



## **Working to end sexual violence in Maryland**

P.O. Box 8782  
Silver Spring, MD 20907  
Phone: 301-565-2277  
Fax: 301-565-3619

For more information contact:  
Lisae C. Jordan, Esquire  
443-995-5544  
www.mcasa.org

### **Testimony Supporting House Bill 1 Lisae C. Jordan, Executive Director & Counsel January 18, 2018**

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 in the State of Maryland. We urge the Judiciary Committee to report favorably on House Bill 1.

#### **House Bill 1 – Rape Survivor Family Protection Act**

##### **Responding to Rape Victims When A Child is Conceived as a Result of Rape**

Rape and consensual sex have the same pregnancy rate: about 5% of rape survivors between 12 and 45 years old become pregnant as a result of the rape. HB1 creates a sound public policy that responds to these cases by supporting women and their children who are working, against great odds, to recover their sense of security, dignity, and stability after the trauma of sexual assault.

Maryland should not grant sexual assailants presumptive and categorical paternity rights without giving women the chance to show by clear and convincing evidence that they were impregnated by acts of sexual assault. Rape can create pregnancy but it cannot create a family. This bill establishes a process to provide rape victims with a chance to litigate parental rights and to protect themselves and their family.

**HB1 creates a process to terminate parental rights of sexual assailants.** Maryland law does not permit termination of one parent's rights, except for cases involving step-parent adoption. *DSS v. Edelmann*, 320 Md. 150 (1990). Maryland law permits termination of both parents' rights or retention of both parents' rights. This means that a rape survivor who chooses to have a child conceived through rape is required to include the rapist in adoption planning or, if she chooses to raise the child herself, to interact with the rapist in custody and visitation matters. HB1 creates a process for rape survivors to use to ask the court to terminate the other parent's rights. The bill as introduced includes strong due

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process protections, a full trial, and a prompt resolution. The moving party would be required to prove that the child was conceived by “non-consensual sexual conduct” and that it is in the best interests of the child to terminate the parental rights of the respondent. “Non-consensual sexual conduct” does not include statutory rape cases.

### **Pregnancy and Rape**

A three year longitudinal study of rape-related pregnancy in the U.S., published in the American Journal of Obstetrics and Gynecology (1996, vol. 175, pp. 320-325), found:

5% of rape victims of reproductive age (age 12-45) became pregnant as a result of rape, with the majority of pregnancies in adolescents. Of these:

- 5.9% placed the child for adoption
- 32.2% kept the child
- 50% terminated the pregnancy
- 11.8% miscarried

### **Standard of Evidence – Clear & Convincing**

House Bill 1 would require “clear and convincing evidence” that the biological father’s sexual assault of the mother caused the child’s conception. This standard of proof is higher than the normal civil standard—“by a preponderance of the evidence”—and is the standard used in all other family law contexts for the judicial termination of parental rights. See, *Santosky v. Kramer*, 455 U.S. 745 (1982). Rape victims should have to meet the same standard used in other termination of parental rights cases – no more, no less.

### **Best Interests of the Child**

Courts would also have to determine that it is in the best interest of the child for the assailant to be excluded as a father. This recognizes that family law cases will invariably present anomalous situations and that the child’s interests must be given priority.

**Most rapes do not lead to criminal convictions.** It is vital that Maryland’s family law NOT rely on a criminal conviction to trigger protections for a rape victim who has had a child from rape. Among women age 18 and older, only about 19.1% of attacks are reported to police. Of the rapes reported to police only 37% resulted in criminal prosecution, and of prosecuted rapists only 46.2% were convicted.<sup>1</sup> Of those convicted 76% were sent to jail. Overall, this means that among rape victims over age 18:

- 7.8% of rapes were criminally prosecuted
- 3.3% of rapes result in a conviction
- 2.2% of rapes result in a conviction and incarceration.<sup>2</sup>

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<sup>1</sup> U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, NAT’L INSTITUTE OF JUSTICE, EXTENT, NATURE AND CONSEQUENCES OF RAPE VICTIMIZATION: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY (SPECIALREPORT) 7 (2006), available at <https://www.ncjrs.gov/pdffiles1/nij/210346.pdf>

<sup>2</sup> *Id.*

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Fashioning a family law policy which requires a conviction would create the illusion of progress for rape survivors without effectively addressing their needs.

**The federal Rape Survivor Child Custody Act, was enacted in 2015 to encourage States to enact laws regarding termination of parental rights of rapists.** The federal law, 42 USCA §14043h, incentivizes states to pass laws permitting rape survivors to “seek court-ordered termination of the parental rights of her rapist with regard to that child, which the court is authorized to grant upon clear and convincing evidence of rape.” Maryland would receive additional federal funds if the General Assembly enacts a qualifying law such as HB1.

**Current law requires publication of a rape victim’s and child’s name and dates of birth when the rapist is unknown or cannot be served.** The Rape Survivor Family Protection Act prohibits courts from ordering that the names or personally identifying information of the rape survivor or child conceived from rape be published. Theoretically, publication is to provide notice that the case exists, but few professionals believe that potential fathers actually read the small ads placed in classified sections to see if they have conceived a child. Ads are, however, included in on-line versions of newspapers and the names of rape victims and their children can easily be found by search engines, such as Google. HB1 balances the interests of all involved by prohibiting an order of publication of a victim’s name or other personally identifying information, on the one hand, and by requiring stronger notice requirements on the other, includes that notice must be “reasonably calculated to give actual notice”. The Attorney General’s Office has issued a letter of advice to the House Bill sponsor confirming that these provisions are constitutionally sound and permissible.

### **Further refinements to bill language include:**

- No termination of parental rights over victim’s objection. If the child’s attorney files for termination of the respondent’s parental rights, the other parent (the rape survivor) must be joined as a party and the case cannot proceed if the victim-parent objects, page 4, lines 11-17;
- Privacy. Courts are permitted to seal court file or require that filings protect privacy, page 6, lines 13-17;
- Consensual incest. If a case is based on incest (not force), the victim must be a minor and the respondent at least four years older at the time of the assault, page 2, lines 25-27;
- Married parties. If the parties are married, there cannot be an action unless there is a conviction or the rape occurred while a protective order is in place, page 3, lines 14-22. This omits a provision of the 2017 bill that also permitted an action if the parties had a separation agreement when the rape occurred;
- Procedural details. Language requiring that a respondent answer in 30 days was stricken, notice and a right to be heard prior to a temporary custody determination was added, and respondents must be advised that they do not have to testify and this cannot be held against them.

**Maryland's Family Law should support women who become pregnant as a result of rape and choose to have the child.** There are many reasons why a rape victim who becomes pregnant as a result of rape might choose to carry the pregnancy to term. Some are morally opposed to abortion. Others – particularly very young women – may not realize they are pregnant until further along in a pregnancy. Others decide to have the child for their own reasons.

**Our state's policy is currently silent about pregnancy from rape. The time has come to make it clear that we support sexual assault survivors and their children.**

**The Maryland Coalition Against Sexual Assault urges the  
Judiciary Committee  
to report favorably on House Bill 1**

