

Pro-Choice Maryland Action

www.prochoicemd.net

info@prochoicemd.net



TESTIMONY IN SUPPORT OF SENATE BILL 758: Criminal Law - Sexual Crimes - Definition of Consent and Repeal of Force

TO: Chair William Smith and Members of the Senate Judicial Proceedings Committee

FROM: Pro-Choice Maryland Action

DATE: February 27, 2024

Pro-Choice Maryland Action 501(c)(4) is an independent, nonprofit organization that develops and advocates for policies that protect reproductive freedom and that advance reproductive justice, including support and services for those who have children. Pro-Choice Maryland Action **strongly supports Senate Bill 758 as an urgently-needed revision to Maryland’s criminal statutes regarding rape and sexual assault.**

Pro-Choice Maryland Action emphatically believes in the sovereignty of each individual over their own body. To that end, consent to sexual activity must be given freely and voluntarily. Acquiescence to sexual activity due to threats, pressure, or coercion is not consent. Consent is given affirmatively and cannot be assumed based on relationship status, attire, or prior consent to other sexual activity. Consent may also be withdrawn, as no one is obligated to participate in or to continue sexual activity.

Unfortunately, current Maryland law does not provide for a definition of “consent” to sexual activity for the purposes of sexual offenses under Title 3 of the Criminal Law Article. The current definition of second-degree rape as codified at Criminal Law Article § 3-304 requires force or threat of force in addition to an undefined lack of consent. This definition means that even if someone does not consent to sex, there is no crime of rape unless force or threat thereof is used in the perpetration of the act. To make matters worse, second-degree rape is the only rape charge available to prosecutors absent certain aggravating yet less-common factors such as the use of a weapon. As a consequence of this archaic law, survivors are told by the State that sex without consent is not “really” rape on its own. This is inexcusable and must be rectified immediately.

Survivors know of the trauma the legal process can inflict given these circumstances. The current law creates a void which a judge or jury can easily fill with outdated and misogynistic ideas regarding consent – such as using clothing or prior consent as a way to blame survivors and allow perpetrators to walk freely. Because of this, many survivors decide, quite reasonably, that they would rather not report their rape or sexual assault. This void in our law therefore not only

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causes untold harm to survivors, but also greatly benefits perpetrators of rape and sexual assault. Not only do they escape accountability, but they also remain free to terrorize others and contribute to undermining the safety of our communities. For survivors seeking justice, their loved ones, and the community at large, this must cease. Senate Bill 758 provides an important step to making Maryland a better and safer place for all.

We affirm the human dignity of every individual when we require consent to sexual activity. Maryland's criminal law regarding rape must recognize this basic principle. For the aforementioned reasons, **we urge a favorable report on Senate Bill 758.**