

# Senator Kelly SB 129 Testimony.pdf

Uploaded by: Ariana Kelly

Position: FAV



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

Testimony in Support of SB129  
Criminal Law- Sexual Crimes- Repeal of Spousal Defense

I am here today with a bill this Committee has heard three times before. Its identical crossfile has already passed the House- just last week- with a **unanimous bipartisan vote**.

I am asking the JPR committee to do the same thing. Please pass this bill- with no amendments. The legislation currently has zero words, just *two brackets*. Let's please keep it that way.

I know lawyers like lots of words, but this bill really truly doesn't need any words. It's beautiful and meaningful just the way it is.

Let's just hit edit delete on Criminal Law Section 3-318- the Spousal Defense for rape and other sexual offenses- an archaic patriarchal offensive antiquated statute that **I know absolutely nobody on this committee believes in**.

This is my only bill in this Committee this year, so I hope my colleagues and the Chairman will prioritize getting this on a voting list as soon as possible.

Now, as the Committee members must know by now, I am not an attorney. But I sit all day and listen intently to all you attorneys talking about things that fascinate you, and now it's payback time. I hope you like History Class!

My degree is in American women's history. You can't really understand this bill- and what this bill MEANS- to the women of Maryland, without understanding women's history.

This legislation strikes from the criminal law article an **extremely outdated and highly offensive** provision that robs married women of their bodily autonomy.

The whole bill is just a set of brackets around the Criminal Law article 3-318. *That's the part in the Maryland statute that spells out the circumstances under which a man is allowed to commit an **already established sex crime** if- and only if- the victim is his wife.*

That's it. That's all that's in the bill.

Can we all please agree that we don't need that section in our law?

- 1) Now, let me be clear: The part of the statute this bill would strike does use more modern gender neutral terms, like "spouse" - so when we take this action to strike the "*spousal defense to sex crimes*" we are also protecting male victims from their spouses, whether that spouse is a man or a woman.
- 2) That gender neutral language was put into law in 1976. The year I was born!
- 3) Also put into statute in 1976 was the language creating Fourth Degree sexual offenses. That's the part in the CURRENT LAW – that makes it illegal to grope or fondle sexually anybody when you know it's against their will. It could be a stranger, it could be your girlfriend, or your fiancé, or your ex-wife. It's illegal and it has been since 1976. And it should be illegal!

For returning committee members, don't worry. We'll get back to fourth degree sex offenses.

**Let's start with why under Maryland law is a man allowed to commit a sex crime against his wife, but not his fiancé?**

- 1) This is a LONG outdated idea that was once commonplace in societies throughout the world- that girls, originally the property of their fathers, become the property of their husbands upon marriage.
- 2) Rape laws around the world were originally developed not to protect women from assault and abuse, but rather to protect the *property interests of men- the property being their daughters and wives.*

**Historically, marital rape was not criminal – because a wife's body was believed to belong to her husband.**

- 1) In early US history, we depended a lot on English Common law, where *marriage* changed women's legal status dramatically. When women married, they found themselves in positions of almost total dependency on their husbands- a system legally known as *coverture*.

As the English jurist William Blackstone famously put it in his *Commentaries on English Law* (1765–1769): *By marriage, the husband and wife are one person in the law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs everything.*

- 2) This is a vestige of a legal idea that dates from a time when married women could not own or inherit property, establish credit in their own name or establish a business in their own name.
- 3) Even unmarried women could not vote or serve on juries, much less become attorneys or judges (or legislators), and in many cases they could not receive an education at all.

Quite simply, this provision dates from a time when women were not treated as full human beings under the law.

**But this is Maryland in 2023 and those days are long long gone. Am I right?**

I know we all agree with that basic principle.

**Under this bill, you will simply no longer be allowed to do things to your wife that were illegal for you to do when she was your fiancé.**

**And she has to follow the same rules for you.**

If we pass this law you will no longer be able to engage in second degree rape, or third or fourth degree sexual offenses. For example, you won't be able to:

- 1) Penetrate your wife digitally (3rd) or with your penis or fondle your wife's genitals or nipples when she is **unconscious**
- 2) Penetrate your wife digitally (3rd) or with your penis or fondle your wife's genitals or nipples when she is **tied up *\*\*against her will\*\**** (it's not a crime if she asks you to do it!)
- 3) Penetrate your wife digitally (3rd) or with your penis or fondle your wife's genitals or nipples if she is incapacitated **because you have drugged her – or because her substance use disorder has rendered her completely incapable of consent.**
- 4) Perform cunnilingus on your wife when she is unconscious, tied up against her will, or chemically incapacitated.
- 5) You also can't grope or fondle your wife's genitals, anal area or breasts **against her will.**

*That's a fourth degree sexual offense - it's been illegal to do that to your girlfriend or fiancé since 1976. If you and your friends haven't been charged with it yet - I think you're going to be safe after we pass this bill.*

In all seriousness, there are decades of experience with this law on the books as it relates to consensual sexual relationships.

**There is absolutely nothing in this legislation that will impact your current ability to maintain a healthy intimate relationship with your partner, whether you are married or**

**not.**

- You can still give your wife a friendly pat on the rear end.
- You can still caress her breast to wake her up in the morning.
- Whatever floats your boats. As long as it's floating BOTH of your boats.

This legislation maintains **all of the existing protections** in Maryland law that already protect people in unmarried consensual sexual and romantic relationships.

I don't mean to give you the vapors, but there are lots and lots of people in Maryland in consensual sexual relationships who are not married- many of these relationships are committed and/or long term and involve children.

**And these people are all currently protected under the law from sex crimes perpetrated by their partners.** This law has been on the books for decades and has not clogged the courts with frivolous cases.

Even though these couples break up and experience jealousy and bitterness  
Even though these couples have child custody or property division fights

I refer you to the written testimony from the Attorney General's office- and we have Jer Welter here from the AG's office- to further explain these existing robust protections for unmarried couples in consensual relationships.

**We simply don't see rampant abuse of this law among unmarried cohabitating couples, and we won't for married couples.**

I also refer you to the written testimony from the Prince George's County State's Attorney's office that states clearly "*the repeal of the spousal rape defense does not endanger individuals who engage in loving and common expressions of affection with their spouses.*"

Even the fiscal note states clearly: The number of people expected to be convicted as a result of this bill is expected to be minimal.

