

TESTIMONY IN SUPPORT OF BILL HB0153 - FAVORABLE
Criminal Law - Sexual Crimes - Repeal of Spousal Defense

TO: Chair Clippinger, Vice Chair Moon, and
members of the Judiciary Committee

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Jan 25, 2022

The spousal defense is a serious forgotten disaster in Maryland's sexual assault laws as it allows some abusers to escape prosecution. Although unwed persons have greater protection from assault while unconscious or incapacitated, married people basically have less protection from the same horrendous acts. This archaic law creates a situation where anyone choosing to get married no longer has the same body autonomy as someone else. I believe the spousal defense should be repealed because any loophole that allows someone to force themselves on another person is completely abhorrent and inhuman. 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As others have previously testified, there is no evidence that frivolous accusations would arise should this law be repealed.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nor do we expect to see that frivolous accusations will become a problem between married couples should this law be repealed.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 make 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 am grateful that the Committee voted favorably on this bill during the 2021 Regular Session. I respectfully urge the committee to issue a favorable report again this year.