



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 House Bill 153
Lisae C. Jordan, Executive Director & Counsel
January 27, 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 House Bill 153.

House Bill 153 – 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.

House Bill 153 brings Maryland into the modern era and eliminates marriage as a defense to all sex crimes. This bill passed the House of Delegates in the same form during the 2020 and 2021 sessions.

Historically, most rape statutes in America included language that specified that rape was forced sexual intercourse with a woman not your wife, reflecting historical views that a wife was a husband's property or that marriage itself was a non-revocable and continual consent to sex.

Currently, Criminal Law §3-318 continues to provide that marriage is a defense to certain sex crimes. It is not absolute bar to prosecution in all sex crimes cases. However, marriage continues to be a defense to sex crimes in cases involving the capacity of a victim or "sexual contact" (touching intimate areas for purposes sexual arousal or gratification or for abuse, other than for medical purposes or as a "common expression of familial or friendly affection"). In 2017, in what one hopes is unintended consequences, when the definition of rape was changed to include all sex crimes involving penetration (not just vaginal intercourse), married people lost protections because marriage became a defense to sex crimes involving capacity and oral sex, anal sex, and penetration with an object. Prior to the 2017 changes, marriage was a defense only for capacity cases involving vaginal intercourse.

Prior to 2004, some offenses involving vaginal intercourse could be prosecuted if the parties had met certain separation requirements and the rape involved force or threat of force. In Maryland in 2004, the General Assembly expanded protections for spouses who were not separated, adding provisions so all vaginal rapes involving either force or “threat of force” could be prosecuted regardless of whether the parties were separated. Additionally, if the parties have a limited (or absolute) divorce, marriage is not a defense.

Disparities between prosecution of sex crimes and other types of intimate partner violence are inexplicable. Assault, stalking, homicide, and other crimes against a person may be prosecuted without regard to the marital status of the parties. Singling out sexual violence as a type of crime that married people should have less protection from is anomalous. This also creates striking inequalities between couples who have chosen to marry and those who have not. For example, a person who rapes their unconscious spouse could not be prosecuted for rape, but a person who raped their unconscious domestic partner could be – even if the married couple had been together for a matter of days and the domestic partners had been cohabiting for decades. Connecticut repealed its law allowing marriage as a defense to sex crimes in 2019, citing concerns about parity between sexual assault in the case of spouses or other intimate partners and the investigation and prosecution of other family violence crimes.

Maryland should not correct the disparities between married and unmarried couples by diminishing the rights of unmarried people in sexual relationships. Competent adults should have the right to refuse sexual interactions, including sexual contact defined by Criminal Law §3-301. Whether they are or are not in a relationship with a person should not change this. It is notable that Maryland does not require “affirmative consent” and if consent to touching is not denied, the law requires “either some degree of resistance or a rational fear of resisting” *Travis v State*, 218 Md.App. 410, 424 (2014). Concerns that repealing the spousal defense would result in prosecution of a husband touching his wife without asking first are, therefore, unfounded.

In states across the country, states are changing the outdated and archaic laws that disregard the rights of married people to control their own bodies and sexuality and amending marriage out of sex crimes codes. A 2006 research article found that as of May, 2005, in 20 states, the District of Columbia, and on federal lands, there are no exemptions from rape prosecution granted to husbands. *Marital Rape: New Research and Directions*, Raquel Kennedy Bergen, with contributions from Elizabeth Barnhill, National Online Resource Center on Violence Against Women (February 2006). Some states have not simply repealed laws permitting marital rape, but gone further and affirmed the application of sex crimes protections to married people. *See, e.g.*, Va.Code Ann., §18.2-61: rape statute applies “whether or not” the victim is the spouse of the actor; *State v. Willis*, 223 Neb.844 (1986), there is no “spousal-exclusion” to sexual assault charges. House Bill 153 would not make Maryland first in efforts to modernize marital rape laws, however, it would help prevent the state from being last in this historic shift.

Marriage should never be a defense to any sex crime.

**The Maryland Coalition Against Sexual Assault urges the
Judiciary Committee to
report favorably on House Bill 153**