

HB412AadhitiVallatharasuSGA_fav (1).pdf

Uploaded by: Aadhiti Vallatharasu

Position: FAV

Committees: Judiciary

Testimony on: HB412

Position: Favorable

17 February 2023

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

The University of Maryland, Student Government Association supports HB412 in removing the requirement for use of force or threat to qualify as second-degree rape and in requiring specific facts to be evaluated in determining whether there was a lack of consent in sexual crimes.

As Director of Sexual Misconduct Prevention at the University of Maryland's Student Government Association and as Director of the Title IX Advisory Board, I am well versed on the nuances of consent and how it is misconstrued when evaluating sexual crimes. Lack of consent can be expressed in many ways, despite previous societal misconceptions that lack of consent can only be expressed with a verbal "no". Maryland law ought to reflect the different ways consent is not granted so those who fall victim to sexual crimes are not denied justice because of a lack of comprehensive language in law.

I have spoken to and know of survivors on campus who have refrained from reporting an assault, despite wanting to, in fear that because the word "no" was not explicitly uttered, the event would not be considered assault. They were assaulted. They did not explicitly grant consent and were still violated. This bill helps dispel the outdated narrative of "no means no" because we should be evaluating consent under the language of "yes means yes". Lack of consent happens in a variety of ways, all of which highlighted in the bill: withdrawal or lack of consent can be inferred from words and conduct, consent can be withdrawn at any point before or during intercourse, current or previous relationships do not guarantee consent, and the way an individual dresses or expresses is not consent.

Maryland's criminal law, Section 3-301.1 should reflect the nuances of consent and ensure that a survivor's assault is recognized as such. A lack of comprehensive language need not be the reason survivors of sexual crimes are denied justice.

I respectfully request a favorable vote on HB412.

Thank you,



Aadhiti Vallatharasu, Student Government Association, Director of Sexual Misconduct Prevention Committee
University of Maryland — College Park, MD
avallath@terpmail.umd.edu

Danica Choi, Student Government Association, Deputy Director of Sexual Misconduct Prevention Committee
University of Maryland — College Park, MD
mchoi124@gmail.com

House Bill 412 - Criminal Law – Sexual Crimes .pdf

Uploaded by: Abigail Snyder

Position: FAV

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 Baltimore District

WRITTEN TESTIMONY

House Bill 412 - Criminal Law – Sexual Crimes – Consent and Second-Degree Rape

Judiciary Committee – February 21, 2023

SUPPORT

Background: House Bill 412, (HB412) would change the elements of second-degree rape from force, or threat of force to consent as defined in the bill.

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 who have been abused and assaulted come to CHANA because they want to know their options and rights. We support HB412 because lack of force or threat of force does not mean a victim wanted to have sexual intercourse with their perpetrator. This bill would be particularly helpful for our clients who have disabilities, as well as some of our elder abuse clients. It would have helped a paralyzed client who was sexually assaulted by a neighbor who claimed he was helping her with her activities of daily living. He groomed her, paying attention to her, showing her affection and helping her. Because she asked him for support with caring for herself, he believed that he had the right or discretion to violate her. While it would not stop the assault from happening, HB412, would allow more victims justice against their perpetrators.

With this in mind, the Baltimore Jewish Council urges a favorable report on HB412.

The Baltimore Jewish Council, a coalition of central Maryland Jewish organizations and congregations, advocates at all levels of government, on a variety of social welfare, economic and religious concerns, to protect and promote the interests of The Associated Jewish Community Federation of Baltimore, its agencies and the Greater Baltimore Jewish community.

Testimony.pdf

Uploaded by: Anna Dzekunov

Position: FAV

Testimony Supporting House Bill 412

Anna Dzekunov

February 21, 2023

Hello,

I am a student at Montgomery College in Rockville. I have lived in Maryland my entire life and am proud of my state. Since I love where I live, I believe that positive change in our legislature is not just possible but necessary.

House Bill 412 would change Maryland's rape law to focus on whether there is clear and voluntary agreement between the people involved. The definition of consent proposed includes:

- Clear and voluntary agreement
- The right to withdraw consent
- Communication through words or conduct

• Consent is not:

- o what someone is wearing,
 - o a prior relationship, or
 - o as a result of fear, threat, or coercion
- Documentation is not required

I was honestly disappointed but not surprised when I learned that Maryland law requires more than a lack of consent to prove rape. Disappointed because this is clearly wrong, but not surprised because, in terms of sexual assault and justice, many places in the country have a long way to go. I want Maryland to lead a trend towards real justice for rape victims everywhere. If we can agree that emotional, psychological, and financial abuse are just as real and as harmful as physical abuse, then we can agree that coercion, pressure, or fear can be as weighty as the immediate threat of physical harm. Sexual assaults are rarely reported and even more rarely result in criminal conviction not because they are rare, but because they are so difficult to prosecute. Rape more often happens within the bounds of a relationship than from a "stranger in the shadows", but the state seems to disregard this fact. I can speak personally to the fact that even just one moment of sexual activity without consent can take years of therapy to begin to address. This does real harm to many, so the state must treat it seriously.

I, Anna Dzekunov, urge the Judiciary Committee to report favorably on House Bill 412.

WDC Testimony HB412-2023-FINAL.pdf

Uploaded by: Beth Tomasello

Position: FAV



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

House Bill 0412
Criminal Law-Sexual Crimes-Consent and Second-Degree Rape
Judiciary Committee – February 21, 2023
FAVORABLE

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club (WDC)** for the 2022 legislative session. WDC is one of Maryland's largest and most active Democratic Clubs, with hundreds of politically active women and men, including many elected officials.

WDC urges the passage of HB412. Under current Maryland law, a person may only be convicted of second-degree rape if the prosecution can prove that the sexual act was committed “by force, or threat of force.” HB412 removes this evidentiary requirement and re-defines second-degree rape as a sexual act committed “without consent.” This bill further defines “*consent*” to be the “*clear and voluntary agreement by an individual to engage in vaginal intercourse, a sexual act, or sexual contact.*” This bill also defines certain facts and circumstances that constitute consent—and certain facts and circumstances that do not. This change to Maryland law is long overdue.

WDC urges the passage of HB412 because the current definition of second-degree rape is outmoded and does not comport with society's understanding of what constitutes “rape.” We would be hard-pressed to identify many Marylanders (and likely no WDC members) who believe that rape can only occur when force, or a threat of force, is used to coerce a sexual act. HB412 conforms the law to society's evolved understanding that rape or other criminally actionable sexual acts occur when they are done to another person without their affirmative consent.

