorably on House Bill 590.

**House Bill 590 – Repeal: Marriage as a Defense to Sex Crimes**

Like many states, Maryland's law was based on the premise that marriage was consent to sex and that, therefore, a man could not rape his wife. Unlike many states, Maryland has not yet firmly rejected that antiquated and fundamentally disrespectful concept.

House Bill 590 brings Maryland into the modern era and eliminates marriage as a defense to all sex crimes.

Currently, Criminal Law §3-318 continues to provide that marriage is a defense to certain sex crimes. It is not absolute bar to prosecution in all sex crimes cases.

Rape involving force or threat of force CAN be prosecuted. It does not matter if the victim and offender are married.

Rape or sexual offenses involving the following three categories **CAN NOT be prosecuted if the victim and offender are married:**

- 1) rape involving capacity (victims is highly intoxicated, victim has substantial cognitive impairment, victim is physically helpless)
- 2) charges based on age
- 3) "sexual contact" without consent

Sexual contact without consent is 4th degree sex offense a misdemeanor 4<sup>th</sup> degree sex offense, Crim.Law §3-308(b)(1). “Sexual contact” is a defined term in the statute (Crim.Law §3-301) and requires:

- intentional touching of genital, anal, or other intimate area
- for purposes of sexual arousal or gratification or abuse

**And** - the touching of those areas are not prohibited if they are:

- a common expression of familial or friendly affections OR
- for an accepted medical purpose

There are significant disparities between prosecution of sex crimes and other types of intimate partner violence which are inexplicable. Assault, stalking, homicide, and other crimes against a person may be prosecuted without regard to the marital status of the parties. Singling out sexual violence as a type of crime that married people should have less protection creates striking inequalities between couples who have chosen to marry and those who have not. For example, a person who rapes their unconscious spouse could not be prosecuted for rape, but a person who raped their unconscious domestic partner could be – even if the married couple had been together for a matter of days and the domestic partners had been cohabiting for decades. Connecticut repealed its law allowing marriage as a defense to sex crimes in 2019, citing these types of concerns about parity between sexual assault in the case of spouses or other intimate partners and the investigation and prosecution of other family violence crimes.

In states across the country, states are changing the outdated and archaic laws that disregard the rights of married people to control their own bodies and sexuality and amending marriage out of sex crimes codes. A 2006 research article found that as of May, 2005, in 20 states, the District of Columbia, and on federal lands, there are no exemptions from rape prosecution granted to husbands. *Marital Rape: New Research and Directions*, Raquel Kennedy Bergen, with contributions from Elizabeth Barnhill, National Online Resource Center on Violence Against Women (February 2006). Some states have not simply repealed laws permitting marital rape, but gone further and affirmed the application of sex crimes protections to married people. *See, e.g.,* Va.Code Ann., §18.2-61: rape statute applies “whether or not” the victim is the spouse of the actor; *State v. Willis*, 223 Neb.844 (1986), there is no “spousal-exclusion” to sexual assault charges. House Bill 590 would not make Maryland first in efforts to modernize marital rape laws, however, it would help prevent the state from being last in this historic shift.

Marriage should never be a defense to a sex crime.

**The Maryland Coalition Against Sexual Assault urges the  
Judiciary Committee to  
report favorably on House Bill 590**