



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This legislation strikes from the criminal law article an **extremely outdated and highly offensive** provision that robs married women of their bodily autonomy.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