**This bill is not about changing the meaning of marriage.  
Marriage has ALREADY changed.**

**The law is way, way, way out of date.**

- This bill is about ensuring the same protections and access to justice *for married women* that unmarried women already have.

- It's about making it clear in Maryland law that getting married does NOT mean you are surrendering your personal rights over your own body.
- It's about being able to hold people who sexually abuse their spouses accountable.
- It's about standing up for married people who are victims of serious crimes at the hands of someone they are supposed to be able to trust.

I refer you to the testimony from Dr. Christina Dardis, a prof of Psychology at Towson:

*Marital sexual violence is common and no less injurious than non-marital sexual violence. 10-14% of women are raped by their spouse in and approximately 12% experience forcible fondling. In addition to physical injuries, survivors of marital sexual violence experience psychological injuries including depression, anxiety, fear, decreases in self-esteem, and long-term difficulties with trust and intimacy....Victims of marital sexual violence experience MORE SEVERE PTSD than those sexually assaulted by strangers.*

The fact is, marital rape is rarely prosecuted. Fourth degree sexual offenses (unwanted groping and fondling) between cohabitating unmarried couples are very rarely, if ever, prosecuted.

However – I refer you to the House of Ruth testimony:

*When conduct is criminalized, it sends a message to potential perpetrators and society that certain acts are unacceptable; when the same conduct is not criminalized it sends a message that the conduct is tolerated.*

That's why this bill passed unanimously in the House.

**Every Republican agreed with every Democrat that Maryland law should not give a pass to people who commit acts of sexual violence, just because they are legally married to their victim.**

I urge a favorable report.

# **Spousal Defense 2023 - Senate Testimony.pdf**

Uploaded by: Ayla Hurley

Position: FAV

Ayla Hurley  
6385 Windharp Way  
Columbia, MD 21045  
District 13

TESTIMONY IN SUPPORT OF SB0129, Criminal Law - Sexual Crimes - Repeal of Spousal  
Defense

3/8/2023

TO: Chair Smith and members of the Senate Judicial Proceedings Committee

FROM: Ayla Hurley

Chair Smith and members of the Senate Judicial Proceedings Committee, my name is Ayla Hurley, I live in Columbia, Maryland, and I am writing in support of SB0129 to repeal the prohibition on prosecuting a person for rape against their spouse.

I write to you as the daughter of an abuse survivor, and I myself have been the victim of sexual assault as a teenager. To know that now, as a recently married person, I have *lost* rights that bring justice to victims of sexual assault is diminishing and unethical. Marriage is not and has not been a contract of ownership over another person for decades. I married my husband in a legal partnership of equals; neither of us belongs to the other, and the laws which keep this medieval loophole of “sexual ownership” over a spouse needs to be repealed.

Victims of sexual assault, be it by a spouse or not, have a hard enough time finding justice in our legal system. That this prohibition exists in our state is an embarrassment to Marylanders and the Maryland government. I urge the Senate Judicial Proceedings Committee to stand by survivors of sexual abuse and once again allow them to obtain justice against abusive spouses, and not turn them back to their abusers, legal hands tied. Please support SB0129. Thank you.



# **SB0129 Repeal of Spousal Defense FAV.pdf**

Uploaded by: Cecilia Plante

Position: FAV



**TESTIMONY FOR SB0129**  
**Criminal Law – Sexual Crimes – Repeal of Spousal Defense**

**Bill Sponsor:** Senator Lee

**Committee:** Judicial Proceedings

**Organization Submitting:** Maryland Legislative Coalition

**Person Submitting:** Cecilia Plante, co-chair

**Position:** **FAVORABLE**

I am submitting this testimony in favor of SB0129 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.

**SB0129\_Chris\_Apple\_FAV.pdf**

Uploaded by: Chris Apple

Position: FAV

TESTIMONY IN SUPPORT OF BILL SB0129 - 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  
6385 Windharp Way  
Columbia, MD 21045  
District 13

Mar 9, 2023

In 2022, I joined other advocates calling for an immediate repeal of the “spousal defense” to sexual assault. I testified alongside attorneys and courageous survivors who talked about how they had suffered as a result of this loophole. I thought Maryland could not truly be a place where this was allowed to happen. But it became clear that this law has been enabling sexual abusers for years, and has failed survivors who come forward.

In October, I started a petition demanding an immediate repeal of this loophole, and began circulating it among registered voters. I knew that other Marylanders would share my outrage about this law.

People were shocked to learn that such a law could exist in Maryland. Though they didn’t know me, hundreds of voters signed when I knocked on their doors. Many volunteered to become circulators themselves. They wanted to unite to defeat this law, to live in a Maryland that protected survivors.

Many were survivors themselves. I was surprised when people began to share their stories with me - stories of repeated assaults by spouses, intimate partners, and family members. Assaults in the dead of night, while the victim was exhausted and delirious. Lasting scars of fear, isolation, and shame.

I felt the deep well of pain beneath this law. Strangers wrote me letters detailing years of abuse and violence they’d suffered. As I knocked on doors, it seemed like every other house revealed another story, another horror that someone had endured. But people were eager to help, even desperate to help. One signer was recovering from carpal tunnel surgery - she spent five agonizing minutes writing her name and address. “Don’t be sorry,” she said to me. “It’s a good cause.”

It became clear that the stories we see in the hearing room are just a few of the many spousal assaults Marylanders endure. Many suffer in silence. But when they do come forward, the justice

system does not protect them. Instead, this law delivers them back into the homes of their abusers.

We need laws that liberate survivors. But so long as this law exists, we subjugate survivors. We send them the clear message that, when conditions are right, their spouses are entitled to unlimited sexual contact. With this law on the books, it must feel like the system is designed to *perpetuate* abuse. Repealing it will get us one step closer to uplifting Marylanders who need our help.

I undertook this effort because I needed the Judiciary Committee to see the opinions of their constituents. Providing testimony is not always a feasible option for folks, nonetheless, those people still have opinions. We only see a handful of advocates in the hearing room, but the reality is that many, many more people support an immediate repeal.

We must stop the cycle of violence and abuse. We must repeal this law.

