

SB 33_Alex Goyette Tahirih Justice Ctr_fav.pdf

Uploaded by: Alexander Goyette

Position: FAV



*Protecting Immigrant
Women and Girls
Fleeing Violence*

Testimony in SUPPORT of Senate Bill 33

(Repeal of Spousal Defense)

Judicial Proceedings Committee

Witness: Alex Goyette, Senior Policy Associate
6400 Arlington Blvd, Suite 400, Falls Church, VA 22042
January 26, 2022

Chair Smith, Vice-Chair Waldstreicher, and Honorable Members of the Senate Judicial Proceedings Committee:

The Tahirih Justice Center (Tahirih) is a non-profit legal advocacy organization that, since 1997, has been serving survivors of domestic violence, sexual assault, human trafficking, and other abuses, in Maryland and other states.

In 2011, Tahirih launched a specialized Forced Marriage Initiative. We have worked on hundreds of forced marriage cases involving girls and women nationwide, and we have unique legal and policy expertise on legislative reforms to strengthen protections against forced marriage.ⁱ

Rape and sexual assault are often part of the trauma history of forced marriage survivors, and can be both the cause and consequence of a forced marriage that has taken place. A girl may be forced to marry her rapist as a way to preserve perceived purity, protect the rapist from prosecution, or to “do the right thing” by getting married – especially if the girl has become pregnant. Rape then becomes a consequence of the forced marriage as well, as it guarantee’s the perpetrator access to the survivor for years or decades throughout the course of the marriage.

In the context of a sexual assault that occurs within marriage, a survivor’s loved ones who would in other circumstances support and advocate for the survivor may instead turn a blind eye and in some cases normalize or excuse the rape as a normal part of marriage. By providing a spousal defense to sexual offenses, Maryland’s current statute reinforces this normalization with the full weight of law.

The existing statute is particularly alarming in the context of Maryland’s statute allowing for children to marry below the age of sexual consent.ⁱⁱ In practice, Maryland provides a loophole for predators to marry children and be shielded from prosecution for what would otherwise be considered a sexual offense.ⁱⁱⁱ

Repealing the spousal defense to sexual offenses would send an important message that a person’s right to their own body does not end with marriage. This is an important public policy for any married person, but especially for those who have survived a marriage they did not want in the first place.

The Tahirih Justice Center asks this Honorable Committee to report SB 33 favorably.

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ⁱ A full copy of Tahirih's 50-state report analyzing state minimum marriage age laws and exceptions, for example, and how they can either increase protections or expose children to harm, is available at www.tahirih.org/childmarriagepolicy.

ⁱⁱ See Md. Fam. Law Code Ann § 2-301, permitting minors as young as 15 to marry. See *also* Md. Code Ann., Crim. Law § 3-303.

ⁱⁱⁱ In addition to the age floor of marriage being younger than the oldest age covered by age-based sex offenses in Maryland, no judge is involved when a minor seeks to marry, and thus no one vets the underlying circumstances of the marriage to see if the minor may be marrying a school employee, for example. A clerk is authorized to issue the license to a minor upon verifying parental consent and/or evidence of pregnancy or childbirth (both parental consent and pregnancy/childbirth are required for a 15-year-old to marry; either parental consent or evidence of childbirth/pregnancy is required for 16- and 17-year-olds.).

Maryland is one of only 4 states that still have such an express pregnancy exception to a minimum marriage age of 18 (together with Arkansas, New Mexico, and Oklahoma). Most states have eliminated any such exceptions they once had, recognizing that a pregnancy at such a young age can result from rape (forcible or statutory), or can signal other coercive control elements in the parties' relationship including re: contraception.

2022 JCRC SB 33 criminal law- sexual crimes - repe

Uploaded by: Ashlie Bagwell

Position: FAV



**Testimony in SUPPORT of *Senate Bill 33 –
Criminal Law – Sexual Crimes - Repeal of Spousal Defense*
Judicial Proceedings Committee
February 1, 2022**

The Jewish Community Relations Council of Greater Washington (JCRC) serves as the public affairs and community relations arm of the Jewish community. We represent over 100 Jewish organizations, synagogues, and schools throughout Maryland, Virginia, and the District of Columbia. The JCRC is strongly committed to cultivating a society based on freedom, justice, and pluralism. We work tirelessly throughout the entire region to advocate not only for the Jewish community but for our non-sectarian agencies that serve the most vulnerable residents throughout the State of Maryland.

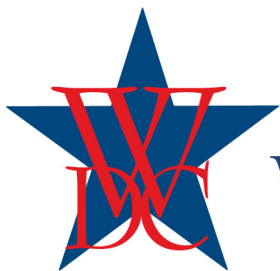
As an advocate for the Jewish Coalition Against Domestic Abuse (JCADA), which provides free legal, counseling, and victim advocacy services to survivors of domestic abuse, the JCRC strongly supports Senate Bill 33. SB 33 is essential for the purpose of repealing a certain prohibition on prosecuting a person for rape or a certain sexual offense against a victim who was the person's legal spouse at the time of the alleged rape or sexual offense.

The JCRC also understand that victims of sexual assault already face so many barriers to reporting their victimization, including stigma, fear of re-traumatization by the system, and fear of not being believed. Few survivors of intimate partners sexual assault report these offenses. These factors should not be exacerbated by antiquated laws that treat women as the property of their husbands, and in so doing, undermine fundamental democratic principles of equality and fairness. SB 33 is necessary to repealing a law on the books which allows for marriage to be a defense to sexual assault. For these reasons, the JCRC supports SB 33 and urges the committee to give a favorable report.

WDC Testimony SB0033-2022_FINAL.pdf

Uploaded by: Beth Tomasello

Position: FAV



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

**Senate Bill 33 Criminal Law-Sexual Crimes-Repeal of Spousal Defense
Judiciary Proceedings Committee –February 1, 2022
SUPPORT**

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club (WDC)** for the 2022 legislative session. WDC is one of the largest and most active Democratic Clubs in our County with hundreds of politically active women and men, including many elected officials.

We urge the passage of SB33. This bill repeals marriage as a defense to ALL sex crimes. Your action will free the Free State from the last vestiges of 17th century English jurist Matthew Hale's pronouncement that rape could not happen in marriage because marriage vows imply ongoing sexual consent.