According to RAINN (Rape, Assault & Incest National Network), 90% of victims of sexual assault are female.¹ Girls and young women between the ages of 12-34 are the most likely victims of sexual assault, with numbers approaching 70% of all victims.² The highest percentage of victims are women aged 18-34.³ Rape and sexual assaults are under-reported, under-prosecuted, and convictions are hard to win, particularly if a victim who clearly did not

¹ <https://www.rainn.org/statistics/scope-problem>

² <https://www.rainn.org/statistics/victims-sexual-violence>

³ <https://www.rainn.org/statistics/victims-sexual-violence>



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consent to the sexual act must prove that the sexual act was performed under force or threat of force.

If Maryland enacts this legislation, it will join a growing number of jurisdictions that require “affirmative, voluntary consent” as a matter of statutory or case law. As of March 2020, RAINN reported that CA, DC, FL, HI, IL, MN, NH, NJ, OH, UT, VT, WA, and WI require “affirmative, voluntary consent” to sexual contact.⁴ It is time for Maryland to join this list.

On a final note, the vast majority of WDC members are parents who have had to educate our children about rape and sexual assaults. We teach our daughters that they have a right to say “no” to any sexual act, and that if they have not affirmatively and voluntarily consented to sexual intimacy, or if they withdraw their consent at any time during the sexual encounter and are nonetheless subjected to a sexual act, then they have been the victim of a sexual assault. Similarly, we teach our sons that they must ask for, and receive, a prospective intimate partner’s affirmative consent before they engage in sexual acts. We teach them that a prior sexual encounter or sexy clothing does not constitute consent, and we also teach them that consent is only valid if the person is fully capable of giving it. We teach our sons that if the person withdraws consent at any time, the sexual act must stop. We do not teach our sons that it is acceptable for them to perform a sexual act with another person so long as they do not use force or the threat of force, and we do not teach our daughters that they have only been assaulted if someone has used force or a threat of force with them. In short, we teach them what is set forth in HB412.

We ask for your support for HB412 and strongly urge a favorable Committee report.

Respectfully,

Diana Conway
President

Beth Tomasello
WDC Advocacy Committee

⁴ <https://www.rainn.org/public-policy-action>

HB412CarolineThorneSGA_fav.pdf

Uploaded by: Caroline Thorne

Position: FAV

Committees: Judiciary
Testimony on: HB412
Position: Favorable

17 February 2023

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

The University of Maryland, Student Government Association supports HB412 because this bill would change Maryland's rape law to focus on whether there is clear and voluntary agreement between the people involved. The definition of consent proposed includes: clear and voluntary agreement, the right to withdraw consent, and Communication through words or conduct. Consent is not: what someone is wearing, a prior relationship, or as a result of fear, threat, or coercion. Documentation is not required.

Thank you for the opportunity to offer testimony on this legislation. My name is Caroline Thorne and I serve as the Director of Government Affairs at the University of Maryland, College Park Student Government Association. On behalf of our SGA, I respectfully request a favorable report of House Bill 412, to modify Maryland's rape law.

Learning that Maryland law requires more than a lack of consent to prove rape was disappointing, but not shocking. Sexual assault, particularly on college campuses, is a severely underreported problem. About 13% of students experience rape or sexual assault while on college campuses, but only 20% of student victims report these crimes to law enforcement. In my experience as a student leader, I have learned that survivors often refrain from reporting assault despite wanting to, largely because they did not explicitly say the word no. The bottom line is that people should not have sex with someone without their consent.

On behalf of the Student Government Association at the University of Maryland, I urge the Judiciary Committee to report favorably on House Bill 412.

Thank you,



Caroline Thorne (she/her/hers)
Student Government Association Director of Government Affairs
University of Maryland — College Park,
cthorne@terpmail.umd.edu

HB0412_Chris_Apple_FAV.pdf

Uploaded by: Chris Apple

Position: FAV

TESTIMONY IN SUPPORT OF BILL HB0412 - FAVORABLE
Criminal Law - Sexual Crimes - Consent and Second-Degree Rape

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

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

Feb 21, 2023

Consent is the underpinning of our concept of assault. It is one of the ethical foundations of our culture that both parties must consent to sexual contact, or else it is a violation of a person's body and freedom.

Yet "consent" currently has no legal definition. Our laws rely instead on other tests to prove assault, specific behaviors which are easier to examine in a courtroom. But by examining external behaviors, we take the emphasis off of consent. We put the victim's *response* on trial, instead of the perpetrator's attack.

Consent is inherently an internal decision, and people do not always express it visibly. In extreme situations like assault, victims do not always fight, scream, or run. Many do not resist at all, fearing further violence¹. Some people freeze. Many survivors report being in total shock during the assault, and said they did not know what to do². Several survivors have said they began to talk during their assaults, talking almost constantly, unable to stop themselves. Some survivors were incapacitated and were unconscious during their assaults.

None of these behaviors should be mistaken for consent. They are just some of the widely varied responses we have to extremely stressful situations. They are largely involuntary, and our laws should not require survivors to have any specific "pre-approved" response to their assault.

Our laws create a system that emphasizes the wrong things. If a person does not wish to have sexual contact, then it should be considered assault regardless of how they responded to it. Consent is the ethical cornerstone of assault and it ought to be the legal cornerstone as well.

I urge the committee to report favorably on HB0412.

¹ Krakauer, Jon. *Missoula: Rape and the Justice System in a College Town*. Anchor Books, 2016. pp. 279-282.

² Hopper, James. "Why many rape victims don't fight or yell." *The Washington Post*. June 23, 2015.
<https://www.washingtonpost.com/news/grade-point/wp/2015/06/23/why-many-rape-victims-dont-fight-or-yell/>

Testimony Supporting House Bill 412.pdf

Uploaded by: Dawn Volkart

Position: FAV

Testimony Supporting House Bill 412

Owls in ACTION: Bystander Intervention Harford Community College

Owls in ACTION: Bystander intervention is a peer education program at Harford Community College dedicated to preventing intimate partner violence (dating and domestic violence, stalking, and sexual assault) as well as promoting a community that engages and invests in everyone's safety and well-being. We provide one-hour skill building workshops where participants learn to identify warning signs of intimate partner violence, develop realistic options to intervene in different types of situations, and be inspired to proactively make our campus an environment that is free from relationship violence.

