

2023 JCRC HB 4 criminal law- sexual crimes - repea

Uploaded by: Ashlie Bagwell

Position: FAV



**Testimony in SUPPORT of *House Bill 4* –
Criminal Law – Sexual Crimes - Repeal of Spousal Defense
Judiciary Committee
January 19, 2023**

The Jewish Community Relations Council of Greater Washington (JCRC) serves as the public affairs and community relations arm of the Jewish community. We represent over 100 Jewish organizations, synagogues, and schools throughout Maryland, Virginia, and the District of Columbia. The JCRC is strongly committed to cultivating a society based on freedom, justice, and pluralism. We work tirelessly throughout the entire region to advocate not only for the Jewish community but for our non-sectarian agencies that serve the most vulnerable residents throughout the State of Maryland.

As an advocate for the Jewish Coalition Against Domestic Abuse (JCADA), which provides free legal, counseling, and victim advocacy services to survivors of domestic abuse, the JCRC strongly supports House Bill 4. HB 4 is essential for the purpose of repealing a certain prohibition on prosecuting a person for rape or a certain sexual offense against a victim who was the person's legal spouse at the time of the alleged rape or sexual offense.

The JCRC also understand that victims of sexual assault already face so many barriers to reporting their victimization, including stigma, fear of re-traumatization by the system, and fear of not being believed. Few survivors of intimate partners sexual assault report these offenses. These factors should not be exacerbated by antiquated laws that treat women as the property of their husbands, and in so doing, undermine fundamental democratic principles of equality and fairness. HB 4 is necessary to repealing a law on the books which allows for marriage to be a defense to sexual assault. For these reasons, the JCRC supports HB 4 and urges the committee to give a favorable report.

Spousal Defense 2023 - House_Senate Testimony.pdf

Uploaded by: Ayla Hurley

Position: FAV

Ayla Hurley
6385 Windharp Way
Columbia, MD 21045
District 13

TESTIMONY IN SUPPORT OF HB0004, Criminal Law - Sexual Crimes - Repeal of Spousal
Defense

1/19/2023

TO: Chair Clippinger and members of the House Judiciary Committee

FROM: Ayla Hurley

Chair Clippinger and members of the House Judiciary Committee, my name is Ayla Hurley, I live in Columbia, Maryland, and I am writing in support of HB0004 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 House Judiciary 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 HB0004. Thank you.

HB0004 Repeal of Spousal Defense.pdf

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR HB0004
Criminal Law – Sexual Crimes – Repeal of Spousal Defense

Bill Sponsor: Delegate Crutchfield

Committee: Judiciary

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: **FAVORABLE**

I am submitting this testimony in favor of HB0004 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.

Delegate Charlotte Crutchfield 2023 Written Testim

Uploaded by: Charlotte Crutchfield

Position: FAV

CHARLOTTE A. CRUTCHFIELD, ESQ.
Legislative District 19
Montgomery County

Judiciary Committee
Chair, Family and Juvenile Law
Subcommittee



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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

January 19, 2023

WRITTEN TESTIMONY IN SUPPORT

OF

HOUSE BILL 04- CRIMINAL LAW-SEXUAL CRIMES- REPEAL OF SPOUSAL DEFENSE

This legislation seeks to repeal Criminal Law Article §3-318 by eliminating the “spousal defense” which prohibits prosecution of a spouse for charges of rape and other sexual offenses.

Current Law:

- A person cannot be prosecuted for rape or certain sexual offenses under Criminal Law Articles § 3-303, § 3-304, § 3-307 and § 3-308 against a victim who is the person’s legal spouse at the time of the alleged rape or sexual offense, known as “spousal defense”.

Proposed Change to Current Law:

- Eliminates spousal defense against charges of rape and other criminal sexual offenses.
- A spouse would be exposed to prosecution against his or her legal spouse for violations of the following Criminal Laws:
 - Article § 3-303 Rape in the First Degree
 - Article § 3-304 Rape in the Second Degree (by force)
 - Article § 3-307 Sexual offense in the Third Degree (w/o consent)
 - Article § 3-308 Sexual offense in the Fourth Degree

Why support this Legislation:

- Current law provides a full legal defense against criminal sexual offenses including rape.
- Marriage is not a defense for any other violent crimes.
- Under current law, prosecution for criminal sexual offenses against a spouse only occurs when the other party does not consent or involves force/threat of force.
- The burden of proof for criminal sexual offenses is so high (“beyond a reasonable doubt”) that normal routine consensual contact/touching between spouses should never be considered as proof of a crime.

I respectfully request a favorable report for House Bill 04.

Sincerely,

Delegate Charlotte Crutchfield

HB0004_Chris_Apple_FAV.pdf

Uploaded by: Chris Apple

Position: FAV

TESTIMONY IN SUPPORT OF BILL HB0004 - FAVORABLE
Criminal Law - Sexual Crimes - Repeal of Spousal Defense

TO: Chair Clippinger, Vice Chair Moon, and
members of the Judiciary Committee

FROM: Chris Apple
6385 Windharp Way
Columbia, MD 21045
District 13

Jan 19, 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.

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

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.