Currently, Criminal Law §3-318 provides that marriage is a defense to certain sex crimes: Rape or sexual offenses involving the following three categories CANNOT be prosecuted if the victim and offender are married:

- 1) rape involving capacity (victims is highly intoxicated, victim has substantial cognitive impairment, victim is physically helpless);
- 2) charges based on age;
- 3) "sexual contact" without consent.

Thus, Maryland criminal law leads to disparities between prosecution of sex crimes and other types of intimate partner violence. Homicide and assault laws, for example, make no distinction as to whether the assailant and victim are married; with NO exceptions to prosecution based on marital status.

Marriage should not reduce a person's control over their own body

As Lisae Jordan, Executive Director of the Maryland Coalition Against Sexual Assault testified in 2020, "Singling out sexual violence as a type of crime that married people should have less protection for creates striking inequalities between couples who have chosen to marry and those who have not. For example, a person who rapes their unconscious spouse could not be prosecuted for rape, but a person who raped their unconscious domestic partner could be – even if the married couple had been together for a matter of days and the domestic partners had been cohabiting for decades." **Marriage should not be a defense to sex crimes, ever.**

WDC hopes that State of Maryland will allow prosecution based on ALL sexual crimes involving married people. Full repeal of these archaic laws is a must—a **partial repeal is unacceptable. We ask for your support for SB33 and strongly urge a favorable Committee report.**

Respectfully,

Leslie Milano
President

SB33 (spousal defense) AG Testimony in Support.pdf

Uploaded by: Carrie Williams

Position: FAV



State of Maryland
Office of the Attorney General

January 28, 2022

TO: The Honorable William C. Smith, Jr., Chair, Judicial Proceedings
Committee

FROM: Carrie J. Williams, Assistant Attorney General

RE: Attorney General's Support for SB 33

The Attorney General urges the Judiciary Committee to report favorably on Senate Bill 33. Senate Bill 33 repeals Criminal Law Article, Section 3-318, which provides that, with exceptions, a person cannot be charged for sexually assaulting his or her legal spouse.

Under current law, a person can engage in non-consensual "sexual contact" with his or her spouse without fear of prosecution. Likewise, a person can have vaginal intercourse or engage in a "sexual act" with his or her spouse, even if the spouse is substantively cognitively impaired, mentally incapacitated, or physically helpless, and the State cannot prosecute that act.

Concerns that a repeal of the "marriage defense" could result in a husband being prosecuted for touching his wife without asking permission first are misplaced. The law in Maryland is clear that, in order for the State to prove a lack of consent when the victim is competent and conscious, "mere passivity on the victim's part" is not enough. *Travis v. State*, 218 Md. App. 410, 424 (2014). There must be evidence of: 1) an express denial of consent; or 2) an implicit denial of consent via resistance or a rational fear of resisting. *Id.* As in any other case involving non-consensual sexual contact, in the above hypothetical the State would have to prove that a husband touched his wife's "genital, anal, or other intimate area," and that his wife expressly denied consent, resisted the contact, or the circumstances established that a reasonable person in the wife's position would have been afraid to resist the contact.

“Spousal defense” laws are archaic. They stem from the 18th century belief that “marriage constituted permanent consent that could not be retracted.”¹ That belief has since been rightly rejected. People do not sacrifice their bodily autonomy when they marry. A relationship with the victim should not be a defense to sexual assault. The Attorney General urges the Judicial Proceedings Committee to report favorably on Senate Bill 33.

cc: Members of the Committee

¹ Rothman, Lily, “When Spousal Rape First Became a Crime in the U.S.”, *Time Magazine*, July 28, 2015, available at time.com/3975175/spousal-rape-case-history/ (last visited Jan. 29, 2020).

SB0033_Spousal_Defense_MLC_FAV.pdf

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR SB0033
Criminal Law – Sexual Crimes – Repeal of Spousal Defense

Bill Sponsor: Senator Lee

Committee: Judiciary

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: **FAVORABLE**

I am submitting this testimony in favor of SB0033 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of individuals and grassroots groups with members in every district in the state with well over 30,000 members.

In situations of marriage, where there is a legal commitment between two parties to remain together, one person should never force themselves upon the other. This is not the spirit of the commitment that they made to each other. We understand that is difficult to prove, even if it is unconscionable. However, we believe that there is no question that in cases where the parties are living separately, forceable sexual aggression or rape should be prosecuted as a criminal offense.

We support this bill and recommend a **FAVORABLE** report in committee.

SB0033_Chris_Apple_FAV.pdf

Uploaded by: Christopher Apple

Position: FAV

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

FROM: Chris Apple
7001 Cradlerock Farm Court
Columbia, MD 21045
District 13

Feb 1, 2022

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.

Feinstein Letter of Support SB33.pdf

Uploaded by: Debbie Feinstein

Position: FAV



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DEPUTY STATE'S ATTORNEYS
PETER A. FEENEY
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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:

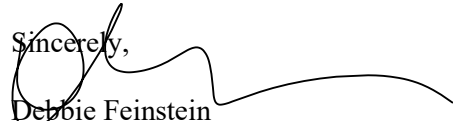
I write in support of SB33, Sexual Crimes—Repeal of Spousal Defense (Love is No Defense to Sexual Crimes). I am the Chief of the Special Victims Division for the Montgomery County State's Attorney's Office and a member of our Sexual Assault Response Team, a multidisciplinary group that reviews cases 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

SB 33 FAV House of Ruth.pdf

Uploaded by: Dorothy Lennig

Position: FAV



Marjorie Cook Foundation

Domestic Violence Legal Clinic

2201 Argonne Drive • Baltimore, Maryland 21218 • 410-554-8463 • dlennig@hruthmd.org

TESTIMONY IN SUPPORT OF SENATE BILL 33

February 1, 2022

DOROTHY J. LENNIG, LEGAL CLINIC DIRECTOR

House of Ruth Maryland is a non-profit organization providing shelter, counseling, and legal services to victims of domestic violence throughout the State of Maryland. House of Ruth has offices in Baltimore City, Baltimore County, Prince George’s County, and Montgomery County. Senate Bill 33 would repeal the spousal defense to rape. **We urge the Senate Judicial Proceedings Committee to issue a favorable report on Senate Bill 33.**

Under current law, a person may not be prosecuted for rape or certain sexual offenses committed against a victim who is the perpetrator’s legal spouse. There are certain limited exceptions to the “spousal defense,” but only if the parties have obtained a limited divorce decree from a court, or if the parties have been separated for at least three months or under a written separation agreement, or the perpetrator used force or the threat of force.

