



**Testimony for the Senate Judicial Proceedings Committee
February 26, 2020**

**SB 682 – Correctional Services – Prerelease Unit for Women –
Requirement to Operate**

**SB 683 – Corrections – Women’s Prerelease Unit – Requirements
(Women’s Prerelease Equity Act)**

**SB 684 – Correctional Services – Prerelease Unit for Women –
Facilities and Services
(Gender-Responsive Prerelease Act)**

FAVORABLE

JOSEPH SPIELBERGER
PUBLIC POLICY COUNSEL

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

FIELD OFFICE
6930 CARROLL AVENUE
SUITE 610
TAKOMA PARK, MD 20912
T/240-274-5295

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
JOHN HENDERSON
PRESIDENT

The ACLU of Maryland supports SB 682, SB 683, and SB 684. Together these bills would:

- Require the Commissioner of Corrections to operate a prerelease unit for women;
- Clarify the definition of a “prerelease unit for women,” and locate a prerelease unit in communities where women are most likely to return; and
- Provide women with evidence-based, gender-responsive services in the areas of jobs, training, education, treatment, family reunification, and other needs, and connect them with community-based service providers.

These bills are about gender equity, racial justice, and equal protection under the law.

Requirement to Operate a Women’s Prerelease Unit

The number of women entangled in the criminal justice system has grown substantially over the past few decades. Although Maryland has several lower-security prerelease units across the state that are designated for men, there are no similar facilities for women. Women only have access to prerelease services from the confines of MCI-Jessup, a maximum-security facility. Reentry services are already inadequate, but even more egregious for women in light of services available to men.

The Equal Protection Clause makes any gender-based classifications inherently suspect. When the government denies women a benefit that it



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Maryland

makes available to men, there must be an “exceedingly persuasive justification for that action.”¹ The State’s decision to deny women access to pre-release beds does not meet intermediate scrutiny, because it does not serve an important government interest through substantially related means.

The Maryland Court of Appeals has also held that the Maryland Equal Rights Amendment “flatly prohibits gender-based classifications, either under legislative enactments, government policies, or by application of common law rules, in the allocation of benefits, burdens, rights and responsibilities as between men and women.”²

Furthermore, the Court does not recognize an exception based on administrative or fiscal convenience.³ Other courts that have addressed the question of parity for male and female inmates acknowledged the fiscal reality of providing a wider range of services for a smaller number of individuals at a greater cost. Nevertheless, “such seemingly practical considerations may not be used to ‘justify official inaction or legislative unwillingness to operate a prison system in a constitutional manner.’”⁴

Recognizing the disparity in Maryland, the General Assembly passed legislation last session requiring the Commissioner of Corrections to study and report on gender-based equity in prerelease programming and facilities. The report has been released, and so it is now time to close the gap on this gender-based inequality.

Definition of Women’s Prerelease Units

Everyone exiting the prison system must be given the best chance to succeed in reentry. While women exiting the prison system face many of the same barriers as men – including housing, jobs, education, and treatment – women have unique needs as well. For instance, women are often primary or sole caretakers of children. On average, they serve shorter sentences, and are more likely to be incarcerated for low-level, non-violent offenses. For women to succeed, they must have access to prerelease services that are tailored specifically to their reentry needs.

¹ *U.S. v. Virginia*, 518 U.S. 515, 531 (1996).

² *Burning Tree Country Club v. Bainum*, 305 Md. 53, 64-65 (1985).

³ See *Ehrlich v. Perez*, 394 Md. 691 (2006).

⁴ *Glover v. Johnson*, 478 F.Supp. 1075, 1078-79 (E.D. Mich. 1979) (quoting *Gates v. Collier*, 501 F.2d 1291, 1319-20 (5th Cir. 1974)).



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Maryland

Location of Women's Prerelease Units

Accessing prerelease services from a maximum-security facility is counterintuitive to the goals of helping women adjust to new lives on the outside. For women who have survived intimate partner violence or gender-based violence, accessing these services in a coed facility may be re-traumatizing, and make further success less likely.

Women deserve to have a separate low-security level pre-release unit, located near their home communities, that would provide them with a safe place to prepare for reentry. Having equitable access to job opportunities and community-based resources, and beginning to reunite with families, friends, and support systems, would make the difficult transition easier, and present them with the best opportunity for successful reentry.

Evidence-Based, Gender-Responsive Services

Maryland's prison system has traditionally willfully neglected the individualized needs of women in its care. By requiring these services to be gender-responsive, evidence-based best practices, these bills will ensure that women are best situated to thrive when they return to their families and communities.

We therefore urge the Committee to work with the Department of Public Safety and Correctional Services to identify and reallocate the funding needed to provide equity for women upon reentry. It is the right thing to do for Maryland's women, families, and communities, who all deserve better.

For the foregoing reasons, we urge a favorable report on SB 682, SB 683, and SB 684.