# **SB 129 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 129**

March 9, 2023

**DOROTHY J. LENNIG, LEGAL CLINIC DIRECTOR**

The 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 129 would repeal the spousal defense to rape. **We urge the Senate Judicial Proceedings Committee to issue a favorable report on Senate Bill 129.**

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 129.**

# **SB 0129 - Repeal of Spousal 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  
www.marylandwomen.org

February 22, 2023

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*Yun Jung Yang, Esq.*

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

RE: SB 0129 - the Repeal of Spousal Defense

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

The Commission urges you to support SB 0129 – 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.

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.

Maryland Commission for Women  
Re: SB 0129 - the Repeal of Spousal Defense  
Page 2

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,

A handwritten signature in black ink, appearing to read 'Tawanda Bailey', written in a cursive style.

Tawanda Bailey, Chair  
Maryland Commission for Women

*Please note that the positions expressed in this letter are those of the Maryland Commission for Women and do not necessarily reflect the position of the Governor or the Department of Human Services.*

# **Witness Statement.pdf**

Uploaded by: Janice Gruselle

Position: FAV

Witness Statement  
SB0129 – Criminal Law – Sexual Crimes – Repeal of Spousal Defense  
Position – Favorable

A married perpetrator committing sexual assault and battery should be charged the same as an unmarried perpetrator. A person is unable to consent in sexual activity while in an incapacitated state. The aftermath of sexual abuse and battery not only seriously impact the person, they impact all family members and the community as a whole. Victims should not have to live in fear and battle the psychological damage this law currently supports. Victims are far less likely to develop a strong and healthy relationship with another person, due to the trauma of sexual assault.

As a victim of varying unwanted sexual assaults and harassment, the burden of proof and the constant attack of personal credibility only encourages suffering victims to remain silent. Meanwhile, the perpetrator continues to wreak havoc on more people.

The cycle of abuse must stop. This law is outdated and protects the perpetrator, not the victim.

**2023-03-09 SB 129 (Support).pdf**

Uploaded by: Jer Welter

Position: FAV



STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.  
(410) 576-6475

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(410) 576-6435

March 9, 2023

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

FROM: Jer Welter, Assistant Attorney General  
Deputy Division Chief for Legal Affairs, Criminal Appeals Division,  
Office of the Attorney General

RE: SB 129 – Criminal Law - Sexual Crimes - Repeal of Spousal Defense  
(Support)

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The Attorney General urges the Judicial Proceedings Committee to issue a favorable report on Senate Bill 129. Senate Bill 129 repeals Criminal Law Article § 3-318, which currently provides that, with exceptions, a person cannot be charged for rape or sexual assault of his or her legal spouse.

Under current law, a person can subject his or her spouse to non-consensual “sexual contact,” and the person’s marriage to the victim is a complete defense to liability for the sexual assault. Likewise, a person can have vaginal intercourse or engage in a “sexual act” with his or her spouse when the spouse is substantially cognitively impaired, mentally incapacitated, or physically helpless—and thus the spouse is incapable of giving consent—and, again, there can be no prosecution.

This so-called “spousal defense” is a relic of the common law. *See Lane v. State*, 348 Md. 272, 279–92 (1997) (tracing history of “marital exemption” from rape law). Such “spousal defense” laws stem from the archaic, 18th-century belief that “marriage constitutes a blanket consent to sexual intercourse by the wife, which she may revoke only by dissolving the marriage.”<sup>1</sup> That belief is now rightly rejected in modern society.

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<sup>1</sup> *Criminal responsibility of husband for rape, or assault to commit rape, on wife*, 24 A.L.R. 4th 105 (1983).

*This bill letter is a statement of the Office of Attorney General’s policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us*

In prior years, concerns have been expressed that a repeal of the “spousal defense” might result in a husband being prosecuted for touching his wife without asking permission first. These concerns are unfounded. The law in Maryland is clear that, in order for the State to prove 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). Instead, there must be evidence of: 1) an express denial of consent; 2) “verbal or physical resistance” by the victim; or 3) a “reasonable fear of resisting” on the part of the victim, caused by “some additional or aggravating conduct” by the perpetrator. *Id.* at 424, 466. Moreover, the definition of “sexual contact” specifically excludes “common expression[s] of familial or friendly affection.” Md. Code, Crim. Law § 3-301(e)(2)(i). If the “spousal defense” were repealed, then the State would have to prove, as in any other case involving non-consensual sexual contact, that the husband in the above hypothetical 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. The mere absence of express permission would not be enough—just as mere lack of permission is not enough to prove a sexual offense in cases where the perpetrator is not married to the victim.

It is past time for Maryland law to recognize that people do not sacrifice their bodily autonomy when they marry. A marital relationship with the victim should never be a defense to rape or sexual assault. The Attorney General urges the Committee to report Senate Bill 129 favorably without amendments.

cc: Members of the Committee

**SB0129 - FAV - PGSAO MSAA.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  
Upper Marlboro, Maryland 20772  
301-952-3500

March 9, 2023

Testimony in **Support** of

**SB 0129 – Criminal Law – Sexual Crimes – Repeal of Spousal Defense**

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Dear Chairman Smith and Members of the Committee:

I am writing to show my strong support for Senate Bill 0129 on behalf of State's Attorney Aisha Braveboy and the MSAA, and to urge a favorable report. I am the Chief of the Special Victims & Violence Unit in the State's Attorney's Office for Prince George's County and a member of our Sexual Assault Response Team, a multidisciplinary group that works to formalize interagency guidelines that prioritize victims' needs, hold offenders accountable, and promote public safety.

As a result of my work, 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. This includes sexual abuse that is facilitated by the use of drugs or alcohol, physical helplessness such as paralysis, cognitive impairments such as dementia or Alzheimer's, and mental health issues that render a victim unable to consent.

What is particularly egregious is that if precisely the same abuse occurs between an abuser and a victim who are not legally married, no blanket defense is provided under the law. Thus, the Spousal Rape Defense denies equal protection to married victims from rape and sexual assault. These victims are not entitled to the same protections and access to justice as unmarried victims who have suffered the exact same abuse.

SB0129 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.