The continued existence of the spousal defense to rape and other sexual offenses supports society’s view that spousal rape is somehow a less important crime than stranger or acquaintance rape. When conduct is criminalized, it sends a message to potential perpetrators and society that certain acts are unacceptable; when that same conduct is not criminalized, it sends a message that the conduct is tolerated. Such is the case with the spousal defense to rape – conduct that is criminalized, and therefore not tolerated, when it is committed against a stranger, is not criminalized, and therefore deemed acceptable, when it is committed against a spouse. This state of the law cannot be allowed to persist.

The spousal defense to rape is rooted in antiquated notions of women being the property of their husbands and irrevocably consenting to sex at the time of marriage. Although as a society our views have grown beyond these concepts, our laws have not. It is long past time to repeal the spousal defense to rape.

The House of Ruth urges a favorable report on Senate Bill 33.

SB0033 Love is No Defense.pdf

Uploaded by: Essita Duncan

Position: FAV



www.marylandwomen.org

Maryland Commission for Women

A Commission of the Maryland Department of Human Services

51 Monroe Street, Ste. 1034 – Rockville, Maryland 20850

301-610-4524

www.marylandwomen.org

January 26, 2022

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Chair*

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Executive Director*

*Tammy Wise
Management Associate*

The Honorable William C. Smith, Chair
The Honorable Jeffrey Waldstreicher, Vice Chair
Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen St., Annapolis, MD 21401 – 1991

Re: SB0033 – Repeal of Spousal Defense (Love is No Defense)

Dear Senators Smith and Waldstreicher and Members of the Senate Judicial Proceedings Committee:

The Commission urges you to support SB0033 – the Repeal of Spousal Defense (Love is No Defense to Sexual Crimes).

The MCW was established in 1965 and was set in state law in 1971. An office of the Department of Human Services, the Commission is a 25-member advisory board whose duties outlined in its enabling legislation include: study the status of women in our state, recommend methods of overcoming discrimination, recognize women's accomplishments and contributions, and provide informed advice to the executive and legislative branches of government on the issues concerning the women of our state. It is to fulfill this mandate that the Commission writes to you today.

(The positions expressed in this letter are those of the Commission for Women and do not necessarily reflect the position of the Governor or the Department of Human Services.)

As the current law stands, a husband cannot be prosecuted for certain sexual crimes against his wife simply because of the nature of their marital status. This idea is antiquated and is reminiscent of the ideology that women are their husband's property.

Without this repeal, a husband may commit an array of sexual offenses against his wife and not be prosecuted. The exact same act, if committed by an intimate partner that is also a co-habitant but not a spouse, could potentially carry a term of imprisonment while the husband may face no penalty. This defense takes away the most precious right a woman has: the autonomy of her own body.

The argument has been made that repealing this Defense will require a husband to obtain consent for every sexual act or touch he performs on his wife to such an extreme that would require him to ask permission for a hug. However, this argument incorrectly assumes that a woman cannot give her husband broad and ongoing consent, which is common and expected in most relationships both intimate and platonic. This argument goes against all common sense. Two friends do not seek verbal permission before greeting each other with a hug because people in any form of a relationship are aware of each other's preferences and therefore, it is reasonable to believe that a husband can be aware of his wife's sexual preferences and boundaries. A wife who has given general consent does not need her husband to ask for permission before performing every act, however, if he begins an act and she tells him to stop, he must. The law should allow for a person to be prosecuted for sexual misconduct regardless of marital status. All persons should feel protected against unwanted sexual acts and be able to set boundaries that they desire; marriage status should not eliminate this right. As the law stands, a non-married intimate partner has more personal rights than a married person does.

We urge you to support the Repeal of the Spousal Defense and allow all women, married or not, to make decisions about their own bodies on their own terms.

With very best regards,



Yun Jung Yang, Chair
Maryland Commission for Women

SB33 Written Testimony (J. Garth) -signed.pdf

Uploaded by: Jessica Garth

Position: FAV

AISHA N. BRAVEBOY
STATE'S ATTORNEY



JASON B. ABBOTT
PRINCIPAL DEPUTY STATE'S ATTORNEY

State's Attorney for Prince George's County
14735 Main Street, Suite M3403
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301-952-3500

January 28, 2022

MEMORANDUM

TO: Maryland Senate Judicial Proceedings Committee
William C. Smith, Jr., *Chair*
Miller Senate Office Building, 2 East Wing
11 Bladen St., Annapolis, MD 21401 – 1991

THRU: Aisha N. Braveboy
State's Attorney for Prince George's County

FROM: Jessica Garth, Chief
Special Victims & Family Violence Unit

RE: **Senate Bill 0033**

CC: Judith Danso, Chief of Staff

Dear Chairman Smith and Members of the Committee:

I am writing to show my strong support for Senate Bill 0033 on behalf of State's Attorney Aisha Braveboy and the MSAA, and to urge a favorable report. The Spousal Rape Defense denies equal protection to spouses from rape and sexual assault and must be repealed.

As the Chief of the Special Victims & Violence Unit in the State's Attorney's Office for Prince George's County, I am very familiar with the methods employed by domestic abusers to dominate and control their victims, including within a marriage. Unfortunately, the use of sexual assault within an abusive relationship is not uncommon. The Spousal Rape Defense allows abusers to sexually assault their unconscious or incapacitated victims, as long as they are married, without consequences. These victims are not entitled to the same protections and access to justice as unmarried victims who have suffered the *exact* same abuse.

SB33 corrects this injustice and extends protections under Maryland law to all victims, regardless of whether they are married to their abusers. Passage of this bill would allow my

office to prosecute domestic abusers who employ sexual assault as a weapon fairly and equally regardless of the marital status of the victim.

The Spousal Rape Defense prevents the fair and equitable prosecution of some of the worse offenses that a victim can suffer, at the hands of the person that she or he should be able to trust the most. It is time for our married victims to have the same rights as our unmarried victims.

For the foregoing reasons, I respectfully urge a favorable report on SB33.

