



Working to end sexual violence in Maryland

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Testimony Supporting House Bill 290
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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 290

**House Bill 290 – Maryland Wiretap and Electronic Surveillance –
Limited Exception for Crime Victims Who Record Crimes**

Maryland currently requires all parties to an audio recording (but not a video recording) to consent to the recording. Violation of the all-party consent rule is a felony and also prevents admission of the recording into evidence. MCASA and its members have encountered multiple cases – including rapes – where recordings of the crime can not be used as evidence.

This bill would create an exception to the prohibition against recording another without consent when the person making the recording has a good faith belief that they or another person was in imminent danger of becoming a victim of specific crimes including rape, other crimes of violence defined by Crim.L. §14-101, stalking, abuse as defined in the protective order statute, and violation of a protective order. This is an issue that needs to be addressed. There have been cases where rape survivors have recorded the crime and the recording was both inadmissible and the survivor could have been (but was not) charged with a felony.

Past versions of this legislation raised concerns that have been addressed in HB290. First, the standard for determining whether a crime is about to occur has been changed to a “good faith belief” of the person making the recording. Many survivors of abuse experience post-traumatic stress, hypervigilance, and a sophisticated understanding of when their abuser poses a danger. The reasonable person standard previously proposed raised concerns these survivors would believe themselves in danger but others would not share their assessment of risk. This could, in turn, expose the survivor to felony liability for making a recording. Using a “good faith” standard resolves this concern and still maintains the court’s ability to prevent admissible of evidence made for malicious reasons.

Second, past iterations of this bill included a separate evidentiary standard for recordings. HB290 leaves this issue to the Rules of Evidence. While there may be cases where the recording is not admissible under the Rules, MCASA believes that the vast majority would fall under existing exceptions to the hearsay rules, such as excited utterances.

In the era of ubiquitous cell phones, provisions of the code making taping of another without consent are depriving our justice system of the best evidence available in many cases, including rape and sexual assault. This bill would continue to protect privacy and allow a reasonable and limited exception to the wiretap law and serve the interests of justice.

**The Maryland Coalition Against Sexual Assault urges the
Judiciary Committee to
report favorably on House Bill 290**