

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

BILL NO: House Bill 302
TITLE: Law Enforcement Officers, Correctional Employees, and Court-Ordered Services Providers – Prohibition on Sexual Activity – Penalties
COMMITTEE: Judiciary
HEARING DATE: February 27, 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. The HTPP, joined by Power Inside and the American Civil Liberties Union of Maryland, respectfully provide this **INFORMATION** to the Senate Judicial Proceedings Committee on House Bill 302.

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 Elfreth 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 302, 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.

For more information, please contact:

Jessica Emerson, LMSW, Esq.
Director, Human Trafficking Prevention Project
jemerson@ubalt.edu

Jacqueline Robarge
Executive Director, Power Inside
jrobarge@powerinside.org

Yanet Amanuel
Director of Public Policy, American Civil Liberties Union of Maryland
amanuel@aclu-md.org

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).