



Maryland State's Attorneys' Association

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RE: SB33 Written Testimony

Judicial Proceedings
Chair Will Smith
Maryland Senate

The Maryland State's Attorney's Association supports Senate Bill 33. For far too long Maryland has allowed a "marriage penalty" in the form of *Maryland Criminal Law* § 3-318. To allow an absolute spousal defense in cases of third- and fourth-degree sex offense empowers abusers, harms victim spouses (mostly women), and unconstitutionally (in my opinion) discriminates against people who are married by giving them less access to the law than those who are unmarried.

Hundreds of thousands of Maryland currently cohabit without a marriage contract. If any of them suffer a sexual assault in the third or fourth degree from their intimate partner they can seek relief in our criminal courts. Married persons have no such recourse. The assailant only has to show that they are the spouse of the survivor, and it is a shield against prosecution. This is an antiquated, outdated, and fundamentally unfair result.

The main argument I have heard by opponents of this reform is that there may be an uptick in filings from spouses seeking to gain an advantage in a divorce case, custody agreement, or another collateral action. The law as it currently stands only applies in criminal cases. The evidence including testimony about an assault would be admissible in a divorce case, a custody hearing, or a protective order hearing. It only is a shield in criminal cases. This fear of frivolous filings is greatly exaggerated based on what I am seeing as a practitioner in our criminal courts. As far back as the 1990's it has been settled law that second degree assault (battery) is a lesser-included of fourth degree sex assault. If frivolous filings were a real thing, we would see second degree assaults charged more. Second degree assault carries a stiffer penalty (10 years compared to 1 year for fourth degree sex offense) and there is no automatic spousal defense. Also, we should trust prosecutors to be able to filter out bogus filings from legitimate incidents of sexual assault rather than give a shield to all married persons charged with these crimes.

Today, the Maryland Legislature is looking to innovative solutions to address systemic racism, sexism, and classism in our government. A simple step toward that brighter day is repealing the

spousal defense for third- and fourth-degree sex offense for married persons who cohabit. The MSAA seeks a favorable report on SB0033.

Joseph Riley
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MSAA Legislative Chair