Thank you,



Jessica L. Garth
Special Victims & Family Violence Unit, Chief

MLAW Testimony - SB33 - Criminal Law - Sexual Crim

Uploaded by: Jessica Morgan

Position: FAV



Bill No: SB33
Title: Criminal Law – Sexual Crimes – Repeal of Spousal Defense
Committee: Judicial Proceedings
Hearing: February 1, 2022
Position: FAVORABLE

The Maryland Legislative Agenda for Women (MLAW) is a statewide coalition of women’s groups and individuals formed to provide a non-partisan, independent voice for Maryland women and families. MLAW’s purpose is to advocate for legislation affecting women and families. To accomplish this goal, MLAW creates an annual legislative agenda with issues voted on by MLAW members and endorsed by organizations and individuals from all over Maryland. **SB33 Criminal Law – Sexual Crimes – Repeal of Spousal Defense** is a priority on the 2022 MLAW Agenda and we urge your support.

SB33 seeks to repeal the current statute that makes marriage a defense to some sex crimes. Sexual Assault disproportionately affects women. Like many states, Maryland’s laws were based on the premise that marriage was consent to sex and that, therefore, a man could not rape his wife. Unlike many states, Maryland has not yet firmly rejected that antiquated and fundamentally disrespectful concept.

Criminal Law §3-318 provides that marriage is a defense to certain sex crimes. We have made some progress: Spouses can be prosecuted for any sex crime if they have a limited divorce or for some sex crimes if they have been separated for three months or have a written separation agreement. Finally, if the rape involved actual force or threat of force, marriage is not a defense. **For other sex crimes, marriage is a complete defense.** This bill repeals Criminal Law §3-318. Marriage should never be a defense to a sex crime.

For these reasons, MLAW strongly urges the passage of SB33.



MLAW 2022 Supporting Organizations

The following organizations have signed on in support of our 2022 Legislative Agenda:

Allegany County Women's Action Coalition
American Association of University Women Maryland
American Association of University Women Anne Arundel County
American Association of University Women Garrett Branch
Anne Arundel County NOW
Baltimore County Commission for Women
Baltimore Jewish Council
Baltimore NOW (National Organization for Women)
Business and Professional Women of Maryland
For All Seasons, Inc.
Forward Justice Maryland
Make A Difference Monday
Maryland Business & Professional Women
Maryland National Organization for Women
Maryland Network Against Domestic Violence
MD Women's Heritage Center (MWHC)
MoCoWoMen
Montgomery County Commission for Women
Montgomery County Women's Democratic Club
Montgomery County Chapter, National Organization for Women
National Coalition For Sexual Freedom
National Organization for Women
NCBW Anne Arundel County Chapter
Prince George's County Alumnae Chapter
Reproductive Justice Inside
South Prince George's Business and Professional Women
Women's Equality Day Celebration Across Maryland
Women's Law Center of Maryland
Yellow Rose Foundation
Zonta Club Mid Maryland

SB 33 - FAV - Support.pdf

Uploaded by: joseph riley

Position: FAV



Maryland State's Attorneys' Association

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Rich Gibson
President

Steven I. Kroll
Coordinator

January 28, 2022

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
State's Attorney
Caroline County
MSAA Legislative Chair

Repeal Spousal Defense Senate.pdf

Uploaded by: Kathryn Marsh

Position: FAV



ANTHONY B. COVINGTON

State's Attorney for Charles County

January 28, 2022

Maryland Senate Judicial Proceedings Committee
William C. Smith, Jr., Chair
Miller Senate Office Building,
2 East Wing 11 Bladen St.,
Annapolis, MD 21401 – 1991

Re: Favorable Report for Senate Bill 33; Repeal of Spousal Defense

Dear Chairman Smith and Members of the Committee:

A marriage license is not a bill of sale, a deed or any other document that indicates ownership over a spouse. One spouse does not lose their autonomy over their own body merely because they're married. Maryland's spousal defense, however, seems to indicate otherwise and grants one spouse the ability to sexually assault their spouse without legal repercussions. No other relationship in Maryland is afforded the right to sexually assault a loved one without legal repercussions, not a parent, a boyfriend, a girlfriend nor any other family member.

The spousal defense harkens back to a past where a wife was deemed property and should not exist in the Maryland of today. I urge a favorable return of this bill.

Thank you,

K.A. Marsh

Kathryn A. Marsh

Special Victims Liaison, Assistant State's
Attorney

VSAB SupportLTR ElimMarriageDefense Senate 2022_.p

Uploaded by: Leslie Frey

Position: FAV



VICTIM SERVICES ADVISORY BOARD

February 1, 2022

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401

Re: Support – SB33 – Criminal Law - Sexual Crimes - Repeal of Spousal Defense

Dear Chairman Smith:

This letter, written on behalf of the Montgomery County Victim Services Advisory Board (VSAB), serves to support Senate Bill 33, which repeals the law that allows marriage to serve as a valid defense to certain sex crimes. Currently, Maryland law significantly limits the instances under which people can be prosecuted for sexual violence against their husbands or wives. These include cases when the two parties have a limited divorce, a written separation agreement or have been separated and apart for three months, and in incidents where there has been force or threat of force. These legal exceptions do not take into account spouses, usually women, who are forced to accept unwanted touching, forcible sex or similar assaults simply because they are married. Senate Bill 33 would eliminate these exceptions, and would thus guarantee that marriage can never be a defense for sexual assaults.

The Montgomery County Victim Services Advisory Board advises the County Council and County Executive on assisting the needs of victims of a broad range of violent crimes, including rape, domestic violence, sexual assault and human trafficking. The number and severity of sexual assault and domestic violence cases referred to the Montgomery County HHS Victim Assistance and Sexual Assault Program and the Abused Persons Program has continued to increase substantially during the pandemic, with more than 1800 requests for help in FY21 and 500 requests already received during the first quarter of FY 22. Victim cases have involved more reports of strangulations as victims – and abusers - have been forced to remain at home during the day because of the pandemic. More than 2,500 domestic violence protective order petitions were filed in Montgomery County District Court in 2021

Experience and data show that domestic violence victims frequently also experience sexual assault. Data based on interviews with thousands of victims shows that women stuck in abusive marriages often feel trapped, isolated and helpless. In such instances, they may realize intellectually that they must escape the marriage, but many emotional and financial factors keep them where they are. The appalling lack of a criminal remedy for sexual assault empowers abusive spouses, intimidates their victims and forces many victims to maintain their fearful silence. The continuing lack of prosecutorial threat for sexual assault contributes to an environment of increased domestic violence across our state. Marriage should never be allowed to be used as a defense to sexual assault, in Maryland and anywhere else in our country.

