



Working to end sexual violence in Maryland

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Testimony Supporting House Bill 132 and House Bill 802
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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 132 and House Bill 802

**House Bill 132 – Maryland Wiretap and Electronic Surveillance –
Allow Judges to Evaluate & Admit Evidence When Victims 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.

House Bill 132 would allow judges to evaluate whether an audio recording should be admitted into evidence in criminal cases involving a crime against at least one individual.

House Bill 802 would allow judges to evaluate whether an audio recording should be admitted into evidence in any type of criminal or civil case.

Both bills would require that judges use the same standard currently included in the Rules of Evidence, *R.5-803(24) other exceptions*, commonly referred to as the “catch-all” exception to hearsay rules. Both bills also add the additional restriction that the recording may NOT be “MADE AS PART OF OR IN FURTHERANCE OF AN INVESTIGATION CONDUCTED BY OR ON BEHALF OF LAW ENFORCEMENT OFFICIALS OF THIS STATE”; this is appropriate and would ensure that law enforcement must continue to obtain a court order prior to recording others. This would not permit every recording to be routinely admitted. Admission would be permitted only when they relate to a material fact, are more probative on the point than other evidence that can be reasonably obtained, and admission will serve the interests of justice.

These bills also do not change the criminal prohibition against recording another. While MCASA believes the current felony classification of recording another should be changed, creating an avenue for admissibility is by far the greater concern.

This is a real issue in our state: there have been cases where rape survivors have recorded the crime and the recording was inadmissible. In the civil context, recordings are often the only non-testimonial evidence available regarding sexual harassment or assault.

In the era of ubiquitous cell phones, the provisions of the code making taping of another without consent are depriving our justice system of the best evidence available in rape, sexual assault and other cases. These bills would continue to protect privacy and allow reasonable exceptions to the wiretap law to serve the interests of justice.

**The Maryland Coalition Against Sexual Assault urges the
Judiciary Committee to
report favorably on House Bill 132 and House Bill 802**

