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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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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.

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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.