I urge a full repeal of the Spousal Rape Defense. Abusers should not have the right to rape their spouses, nor to engage in any type of sexual touching without consent. Sexual offense in the fourth degree under CR 3-308 prohibits sexual contact without consent. Notably, the law specifically states that touching that is a common expression of familial or friendly affection, or for an accepted medical purpose, is not criminal under the statute. Because this type of conduct is already protected, full repeal of the Spousal Rape Defense does not endanger individuals who engage in loving and common expressions of affection with their spouses.

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. The current law is outdated, unfair, and unnecessary.

For the foregoing reasons, I respectfully urge a favorable report, and ultimately passage, on SB0129.

Sincerely,



Jessica L. Garth  
Chief, Special Victims & Family Violence Unit  
State's Attorney's Office for Prince George's County

## **Testimony\_Irwin\_2.pdf**

Uploaded by: Jessica Irwin

Position: FAV

Good afternoon [Senator William C. Smith, Jr.](#) and members of the Judicial Proceedings committee. My name is Jessica Irwin; I live in Owings, MD. I have been a resident of Maryland for the past 2 years. Before that time, I spent 14 years moving around the country as a spouse of an active-duty member of our nation's military.

Today I am asking you to pass Senate Bill 0129, to repeal spousal defense in sex crimes, to better serve and protect the over 14,000 military spouses, the 29,000 active duty military members, and the nearly 30,000 children of active duty members who live in the state of Maryland. ("Maryland Military Legislation & Policies | Military State Policy")

As a military spouse, I experienced the many ups and downs that military life creates.

I made deep and lasting friendships, searched for work and community in each new place, and moved more times than most people do in their entire lives.

This constant relocation, over which we had minimal choice and nearly zero control, was challenging in more ways than just packing and unpacking belongings.

From personal experience, being a military spouse makes anything you do slightly more challenging. There is pressure and fear placed on military members and their spouses regarding any action you make in terms of long-term implications for both your spouse's career and how your actions might ripple through the community.

The laws of each state we were told to relocate to could drastically affect our lives and potentially have long-term, lifetime-long implications regardless of whether we were legal residents and voting members of that state.

Sexual violence in any situation is incredibly challenging to overcome. It's difficult for the victims to report, it's difficult to prove, and it's difficult to get authorities to take you seriously. Couple this with the challenge of navigating the military judicial system, getting any protection or action taken in the case of sexual violence, and the lack of faith that many have in that system. You can understand why this is such a pressing issue.

While there is a Bill of Rights for Dependents of Active Duty Military Sexual Violence Victims, it places all of its faith in the military investigation system. The only recourse, if this fails, is the civilian authorities. According to the military times, In 2021, the armed services started court martial proceedings on only 42% of reported cases of sexual violence; 27% of those cases only resulted in administrative action, and 31% in nonjudicial punishments. The faith in this system is incredibly low. It's fraught with conflict of interest, personal opinions, and feelings ("Rights For Dependents of Active Duty Military Sexual Violence Victims").

Military spouses are twice as likely as their civilian counterparts to experience sexual victimization (Farmer 10). But the lack of action by the DOD in these situations means that rather than approach the command with which you're associated or the military installation,

people turn to local law enforcement and intern local lawmakers to protect them and prosecute accordingly.

Imagining summing up all of that courage and disregarding all of the fear that you have of the implications, reporting your spouse and the violence that they've committed against you, only to find that the state in which you've been told you must reside in will ultimately not protect you because your spouse cannot be convicted of the crime they've committed against you. And because you're not a resident or voting member in the state, you're discouraged from speaking up or totally disregarded.

So many acts of sexual violence go unreported; in fact, as an 18-year-old, I did not report the act of sexual violence that was committed against me. At that time, I didn't have the strength or the courage or the words or the tools to be able to report what had happened to me. My attacker was not my spouse, and yet there was still enough stigma and fear that I was not able to act.

I have tremendous admiration for the individuals who are able to report the crimes committed against them, especially when those crimes are committed by the person that you have put so much trust into. Especially, when these victims have additional stigmas and bias to overcome simply due to their spouses profession.

Marriages in the military can be isolating, military spouses who have sacrificed so much, who have left everyone and everything they've known, to move to a new place with this one person. When bringing up an issue as sensitive as sexual violence that you experience from your partner, you may not know who to trust or who to turn to protect yourself or your family.

A place that you should be able to turn, and count on the fact that they will protect you and defend you, is the system of government and the state in which you are required to live.

Today I urge you to vote in favor of the repeal of spousal defense because while the 50,000 military members and their partners may not be able to vote in your District, it is still your responsibility to represent them to protect them and to ensure that then when they receive military orders to the state of Maryland, they do not have to fear not being protected if one of the worst things that will ever happen in their life were to occur while they were here.

Thank you.



# **MLAW Testimony - SB129 - Criminal Law - Sexual Cri**

Uploaded by: Jessica Morgan

Position: FAV



Bill No: SB129  
Title: Criminal Law – Sexual Crimes – Repeal of Spousal Defense  
Committee: Judicial Proceedings  
Hearing: March 9, 2023  
Position: SUPPORT

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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. **SB129 Criminal Law – Sexual Crimes – Repeal of Spousal Defense** is a priority on the [2023 MLAW Agenda](#) and we urge your support.

SB129 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 SB129.**



## MLAW 2023 Supporting Organizations

The following organizations have signed on in support of our 2023 Legislative Agenda\*:

AAUW Anne Arundel County  
AAUW Howard County  
AAUW Maryland  
Advocacy and Training Center  
Allegany County Women's Action Coalition  
Anne Arundel County NOW  
Aspire Ascend  
Baltimore County State Democratic Central Committee  
Bound for Better  
Business and Professional Women of Maryland  
Charles County Commission for Women  
Climate Xchange Maryland  
Drake Institute of Women's Policy  
Empowered Women in Business International  
ERA Coalition  
For All Seasons, Inc.  
Kensington-Rockville AAUW  
Maryland Coalition Against Sexual Assault (MCASA)  
Maryland Commission for Women  
Maryland NOW  
Maryland WISE Women  
Miller Partnership Consultants LLC  
MoCoWoMen  
Montgomery County Business & Professional Women (MC BPW)  
Montgomery County Chapter, National Organization for Women  
Montgomery County Commission for Women  
Montgomery County Women's Democratic Club  
National Coalition of 100 Black Women, Prince George's County Chapter  
National Women of Achievement, Inc.  
Planned Parenthood of Maryland  
Planned Parenthood of Metropolitan Washington, DC  
Reproductive Justice Inside  
Southern Prince George's Business and Professional Women  
Top Ladies of Distinction, Inc., Prince George's County Chapter  
University of Baltimore School of Law If/When/How Chapter  
Women's Democratic League of Frederick County  
Women's Equity Center and Action Network (WE CAN)  
Women's Law Center of Maryland  
Zonta Club of Annapolis  
Zonta Club of Mid-Maryland

