

2024-02-01 SB 177 (Support).pdf

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Position: FAV

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February 1, 2024

TO: The Honorable Will Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: Tiffany Johnson Clark
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: Senate Bill 177- Law Enforcement Officers, Correctional Employees, and Court-Ordered Services Providers - Prohibition on Sexual Activity - Penalties and Registry
(Support)

The Office of the Attorney General (OAG) urges the Judicial Proceedings Committee to give **Senate Bill 177 – Law Enforcement Officers, Correctional Employees, and Court-Ordered Services Providers - Prohibition on Sexual Activity - Penalties and Registry** sponsored by Senator C. Anthony Muse a favorable report.

The bill would raise the maximum penalty, from a 3-year misdemeanor to a 10-year felony, for law enforcement officers, correctional officers, and other correctional personnel engaging in sexual conduct (vaginal intercourse, sexual acts, or sexual contact) with a person in the officer's custody or who is a victim, witness, suspect, person requesting the officer's assistance in the course of the officer's duties, or person under supervision. See § 3-314 of the Criminal Law Article. We support increasing the potential penalties for sexual conduct by officers with persons in their custody or with whom they are interacting in their official duties. With the sponsor amendments, the bill would do so by raising the penalty for the § 3-314 offense, classifying it as a felony, and subjecting it to

Tier I sex offender registration when committed against an adult victim (the offense when committed against a minor victim is already subject to Tier II or Tier III registration, depending on whether the victim is over or under 14 years of age; the bill does not alter those provisions).

This legislation is an appropriate measure to hold accountable officers who violate the public trust and victimize the persons in their custody or supervision. For the foregoing reasons, the Office of the Attorney General urges a favorable vote on **Senate Bill 177**.

SB 177 - WLCMD - FAV.pdf

Uploaded by: Andrea Rafter

Position: FAV

BILL NO: Senate Bill 177
TITLE: Law Enforcement Officers – Sexual Contact with Person in Custody – Penalty
COMMITTEE: Senate Judicial Proceedings Committee
HEARING DATE: February 1, 2024
POSITION: **SUPPORT**

In 2021 the Maryland General Assembly passed House Bill 43 – Criminal Law – Law Enforcement Officers – Prohibition on Sexual Activity. This important piece of legislation ensured that law enforcement officers could not engage in sexual conduct with victims, witnesses, or suspects in open investigations.

Senate Bill 177 seeks to move that recently passed law into the previously existing statute prohibiting sexual offenses in the third degree. In so doing, a person violating the law would be guilty of felony of a instead of a misdemeanor, and the penalty for such a crime would increase from “imprisonment of 3 years or a fine not exceeding \$3,000 or both”, to “imprisonment not exceeding 10 years”. As the Women’s Law Center of Maryland firmly believes in all sexual activity being mutual, respectful, and consensual, and that anything else would be rape and should be treated as such, we support the changes to SB177.

The Center for Disease Control recognizes that sexual violence includes “non-physically forced penetration which occurs after a person is pressured verbally or through intimidation or misuse of authority to consent or acquiesce”¹. When power or authority is involved, it is not possible to give true consent. Relationship dynamics where consent cannot be given include any relationship where a person might feel compelled to say yes because of the power that the authority figure holds over them or the trusted position that the person in authority holds. Given the positional authority of law enforcement officers over victims, witnesses, and suspects, there is no time during an investigation where an individual could realistically provide consent freely and without intimidation. The very real possibility of physical violence, retaliation, and abuse of authority, places those individuals in situations where they feel they have no choice but to “consent”, which is of course, not actual consent.

For all those reasons state above, the Women’s Law Center of Maryland urges a favorable report for SB 177.

*The Women’s Law Center of Maryland is a non-profit legal services organization whose mission is to ensure the physical safety, economic security, and bodily autonomy of women in Maryland.
Our mission is advanced through direct legal services, information and referral hotlines, and statewide advocacy.*

¹ <https://www.cdc.gov/violenceprevention/sexualviolence/definitions.html>

SB 177 - Testimony before JPR.pdf

Uploaded by: C. Anthony Muse

Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

TESTIMONY by Senator C. Anthony Muse

SB 177: Law Enforcement Officers, Correctional Officers, and Court-Ordered Services Providers – Prohibition on Sexual Activity – Penalties and Registry

Good afternoon, Mr. Chairman, Vice Chairman, and members of the Senate Judicial Proceedings Committee. Senate Bill 177 would prohibit a law enforcement officer, correctional employee, or a court-ordered services provider from engaging in sexual activity with a person that is in their custody.