Favorable on HB 0004 Dardis.pdf

Uploaded by: Christina Dardis

Position: FAV



Testimony Concerning HB 0004

“Criminal Law – Sexual Crimes – Repeal of Spousal Defense”

Submitted to the House Judicial Proceedings Committee

January 17, 2023

Department of Psychology
8000 York Road
Towson, MD 21252-0001

Position: FAVORABLE

Dear Delegate Crutchfield and Colleagues,

I, Christina Dardis, Assistant Professor of Psychology at Towson University, strongly support HB 0004, which would repeal the spousal defense to sex crimes in the state of Maryland. My research examines sexual violence and intimate partner violence. In my career, I have published over 50 articles on sexual and intimate partner violence and presented my work at professional conferences over 75 times. This testimony represents my own views based on the extant scientific literature and does not represent the views of Towson University.

The marital exemption for sexual crimes dates back to 18th century English common law (known as the Hale doctrine). It was sustained by Blackstone’s unities theory (1765), which asserts that “husband and wife are legally one person. The legal existence of the wife is suspended during marriage, incorporated into that of the husband” and that, thus, “if a wife is injured, she cannot take action without her husband’s concurrence.” In contrast to these doctrines, the State of Maryland already recognizes that spouses should not be exempt from some sex crimes (including forcible rape) and can be held criminally liable. Based on the literature, I strongly support the proposed legislation, which would close the exemption for cases (a) of unwanted sexual contact and (b) in cases of sexual violence due to incapacitation, or in the context of “mental defect” or “physical helplessness.” I urge you to support this bill for several reasons.

First, marital sexual violence (including unwanted sexual contact) is common and no less injurious than non-marital sexual violence. In all, 10-14% of all women are raped by their husbands in their lifetime, and approximately 12% experience forcible fondling from their spouses (Martin et al., 2007; Kreinert & Walsh, 2018). Marital sexual violence also leads to a range of negative consequences for survivors; results of a national study indicate that marital sexual violence (including incidents of forcible fondling) resulted in significantly more physical injuries to survivors than did sexual violence from a non-marital intimate partner (Kreinert & Walsh, 2018)—in fact, 39% of survivors of marital sexual violence reported some type of injury in this national study. Survivors of marital sexual violence also experience psychological injuries, including depression, anxiety, fear, decreases in self-esteem, and long-term difficulties with trust and intimacy. Some research even indicates that survivors of

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marital sexual violence experienced more severe posttraumatic stress disorder (PTSD) than those who experience sexual violence from non-marital partners or strangers (Plichta & Falik, 2001). Marital sexual violence is also often perpetrated within a broader pattern of intimate partner violence, frequently co-occurring with physical and psychological abuse, stalking, and financial control (Mahoney & Williams, 1998); thus, curbing marital sexual violence, in all of its forms, must be considered part of the formula for curbing intimate partner violence more broadly.

Second, sexual violence in the presence of mental or physical incapacitation is no less serious or injurious than is forcible rape. The current Maryland law exempts spousal sexual violence in cases where the victim is “incapacitated,” deemed “mentally defective” or “physically helpless”. However, **disabled women (including those with mental disabilities) are more likely to experience marital sexual violence than are non-disabled women (Brownridge, 2006), and are disproportionately negatively affected by spousal violence (Coston, 2019).** This is even more concerning, given that disabled partners experience disproportionately high rates of co-occurring intimate partner violence and coercive control from their partners, and at times by nature of their disability status, may experience serious barriers to care (Barrett et al., 2009). By failing to remove the exemption, disabled spouses’ rights are severely limited. In addition, The State of Maryland already considers offenses due to incapacitation, including offenses perpetrated through drug- and alcohol-facilitated incapacitation, to be a crime *if the perpetrator and victim are not married*; thus, unless the State believes that married individuals’ legal rights have been “suspended” (Blackstone, 1765), there is simply no reason why a different standard should apply to married individuals.

In sum, acts of marital sexual violence, including unwanted sexual contact and incapacitated sexual violence, are common, frequently co-occur with other forms of intimate partner violence, and lead to deleterious negative physical and psychological outcomes for survivors. These crimes should be treated no less seriously than forcible marital rape, which is currently criminalized. It is long past time to change this archaic exemption to move Maryland forward--as long as there is a marital exemption for any sexual offense, the legacies of Hale and Blackstone persist, and married partners’ rights to body autonomy and personhood in the State of Maryland will continue to be imperiled.

Thank you for your consideration,



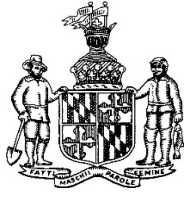
Christina M. Dardis, Ph.D.
Assistant Professor of Psychology
Towson University



Feinstein Letter of Support HB0004.pdf

Uploaded by: Debbie Feinstein

Position: FAV



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PETER A. FEENEY
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January 17, 2023

The Honorable Luke Clippinger
Chairman, House Judiciary Committee
6 Bladen Street
Annapolis, MD 21401

Dear Chairman Clippinger:

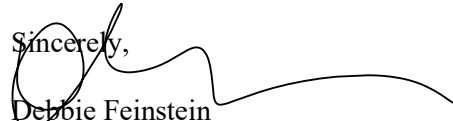
I write in support of HB004, Criminal Law—Sexual Crimes—Repeal of Spousal Defense. I am the Chief of the Special Victims Division for the Montgomery County State's Attorney's Office and a member of our Sexual Assault Response Team, a multidisciplinary group that reviews cases and sets policy regarding sexual assault crimes in our county. I also chair the Montgomery County Choose Respect Initiative that offers educational content to teens on healthy relationships and consent. Lastly, I co-chair the Special Victims Subcommittee for the Maryland State's Attorney's Association.

