

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

The undersigned provides this INFORMATION to the House Judiciary Committee on House Bill 748.

In 2018, the Maryland General Assembly passed a bill prohibiting sexual contact between a law enforcement officer and a person in their custody.¹ In 2021, Delegate Williams and numerous advocates working on behalf of victims of sexual violence rightfully sought to build upon that progress by also prohibiting sexual contact between law enforcement and any “victim, witness, or suspect in an open investigation that the law enforcement officer is conducting, supervising, or assisting with[,]” or who are “requesting assistance from” law enforcement,”² rightfully recognizing that the unequal power dynamic that exists between law enforcement and civilians significantly heightens the risk of exploitation in any sexual contact between the two.

In response to concerns raised by smaller police jurisdictions over scenarios around consensual sexual contact between a police officer and a civilian who may be a victim, witness, or suspect or otherwise requesting assistance from law enforcement, an exception was crafted stating that sexual conduct between law enforcement and a civilian would *not* be prohibited under this statute if the officer had a “prior existing legal sexual relationship with the person,” *and* “did not act under the color or pretense of office or under color of official right when seeking consent to the . . . sexual contact.”³

While this exception was intended to address the scenarios posed by law enforcement, it actually does very little to protect *any* victims of law enforcement-initiated violence, including those with whom an officer may have had a relationship in their personal capacity. While law enforcement’s history of violence and abuse in their professional capacity has been well-documented,⁴ far less attention has been paid to victims who are or have been the intimate partners of law enforcement officers. Despite research showing that violence by officers toward their

¹ 2018 Maryland Laws Ch. 500 (H.B. 1292).

² 2021 Maryland Laws Ch. 314 (S.B. 43).

³ MD Code Ann. § 3-314(2) (West, 2021).

⁴ See generally U.S. Department of Justice, Civil Rights Division, Investigation of the Baltimore City Police Department. 149-150 (2016), <https://www.justice.gov/crt/file/883296/download>, (stating that the DOJ “heard complaints from the community that some officers target members of a vulnerable population—people involved in the sex trade—to coerce sexual favors from them in exchange for avoiding arrest, or for cash or narcotics. This conduct is not only criminal, it is an abuse of power. Unfortunately, we not only found evidence of this conduct in BPD’s internal affairs files, it appeared that the Department failed to adequately investigate allegations of such conduct, allowing it to recur.”); Jacqueline Robarge, Opinion: Survivor-Focused Approach Needed on Law Enforcement Sexual Misconduct (Mar. 2, 2021), <https://www.marylandmatters.org/2021/03/02/opinion-survivor-focused-approach-needed-on-law-enforcement-sexual-misconduct/> (citing the experiences of a woman struggling with homelessness and addiction who was coerced into sex by a law enforcement officer. The victim states that the officer “provided what I needed at the time, or what I thought I needed. He was an officer of the law; he should’ve gotten me help. Instead, he participated in my addiction and kept me strung out longer.”); Katherine H.A. Footer, et. al., *Police-Related Correlates of Client-Perpetrated Violence Among Female Sex Workers in Baltimore City, Maryland* (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6336048/> (reporting the results of a Johns Hopkins University study of 250 women involved in the street-based sex trade in which one quarter of the women surveyed reported having law enforcement officers engage them in a sexual transaction over the 12-month study, with police comprising 11% of all sex trades. Among the police-involved sex trades, over three-quarters of the women considered an individual officer a “regular.”); Andrea Ritchie, *How Some Cops Use the Badge to Commit Sex Crimes* (Jan. 2018), https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842_story.html; Dave Phillips, *Former Oklahoma City Police Officer Found Guilty of Rapes* (Dec. 2015), <https://www.nytimes.com/2015/12/11/us/former-oklahoma-city-police-officer-found-guilty-of-rapes.html> (citing the case of former Officer Daniel Holtzclaw, who was convicted of multiple counts of rape involving “poor, black victims with criminal backgrounds whose stories would not be believed.”).

intimate partners is startlingly common,⁵ the “exception” built in to § 3-314 of the Criminal Code designed to account for these types of intimate personal relationships provides a potential legal “out” for the type of serial predation so many survivors of police violence experience, whose “consent” to sex with law enforcement is commonly obtained through coercion and manipulation of their vulnerabilities.

The fact that we allow this type of exception *only for law enforcement* should give all of us pause. The presence of this exception within the Sexual Crimes subtitle of the Maryland Criminal Law Article should raise even more eyebrows given that the General Assembly is currently considering House Bill 412 to legally define consent, which explicitly states that “a current or previous dating, social, or sexual relationship” *does not* constitute consent, as well as House Bill 4/Senate Bill 129, which rightfully clarifies that marriage should never be a defense to a sex crime.

Despite these reservations concerning the current language of the statute at issue in HB 748, we recognize that the conduct the bill seeks to address is abhorrent and indeed deserving of a felony designation. As a result, we would welcome an opportunity to examine how to amend the current law so that it does not criminalize sex acts that are truly consensual while protecting *all* victims of police abuse.

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⁵ See Leigh Goodmark, *Hands Up at Home: Militarized Masculinity and Police Officers Who Commit Intimate Partner Violence* 107-113 (2015), https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2519&context=fac_pubs; Philip M. Stinson & John Liederbach, *Fox in the Henhouse: A Study of Police Officers Arrested for Crimes Associated with Domestic and/or Family Violence* (2013), https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1005&context=crim_just_pub; See generally Conor Friedersdorf, *Police Have a Much Bigger Domestic-Abuse Problem Than the NFL Does* (Sept. 2014), <https://www.theatlantic.com/national/archive/2014/09/police-officers-who-hit-their-wives-or-girlfriends/380329/>; National Center for Women & Policing, *Police Family Violence Fact Sheet* (2013), <https://olis.oregonlegislature.gov/liz/2017R1/Downloads/CommitteeMeetingDocument/132808>.