

Support HB 324 Bronfein Family Law Clinic

Dear Chairman Clippinger and Members of the Judiciary Committee:

The Bronfein Family Law Clinic (“FLC”) writes in strong support of HB 324”. The FLC is comprised of student-attorneys who each possess a variety of skills relevant to addressing the punitive way that failure to protect laws are wielded against domestic violence victim, including handling family law cases involving domestic violenceⁱ (“DV”). Each student has completed, or is completing, education relevant to family law and is being supervised by attorneys with expertise in the area of domestic violence, neglect and family law matters.

HB 324 seeks to implement a rebuttable presumption that “neglect” in Child in Need of Assistance proceedings, does not include failures to take certain actions by the domestic violence victim. In doing so, HB 324 seeks to dismantle the misuse of neglect laws to penalize victims of domestic violence in Maryland.

Throughout the country, there has been a practice of punishing these victims for their perceived failure to protect the child/ren in the home from witnessing domestic violence that is inflicted against the parent by anotherⁱⁱ. There are myriad reasons why domestic violence victims may be limited in their options following an act of violence against them. One reason is the fear that if they seek out help from police, physicians, social workers, or other such mandatory reporters, it could trigger the involvement of child protective service agencies, which have the power to remove children from the home. Indeed, 71% of survivors of abuse describe feeling that mandatory reporting and the potential of losing their children dissuades them from seeking care.ⁱⁱⁱ Unsurprisingly, there are domestic violence offenders who wield the threat of child protective services’ power to remove children from the home as a tool to control their victim^{iv}.

In addition to the valid fear that revealing violence in their home could cause them to lose their children, domestic violence victims contend with an onslaught of additional barriers to obtaining help and justice. These barriers include (i) “retaliation” by the abuser against themselves and/or their children if they try to escape; (ii) contending with “psychiatric disorders” arising as a result of the abuse; (iii) “economic dependence” on their abuser (as well as the fact that “low socioeconomic status places them at even greater risk for revictimization”); (iii) a range of psychological factors; (iv) sociocultural factors, including the “patriarchal and sexist attitudes and practices” in the United States, where it has “historically been socially acceptable for males to use aggression against their wives to resolve interpersonal conflicts”; and (v) an “ineffective” criminal justice system riddled with confusing and arguably ineffectual practices and results.^v These realities may prevent them from taking some of the actions that often support the idea that survivors “fail to protect” their children such as leaving their abuser, calling the police or seeking an order of protection.

Maryland legislators have the power to protect both children in need and parents who are victims of domestic violence and therefore also vulnerable. HB 324 does nothing to minimize the powers of the law to protect children in need, but it does add a layer of security to victimized parents, which could empower them to seek out help from appropriate avenues when faced with a situation of violence. **For all of these reasons, we urge a favorable report on HB 324.**

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- i “Domestic violence is the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a Systematic pattern of power and control perpetrated by one intimate partner against another. It includes physical violence, sexual violence, psychological violence, and emotional abuse.” The United States Department of Justice, National Institute of Corrections, *DV/IPV: Domestic Violence/Intimate Partner Violence*, (2018) Accession Number: 031384. Retrieved From: <https://nicic.gov/dvipv-domestic-violenceintimatepartner-violence>. Last Accessed: February 5, 2023.
- ii Domestic and intimate partner violence, while feasibly experienced by anyone, disproportionately impacts women, is seen in higher rates for ethnic minority women (though, unsurprisingly, this “disappears once socioeconomic status and substance use are controlled for”) and has much more damaging consequences for women than men (including greater risks of rape, being stalked, and being injured). Denise Hien, Lesia Ruglass, Interpersonal partner violence and women in the United States: An overview of prevalence rates, psychiatric correlates and consequences and barriers to help seeking, *International Journal of Law and Psychiatry*, Volume 32, Issue 1, 2009, Pages 48-55, <https://doi.org/10.1016/j.ijlp.2008.11.003>; Further, United States, like many other countries, has maintained a “patriarchal construct of motherhood” which has allowed for the prevalence of domestic and intimate partner violence to occur by historically treating violence in the home a private matter. Sarah Singh, Punishing Mothers for Men’s Violence: Failure to Protect Legislation and the Criminalisation of Abused Women, *29 Feminist L. Stud.* 181 (2021).; Arnall E and Stewart S(2021)Developing a theoretical framework to discuss mothers experiencing domestic violence and being subject to interventions: A cross-national perspective. *International Journal for Crime, Justice and Social Democracy*10(2): 113-126 <https://doi.org/10.5204/ijcjsd.1561>
- iii Iavicoli LG. Mandatory reporting of domestic violence: the law, friend or foe? *Mt Sinai J Med.* 2005;72(4):228 231. *Virtual Mentor.* 2009;11(2):137-140. doi: 10.1001/virtualmentor.2009.11.2.jdsc1-0902.
- iv Amanda Mahoney, How Failure to Protect Laws Punish the Vulnerable, *Health Matrix*, Vol. 29, Issue 1. (2019), p. 430-460.
- v Denise Hien, Lesia Ruglass, Interpersonal partner violence and women in the United States: An overview of prevalence rates, psychiatric correlates and consequences and barriers to help seeking, *International Journal of Law and Psychiatry*, Volume 32, Issue 1, 2009, Pages 48-55, <https://doi.org/10.1016/j.ijlp.2008.11.003>.