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MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on
Cybersecurity, Information Technology,
and Biotechnology

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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House Judiciary Committee
**Senate Bill 250 – Criminal Law - Sexual Crimes - Fourth Degree Sexual
Offense and Spousal Defense
(Repeal of the Spousal Defense to Rape)**

As this committee is well aware, Delegate Crutchfield and I introduced legislation to fully repeal the spousal defense law. This bygone and brutal part of the code created an absolute defense to certain sex crimes if you were married to your abuser. Your esteemed Committee and the House of Delegates passed the bill as introduced. In the Senate Judicial Proceedings Committee, the bill had two amendments.

One amendment struck the title of the bill. The other was an off-the-cuff attempt to clarify 4th degree sexual offense as it pertains to the touching of an intimate area of another without consent.

In order to understand this attempt to clarify current law, we must examine existing law and legal interpretations of consent. I have included a 2020 advice letter from the Office of Attorney General on point to this question. There is a misnomer that consent requires permission for each and every touching. That is simply not the law as Maryland is NOT an affirmative consent state.

Mere passivity is not consent to sexual touching. To prove lack of consent, a form of resistance is required – this does not have to be physical resistance. Still, it does have to be a verbal “no” or similar objection or pulling away.

In some cases, this is pretty easy to prove – a groping on the subway, for example. But other cases prove difficult – particularly cases involving intimate partners, whether married or not. To figure out whether there is resistance and prove lack of consent, courts must look to the facts of

the case. This includes the relationship of the parties. Please refer to the AG advice letter for details.

JPR adopted an amendment that if you are in a sexual relationship (married or not), your right to consent and refuse sexual touching is different than if you are not in an intimate relationship. While some viewed this as a clarification of the law, and while it does repeal the spousal defense to rape, the so-called clarification does create a new distinction that this committee should examine carefully for 4th degree sexual assault.

I look forward to a conference committee on this important bill. I am sure we can work together to the extent necessary to clarify that sex crimes are crimes no matter your marital status. Without cutting into the rights and protections against sexual abuse from any aggressor.

I respectfully ask this committee to please move SB250 swiftly, so we can resolve any lingering concerns between the two chambers this session. It is long overdue to repeal this arcane law and policy from Maryland's code.