



SB0807 - Criminal Procedure – Victims of Sexually Assaultive Behavior – Waiver of Rights - Prohibition

Presented to the Hon. Will Smith and Members of Senate Judicial Proceedings Committee

March 5, 2020 12:00 p.m.

POSITION: SUPPORT

NARAL Pro-Choice Maryland urges the Senate Judicial Proceedings Committee to issue a **favorable report on SB0807 Criminal Procedure – Victims of Sexually Assaultive Behavior – Waiver of Rights - Prohibition**, sponsored by Senators Shelly Hettleman and Sarah Elfreth.

Our organization is an advocate for reproductive health, rights, and justice. Those who have experienced sexual assault—typically termed ‘survivors’ of sexual assault—deserve opportunities to regain their physical, mental, and emotional wellbeing, as well as retribution and justice against those who have perpetrated harm against them. To achieve true reproductive justice, we must support survivors—those who have had their bodily autonomy, safety, power, and control taken away from them during an assault. Depending on the agency’s ability to holistically support survivors, a survivor’s healing can be bolstered or undermined by various justice procedures. For some, reporting an assault to law enforcement can prevent a situation from escalating further and aid in the investigative process. [Among female survivors who reported to law enforcement between 2005 and 2010](#), 28% were hoping to protect themselves and their household from future crimes by the offender, 25% wanted to stop the incident or prevent escalation, and 21% felt they should report to improve police surveillance of sexual violence.ⁱ However, reporting to law enforcement does not appear to be a direct solution for all: among female survivors who did not report their assault during this time period, 13% believed the police would not do anything to help and another 20% were afraid of retaliation due to their assault report.ⁱ Ultimately, survivors who blame themselves for their assaults, feel afraid for their safety, and worry about lack of action being taken must *also* feel supported if they choose to pursue justice against their perpetrator. Support offered by a variety of resources in a survivor’s community, including support from law enforcement throughout a criminal investigation, is undoubtedly essential.

According to a 2000 study, the lifetime prevalence of sexual assault is 39%—meaning that 39% of people will be assaulted over their lifetime.ⁱⁱ According to estimates by the Rape Abuse and Incest National Network (RAINN), out of every 1000 sexual assaults, 995 perpetrators will not be incarcerated for their crimes.ⁱⁱⁱ Looking at Figure 1, only 23% of sexual assaults are reported to police. Of those reported,

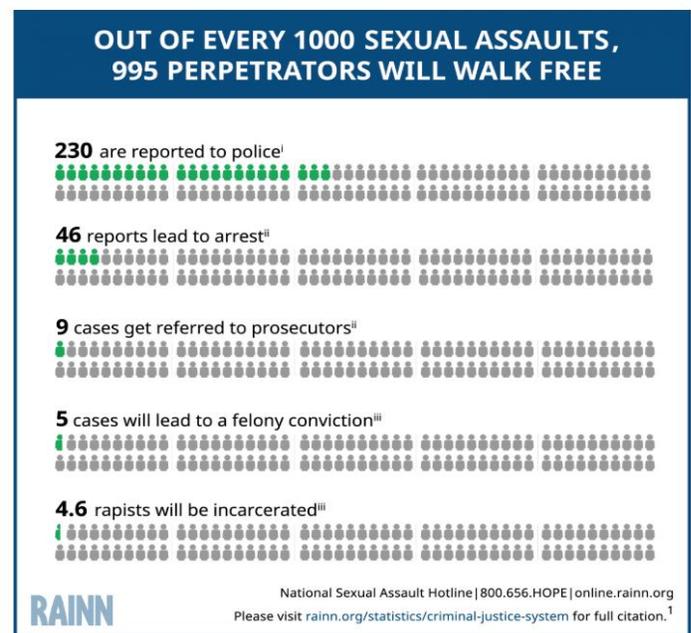


Figure 1: Retrieved from the [Rape Abuse and Incest National Network](#)

only 20% will lead to arrest. Thus, 80% of the cases brought to law enforcement agencies do not lead to arrest of a perpetrator, either due to no investigation taking place or unsuccessful attempts at investigation. The 23% of survivors who report to law enforcement *must* be taken seriously, supported, and listened to by law enforcement agencies.

