



Working to end sexual violence in Maryland

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Testimony Supporting House Bill 338 with 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 House Bill 338 with Amendments.

House Bill 338 – Domestic Violence and Government Intervention for Child Neglect

This bill would prevent the state government from intervening in cases because a victim of domestic violence has not reported the violence to law enforcement or child protective services, failed to protect their child from witnessing domestic violence, failed to leave the home of the abuser, failed to end a relationship, or declined to seek a protective order.

MCASA joins with our sister coalition, the Maryland Network Against Domestic Violence, in support of this bill. We note that according to the Rape and Incest National Network (RAINN), 33 percent of rapes are perpetrated by a current or former intimate partner. The National Council against Domestic Violence (NCADV) reported that 40 to 45 percent of individuals in an abusive relationship will also be sexually assaulted by their partner. Additionally, women who are sexually assaulted by an intimate partner report more risk factors for murder by that intimate partner than women in an abusive relationship that does not include sexual violence.

Under the existing definitions of neglect, under Courts and Judicial Proceedings Article § 3-801 and Family Law Article § 5-701, failing to protect a child from witnessing domestic violence is sufficient evidence to constitute neglect.¹ Therefore, if domestic violence is occurring between adults in the home, the Department of Social Services can remove the child and initiate a neglect case against the non-abusive parent for merely living in the same household together. HB 338 is crucial because Maryland's current law penalizes survivors of domestic violence for their own victimization, and fails to account for the numerous, complex reasons why survivors do not, and often cannot, leave the relationship.

¹ See, e.g., *In re S.B.*, No. 696, 697, 2017 WL 118088 (Md. Ct. Spec. App. Jan. 12, 2017); *In re Adoption of Devon W.*, 223 Md.App. 773 (Md. Ct. Spec. App. 2015); *In re Y.D.*, No. 2460, 2017 WL 4876778 (Md. Ct. Spec. App. Oct. 30, 2017); *In re Adoption/Guardianship of Jasmine D.*, 94 A.3d 837 (Md. Ct. Spec. App. 2014).

As a result of Maryland's interpretation of "neglect", many survivors who want to seek help are deterred from doing so because they fear the very real possibility of losing their children if they disclose their abuse. In one case from 2017 involving two parents in an abusive relationship who lived together with their child, one spouse sought a protective order against the other. At the protective order hearing, the case was automatically forwarded to DSS, who then removed the child from the home citing multiple domestic violence incidents between the parents as "ample evidence to support the court's finding that [the child] was neglected."²

By contrast, New York has taken the policy approach contained in House Bill 338. There, courts found that a mother's inability to prevent her children from witnessing domestic violence does not constitute neglect and to find otherwise would unfairly punish both survivors and their children.³ This is the better approach and will ultimately lead to less violence against both protective parents and their children.

Amendment Suggested

Victim services programs report that the current system is interfering with their relationships with some clients, because the clients (correctly) fear that seeking help from rape crisis and domestic violence programs will be seen as evidence that they are placing their children in harm's way. At the same time, there is concern that that clinicians have the ability to report cases where they believe a child is at substantial risk of harm. As a result, MCASA respectfully suggests that HB338 be amended to clarify that domestic violence may not be the SOLE basis for neglect, but does not bar a report of abuse. Specifically, on page 2, line 26, following "DOES NOT INCLUDE," insert "AS A SOLE BASIS, THE FOLLOWING"

**The Maryland Coalition Against Sexual Assault urges the
Judiciary Committee to
report favorably on House Bill 338 with Amendment**

² *In re* Y.D., 2017 WL 4876778, at *9.

³ *Nicholson v. Scopetta*, 344 F.3d 154 (2d Cir. 2003).