*\*as of 2/3/2023*

**Maryland Legislative Agenda for Women**

**305 W. Chesapeake Avenue, Suite 201 - Towson, MD 21204 - 443-519-1005 phone/fax  
[mdlegagenda4women@yahoo.com](mailto:mdlegagenda4women@yahoo.com) - [www.mdlegagendaforwomen.org](http://www.mdlegagendaforwomen.org)**

# **WDC 2023 Testimony SB129\_Final.pdf**

Uploaded by: JoAnne Koravos

Position: FAV



MONTGOMERY COUNTY, MARYLAND  
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

[www.womensdemocraticclub.org](http://www.womensdemocraticclub.org)

**Senate Bill 129 Criminal Law – Sexual Crimes – Repeal of Spousal Defense  
Judicial Proceedings Committee – March 9, 2023  
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 2023 legislative session. WDC is one of Maryland's largest and most active Democratic clubs with hundreds of politically active members, including many elected officials. WDC urges the passage of SB0129 to repeal marriage as a defense to ALL sex crimes.

Currently, Maryland Criminal Law §3-318 provides that, with limited exceptions, a person cannot be prosecuted for certain sexual crimes, including first- and second-degree rape and third- and fourth-degree sexual offenses, if the victim was the person's spouse at the time of the alleged offense. Yet, this same person can be tried for these same offenses if the parties are domestic partners, dating or in an otherwise non-marital relationship.

This leads to unfair and unconscionable disparities in the law. For example, why should a person who rapes their unconscious spouse of two months be given immunity under the law, while a person who rapes their unconscious domestic partner of decades is subject to full prosecution under the law? There should be parity under the law and NO exceptions to prosecution based solely on marital status. Notably, passage of SB0129 does not create a new crime. The bill simply removes a defense to rape by married persons that non-married persons already have and treats offenders equally regardless of their legal relationship to the victim. By passing this bill, the legislature will rectify the inconsistent application of laws to its citizens simply because of their marital status.

In addition, any amendment that would change the meaning of consent by redefining "sexual contact" for couples should be opposed. It is totally unreasonable to provide that people in relationships have less control over and legal protection for their own bodies than others. Including language that would make a person's relationship status relevant to determinations of consent and sexual contact would be a step backwards, not forward.

WDC strongly encourages the State of Maryland to allow prosecution based on ALL sexual crimes involving married people. Full repeal of Maryland's archaic law is a must; a partial repeal is unacceptable.

**We ask for your support for SB0129 and strongly urge a favorable Committee report.**

Diana E. Conway  
WDC President

Leslie A. Hawes  
WDC Advocacy Committee

**SB 0129.pdf**

Uploaded by: Julia Guerra

Position: FAV

**Testimony Concerning SB 0129 Criminal Law – Sexual Crimes – Repeal of Spousal Defense**

**Submitted to the Senate Judicial Proceedings Committee**

**March 8, 2023**

**Position: FAVORABLE**

Dear Senator Lee and members of the Senate,  
I, Julia M. Guerra, a resident and registered Maryland voter, support SB 0129 which would repeal the spousal defense to sex crimes in the State of Maryland.

It is shocking that this barbaric law is still in effect in Maryland. Marriage is not a defense to sexual offenses that would be considered felonies outside of a marriage. Specifically allowing sexual activity with an incapacitated spouse is reprehensible. In January of this year a man from Calvert County was sentenced to 10yrs incarceration, required to serve only 1 year, with the other nine years suspended, followed by 3 years of supervised probation. This was following a guilty plea for 4<sup>th</sup> degree sexual assault. The State's Attorney Office was not able to prosecute for 2<sup>nd</sup> Degree Rape because the victim was his wife.

Had the parties been cohabitating rather than married this would not have been the case. To assume that marriage alone provides general consent to all sexual activities between spouses is antiquated and removes bodily autonomy. Sexual contact and intercourse with an incapacitated party regardless of marital status should be considered a criminal act.

I strongly urge the senate to vote in favor of SB 0129 to repeal Spousal Defense for sexual crimes.

Thank you for your consideration.  
Julia Guerra

**SB 129 - FAV - Women's Law Center of MD.pdf**

Uploaded by: Laure Ruth

Position: FAV

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**BILL NO:** Senate Bill 129  
**TITLE:** Criminal Law – Sexual Crimes – Repeal of Spousal Defense  
**COMMITTEE:** Judicial Proceedings  
**HEARING DATE:** March 9, 2023  
**POSITION:** **SUPPORT**

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Senate Bill 129 would repeal certain prohibitions on prosecuting someone for rape or sexual assault of their spouse. The Women’s Law Center (WLC) supports Senate Bill 129 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, §3-30129, §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 sections of the code comprise the crimes of rape in the first and second degree, and sexual offense in the third and fourth degree. SB 129 would eliminate the bar to prosecution for sexual offenses against one’s spouse. Thus, 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.

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.<sup>1</sup> In the nineteenth century, feminists explained a woman's lack of control over her person as the key foundation of her subordination.<sup>2</sup> Efforts were made throughout the past centuries to address this issue but were rarely recognized.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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 129.

***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.***

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<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://search.yahoo.com/&httpsredir=1&article=11298129&context=californialawreview> – the history of Martial Rape (2000). 88 Cal. Law Rev. 1373 (2000).

<sup>2</sup> Id., at 1379.

<sup>3</sup> Id., at 1373-1378.

<sup>4</sup> 129 Am. Univ. International Law Rev. 555 (2012).

<sup>5</sup> Id., at 555-556.

