



*Protecting Immigrant
Women and Girls
Fleeing Violence*

Testimony in **SUPPORT** of Senate Bill 33, **WITH AMENDMENTS**

(Repeal of Spousal Defense)

Judiciary Committee

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Chair Clippinger, Vice-Chair Moon, and Honorable Members of the House Judiciary 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 may turn a blind eye and in some cases normalize or excuse the rape as a normal part of marriage. By maintaining a spousal defense to sexual offenses, Maryland’s current statute reinforces this harmful normalization with the full weight of law.

The existing statute is also 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not want in the first place and was recently recognized in the reauthorization of the Violence Against Women Act which repealed the marriage defense to statutory rape on the federal level.

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The noble aim of this bill as introduced has unfortunately been significantly undermined by the amendment made in the Senate’s Judicial Proceedings Committee, which harmfully redefines consent in some situations to hinge on a person’s relationship status rather than their desire to participate in a sexual activity. Beyond the harmful impact of the amendments itself, the notion that the General Assembly would redefine consent without holding hearings specific to the subject should also be rejected; if the state wishes to revisit the issue, it should do so in an independent bill that affords advocates and survivors the full opportunity to weigh in.

Tahirih Justice Center urges this Honorable Committee to amend Senate Bill 33 to remove the language added by the Senate, and issue a favorable report for the bill in its original form.

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.