We are writing in support of House Bill 412, which would change Maryland's rape law to focus on whether there is clear and voluntary agreement between the people involved. The definition of consent proposed includes:

- Clear and voluntary agreement
- The right to withdraw consent
- Communication through words or conduct

Consent is not:

- what someone is wearing,
- a prior relationship, or
- as a result of fear, threat, or coercion

It is important to note that as peer educators, we attended cutting edge training based on the best practices for intimate partner violence and violence prevention (including for sexual assault) which were taught to our coordinators through the Department of Justice Office on Violence Against Women's Technical Training Institute. This sets the context for our comments.

As peer educators trained in these best practices, we were horrified to discover that Maryland law requires proof of lack of consent and force or threat of force; and that force or threat of force is proven by focusing on the survivor/victim and whether they resist. This is an extremely outdated viewpoint. It is common for victims of intimate partner violence to respond in many different ways including freezing, fighting, flight, submitting, feigning death, crying for help, and dissociating. The current law only covers two of these responses but needs to allow space for all of them. Another important consideration is that if a survivor does not feel they have the proof the current law requires, they may be less willing to report their assault making it easier for predators to remain in the community.

At Harford, we have a definition of consent in our school policies for students and employees. Consent is a positive, unambiguous, and voluntary agreement to engage in a specific sexual

activity throughout a sexual encounter. Consent cannot be inferred from the absence of "no." A clear "yes" is necessary. Consent cannot be obtained by threat, coercion or force. And it cannot be obtained from a person who is incapacitated, such as from alcohol or drugs. Consent to some sexual acts does not imply consent to others. It must be ongoing throughout a sexual encounter, and it can be revoked at any time. It is hard to believe that the state of Maryland's definition is so far away from best practices and a definition of consent like ours. People should not have sex with someone without their consent and consent needs to encompass the complexities of sexual assault and the responses of its victims.

In conclusion, Owls in ACTION: Bystander Intervention urges the Judiciary Committee to report favorably on House Bill 412. Please bring this archaic law into the 21st century. The best practices in intimate partner violence, including a definition of consent, have evolved and so should Maryland State.

Thank you for your time and effort.

Sincerely,

The Owls in ACTION: Bystander Intervention Team

Dawn Volkart, Coordinator

Xiomara Macuri Romero, Peer Educator

Asra Rauf, Peer Educator

Jessica Stephens, Peer Educator

HB 412 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 412

February 21, 2023

DOROTHY J. LENNIG, LEGAL CLINIC DIRECTOR

The House of Ruth Maryland is a non-profit organization providing shelter, counseling, and legal services to victims of domestic violence throughout the State of Maryland. House of Ruth has offices in Baltimore City, Baltimore County, Prince George’s County, and Montgomery County. House Bill 412 defines consent or lack of consent for certain sexual crimes and sexual acts. **We urge the House Judiciary Committee to issue a favorable report on House Bill 412.**

HB 412 changes Maryland's rape law by defining consent and repealing language that focuses on whether a victim resisted the sexual act and whether there was force or threat of force by the alleged perpetrator. HB 412 changes the focus of consent to whether there is **clear and voluntary agreement** between the people involved. HB 412 defines consent as including clear and voluntary agreement to engage in the sexual act; the right to withdraw consent before or during the sexual act; and, communicating or expressing consent through words or conduct. HB 412 also addresses what is **not** consent, including what someone is wearing; agreement as a result of fear, threat, or coercion; or, having had a prior relationship.

HB 412 creates important protections for victims of rape and sexual assault. Victims may employ a variety of means to express their lack or withdrawal of consent to a sexual act – by saying “no,” through other verbal communication, by moving their body in a certain way, by physically resisting, or by other means. HB 412 provides a framework for determining whether consent to sexual activity has been granted, denied or withdrawn that takes into account both a victim’s words and actions. In addition, HB 412 clarifies that a victim does not consent to rape by virtue of being in a relationship with the assailant, by dressing a certain way, or by submitting as a result of fear or duress. HB 412 hopefully will serve to reduce incidents of rape and other forms of sexual assault by creating a better understanding of what constitutes consent or lack thereof, and will create greater accountability for perpetrators.

The House of Ruth urges a favorable report on House Bill 412.

Testimony - Shetty - HB 412 - Criminal Law - Sexua

Uploaded by: Emily Shetty

Position: FAV

HB412

Judiciary - Criminal Law, Sexual Crimes, Consent and Second-Degree Rape - Testimony in SUPPORT

Chair Clippinger, Vice Chair Moon and members of the House Judiciary Committee, thank you for the opportunity to provide favorable testimony in support of House Bill 412, which will define consent for the purposes of engaging in sexual activity.

Unlike half of the states in the US, the state of Maryland still has no legal definition of consent and instead relies on victims to prove that they resisted or were afraid to do so, due to the threat of force¹. This frequently becomes a barrier to justice for victims of sexual crimes, and excludes numerous scenarios in which a victim may experience a non-consensual sexual act, but are fearful of other retaliation or consequences.

As of 2021, 44% of Maryland's women and more than 24.8% of Maryland's men reported experiencing sexual violence. Women and members of the LGBTQ+ community face particular vulnerability. More than 21% of women have reported experiencing attempted or completed rape, and 21% of non-gender conforming individuals have experienced sexual assault. Montgomery County, Prince George's County, Baltimore City, Baltimore County, and Anne Arundel have consistently reported the highest number of rapes in the state.² Particularly concerning is the number of underage girls who have experienced sexual violence. According to recently released data from the CDC, at least one of every ten high school-age girls has reported being forced to have sex at some point. Unsurprisingly, three out of five girls reported feeling hopeless in 2021, and nearly one-third considered suicide.³

Sexual crimes cause physical, mental, and economic consequences. After trauma, the brain remains overactive as it comes down from "fight or flight" mode, causing the survivor to experience behavioral and cognitive dysfunction. The monetary cost remains a lifetime burden as survivors take time off of work or seek medical and mental support. According to the Maryland Coalition Against Sexual Assault, the lifetime cost to recover from rape per victim is \$122,461, and the cost to the state is \$3.1 trillion⁴.

¹ Lawson, "Half of the Country Doesn't Have a Legal Definition of Consent." *Vice*.
<https://www.vice.com/en/article/bj3p35/state-definition-of-consent-legislation>

² Maryland Coalition Against Sexual Assault, "Sexual Assault in Maryland."
<https://mcasa.org/stats-info/statistics>

³ Muller, "Teen Girls Report Most Distress, Sexual Violence in a Decade." *Bloomberg*.
<https://www.bloomberg.com/news/articles/2023-02-13/teen-girls-report-most-distress-sexual-violence-in-a-decade--cdc-says>

⁴ Maryland Coalition Against Sexual Assault, "Sexual Assault in Maryland."
<https://mcasa.org/stats-info/statistics>

Many survivors choose not to report out of fear of ostracization, retaliation from the perpetrator, or perception of insufficient evidence. The lack of a clear definition of consent offers another barrier to their coming forward. Victims of these horrific crimes should be supported by law and society in their decision to seek justice.

