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## Working to end sexual violence in Maryland

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### **Information on House Bill 287** **Lisae C. Jordan, Executive Director & Counsel** February 7, 2023

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.

#### **House Bill 287 – Repeal of HIV-Specific Law on Intentional Transmission**

House Bill 287 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. The law is rarely used.

One of the risks faced by rape survivors is HIV infection.<sup>1</sup> 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.<sup>2</sup>

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.

Public Health officials also report that statutes singling out HIV increase stigma, exacerbate disparities, and may discourage HIV testing.<sup>3</sup> 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.

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

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

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

We note that 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.

We respectfully suggest that the Committee explore options to address how to criminalize conduct with the specific intent to harm another individual by transmitting or attempting to transmit an infectious disease. While this could be accomplished by amending HB287, we defer to the Committee regarding whether a separate bill is a more appropriate vehicle and look forward to future work on this issue.