VSAB asks the committee to issue a favorable report on Senate Bill 33.

Sincerely,

Lawrence Center & Neda Bolourian
VSAB Members

Department of Health and Human Services

Marriage as a defense to sex crimes - testimony -

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277
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For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
www.mcasa.org

Testimony Supporting Senate Bill 33
Lisae C. Jordan, Executive Director & Counsel
February 1, 2022

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 Judicial Proceedings Committee to report favorably on Senate Bill 33.

Senate Bill 33 – Repeal: Marriage as a Defense to Sex Crimes

Like many states, Maryland's law was based on the premise that marriage was consent to sex and that, therefore, a man could not rape his wife. Unlike many states, Maryland has not yet firmly rejected that antiquated and fundamentally disrespectful concept.

Senate Bill 33 brings Maryland into the modern era and eliminates marriage as a defense to all sex crimes.

Historically, most rape statutes in America included language that specified that rape was forced sexual intercourse with a woman not your wife, reflecting historical views that a wife was a husband's property or that marriage itself was a non-revocable and continual consent to sex.

Currently, Criminal Law §3-318 continues to provide that marriage is a defense to certain sex crimes. It is not absolute bar to prosecution in all sex crimes cases. However, marriage continues to be a defense to sex crimes in cases involving the capacity of a victim or "sexual contact" (touching intimate areas for purposes sexual arousal or gratification or for abuse, other than for medical purposes or as a "common expression of familial or friendly affection"). In 2017, in what one hopes is unintended consequences, when the definition of rape was changed to include all sex crimes involving penetration (not just vaginal intercourse), married people lost protections because marriage became a defense to sex crimes involving capacity and oral sex, anal sex, and penetration with an object. Prior to the 2017 changes, marriage was a defense only for capacity cases involving vaginal intercourse.

Prior to 2004, some offenses involving vaginal intercourse could be prosecuted if the parties had met certain separation requirements and the rape involved force or threat of force. In Maryland

in 2004, the General Assembly expanded protections for spouses who were not separated, adding provisions so all vaginal rapes involving either force or “threat of force” could be prosecuted regardless of whether the parties were separated. Additionally, if the parties have a limited (or absolute) divorce, marriage is not a defense.

Disparities between prosecution of sex crimes and other types of intimate partner violence are inexplicable. Assault, stalking, homicide, and other crimes against a person may be prosecuted without regard to the marital status of the parties. Singling out sexual violence as a type of crime that married people should have less protection from is anomalous. This also creates striking inequalities between couples who have chosen to marry and those who have not. For example, a person who rapes their unconscious spouse could not be prosecuted for rape, but a person who raped their unconscious domestic partner could be – even if the married couple had been together for a matter of days and the domestic partners had been cohabiting for decades. Connecticut repealed its law allowing marriage as a defense to sex crimes in 2019, citing concerns about parity between sexual assault in the case of spouses or other intimate partners and the investigation and prosecution of other family violence crimes.

Maryland should not correct the disparities between married and unmarried couples by diminishing the rights of unmarried people in sexual relationships. Competent adults should have the right to refuse sexual interactions, including sexual contact defined by Criminal Law §3-301. Whether they are or are not in a relationship with a person should not change this. It is notable that Maryland does not require “affirmative consent” and if consent to touching is not denied, the law requires “either some degree of resistance or a rational fear of resisting” *Travis v State*, 218 Md.App. 410, 424 (2014). Concerns that repealing the spousal defense would result in prosecution of a husband touching his wife without asking first are, therefore, unfounded.

In states across the country, states are changing the outdated and archaic laws that disregard the rights of married people to control their own bodies and sexuality and amending marriage out of sex crimes codes. A 2006 research article found that as of May, 2005, in 20 states, the District of Columbia, and on federal lands, there are no exemptions from rape prosecution granted to husbands. *Marital Rape: New Research and Directions*, Raquel Kennedy Bergen, with contributions from Elizabeth Barnhill, National Online Resource Center on Violence Against Women (February 2006). Some states have not simply repealed laws permitting marital rape, but gone further and affirmed the application of sex crimes protections to married people. *See, e.g., Va.Code Ann., §18.2-61*: rape statute applies “whether or not” the victim is the spouse of the actor; *State v. Willis*, 223 Neb.844 (1986), there is no “spousal-exclusion” to sexual assault charges. Senate Bill 33 would not make Maryland first in efforts to modernize marital rape laws, however, it would help prevent the state from being last in this historic shift.

Marriage should never be a defense to any sex crime.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 33**

SB 33_mgoldstein_fav 2022.pdf

Uploaded by: Mathew Goldstein

Position: FAV



Secular Maryland

secularmaryland@tutanota.com

February 01, 2022

SB33 - SUPPORT

Criminal Law - Sexual Crimes - Repeal of Spousal Defense

Dear Chair Smith, Vice-Chair Waldstreicher, and Members of the Judicial Proceeding Committee

Chairman and Members

According to Criminal Law §3-318 “a person may not be prosecuted under §3-303, §3-304, §3-30 or §3-308 of this subtitle for a crime against a victim who was the person’s legal spouse at the time of the alleged rape or sexual offense.” Your legal relationship to someone else should not give you permission to rape them or alter the criteria for defining rape or sexual offense as a crime. Secular Maryland supports repealing these marital rape and sexual offense prosecution exemptions from Maryland law.

17th-century British common law declared that when the wife signed the marriage contract she automatically conferred unqualified consent forever thereafter to the husband having sex with her. It is a fiction that everyone consents continuously and forever in advance from the first day of marriage. Some people cite 1 Corinthians 7:3-5 to defend the existing law. False justifications and the Bible can be convenient anchors for unjust law. All fifty states originally followed this legal tradition and explicitly rejected marital rape as a crime. Today those state laws are mostly gone and either spouse can request a divorce if their partner persists in refusing to consent to sex. It is time for Maryland to also repeal this law so that the law as written acknowledges that respectful mutual consent is a reasonable and proper secular legal requirement both within and outside of marriage.

