



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 43 with Amendment
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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 Senate Bill 43.

Senate Bill 43 – Sexual Offenses – Law Enforcement

Current law recognizes the power disparities between law enforcement and those in their “custody.” Criminal Law §3-314 prohibits a law enforcement officer from engaging in sexual contact, vaginal intercourse, or a sexual act with a person in their custody of the law enforcement officer. A similar prohibition and penalty applies to correctional employees and inmates. Senate Bill 43 expands this prohibition to law enforcement and people who are involved in an investigation or who have requested assistance. The law would not apply if the people involved had a prior sexual relationship that was legal (such as dating) but would apply to cases involving an officer and a sex worker.

The unequal power between law enforcement and people who are in their custody, involved in police investigations, or who have requested assistance, makes voluntary consent difficult to assess and heightens the risk of exploitation. SB43 recognizes that people who have requested an officer's help or who are involved in an investigation should be protected against sexual exploitation. Maryland is not alone in this concern, for example, Kansas recently prohibited sexual interactions between law enforcement and a person "during the course of a traffic stop, a custodial interrogation, an interview in connection with an investigation, or while the law enforcement officer has such person detained." CBS, May 11, 2018. Other states have focused on abuse of sex workers during the course of prostitution investigations. See, *Hawaii Police Won't Get to Have Sex With Prostitutes Anymore*, Time, March 26, 2014. The US Department of Justice investigation of the Baltimore City Police Department (BPD) provides an example of why this legislation should be enacted in Maryland:

[W]e found evidence that some BPD officers engage in criminal behavior that BPD does not sufficiently address. We heard complaints from the community that some 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. Unfortunately, we not only found evidence of this conduct in BPD's internal affairs files, it appeared that the Department failed to adequately investigate allegations of such conduct, allowing it to recur. For example, BPD investigators became aware of one officer's alleged misconduct in March of 2012 when they conducted a "prostitution initiative" "for the purposes of gathering intelligence and obtaining confidential informants relating to police corruption." One of the women interviewed informed BPD investigators that she met with a certain officer and engaged in sexual activities in the officer's patrol car once every other week "in exchange for U.S. Currency or immunity from arrest." U.S. Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department*. 149-150 (2016). <<https://www.justice.gov/crt/file/883296/download>>. See also, https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842_story.html, citing the BPD investigation report.

People should be able to have confidence that law enforcement officers are not using their positions of authority to coerce others for sexual favors during the course of their duties. MCASA respectfully disagrees that bans on sexual interactions can be enforced through policy alone. Those policies are already in place and they are not working. Moreover, the current distinction between being in custody and being under investigation or requesting help is a very thin one that does not take into account power dynamics in the real world. MCASA notes that SB43 does include a provision providing an exception for law enforcement with a previous legal relationship with the other person. This would not apply to people in custody, only those who are under investigation or requesting assistance. This was drafted to address legal relationships such as marriage or dating, but to exclude illegal relationships, such as those involving prostitution. This was included after negotiations with our law enforcement colleagues and included in the spirit of compromise. The House struck these provisions after further concerns were expressed regarding the application of the prior relationship language in cases involving sex workers. In an effort to bridge the differences between the House and Senate bill, MCASA respectfully suggests the following amendment:

(2)IT IS AN AFFIRMATIVE DEFENSE TO PARAGRAPH (1)(I)AND (II)OF THIS SUBSECTION THAT
(i) THE LAW ENFORCEMENT OFFICER HAD A PRIOR EXISTING LEGAL SEXUAL RELATIONSHIP WITH THE PERSON; AND
(ii) THE LAW ENFORCEMENT OFFICER DID NOT ACT UNDER THE COLOR OR PRETENSE OF OFFICE OR UNDER COLOR OF OFFICIAL RIGHT WHEN SEEKING CONSENT TO THE SEXUAL CONTACT, SEXUAL ACT, OR VAGINAL INTERCOURSE

SB43 would send a clear message about the serious nature of sexual exploitation. It is one part of Maryland's ongoing efforts to end sexual misconduct and enact meaningful police reform.

**The Maryland Coalition Against Sexual Assault urges the
Judiciary Committee to report favorably on Senate Bill 43 with Amendment**