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2009 Legislative Priorities - Preliminary

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes all of the State's eighteen 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.

The Maryland Coalition Against Sexual Assault (MCASA) supports legislation that promotes justice for survivors of sexual violence, accountability for offenders, and protection for the general public. MCASA responds to policy questions and legislative initiatives throughout Maryland's legislative session (January-April).

We expect our priority list may expand, but 2009 priorities currently include the following:

Support

3rd Degree Sex Offense and Person in Position of Authority

A bill to prevent sexual contact between children and persons with authority over the child (such as coaches and clergy) during "off-hours," when the child is not in the perpetrator's care. Lead Sponsors: Delegates Cheryl Glenn and Kris Valderrama, Senator Anthony Muse.

Juvenile Sex Offenders

MCASA will be closely monitoring efforts to address treatment, monitoring and registry of juvenile sex offenders. We expect at least two bills to impact juvenile sex offenders.

Frosh/Dumais bill

Last session a bill sponsored by Senator Brian Frosh and Delegate Kathleen Dumais gave courts the option of putting certain juvenile offenders on the sex offender registry if there was substantial risk they would re-offend. This bill ran into serious opposition in the Judiciary Committee. MCASA expects that a new version of this bill will be drafted. MCASA is likely to support the bill but is waiting for specific language

Adam Walsh compliance bill - Oppose

The administration may re-introduce a bill to bring Maryland into compliance with the federal Adam Walsh Act. MCASA has opposed this bill because it would place juvenile offenders on the sex offender registry retroactively; many of these offenders are also victims. We are concerned that placing juvenile victim/offenders on the registry retroactively is fundamentally

unfair. Additionally, there are serious concerns about whether this would increase community safety or, perversely, decrease safety by decreasing juvenile prosecution and treatment. Finally, the fiscal impact of complying with the federal act appears to be significantly higher than the threatened penalty.

STOP Compliance – Polygraphing Sexual Assault Survivors

The federal Violence Against Women Act requires states to have the policy or practice that prohibits polygraphing sexual assault survivors as a condition of prosecution. While we are hopeful that the executive branch will be issuing a formal policy address this issue, Delegate Karen Montgomery plans on introducing a bill to create this prohibition if the administration's actions are insufficient. MCASA is appreciative of Delegate Montgomery's leadership on this issue. If Maryland does not come into compliance with this federal mandate it risks losing all S.T.O.P. funding. The federal S.T.O.P. (Services and Training for Officers and Prosecutors) Violence Against Women Formula Grant Program provides approximately \$1.8 million in grant funds to 63 Maryland organizations/agencies that encourage the development and combat violent crimes against women and to develop and enhance victim services that address violence against women, including sexual assault. This funding is critical to Maryland's efforts to end sexual violence.

Guns and Protective Orders

Legislation to addressing gaps in Maryland's protective order statute is expected to be introduced. There are several outstanding issues:

- 1) prohibiting possession of all firearms if a protective order has been entered against the gun user (current law prohibits possession of *registered* firearms);
- 2) requiring courts to order that a respondent turn over guns (current law give courts the discretion to order this);
- 3) allowing courts to remove firearms at the temporary protective order stage

The Legislative Action Team of the Family Violence Council is working with the O'Malley administration and hopes to have at least some of these provisions included in an administration bill. Many victims of domestic violence are sexually assaulted and eligible for protective orders; victims of child sexual abuse may also seek protective orders. MCASA looks forward to working with its sister domestic violence advocates on these important bills.

Sex Offender Registry Loophole

In 2001, the General Assembly passed legislation requiring that child sex offenders who committed a crime prior to October 1, 1995, and all sex offenders who committed a crime prior to July 1, 1997, must register if they were in custody or supervision on October 1, 2001. While the intent of the 2001 law appears to be to require that sex offenders incarcerated after a certain date be required to register, the law left a gap. A sex offender who committed a crime before October 1, 1995 but who was convicted and under supervision *after* October 1, 2001 does not have to register.

Child sex abuse and other sex crimes are often reported and convicted years after they occurred. The gap in the 2001 law is allowing these offenders to evade the registration requirements. A bill to close this gap almost passed last session. MCASA supports this bill. Sponsors: Delegate Chris Shank, Senator Nancy Jacobs.

Budget

State funding for rape crisis & recovery centers has remained flat since 2002. MCASA remains committed to monitoring funding and preventing further cuts as the State faces a serious fiscal crisis.

Custody

MCASA will continue to monitor efforts to codify Maryland's custody statute. We will support efforts to include provisions requiring that a court consider sexual assault and other violence by one parent against another and that a court consider sexual and other abuse against a child. We will continue to oppose presumptions of joint custody.

Oppose

Offensive Contact/Third Degree Assault/Disorderly Conduct – HB 917

House Bill 917 was proposed in several versions during the 2008 session. The bill attempted to create a low-level type of assault. MCASA raised concerns regarding the bill's impact on dating violence, sexual assault, and domestic violence. The Maryland Network Against Domestic Violence and the State's Attorneys Association also opposed the various versions of this bill. We anticipate that all stakeholders, including MCASA, will be working together during the interim to resolve their differences. Lead Sponsor: Delegate Victor Ramirez.

Other Potential Issues

A number of other issues have been discussed by various groups and are likely to require MCASA's attention:

- 1) Sex offenders in nursing homes. We anticipate a bill prohibiting sex offenders from living in nursing homes. While protection of nursing home residents from sex offenders is, of course, something MCASA supports, a number of other advocates have raised legitimate concerns. The Alzheimer's Association has expressed concern about any policy that would leave its constituents without needed care. Others have discussed the need to have a "universal precaution" approach to sexual assault.
- 2) Past bad acts. We anticipate a bill to allow jurors to consider certain past bad acts in child sexual abuse cases may be resurrected. MCASA strongly supports the policy embodied in this bill, but advocates for a new approach to make the bill viable.
- 3) Statutory rape. There has been some interest in moving so-called "statutory" offenses from the sex offense and rape statutes to its own section in the sex crimes subtitle. This technical amendment would help support changes in the non-statutory sections. Additionally, there has been discussion of dividing statutory rape into degrees or creating different penalties for first and subsequent offenses. The issue of whether statutory rape should be the basis for inclusion on the sex offender registry may also be raised. Action in this area implicates federal funding. MCASA is continuing to monitor this issue.
- 4) Criminal Injuries Compensation. There were a number of bills last year regarding criminal injuries compensation. These included bills regarding confidentiality of claims and a proposal to move CICB proceedings to the Administrative Hearings Office. We expect some of these to return and will continue to monitor them. These claims often provide one of the only sources of financial compensation for sexual assault survivors.