

**New Jersey Coalition Against Sexual Assault
Testimony on behalf of A231, Civil Rape Shield
Assembly Judiciary Committee
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Testimony submitted by,
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Thank you to the members of the Assembly Judiciary Committee for hearing this bill. The New Jersey Coalition Against Sexual Assault (NJCASA) supports the creation of a civil rape shield law in New Jersey through A231. A civil rape shield law in New Jersey would protect the privacy of survivors and help keep the focus on the actions of the perpetrator. One of the reasons that only 15-20% of sexual assaults are reported to law enforcement authorities is that survivors of sexual violence fear being re-victimized in the criminal and civil justice systems through gratuitous inquiry into their personal lives. A civil rape shield law would encourage more survivors to come forward to report their assault and take other legal actions.

The New Jersey Coalition Against Sexual Assault would like to see this bill strengthened to better ensure protections to survivors of sexual violence. Given some of the issues that were created with the criminal rape shield since the NJ Supreme Court handed down the Garron case in 2003, NJCASA recommends enhancements in two areas:

- The victim's history with the defendant (1(a))
- Evidence of the victim's sexual conduct prior to one year before the date of the offense. (2)

Regarding the availability of evidence on the victim's sexual history with the defendant, it is not clear if the survivor's history of sexual conduct with the defendant is completely available to the court or if it is subject to a court's decision as to the relevance of the evidence, and if so, what the standard would be. Given that most sexual assaults occur by someone known to a survivor, allowing evidence of the survivor's sexual conduct with the defendant without further checks on that evidence still dampens the survivor's willingness to report or otherwise take legal action around a sexual assault as much of her sexual conduct would still seem open to discovery. Furthermore, decades of data and research indicate that previous consensual sexual activity among parties does not preclude sexually violent behavior between the parties, therefore pointing towards the necessity of a high standard for the introduction of such evidence.

Ideally, the New Jersey Coalition Against Sexual Assault recommends the clear and convincing standard for allowing evidence of the victim's sexual conduct to be applied to all of the survivor's



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sexual conduct, with the defendant and with anyone else. NJCASA also recommends that evidence of the survivor's sexual conduct within the previous year be subjected to the clear and convincing standard, rather than only sexual conduct prior to one year before the date of the offense.

Again, the New Jersey Coalition Against Sexual Assault supports the creation of a civil rape shield law in New Jersey. A231 would help survivors feel more comfortable reporting sexual assaults and taking action against offenders as it would help keep much irrelevant evidence of prior sexual conduct out of discovery. NJCASA asks you to pass this bill, with the changes we recommend above to further strengthen protections to survivors. Thank you.