**VSAB SupportLTR ElimMarriageDefense Senate SB129.p**

Uploaded by: Leslie Frey

Position: FAV





## VICTIM SERVICES ADVISORY BOARD

March 9, 2023

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

Re: Support – SB 129 - 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 129, 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 living apart for three months, and incidents where there has been force or a threat of force. These legal exceptions do not consider spouses, usually women, who are forced to accept unwanted touching, forcible sex, or similar assaults simply because they are married to the perpetrator. Senate Bill 129 would eliminate these exceptions and would thus guarantee that marriage can never be used as a defense for sexual assaults.

VSAB advises the Montgomery County Council and County Executive on meeting the needs of crime victims. These include 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 Montgomery County HHS Trauma Services have continued to increase compared to the pre-pandemic period, with a 33% increase in service requests in FY 22 compared to FY21. Consistent with the increase in crime rates both in Montgomery County and nationally, the severity of cases has become more critical, with a substantial rise in homicides, domestic violence, sexual violence, and more reports of strangulations. For example, in FY22, Trauma Services received 37 homicide referrals and provided help to 44 individual surviving family members.

Victims of domestic violence often also experience sexual assault. Although victims may acknowledge they must leave the situation, frequently they are overcome with feelings of being trapped, isolated, and helpless. In many cases, emotional and financial factors play a major role in their decision to stay with their abuser. The appalling lack of a criminal remedy for sexual assault empowers abusive spouses, intimidates their victims, and motivates many victims to maintain their fearful silence. The continuing lack of a prosecutorial threat for sexual assault contributes to an environment of increased domestic violence across our state. Marriage should never be allowed to be 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 129.

Sincerely,

Wendy Ayala  
VSAB Member

Department of Health and Human Services

**SB 129\_FJLSC\_FAV.pdf**

Uploaded by: Lindsay Parvis

Position: FAV

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**To:** Members of the Senate Judicial Proceedings Committee

**From:** Family & Juvenile Law Section Council (FJLSC)

**Date:** March 9, 2023

**Subject:** **Senate Bill 129:**  
Criminal Law – Sexual Crimes – Repeal of Spousal Defense

**Position:** **SUPPORT**

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The Family and Juvenile Law Section of the Maryland State Bar Association ( FJLSC) **supports Senate Bill 129 – 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. §3-30129), 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. Senate Bill 230 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.<sup>1</sup> 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. Last year, 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 criminalizing rape without allowing a marriage license to be a 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 Senate Bill 129 and urges a favorable committee report.**

Should you have any questions, please contact Michelle Smith by e-mail at [msmith@lawannapolis.com](mailto:msmith@lawannapolis.com) or by telephone at (12910) 280-1700.

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<sup>1</sup> Sir Matthew Hale *Historia Placitorum Cononæ: The History of the Pleas of Crown, Vol. 1* 628 (181297). “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.”

# **Marriage as a defense to sex crimes - testimony -**

Uploaded by: Lisae C Jordan

Position: FAV



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## Working to end sexual violence in Maryland

P.O. Box 8782  
Silver Spring, MD 20907  
Phone: 301-565-2277

For more information contact:  
Lisae C. Jordan, Esquire  
443-995-5544  
[www.mcasa.org](http://www.mcasa.org)

### **Testimony Supporting Senate Bill 129** **Lisae C. Jordan, Executive Director & Counsel** March 9, 2023

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 129.

#### **Senate Bill 129 – 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 129 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").

**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.

**Competent adults should have the right to refuse sexual interactions, including sexual contact defined by Criminal Law §3-301.** Whether or not someone is in a relationship with a person should not change this. The amendments proposed by the Senate in past years would diminish the rights of unmarried couples so marriage is not a defense to sex crimes, but sexual relationships are. This would be a step backwards and should be firmly rejected.

**Concerns that repealing the spousal defense would result in prosecution of a husband touching his wife without asking first are unfounded.** Maryland does not require “affirmative consent” and SB129 does not change this. Couples can and do consent to touching through verbal and nonverbal means and agreements with one another and SB129 does not change this. Additionally, §3-319 permits introduction of relevant and material evidence of past sexual interactions of the people involved, so factfinders will have information about relevant past patterns of sexual touching.

**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 129 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 129**

**SB0129\_Repeal Spousal Defense\_FAVORABLE.pdf**

Uploaded by: Liz Enagonio

Position: FAV





# Indivisible: Central Maryland

**Susan Radke, Lead Advocate**

[Dsusan56@gmail.com](mailto:Dsusan56@gmail.com)

**Liz Enagonio, Lead Advocate**

[lenagonio@icloud.com](mailto:lenagonio@icloud.com)

## TESTIMONY FOR SB0129

### Criminal Law - Sexual Crimes - Repeal of Spousal Defense

**Bill Sponsor:** Senators Lee and Beidle

**Committee:** Judicial Proceedings

**Organization Submitting:** Indivisible Central Maryland

**Person Submitting:** Liz Enagonio and Susan Radke, lead advocates

**Position:** FAVORABLE

Our names are Liz Enagonio and Susan Radke, lead advocates for Indivisible Central Maryland, a grassroots organization of constituents dedicated to protecting progressive and democratic values. Indivisible Central Maryland **strongly supports SB0129**.

As the current law stands, a husband cannot be prosecuted for certain sexual crimes against his wife simply because they are married. This idea is an outdated and offensive holdover from times when women were considered their husband's property. 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. The argument has also been made that women will lie to gain revenge against a husband. Two rebuttals: 1) that is what the court system is for...to review testimony and evidence and make a decision; and 2) men lie. Men rape. If we made laws based on "what if" contingencies, we would probably have to get rid of ALL laws.

On behalf of the married women of Maryland, who deserve bodily autonomy equal to that of unmarried women, Indivisible Central Maryland **STRONGLY** supports SB0129, and recommends a **FAVORABLE** vote in committee.

