
To: Members of The House Judiciary Committee

From: Family & Juvenile Law Section Council (FJLSC)

Date: January 27, 2022

Subject: **House Bill 153:**
Criminal Law – Sexual Crimes – Repeal of Spousal Defense

Position: **SUPPORT**

The Family and Juvenile Law Section of the Maryland State Bar Association (FJLSC) **supports House Bill 153 – 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 House Bill 153 would repeal the outdated prohibition on prosecuting a person for rape or certain sexual offenses against a victim who is the person’s legal spouse.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 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 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 rape, it sends a message to possible perpetrators, victims, and society that the conduct exempt from prosecution is tolerated. It is time for our rape and 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 House Bill 153 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.”