
BILL NO.: House Bill 748
TITLE: Law Enforcement Officers – Sexual Contact with Person in Custody – Penalty
COMMITTEE: House Judiciary Committee
DATE: February 28, 2023
POSITION: **SUPPORT**

In 2021 the Maryland General Assembly passed Senate Bill 43 – Criminal Law – Law Enforcement Officers – Prohibition on Sexual Activity. This important piece of legislation ensured that law enforcement officers could not engage in sexual conduct with victims, witnesses, or suspects in open investigations.

House Bill 748 seeks to move that recently passed law into the previously existing statute prohibiting sexual offenses in the third degree. In so doing, a person violating the law would be guilty of a felony of a instead of a misdemeanor, and the penalty for such a crime would increase from “imprisonment of 3 years or a fine not exceeding \$3,000 or both”, to “imprisonment not exceeding 10 years”. As the Women’s Law Center of Maryland firmly believes in all sexual activity being mutual, respectful, and consensual, and that anything else would be rape and should be treated as such, we support the changes to HB748.

The Center for Disease Control recognizes that sexual violence includes “non-physically forced penetration which occurs after a person is pressured verbally or through intimidation or *misuse of authority* to consent or acquiesce”¹. When power or authority is involved, it is not possible to give true consent. Relationship dynamics where consent cannot be given include any relationship where a person might feel compelled to say yes because of the power that the authority figure holds over them or the trusted position that that the person in authority holds. Given the positional authority of law enforcement officers over victims, witnesses, and suspects, there is no time during an investigation where an individual could realistically provide consent freely and without intimidation. The very real possibility of physical violence, retaliation, and abuse of authority, places those individuals in situations where they feel they have no choice but to “consent”, which is of course, not actual consent.

For all those reasons state above, the Women’s Law Center of Maryland urges a favorable report for HB 748.

The Women’s Law Center of Maryland is a private, non-profit, legal services 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, working to ensure physical safety, economic security, and bodily autonomy for women in Maryland.

¹ <https://www.cdc.gov/violenceprevention/sexualviolence/definitions.html>