



Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277
Fax: 301-565-3619

For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
www.mcasa.org

Testimony Supporting Senate Bill 250 with Amendments
Lisae C. Jordan, Executive Director & Counsel
April 1, 2021

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 Judiciary Committee to report favorably on Senate Bill 250 with Amendments.

Senate Bill 250 – Repeal: Marriage as a Defense to Sex Crimes

Like many states, Maryland's law was based on the premise that marriage was consent to sex and that, therefore, a man could not rape his wife. Unlike many states, Maryland has not yet firmly rejected that antiquated and fundamentally disrespectful concept. The House of Delegates passed HB147, as introduced, and would fully repeal marriage as a defense to sex crimes. In the Judicial Proceedings Committee, the bill was amended. MCASA strongly opposes the amendments.

The substantive amendment to SB250 is regarding 4th degree sexual offense and touching an intimate area of another person without consent. In order to understand the amendments, it is important to understand the current law.

There is sometimes a misunderstanding that Maryland's law on consent requires permission for every single touching.

That is simply not the law.

Maryland is NOT an affirmative consent state

“[M]ere passivity on the victim's part will not establish the absence of consent.” *Travis v. State*, 218 Md.App. 410, 428 (2014). Touching someone in an intimate area requires

resistance of some kind in order to prove lack of consent when the victim is competent – this does not have to be physical resistance, Crim.L. §3-319.1, but it does have to be “no” or pulling away, or some other communication. (Different standards apply when a victim lacks capacity.) In some cases, resistance is straight forward to prove – groping in a public place by a stranger, for example. But in others, it is very difficult – particularly cases involving intimate partners, married or not. To determine whether there is resistance and to prove lack of consent, courts look to the facts of the case.

As the **House** passed the bill, people in intimate relationships are treated the same as other people and have equal control over their bodies and how they are touched.

In the **Senate**, however, the Judicial Proceedings Committee adopted an amendment to SB250 expressing the policy that your right to refuse “intentional touching of the victim’s or actor’s genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party” is different if you are part of a couple (married or not).

This was accomplished by changing the definition of “sexual contact” for some 4th degree sexual offenses to exclude the following acts from what is prohibited contact:

FOR THE PURPOSES OF §3-308(B)(1) OF THIS
SUBTITLE ONLY, IN THE CASE OF TWO INDIVIDUALS
ENGAGED IN AN ONGOING CONSENSUAL SEXUAL
RELATIONSHIP, PHYSICAL CONTACT COMMONLY
ENGAGED IN BY TWO INDIVIDUALS IN A SEXUAL
RELATIONSHIP, UNLESS ONE OF THE INDIVIDUALS
HAS REASONABLY INDICATED TO THE OTHER THAT
FURTHER PHYSICAL CONTACT IS UNWANTED.

Equal Rights to Say No

MCASA firmly believes that a person’s right to consent should not depend on whether they are married or whether they are in a relationship. All people should have the same right to control how they are touched and to say no to “intentional touching of the victim’s or actor’s genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party”. Crim.L. §3-301(e)(1).

Drafting Concerns

In addition to the important principle that all people should have equal rights to control how they are touched, MCASA is concerned about the drafting of the Senate amendment and how it could be interpreted. Several of the phrases used in the amendment raise questions. The amendment refers to whether an individual has “REASONABLY INDICATED TO THE OTHER THAT FURTHER PHYSICAL CONTACT IS UNWANTED”. This is susceptible to an interpretation that some types or communication are unreasonable or perhaps even that it is unreasonable to refuse certain types of physical contact. Additionally, the amendment uses the phrase “PHYSICAL CONTACT COMMONLY ENGAGED IN BY TWO INDIVIDUALS IN A SEXUAL RELATIONSHIP”. This raises questions about whether the law is dictating that people in a sexual relationship are consenting to a “common” set of touches without regard to the practices of the couple.

As introduced, SB250 would help move Maryland into the modern era and affirm the right to control one’s body. MCASA urges the Judiciary Committee to conform SB250 to HB147 as passed by the House of Delegates.

**The Maryland Coalition Against Sexual Assault urges the
Judiciary Committee to
report favorably on Senate Bill 250 with Amendment**