In 2017, Maryland counties saw 1,773 reported rape cases (Fig. 2).^{iv} Within the statewide landscape of inconsistent crime data, sexual assault is consistently underreported and, thus, under-acknowledged. A [January 2020 article in the Carroll County Times](#) found inconsistencies across Maryland rape statistics at the county, state, and national levels, particularly in Prince George’s County.^v Despite these inconsistencies, the number of rape cases have generally been consistent or increasing between 2016 and 2017.^{iv} Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Charles County, Frederick County, Harford County, Howard County, Washington County, Wicomico County, and Worcester County all experienced increases in reported rapes. According to the [Maryland Coalition Against Sexual Assault](#), these numbers do not necessarily mean that more sexual assaults have occurred, but could highlight increased levels of reporting these events.^{iv}

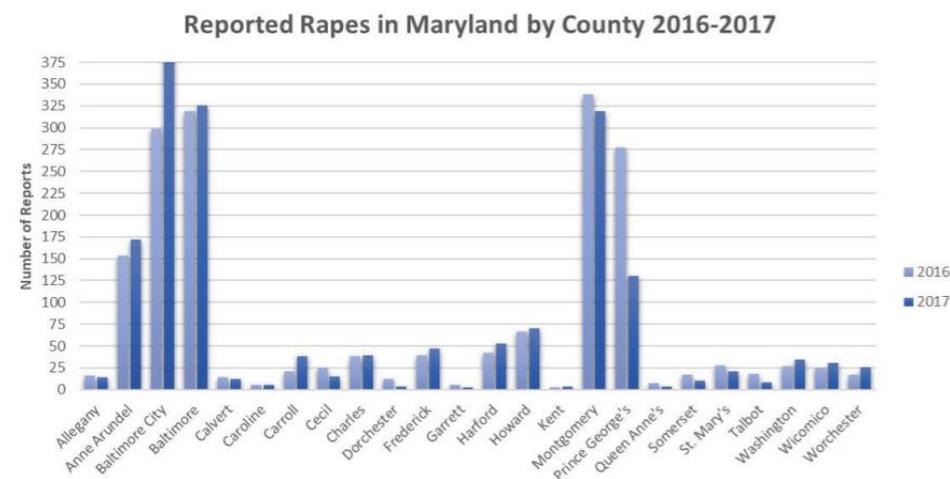


Figure 2: Retrieved from the [Maryland Coalition Against Sexual Assault](#), using data from the [Maryland Statistical Analysis Center](#).

In a country where more than 75% of sexual assaults are unreported,ⁱⁱⁱ there must be continued trust in law enforcement to handle the numbers of cases already reported. To highlight capacity to support survivors who report to law enforcement, Maryland law enforcement agencies must clarify their policies and procedures. According to statewide guidelines for reporting a rape or sexual assault, the sensitization of the

criminal justice system has been a continued priority, since law enforcement agencies are expected to use specially trained investigators who are “sensitive to the needs and concerns of a sexual assault victim.”^{vi} However, in light of recent concerns involving [the alleged concealing of rape cases in Baltimore County](#)—including unnecessary dismissal of cases, ignorance of evidence, and victim deception—it is undeniable that Maryland law enforcement needs clear guidance surrounding the rights of survivors to criminal investigations.^{vii}

A 2015 report by the [Michigan Domestic and Sexual Violence Prevention and Treatment Board](#) noted best practices for law enforcement responding to sexual assault. These include not asking a survivor if they wish to pursue prosecution, avoiding subjecting a survivor to a “lengthy or detailed interview, nor...’test[ing]’ for credibility,” and not making judgments about the survivor’s credibility based on their demeanor, narrative, or presence.^{viii}(pg 6) Ultimately, the board noted that “it is neither reasonable nor realistic to expect the victim to be able to make an informed decision about their future involvement in the criminal justice” at an early investigative stage.^{viii}(pg 5) Similar best practices for law enforcement are reflected by the International Association of Chiefs of Police (IACP). In their [2018 report on sexual assault investigative strategies](#), the IACP

proclaimed that “a victim’s reluctance to participate [for various reasons] is neither indicative of a false report nor reason to forego a strong, evidence-based investigation.”^{ix}(pg 2) IACP further established that the survivor’s right to accept or decline services from law enforcement should not prevent a thorough investigation from being conducted.

Importantly, IACP established that “**pressuring a reluctant victim to sign a form stating that they are not interested in prosecution and will not hold the agency accountable for stopping the investigation is poor practice and is potentially damaging to an agency**” (emphasis added).^{ix}(pg 6) SB0807 prevents this very practice from occurring, since the “private right of action” of the victim is central for every agency. The knowledge that perpetrators could be prosecuted often encourages survivors to report their assaults.^x Increased trust and transparency of investigative and criminal justice processes allows for a survivor a restored sense of control.^{ix}

Ultimately, law enforcement agencies *must* treat survivors with dignity, respect, and sensitivity throughout their interactions with the criminal justice system.^{xi} SB0807 undoubtedly establishes the foundation for tangible support for survivors within law enforcement agencies, and retroactive application will serve to right the wrongs done to survivors who have unknowingly limited their right to action. For these reasons, NARAL Pro-Choice Maryland **urges a favorable committee report on SB0807**. Thank you for your time and consideration.