Mathew Goldstein
3838 Early Glow Ln
Bowie, MD

SB 33_MNADV_FAV.pdf

Uploaded by: Melanie Shapiro

Position: FAV



BILL NO: Senate Bill 33
TITLE: Criminal Law – Sexual Crimes – Repeal of Spousal Defense
COMMITTEE: Judicial Proceeding
HEARING DATE: February 1, 2022
POSITION: **SUPPORT**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to issue a favorable report on SB 33.**

Maryland’s laws only permit the prosecution of a legal spouse for rape or other sexual offenses pursuant to Criminal Law §3-303, §3-304, §3-307 or §3-308 with limited exceptions including if there was force or threat of force and no consent, if the parties lived apart without cohabitation and interruption under an executed written separation agreement or for at least three months preceding the rape or sexual assault. The spousal defense to rape and sexual offenses is rooted in English common law dating back to 1847 when women were considered their husband’s property and a marriage contract meant a woman consented to all marital sex, including rape.¹ SB 33 would repeal this archaic law and allow all Marylanders to know that no form of rape or sexual offense is acceptable, even if you are legally married.

While often underreported, marital rape and sexual offenses is a significant and measurable form of intimate partner violence. In 2019, 12% of the calls from Maryland citizens to the National Domestic Violence Hotline were seeking help after sexual abuse from an intimate partner.² Approximately 10-14% of married women will be raped at some point during their marriage.³ Survivors of marital rape experience both physical and psychological effects as a direct result of the violence caused by their spouse including suffering from depression and PTSD.⁴

¹ Jill Elaine Hasday, "Contest and Consent: A Legal History of Marital Rape," 88 California Law Review 1373 (2000). [Contest and Consent: A Legal History of Marital Rape \(uchicago.edu\)](#)

² *Statistics*, The National Domestic Violence Hotline, Retrieved January 11, 2021 from <https://www.thehotline.org/stakeholders/impact-and-state-reports/>

³ *Statistics*, National Coalition Against Domestic Violence, Retrieved January 11, 2021 from [sexual_assault_dv.pdf \(speakcdn.com\)](#)

⁴ Stermac, L., Del Bove, G., & Addison, M. (2001). Violence, injury and presentation patterns in spousal sexual assaults. *Violence Against Women*, 7(11), 1218- 1233.



Any perpetrator of a rape or sexual offense should be subject to prosecution regardless of the relationship with the victim. Maryland must join the other 33 states that prohibit all forms of marital rape and repeal the spousal defense.

For the above stated reasons, the **Maryland Network Against Domestic Violence** urges a **favorable report on SB 33.**

For further information contact Melanie Shapiro • Public Policy Director • 301-852-3930 • mshapiro@mnadv.org

4601 Presidents Drive, Suite 300 • Lanham, MD 20706
Tel: 301-429-3601 • E-mail: info@mnadv.org • Website: www.mnadv.org

SB 33 - Criminal Law - Sexual Crimes - Repeal of S

Uploaded by: Michelle Siri

Position: FAV

BILL NO: Senate Bill 33
TITLE: Criminal Law – Sexual Crimes – Repeal of Spousal Defense
COMMITTEE: Judicial Proceedings
HEARING DATE: February 1, 2022
POSITION: **SUPPORT**

Senate Bill 33 would repeal certain prohibitions on prosecuting someone for rape of their spouse. The Women's Law Center (WLC) supports Senate Bill 33 because the idea that rape or sexual assault, unwanted touching, forcible sex or anything else of that nature is okay because the parties are married is arcane and insulting, a relic of another era that has no place in Maryland law.

Currently, a person cannot be prosecuted under Criminal Law Code §3-303, §3-304, §3-307, or §3-308 if the alleged victim is the defendant's spouse, except under certain circumstances. If for at least three months prior to the act, the spouses are separated and not cohabiting (having sexual relations), and have a separation agreement, then the person can be prosecuted if they used force of threat and did not have consent (or if they had a limited divorce). These Codes sections comprise the crimes of rape in the first and second degree, and sexual offense in the third and fourth degree. SB 33 would eliminate the bar to prosecution for sexual offense against one's spouse.

The WLC thinks it is far beyond the time when a spouse, presumably or usually the husband or man, could do whatever he wanted to his spouse. This was the common law from hundreds of years ago.¹ In the nineteenth century, feminists explained a woman's lack of control over her person as the key foundation of her subordination.² Efforts were made throughout the past centuries to address this issue but were rarely recognized.³ It has only been in the last 25 years that states have begun to update this archaic area of law. The existence of this bar to prosecution is a stark illustration of outdated assumptions about husbands and wives having aligned interests in all matters. Clearly that is not true and not a demonstration of modern views of the marital contract.

Rape violates a woman's bodily integrity, freedom, and self-determination; the harm is not mitigated because the rape occurred in her marriage bed.⁴ Marital rape can be more traumatic and abusive than stranger rape. Suffering at the hands of a spouse, who is usually a source of trust and care, produces feelings of betrayal, disillusionment, and isolation in the woman.⁵

1

<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://search.yahoo.com/&httpsredir=1&article=1484&context=californialawreview> – the history of Martial Rape (2000). 88 Cal. Law Rev. 1373 (2000).

² Id., at 1379.

³ Id., at 1373-1378.

⁴ 4 Am. Univ. International Law Rev. 555 (2012).

⁵ Id., at 555-556.

Over the years the WLC has represented women with these fact scenarios all too frequently. It is more than time to repeal this defense to rape.

Therefore, the Women's Law Center of Maryland, Inc. strongly urges a favorable report on Senate Bill 33.

The Women's Law Center of Maryland is a private, non-profit, membership organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change.

SB 33_FJLSC_fav.pdf

Uploaded by: Michelle Smith

Position: FAV

To: Members of the Senate Judicial Proceedings Committee

From: Family & Juvenile Law Section Council (FJLSC)

Date: February 1, 2022

Subject: Senate Bill 33:
Criminal Law – Sexual Crimes – Repeal of Spousal Defense

Position: FAVORABLE

The Family and Juvenile Law Section of the Maryland State Bar Association (FJLSC) **supports Senate Bill 33 – Criminal Law – Sexual Crimes – Repeal of Spousal Defense.**

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

Under current law, a person may not be prosecuted for rape or certain sexual offenses committed against a victim who is the person’s legal spouse under what is known as the spousal defense rule. Specifically, Section 3-318 of the Criminal Law Article states that a person cannot be prosecuted for rape in the first degree (Md. Crim. L. §3-303), rape in the second degree (Md. Crim. L. §3-304), sexual offense in the third degree (Md. Crim. L. §3-307) and/or sexual offense in the fourth degree (Md. Crim. L. §3-308) if the person is married to the victim. There are a limited number of exceptions to the “spousal defense,” but only if the parties have obtained a limited divorce decree from a court, or if the parties have been separated for at least three months or under a written separation agreement, or the perpetrator used force or the threat of force. House Bill 153 would repeal the outdated prohibition on prosecuting a person for rape or certain sexual offenses against a victim who is the person’s legal spouse.

