

Bill Number: SB 33
Scott D. Shellenberger, State's Attorney for Baltimore County
Support

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT OF SENATE BILL 33
COMMON LAW OF RAPE

I write in support of Senate Bill 33 that eliminates a law that was designed to prevent a prosecution of a person for the rape of a spouse. Senate Bill 33 brings the law of rape into this century but allows an exception with regard to a fourth degree sexual offense.

At common law, one could not be charged with rape of their spouse even in the case of forcible rape. It was a complete defense as long as the couple was married. Criminal Law (CL) §3-318 was created to permit a spouse to be charged and convicted of rape if their separation fell under the well-defined limits of the statute. At the time CL §3-318 passed it was moving the State forward into a more modern era. Now is the time to completely move forward. Rape is rape and if the elements of the crime have been proven (i.e. force or threat of force) then the status of the parties should not matter. It should not be a bar to charging and proving rape if the parties have only legally been separated for two months thus falling 30 days short of the requirements of the statute.

This change is no different then what the Legislature did in 2017 when you passed CL §3-319.1 by eliminating the need to prove victim resistance to the crime of rape. That was a modernization of our sexual offense laws.

While the original Senate Bill eliminated all exceptions to the sexual offense statute, members of the Judicial Proceedings Committee were concerned that some common expressions of affection between couples need to explicitly be excluded from the criminal law. In order to assure no prosecutions of these contacts §3-301(iii) was created. §3-301 (iii) explicitly states that if a couple is in an ongoing consensual sexual relationship, physical contact commonly accepted is allowed unless one party has communicated that it is not.

The best way to explain this is by example. A married couple is lying in bed, one spouse is asleep, and the other spouse gently touches the other spouse in an intimate body part. While there was no explicit consent §3-301(iii) says that touching is not a crime unless that type of touching was explicitly stated could not happen. While I don't believe prosecutors in this State would be prosecuting such cases having this exception in the law does not hurt and the overall goal of Senate Bill 33 is an important thing to accomplish.

Passing Senate Bill 33 will modernize us once more and eliminate one more ancient remnant of the common law.