HB 412 would address this issue by requiring certain facts to be considered when determining whether consent was given and by altering the elements of second-degree rape by removing the requirement of the use of force. More specifically, the bill would take the responsibility off of the victim to prove that they resisted or were too afraid to do so, and instead notes that an individual that has been coerced, is in fear, or is threatened is not in fact providing consent. This bill would close the disconnect between the definition of consent taught in schools and what is written in law today. Please note that this legislation is not changing the legal requirements to affirmative consent, meaning it does not require an explicit yes. Rather, it takes into account words, actions, and the ability to withdraw consent at any time. The bill also does not require a written agreement or assume that a current or prior relationship by itself constitutes consent.

A quick note on sponsor amendments - I have submitted one to strike 'deception' from the existing bill as I believe that the other items listed adequately cover the scenarios in which we are trying to protect victims.

I urge you to pass this common-sense legislation to allow victims of sexual crimes to seek justice.

Thank you for the committee's consideration, and I respectfully request a favorable report on HB412.

HB412.pdf

Uploaded by: Hanah Ajamian

Position: FAV

Testimony Supporting House Bill 412

Anna Gerstein and Damiana Colley (Preventing Sexual Assault UMD)

February 21, 2023

Committees: Judiciary

Testimony on: HB412 - changing the focus to whether there is clear and voluntary agreement between the people involved.

Position: Favorable

The University of Maryland – College Park, Preventing Sexual Assault urges the Judiciary Committee to report favorably on House Bill 412 changing the focus to whether there is a clear and voluntary agreement between the people involved.

Preventing Sexual Assault is an entirely student-run organization dedicated to advocating for students, spreading awareness, and implementing action to prevent sexual assault and change rape culture at the University of Maryland. We protect and uplift survivors as well as act as the voice for students in all matters related to Title IX and power-based violence. PSA leads many education and prevention programs to engage the community and create space for survivors and students.

Hello everyone. My name is Anna Gerstein and I am currently a Senior in the School of Public Policy at the University of Maryland. I am passionate about change: I work as a legal intern for the City of Baltimore Court Circuit under an honorable Judge, I spend my days in college classes educating myself on policy issues and the impact legislation has on issues such as preventing sexual assault, and I am one of the Presidents of PSA. In my first semester of college at UMD, I was sexually assaulted by an athlete at the University of Maryland which significantly impacted my mental health, my grades, and my ability to trust others. Whenever I talk to someone romantically, I have to explain to them how I got sexually assaulted, resulting in explaining why sexual intercourse is a sensitive topic for me. For six months after my assault, each Thursday, I had to see a psychologist, to whom I would cry about how disgusted I felt with myself. Each Tuesday, I had to visit a Pelvic Floor Therapist, who had to teach me how to correctly insert tampons. I had been using tampons since I was 15 years old and at 20, after my assault, my body wouldn't let me. She would also have conversations with me on how to safely have sexual intercourse again, at a time that was best for me when I felt more comfortable. The impact that this assault had on me was significant.

Hello everyone. My name is Damiana Colley and I am a Junior at the University of Maryland double majoring in Psychology and Criminal Justice/Criminology and I am the other President for PSA. Issues related to power-based violence and victim services are extremely important to me, and I have long been passionate about preventing them and supporting victims, through formal training, working in the Governor's Office of Crime Prevention, Youth, and Victim Services, and being involved in everyday activism. Addressing sexual assault comes with addressing the wide (and unfortunate) range of systemic issues. Including, but not limited to, power-based violence, homophobia, transphobia, sexism, toxic masculinity, racism, classism, fatphobia, lack of access to education, etc, etc, etc. My work and knowledge in this area has helped me realize that violence of this nature has become a public health issue that requires solutions centered around multidisciplinary acts, not just reactionary or punitive measures. I will not stand silent for an issue that is not only extremely personal to me, but one that I realize affects everyone. This issue will unfortunately persist, but if we work to destigmatize talking about sexual relations, dismantle systems of oppression, support and believe survivors, enact helpful and clear standards after a victimization, build preventative measures through education and awareness of the interconnected topics, and so much more, I hope that one day this issue will exist once in a blue moon. And it could start with this Bill.

House Bill 412 would change Maryland's rape law to focus on whether there is a clear and voluntary agreement between the people involved. This also includes the right to withdraw consent, and communication through words or conduct. Consent is NOT: what someone is wearing, if you have engaged in sexual activity before, or if you have been in or are currently in a relationship.

Every week, Damiana and I use our time to talk to university clubs, athletics, greek life etc. about the importance of consent. Clarifying the definition of what consent is in the state of Maryland through official legislative language, eliminates the possibility for interpretation. A punitive outcome for violating a behavior categorized as a law, will be a deterrent for non-consensual behavior. More than anything, however, it helps educate people about why consent is important and why a lack of consent is harmful. As college students, we are very aware of the prevalence and impact that sexual assault has on individuals, and we believe there is an urgency to push legislation requiring sexual assault prevention policies. Not only is this important for the state of Maryland, but it also sets a standard for improvement surrounding policies of power-based violence across the country. We believe the enforcement of House Bill 412 is critical for survivors to feel validated and safer within Maryland's criminal justice system. Everyone deserves to have their case heard and believed. Maryland Legislation enforcing voluntary and clear agreement when it comes to sexual acts, will ensure that perpetrators of

sexual violence will be held accountable and it will protect survivors from facing retraumatization and the hardship that we have often had to face as sexual assault survivors.

By supporting this bill, we believe it will demonstrate that the State is dedicated to taking a survivor-centered approach in instances of violence. Enacting this bill is the first step, but it is one that is necessary to build a better, and safer, Maryland.

Thank you for your time and consideration.