**On behalf of our valued immigrant community, Indivisible Central Maryland STRONGLY SUPPORTS SB0806 and recommends a FAVORABLE report in committee. Thank you.**

# **Tahirih Justice Ctr Written Testimony Supporting S**

Uploaded by: Maria Daniella Prieshoff

Position: FAV

## **Testimony in SUPPORT of Senate Bill 129**

*(Repeal of Spousal Defense)*

Judicial Proceedings Committee

Witness: María Daniella Prieshoff, Senior Supervising Attorney  
211 East Lombard Street, Suite 307, Baltimore, Maryland 21202  
March 9, 2023

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

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

Since 2010, Tahirih Justice Center's Baltimore office has been at the forefront of advocating for immigrant survivors of domestic violence and sexual assault. Tahirih has unique legal and policy expertise on legislative reforms to strengthen protections for survivors of sexual violence. Daily we learn from our clients across Maryland the struggles they face in seeking protection and help as survivors of spousal violence. It is on their behalf that I submit this written testimony today.

Rape and sexual assault are frequently part of the trauma history of spousal abuse survivors. Sexual violence is a primary tool that a perpetrator of abuse may use to dominate, control, and isolate their spouse into submission. The story of a survivor trying to report spousal rape to law enforcement and being ignored or dismissed because of the spousal defense is all too common amongst our clients. When the survivor has no recourse to seek protection because of the spousal defense to rape and sex offenses, the perpetrator succeeds in using sexual violence to silence their victim.

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 providing equitable access to protection for non-English speaking survivors of sexual violence who come from cultures distrustful of law enforcement authorities, or whose abusive spouses threaten to call law enforcement to have them arrested or detained in an effort to further control their victim. For these survivors, the spousal defense creates an additional barrier to leaving an abusive environment. Removing this barrier will help non-English speaking survivors build trust with and seek help from law enforcement.

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 those who are struggling to escape intimate partner violence.

**The Tahirih Justice Center asks this Committee to report SB 129 favorably.**

**SB 129\_MNADV\_FAV.pdf**

Uploaded by: Melanie Shapiro

Position: FAV



**BILL NO:** Senate Bill 129  
**TITLE:** Criminal Law – Sexual Crimes – Repeal of Spousal Defense  
**COMMITTEE:** Judicial Proceedings  
**HEARING DATE:** March 9, 2023  
**POSITION:** **SUPPORT**

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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 129.**

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.<sup>1</sup> SB 129 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.<sup>2</sup> Approximately 10-14% of married women will be raped at some point during their marriage.<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> 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 \(uchicago.edu\)](#)

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

<sup>3</sup> *Statistics*, National Coalition Against Domestic Violence, Retrieved January 11, 2021 from [sexual\\_assault\\_dv.pdf \(speakcdn.com\)](#)

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

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For further information contact Melanie Shapiro • Public Policy Director • 301-852-3930 • [mshapiro@mnadv.org](mailto:mshapiro@mnadv.org)

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Any perpetrator of a rape or sexual offense should be subject to prosecution regardless of the relationship with the victim. Maryland must 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 129**.

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For further information contact Melanie Shapiro • Public Policy Director • 301-852-3930 • [mshapiro@mnadv.org](mailto:mshapiro@mnadv.org)

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# **SB 129- Favorable Report.pdf**

Uploaded by: Rebecca Cordero

Position: FAV

Robert H. Harvey, Jr.  
State's Attorney



Timothy J. Maher  
Deputy State's Attorney

Circuit Court Division: 175 Main Street • Courthouse • Prince Frederick, MD 20678  
410-535-1600 ext. 2369 • 301-855-1243 • MD Relay: 1-800-735-2258 • [www.calvertstatesattorney.com](http://www.calvertstatesattorney.com)

March 8, 2023

The Honorable William Smith & Members of the Senate Judicial Proceedings Committee  
Chairperson, Senate Judicial Proceedings Committee  
11 Bladen Street  
Annapolis, MD 21401

Re: Favorable Report for Senate Bill 129; Repeal of Spousal Defense

Dear Chairperson Smith and JPR Committee Members:

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.

Sincerely,

*Rebecca Cordero*

Rebecca Cordero  
Senior Assistant State's Attorney  
Calvert County State's Attorney's Office

**2023 ACNM SB 129 Senate Side.pdf**

Uploaded by: Robyn Elliott

Position: FAV



**Committee:** Judicial Proceedings Committee

**Bill Number:** Senate Bill 129 - Criminal Law - Sexual Crimes - Repeal of Spousal Defense

**Hearing:** March 9, 2023

**Position:** Support

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The Maryland Affiliate of the American College of Nurse Midwives strongly supports *Senate Bill 129 – Criminal Law - Sexual Crimes - Repeal of Spousal Defense*. The legislation would eliminate the use spousal defense in case of rape or sexual offenses. As midwives, we support our patients throughout their reproductive health life span. We counsel them that they have autonomy to make their own decisions regarding health, including their sexual health. It is deeply concerning that Maryland still allows spouses to use their marital status as defense if charged with rape or other sexual offenses. We cannot allow this practice to continue. In 2023, we should not be sending the message to all individuals, and especially women, that they lose their most basic legal rights with marriage.

We ask for a swift and favorable vote on this legislation. If we can provide any additional information, please contact Robyn Elliott at (443) 926-3443 or [relliott@policypartners.net](mailto:relliott@policypartners.net).

**2023 PPM SB 129 Senate Side FAV.pdf**

Uploaded by: Robyn Elliott

Position: FAV

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Planned Parenthood of Maryland

**Committee:** Senate Judicial Proceedings Committee

**Bill Number:** Senate Bill 129 - Criminal Law - Sexual Crimes - Repeal of Spousal Defense

**Hearing:** March 9, 2023

**Position:** Support

Planned Parenthood of Maryland supports *Senate Bill 129 – Criminal Law - Sexual Crimes - Repeal of Spousal Defense*. Sexual acts committed without complete, freely given consent from all parties constitute assault, regardless of marital status. While we no longer live in a society where a wife is property of her husband, Criminal Law §3-318 continues to provide that marriage is a defense to certain sex crimes. The spousal defense enshrines an antiquated, dangerous understanding of consent and marriage in Maryland law and denies justice to survivors of marital rape. It is time to bring Maryland into the twenty-first century and ensure our understanding of bodily autonomy is reflected in state law.

Assault, stalking, homicide, and other crimes against a person may be prosecuted without regard to the marital status of the parties. There is no reason for sexual violence to be singled out as an act that is treated differently based on marital status. Doing so 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.

