



Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277
Fax: 301-565-3619

For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
mcasa.org

Testimony Supporting House Bill 485 ONLY if Amended
Lisae C. Jordan, Executive Director & Counsel
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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 Judiciary Committee to report favorably on House Bill 485 only if amended.

House Bill 485 – Repeal of HIV-Specific Law on Intentional Transmission

House Bill 485 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, there is 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 no longer opposes repeal of §18-601.1 due to the discriminatory history and application of an HIV specific law and the serious public health concerns the statute raises. **However, this does not mean that the law should be simply repealed. 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. 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. This is punishable by up to one year in prison, a \$1,000 fine, or both. 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.

For these reasons, MCASA respectfully requests amending HB485 with the following language:

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

Criminal Law §XXX

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

(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.

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

(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
Judiciary Committee to
report favorably on House Bill 482 only if Amended**

