



**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)
February 26, 2020**

The Howard University School of Law Human and Civil Rights Clinic writes to express support for Senate Bills 682, 683, and 684. Senate Bill 682 would require the Commissioner of Corrections to create prerelease units for women, helping to cure the complete lack of prerelease units for women in Maryland. Senate Bill 683 would define “prerelease unit for women,” requiring the prerelease unit to be placed in a zip code where the largest percentage of incarcerated persons are likely to be released and authorize increased community access. Senate Bill 684 would require that the Commissioner ensure that women in pre-release programs receive access to appropriate rehabilitative programs. Together, these bills will rectify the disparity in prerelease services offered to incarcerated women and allow these women access to programs that will aid them in transitioning back into society.

Criminal justice reform policies have largely neglected the needs of incarcerated women who often lack access to prerelease programs, despite their growing numbers. The United States is home to just 4% of the world’s female population, but accounts for nearly 30% of the world’s

incarcerated women.¹ Fueled in part by the war on drugs and post-conviction barriers to reentry, the number of incarcerated women has grown at an unprecedented rate, increasing by more than 750% between 1980 and 2017.² Women are incarcerated at a rate twice that of men;³ however, unlike their male counterparts, women are largely convicted of non-violent crimes, mainly property and drug offenses that can be linked to conditions of disadvantage.⁴

Despite posing less of a security risk than males, there are no prerelease units for incarcerated females in Maryland. Prerelease units are designed for incarcerated persons subject to the lowest security level who present the least risk of violence or escape and have established an excellent record of acceptable behavior. Over a decade ago, Maryland closed down Baltimore's Prerelease Center, the only prerelease center for women in Maryland, to save money.⁵ Conversely, Maryland runs nine prerelease units for incarcerated men including Brockbridge Correctional Facility (a medium-security institution and a minimum-security facility), the Dorsey Run Correctional Facility, the Central Maryland Correctional Facility, the Southern Maryland Pre-Release Unit, the Eastern Pre-Release Unit, the Baltimore Pre-Release Unit, the Harold E. Donnell Pre-Release Unit, and the Poplar Hill Pre-Release Unit.⁶ As a result, incarcerated women in Maryland do not have the same access to prerelease programs as men that could shorten their sentences and provide them with the resources necessary to succeed upon their release.

¹ Aleks Kajstura, "States of Women's Incarceration: The Global Context 2018." *Prison Policy Initiative*, June 2018, available at <https://www.prisonpolicy.org/global/women/2018.html>.

² The Sentencing Project, "Incarcerated Women and Girls." June 6, 2019, available at: www.sentencingproject.org/publications/incarcerated-women-and-girls/.

³ The Sentencing Project, "Incarcerated Women and Girls."

⁴ Sufirin, Carolyn, Molinas, Alexa Kolbi, and Rachel Roth. "Reproductive Justice, Health Disparities and Incarcerated Women in the United States." *Perspectives on Sexual & Reproductive Health* 213, 213 (December 2015).

⁵ Alison Knezevich, Maryland Plans a Coed Training Center for Inmates Heading Home, But Women's Advocates Say It's Not Enough, *The Baltimore Sun*, Jan 20, 2020, available at <https://www.baltimoresun.com/politics/bs-md-pol-womens-pre-release-20200127-liorw44dizfjhlzq2zw7h2ui-story.html>.

⁶ "Department of Public Safety & Correctional Services" *Maryland Manual On-Line: A Guide to Maryland & Its Government*, available at: <https://msa.maryland.gov/msa/mdmanual/22dpscs/html/22agen.html#prerelease>.

I. The Lack of Equal Access to Prerelease Units for Women in Maryland Presents Serious Concerns Under the Equal Protection Clause of the Fourteenth Amendment.

The failure to provide any, let alone equal, prerelease units for women in Maryland constitutes gender discrimination and raises concerns under the Fourteenth Amendment. The Equal Protection Clause of the Fourteenth Amendment provides that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” Classifications based on gender, including in the context of unequal prison conditions, are subject to intermediate scrutiny and require the State to show that the classification is substantially related to an important governmental objective.⁷ Saving time, money, and/or effort does not justify gender-based discrimination.⁸

Maryland does not have an important governmental interest justifying the disparity in prerelease units for women in comparison to men. Incarcerated women have an equal right to access prerelease units and services as similarly situated incarcerated men in Maryland. Due to the complete lack of prerelease units for incarcerated women in Maryland, women often have a harder time transitioning from the isolated world of incarceration back into society.

Courts have agreed. For example, in *West v. Virginia Dep't of Corrections*, the U.S. District Court for the Eastern District of Virginia found that the Virginia Department of Corrections (“DOC”) “acted unconstitutionally in providing a favorable sentencing option [a boot camp incarceration program] for male prisoners, where none was available for female prisoners.”⁹ The Plaintiff in the case plead guilty to a felony charge of possession of narcotics with intent to

⁷ *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982); *Bukhari v. Hutto*, 487 F. Supp. 1162, 1171 (E.D. Va. 1980).

