



Working to end sexual violence in Maryland

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Testimony Opposing Senate Bill 775
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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 in the State of Maryland. We urge the Judicial Proceedings Committee to report unfavorably on Senate Bill 775.

Senate Bill 775 – Custody and Child Access After a Finding of Abuse

This bill would limit a court's discretion when crafting custody and visitation orders after a finding that one party has abused either a party or a child in the family. Without question, many courts have not given sufficient weight to child sexual abuse, marital rape, and other forms of intimate partner and child abuse. MCASA appreciates the intent of this bill and the desire to correct inadequate decision-making in child access cases, however, we must firmly and clearly oppose the specific provisions SB775 includes.

Senate Bill 775 would create a rebuttable presumption that it is not in the child's best interest for a court to grant sole or joint legal or physical custody to a party who has committed abuse against the other party. MCASA has consistently and clearly opposed presumptions in custody cases for many years. Like our colleagues, we believe that each child, each family, and each situation needs to be judged on its own merits and decided based on the needs of the child. One size does not fit all when it comes to custody decisions and each and every child deserves the court to consider their individual best interests.

MCASA also has grave concerns that if a finding of abuse becomes a trigger for a presumption in custody and visitation cases, this will have the unintended consequence of discouraging courts from issuing protective orders. If courts know that a finding in a protective order case is not simply to help support safety and emergency needs, but instead will tie the hands of judges in later custody proceedings, they may be reluctant to issue these orders. Our policy choices should support survivors seeking protection and support the ability of courts to focus on immediate safety, not long term litigation consequences. We are no way suggesting that protective orders and their findings should not be considered, however, and resist any suggestion that the legislature address this concern by depriving courts of the evidence that an order was issued.

Senate Bill 775 also provides a list of conditions or requirements to impose after a finding of abuse (page 2, line 11- page 3, line 2). This list may or may not be in the best interests of a given child in the specific circumstances of a particular case involving abuse. Additionally, courts already have the authority to impose conditions in child access cases, so a list is not necessary to provide authority. Of particular concern is page 2, lines 29-30, regarding ordering a party to post a bond for the “return and safety of a child.” If a court has such serious concerns about the safety of a child the court should not be ordering that child to go with that (abusive) parent.

Finally, if a court determines both parties have engaged in abuse, any law should mirror what is already in Family Law §4-506 rather than creating a new standard of assessment. The specific factors included in the bill also raise serious concerns. “Severity of the injuries” causes the most concern as it lacks any indication of how sexual assault is considered, particularly if there are no physical injuries. Additionally, “coercive control” is not currently defined in our laws. Finally, the suggestion that acts of self defense are “domestic violence” has no place in our laws.

In short, Senate Bill 775 contains a myriad of drafting and policy flaws and will not accomplish its very noble goals.

**The Maryland Coalition Against Sexual Assault urges
the Judicial Proceedings Committee to report unfavorably on Senate Bill 775**