Also, if convicted, SB 177 would change the act to a felony instead of a misdemeanor and the defendant would be subject to imprisonment up to 10 years or a fine up to \$3,000 *or both*.

Colleagues, no one that is in the custody of an officer, while they are in their official capacity, should be forced or subjected to any sexual contact. We cannot tolerate these heinous offenses and behavior by persons who take an oath to protect the community. Delegate Nicole Williams has presented this bill before the legislature over the last two years after several unfortunate incidences happened in her district, which include:

- In 2018, a six-year veteran officer forced an undocumented Latina woman into engaging in a sexual act in exchange for evading a ticket or arrest.
- In 2020, an officer from a local municipality sexually assaulted a 19-year-old woman while in custody after a traffic stop.
- In October of 2022, a Maryland Sheriff was charged with second degree rape and assault of an individual while in custody.

In closing, there are a thousand wonderful things I can highlight about our officers across the state of Maryland, but unfortunately the small number of officers that commit these crimes reduce the public's trust. SB 177 would hopefully deter law enforcement officers, correctional officers and or a court ordered service providers from committing such a disgraceful crime.

Therefore, I urge this committee for a FAVORABLE report for SB 177.

Feinstein Letter of Support SB 177.pdf

Uploaded by: Debbie Feinstein

Position: FAV



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February 1, 2024

The Honorable William C. Smith, Jr.
11 Bladen Street
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Dear Chair Smith and Judiciary Proceedings Committee Members:


I write in support of SB0177—Law Enforcement Officers, Correctional Employees, and Court-Ordered Service Providers—Prohibition on Sexual Activities—Penalties and Registration. I am the Chief of the Special Victims Division for the Montgomery County State's Attorney's Office and a member of the Montgomery County's Child Advocacy Center's Multidisciplinary Team and Sexual Assault Response Team. I also chair Choose Respect Montgomery, an initiative aimed at reducing teen dating violence and sexual assault. Lastly, I co-chair the Maryland State's Attorneys Association's Special Victims Subcommittee.

Section 3-314 of the Criminal Law Article already prohibits law enforcement officers, correctional employees, and court-ordered service providers from engaging in sexual activity with a person under their supervision or in their custody. The penalty of one year, however, is insufficient. In addition, the fact that the current law does not require sexual offender registry for this crime puts it out of synch with all other sexual offenses in our Criminal Code.

Senate Bill 177 provides an appropriate sentencing range and registration requirement for these offenders, and brings the penalties and registration requirement for these offenses into parity with similar offenses in the law. Moreover, by providing a higher penalty and by making this crime a felony, this bill will provide greater protection against sexual assault for individuals involved in the criminal justice system.

Law enforcement officials hold positions of trust in our society. Those that abuse that trust and sexually assault individuals in their custody or under their supervision should be held fully accountable and the law should clearly reflect the gravity of their actions. I urge a favorable report on SB0177.

Sincerely,


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

Cops and sex - testimony - senate - 2024 - SB177 F

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 177 **Lisae C. Jordan, Executive Director & Counsel** February 1, 2024

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 Judicial Proceedings Committee to report favorably on Senate Bill 177.

Senate Bill 177 – Sexual Offenses – Law Enforcement

Current law recognizes the power disparities between law enforcement and those in their “custody.” Criminal Law §3-314 prohibits a law enforcement officer from engaging in sexual contact, vaginal intercourse, or a sexual act with a person in their custody of the law enforcement officer; is a victim, witness or suspect in an investigation; or who have requested assistance. The law also prohibits sexual contact vaginal intercourse, or sexual acts performed by correctional officers, court-ordered services providers, department of juvenile justice personnel, department of public safety personnel and contractors, and others working in correctional facilities from these sexual activities with inmates and those in their care. Senate Bill 177 increases the penalties for this conduct from a 3 year misdemeanor to a 10 year felony, and provides for sex offender registration.

The unequal power between law enforcement and people who are in their custody, involved in police investigations, or who have requested assistance, heightens the risk of exploitation and abuse of power. SB177 stems from a case involving a woman who was speeding because she was on the way to see her injured young child. The officers who stopped her put her in handcuffs and took her back to the station. Her car was also impounded. At the station they uncuffed her and an officer told her that if she would help him, he could help her, and then engaged in vaginal penetration with her at the station. She testified that she did not feel like she really had a choice. A 3 year penalty is inadequate for this abuse of power by a police officer.