ⁱ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. *Female Victims of Sexual Violence, 1994-2010*. Michael Planty, Lynn Langton, Christopher Krebs, Marcus Berzofsky, and Hope Smiley-McDonald. NCH 240655. Washington DC: Bureau of Justice Statistics, 2016. Online, <https://www.bjs.gov/content/pub/pdf/fvsv9410.pdf> (Accessed March 3, 2020).

ⁱⁱ Feldhaus KM, Houry D, Kaminsky R. “Lifetime sexual assault prevalence rates and reporting practices in an emergency department population.” *Annals Emergency Medicine* 36, no. 1 (2000). Quoted in Read, KM, Kufera, JA, Jackson, C, Dischinger, PC. “Population-based study of police-reported sexual assault in Baltimore, Maryland.” *American Journal of Emergency Medicine* 23 (2005): 273-278. Accessed March 3, 2020. [https://www.ajemjournal.com/article/S0735-6757\(05\)00080-X/fulltext](https://www.ajemjournal.com/article/S0735-6757(05)00080-X/fulltext)

ⁱⁱⁱ “The Criminal Justice System: Statistics”, rainn.org, Rape Abuse and Incest National Network, 2020, accessed March 3, 2020, <https://www.rainn.org/statistics/criminal-justice-system>

^{iv} “Reported Rapes in Maryland by County 2016-2017,” mcasa.org, Maryland Coalition Against Sexual Assault, last revised in February 2020, accessed March 3, 2020, https://mcasa.org/assets/files/Reported_Cases_of_Rapes_by_Counties_2016-2017_Fact_Sheet_2.24.2020.pdf. Data sourced from “Violent Crime and Property Crime by County: 1975 to Present,” opendata.maryland.gov, Maryland Council on Open Data, last revised January 2020, accessed March 3, 2020, <https://opendata.maryland.gov/Public-Safety/Violent-Crime-Property-Crime-by-County-1975-to-Pre/jwfa-fdxs/data>

^v Davis, Elliott. “Maryland crime data highlights inconsistent statistics; recent assault data for Carroll County differs with FBI, MSP.” *Carroll County Times*, January 4, 2020. Accessed March 3, 2020. <https://www.baltimoresun.com/maryland/carroll/news/cc-cns-crime-data-20200105-kffkcv6z5hdzpzpsyz7arzhta-story.html>

^{vi} “Reporting a Rape or Sexual Assault” Annapolis.gov, Maryland Sexual Assault and Rape Prevention Program, accessed March 3, 2020, <https://www.annapolis.gov/669/Reporting-a-Rape-or-Sexual-Assault>

^{vii} Moyer, Justin. “Students protest after Maryland lawsuit alleges ‘shameless corruption’ in concealing rape cases.” *The Washington Post*, September 18, 2018. Accessed March 3, 2020. <https://www.washingtonpost.com/dc-md-va/2018/09/18/students-protest-after-maryland-lawsuit-alleges-shameless-corruption-concealing-rape-cases/>

^{viii} Michigan Domestic and Sexual Violence Prevention and Treatment Board. *Michigan Model Policy: The Law Enforcement Response to Sexual Assault: Adults and Young Adults*. Published with funding from the Office on Violence Against Women, US Department of Justice, April 2015. Accessed March 3, 2020. https://www.michigan.gov/documents/mdhhs/Michigan_Model_Policy_550586_7.pdf

^{ix} International Association of Police Chiefs. *Sexual Assault Incident Reports: Investigative Strategies*. Published with funding from the Office on Violence Against Women, US Department of Justice, 2005. Accessed March 3, 2020. <https://www.theiacp.org/sites/default/files/all/s/SexualAssaultGuidelines.pdf>

^x Read, KM, Kufera, JA, Jackson, C, Dischinger, PC. “Population-based study of police-reported sexual assault in Baltimore, Maryland.” *American Journal of Emergency Medicine* 23 (2005): 273-278. Accessed March 3, 2020. [https://www.ajemjournal.com/article/S0735-6757\(05\)00080-X/fulltext](https://www.ajemjournal.com/article/S0735-6757(05)00080-X/fulltext)

^{xi} Maryland Crime Victims Resource Center. “Your Rights as a Victim in District Court.” Mdcrimevictims.org, MCVRC, 2020. Accessed March 3, 2020, <https://www.mdcrimevictims.org/victim-services/legal-rights-in-the-criminal-justice-system/your-rights-as-a-victim-in-district-court/>