



FAMILY AND JUVENILE LAW SECTION COUNCIL TESTIMONY IN SUPPORT OF SENATE BILL 210

Family Law – Protective Order – Relief Eligibility – Rape and Sexual Offenses

January 28, 2020

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

Individuals seeking protection from abuse fall into two distinct categories, those who qualify for relief under the domestic violence statute and those that qualify under the peace order statute. Those who are “persons eligible for relief” under the domestic violence statute encompass 1) current or former spouse; 2) cohabitant of the respondent; 3) a person related to the respondent by blood, marriage or adoption; 4) a parent, stepparent, child or stepchild of the respondent, or person eligible for relief who resided with the respondent or person eligible for relief for at least 90 days within 1 year prior to the filing; 5) a vulnerable adult; 6) a person who has a child in common with the respondent; 7) an individual who has had a sexual relationship with the respondent within one year before the petition was filed. It is noteworthy that an individual who is sexually assaulted or raped by someone with whom they do not have a previous relationship, would arguably not qualify for protection under the domestic violence statute, despite those acts being included in the “act(s) of abuse” that would otherwise afford the protection of the domestic violence statute.

The current status of the law creates confusion because both the protective order statute and the peace order statute include rape and sexual offenses as “act(s) of abuse” warranting the entry of a peace or protective order. A nuanced, but significant difference between the two statutes is that the protective order statute currently requires some sort of intimate or family relationship between the petitioner and respondent. Because of this relationship hurdle, a number of judges believe that date rape/rape victims are not in a sexual “relationship” with the assailant. Further, victims of sexual assault are not considered to be in a qualifying relationship. Therefore, neither of these groups would qualify for a protective order because there is no “relationship” present. The purpose of this Bill is to correct that deficiency, clarify the law and extend the protection afforded by the domestic violence statute to victims of rape or sexual assault even where an ongoing relationship is not present. This Bill contemporaneously removes rape and certain sexual offenses from the list

of offenses which would qualify for relief under the peace order statute, thereby clarifying which statute these victims should turn to for relief. Without this clarification it is difficult for a family law attorney to advise client victims as to which statute to rely on for needed relief. By way of example, in the event that a client seeks relief under the protective order statute, if the Judge determines, as regularly occurs, that rape does not constitute a sexual relationship, he or she will be denied relief and will then need to seek relief under the peace order statute. This is an expensive process when represented by a private attorney. Additionally, in many instances, the client will lose the fortitude to proceed, which places the victim and any children at risk of further harm. The simple clarifications proposed by this bill, correct this situation.

The FJLSC urges the House Judiciary Committee to issue a favorable report on SB 210.

Respectfully submitted,

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MSBA