



Working to end sexual violence in Maryland

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Information Regarding House Bill 84
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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.

86 percent of women who have spent time in jail report that they had been sexually assaulted at some point in their lives. (*Overlooked: Women and Jails in an Era of Reform*, Vera Institute, 2016) Sexual violence is so pronounced among jailed and incarcerated women that Sen. Cory Booker, (D-NJ,) has labeled the overarching phenomenon as "a survivor-of-sexual-trauma to prisoner pipeline."

House Bill 84 seeks to address the experience of victims of (primarily) family violence who commit crimes in whole or in part because of their victimization. This all too common experience is a serious problem and one that MCASA strongly supports addressing. We appreciate the conversations with the creators of this legislation last year, and the continuing conversations with the sponsors and other advocates. We also acknowledge that there have been improvements to the draft language. Nonetheless, MCASA is unable to support the specific language in HB84. There are multiple aspects of the bill that cause concern, and unfortunately the press of the legislative session does not provide us with the time needed to provide the extensive amendments we believe would be necessary. We note that additional issues have come to light since the Senate hearing and there may be others not identified here.

As an initial matter, MCASA notes that many incarcerated people are survivors of sexual assault by someone other than an intimate partner or other person enumerated by HB84 and MCASA urges that all survivors of sexual violence have access to the relief contemplated by this bill. Of the most importance to MCASA, however, is the timing of the proposed mitigation. If a person has committed a crime and domestic violence, sexual

abuse or assault or child abuse was a “significant contributing factor to the defendant’s commission of the crime”, we are at a loss on why this should not be considered **at trial by the fact-finder and be either a complete defense or significant factor for the judge or jury to consider as part of determining guilt.**

Consider the young adult woman who commits a first-degree assault against the person who sexually abused her for years, but the assault was committed when the abuser was passed out on the couch. She currently cannot avail herself of a duress defense because there is no imminent harm, but a just and fair court system should allow the factfinder to consider evidence of her abuse and her belief that violence was necessary to stop being abused. Post conviction is not the right time for this analysis – during the trial is the time this should be considered. This is what Maryland does for some survivors of human trafficking, see Criminal Law §11-306(c); this is what the state should do for victims of sexual assault, abuse, and domestic violence as well.

There are also technical concerns with the language of the bill. It is both over-inclusive and under-inclusive. MCASA strongly objects to permitting modification of a conviction for sextortion, as proposed on page 3, lines 22-23 (sextortion, Criminal Law §3-709 is contained in the extortion subtitle). We also express concern about the application of this law to trafficking of minors as would be permitted by the provisions on page 3, lines 15-18. For example, this would permit mitigation of someone who was convicted of trafficking an eight year old. MCASA does not believe this is sound policy.

On the other hand, the bill does not include many crimes that victims may be convicted of and may be very intertwined with intimate partner violence, notably assault in the 2d degree. As noted by the Maryland State Attorneys’ Association, evidence of abuse may already be considered by the court during sentencing. Codifying that the court may consider this evidence in sentencing for a list of crimes may have the unintended consequence of suggesting to the court that it may not consider this evidence when sentencing for crimes that are not listed.

In speaking with other advocates, the PATH Act as enacted in other states, such as New York, <https://legislation.nysenate.gov/pdf/bills/2019/S1077>, have been cited as a model. A brief review of the NY statute, however, shows some very important differences. The NY statute *requires* the court to hear evidence of domestic violence, while the bill proposed in Maryland *permits* it (HB84, page 4, line 6). The New York law also creates very clear direction to courts regarding sentence reduction. The Maryland law does not include this.

There are aspects of this legislation that MCASA believes are strong and we absolutely support the goals and value the bill reflects. We remain very concerned that the current language will not meet the important goals it intends to address.