



BILL NO: House Bill 338
TITLE: Child Abuse and Neglect - Definition of Neglect
COMMITTEE: Judiciary
HEARING DATE: February 10, 2022
POSITION: **SUPPORT**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Judiciary Committee to issue a favorable report on HB 338.**

The current definition of neglect under Courts and Judicial Proceedings Article § 3-801 and Family Law Article § 5-701 is harming survivors of domestic violence and their children. Under the existing definition, 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 it prevents the state from bringing a neglect case against a survivor for failing to protect the child from witnessing domestic violence, failing to leave the home where the abuser lives, failing to end their relationship with the abuser, failing to report the abuse to law enforcement or DSS, or failing to seek a protective order against their abuser.

The 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. On average, it takes a survivor seven tries to successfully leave their abuser.² Abusers use countless methods to control their partners, including isolating survivors from friends and family, controlling their finances, gaslighting survivors into doubting their experience of abuse, and threatening to harm or kill them or their children if they leave. For survivors, staying in the relationship is frequently the key to survival. It is often mistakenly assumed that there is less danger to a survivor and their children once they no longer live with the abuser, but, in reality, the risk of being harmed or killed is highest when they try to leave.³

In failure to protect cases, the law punishes survivors for staying with their abusers, yet that very same law is actually making it more difficult for them to leave. 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

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).

² <https://www.thehotline.org/resources/get-help-50-obstacles-to-leaving/>

³ Bancroft, L., & Silverman, J. (2002). The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics.

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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.”⁴ HB 338 is therefore necessary to remove a real barrier survivors face when trying to seek help. Instead of penalizing survivors, as is done under the current law, this bill shows survivors that they are supported and encourages them to get help without having to fear that they will lose their children in the process.

Additionally, removing children from their non-abusive parents in these situations can be detrimental to the child’s well-being. While it must be acknowledged that witnessing domestic violence can be harmful to children, that harm is only increased with placement in foster care.⁵ One psychologist reported that “children removed from their natural homes and placed in a series of foster homes suffered long-term psychological problems that were actually more serious than the problems experienced by physically abused children who continued to be at-risk for abuse who remained with their parents.”⁶ After witnessing violence, children need the stability and familiarity of a non-abusive parent more than ever. Removal is distressing for children and results in developmental problems, difficulty forming attachments, chronic health problems, difficulty regulating emotions, and mental health conditions such as PTSD.⁷ It is impossible to solve one trauma by inflicting more trauma. Instead, survivors and their children should be empowered through resources and support. HB 338 accomplishes this goal of supporting survivors by keeping their children in the home rather than further traumatizing them.

Finally, HB 338 is an opportunity for Maryland to catch up to other states that have already adopted this policy approach. In New York, 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.⁸ Maryland should also step up as a leader in protecting survivors and their children from further trauma and victimization by the legal system.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on HB 338.**

⁴ *In re Y.D.*, 2017 WL 4876778, at *9.

⁵ Evan Stark, *Nicholson v. Williams Revisited: When Good People Do Bad Things*, 82 Denv. U. L. Rev. 691, 720 (2005).

⁶ <https://wscadv.org/wp-content/uploads/2015/06/CPS-Reforming-Child-Protective-Services.pdf>

⁷ Bartlett, J., & Rushovich, B. (2018). *Implementation of Trauma Systems Therapy-Foster Care in Child Welfare*.

⁸ *Nicholson v. Scoppetta*, 344 F.3d 154 (2d Cir. 2003).

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