

## HB412

### Judiciary - Criminal Law, Sexual Crimes, Consent and Second-Degree Rape - Testimony in SUPPORT

Chair Clippinger, Vice Chair Moon and members of the House Judiciary Committee, thank you for the opportunity to provide favorable testimony in support of House Bill 412, which will define consent for the purposes of engaging in sexual activity.

Unlike half of the states in the US, the state of Maryland still has no legal definition of consent and instead relies on victims to prove that they resisted or were afraid to do so, due to the threat of force<sup>1</sup>. This frequently becomes a barrier to justice for victims of sexual crimes, and excludes numerous scenarios in which a victim may experience a non-consensual sexual act, but are fearful of other retaliation or consequences.

As of 2021, 44% of Maryland's women and more than 24.8% of Maryland's men reported experiencing sexual violence. Women and members of the LGBTQ+ community face particular vulnerability. More than 21% of women have reported experiencing attempted or completed rape, and 21% of non-gender conforming individuals have experienced sexual assault. Montgomery County, Prince George's County, Baltimore City, Baltimore County, and Anne Arundel have consistently reported the highest number of rapes in the state.<sup>2</sup> Particularly concerning is the number of underage girls who have experienced sexual violence. According to recently released data from the CDC, at least one of every ten high school-age girls has reported being forced to have sex at some point. Unsurprisingly, three out of five girls reported feeling hopeless in 2021, and nearly one-third considered suicide.<sup>3</sup>

Sexual crimes cause physical, mental, and economic consequences. After trauma, the brain remains overactive as it comes down from "fight or flight" mode, causing the survivor to experience behavioral and cognitive dysfunction. The monetary cost remains a lifetime burden as survivors take time off of work or seek medical and mental support. According to the Maryland Coalition Against Sexual Assault, the lifetime cost to recover from rape per victim is \$122,461, and the cost to the state is \$3.1 trillion<sup>4</sup>.

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<sup>1</sup> Lawson, "Half of the Country Doesn't Have a Legal Definition of Consent." *Vice*.  
<https://www.vice.com/en/article/bj3p35/state-definition-of-consent-legislation>

<sup>2</sup> Maryland Coalition Against Sexual Assault, "Sexual Assault in Maryland."  
<https://mcasa.org/stats-info/statistics>

<sup>3</sup> Muller, "Teen Girls Report Most Distress, Sexual Violence in a Decade." *Bloomberg*.  
<https://www.bloomberg.com/news/articles/2023-02-13/teen-girls-report-most-distress-sexual-violence-in-a-decade--cdc-says>

<sup>4</sup> Maryland Coalition Against Sexual Assault, "Sexual Assault in Maryland."  
<https://mcasa.org/stats-info/statistics>

Many survivors choose not to report out of fear of ostracization, retaliation from the perpetrator, or perception of insufficient evidence. The lack of a clear definition of consent offers another barrier to their coming forward. Victims of these horrific crimes should be supported by law and society in their decision to seek justice.

HB 412 would address this issue by requiring certain facts to be considered when determining whether consent was given and by altering the elements of second-degree rape by removing the requirement of the use of force. More specifically, the bill would take the responsibility off of the victim to prove that they resisted or were too afraid to do so, and instead notes that an individual that has been coerced, is in fear, or is threatened is not in fact providing consent. This bill would close the disconnect between the definition of consent taught in schools and what is written in law today. Please note that this legislation is not changing the legal requirements to affirmative consent, meaning it does not require an explicit yes. Rather, it takes into account words, actions, and the ability to withdraw consent at any time. The bill also does not require a written agreement or assume that a current or prior relationship by itself constitutes consent.

A quick note on sponsor amendments - I have submitted one to strike 'deception' from the existing bill as I believe that the other items listed adequately cover the scenarios in which we are trying to protect victims.

I urge you to pass this common-sense legislation to allow victims of sexual crimes to seek justice.

**Thank you for the committee's consideration, and I respectfully request a favorable report on HB412.**