Currently, 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. In Montgomery County, we had a case where, on multiple occasions, the offender raped his wife (and filmed it) while she was under the influence of prescription drugs. While the State was able to prosecute the offender for some offenses, given the complete defense, we could not prosecute him for the vast majority of the rapes he perpetrated against his wife on film. The current defense also allows a spouse to legally commit a sexually offense against a spouse who is paralyzed or otherwise physically helpless; cognitively impaired, including dementia or Alzheimer's disease; or mentally incapacitated by a mental health issue. It is a travesty of justice to allow offenders a complete defense when their spouse falls into one of these categories of individuals.

Moreover, the current law allows a complete defense to fourth degree sexual offenses, even where one spouse does not consent to the sexual touching. Sexual offense in the fourth degree prohibits "sexual contact with another without the consent of the other," including the "intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party." The law carves out an exception for any touching that is a common expression of familial or friendly affection or for an accepted medical purpose. Marriage should not obviate consent under any circumstance. The current law is out of date and out of synch with our modern understanding of affirmative consent and should be eliminated.

Maryland law should not allow a person to use the fact of their marriage to protect them from prosecution for a sexual crime. I strongly urge the passage of HB0004.

Sincerely,


Debbie Feinstein
Chief, Special Victims' Division
Senior Assistant State's Attorney

HB 4 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 HOUSE BILL 4
January 19, 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 Bill 4 would repeal the spousal defense to rape. **We urge the House Judiciary Committee to issue a favorable report on House Bill 4.**

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 House Bill 4.

Feldstein SB0004 House Testimony.pdf

Uploaded by: Elizabeth Feldstein

Position: FAV

TESTIMONY IN SUPPORT OF HB0004 - FAVORABLE
CRIMINAL LAW - SEXUAL CRIMES - REPEAL OF SPOUSAL DEFENSE

Maryland General Assembly
Judiciary Committee
Room 101
House Office Building
Annapolis, Maryland 21401

January 17, 2023

My name is Elizabeth Feldstein. I am a practicing attorney in the District of Columbia. As an undergraduate student, I held leadership positions in my college's sexual assault awareness organization and have given trainings on sexual assault, consent, and bystander intervention to hundreds of students. I graduated from Harvard Law School in 2021 and I am speaking today in my personal capacity.

I am writing in support of HB0004, which would repeal Section 3-318, Maryland's spousal defense to sexual assault. Our current spousal rape exemption is not consistent with the evolution of modern criminal law, with current literature on sexual violence, or with the deeply-held values of Maryland residents.

As you know, under Section 3-318 of the Maryland Criminal Code, a person cannot be prosecuted for rape or other sexual offenses if the victim is their spouse. This is a complete defense. Spousal rape is only illegal if either married couple is separated, or if the perpetrator used force or the threat of force.

The spousal rape exemption in the United States is a relic of eighteenth century English common law, which presumed that women lost their legal personhood after marriage.¹ Rape laws were arguably "developed primarily to protect men's property interests in their wives or daughters as sexual objects."² Marital rape was not criminalized because married women were considered chattel and their consent to sex was implied by the very existence of a marriage contract.³ Through the twentieth century, U.S. state courts frequently held that a man could not legally be guilty of raping his wife, because of this concept of irrevocable matrimonial consent.⁴

This rationale "went largely unchallenged" until the 1970s, when feminist advocates' arguments for eliminating the spousal rape exception gained greater traction.⁵ By 1980, the Supreme Court had disavowed the theory that women lacked legal personhood.⁶ In 1993, marital rape was criminalized in some form in all 50 states for the first time, but the majority of states retained loopholes that rendered this reform "a facade."⁷ Today, our system of laws ostensibly rejects the archaic premises that married women lose their legal personhood and their capacity to consent. We recognize that sexual violence can happen within marriage to people of any gender. But the patriarchal vestiges of these eighteenth-century common-law principles still persist in Maryland's criminal code as long as our laws treat victims of sexual violence differently for being married to their perpetrators.

And today, we are far behind the curve. The Minnesota legislature quickly and unanimously eliminated its spousal rape exception in 2019, after hearing testimony from a survivor whose husband recorded himself sexually assaulting her while she was unconscious.⁸ Witnesses have testified before this Committee in previous years about a strikingly similar incident. Maryland's failure to repeal the spousal rape defense is out of sync with the evolution of the legal system to recognize the dignity and bodily autonomy of all people.

