

SB0303 2022-02-04 Testimony of FreeState Justice t

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February 4, 2022

The Honorable Delores Kelley
Senate Finance Committee
3 East
Miller Senate Office Building
Annapolis, Maryland 21401

Testimony of FreeState Justice

IN SUPPORT OF

SB303: Public Health - Nonconsensual Condom Removal - Prohibition

To the Honorable Chair Delores Kelley, Vice Chair Brian Feldman, and esteemed members of the Finance Committee:

FreeState Justice is Maryland's lesbian, gay, bisexual, transgender, and queer (LGBTQ) civil rights advocacy organization. Each year, we provide free legal services to dozens, if not hundreds, of LGBTQ+ Marylanders who could not otherwise be able to afford an attorney, as well as advocate more broadly on behalf of the LGBTQ+ community.

We write today in support of Senate Bill 303, which will empower victims to redress harms done to them through the nonconsensual removal of a condom during an otherwise consensual sexual encounter. Popularly known as "stealthing," nonconsensual condom removal is an act of sexual violation by which the victim's agency is ignored, subjecting them not only to emotional distress and trauma, but also the potential risk of STI transmission and/or pregnancy, which can have devastating physical and financial impacts.

While the range of safer sex options has dramatically expanded over the past several decades, barrier protection (e.g., condoms) remains an essential component in the management of many LGBTQ+ individuals' sexual health. Low-income LGBTQ+ Marylanders

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especially are less likely to be insured or have a primary healthcare provider, severely limiting their access to birth control, pre- and post-exposure prophylaxis for HIV (PrEP and PEP), and other preventative medications and treatments. Many of these LGBTQ+ community members (who are among those least able to afford a health problem or an unexpected pregnancy) are dependent on inexpensive or free condoms—as well as their partner’s respect for sexual consent. Stealthing not only violates that consent, it also denies individuals the ability to make informed decisions about their sexual and reproductive healthcare.

SB 303 would enable victims of stealthing to address the materials harms of this violation through civil actions, in which they could be awarded compensatory damages for the violation they have suffered. Awarding monetary damages shifts the focus of the law from punishing the perpetrator to instead supporting the victim’s agency and personal needs for healing.

Although stealthing is a form of intimate partner violence (IPV), addressing it only through a lens of criminality reduces the likelihood victims will come forward. LGBTQ+ people of color continue to face significant marginalization at the hands of our criminal justice system, leaving many both afraid to report an incident and doubtful of the likelihood a report would result in justice. Importantly, SB 303 neither precludes nor requires criminal interventions in addition to the civil action; in doing so, it respects the agency and autonomy that victims of stealthing have been denied by others.

By working to prevent stealthing and to enable victims to address the direct harms stealthing has caused in their lives, SB 303 would contribute to public health in the state of Maryland, while recognizing the fundamental human dignity of those who have been victimized.

For these reasons, FreeState Justice urges a favorable report on Senate Bill 303.

Sincerely,

Bianca Beebe, MPH
Policy Fellow
FreeState Justice

SB303_LAM_FAV.pdf

Uploaded by: Clarence Lam

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Support SB 303
Public Health - Nonconsensual Condom Removal - Prohibition

Why SB 303 is needed?

- Currently, Maryland does not have any law that expressly prohibits nonconsensual condom removal, commonly known as “stealthing.”¹
- It is estimated that 6% males aged 18-25 years old have purposely removed a condom in a nonconsensual manner.²
- It is estimated that 5% of males and 19% of females aged 18-25 years have been victims of nonconsensual condom removal.²
- While there is less public awareness about this issue, nonconsensual condom removal is a form of sexual assault as it a disempowering and demeaning violation of a sexual agreement.
- Nonconsensual condom removal potentially exposes the individual who experiences such a violation to sexually transmitted infections and pregnancy.
- California was the first state to pass a law creating civil penalties for stealthing. Legislators in New York, New Jersey, Massachusetts, and Wisconsin have proposed similar bills.

What SB 303 does?

- SB 303 prohibits an individual from causing contact of an “intimate part” from a sexual organ from which a condom has been nonconsequally removed.

¹ [§ 3-308. Sexual offense in the fourth degree.](#)

² [Stealthing Perpetration and Victimization](#)

- SB 303 allows an individual who experiences such a violation to file a civil action against the violator, and a court may award compensatory damages, injunctive relief, reasonable attorney's fees, and litigation expenses, or any other appropriate relief.

What SB 303 accomplishes?

- SB 303 clarifies that the nonconsensual removal of a condom is a prohibited act which has previously been unclearly captured in existing code.
- This bill increases protection for survivors of sexual assault, which disproportionately impacts marginalized communities.³
- This bill also increases protection for sex workers, who are at elevated risk of experiencing violations of a sexual agreement in their line of work.
- Making nonconsensual condom removal a civil offense, rather than criminal offense, empowers the survivor to decide whether or not to file the lawsuit.
- This bill is another step towards mitigating rape culture and enhancing remediation opportunities for sexual assault survivors in the state of Maryland.

³ <https://stoprape.humboldt.edu/statistics>

Stealthling - MCASA 2022 - SB303 FWA.pdf

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Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 303 Only if Amended
Lisae C. Jordan, Executive Director & Counsel
February 8, 2022

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. MCASA urges the Finance Committee to issue a favorable report on Senate Bill 303 only if amended.

Stealthing is the practice of removing a condom without a partner's consent and continuing to engage in sexual activities. A [study](#) published in the National Library of Medicine in 2019 found that 12% of women had experienced stealthing. An [Australian study](#) from the same year suggests it's even more widespread: one in three women and one in five men reported being victims of stealthing. Women reporting being stealthed were more likely to be a sex worker. There are videos and other materials on the Internet providing instruction on how best to stealth and prevent one's partner from knowing a condom has been removed.

Without question, stealthing is an outrageous sexual, physical, and psychological violation that can lead to unwanted pregnancy, sexually transmitted infections (STIs), and serious emotional distress. SB303 would create a separate cause of action for stealthing, including damages, attorneys fees, injunctive, and other relief. MCASA appreciates the intent of the sponsor and applauds efforts to stop stealthing. Stealthing is a type of (sexual) assault and assaults are currently torts and subject to civil lawsuits. SB303 adds the availability of attorneys fees, an improvement over current law. If this approach is used for stealthing, it should be available for all sexual assaults.

Proving a stealthing case would also present significant challenges in the courtroom, and the civil action alone may do little to actually deter the practice. To help end stealthing, MCASA respectfully suggests that sexual assault prevention and education programs include information on stealthing awareness. Moreover, we note that the Department of Health has cut funding for many community based sexual assault prevention programs throughout the State and urge the General Assembly to consider action to restore and increase funding to sexual assault prevention.

**The Maryland Coalition Against Sexual Assault urges the
Finance Committee to
report favorably on Senate Bill 303 Only if Amended**