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# Maryland Commission for Women

A Commission of the Maryland Department of Human Services

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The Honorable Luke Clippinger, Chair  
The Honorable J. Sandy Bartlett, Vice Chair  
House Judiciary Committee  
House Office Building Room 101  
Annapolis, MD 21401 – 1991

Re: HB0496 – Criminal Law - Sexual Crimes - Definition of Consent and Repeal of Force

Dear Delegates Clippinger and Bartlett and Members of the House Judiciary Committee:

The Maryland Commission for Women (MCW) urges your strong support of HB0496 which would correctly reframe Maryland’s sexual assault statutes to focus on issues of consent rather than resistance. Such legislation is reflective of the reality of sexual assault and of the profound psychological and physical impacts of sexual assault on survivors.

The MCW was established in 1965 and was set in state law in 1971. An office of the Department of Human Services, the Commission is a 25-member advisory board whose duties outlined in its enabling legislation include: study the status of women in our state, recommend methods of overcoming discrimination, recognize women’s accomplishments and contributions, and provide informed advice to the executive and legislative branches of government on the issues concerning the women of our state. It is to fulfill this mandate that the Commission writes to you today.<sup>1</sup>

Currently, Maryland’s rape law requires proof of both lack of consent and force or threat of force. This outdated and unsubstantiated language places an unreasonable burden on survivors of sexual assault— first to prove that they did not consent to the activity, and second to establish that they resisted or failed to resist because they were afraid to do so. HB0496 would remedy this unreasonable burden by striking the language about force completely, and by— for the first time— defining the term “consent” under Maryland’s rape law.

The reality is that physical violence (or the threat thereof) is not a prerequisite for sexual assault. Perpetrators often rely on coercion, reputational or professional intimidation, grooming, and incapacity rather than brute force. And, despite outdated notions of how a survivor should act during an assault, many people find themselves

<sup>1</sup> (The positions expressed in this letter are those of the Commission for Women and do not necessarily reflect the position of the Governor or the Department of Human Services.)

physiologically unable to resist an assault, as the brain's protective "freeze" mechanism disables them. Striking the words "force or threat of force" from Maryland's rape statute recognizes this reality and removes an additional barrier to reporting sexual assault—namely, the inability to explain why they didn't fight back.

In addition, the current lack of a definition for "consent" in Maryland's law serves as another barrier for survivors' coming forward. Please note that this legislation is not changing the legal requirements to affirmative consent, meaning it does not require an explicit yes. Rather, it takes into account words, actions, and the ability to withdraw consent at any time. The bill also does not require a written agreement or assume that a current or prior relationship by itself constitutes consent.

Importantly, HB0496 would bring Maryland's criminal sexual assault statute in line with Maryland's own laws regarding teaching consent to Maryland students. Since 2018, Maryland's public schools have been required to educate students in 4th - 12th grade about consent, boundaries, and healthy relationships. These requirements include lessons on what does and does not constitute sexual consent, and how to analyze factors, including alcohol and other substances, that can affect the ability to give or perceive consent to sexual activity.<sup>2</sup> It is time to rectify the significant gap between what our children are rightly learning about consent and what survivors wrongly face when attempting to prosecute their attackers.

As of 2021, 44% of Maryland's women and more than 24.8% of Maryland's men reported experiencing sexual violence. Women and members of the LGBTQ+ community face particular vulnerability. More than 21% of women have reported experiencing attempted or completed rape, and 21% of non-gender conforming individuals have experienced sexual assault. Montgomery County, Prince George's County, Baltimore City, Baltimore County, and Anne Arundel have consistently reported the highest number of rapes in the state.<sup>3</sup> Given these statistics and the brutality of all rape—regardless of physical violence—it is imperative that lawmakers prioritize these issues.

HB0496 is an effective, meaningful, and overdue reform of Maryland's rape law. The Maryland Commission for Women urges your strong and unwavering support of survivors of sexual assault, including by removing barriers to reporting and prosecuting these crimes.

With very best regards,



Tawanda A. Bailey, Chair  
Maryland Commission for Women

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<sup>2</sup> [https://marylandpublicschools.org/about/Documents/DCAA/Health/Health\\_Education\\_Framework\\_July\\_2022.pdf](https://marylandpublicschools.org/about/Documents/DCAA/Health/Health_Education_Framework_July_2022.pdf)

<sup>3</sup> Maryland Coalition Against Sexual Assault, "Sexual Assault in Maryland." <https://mcasa.org/stats-info/statistics>