

TESTIMONY IN SUPPORT OF BILL SB0033 - FAVORABLE  
Criminal Law - Sexual Crimes - Repeal of Spousal Defense

TO: Chair Smith, Vice Chair Waldstreicher,  
and members of the Judicial Proceedings  
Committee

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Maryland's spousal defense is a serious blind spot in our sexual assault laws that allows some abusers to escape prosecution. Whereas unwed persons would enjoy greater protection from assault while incapacitated, married people effectively have fewer protections from the same heinous actions. This law creates a situation where people choosing to get married must give up some of their bodily autonomy. I believe the spousal defense should be repealed because all people deserve the same protections regardless of their marital status.

The spousal defense covers a disturbing number of cases. Fourth-degree sexual assault receives a lot of attention in discussions of this bill. But my understanding is *any* sexual assault, of *any* degree, is legal when the perpetrator's spouse is unconscious or incapacitated. This could include unconsciousness for any number of reasons, including just having a few too many drinks. Or it could be a result of deliberate drugging by the perpetrator, which has occurred in Maryland; the perpetrator could not be prosecuted because the woman he raped was his wife.

As others have previously testified, there is no evidence that frivolous accusations would arise should this law be repealed. Many couples in Maryland live together and are life partners without being married. We do not see a problem with frivolous accusations between those couples, nor do we expect to see that frivolous accusations will become a problem between married couples should this law be repealed. The goal of this legislation is to protect those victims who are truly at risk. It does not aim to criminalize common spousal touching where consent is implicit.

It is deeply disturbing that this law is still on the books in Maryland. Previous years' testimony makes clear that there are still victims whose bodily autonomy is stripped by this law. Married persons should be afforded the same protections they had before they were married. I respectfully urge the committee to issue a favorable report on SB0033.