Maryland's spousal rape exemption is also in tension with modern data on sexual violence. Spousal rape is unfortunately a common occurrence.⁹ Over 18% of women and 8% of men have experienced sexual violence by an intimate partner.¹⁰

In previous years, legislators have raised concerns about whether this reform would lead to false allegations. These concerns are not new—the architect of the English spousal rape exception also claimed to be concerned about false reports—but they are as statistically unfounded as they were in 1736.¹¹ False rape allegations are extremely rare and occur at comparable rates to false reports of other crimes.¹² But ultimately, these concerns are beside the point. If HB0004 becomes law, people accused of sexually assaulting their spouse would retain the same procedural safeguards as all other defendants. The only change would be to apply Maryland's existing sexual assault laws equally, regardless of marital status.

Finally, Section 3-318 is inconsistent with Maryland residents' values. Over the past few months, I've had conversations with dozens of friends and family members about this law, both married and unmarried. I've talked to teachers and lawyers, scientists and retirees. Without fail, when I explain Section 3-318 to people in my community, I receive two reactions: shock and horror. People do not know about the spousal rape defense in Maryland, and when they learn about it, they are so appalled that they sometimes have a hard time believing that this law exists. They are even more confused and dismayed when I explained to them that there have been many unsuccessful attempts to repeal the spousal rape exemption, and they wonder why the legislature has yet to act.

Most people are not familiar with the contours of the Maryland criminal code, but that does not make this an esoteric or marginal issue. When I took the time to explain Section 3-318 to people I knew, it became clear that you do not need a law degree or a background in sexual violence advocacy to instinctively understand how medieval and sickening this law is. Maryland residents care deeply about sexual violence, and believe that our legal system should treat all survivors of sexual assault equally, regardless of marital status. It is long past time for our laws to catch up to these values.

I urge a favorable report on HB0004 without any amendments.

Sincerely,

Elizabeth Feldstein
Maryland Legislative District 16

¹ Michael J. Gonring III, *Spousal Exemption to Rape*, 65 Marq. L. Rev. 120 (1981); *see also* 1 M. Hale, *Pleas of the Crown* 629 (1st Am. ed. 1847) (“But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given up herself in this kind unto her husband, which she cannot retract.”)

² *Id.*

³ *Id.*

⁴ Kennedy Holmes, *Shining Another Light on Spousal Rape Exemptions: Spousal Sexual Violence Laws in the #MeToo Era*, 11 U.C. Irvine L. Rev. 1213 (2021); *see, e.g., Frazier v. State* 86 S.W. 754 (Tex. Cri. App. 1905) (“all the authorities hold that a man cannot himself be guilty of actual rape upon his wife. One of the main reasons being the matrimonial consent which she gives when she assumes the marriage relation, and which the law will not permit her to retract in order to charge her husband with the offense of rape”); *State v. Haines*, 25 So. 372 (La. 1899) (“because the husband of a woman cannot himself be guilty of an actual rape upon his wife, on account of the matrimonial consent which she has given, and which she cannot retract”);

⁵ Raquel Kennedy Bergen, *Marital Rape: New Research and Directions*, National Online Resource Center on Violence Against Women (Feb. 2006); Holmes, *Shining Another Light on Spousal Rape Exemptions*.

⁶ *Trammel v. United States*, 445 U.S. 40, 52 (1980).

⁷ Bergen, *Marital Rape: New Research and Directions*; Holmes, *Shining Another Light on Spousal Rape Exemptions*.

⁸ Holmes, *Shining Another Light on Spousal Rape Exemptions*; Don Tompson, *California may end ‘spousal rape’ distinction in punishment*, Associated Press (Mar. 22, 2021), <https://apnews.com/article/legislature-california-sexual-assault-962ff3592c5b86c35097de0e35d4c860>. In April of last year, California repealed a provision of its criminal code that required disparities in sentencing for married perpetrators. Dmitry Gorin, *Spousal Rape Law Repealed in California - Penal Code 262 PC*, Eisner Gorin LLP (Apr. 28, 2022), <https://www.egattorneys.com/spousal-rape-penal-code-262-repealed>. There are also reform efforts underway in other states. *See, e.g., Gabriel Cripe, Well Past Time: The (What Seems Fairly Obvious) Argument for Eliminating Ohio’s Spousal Exemption to Rape Law*, Univ. Cincinnati L. Rev., <https://uclawreview.org/2022/02/18/well-past-time-the-what-seems-fairly-obvious-argument-for-eliminating-ohios-spousal-exemption-to-rape-law>.

⁹ Raquel Kennedy Bergen and Elizabeth Barnhill, *Marital Rape: New Research and Directions*, VAWnet (Feb. 2006), <https://vawnet.org/material/marital-rape-new-research-and-directions>.

¹⁰ Centers for Disease Control, *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief* (Nov. 2018) | <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>

¹¹ Gonring III, *Spousal Exemption to Rape*.

¹² Claire Ferguson and John M. Malouff, *Assessing Police Classifications of Sexual Assault Reports: A Meta-Analysis of False Reporting Rates*, *Archives of Sexual Behavior* 45 (5) (July 2016); *Myths about Sexual Assault Reports*, Brown University, <https://www.brown.edu/campus-life/health/services/promotion/sexual-assault-dating-violence/myths-about-sexual-assault-reports>.

