



Working to end sexual violence in Maryland

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October 20, 2015

To: Sexual Assault Program Counsel and Advocates
From: Lisae C Jordan, Esquire, MCASA
Cc: Delegate Kathleen M Dumais, Vice-Chair, House Judiciary Committee
Senator Victor Ramirez, Senate Judicial Proceedings Committee
Laure Ruth, Esquire, Legal Director, Women's Law Center of Maryland

RE: Sexual Assault under 2015 amendments to the Protective Order statute

2015 amendments

As you know, the definition of a "person eligible for relief" under Maryland's Protective Order statute was amended during the 2015 legislative session. As a result of Senate Bill 477/House Bill 606,¹ sponsored by Senator Ramirez and Delegate Dumais, respectively, Family Law Article §4-501(m)(7) added the following people to those who may seek a protective order:

(7) an individual who has had a sexual relationship with the respondent within 1 year before the filing of the petition.

"Sexual Relationship"

A question has arisen regarding the phrase "sexual relationship":

Does the phrase "sexual relationship" include all victims of sexual assault?

Yes.

Discussion

The plain language of the phrase "sexual relationship" would include perpetrators of any type of sexual assault. A victim of a crime and the perpetrator of that crime have a victim/perpetrator relationship, and, in the case of sexual violence, that relationship is also sexual.

¹ Only the Senate bill was enacted.

Questions have arisen suggesting other requirements should be imputed to the phrase “sexual relationship”. However, if the legislature had wanted to add requirements or qualify the meaning of the words, it would have done so. The bill that was enacted has had several iterations over the years and the General Assembly considered a variety of phrases, including, for instance, language considered during the 2013 session adding the following definitions to a person eligible for relief:

(7) AN INDIVIDUAL WHO HAS HAD A CONSENSUAL OR NONCONSENSUAL SEXUAL RELATIONSHIP WITH THE RESPONDENT; OR

(8) AN INDIVIDUAL WHO IS OR HAS BEEN IN A RELATIONSHIP WITH THE RESPONDENT THAT:

(I) GOES BEYOND A CASUAL ACQUAINTANCE OR ORDINARY FRATERNIZATION IN A BUSINESS OR SOCIAL CONTEXT; AND

(II) IS AN INTIMATE RELATIONSHIP BASED ON:

1. THE NATURE OR TYPE OF RELATIONSHIP BETWEEN THE INDIVIDUAL AND THE RESPONDENT, REGARDLESS OF WHETHER THE RELATIONSHIP IS OR WAS SEXUAL IN NATURE;
2. THE FREQUENCY OF INTERACTION BETWEEN THE INDIVIDUAL AND THE RESPONDENT; AND

3. THE DURATION OF THE RELATIONSHIP BETWEEN THE INDIVIDUAL AND THE RESPONDENT. (Senate Bill 490, 2013)

This makes it clear that the General Assembly was well aware of language that would have required courts to inquire more deeply into the interactions between a person eligible for relief and a respondent. Instead, the Legislature chose the bright line rule created by “sexual relationship.”

The Maryland Coalition Against Sexual Assault specifically addressed sexual assault in its testimony in support of the 2015 bill. MCASA testimony on Senate Bill 477 before the Senate Judicial Proceedings Committee included that, “There [are] really two goals of this bill: one is to cover dating violence cases, the other is to cover sexual violence cases – all sexual violence cases ...” MCASA testimony before the Senate Judicial Proceedings Committee, February 18, 2015, SB477, 4:04:38.) See also 4:08:40, discussing cases where one party says a sexual relationship is consensual and the other says the relationship is not and the need to address these serious cases in the Protective Order Statute. MCASA’s written testimony also distinguished sexual assault from dating violence:

Senate Bill 477 – Protective Orders for Victims of Dating and Sexual Violence
Protective Orders and Peace Orders are civil orders to protect individuals against future violence and harassment. Senate Bill 477 moves dating violence **and sexual assault** out of the Peace Order statute and the Protective Order statute. This will provide these victim/survivors with heightened protection and a better systemic response. (Emphasis added. MCASA Written Testimony Supporting Senate Bill 477, March 31, 2015, before the House Judiciary Committee.)

The Judiciary opposed the 2015 bill in part out of concern that sexual assault should be addressed by the criminal justice system. The Maryland Judicial Conference's written testimony opposing the bill stated:

Although the amendment [to the Senate bill] removed the language "consensual or nonconsensual" from the bill, "sexual relationship" is not defined and could still be interpreted to include both consensual and nonconsensual sexual relationships. Including those petitioners who had a non-consensual sexual relationship with a respondent is overly broad and is matter best left for a criminal proceeding. In addition, this bill is unnecessary for those who have had a "consensual" sexual relationship. Those individuals would be able to petition the court for a peace order as an avenue of recourse. (Maryland Judicial Conference, written testimony submitted to the House Judiciary Committee, March 26, 2015.)

While MCASA supported the bill, it agreed with the Judiciary that both consensual and nonconsensual sexual relationships were encompassed, noting in oral testimony that "since sexual relationships are either consensual or nonconsensual [MCASA] would view that as a perfectly acceptable amendment." Further oral testimony noted that the Peace Order statute is also ineffective in college sexual assault cases because Peace Orders require proof that the underlying act (which may include a rape or sexual offense) is something that the respondent is "likely to commit in the future". Courts & Jud. Pro. §3-1505(c)(2). This requirement is difficult to prove in, for instance, a case involving someone raped at a fraternity party. (Oral testimony before the House Judiciary Committee, March 31, 2015, 1:52:10, 1:53:00.) MCASA is the statewide anti-sexual assault advocacy organization and would not have viewed these amendments as acceptable if they failed to protect all victims of sexual violence.

While many domestic violence organizations naturally focused on Senate Bill 477's applicability to dating violence, there was no question that sexual assault outside of the context of a dating relationship was included in the term "sexual relationship" and that all victims of sexual violence are persons eligible for relief under the Protective Order Statute.