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January 28, 2022

The Honorable William Smith  
Chairperson, Senate Judicial Proceedings Committee  
11 Bladen Street  
Annapolis, MD 21401

Dear Chairperson Smith:

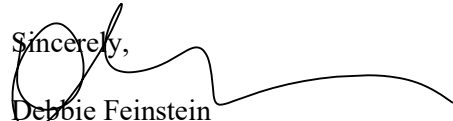
I write in support of SB33, Sexual Crimes—Repeal of Spousal Defense (Love is No Defense to Sexual Crimes). I am the Chief of the Special Victims Division for the Montgomery County State's Attorney's Office and a member of our Sexual Assault Response Team, a multidisciplinary group that reviews cases and sets policy regarding sexual assault crimes in our county. I also chair the Montgomery County Choose Respect Initiative that offers educational content to teens on healthy relationships and consent.

Currently, Maryland law offers married individuals a complete defense to sexual offenses, including rape, unless the rape was perpetrated by force. This law allows an individual a complete defense if they rape their cognitively impaired, mentally incapacitated, or physically helpless spouse, including drug or alcohol facilitated rapes and sexual offenses. In Montgomery County, we had a case where, on multiple occasions, the offender raped his wife (and filmed it) while she was under the influence of prescription drugs. While the State was able to prosecute the offender for some offenses, given the complete defense, we could not prosecute him for the vast majority of the rapes he perpetrated against his wife on film. The current defense also allows a spouse to legally commit a sexually offense against a spouse who is paralyzed or otherwise physically helpless; cognitively impaired, including dementia or Alzheimer's disease; or mentally incapacitated by a mental health issue. It is a travesty of justice to allow offenders a complete defense when their spouse falls into one of these categories of individuals.

Moreover, the current law allows a complete defense to fourth degree sexual offenses, even where one spouse does not consent to the sexual touching. Sexual offense in the fourth degree prohibits "sexual contact with another without the consent of the other," including the "intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party." The law carves out an exception for any touching that is a common expression of familial or friendly affection or for an accepted medical purpose. Marriage should not obviate consent under any circumstance. The current law is out of date and out of synch with our modern understanding of affirmative consent and should be eliminated.

Maryland law should not allow a person to use the fact of their marriage to protect them from prosecution for a sexual crime. I strongly urge the passage of SB33.

Sincerely,

  
Debbie Feinstein  
Chief, Special Victims Division  
Senior Assistant State's Attorney