

---

BILL NO: House Bill 412  
TITLE: Criminal Law – Sexual Crimes – Consent and Second-Degree Rape  
COMMITTEE: Judiciary  
HEARING DATE: February 21, 2023  
POSITION: **Favorable**

---

The Women’s Law Center of Maryland is dedicated to ensuring the physical safety, economic security, and **bodily autonomy** of women throughout the State. We support systemic changes to our current policies and practices that disproportionately negatively affect women. House Bill 412 is a step towards establishing these systemic changes for victims of sexual assault. The Women’s Law Center of Maryland urges a favorable report on HB 412.

HB 412 would bring Maryland’s current rape law up to date by removing the antiquated *force and threat of force* standard. That standard places the onus on a victim to stave off a rapist. Under HB 412 the focus would be whether there was a **clear and voluntary agreement** between the individuals involved. In order to make this determination, HB 412 provides a logical and concise definition of consent, as well as outlines acts and circumstance that do not qualify as consent. This analysis keeps the fact finder focused on asking the right questions – if consent was sought and the circumstances under which consent was given. This analysis keeps the fact finder away from wrong and harmful questions that have historically been used to blame victims of sexual assault – what the victim was wearing, did the victim have a prior consensual sexual experience with the perpetrator, etc. As a result, HB 412 provides a straightforward approach to prosecuting and determining sex crime cases.

Currently 28 jurisdictions throughout the country have updated their rape statutes to define consent in terms of behavior. For instance, the Vermont statute defines consent as, “unambiguous, and voluntary agreement to engage in a sexual act, which can be revoked at any time<sup>1</sup>.” According to the American Law Institute, “neither verbal nor physical resistance is required to establish that consent is lacking, but their absence may be considered, in the context of all the circumstances, in determining whether there was consent<sup>2</sup>.” Further, the majority of states across the country have already updated their rape and sexual assault statutes to eliminate a requirement of *force or the threat of force*<sup>3</sup>. It is time for Maryland to do the same.

Women experience sexual assault at disturbing rates, especially Black women and women of color. In Maryland roughly 18% of white women and 22.3% of non-Hispanic Black women have been raped. Additionally, 44% of Maryland women have experienced other forms of sexual violence<sup>4</sup>. These statistics are alarming. The legislature must make changes in order to properly support victims of sexual assault when they are seeking legal recourse. For these reasons, the Women’s Law Center of Maryland urges a favorable report on House Bill 412.

*The Women’s Law Center of Maryland is a private, non-profit legal services organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal representation for individuals and statewide advocacy to achieve systemic change.*

---

<sup>1</sup> Vt. Stat. Ann. tit. 13, § 3251 (Lexis Advance through the end of the 2021 (Adj. Sess.), including legislative updates through December 31, 2022)

<sup>2</sup> <https://www.ali.org/news/articles/updated-consent-definition/>

<sup>3</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4191840](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4191840)

<sup>4</sup> [https://mcasa.org/assets/files/Sexual\\_Assault\\_in\\_MD\\_Fact\\_Sheet\\_2021.12.pdf](https://mcasa.org/assets/files/Sexual_Assault_in_MD_Fact_Sheet_2021.12.pdf)