



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 1165 with Amendments
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March 26, 2024

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. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 1165 with Amendments.

Senate Bill 1165 – Repeal of HIV-Specific Law on Intentional Transmission

Senate Bill 1165 would repeal HIV-specific provisions criminalizing knowing transmission or attempted transmission of the HIV virus and imposing a penalty of up to 3 years imprisonment, a \$2500 fine, or both. **MCASA fully supports amending the law to strike the reference to HIV alone**, but respectfully asks that the Committee adopt amendments to continue to criminalize conduct to transmit an infectious or contagious disease with the specific intent to harm another person.

One of the risks faced by rape survivors is HIV infection.¹ Studies of HIV transmission have been based on consensual sexual activity, and do not account for the violence of rape, so it is unclear what the risk level is, however, 91.9% of rape victims reported some degree of initial fear or concern for contracting HIV and 72.6% reported extreme fear or concern for contracting HIV.²

Sexual assault programs and prosecutors in Maryland have reported cases of sexual assault where perpetrators have intentionally attempted to infect their victims with HIV. These have included situations where perpetrators have told the victim they are infected during the assault. It is appropriate to have an additional criminal charge available for this exceeding cruel and demeaning behavior. However, MCASA agrees with the consensus that Health General §18-601.1 and a law specifically targeting HIV is problematic and interwoven with discrimination against the LGBTQ+ community.

¹ Draughon, J. (2012). *Sexual Assault Injuries and Increased Risk of HIV Transmission*.

² Resnick, H., Monnier, J., Seals, B., Holmes, M., Walsh, J., Acierno, R., Kilpatrick, D., (2002). *Rape-Related HIV Risk Concerns Among Recent Rape Victims*.

Public Health officials also report that statutes singling out HIV increase stigma, exacerbate disparities, and may discourage HIV testing.³ This is particularly relevant for sex workers, many of whom are victims of sex trafficking, and who may avoid testing for HIV due to §18-601.1.

MCASA firmly believes that Health General §18-601.1 should be repealed and replaced due to the discriminatory history and application of an HIV specific law and the serious public health concerns the statute raises. **However, we also suggest that the law should not be simply repealed without being replaced. MCASA supports amendments to move the current law into the criminal law article and prohibit actions which are made with the specific intent to harm another by transmitting any infectious or contagious disease.** We note that inserting a specific intent requirement will exclude transmission made without the intent to harm, for example, when couples with different HepC status have sexual relations and the virus is transmitted. HIV should not be singled out, but other infectious diseases such as hepatitis C, herpes, or other sexually transmitted diseases should be included in the law. Some colleagues have expressed a preference to exclude respiratory transmission from intentional transmission provisions, and MCASA has no objection to this. We also note that intentional transmission of disease with the intent to harm is a concern of MCASA partners, such as law enforcement and health care workers, and we support efforts to help protect them.

Regarding some of the statements that have been made regarding other sections of the code: Maryland also has a generally applicable statute prohibiting being in a public place without taking proper precautions against exposing other individuals to the disease, or transferring to another individual any article that has been exposed to the disease without thoroughly disinfecting the article. Health General §18-601. This section, however, does not cover intentional transmission. Other crimes with adjacent relevancy includes prohibiting attempted poisoning (Crim.Law §3-213), contamination of water, food, or drink (Crim.Law §3-214), and ingestion of bodily fluids (Crim.Law §3-215). None of these, however, capture the direct intent to harm via infection. Finally, an advice email from counsel to the General Assembly opines that transmitting or attempting to transmit HIV would fall under reckless endangerment, but not assault, law and there are some prosecutors' offices that have used this approach. MCASA appreciates this recent advice, and defers to the Committee regarding whether this is sufficient for other types of infectious diseases. We also note that proposed amendments would either stand alone or be in addition to other charges and would apply only if there was specific intent to harm. Other states have taken approaches similar to the proposed amendments, see hivlawandpolicy.org (e.g., Missouri: removed most references to HIV and replaced them with “a serious infectious or communicable disease”; California: prosecution requires specific intent to transmit couple with conduct likely to transmit and transmission results).

For these reasons, MCASA respectfully requests amending SB1165 with the following language:

Repeal Health General - §18–601.1. and insert into the Criminal Law Article:

Criminal Law §XXX

(a) (1) An individual who has [the human immunodeficiency virus] **AN INFECTIOUS**

³ <https://www.cdc.gov/hiv/policies/law/states/exposure.html>

OR CONTAGIOUS DISEASE may not knowingly transfer or attempt to transfer [the human immunodeficiency virus] **THE INFECTIOUS OR CONTAGIOUS DISEASE** to another individual **WITH THE SPECIFIC INTENT TO HARM THE INDIVIDUAL.**

(2) THIS SECTION SHALL NOT APPLY TO REPIRATORY TRANSMISSION OF AN INFECTIOUS OR CONTAGIOUS DISEASE.

(b) A person who violates the provisions of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,500 or imprisonment not exceeding 3 years or both.

(C) (1) UNLESS SPECIFICALLY CHARGED BY THE STATE, A VIOLATION OF THIS SECTION MAY NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER CRIME.

(2) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE IMPOSED SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 1165 with Amendments**

