



Maryland State's Attorneys' Association

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RE: HB147 Written Testimony

House Judiciary
Chair Luke Clippinger
Maryland House of Delegates

Thank you for allowing me the opportunity to address you on the above proposed piece of legislation. Last year in the abbreviated 2020 session, this proposed piece of legislation received a favorable report from this committee and passed the House of Delegates 127-9 in a bipartisan vote. As the elected State's Attorney for Caroline County and the Chair of the Maryland State's Attorneys Association, I am again seeking a favorable report on this vital piece of legislation that will repeal the archaic, misogynistic, and reprehensible spousal exception to sexual assaults in cases not involving force, threats of force and against Fourth Degree Sexual Assault in its entirety.

In 1736 while we were still a colony of Great Britain, Lord Hale articulated the English common law proposal that a spouse (then only a male spouse) was not capable of rape against the other spouse (then only a female spouse) because once the parties had married consent was irrevocable. This meant that spousal rape was impossible. When our country gained its independence from the British Empire, we retained the common law of Great Britain. More than 250 years later, the State of Maryland in 1997 in *Lane v. State*, 348 Md. 272 took away the idea of spousal rape and sex assault being non-existent in cases involving actual force. In 2004, Maryland Criminal Code 3-318 added that cases involving the threat of force nullified the exception as well.

The list of possible acts that are still subject to spousal nullification include but are not limited to:


- If someone drugs and sexually assaults their spouse
- If someone sexually assaults their spouse while they are asleep or drunk.
- If someone nonviolently pressures or coerces their spouse into sex

When this committee gave a favorable report last year it was after testimony from an ASA from Montgomery County that gave detail to a case where a spouse was taking legally prescribed medication that made it impossible to consent to sex acts committed by her spouse. These acts were filmed by the offending spouse however, due to the current state of Maryland law that office was unable to proceed on any of the incidents where actual force could not be shown.

The arguments I have heard against this legislation focus on the argument that divorce cases would become criminal cases. That when the criminal law is used as a sword in this way the spousal exception acts as a shield to prevent this harm. The Office of the Public Defender in their written opposition to this bill last session suggested their opposition was because courts would be inundated with cases charging Fourth Degree Sex Offense if this protection is removed. These arguments should be rejected for many reasons. One, prosecutorial discretion is a valuable tool to act as a shield against any frivolous claim (if any). Two, the suggestion that there would be frivolous claims embraces the unsubstantiated idea that there are any more false claims of sexual assault than there are of any other crime. No respected evidence suggests this. It also ignores the fact that no spousal exception exists for Second Degree Assault. Second Degree Assault despite being a 10-year offense is a lesser included of Fourth Degree Sex Offense (a maximum of one year). If these false claims were really a problem, would it not be present in false claims of Second Degree Assault? This is simply not the case. Third, the crime of making a false statement that the person making the statement knows to be false, with the intent to cause an investigation or other action (i.e. a prosecution) exists.

The existence of this tired vestige of common law serves only to create a second class of citizens who cannot seek recourse from the criminal law. If two persons were co-habitants but not married the accused individual would not have this shield. It is a provision of our law that has its roots in the idea that the female spouse is subject to the desires and wants of the male spouse. It must come to an end.

I ask you to please consider the acts I described in the bullet points above. If you were to weigh the harms on a scale, on one side you would have victims of these acts having no recourse and on the other side spouses who would now face allegations that still have to be proven beyond a reasonable doubt that they occurred. It should really be no contest. The Maryland State's Attorneys Association request a favorable report on this bill.


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