The origins of Maryland’s spousal defense to rape can be found in centuries-old English common law, where jurists decided that marriage vows equated with perpetual consent.¹ In other words, it is based on the antiquated idea that once a woman marries a man she becomes his property losing her autonomy and ability to take away consent to sex. The precedent established in England was brought to the colonies, and later adopted by courts and legislatures of the United States. The existence of the spousal defense to rape and other sexual offenses sends a message to society that rape is less of a crime when committed against a spouse instead of an acquaintance or stranger. It also sends a message to victims of spousal rape or sexual offenses that if they want to be able to seek relief from the courts by way of prosecution, they must take additional and often unavailable steps or be raped in a manner that someone raped by an acquaintance or a stranger does not. Beginning in the 1970’s, there was a growing movement to remove the marital exemption/spousal defense and to make marital rape a crime. Through this movement marital rape is a crime in all fifty (50) states and the District of Columbia, however, loopholes remain that allow marital rape and sexual assaults to persist. In the wake of the #MeToo movement, there have been efforts across the United States to get these antiquated laws repealed. During the recent years, the Minnesota legislature passed, and the governor signed into law, a bill to repeal and thereby eliminate the marital exemption for rape and sexual assault from its laws. Now, it is time for Maryland to repeal the statutory Spousal Defense for perpetrators of marital rape and to bring justice to their spouses/victims.

By repealing the spousal rape defense, and disallowing the marriage license loophole, it sends a message to both victims and perpetrators that the law will provide the highest level of support and relief for all victims of sexual assault including those married to their perpetrator. Without repealing the spousal defense to sexual crimes, it sends a message to possible perpetrators, victims, and society that the conduct exempt from prosecution is tolerated. It is time for our sexual offense laws to catch up to society’s view and understanding that the rape of a spouse is no less a crime than acquaintance or stranger rape, and should not be prosecuted differently. For married victims of rape and sexual offenses, this necessitates a repeal of the spousal defense.

For the reason(s) stated above, the MSBA FJLSC **supports Senate Bill 33 and urges a favorable committee report.**

Should you have any questions, please contact Michelle Smith by e-mail at msmith@lawannapolis.com or by telephone at (410) 280-1700.

¹ Sir Matthew Hale *Historia Placitorum Cononæ: The History of the Pleas of Crown, Vol. 1* 628 (1847). “The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.”

SB0033-JPR-FAV.pdf

Uploaded by: Natasha Mehu

Position: FAV



BRANDON M. SCOTT
MAYOR

*Office of Government Relations
88 State Circle
Annapolis, Maryland 21401*

SB 33

February 1, 2022

TO: Members of the Judicial Proceedings Committee
FROM: Natasha Mehu, Director of Government Relations
RE: Senate Bill 33 – Criminal Law - Sexual Crimes - Repeal of Spousal Defense
POSITION: Support

Chair Smith, Vice Chair Waldstreicher, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **supports** Senate Bill 33.

Current law allows marriage to be a legal defense to sex crimes involving the capacity of a victim. HB 153 repeals an exemption in current law which states a person cannot be prosecuted for sexually assaulting his or her legal spouse. It is highly unusual to have a law that provides less protections for married individuals. This bill will end this archaic law and send a powerful message that there are no excuses for sexual assault. Furthermore, this bill will protect the rights of disabled spouses who are disproportionately impacted by spousal violence.

Baltimore City's Sexual Assault Response Team (SART) provides a collaborative, victim-centered, and trauma-informed response to sexual violence with a focus on offender accountability. By repealing the spousal rape defense and finally eliminating the last vestiges of English common law's subordination of women, sexual violence survivors across Maryland will have increased access to safety and justice.

We respectfully request a **favorable** report on Senate Bill 33.

SB33 repeal of spousal defense .pdf

Uploaded by: Sarah Miicke

Position: FAV

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Baltimore Zionist District

Beth Am Congregation

Beth El Congregation

Beth Israel Congregation

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Howard County

Beth Tfiloh Congregation

B'nai B'rith, Chesapeake Bay Region

B'nai Israel Congregation

B'nai Jacob Shaarei Zion Congregation

Bolton Street Synagogue

Chevra Ahavas Chesed, Inc.

Chevrei Tzedek Congregation

Chizuk Amuno Congregation

Congregation Beit Tikvah

Congregation Beth Shalom of

Carroll County

Congregation Tiferes Yisroel

Federation of Jewish Women's

Organizations of Maryland

Hadassah

Har Sinai - Oheb Shalom Congregation

J Street

Jewish Federation of Howard County

Jewish Labor Committee

Jewish War Veterans

Jewish War Veterans, Ladies Auxiliary

Jewish Women International

Jews For Judaism

Moses Montefiore Anshe Emunah

Hebrew Congregation

National Council of Jewish Women

Ner Tamid Congregation

Rabbinical Council of America

Religious Zionists of America

Shaarei Tfiloh Congregation

Shomrei Emunah Congregation

Simon E. Sobeloff Jewish Law Society

Suburban Orthodox Congregation

Temple Beth Shalom

Temple Isaiah

Zionist Organization of America

Baltimore District

WRITTEN TESTIMONY

Senate Bill 33 - Criminal Law – Sexual Crimes – Repeal of Spousal Defense

Judiciary Committee - February 1, 2022

SUPPORT

Background: Senate Bill 33, (SB33) would repeal the law allowing marriage as a defense to sex crimes. Currently, criminal Law provides that marriage is a defense to certain sex crimes. Like many states, Maryland's laws were based on the premise that marriage is consent to sex and, therefore, a man could not rape his wife. While we have made some progress, including repealing marriage as a defense in a limited divorce or separation, for other sex crimes, marriage is a complete defense. However, marriage should never be a defense to a sex crime.