AG Brown - FAV

Uploaded by: Hannibal Kemerer

Position: FAV

ANTHONY G. BROWN
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January 19, 2023

TO: The Honorable Luke Clippinger
Chair, Judiciary Committee

FROM: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: HB 13 Hate Crimes – Civil Remedy (Support)

The Attorney General urges the Judiciary Committee to favorably report HB 13, Delegate Crutchfield's legislation creating a civil cause of action for victims of hate crimes to seek redress from anyone who committed a hate crime against them. The legislation further provides for injunctive relief and economic and noneconomic damages, and reasonable attorneys' fees. In Section 10-309(d) of the bill, the legislation caps economic and noneconomic damages at three times the amount of actual damages. Importantly, if enacted, HB 13 would not undermine or supersede "any legal or equitable remedy otherwise provided by law."¹

Adherents to extremist ideologies are on the rise, as are their hate-motivated crimes. "White nationalist hate groups rose fifty-five percent under the Trump administration."² Further, "FBI statistics . . . reveal that hate crimes jumped twenty percent during this time, with the vast majority committed by white supremacists."³ In the face of these dire facts, it is important that victims of hate crimes not only have recourse to our criminal justice system, but that they may be made whole by holding the perpetrators of hate crimes accountable through civil remedies that include damages for pain and suffering. Moreover, the provision permitting reasonable attorneys' fees will ensure that Maryland lawyers have ample incentive to represent victims of hate crimes in civil actions against their perpetrators.

¹ H.B. 13, 2023 Legis. Sess, 445th Gen. Assemb. (Md. 2023) § 10-309(e).

² Suzette M. Malveaux, *Is It Time for A New Civil Rights Act? Pursuing Procedural Justice in the Federal Civil Court System*, 63 B.C. L. REV. 2403, 2464 (2022) (citing Jason Wilson, *White Nationalist Hate Groups Have Grown 55% in Trump Era, Report Finds*, The Guardian (Mar. 18, 2020), <https://www.theguardian.com/world/2020/mar/18/white-nationalist-groups-southern-poverty-law-center>).

³ *Id.* (citing Daniel Villarreal, *Hate Crimes Under Trump Surged Nearly 20 Percent Says FBI Report*, NEWSWEEK (Nov. 16, 2020), <https://www.newsweek.com/hate-crimes-under-trump-surged-nearly-20-percent-says-fbi-report-1547870>).

13. For the foregoing reasons, the Office of Attorney General urges a favorable report on HB

cc: The Honorable Charlotte Crutchfield & Committee Members

OAG Testimony - HB 4 (Repeal of Spousal Defense) -

Uploaded by: Jer Welter

Position: FAV

ANTHONY G. BROWN
Attorney General



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January 19, 2022

TO: The Honorable Luke Clippinger, Chair, Judiciary Committee
FROM: Jer Welter, Assistant Attorney General
RE: Attorney General's **Support** for **HB 4**
(Repeal of Spousal Defense)

The Attorney General urges the Judiciary Committee to issue a favorable report on House Bill 4. House Bill 4 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 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.”¹ That belief is now rightly rejected in modern society.

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,

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

“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 HB 4 favorably without amendments.

cc: Members of the Committee

HB0004 - 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

January 19, 2023

Testimony in **Support** of

HB 0004 – Criminal Law – Sexual Crimes – Repeal of Spousal Defense

Dear Chairman Clippinger, Vice Chairman Moon, and Members of the Committee:

I am writing to show my strong support for House Bill 0004 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.

HB0004 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 HB0004.

Sincerely,



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

MLAW Testimony - HB4 - Criminal Law - Sexual Crime

Uploaded by: Jessica Morgan

Position: FAV



Bill No: HB4
Title: Criminal Law – Sexual Crimes – Repeal of Spousal Defense
Committee: Judiciary
Hearing: January 19, 2023
Position: SUPPORT

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. **HB4 Criminal Law – Sexual Crimes – Repeal of Spousal Defense** is a priority on the [2023 MLAW Agenda](#) and we urge your support.

HB4 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 HB4.

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 MD
Advocacy and Training Center
Allegany County Women's Action Coalition
Anne Arundel County NOW
Aspire Ascend
Baltimore County Democratic State Central Committee
Bound for Better
Business and Professional Women of Maryland
Drake Institute of Women's Policy
Empowered Women in Business International
For All Seasons, Inc.
Kensington-Rockville AAUW
Maryland Commission for Women
Maryland WISE Women
Miller Partnership Consultants LLC
MoCoWoMen
Montgomery County Business & Professional Women (MC BPW)
Montgomery County Chapter, National Organization for women
Montgomery County Women's Democratic Club
National Coalition of 100 Black Women, Prince George's County Chapter
Planned Parenthood of Maryland
Planned Parenthood of Metropolitan Washington, DC
Reproductive Justice Inside
Southern Prince George's Business and Professional Women
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

**as of 1/16/2023*

Maryland Legislative Agenda for Women
305 W. Chesapeake Avenue, Suite 201 • Towson, MD 21204 • 443-519-1005 phone/fax
mdlegagenda4women@yahoo.com • www.mdlegagendaforwomen.org

WDC 2023 Testimony HB4_Final2.pdf

Uploaded by: JoAnne Koravos

Position: FAV



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

**House Bill HB0004 Criminal Law – Sexual Crimes – Repeal of Spousal Defense
Judiciary Committee – January 19, 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 the largest and most active Democratic clubs in our county with hundreds of politically active women and men, including many elected officials. WDC urges the passage of HB0004 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 HB 4 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 HB0004 and strongly urge a favorable Committee report.

