



SENATE BILL 0758

Criminal Law - Sexual Crimes - Definition of Consent and Repeal of Force

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POSITION: FAVORABLE WITH AMENDMENT

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Ladies and gentleman of the Senate Judicial Proceedings Committee:

Thank you for this opportunity to address you today. My name is Jennifer Ritter. I am a Senior Assistant States Attorney in Howard County. I have been with the office for over 18 years, the last 15 of which I have specialized in the prosecution of sexual assault and child abuse cases. I am here today on behalf of State's Attorney Richard Gibson and the Howard County State's Attorney's Office. I want to first express our office's unwavering support of victims of sexual assault. These are some of the most difficult to prove and emotionally challenging cases in the criminal justice system, with the consequences for both the victims and perpetrators lasting a lifetime. To that end, I am here to support Senate Bill 0758 but to call for an amendment to section (B)(5) addressing the definition of submission.

Senate Bill 0758, proposes to add definitions of consent to the current definition section of 3-301 of the Criminal Law Article addressing sexual crimes. For the most part, it codifies judicially recognized definitions of consent. We are in support of these addition. Our concern, however, is with section (5) addressing submission as a result of fear, threat, or coercion. Caselaw recognizes that submission as a result of fear of force or threat of force is not consent. In evaluating questions of submission, the caselaw requires both conduct, either through words or circumstances created by the perpetrator reasonably calculated to instill fear in the victim, and a finding that the victim's fear was objectively reasonable. This analysis, requiring intentional

behavior on the part of the perpetrator and a finding that the victim's fear is objectively reasonable, ensures that the behavior being punished by the statute is criminal.

Our concern is that the caselaw addressing submission discusses the action in light of the rape statute requiring proof of "force or threat of force." With the proposed bill deleting "force or threat of force" and only referring to lack of consent, it is not clear that the precedence established by caselaw would apply to the definition of submission. On its face, the definition does not require any proof of intentional actions on the part of the perpetrator to cause the submission, thus showing intent to commit a rape. Nor does the current definition require a showing that the victim's belief is objectively reasonable. Sadly, we see many instances of regrettable sexual interactions but regrettable does not equate to criminal. Rape is a felony carrying up to 20 years in prison and lifetime registration as a sex offender. The behavior punished by the rape statute must clearly be intentional and worthy of the very serious punishment.

We propose that section (B)(5) be amended to read: "Submission as a result or fear, threat, or coercion does not constitute consent *when based on actions of the perpetrator reasonably calculated to overcome the will of the victim and where the victim's fear is objectively reasonable in light of the totality of the circumstance.*" This language incorporates the current state of the law and ensures that the behavior being punished rises to the level of criminality.

Thank you for your consideration and I appreciate the opportunity to speak to you today. We all share the goal of protecting victims of sexual assault and making our communities safer.