Written Comments: The Baltimore Jewish Council represents the Associated Jewish Community Federation of Baltimore and its agencies, including CHANA. CHANA is a domestic violence, sexual abuse, and elder abuse agency that serves the citizens of Greater Baltimore. People in abusive marriages come to CHANA because they want to know their options and rights. What underlies all domestic violence is power and control. Our clients experience physical, sexual, psychological, financial, technological and spiritual abuse. Some are hit, kicked, and raped, while others are told daily that they are stupid and worthless. However, current Maryland law protections many abusers for sex crimes when the abuser is married to the victim. SB33 would create more protections for abuse victims by repealing marriage as a defense to sex crimes.

With this in mind, the Baltimore Jewish Council urges a favorable report on SB33.

The Baltimore Jewish Council, a coalition of central Maryland Jewish organizations and congregations, advocates at all levels of government, on a variety of social welfare, economic and religious concerns, to protect and promote the interests of The Associated: Jewish Community Federation of Baltimore, its agencies and the Greater Baltimore Jewish community.

BALTIMORE JEWISH COUNCIL

5750 Park Heights Avenue, Suite 329 • Baltimore, Maryland 21215

410-542-4850 • fax 410-542-4834 • baltjc.org

Member of the Jewish Council for Public Affairs

Baltimore Jewish Council is an agency of The Associated

SB 33 - Written Testimony.pdf

Uploaded by: Scott Shellenberger

Position: FAV

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.

2022 PANDA SB33 Senate Side .pdf

Uploaded by: Suhani Chitalia

Position: FAV

Mid Atlantic P.A.N.D.A. Coalition

5788 Endless Ocean Way, Columbia Maryland 21045

From: Mid Atlantic P.A.N.D.A. Coalition

To: Chair Smith

Re: SB 33 Criminal Law-Sexual Crimes- Repeal of Spousal Defense

Date: February 1, 2022

The Mid-Atlantic P.A.N.D.A. is in Favor of SB 33.

We represent the Mid Atlantic P.A.N.D.A. Coalition (Prevent Abuse and Neglect through Dental Awareness). We were established in 2000, our mission is "To create an atmosphere of understanding in dentistry and other professional communities which will result in the prevention of abuse and neglect through early identification and appropriate intervention for those who have been abused or neglected." Dentists and Dental Hygienists (Dental Professionals) are mandated by the State of Maryland to report suspected cases of abuse and neglect. Our coalition has established a Continuing Education (CE) course that educates Dental Professionals and others on how to recognize, report, or refer. The Maryland State Board of Dental Examiners has deemed this course as a mandatory CE requirement for Dentists and Hygienists to renew their licenses. We also address domestic violence, elder abuse, human trafficking and bullying in our CE course.

Marriage should never be an excuse for unacceptable behavior, it does not mean that a spouse has the right to do whatever they like without consent. No means no in any relationship. Once a spouse says no and rape or other sexual offenses take place, it should be considered a sexual offense with consequences even if the person is your spouse at the time of the offense.

Thank you for your consideration of SB33 and be urge your support of this bill.

Respectfully submitted,

Mid-Atlantic P.A.N.D.A. Coalition

Carol Caiazzo, RDH President

Susan Camardese, RDH, MS, Vice President

SB33_FAV_Lee_2022.pdf

Uploaded by: Susan Lee

Position: FAV

SUSAN C. LEE
Legislative District 16
Montgomery County

MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on
Cybersecurity, Information Technology,
and Biotechnology

Chair Emeritus
Maryland Legislative Asian American
and Pacific Islander Caucus

President Emeritus
Women Legislators of the
Maryland General Assembly, Inc.



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 1, 2022

Judicial Proceeding Committee

SB 33 – Favorable - Sponsor Testimony - Criminal Law - Sexual Crimes - Repeal of Spousal Defense

Senate Bill 33 is familiar to this committee, as it is the full repeal of the spousal defense to sex crimes. I have reintroduced this legislation as a clean bill again, and I trust we can pass it as a full repeal of the spousal defense to rape, without other topics outside the scope of married couples. We have had years to discuss this legislation and propose alternatives to the existing law for non-married couples, but this bill, and the notice to everyone who would want to testify on it is specifically and purposefully limited to relationships of marriage. The limited scope of this bill was by design because our code contains an unfounded and unconscionable defense to sex crimes for married couples. Please note the name of the bill has been changed to a generic title, in response to concerns last session. That is an amendment we were happy to make, but we are not open to categories beyond married couples for this vehicle, and respectfully ask for that discussion to be brought up in separate legislation if so desired.

This legislation is a top priority for me, and I am not going to give up this effort until we repeal this egregious defense to sex crimes. Marriage is something that should be encouraged, not sullied with the idea that you can drug and rape your wife or husband without repercussions, as long as you don't get charged with the underlying assault, which might be harder to prove, especially if they video taped the rape and not the drugging. A complete defense, is completely defenseless. We can't leave victims in this nightmare scenario.

Please join with me to support and finally pass SB33 this session. I respectfully request a favorable clean vote on SB33.

SB0033_VMcAvoy_UNF.pdf

Uploaded by: vince mcavoy

Position: UNF

SB0033 UNFAVORABLE

Dear Senators of JPR,

I urge you to be the adults who understand that turning EVERY marriage into a potential rape case is not what Marylanders want; it is what radical feminists want.

It is part of a long-standing program they have to destroy marriage & use the idea of "consent" to use the intrusive family-law-courthouses toward financial gain & ideological profits by way of **mere UNPROVABLE hearsay**.

These cases WILL end up in courts, clogging courts, whether or not the circumstances are factual.

Facts have VERY LITTLE to do with the running of family law courts in radical feminist Maryland.

One-off cases are not the substance of good law.

I encourage a NO vote on **SB0033, Criminal Law - Sexual Crimes - Repeal of Spousal Defense**.

As detailed in JPR, Marital Privilege is internationally respected.

I really encourage you to listen to what JPR Chairman Bobby Zirkin had to say on the issue.

http://mgaleg.maryland.gov/mgaweb/Committees/Media/false?cmte=jpr&ys=2019RS&clip=JPR_2_12_2019_meeting_1&url=http%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2Ffe857c1c3-5503-4334-8595-1341f3b34e23%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D12049000

The bill proponents' intention seems to remain the same -- destroy family through the use of the multi-billion dollar domestic violence industries, whose members routinely serve Annapolis lies, half-lies and damnable lies.

SB0033 is an intrusive bill and should be **voted down**.

Thank you for your time & attention to reducing false allegations, preserving family & eliminating the monetization of family discord.

Thank you for your votes & your consideration.

humbly

~vince

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