



**Testimony for the House Judiciary Committee
February 18, 2020**

**HB 608 – Correctional Services – Prerelease Unit for Women –
Requirement to Operate**

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FAVORABLE

The ACLU of Maryland supports HB 608, which would require the Commissioner of Corrections to operate a prerelease unit for women.

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This bill is about gender equity, racial justice, and equal protection under the law.

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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.

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

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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

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).



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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

Maryland’s current situation is inherently discriminatory. 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.

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, that would provide them with a safe place to prepare to reenter their communities. 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.

Recognizing this need, 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 disparity.

We 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, because it is the right thing to do. Maryland women deserve better.

For the foregoing reasons, we urge a favorable report on HB 608.

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)).