⁸ *See Bukhari*, 487 F. Supp. at 1172 (holding that “such seemingly practical considerations” such as cost “may not be used to justify official inaction or legislative unwillingness to operate a prison system in a constitutional manner.”); *See also Califano v. Goldfarb*, 430 U.S. 199, 217 (1977) (finding gender-based discrimination in the distribution of employment-related benefits “based simply on ‘archaic and overbroad’ generalizations that it would save the Government time, money, and effort . . . do not suffice to justify a gender-based discrimination”).

⁹ *West v. Va. Dep't of Corr.*, 847 F. Supp. 402 (W.D. Va. 1994).

distribute and filed a motion to participate in the boot camp program. Besides being female, she met all of the requirements for admission to the program, but she was denied entry and sentenced to serve her sentence in prison. Upon review, the court concluded that the defendants could not provide “programs and favorable sentencing to male inmates solely on the basis that the problems are more pressing in male prisons and it is more cost-effective to address those problems.”¹⁰ The court held there was no justifiable reason to treat the male and female prisoners differently and doing as such was unconstitutional.

Here too, Maryland is acting unconstitutionally by providing prerelease units to men, but none to women. This has the effect of foreclosing the favorable benefits of prerelease units for incarcerated women even though they qualify for prerelease status. There is no justification for providing incarcerated males with more prerelease programs while failing to provide prerelease units for women.

II. Women Face Unique Harms as a Result of a Complete Lack of Prerelease Units for Women in Maryland.

The drastic increase in the rate of female incarceration has exposed the unique harms women face in a correctional system designed for men. The prevalence of histories of trauma, abuse, drug addiction, and mental illness is high among incarcerated women, who, while incarcerated, are exposed to violence, sexual assault, communicable diseases, poor nutrition, and poor living conditions.¹¹ Despite these high prevalence rates, women lack access to the very prerelease programs that provide the necessary counseling, treatment, and resources needed to move past any mistakes they have made. Additionally, because there are no prerelease units for women in Maryland, women who meet the requirements for prerelease are housed with women

¹⁰ *Id.* at 407.

¹¹ “Reproductive Justice, Health Disparities and Incarcerated Women in the United States.”⁴⁷ *Perspectives on Sexual & Reproductive Health* at 213-14.

with more violent histories subjecting them to a higher probability of being assaulted.¹² Failing to provide prerelease units for women, will continue to keep women confined in a correctional setting where they are exposed to these risks rather than providing the resources that would allow them to reintegrate as productive members of society.

Moreover, the harms of failing to provide prerelease units for women extend beyond the women detained to the next generation. The increase in incarceration rates of women has also led to an increase in the incarceration of mothers. From 1991 to 2007, the number of mothers incarcerated increased by 122% compared to 76% for fathers.¹³ Incarcerated women are more likely than men to be the primary caregivers for their children.¹⁴ As a result, children of incarcerated women are more likely to live with relatives or be placed in foster care than children of incarcerated men.¹⁵ This can make the life of the children with an incarcerated mother more difficult as they must deal with material hardships and familial instability stemming from their mother's incarceration, including lower standards of living, insecure housing, and frequent school changes.¹⁶ Prerelease programs allow for family reintegration and aid in rebuilding and strengthening familial ties that can counteract the negative effects of a mother's incarceration on a child.

III. Conclusion

It is time that we, as a society, take action to ensure that we are as invested in the future success of our women as we are our men. Maryland's failure to provide prerelease units for

¹² Out for Justice, "Women's Pre-Release pamphlet and fact sheet" available at <https://www.marylandjusticeproject.org/women-s-pre-release-facility>

¹³ The Sentencing Project, "Parents in Prison." Sept. 27, 2012, available at: <https://www.sentencingproject.org/publications/parents-in-prison/>

¹⁴ See Emily Halter, Parental Prisoners: The Incarcerated Mother's Constitutional Right to Parent, 108 *J. Crim. L. & Criminology* 539, 555 (2018).

¹⁵ The Sentencing Project, "Parents in Prison."

¹⁶ Parental Prisoners: The Incarcerated Mother's Constitutional Right to Parent, 108 *J. Crim. L. & Criminology* at 555.

incarcerated women raises serious concerns under the Equal Protection Clause of the 14th Amendment and has no justifiable explanation. These constitutional concerns can only be remedied by providing women with their own prerelease units that offer the same rehabilitative services to incarcerated women that are provided to incarcerated men in Maryland. For the forgoing reasons, the Howard University School of Law Human and Civil Rights Clinic urges favorable reports on Senate Bills 682, 683, and 684.