



Maryland State's Attorneys' Association

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The Honorable Luke Clippinger
Chairman, House Judiciary Committee
101 House Office Building
6 Bladen Street
Annapolis, MD 21401

Re: Conform Senate Bill 33 to House Bill 153 (as passed by the House)

Dear Delegate Clippinger and Members of the Judiciary Committee:

House Bill 153 and Senate Bill 33, as originally drafted, repeal current Maryland law that gives individuals a complete defense to sexual crimes perpetrated on their spouse, including rape, unless the crime of rape was perpetuated by force. The House and the Senate passed different versions of the repeal spousal defense bill. The Senate passed a version that included the following language:

“For the purposes of §3-308(B)(1) of this subtitle only, in the case of two individuals engaged in an ongoing consensual sexual relationship, physical contact commonly engaged in by two individuals in a sexual relationship, unless one of the individuals has reasonably indicated to the other that further physical contact is unwanted.”

This amendment is contrary to everything we know and teach about consent: Consent means giving permission for all sexual contact that happens. Consent is freely given, of a person's own free will, and absent of pressure. Consent is agreeing throughout the entire act. Being in a sexual relationship does not and cannot mean that one partner can engage in sexual contact without the consent of their partner.

Section 3-308(B)(1) prohibits a person from engaging in “sexual contact with another without the consent of the other.” “Sexual contact” means 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.” Current law carves out an exception for any touching that is a common expression of familial or friendly affection or for an accepted medical purpose. Familial or friendly affection often includes hugs, kisses, squeezes, “taps” to the body, etc., if this is part of the normal routine and consented contact between the parties.

The proposed amendment creates a vague and unnecessary exception to the crime of sexual assault for individuals engaged in a prior sexual relationship. The fact that someone is in a relationship should not obviate consent under any circumstance. The amendment is out of synch with our modern understanding of consent and should be eliminated.

Moreover, the language of the proposed amendment is vague and subject to multiple interpretations. What constitutes an “ongoing sexual relationship?” How do we define the meaning of “physical contact commonly engaged in by two individuals?” And lastly, what is a “reasonable indicat[ion]” that physical

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contact is “unwanted.” Witnesses will be forced to share the intimate details of their sexual history, which is typically protected under section 3-319 of the Criminal Law Article.

Maryland law should not allow a person to use the fact of their marriage or relationship to protect them from prosecution for a sexual crime. The MSAA urges the Judiciary Committee to report favorably on SB33 in its original form (without the italicized language above).

Sincerely,

A handwritten signature in blue ink that reads "Joseph A. Tilley". The signature is written in a cursive style with a large, looping initial "J".

Legislative Chair - MSAA