Diana E. Conway
WDC President

Leslie A. Hawes
WDC Advocacy Committee

VSAB SupportLTR ElimMarriageDefense House 2023_.pd

Uploaded by: Leslie Frey

Position: FAV



VICTIM SERVICES ADVISORY BOARD

January 19, 2023

The Honorable Luke Clippinger
Chair, House Judiciary Committee
Room 101, House Office Building
Annapolis, Maryland 21401

Re: Support – HB4 – Criminal Law - Sexual Crimes – Repeal of Spousal Defense

Dear Chairman Clippinger:

This letter, written on behalf of the Montgomery County Victim Services Advisory Board (VSAB), serves to support House Bill 4, 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. House Bill 4 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 assisting victims of a broad range of violent crimes in meeting their needs, including victims of 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 House Bill 4.

Sincerely,

Wendy Ayala
VSAB Members

Department of Health and Human Services

2023 ACNM HB 4 House Side.pdf

Uploaded by: Lisa Spencer

Position: FAV



Committee: Judiciary Committee

Bill Number: House Bill 4 - Criminal Law - Sexual Crimes - Repeal of Spousal Defense

Hearing: January 19, 2023

Position: Support

The Maryland Affiliate of the American College of Nurse Midwives strongly supports *House Bill 4 – 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.

Marriage as a defense to sex crimes - testimony -

Uploaded by: Lisae C Jordan

Position: FAV



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

Testimony Supporting House Bill 4 **Lisae C. Jordan, Executive Director & Counsel** January 19, 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 Judiciary Committee to report favorably on House Bill 4.

House Bill 4 – 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.

House Bill 4 brings Maryland into the modern era and eliminates marriage as a defense to all sex crimes. This bill passed the House of Delegates in the same form during the 2020, 2021 and 2022 sessions.

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 HB4 does not change this. Couples can and do consent to touching through verbal and nonverbal means and agreements with one another and HB4 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. House Bill 4 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
Judiciary Committee to
report favorably on House Bill 4**

Tahirih Justice Ctr Written Testimony Supporting H

Uploaded by: Maria Daniella Prieshoff

Position: FAV



Protecting Immigrant
Women and Girls
Fleeing Violence

Testimony in SUPPORT of House Bill 4

(Repeal of Spousal Defense)

Judiciary Committee

Witness: María Daniella Prieshoff, Senior Supervising Attorney
211 East Lombard Street, Suite 307, Baltimore, Maryland 21202
January 19, 2023

Chair Clippinger, Vice-Chair Moon, and Honorable Members of the House Judiciary Committee:

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

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 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 so as to further control their victim. For these survivors, the spousal defense creates an additional barrier to leaving a domestically abusive environment. Removing this barrier will help non-English speaking survivors build trust with and seek help from law enforcement.

Commented [AG1]: just changed this to the date of the hearing rather than today's date

Commented [AG2]: Just added this to get at our unique intersectional perspective a bit more specifically, but if you'd rather leave it broad that's fine too. Up to you!

Commented [DP3R2]: @Alec thanks for the edit - I agree

Commented [AG4]: same as above. Lmk too if there was a specific reason for leaving this language out, or if Baltimore has shifted away from this language

BALTIMORE
211 E. Lombard Street
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Baltimore, MD 21202
Tel: 410-999-1900
Fax: 410-630-7539
Baltimore@tahirih.org

tahirih.org

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 Honorable Committee to report HB 4 favorably.

HB 4_MNADV_FAV.pdf

Uploaded by: Melanie Shapiro

Position: FAV



BILL NO: House Bill 4
TITLE: Criminal Law – Sexual Crimes – Repeal of Spousal Defense
COMMITTEE: Judiciary
HEARING DATE: January 19, 2023
POSITION: **SUPPORT**

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 House Judiciary Committee to issue a favorable report on HB 4.**

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.¹ HB 4 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.² Approximately 10-14% of married women will be raped at some point during their marriage.³ 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.⁴

¹ 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 \(uchicago.edu\)](#)

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

³ *Statistics*, National Coalition Against Domestic Violence, Retrieved January 11, 2021 from [sexual_assault_dv.pdf \(speakcdn.com\)](#)

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

For further information contact Melanie Shapiro • Public Policy Director • 301-852-3930 • 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 HB 4.**

For further information contact Melanie Shapiro • Public Policy Director • 301-852-3930 • mshapiro@mnadv.org

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HB 4 - Fav - WLC Maryland.pdf

Uploaded by: Melissa Murphy

Position: FAV

BILL NO: House Bill 4
TITLE: Criminal Law – Sexual Crimes – Repeal of Spousal Defense
COMMITTEE: Judiciary
HEARING DATE: January 19, 2023
POSITION: SUPPORT

House Bill 4 would repeal certain prohibitions on prosecuting someone for rape or sexual assault of their spouse. The Women’s Law Center (WLC) supports House Bill 4 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, §3-304, §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. HB 4 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.¹ In the nineteenth century, feminists explained a woman's lack of control over her person as the key foundation of her subordination.² Efforts were made throughout the past centuries to address this issue but were rarely recognized.³ 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.⁴ 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.⁵ 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 House Bill 4.