Anna R. Gerstein (she/her)
Undergraduate Student in Public Policy |
Legal Assistant Baltimore Court Circuit |
Preventing Sexual Assault (PSA) Co-President

—
tel: (908)-300-1291

Email: agerstei@terpmail.umd.edu



Damiana E. Colley (She/Her/Hers)
University of Maryland, College Park '24
B.A. Criminology and Criminal Justice | B.S. Psychology
University Honors & PSYC Honors Student
Co-President for Preventing Sexual Assault

tel: (443)-880-0800

email: decolley@terpmail.umd.edu



HB412 Consent Bill JS FAV 02-15-2023.pdf

Uploaded by: Jessie Sell

Position: FAV

House Judiciary Committee

House Bill 412 – Criminal Law - Sexual Crimes - Consent and Second-Degree Rape Written Support

Jessie Sell, Sexual Violence Resource Coordinator
Notre Dame of Maryland University
February 21, 2023
jsell@ndm.edu

In my capacity at Notre Dame of Maryland University (NDMU), I serve as the University's Sexual Violence Resource Coordinator. NDMU is committed to maintaining a campus environment that is free from sexual harassment and violence. Thank you for the opportunity to provide this testimony in support of [House Bill 412 – Criminal Law - Sexual Crimes - Consent and Second-Degree Rape Written Support](#). The bill would change Maryland's rape law to focus on whether there is clear and voluntary agreement between the people involved.

The definition of consent proposed includes:

- Clear and voluntary agreement
- The right to withdraw consent
- Communication through words or conduct

Consent is not:

- what someone is wearing,
- prior relationship, or
- as a result of fear, threat, or coercion

I am appalled that Maryland law requires more than lack of consent to prove rape. I strongly disagree with the current law. People should never have sex with someone without their consent.

I urge the Judiciary Committee to report favorably on House Bill 412.

WDC 2023 Testimony HB412_Final.pdf

Uploaded by: JoAnne Koravos

Position: FAV



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

House Bill 412
Criminal Law-Sexual Crimes-Consent and Second-Degree Rape
Judiciary Committee – February 21, 2023
SUPPORT

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club (WDC)** for the 2023 legislative session. WDC is one of Maryland's largest and most active Democratic clubs, with hundreds of politically active members, including many elected officials.

WDC urges the passage of HB412. Under current Maryland law, a person may only be convicted of second-degree rape if the prosecution can prove that the sexual act was committed "*by force, or threat of force.*" House Bill 412 removes this evidentiary requirement and re-defines second-degree rape as a sexual act committed "*without consent.*" This bill further defines "*consent*" to be the "*clear and voluntary agreement by an individual to engage in vaginal intercourse, a sexual act, or sexual contact.*" This bill also defines certain facts and circumstances that constitute consent—and certain facts and circumstances that do not. This change to Maryland law is long overdue.

The current definition of second-degree rape is outmoded and does not comport with society's understanding of what constitutes "rape." We would be hard-pressed to identify many Marylanders (or any WDC members) who believe that rape can only occur when force, or a threat of force, is used to coerce a sexual act. House Bill 412 conforms the law to society's evolved understanding that rape or other criminally actionable sexual acts occur when they are done to another person without their affirmative consent.

According to RAINN (Rape, Assault & Incest National Network), 90% of victims of sexual assault are female.¹ Girls and young women between the ages of 12-34 are the most likely victims of sexual assault, with numbers approaching 70% of all victims.² The highest percentage of victims are women aged 18-34.³ Rape and sexual assaults are under-reported, under-prosecuted, and convictions are hard to win, particularly if a victim who clearly did not consent to the sexual act must prove that the sexual act was performed under force or threat of force.

¹ <https://www.rainn.org/statistics/scope-problem>

² <https://www.rainn.org/statistics/victims-sexual-violence>

³ <https://www.rainn.org/statistics/victims-sexual-violence>



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If Maryland enacts this legislation, it will join a growing number of jurisdictions that require “affirmative, voluntary consent” as a matter of statutory or case law. As of March 2020, RAINN reported that CA, DC, FL, HI, IL, MN, NH, NJ, OH, UT, VT, WA, and WI require “affirmative, voluntary consent” to sexual contact.⁴ It is time for Maryland to join this list.

On a final note, the vast majority of WDC members are parents who have had to educate our children about rape and sexual assaults. We teach our daughters that they have a right to say “no” to any sexual act, and that if they have not affirmatively and voluntarily consented to sexual intimacy, or if they withdraw their consent at any time during the sexual encounter and are nonetheless subjected to a sexual act, then they have been the victim of a sexual assault. Similarly, we teach our sons that they must ask for, and receive, a prospective intimate partner’s affirmative consent before they engage in sexual acts. We teach them that a prior sexual encounter or sexy clothing does not constitute consent, and we also teach them that consent is only valid if the person is fully capable of giving it. We teach our sons that if the person withdraws consent at any time, the sexual act must stop. We do not teach our sons that it is acceptable for them to perform a sexual act with another person so long as they do not use force or the threat of force, and we do not teach our daughters that they have only been assaulted if someone has used force or a threat of force with them. In short, we teach them what is set forth in HB0412.

We ask for your support for HB0412 and strongly urge a favorable Committee report.

Diana Conway
WDC President

Beth Tomasello
WDC Advocacy Committee

⁴ <https://www.rainn.org/public-policy-action>

HB 412 - FAV - Women's Law Center of Maryland.pdf

Uploaded by: Laure Ruth

Position: FAV

BILL NO: House Bill 412
TITLE: Criminal Law – Sexual Crimes – Consent and Second-Degree Rape
COMMITTEE: Judiciary
HEARING DATE: February 21, 2023
POSITION: **Favorable**

The Women’s Law Center of Maryland is dedicated to ensuring the physical safety, economic security, and **bodily autonomy** of women throughout the State. We support systemic changes to our current policies and practices that disproportionately negatively affect women. House Bill 412 is a step towards establishing these systemic changes for victims of sexual assault. The Women’s Law Center of Maryland urges a favorable report on HB 412.

HB 412 would bring Maryland’s current rape law up to date by removing the antiquated *force and threat of force* standard. That standard places the onus on a victim to stave off a rapist. Under HB 412 the focus would be whether there was a **clear and voluntary agreement** between the individuals involved. In order to make this determination, HB 412 provides a logical and concise definition of consent, as well as outlines acts and circumstance that do not qualify as consent. This analysis keeps the fact finder focused on asking the right questions – if consent was sought and the circumstances under which consent was given. This analysis keeps the fact finder away from wrong and harmful questions that have historically been used to blame victims of sexual assault – what the victim was wearing, did the victim have a prior consensual sexual experience with the perpetrator, etc. As a result, HB 412 provides a straightforward approach to prosecuting and determining sex crime cases.

Currently 28 jurisdictions throughout the country have updated their rape statutes to define consent in terms of behavior. For instance, the Vermont statute defines consent as, “unambiguous, and voluntary agreement to engage in a sexual act, which can be revoked at any time¹.” According to the American Law Institute, “neither verbal nor physical resistance is required to establish that consent is lacking, but their absence may be considered, in the context of all the circumstances, in determining whether there was consent².” Further, the majority of states across the country have already updated their rape and sexual assault statutes to eliminate a requirement of *force or the threat of force*³. It is time for Maryland to do the same.

