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BILL NO.: House Bill 411  
TITLE: Criminal Law – Law Enforcement Officers – Prohibition on Sexual Activity  
COMMITTEE: House Judiciary Committee  
DATE: January 18, 2021  
POSITION: **SUPPORT**

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House Bill 411 seeks to prohibit law enforcement officers from engaging in sexual conduct with a victim, witness, or suspect in an investigation in which the officer is involved. Officers are further prohibited from sexual conduct with individuals requesting the assistance of law enforcement whilst responding in the course of their official duties. As the Women’s Law Center of Maryland firmly believes in all sexual activity being mutual, respectful, and consensual, we support HB411.

The Center for Disease Control recognizes that sexual violence includes “non-physically forced penetration which occurs after a person is pressured verbally or through intimidation or *misuse of authority* to consent or acquiesce”<sup>1</sup>. When power or authority is involved, it is not possible to give true consent. Relationship dynamics where consent cannot be given include any relationship where a person might feel compelled to say yes because of the power that the authority figure holds over them or the trusted position that that the person in authority holds. Given the positional authority of law enforcement officers over victims, witnesses, and suspects, there is no time in the course of an investigation where an individual could realistically provide consent freely and without intimidation. The very real possibility of physical violence, retaliation, and abuse of authority, places those individuals in situations where they feel they have no choice but to “consent”, which is of course, not actual consent.

Similar laws recognize the imbalance of power, such as the Prison Rape Elimination Act (PREA). PREA defines sexual abuse of an inmate by a staff member as sexual acts *with or without the consent of the inmate*. For example, if a correctional officer engages in sex with an inmate, even if the inmate “consents” to it, it is still considered sexual abuse under PREA. Consent must be given freely and unambiguously, without any threat of coercion or retaliation. As law enforcement offices hold positions of trust and authority within the community, they must not be permitted to abuse that position.

HB 411 includes what the WLC believes is a reasonable exception for law enforcement officers who already are in a pre-existing *legal* sexual relationship with an individual. Importantly, this clause includes a single caveat: the exception shall *not* apply if an active protective order exists between the parties. This secondary exception is necessary to prevent victims of “officer involved domestic violence” (OIDV) who are already more susceptible to coercion from being further harmed. Individuals who are the victims of domestic violence at the hands of police officer-batterers are often in a unique and particularly vulnerable situation. One reason why it is more difficult for a victim of OIDV to seek help is the strong bonds of loyalty within most law enforcement communities<sup>2</sup>. Victims often feel their abusers’ knowledge and understanding of the legal process, coupled with the discretion granted to officers in determining how to respond to allegations of abuse, would lead to departments failing to take allegations seriously. This can be true even when the victim is also a law enforcement officer, especially if she is seen as breaking that

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<sup>1</sup> <https://www.cdc.gov/violenceprevention/sexualviolence/definitions.html>

<sup>2</sup> STOP Violence Against Women, A Project of The Advocates for Human Rights, Officer-Involved Domestic Violence, [http://www.stopvaw.org/officer-involved\\_domestic\\_violence](http://www.stopvaw.org/officer-involved_domestic_violence), last viewed February 22, 2020.

bond of loyalty by reporting the abuse<sup>3</sup>. It is important to note that the exception for prior existing legal relationships **does not apply** if the party is in police custody. That exception only applies to situations where the other party is a victim of, or witness to, a crime, or is otherwise seeking police assistance.

It is an unfortunate reality that this legislation is necessary to protect vulnerable individuals from abuses of power at the hands of law enforcement officers. Victims of officer involved domestic violence require even more protections within our laws. And for all those reasons state above, the Women's Law Center of Maryland urges a favorable report for HB 411.

***The Women's Law Center of Maryland is a private, non-profit, legal services organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change, working to ensure physical safety, economic security, and bodily autonomy for women in Maryland.***

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<sup>3</sup> See generally, *The Misuse of Police Powers in Officer-Involved Domestic Violence*, Diana Wetendorf and Dottie L. Davis, 2003.