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.

1

<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://search.yahoo.com/&httpsredir=1&article=1484&context=californialawreview> – the history of Martial Rape (2000). 88 Cal. Law Rev. 1373 (2000).

² Id., at 1379.

³ Id., at 1373-1378.

⁴ 4 Am. Univ. International Law Rev. 555 (2012).

⁵ Id., at 555-556.

HB4_FJLSC_fav.pdf

Uploaded by: Michelle Smith

Position: FAV

To: Members of the House Judiciary Committee

From: Family & Juvenile Law Section Council (FJLSC)

Date: January 19, 2023

Subject: **House Bill 4:**
Criminal Law – Sexual Crimes – Repeal of Spousal Defense

Position: **SUPPORT**

The Family and Juvenile Law Section of the Maryland State Bar Association (FJLSC) **supports House Bill 4 – Criminal Law – Sexual Crimes – Repeal of Spousal Defense.**

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

Under current law, a person may not be prosecuted for rape or certain sexual offenses committed against a victim who is the person’s legal spouse under what is known as the spousal defense rule. Specifically, Section 3-318 of the Criminal Law Article states that a person cannot be prosecuted for rape in the first degree (Md. Crim. L. §3-303), rape in the second degree (Md. Crim. L. §3-304), sexual offense in the third degree (Md. Crim. L. §3-307) and/or sexual offense in the fourth degree (Md. Crim. L. §3-308) if the person is married to the victim. There are a limited number of exceptions to the “spousal defense,” but only if the parties have obtained a limited divorce decree from a court, or if the parties have been separated for at least three months or under a written separation agreement, or the perpetrator used force or the threat of force. 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.¹ In other words, it is based on the antiquated idea that once a woman marries a man she becomes his property losing her autonomy and ability to take away consent to sex. The precedent established in England was brought to the colonies, and later adopted by courts and legislatures of the United States. The existence of the spousal defense to rape and other sexual offenses sends a message to society that rape is less of a crime when committed against a spouse instead of an acquaintance or stranger. It also sends a message to victims of spousal rape that if they want to be able to seek relief from the courts by way of prosecution, they must take additional and often unavailable steps or be raped in a manner that someone raped by an acquaintance or a stranger does not. Beginning in the 1970’s, there was a growing movement to remove the marital exemption/spousal defense and to make marital rape a crime. Through this movement marital rape is a crime in all fifty (50) states and the District of Columbia, however, loopholes remain that allow marital rape to persist. In the wake of the #MeToo movement, there have been efforts across the United States to get these antiquated laws repealed. 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 House Bill 4 and urges a favorable committee report.**

Should you have any questions, please contact Michelle Smith by e-mail at msmith@lawannapolis.com or by telephone at (410) 280-1700.

¹ Sir Matthew Hale *Historia Placitorum Cononæ: The History of the Pleas of Crown, Vol. 1* 628 (1847). “The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.”

BPW MGA 2023 Testimony HB4.pdf

Uploaded by: Rebecca Wise

Position: FAV



Bill No: **HB 0004**

Title: **Criminal Law - Sexual Crimes - Repeal of Spousal Defense**

Committee: **Judiciary**

Hearing Date: **1/19/23**

Position: **SUPPORT**

Business and Professional Women of Maryland (BPW/MD) is a non-partisan, nonsectarian, member-supported nonprofit focused on the principle of equal pay, eliminating gender discrimination in employment, and the need for a comprehensive equal rights amendment. Founded in 1929, our mission is advanced through state and national legislative advocacy, professional development, and public education.

As an association of pro-equality Maryland citizens and part of a dedicated community of pro-equality partner organizations, BPW/MD fully supports repealing Maryland's archaic Article - Criminal Law, Section 3-318. Rape was historically defined as forced intercourse with a woman not your wife, reflecting the patriarchal historical views that marriage was a non-revocable, continual consent to sex and that a wife was a husband's property. Unlike many states, Maryland has not yet firmly rejected these fundamentally discriminatory concepts.

Legally equating marriage to sexual consent deprives adults of their bodily autonomy and infringes on fundamental freedoms. Civil rights guarantee "equal social opportunities and protection under the law,"¹ but Section 3-318 denies married partners the law's equal protections. Assault, stalking, homicide, and other crimes against a person are prosecuted without regard to marital status. Singling out sexual violence as a crime dependent on marital status is anomalous, without basis, and indefensible.

Section 3-318's roots in the antiquated notion that a wife is a husband's property is especially galling. Forty-nine percent of Maryland's workforce is female, and almost a third of that number are employed in society's most critical sectors: education and health care.² Women fuel Maryland's economy at every level and function as half of all heads of household.³ With the unified voice and combined energy of all of its members, BPW/MD urges the Judiciary Committee to report favorably on House Bill 0004.

