

# 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](mailto:JohnGiannetti.mcdaa@gmail.com) Copyright 2023 MCDAA. All rights reserved.