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**Working to end sexual violence in Maryland**

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**Testimony Supporting Senate Bill 834**  
**Lisae C. Jordan, Executive Director & Counsel**  
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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 Judicial Proceedings Committee to report favorably on Senate Bill 834.

**Senate Bill 834 – Bringing the Definition of Sexual Harassment into the 21<sup>st</sup> Century**

In 2018, the late President Miller and Speaker Busch established the General Assembly's Workplace Harassment Commission. In response to the recommendations of the Commission, Maryland enacted reforms to Maryland's employment discrimination laws, expanding protection to workers in more types of employment situations, and expanding the time that victims of harassment have to file for remedies. While the Commission had ended, the work it started must continue. **SB834 does exactly that: this legislation would effectively repeal dated and offensive case law that limits access to justice for employees who have been sexually harassed and replace it with a modern and reasonable definition. MCASA fully supports the intent of this bill.** We note that there have been discussions regarding clarifying or simplifying amendments which may also be appropriate.

Courts have interpreted anti-discrimination law to prohibit workplace harassment based on two theories: quid pro quo harassment (when submitting to the conduct becomes a condition of employment or continued employment), or hostile workplace environment (when the harassing conduct is so severe or pervasive as to create an intimidating, hostile, or abusive work environment). **Far too often, lower courts have interpreted the hostile work environment standard very narrowly, so that egregious conduct is not considered "severe or pervasive."** Senate Bill 834 seeks to correct this by providing a statutory definition of "SEXUAL HARASSMENT" to include:

ORAL, WRITTEN, OR PHYSICAL CONDUCT, WHETHER OR NOT THE CONDUCT WOULD BE CONSIDERED SUFFICIENTLY SEVERE OR PERVASIVE UNDER PRECEDENT APPLIED TO SEXUAL HARASSMENT CLAIMS, THAT CONSISTS

OF UNWELCOME SEXUAL ADVANCES, REQUESTS FOR SEXUAL FAVORS, OR OTHER VERBAL, WRITTEN, OR PHYSICAL CONDUCT OF A SEXUAL NATURE WHEN:

(1)(I) SUBMISSION TO THE CONDUCT IS MADE EITHER EXPLICITLY OR IMPLICITLY A TERM OR CONDITION OF EMPLOYMENT OF AN INDIVIDUAL;

(II) SUBMISSION TO OR REJECTION OF THE CONDUCT IS USED AS A BASIS FOR EMPLOYMENT DECISIONS AFFECTING THE INDIVIDUAL; OR

(III) THE CONDUCT HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING WITH AN INDIVIDUAL'S WORK PERFORMANCE OR CREATING A WORKING ENVIRONMENT THAT IS PERCEIVED BY THE VICTIM TO BE ABUSIVE OR HOSTILE; AND

(2) A REASONABLE VICTIM OF DISCRIMINATION WOULD CONSIDER THE CONDUCT TO BE MORE THAN A PETTY SLIGHT, TRIVIAL INCONVENIENCE, OR MINOR ANNOYANCE.

MCASA notes that the Committee may wish to be a bit more straight-forward and simply add that "THE CONDUCT NEED NOT BE PERVASIVE OR SEVERE". We look forward to further discussions about these friendly amendments.

Examples of Maryland cases that illustrate the impact of current case law are listed below. While these are federal cases, Maryland courts routinely look to federal Title VII cases to determine a defendant's scope of liability under Title 20 of the Maryland Code.<sup>1</sup>

*In one case, a supervisor frequently entered the men's restroom when plaintiff was in the restroom alone, and on one of those occasions, pretended to lock the door and said, "Ah, alone at last," while approaching the plaintiff. The supervisor also inquired about the plaintiff's dating life and whether the plaintiff had sex with anyone over the weekend, and regularly commented on the plaintiff's physical appearance. During one incident, the supervisor positioned an illuminated magnifying glass over the plaintiff's crotch, looking through it while pushing the lens down and asking, "Where is it?". In another instance, the supervisor bumped into the plaintiff and said, "You only do that so you can touch me." Additionally, while in a confined darkroom space together, the supervisor asked the plaintiff, "Was it as good for you as it was for me?, and upon leaving the darkroom, attempted to force himself in a one-person revolving door with the plaintiff. This behavior continued over a seven year period, and the court found the sexual harassment was not "severe or pervasive" enough to constitute unlawful harassment. Hopkins v. Baltimore Gas & Electric Co., 77 F.3d 745 (1996).*

*In another reported case, a supervisor engaged in sexually harassing conduct towards his employee, including requesting sexual favors from her in return for a promotion; repeatedly accusing her of having a sexual relationship with her former supervisor and asking other employees if such a sexual relationship occurred; commenting on her body, specifically, on the shape of her legs and waist; and, on one occasion, squeezing her waist. The court held the*

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<sup>1</sup> *Moore v. Sprint Commc'n Co., LP*, 2012 WL 4480696, at \*6 (D. Md. Sept. 27, 2012); see also *Haas v. Lockheed Martin Corp.*, 914 A.2d 735 (Md. 2007) ("Title VII is the federal analog to Article 49B of the Maryland Code" and "our courts traditionally seek guidance from federal cases in interpreting Maryland's Article 49B").

*conduct was not sufficiently severe or pervasive. Francis v. Board of School Com'rs of Baltimore City, 32 F.Supp 2d 316 (D. Md. 1999).*

The era of #MeToo has changed the culture of our workplaces. **Employees now rightfully expect to be treated without discrimination and to go to work without being subjected to the sexually harassing behavior that was once categorized as “boys will be boys”.** Senate Bill 834 will mean that Maryland’s courts and anti-discrimination laws take a fresh look at this behavior without the weight of questionable and dated case law or the expectation that a “little bit” of harassment is acceptable as long as it is not “severe and pervasive”.

**HB834 is also timely in light of the pandemic.** The need for strong workplace anti-harassment laws in Maryland is more urgent than ever. The COVID-19 pandemic has unleashed an economic recession that is hitting women hardest, with especially high levels of job loss for Black women and Latinas. Women— disproportionately Black women—are also 65% of front-line workers in Maryland risking their lives in low-paid jobs.<sup>2</sup> Without a safety net or optimism about their chances of finding another job, workers are more desperate to keep a paycheck at any cost and less willing to report workplace abuses, increasing their vulnerability to harassment, discrimination, exploitation, abuse, and retaliation at work.

**Senate Bill 834 will help enforce the reasonable expectation that a workplace should be free of sexual harassment.**

**The Maryland Coalition Against Sexual Assault urges  
the Judicial Proceedings Committee to  
report favorably on Senate Bill 834**

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<sup>2</sup> National Women’s Law Center calculations using 2014-2018 American Community Survey (ACS), 5-year sample, using IPUMS-USA, available at <https://usa.ipums.org/usa/>. Front-line workforce defined using methodology outlined in Hye Jin Rho, Hayley Brown, & Shawn Fremstad, Center for Economic Policy Research, A Basic Demographic Profile of Workers in Frontline Industries (Apr. 2020), available at <https://cepr.net/a-basic-demographic-profile-of-workers-in-frontline-industries/>.