¹ Hamlin, Rebecca. "civil rights". Encyclopedia Britannica, 18 Aug. 2021, <https://www.britannica.com/topic/civil-rights>. Accessed 24 January 2022.

² Maryland Commission for Women. "Maryland Women: A Status Report." Maryland Department of Human Services, April 2021, https://dhs.maryland.gov/documents/MD-Women-A-Status-Report_FIN-2.pdf.

³ Goodman, Laurie; Hyung Choi, Jung; and Zhu, Jun. "More Women Have Become Homeowners and Heads of Household. Could the Pandemic Undo That Progress?" Urban Wire, the Urban Institute, March 16, 2021, <https://urban.is/3G21NfU>.

2023 PANDA HB 4 House Side.pdf

Uploaded by: Robyn Elliott

Position: FAV

Mid Atlantic P.A.N.D.A. Coalition

5788 Endless Ocean Way, Columbia Maryland 21045

From: Mid Atlantic P.A.N.D.A. Coalition

To: Chair Luke Clippinger

Re: HB 4 Criminal Law-Sexual Crimes- Repeal of Spousal Defense

Date: January 19, 2023

The Mid-Atlantic P.A.N.D.A. is in Favor of HB 4

We represent the Mid Atlantic P.A.N.D.A. Coalition (Prevent Abuse and Neglect through Dental Awareness). We were established in 2000, our mission is "To create an atmosphere of understanding in dentistry and other professional communities which will result in the prevention of abuse and neglect through early identification and appropriate intervention for those who have been abused or neglected." Dentists and Dental Hygienists (Dental Professionals) are mandated by the State of Maryland to report suspected cases of abuse and neglect. Our coalition has established a Continuing Education (CE) course that educates Dental Professionals and others on how to recognize, report, or refer. The Maryland State Board of Dental Examiners has deemed this course as a mandatory CE requirement for Dentists and Hygienists to renew their licenses. We also address domestic violence, elder abuse, human trafficking and bullying in our CE course.

Marriage should never be an excuse for unacceptable behavior, it does not mean that a spouse has the right to do whatever they like without consent. No means no in any relationship. Once a spouse says no and rape or other sexual offenses take place, it should be considered a sexual offense with consequences even if the person is your spouse at the time of the offense.

Thank you for your consideration of HB 4 and be urge your support of this bill. Respectfully submitted,

Mid-Atlantic P.A.N.D.A. Coalition
Carol Caiazzo, RDH President
Susan Camardese, RDH, MS, Vice President

2023 PPM HB 4 House Side.pdf

Uploaded by: Robyn Elliott

Position: FAV

Planned Parenthood of Maryland

Committee:	Judiciary Committee
Bill Number:	House Bill 4 - Criminal Law - Sexual Crimes - Repeal of Spousal Defense
Hearing:	January 19, 2023
Position:	Support

Planned Parenthood of Maryland supports *House Bill 4 – 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.

BJC FAV HB4 Repeal of Spousal Defense.pdf

Uploaded by: Sarah Miicke

Position: FAV

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 Temple Isaiah
 Zionist Organization of America
 Baltimore District

WRITTEN TESTIMONY

House Bill 4 - Criminal Law – Sexual Crimes – Repeal of Spousal Defense

Judiciary Committee - January 19, 2023

SUPPORT

Background: House Bill 4, (HB4) 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. HB4 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 HB4.

HB0004 - UNF for redux of last years HB0153.pdf

Uploaded by: vince mcavoy

Position: UNF

HB153 UNFAVORABLE

Dear Delegates,

I urge you to be the adults who understand that turning EVERY marriage into a potential rape case is not what Marylanders want; it is what radical feminists want.

It is part of a long-standing program they have to destroy marriage & use the idea of "consent" to use

the intrusive family-law-courthouses toward financial gain & ideological profits by way of **mere UNPROVABLE hearsay**.

These cases WILL end up in courts, clogging courts, whether or not the circumstances are factual.

Facts have VERY LITTLE to do with the running of family law courts in radical feminist Maryland.

One-off cases are not the substance of good law.

I encourage a NO vote on **HB0153, Criminal Law - Sexual Crimes - Repeal of Spousal Defense**.

As detailed in JPR, Marital Privilege is internationally respected.

I really encourage you to listen to what JPR Chairman Bobby Zirkin had to say on the issue.

http://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=jpr&ys=2019RS&clip=JPR_2_12_2019_meeting_1&url=http%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2Fe857c1c3-5503-4334-8595-1341f3b34e23%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D12049000

The bill proponents' intention seems to remain the same -- destroy family through the use of the multi-billion dollar domestic violence industries, whose members routinely serve Annapolis lies, half-lies and damnable lies.

HB153 is an intrusive bill and should be **voted down**.

Thank you for your time & attention to reducing false allegations, preserving family & eliminating the monetization of family discord.

Thank you for your votes & your consideration.

humbly

~vince

V. McAvoy po box 41075 baltimore md