



Maryland State's Attorneys' Association

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Maryland House Judiciary Committee
Luke Clippinger, Chair
House Office Building, Room 101
Annapolis, MD 21401 – 1991

Re: Favorable Report for House Bill 164

Dear Chairman Clippinger and Members of the Committee

Trigger Warning:

“I relive the crime over and over again and I can never leave the crime scene.”

Survivor of child sexual abuse.

“There are wounds that never show on the body, that are deeper and more hurtful than anything that bleeds” Laura K. Hamilton.

“At the age of thirteen, I realized that there was danger in innocence and beauty, I could not live with both” Tracey Emin, describing childhood rape.

Child sexual abuse is a crime that stays with a victim forever and is associated with a wide range of adverse outcomes including: mental health diagnosis such as PTSD, anxiety, depression and self-harm to and physical health related outcomes like increased risk of diabetes, cancer, obesity and addiction. Although the long-term impacts and risks associated with child sexual abuse are well documented, what is often overlooked is the impact on the victim when justice isn't served in the courtroom.

Currently, Sexual Abuse of a Minor is only considered a crime of violence when a victim is 12 or younger, meaning that if a victim is 13 and sexually abused by a parent, relative or caregiver, the perpetrator is eligible for parole at just a quarter of the sentence; for example, if the abuser receives a 10-year sentence and the victim is 13, the abuser is eligible for parole in 2.5 years, this is the exact same parole eligibility of a perpetrator who had just punched someone.

This bill would help better balance the scales of justice when it comes to sexual abuse of our minors. Specifically, this bill establishes that for a child 13 or younger, Sexual Abuse of a Minor would be considered a crime of violence. This change is extremely important as statistically, children between the ages of 7 and 13 are the most vulnerable to Child Sexual Abuse. This bill also makes Sexual Abuse of a Minor a crime of violence If a victim is 14 or 15 Sexual and the abuser is over the age of 21. This change recognizes that 28% of U.S. children between the ages of 14 and 17 have been victims of sexual abuse. Age, however, is not the only factor that should be considered when examining this legislation, but rather the specific crime itself. Sexual Abuse of a Minor occurs when a family member, household member, or a person who holds a position of care and custody over a child sexually abuses that child. Care and Custody includes rights and responsibilities over the actions of a child. 93% of children who are victims of sexual

abuse know their abuser with 34% of the crimes being committed by a child's family member. When looking at Sexual Abuse of a Minor, we are looking at one of the most heinous crimes that can be committed as a young victim is not just sexually violated, but also has their trust ripped from them from the very person who should be protecting them. Robbery, without a weapon, is a crime of violence, rightfully so, as it is forcefully taking away the property of another. However, I would wager as a career special victims prosecutor, that a victim of child sexual abuse would much rather have their purse taken by force, rather than their innocence. Sexual abuse of a minor needs to be a crime of violence.

In addition to increasing the age at which Sexual Abuse of a Minor would be considered a crime of violence, this legislation would also amend the statute governing Lifetime Sexual Offender Supervision (Lifetime Supervision doesn't mean lifetime as I explain below), in two ways:

- 1) Regarding Sexual Abuse of a Minor it would change the age from 12 to 13 and;
- 2) it would provide parity between Second Degree Sexual Offense and Second Degree Rape.

It is important to note that although the statute labels this form of supervision as lifetime, it is in fact risk-based supervision. The statutes governing Lifetime Supervision allows the Court the discretion to remove a perpetrator from Lifetime Supervision, after 5 years, if the Court is convinced the perpetrator is no longer a danger. Under Criminal Procedure 11-724 (f) a person may file for discharge from "lifetime supervision" after 5 years, and every year after that, if initially denied by the Court. When a petition for discharge is filed a risk assessment is conducted by a sexual offender treatment provider, additionally the sexual offender management team will also provide a recommendation to the court. If the court finds that the defendant is no longer a danger to others the defendant will be discharged from the supervision. If the court determines there is still a risk or danger to others the court continues the defendant on probation. The next year the defendant may request to be discharged from probation again and a new risk assessment is done. The defendant will only remain on probation as long as he/she is considered a risk or danger to others. Lastly, this statute only applies to a small portion of the population, according to an inquiry to the Department of Public Safety and Correctional Services as of March 1, 2022 there were 24 people currently on Lifetime Supervision down from the 25 that were on Lifetime Supervision as of July 1, 2021.

As the statute reads now, Lifetime Sexual Offender Supervision is available for any Second-Degree Rape but is only available for two categories of Second Degree Sexual Assault. In 2017, the Legislature determined that there is no legal difference between Second Degree Rape and Second Degree Sexual Assault and codified Second Degree Sexual Offense into Second Degree Rape, however, Criminal Procedure Section 11-723 (Lifetime Supervision) was omitted during this change and still categorizes these crimes differently which was not the intention of the Legislature. Anal penetration, fellatio and cunnilingus should all be treated the same, and provided the same protections as vaginal penetration. Of course, the more time that has passed since 2017 the less likely this section of the statute is an issue. We will still see cases with sexual assaults that occurred prior to 2017, however these cases often have multiple victims (think Sandusky, Nassar). When the crime occurred prior to 2017 prosecutors are required to charge the Second Degree Sexual Offense, and as of right now, victims of Second Degree Sexual Offense aren't entitled to the risk based supervision they would be if the crime occurred today.

I urge a favorable return for House Bill 164

Kathryn A. Marsh
Career Special Victims Prosecutor
MSAA representative

Statistics from RAINN and CDC