The US Department of Justice investigation of the Baltimore City Police Department (BPD) provides further example of why this legislation should be enacted in Maryland:

[W]e found evidence that some BPD officers engage in criminal behavior that BPD does not sufficiently address. We 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. For example, BPD investigators became aware of one officer’s alleged misconduct in March of 2012 when they conducted a “prostitution initiative” “for the purposes of gathering intelligence and obtaining confidential informants relating to police corruption.” One of the women interviewed informed BPD investigators that she met with a certain officer and engaged in sexual activities in the officer’s patrol car once every other week “in exchange for U.S. Currency or immunity from arrest.” 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>>. See also, 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, citing the BPD investigation report.

People should be able to have confidence that law enforcement officers and others in similar jobs are not using their positions of authority to coerce others for sexual favors during the course of their duties.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to report favorably on Senate Bill 177**

SB 177_FAV_MNADV.pdf

Uploaded by: Melanie Shapiro

Position: FAV



BILL NO: Senate Bill 177
TITLE: Law Enforcement Officers, Correctional Employees, and Court-Ordered Services Providers - Prohibition on Sexual Activity - Penalties and Registry
COMMITTEE: Judicial Proceedings
HEARING DATE: February 1, 2024
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 Senate Judicial Proceedings Committee to issue a favorable report on SB 177.**

Senate Bill 177 builds off previously passed legislation to ensure that law enforcement officers do not abuse their power over a victim, witness, or suspect in a police investigation. Existing law prohibits law enforcement from engaging in sexual contact, vaginal intercourse, or a sexual act with a person who is a victim, witness, or suspect and the officer is involved in the investigation or knew or should have known of the person was a victim, witness, or suspect. In any situation, a police officer, likely uniformed and armed, empowered with the authority to arrest wields an extraordinary amount of power and control over others. There cannot be true consent to sexual contact during a police investigation due to the imbalanced power and control that police have over victims, witnesses, and suspects.

Survivors of domestic violence frequently do not report the violence they suffer to the police. It is one of the most underreported crimes. A 2015 study conducted by the National Domestic Violence Hotline found that 80% of the survivors of domestic violence surveyed who had never called the police before indicated that they were “somewhat or extremely afraid to call them in the future.”¹ Of the survivors surveyed that had called the police because of the domestic violence, 1 out of 4 said that they would not call again.² In order to begin to end the trauma and violence suffered by survivors of domestic violence, they must feel trust and confidence in the police when calling for help, and unfortunately that trust and confidence does not currently exist.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report with sponsor amendments on SB 177.**

¹ National Domestic Violence Hotline, Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses. Washington, DC (2015). <http://www.thehotline.org/resources/law-enforcement-responses>

² *Id.*

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

HPP, Power Inside, & ACLU SB 177 Testimony- INFOR

Uploaded by: Jessica Emerson

Position: INFO

Testimony of the Human Trafficking Prevention Project, Power Inside, & the ACLU of Maryland

BILL NO: Senate Bill 177
TITLE: Law Enforcement Officers, Correctional Employees, and Court-Ordered Services Providers – Prohibition on Sexual Activity – Penalties
COMMITTEE: Judicial Proceedings
HEARING DATE: February 1, 2024
POSITION: **INFORMATION**

The Human Trafficking Prevention Project (“HTPP”) is dedicated to ending the criminalization of sex workers and survivors of human trafficking through access to civil legal services and support for policies that dismantle harmful systems and increase access to basic human rights and legal relief. In partnership with Power Inside and the American Civil Liberties Union of Maryland, the HTPP respectfully provide this **INFORMATION** to the Senate Judicial Proceedings Committee on Senate Bill 177.

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, Senators Elfretth and Hettleman, along with 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* victim 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

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*

the intimate partners of law enforcement officers. Despite research showing that violence by officers toward their 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.

Given both the severity *and* frequency of intimate partner violence by law enforcement, the fact that we allow this type of exception only for law enforcement should give us all pause. Additionally, 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 496 to legally define consent, which explicitly states that “a current or previous dating, social, or sexual relationship” *does not* constitute consent, and recently passed a law which rightfully clarified that marriage is not and should never be a defense to a sex crime.⁶

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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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 surveyed reported having law enforcement officers engage them in a sexual transaction over the 12-month study period, 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-ef3-11e7-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.”).

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>.

⁶ 2023 Maryland Laws Ch. 729 (S.B. 129).