

Opinion: Survivor-Focused Approach Needed on Law Enforcement Sexual Misconduct

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Jada* has survived sexual assault many times, though she's only ever been treated as a criminal.

Since childhood, her struggles with abuse and homelessness led to frequent encounters with the police officers tasked with enforcing drug and prostitution laws. As a Black woman she's more likely to be sexually assaulted and to be arrested compared to a white woman.

Throughout a cycle of arrests and survival on the streets, Jada wasn't helped by police officers after being sexually assaulted. In fact, many of the assaults were committed by police officers themselves.

A bill before Maryland's General Assembly, [Senate Bill 43](#), would amend an existing law to prohibit certain sexual activity by a law enforcement officer with a person who requests assistance from or responds to the officer in the course of the officer's official duties; or who is a victim, witness, or suspect in an open investigation that the officer is working on.

Sexual misconduct as described in the bill is a violation of civil rights and inexcusable. Yet by including a legal exception for law enforcement officers who have had a "prior existing legal sexual relationship" with the victim, SB 43 proposes we do just that — excuse officers for sexual crimes.

Federal law makes it a crime for people in positions of control and authority to engage in sexual activity under color of law (18 USC §242)—meaning in the course of officers' official duties or when they claim to be in the bounds of their lawful authority, on- or off-duty. In Maryland, current law prohibits sex acts by law enforcement and correctional officers with people in-custody or who are incarcerated without exception.

Sex acts by law enforcement officers under color of law is prohibited by other states without exception. Minnesota's law bans sex acts with a victim who "does not feel free to leave the officer's presence." Florida stipulates that "acquiescence" by a victim does not constitute consent to sex with a person in a position of authority or control.

SB 43 threatens the safety of women like Jada who've survived sexual misconduct by officers who repeatedly force, coerce, or solicit sex from their victims. Police officers who commit sexual crimes are outnumbered by those who do not, but Maryland state's attorneys and law enforcement agencies rarely, if ever, hold officers accountable for serial sexual assault and misconduct against marginalized women.

Power Inside has served thousands of survivors of sexual assault—most are Black women who have had no choice but to interact with law enforcement in heavily-policed Black communities. In 2016, the U.S.

Department of Justice detailed a pattern of discriminatory policing by the Baltimore Police Department against women and people of color, including disparate rates of pedestrian stops and searches of Black residents.

The DOJ found evidence that some BPD officers “target members of a vulnerable population—people involved in the sex trade—to coerce sexual favors from them in exchange for avoiding arrest, or for cash or narcotics. This conduct is not only criminal; it is an abuse of power... [BPD] failed to adequately investigate allegations of such conduct, allowing it to recur.”

In her 2015 complaint to the DOJ, Jada describes one patrol officer who often came to vacant houses where she sought shelter in order to have sex with her. Jada explained why she didn’t report the officer.

“He was somebody that provided crack [cocaine] and something to eat. I was an addict and homeless. He provided what I needed at the time, or what I thought I needed,” Jada said. “He was an officer of the law; he should’ve gotten me help. Instead, he participated in my addiction and kept me strung out longer.”

The conduct which SB 43 hopes to address is indeed abhorrent. To the casual eye, SB 43 appears to expand the law while only protecting officers from mistaken arrests for private sex. But sexual activity under color of law is always a breach of public trust and never a private matter.

Maryland law already gives police officers special rights that ordinary people do not get. Sexual misconduct complaints rarely result in disciplinary consequences or criminal charges and victims cannot access information on how or if an investigation occurred. Survivors cannot safely report police sexual violence without access to accountable and transparent systems.

The House Judiciary Committee passed a version of the legislation that would rightfully ban law enforcement sexual misconduct without exception ([House Bill 411](#)). We urge legislators to embrace HB 411’s survivor-focused version that protects women like Jada and reject SB 43’s preferential treatment for law enforcement officers who commit sexual crimes under color of law.

— JACQUELINE ROBARGE

Jacqueline Robarge is the executive director of Power Inside, Inc. and a 2002 Open Society Institute Community Fellow. For more information visit <https://powerinside.org>

**Jada (name changed to protect her safety) contributed to this piece and permitted the use of her story. She is one of many survivors who submitted complaints to the Department of Justice and ensured that sexual misconduct by the Baltimore Police Department would not be ignored.*

<https://www.marylandmatters.org/2021/03/02/opinion-survivor-focused-approach-needed-on-law-enforcement-sexual-misconduct/>