



Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277
Fax: 301-565-3619

For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
www.mcasa.org

Testimony Opposing House Bill 947
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 a statewide direct legal services program for survivors of sexual assault: the Sexual Assault Legal Institute (SALI). 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 Judiciary Committee to report unfavorably on House Bill 947.

A presumption in favor of joint legal custody would have the unintended consequence of endangering children in difficult to prove child sexual abuse cases. Cases involving allegations of child sexual abuse can be extremely difficult to prove and are full of gray areas. Sometimes awarding sole custody to the parent more likely to protect the child is the best that can be done. A rebuttable presumption for joint custody should not be permitted color the Court's focus on the needs of a child in these very difficult cases.

Family Law §§ 9-101 and 9-101.1, by themselves, would not provide adequate protection for cases involving grooming behavior if HB947 were enacted. Perpetrators of child sexual abuse typically "groom" child victims prior to committing abuse. This grooming behavior can involve testing a child to see if he or she will keep a secret, cultivating a private relationship with a child, or pushing physical boundaries. Grooming, however, stops short of abuse and would not fall under provisions of the law regarding abuse such as Family Law Article §§ 9-101 and 9-101.1. Current law gives judges the discretion – and the duty – to consider all factors related to the best interests of a child. This child-centered focus should not be changed with a presumption.

House Bill 947 would help abusers by forcing abused or protective parents to rebut a joint custody presumption. A presumption of joint custody is not necessary. Judges currently have the authority to order joint custody and must consider it whenever either parent asks them to. Currently, before a joint custody order is entered, Maryland case law requires trial judges to consider whether parents are able to communicate and reach shared decisions regarding their child's welfare. *Taylor v. Taylor*, 306 Md. 290 (1986); *Leary v. Leary*, 97 Md.App. 26 (1993). This is good law. Judges should be required to evaluate the relationship of parents before ordering joint custody. The best interests of children will not be served by requiring shared decisions between parents when one believes that the other parent has sexually abused or failed to protect their child.

This bill would also harm adult victims of marital rape and sexual abuse. An order of joint legal custody is almost never appropriate when one parent has committed acts of sexual or physical violence against the other. Violence is only one facet of a battering relationship. Batterers also use psychological and emotional abuse to manipulate and control their victims. Joint custody orders allow this type of abuse to continue by forcing victims to negotiate and compromise with their batterers. This places victims in danger of further violence, burdens the courts with post-judgment proceedings, and can cause mental harm to children who witness abuse.

House Bill 947 would lead courts to order joint custody in error in many cases, particularly cases with pro se litigants. Many -- if not most -- victims of domestic abuse do not identify themselves as such. Victims of marital rape and sexual abuse are even more reluctant to disclose abuse. Unfortunately, many lawyers also do not interview their clients with the care necessary to uncover abuse. As a result, evidence of marital rape and abuse would often not be presented and inappropriate joint custody orders would be entered.

**The Maryland Coalition Against Sexual Assault
urges the Judiciary Committee to
report unfavorably on House Bill 947**