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POSITION ON PROPOSED LEGISLATION

BILL: HB 0338 – Child Abuse and Neglect – Definition of Neglect

POSITION: SUPPORT

DATE: February 3, 2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 0338.

In Maryland, a victim of domestic violence can have his or her children removed from their custody because their children are being exposed to their abuse.

Many times, for a victim of domestic violence it is not a choice to stay. There are various components of domestic violence that leave victims trapped in an abusive relationship. Victims are often alienated from family and friends so that they have no support and are forced to rely solely on their abuser. Many victims are financially reliant on their abuser so that they will not have the financial resources to live separate and apart from the abuser. Further, many victims of domestic violence are emotionally and psychologically abused and made to think they are in some way worthless and not capable of living separate and apart from their abuser. And lastly, victims of domestic violence are often surveilled and threatened that if they try to leave, they would lose their children and even their lives as the abuser will threaten that he or she would kill the victim rather than live without them. This is the backdrop for which many victims of domestic violence will stand before the court and have their children taken away from them because they did not leave their abuser.

As an attorney in the Child in Need of Assistance Court, I have represented women, mothers who were in this very situation. They were in abusive relationships. In every instance, the mother had tried to escape her abuser and the abuser continued to force himself into her home or into her life; sometimes making apologies and promises that the abuse would never happen again, sometimes using guilt and shame to coerce the victim to “help” the abuser and yet other times threatening to kill her if she did not allow him to stay. In one case, a mother actually did make it out of her home with her children only for her husband to find her and drive to where she was to pick her up and force her to come home. The mother fearing for her safety and not

wanting to be abused in front of her children acquiesced. In another case, a young mother moved out of her abusers family home and got her own apartment. Only to have the abuser move out of his family home and use his homelessness to guilt her into staying until he “got on his feet,” she reluctantly did and was attacked by her abuser in her home. She managed to get away and call the police, but the response was that CPS was called and her child was removed from her care.

For each of these women, what they needed was help to escape, and support to keep their abuser away. Understanding that a simple, “no,” or “I don’t want you here,” or “you can’t stay here,” or “I don’t want to go with you,” was simply not enough to escape their abuser. They needed support. They needed someone to make their abuser stay away. They needed the strength and support of their communities to provide a safe place and a presence that would not make leaving such a lonely and scary feat. Instead, what they received was their children being removed from their care and made to feel that the abuse they suffered was all their fault.

In order to get their children back, these mothers often had to find new housing, they had to take parenting and anger management as well as get domestic violence counseling and individual therapy. Many also had to figure out how they would support their children and themselves without the assistance of their partner. They had to restart their whole lives in order to get their children back. For one, that would take six months, for another a year and a half and for another, the fight continues for her to get her children back; while the abusers did nothing.

For each of these women, there was no disagreement that they could care for their children. There was no disagreement that there were no safety concerns for the children while in the care of their mothers. The only issue was that their mother could not stop their abuser from hitting them. Even in two cases where the abusers came into court and corroborated the mother’s position that she had in no way hurt her children and had tried to protect them from witnessing their abuse, the court still took their children from the victim. In one case, the court used the protective order that the mother obtained against her abuser as evidence against her that she was experiencing violence in the home.

Being the victim of domestic violence is not the fault of the victim. We would never blame a victim of robbery for being robbed. We would never blame a carjacking victim for getting car jacked. We have even progressed from not blaming rape victims for being sexually assaulted, but in taking children away from their loving parent because that parent cannot protect herself against an abusive mate, we continue to blame and punish victims of domestic violence for their abuse.

In redefining neglect to not include a victim of domestic violence who is being abused in front of their children, the legislature will guide the court in acknowledging that the victim is not the perpetrator and should be protected. It will also prevent courts from further traumatizing children by taking them away from a parent who loves them and provides proper care and attention.

Many who would oppose this bill will note the harmful effects of exposure to domestic violence on the child. They would note that exposure to domestic violence is an Adverse Childhood Experience (ACE) that can cause lifelong mental and physical illness to the child.

What is often overlooked in such an argument is that the separation from a loving parent is also an Adverse Childhood Experience and can also cause lifelong mental and physical illness of the child. Additionally, research also shows that children who enter foster care are far worse off and have a higher risk of post-traumatic stress disorder, anxiety, depression, attachment disorder, teen pregnancy, low school performance, drug use and housing instability than their peers who can remain in their home and get access to services.

Not finding a victim of domestic violence as neglectful does not mean that nothing can be done to help the child being exposed to domestic violence. A court can give custody of the children to the victim. The court can order the abuser to enter treatment, and order the abuser to supervised visitation with his children; the court can order the abuser out of the home, as well as order the mother to ensure therapeutic services for her children, work with the department to put services and a plan in place to escape the abuser and/or create a healthier environment for the family. Additionally, victims can work voluntarily with the Department of Social Services to receive the help they need for themselves and their family's whether they choose to end the relationship with the abuser or not.

Victims of domestic violence love their children and want the best for their children. As we come to understand the dynamics of domestic abuse, we need to shift our intentions from punishment to safety for the victim and his or her children and services for the entire family. We cannot treat the traumatic experience of being exposed to domestic violence by causing more trauma separating a child from a loving parent to which they are bonded. HB 338 is a bill that addresses only those victims of domestic violence whose children are not being abused or neglected and are otherwise safe with their non-abusive parent, but for that parent is themselves a victim. HB 338 is necessary and important in continuing the fight against domestic violence. For these reasons we support HB 338.

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