Women experience sexual assault at disturbing rates, especially Black women and women of color. In Maryland roughly 18% of white women and 22.3% of non-Hispanic Black women have been raped. Additionally, 44% of Maryland women have experienced other forms of sexual violence⁴. These statistics are alarming. The legislature must make changes in order to properly support victims of sexual assault when they are seeking legal recourse. For these reasons, the Women’s Law Center of Maryland urges a favorable report on House Bill 412.

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 representation for individuals and statewide advocacy to achieve systemic change.

¹ Vt. Stat. Ann. tit. 13, § 3251 (Lexis Advance through the end of the 2021 (Adj. Sess.), including legislative updates through December 31, 2022)

² <https://www.ali.org/news/articles/updated-consent-definition/>

³ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4191840

⁴ https://mcasa.org/assets/files/Sexual_Assault_in_MD_Fact_Sheet_2021.12.pdf

Consent - testimony - house - 2023 - HB412 - FAV.p

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

Testimony Supporting House Bill 412
Lisae C. Jordan, Executive Director & Counsel
February 21, 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 412.

House Bill 412 – Consent – Voluntary Agreement

This bill changes Maryland’s sex crimes law by defining “consent” to include clear and voluntary agreement, permitting consent by words or conduct, and clarifying that consent may be withdrawn. HB412 also provides that consent may not be constituted by a prior relationship by itself, or by manner of dress. Submission as a result of fear, threat, or coercion does not constitute consent. (A sponsor amendment strikes “deception”.) HB412 also provides that the section may not be construed to require documentation of consent.

Rape Law in Maryland – Lack of Agreement to have Sex is Not Rape

When one person has sex with someone without consent Maryland’s second degree **rape law**, Criminal Law §3-304(a)(1) requires proof of:

Lack of consent and
Force or Threat of Force

Force = Focus on Victim, not Perpetrator

It is not enough to prove lack of agreement to have sex, Maryland’s law requires more. “Force or Threat of Force” is proven by focusing on the survivor/victim and whether they resist. While physical resistance is no longer required (Criminal Law §3-319.1), rape is only proven when in addition to lack of consent, the state can prove the victim resisted or was too scared to resist. (Note that rape prosecutions based on capacity, such as intoxication, are in other parts of the law and neither consent nor force are elements.)

Force and Threat of Force

Some degree of force is inherent in physical sexual activity. However, Maryland takes the approach that in a case involving actual, non-constructive force, the minimum of physical force that would be necessary to satisfy the “force” element is “the application of force beyond that which is part of the sexual act itself.” *State v. Mayers*, 417 Md. 449, 476 (2010); *see also Martin v. State*, 113 Md. App. 190, 241 (1996) (stating that the “force” element “means more than the mere physical exertion required to engage in a sexual act ‘against the will and without the consent of the other person’”).

While force may be by threat without actual violence, it is still more than a failure to have agreement. Case law explains: constructive force, [are] “acts and threats of the defendant” that reasonably create in the mind of the victim “a real apprehension, due to fear, of imminent bodily harm[.]” *Brown v. State*, 252 Md. App. 197, 213 (2021) (quoting *Hazel v. State*, 221 Md. 464, 469 (1960)).

House Bill 412 changes the law away from force and to a focus on whether there is clear and voluntary agreement. This bill strikes “force or threat of force” from the second degree rape statute, leaving “without the consent of the other” and provides a definition of “consent”.

The **definition of CONSENT** proposed by HB412 includes:

- Clear and voluntary agreement;
- The right to withdraw consent;
- Communication through words or conduct (NOT affirmative consent) and based on the totality of the circumstances;
- Consent is not:
 - what someone is wearing,
 - a prior relationship, or
 - as a result of fear, threat, or coercion (note that a sponsor amendment will strike “deception”);
- Documentation is not required.

House Bill 412 does not create an affirmative consent standard. Under HB412 consent can be “INFERRED FROM WORDS OR CONDUCT AND IS BASED ON THE TOTALITY OF THE CIRCUMSTANCES” (page 2, lines 7-9). There is no mandate in HB412 to ask permission and obtain a response throughout a sexual interaction. Agreement could be given without uttering a word.

Current law does not reflect what we teach students about consent.

Maryland requires age-appropriate instruction on the meaning of “consent” and respect for personal boundaries as part of the Family Life and Human Sexuality curriculum in every grade in which the curriculum is taught in public schools in the county. “Consent” is defined in Maryland’s education law as: “the unambiguous and voluntary agreement between all participants in each physical act within the course of interpersonal relationships, including respect for personal boundaries.” Education Article §7-445.

Students feel misled when they learn that criminal law does not view lack of agreement as rape. Standards used in college student judicial conduct proceedings do not require force, they focus on whether there was agreement. A 2016 survey of institutions of higher education found 16 with affirmative consent policies (including the University of Maryland system), 32 using “knowing”, “voluntary” or both, 13 including “mutually understandable”, and even one requiring “intelligent” as part of consent.

Other states. Comparisons between state sex crimes laws are imperfect because of the variety of approaches that states use. However, at least nine states have reformed their definitions of consent to focus on agreement. These are attached as Appendix I.

House Bill 412 changes Maryland law to prohibit having sex with another person without their consent. This is recognition of fundamental control and autonomy a person should have over their own body and it should be the law.

**The Maryland Coalition Against Sexual Assault urges the
Judiciary Committee to
report favorably on House Bill 412**

Appendix I.
Examples of Consent Definitions from other states.

California. "Consent" is defined to mean positive cooperation in act or attitude pursuant to the exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. California Penal Code § 261.6.

Colorado. "Consent" means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship is not sufficient to constitute consent. Submission under the influence of fear does not constitute consent. Colorado Revised Statutes Annotated § 18-3-401(1.5).

District of Columbia. "Consent" means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent. D.C. Code § 22-3001(4).

Indiana. "Consent" means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent. A person who initially consents to sexual penetration or sexual conduct is not deemed to have consented to any sexual penetration or sexual conduct that occurs after he or she withdraws consent during the course of that sexual penetration or sexual conduct. 720 ILCS 5/11-1.70.

Minnesota. "Consent" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act. Further:

- A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.
- Corroboration of the victim's testimony is not required to show lack of consent.

Minn. Stat. § 609.341(4).

Montana. The term "consent" means words or overt actions indicating a freely given arrangement to have sexual intercourse or sexual contact and is further defined, but not limited by the following:

- An expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;
- A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent; and

- Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

Mont. Code Ann. § 45-5-501(1).

