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DATE: February 3, 2026
BILL NUMBER: HB 84
POSITION: Informational

The Maryland State's Attorneys' Association (MSAA) offers the following information related to House Bill 84 —Criminal Procedure—Sentencing—Domestic Violence as a Mitigating Factor (Providing Alternatives Through Healing for Justice-Involved Individuals (PATH) Act).

House Bill 84 creates a pathway for victims of domestic violence, who are convicted of certain crimes, to introduce evidence that domestic violence was a contributing factor to the commission of the crime. In addition, House Bill 84 sets up trial within a trial by requiring the domestic violence victim/defendant to prove, by a preponderance of the evidence, that domestic violence was a significant contributing factor. The domestic violence victim/defendant may produce evidence, including testimony, records, and reports, to reach this threshold. The State may introduce evidence to rebut the domestic violence victim/defendant's evidence. The proposed law requires the judge to consider the mitigating evidence but does not mandate any sentence departure or modification based on that evidence.

Currently, at sentencing, any defendant can present evidence that mitigates their crime. Prosecutors routinely see defendants, through their attorneys, friends, family members, and mental health professionals, offer statements regarding the defendant's trauma history, including, but not limited to, domestic violence, child abuse, and sexual assault. The State can make responsive arguments, and the Court can consider all or none of the information from either party when fashioning its sentence.

Moreover, the current sentencing guidelines include departure factors that, while not specific to domestic violence victimization, do address any defendant's history of trauma. Specifically, the guidelines include that the offender is or was suffering from a mental or physical condition that reduces culpability for the offense, and other circumstances of the crime and/or the offender do not warrant a sentence within the guidelines. One potential solution, in lieu of a legislative change, could be to advocate for another, more specific, departure factor.

Courts and prosecutors should consider trauma history when fashioning a sentence or making a sentencing recommendation, but the proposed law creates an additional burden on the victim/defendant to "prove" their history of trauma. Moreover, the changes proposed by the PATH Act create an unnecessary procedure for the admission of information that the law already allows.