



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 449 with Technical Amendments
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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 Senate Bill 449 with Technical Amendments.

Senate Bill 449 – Crime Victim Rights – Right to Petition to Extend Charges Based on Extraordinary Circumstances and Continued Supervision of IST Defendants

Maryland law correctly limits the length of time a person may be detained after a finding that they are incompetent to stand trial (IST). If the defendant was charged with a felony or a crime of violence under § 14-101 of the Criminal Law Article, the court must dismiss the charge after the lesser of the expiration of five years or the maximum sentence for the most serious offense charged. For all other defendants, the court must dismiss the charge after the lesser of the expiration of three years or the maximum sentence for the most serious offense charged. Both the State's Attorney and the victim must be notified of the contemplated dismissal, however, only the State's Attorney may file a motion to continue charges based on extraordinary cause. **This bill would grant victims the right to petition the court to extend the time to dismiss a charge regarding a defendant who has been found incompetent to stand trial. Senate Bill 449 also expands the maximum period of supervision when there are charges of sexually assaultive behavior or first degree murder to 10 years.**

Continued charges and supervision protect victims and the community when a defendant is both IST and dangerous. It is critical to understand that if charges are not continued, the defendant will no longer have supervision. Last session, this bill was introduced following the unreported opinion, *MO v. State*, filed by the Court of Special Appeals, March 24, 2021, and submitted with this testimony. In this case, a known and dangerous sex offender was approaching the 5 year limit on his IST status and a motion to dismiss charges was filed. The State's Attorney failed to file a motion to continue the charges, although they did oppose the motion to dismiss. The victim presented compelling testimony regarding the danger the defendant posed.

In the case prompting this bill, Terrell Nowlin was charged with two counts of Second-Degree Sex Offense and one count of Sodomy. The incident occurred on February 28, 2011 when the victim, J.O., and Mr. Nowlin participated, as athletes, in a Special Olympics event. Mr. Nowlin was found incompetent to stand trial. In reviewing the motion to dismiss charges, the court made a number of findings regarding the risk the defendant poses:

Because of this case, [the Defendant] is also subject to an order that creates heavy supervision and structure designed to mitigate the risk that Defendant Nowlin presents to public safety. Despite this significant structure and supervision in a residential setting that specializes in supporting those with developmental disabilities, Defendant has, in the past, been in contact with the victim and victim's family. Because this Defendant has made prior threats to the victim, the contacts have caused severe distress to the victim and his family in violation of the conditions of the supervision order.

Also, in direct violation of Defendant's release conditions and the structure in his residential program, in the past Defendant was able to create and function with many social media accounts and he was able to download and view large amounts of pornography. Viewing of pornography on the internet creates an increased risk that Defendant Nowlin may sexually assault someone else. To mitigate that risk, the [c]ourt required 24/7 supervision of Defendant. After the 24/7 supervision requirement, Defendant Nowlin made no more contact with the victim's family and had no more exposure to pornography.

In terms of the risk that Defendant Nowlin may sexually victimize someone in the future, the [c]ourt must consider that before Defendant Nowlin sexually assaulted the victim in this case, he was convicted of forced sexual assault upon someone else. With two convictions for forced sexual assault, the [c]ourt must conclude that Defendant Nowlin presents a future risk to others. Even with a prior conviction for forced sexual assault, Defendant Nowlin, with his disabilities, was not supervised adequately to prevent the sexual attack that resulted in this case. Another compelling circumstance that enhances the public safety risk is that because of Defendant's own developmental disabilities, Defendant lives with and is in programs with other developmentally disabled and uniquely vulnerable individuals.

The Court also highlighted the effect the dismissal of charges has on supervision of the IST defendant, noting:

After dismissal of this case, the [c]ourt has little confidence that the 24/7 supervision will continue. The [c]ourt, therefore, would have found (if the statute did not prevent this action) that dismissal of this case creates a significant safety risk that this Defendant will sexually victimize someone else in the future (and perhaps multiple people).

Both the trial court and the appellate court noted that the Courts' hands are tied because the statute does not permit the Court to accept the victim's petition to extend the time to dismiss charges and the State's Attorney filed to file the appropriate motion. Senate Bill 449 corrects this deficiency in the statute and helps make the promise of crime victim rights a reality. Senate Bill 449 does not mean the Courts will grant a crime victim's request, but it will give victims the ability to ask the Court for needed relief in extraordinary cases.

Amendments (technical)

Senate Bill 449 incorrectly includes language regarding Not Criminally Responsible (NCR) defendants. Since NCR is a disposition, there is no longer a case to be dismissed. MCASA respectfully suggests deleting page 2, lines 20-28.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 449 with Technical Amendments**