Oklahoma. The term “consent” means the affirmative, unambiguous and voluntary agreement to engage in a specific sexual activity during a sexual encounter which can be revoked at any time.

Consent cannot be given by an individual who:

- is asleep or is mentally or physically incapacitated either through the effect of drugs or alcohol or for any other reason, or
- is under duress, threat, coercion or force

Consent cannot be inferred under circumstances in which consent is not clear including, but not limited to:

- the absence of an individual saying “no” or “stop”, or
- the existence of a prior or current relationship or sexual activity.

Okla. Stat. tit. 21, § 113

Vermont. “Consent” means the affirmative, unambiguous, and voluntary agreement to engage in a sexual act, which can be revoked at any time. 13 Vermont Stat. Ann. §3251(3).

Washington. Consent requires that there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact at the time of the act. Wash. Rev. Code Ann. § 9A.44.010(7).

Wisconsin. “Consent” means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Wis. Stat. Ann. § 940.225(4).

HB 412_mgoldstein_fav 2023.pdf

Uploaded by: Mathew Goldstein

Position: FAV



Secular Maryland

secularmaryland@tutanota.com

February 21, 2023

HB 412 - SUPPORT

Criminal Law - Sexual Crimes - Consent and Second-Degree Rape

Dear Chair Clippinger, Vice-Chair Moon, and Members of the Judiciary Committee,

This bill applies a standard secular definition of consent to sexual crime. It is a step forward in secularizing our laws and merits being enacted into law.

Mathew Goldstein
3838 Early Glow Ln
Bowie, MD

HB 412_MNADV_FAV.pdf

Uploaded by: Melanie Shapiro

Position: FAV



BILL NO: House Bill 412
TITLE: Criminal Law - Sexual Crimes - Consent and Second-Degree Rape
COMMITTEE: Judiciary
HEARING DATE: February 21, 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 412.**

House Bill 412 changes Maryland's rape law by defining consent and repealing language that focuses on whether a victim resisted the sexual act and whether there was force or threat of force by the alleged perpetrator. The definition of consent in HB 412 changes the focus to whether there is a clear and voluntary agreement between the people involved. Consent, as defined in HB 412, includes a clear and voluntary agreement, the right to withdraw consent, and communication through words or conduct and based on the totality of the circumstances. The definition also includes what is not consent including what someone is wearing, a prior relationship, or as a result of fear, threat, or coercion. No documentation is required for consent.

The prevalence and devastating impact of sexual assault and rape is alarming. Instead of determining whether there was consent based on whether a victim resisted, HB 412, by removing force or threat of force, changes the focus to whether there is a clear and voluntary agreement between the people involved. HB 412 provides clear language on what consent is and how it can be communicated through words or conduct, and that consent can be withdrawn at any time.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on HB 412.**

Newlin%20Testimony%20.pdf.pdf

Uploaded by: Paris Newlin

Position: FAV

Testimony Supporting House Bill 412

Paris Newlin

February 17th, 2023

Dear members of the Judiciary Committee,

My name is Paris Newlin, I live in Elkton, Maryland and I'm currently a freshman attending Cecil College.

House Bill 412 would change Maryland's rape law from focusing on the survivor/victim and whether they resist, to focusing on whether there is a clear and voluntary agreement between the people involved. House Bill 412 also provides a definition of what is and is not consent.

As a young woman living in Maryland with five sisters I was appalled to learn that Maryland's law requires more than lack of consent to prove rape. It's no secret that women account for an unproportionate percentage of sexual assault victims and I believe it's important for our law to accurately define what constitutes as rape.

I urge you to support House Bill 412 because consent includes voluntary agreement and Maryland's rape law should too. Thank you for your consideration.

Paris Newlin

Pnnewlin@gmail.com

443-417-6347

1187 Leeds Rd Elkton, MD 21921

Testimony Supporting House Bill 412.pdf

Uploaded by: Rolicia Martin

Position: FAV

Testimony Supporting House Bill 412

Rolicia F. Martin, MPH

February 21, 2023

I am submitting this testimony as a lifelong Maryland resident, researcher, educator, and student dedicated to ending sexual violence. House Bill 412 would change Maryland's rape law to focus on whether there is a clear and voluntary agreement between the people involved.

The proposed legislation would represent a significant change in Maryland's approach to sexual crimes, specifically by removing the requirement of force or threat of force for second-degree rape and outlining specific factors to consider when determining the presence of consent.

This shift is in line with a growing understanding that sexual violence can take many forms, including those that do not involve physical force, and that consent is essential for any sexual encounter. By removing the requirement of force or threat of force, the legislation would expand the definition of rape to include situations where someone may have been coerced or manipulated into a sexual act.

Additionally, by providing specific factors to consider when determining consent, the legislation would help clarify the legal standard for sexual encounters, making it easier to determine when a crime has occurred. This standard would help ensure that all parties involved in a sexual encounter have a clear understanding of what constitutes consent and that any violation of that consent is taken seriously.

Overall, this proposed legislation could represent an important step forward in addressing sexual violence in Maryland by expanding the definition of rape and clarifying the legal standard for consent.

I urge the Judiciary Committee to report favorably on House Bill 412.

2023-02-21 HB 412 (Support with Amendment).pdf

Uploaded by: Jer Welter

Position: FWA

ANTHONY G. BROWN
Attorney General



CANDACE McLAREN LANHAM
Chief of Staff

CAROLYN A. QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
(410) 576-6475

WRITER'S DIRECT DIAL NO.
(410) 576-6435

February 21, 2023

TO: The Honorable Luke Clippinger
Chair, Judiciary Committee

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

RE: HB 412 – Criminal Law – Sexual Crimes – Consent and Second-Degree
Rape (Support with Sponsor Amendment Eliminating Deception Provision)

The Office of Attorney General supports House Bill 412 and urges a favorable report, with the sponsor's amendment offered by Delegate Shetty. This legislation would prescribe pertinent considerations for how "consent" to sexual activity is determined, and would repeal the requirement of "force or threat of force" for second-degree rape, such that second-degree rape would include having vaginal intercourse or committing a "sexual act" (i.e. oral sex, anal sex, or penetration with a body part or object) with a person without the person's consent. (Force or threat of force would remain an element of first-degree rape.)

House Bill 412 would eliminate a longstanding gap in Maryland sexual offense law where currently, there is no criminal offense that simply consists of subjecting a person to sex without the person's consent. Rape in any degree additionally requires either the use or threat of force, or a scenario where consent is legally impossible, *i.e.* statutory rape/incapacitation. Fourth-degree sex offense includes "sexual contact" without consent, but "sexual contact" is defined as intentional touching of intimate areas of the body, not vaginal intercourse or other penetrative sex acts. *Travis v. State*, 218 Md. App. 410, 464–65 (2014).