Removing the spousal defense entirely from our criminal law will bring Maryland into line with the majority of states around the country and demonstrate Maryland’s commitment to justice for survivors of sexual assault regardless of the perpetrator. All persons are deserving of bodily autonomy and having sexual intercourse if, where, when, and with whom they so choose. Marital status should have no impact on this essential human right.

We ask for a favorable vote on this legislation. If we can provide any additional information, please contact Robyn Elliott at (443) 926-3443 or [relliott@policypartners.net](mailto:relliott@policypartners.net).

# **SB129 Repeal of Spousal Defense.pdf**

Uploaded by: Sarah Miicke

Position: FAV

**OFFICERS**

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 Past President  
 HOWARD LIBIT  
 Executive Director

**WRITTEN TESTIMONY**

**Senate Bill 129 - Criminal Law – Sexual Crimes – Repeal of Spousal Defense**

**Judicial Proceedings Committee– March 9, 2023**

**SUPPORT**

**MEMBER ORGANIZATIONS**

Adat Chaim Congregation  
 American Jewish Committee  
 Americans for Peace Now  
 Baltimore Chapter  
 American Israel Public Affairs Committee  
 American Red Magen David for Israel  
 American Zionist Movement  
 Amit Women  
 Association of Reform Zionists of America  
 Baltimore Board of Rabbis  
 Baltimore Hebrew Congregation  
 Baltimore Jewish Green and Just Alliance  
 Baltimore Men's ORT  
 Baltimore Zionist District  
 Beth Am Congregation  
 Beth El Congregation  
 Beth Israel Congregation  
 Beth Shalom Congregation of  
 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 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 Emenah  
 Hebrew Congregation  
 National Council of Jewish Women  
 Ner Tamid Congregation  
 Rabbinical Council of America  
 Religious Zionists of America  
 Shaarei Tfiloh Congregation  
 Shomrei Emenah Congregation  
 Suburban Orthodox Congregation  
 Temple Beth Shalom  
 Temple Isaiah  
 Zionist Organization of America  
 Baltimore District

**Background:** Senate Bill 129, (SB129) would repeal the law allowing marriage as a defense to sex crimes. Currently, Maryland law provides that marriage is a defense to most sex crimes, however in the cases of rape not by force and all fourth-degree sexual offenses, it is a complete defense. 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. 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. SB129 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 SB129.



# **Repeal of Spouse Defense-SB129FAV - Final 03.08.23**

Uploaded by: Tondalayo Royster

Position: FAV



**COMMISSION FOR WOMEN  
COMMUNITY ENGAGEMENT CLUSTER**

March 8, 2023

Senator William Smith  
Chair, Senate Judiciary Committee  
3 East Miller Senate Office Building  
Annapolis, MD 21401

Re: SB129 / Criminal Law – Sexual Crimes - Repeal of Spousal Defense  
Position: **FAVORABLE**

Dear Chairperson Smith and Members of the Senate Judiciary Committee,

On behalf of the Montgomery County Commission for Women, I am writing to request your support for SB129 — Repeal of Spousal Defense. To date, Maryland law provides a defense to sexual crimes committed in the marriage. This includes rape (without force) and rape without mutual consent, in particular with a spouse who is cognitively impaired.

The reality is sexual assault in marriage is not uncommon. When it happens, abuse is often involved, the wounded spouse is traumatized and the marital bed becomes unsafe, unpleasant, and defiled. Power, control, and manipulation, even in subtle forms, is destructive to the soul and does not promote safety or uphold the sacredness of marriage. Healthy marriages tend to have a natural flow of consent, open communication, and familial connection between a couple. Enjoyable, safe, and mutual intimacy in and out the marital bed is rightfully expected. Because marital rape is not uncommon, there are many women suffering in silence. Your support for SB129 - is vital and the shift in law that is needed to break this traumatic and soul crushing cycle. Your support conveys:

- To perpetrators: Sexual offenses in marriage are not tolerated.
- To community members: We are dedicated to making family and home safe again.
- To victims: I believe you! It's safe to break your silence.

SB129 is powerful for prevention and upholding the law. I respectfully urge your support for this bill – SB129.

Respectfully,

A handwritten signature in black ink, appearing to read "Tondalayo Royster".

Tondalayo Royster  
Montgomery County Commission for Women

**JCohen Roth\_SB 0516 Testimony\_03072023.pdf**

Uploaded by: Jacquie Cohen Roth

Position: FWA



March 7, 2023

Senator Melanie Griffith, Chair  
Senate Finance Committee  
3 East Miller Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401

Dear Chair Griffith:

I am writing as CEO/Founder of CannabizMD, a Maryland certified MBE/SBE/DBE and Tea Pad. Both social enterprises are focused on filling the void of cannabis science and policy education, particularly for women and people of color for advancement in STEM. I am a member of the first cohort of the Master of Science in Medical Cannabis Science and Therapeutics at the University of Maryland School of Pharmacy. I am now an adjunct professor in the same program in classes focused on federal and state cannabis laws and policies. I am in favor of SB 0516, Cannabis Reform, with amendments.

Cannabis is not a panacea nor it is benign. My suggested amendments focus on prioritizing with immediacy the need for education for Maryland cannabis industry employees, volunteers, and any other authorized person as well as public health education.

Firstly, I am an advocate for every cannabis agent and certified caregiver registered in the State of Maryland to be required to have a minimum of two hours of cannabis science and policy education delivered by a Maryland-certified responsible vendor. Cannabis education is especially important in an adult use program where there is likely zero involvement of a cannabis-educated healthcare provider in the commercial transaction.

Secondly, given that this proposed piece of legislation is an Act that is an emergency measure and as such, it is necessary for the immediate preservation of public health and safety that funds from the Cannabis Public Health Fund are swiftly released to qualified vendors with dates specified in the ACT with priority given to MBE and qualified minority-owned entities for education and public awareness campaigns on the potential benefits and harms of cannabis use including driving under the influence of cannabis (DUIC) and to include funding for school-based educational programs.

Cannabis public health education improves public health, and health equity, and will help to combat the illicit cannabis industry.

Best,

Jacquie Cohen Roth, MS  
Founder/CEO