



**House Criminal Justice Committee
Proponent Testimony for House Bill 161
Emily Gemar, Public Policy Director
Ohio Alliance to End Sexual Violence
June 6, 2023**

Chair Abrams, Vice Chair Williams, Ranking Member Brown and members of the House Criminal Justice Committee:

Thank you for the opportunity to provide testimony in support of House Bill 161, which would eliminate the spousal exception for sex offenses in the Ohio Revised Code. The Ohio Alliance to End Sexual Violence (OAESV) is the statewide coalition for Ohio's rape crisis centers. We advocate for comprehensive responses and rape crisis services for survivors and empower communities to prevent sexual violence. OAESV has supported the removal of spousal exceptions to sex offenses since our inception.

Under current Ohio law, certain sex crimes exempt from prosecution perpetrators who commit sexual violence against their spouses, even though the same actions outside of a marriage would be considered a crime. For example, if a married person drugs their spouse and sexually assaults them, this would not be a crime. However, if this assault occurred between unmarried persons, the perpetrator would be subject to criminal prosecution. This loophole prevents survivors of spousal rape from taking legal action for their wellbeing and safety. The continued existence of this loophole reinforces a false view that spousal sexual violence is somehow less serious than other forms of sexual violence. The reality is married persons do not forfeit their right to bodily autonomy because they get married.

It is inexplicable that disparities exist between prosecution of sex crimes and other types of intimate partner violence. 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 egregious. It also creates striking inequalities between couples who have chosen to marry and those who have not. So, 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.

When survivors receive the message that what happened to them is not a crime, it can create an insurmountable obstacle to reporting the crime or even seeking help outside of the criminal legal system. The current exception in the law for certain¹ sex crimes perpetrated by a spouse prevent those offenses from qualifying as sexually oriented offenses.² Therefore, married survivors do not qualify for a Sexually Oriented Offense Protection Order when pursuing protection after

¹ § 2907.02: "... a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception."

² §§ 2907.02-2907.07 offenses perpetrated by a spouse do not qualify as sexually oriented offenses

drug-induced rape, sexual battery, or gross sexual imposition, and the many egregious acts of sexual violence insulated when committed within a marriage. Protection orders are a critical safety planning tool for many survivors of intimate partner violence and sexual violence. Married survivors are left without this option for their safety in our state.

Sexual violence in a relationship is rarely an isolated incident; it often occurs alongside other forms of abusive behavior, including physical and emotional abuse. We know that more than half of female survivors of rape report being raped by an intimate partner³ and that over half of women raped by their spouse report repeat victimization in that relationship, resulting in higher levels of physical injury, longer lasting trauma, and an increased risk for homicide.⁴

OAESV wants to take this opportunity to remind the Committee that this bill does not alter the Rules of Evidence. It does not alter the Rules of Criminal Procedure. It does not alter the Rules of Civil Procedure. It does not alter local court rules. In summary, removing the spousal exception does not remove all of the checks our systems have in place to evaluate the veracity of a claim. The survivor who reports will still have to demonstrate to the court or jury's satisfaction that they have met the applicable standard⁵ of proof. Ohio cannot continue to allow fears about false reporting, which is the exception rather than the norm,⁶ to deter essential changes to the law—changes that will improve health and safety for our entire population.

A person's legal relationship to the person who harms them should never limit their options for safety, accountability, or healing in the aftermath of sexual assault. Further acceptance of this exception in our Code tells all Ohioans, including potential perpetrators and victims, that we accept spousal rape as within the bounds of socially acceptable behavior. Ohio must act and provide full and equal legal protection to married survivors for all sexual offenses – because a marriage license is not a license to abuse.

Thank you for your time and attention to this critical legislation. OAESV respectfully requests the Committee's favorable consideration of this bill, and thanks Representatives Hillyer and Miranda for their sponsorship of House Bill 161. I am available to answer any questions you have at this time.

³ Black et al. (2011). The national intimate partner and sexual violence survey (NISVS): 2010 summary report. National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf

⁴ Samuels, J.E., Thacker, S.B. (2000). Full report of the prevalence, incidence, and consequences of violence against women. National Institute of Justice, Centers for Disease Control and Prevention. <https://www.ncjrs.gov/pdffiles1/nij/183781.pdf>

⁵ For a protection order, a preponderance of the evidence standard; in a criminal prosecution, beyond a reasonable doubt.

⁶ Research demonstrates that the prevalence of false reporting of rape is about the same as it is for other felonies – between 2% and 8%. A large, multi-year, study of sexual assault cases found only a 5.9% rate of false reports. *See* Lisak et al. (2010). False allegations of sexual assault: an analysis of ten years of reported cases. *Violence against women*, 16(12), 1318–1334. <https://doi.org/10.1177/1077801210387747>