
BILL NO: Senate Bill 129
TITLE: Criminal Law – Sexual Crimes – Repeal of Spousal Defense
COMMITTEE: Judiciary (Cross Over Hearing)
HEARING DATE: March 28, 2023
POSITION: **SUPPORT**

Senate Bill 129 would repeal certain prohibitions on prosecuting someone for rape or sexual assault of their spouse. The Women's Law Center (WLC) supports Senate Bill 129 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, §3-30129, §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. SB 129 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 The existence of this bar to prosecution is a stark illustration of outdated assumptions about husbands and wives having aligned interests in all matters.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 Senate Bill 129.

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.

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<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://search.yahoo.com/&httpsredir=1&article=11298129&context=californialawreview> – the history of Martial Rape (2000). 88 Cal. Law Rev. 1373 (2000).

² Id., at 1379.

³ Id., at 1373-1378.

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

⁵ Id., at 555-556.