The sponsor's amendment strikes "deception" from the bill as filed. With that amendment, the bill's prescribed considerations for how "consent" is determined are consistent with existing state law. *See, e.g., State v. Baby*, 400 Md. 220 (2008) (holding that rape includes

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

the continuation of sex after consent has been withdrawn). We support the sponsor's amendment; while sexual offense laws in some other jurisdictions do address "rape by fraud" or "rape by deception," that topic is a complex one that would appropriately be a subject of separate legislation.

For all of the foregoing reasons, the Office of the Attorney General urges a favorable-with-amendment report on House Bill 412.

cc: Committee Members

HB0412 Testimony to Judicial Proceedings.pdf

Uploaded by: Lauren Pruitt

Position: FWA



2601 N. HOWARD STREET BALTIMORE, MD 21218

TEL (410) 625-LGBT (5428)

FAX (410) 625-7423

www.freestate-justice.org

Lauren Pruitt, Esq.

Legal Director

LPruitt@freestate-justice.org

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

February 17, 2023

Testimony of FreeState Justice in Support of

HB0412: Criminal Law – Sexual Crimes – Consent and Second–Degree Rape

To the Honorable Luke Clippinger, Vice Chair David Moon, and the esteemed committee: FreeState Justice is Maryland’s civil rights advocacy organization for lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA+) Marylanders. We also provide pro bono legal services each year to hundreds of LGBTQIA+ Marylanders who could not otherwise afford an attorney and we advocate more broadly on behalf of the LGBTQIA+ community.

We write today supporting House Bill 412. Currently, when a person has sex with someone without consent Maryland’s rape law requires proof of lack of consent and threat of force or force. The threat of force or force is proven by focusing on the victim and whether they resisted the sexual assault. House Bill 412 changes the focus to whether there is fear and voluntary agreement to have a sexual encounter between the individuals involved. Under House Bill 412, the definition of consent includes: a clear and voluntary agreement; the right to withdraw consent; and the communication of consent through words or conduct and based on the totality of the circumstances. The bill also defines what consent is not including what someone is wearing, the existence of a prior relationship, or as the result of fear, threat, or coercion. Documentation of consent is also not required under this bill. Leading victim advocates, Maryland Coalition Against Sexual Assault | MCASA, agree that this change will promote accessibility and compassionate care for survivors of sexual violence and will increase efforts to hold offenders accountable.

FreeState Justice, Inc. (formerly FreeState Legal Project, Inc., merging with Equality Maryland) is a social justice organization that works through direct legal services, legislative and policy advocacy, and community engagement to enable Marylanders across the spectrum of lesbian, gay, bisexual, transgender, and queer identities to be free to live authentically, with safety and dignity, in all communities throughout our state.

Additionally, FreeState Justice supports the amendment that will strike deception from §3-301.1.(B)(5) as we believe the term could unfairly target the LGBTQIA+ community members providing an unwarranted defense to sexual violence stemming from the internalized homophobia and shame of potential aggressors.

Sexual violence affects all people of every gender identity and sexual orientation. People who identify as a member of the LGBTQIA+ community face additional challenges in accessing legal, medical, law enforcement or other resources than other populations. This bill provides additional opportunities for a victim to be heard and shifts the burden of proving the victim resisted the attack to whether the defendant received consent. This burden shifting will hopefully contribute to more individuals feeling supported and validated through the process of reporting sexual violence and reduce feelings of not being believed or being responsible or at fault.

According to the Centers for Disease Control and Prevention (CDC), lesbian, gay and bisexual people experience sexual violence at similar or higher rates than heterosexual people, this includes assaults by prior or current intimate partners as well. The National Coalition of Anti-Violence Projects (NCAVP) estimates that one in ten LGBTQ survivors of intimate partner violence (IPV) has experienced sexual assault from those partners. Studies suggest that around half of transgender people and bisexual women will experience sexual violence at some point in their lifetimes. The LGBTQIA+ community faces higher rates of poverty, discrimination, stigma, and marginalization, which put the community at greater risk for sexual assault. We also face higher rates of hate-motivated violence, which can often take the form of sexual assault. This bill gives survivors of sexual violence a new voice to speak out against the perpetrators of this type of violence. For these reasons, FreeState Justice urges a favorable report on House Bill 412.

Lauren Pruitt, Esq.

Legal Director, FreeState Justice

Final HB 412 Oppose - 2nd Deg Rape 2023.pdf

Uploaded by: John Giannetti

Position: UNF

Maryland Criminal Defense Attorneys' Association



MD House of Delegates - Judiciary Committee

February 21, 2023 1 pm

Hearing on HB 412

Sexual Crimes – Second Degree Rape and Consent

MCDAA POSITION: OPPOSE

Brief bill explanation: This bill significantly amends CR 3-301.1, Maryland's statute defining second-degree rape. Generally, the bill removes the "force or threat of force" component from the second-degree rape definition, and introduces a list of six factors the court must use to determine whether or not the act or activity in question was consensual.

MCDAA's Position: MCDAA fully respects the legislature's prerogative to set public policy concerning penalties for crimes and to define the constituent elements of the crimes. However, we oppose this legislation due to the dramatic change the new statutory language will cause, if enacted into law. Further, we anticipate numerous "unintended consequences" that would be borne from this statutory language. Enactment of this legislation would, for example, reclassify a lower-tier crime, such as an incidental touching of another's body part, from a fourth-degree sexual offense (with a 1 year penalty and 15 years on the sexual offender registry) to a crime meeting the definition of second-degree rape (with a 20 yr penalty and a lifetime place on the registry with lifetime sexual offender supervision). We believe the 6-factor "consent test" required to be considered by the trier of fact to be problematic and unworkable due to undefined and subjective terms such as "deception" and "coercion."

Further, Maryland has a tiered approach in charging sexual crimes. This bill would destroy the tier system and radically alter that treatment by creating onerous second-degree rape penalties for conduct currently classified as fourth-degree sex offenses.

Respectfully, we believe changes to the elements of sexual crimes should be examined during a comprehensive review of the criminal code as anticipated in Senator West's SB209: Task Force to Study Classification of Crimes and Penalties.

For additional information or questions regarding this legislation, please contact MCDAA lobbyist John Giannetti 410.300.6393, JohnGiannetti.mcdaa@gmail.com Copyright 2023 MCDAA. All rights reserved.