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Bill: SB0768
Title: Nondiscrimination and LGBTQ+ Individuals
Date: February 29, 2021
Committee: Judicial Proceedings Committee
Position: Support

To the Honorable Senator William C. Smith, Jr. and Esteemed Members of the Committee:

FreeState Justice is a statewide legal advocacy organization that seeks to improve the lives of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) Marylanders. We work across Maryland to provide free civil legal aid to LGBTQ Marylanders with low incomes who are facing discrimination. Almost all of our clients report challenges in accessing or securing government services due to systemic discrimination on the basis of sexual and gender identity.

The overrepresentation of lesbian, gay, bisexual, transgender, and queer or questioning (“LGBTQ”) youth in child welfare and juvenile justice systems and among youth experiencing homelessness has been well-documented for over a decade. It is also well-documented that LGBTQ individuals, especially transgender individuals and LGBTQ people of color, experience widespread prejudice and discrimination. Despite making up on 5 to 7 percent of the general population nationwide, LGBTQ youth comprise as much as 30% of youth in foster care and 20% of youth in juvenile justice systems.

Additionally, in the last year, 1-in-3 LGBTQ people reported experiencing discrimination. Maryland manages billions of dollars for programs and projects to improve the general welfare of Marylanders, including job training, housing and food assistance, and other critical services. Discriminating against LGBTQ people and not serving them in accessible and affirming ways undermines the effectiveness of these essential government services.

This bill seeks to codify nondiscrimination policies for service providers in working with LGBTQ+ individuals throughout all of Maryland’s systems of care, including child welfare services, juvenile justice, human trafficking, court services, and human services. Most importantly, this bill mandates

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appropriate training for all government-funded service providers to ensure affirming and inclusive service delivery to LGBTQ Marylanders. Protections for LGBTQ+ folks should not rely solely on which administration is in office or which administrators have been appointed to fill service positions. It is time to make these protections secure and stable by codifying them into law.

Primary reasons to provide a favorable report on this bill:

- **Broadly protects youth, families, trafficking victims, and older adults in accessing critical, essential services.** During an unprecedented public health and economic crisis, we need to ensure that all Marylanders are able to obtain access to housing, food, healthcare, and stability. Nondiscrimination protections would help ensure equal access and reduce barriers in seeking help.
- **Establishes Maryland as a national leader in comprehensively protecting its residents from discrimination.** True Colors United and the National Homelessness Law Center ranks Maryland at 29th, due in part the lack of clear comprehensive nondiscrimination protections throughout the range of youth-facing homelessness services¹. Additionally, despite various administrative regulations, there are other significant gaps in protecting LGBTQ residents. This bill would codify existing administrative regulations into law and cover the full range of human services and the court system; the first such statute in the nation.
- **Mandates appropriate training on LGBTQ+ identities.** As February 12, 2021, Maryland Department of Human Services rescinded its guidelines for placement of transgender kids, leaving youth especially vulnerably when over 78% of LGBTQ youth leave placement due to discrimination. Beyond foster care, very few government services have nondiscrimination policies, let alone consistent training on serving LGBTQ+ citizens. We need to empower our human services and justice providers to better support and affirm LGBTQ+ youth and families through appropriate training. By educating taxpayer-funded service providers, we can ensure Maryland's LGBTQ+ residents are fully protected, guaranteed equal access, and empowered.

In addition to these main reasons, current structures and policies are not adequately serving LGBTQ+ folks, especially LGBTQ youth, elders, and people of color. Additionally, the proposed legislation would codify many existing administrative policies and better align Maryland with federal policies, all while reducing economic burden of the state through the improvement of service delivery.

1. The overrepresentation of lesbian, gay, bisexual, transgender, and queer or questioning (“LGBTQ”) youth in child welfare and juvenile justice systems and among youth experiencing homelessness has been well-documented for over a decade. Despite making up only 5-7 %of the general population nationwide, LGBTQ youth comprise as much as 30% of youth in foster care² and 20% of youth in

juvenile justice systems.³ By some estimates, almost 50% of youth experiencing homelessness identify as LGBTQ.⁴

2. Transgender, gender-expansive, and gender-nonconforming (“TGNC”) youth are overrepresented in these systems at even higher rates than youth who identify as lesbian, gay, or bisexual; according to a federally funded study, in Los Angeles County, 5.6% of youth in foster care identify as TGNC, compared to only 1-2% of the general youth population.⁵
3. It is also well-documented that LGBTQ individuals, especially transgender individuals and LGBTQ people of color, experience widespread prejudice and discrimination, and that this discrimination frequently takes the form of violence, harassment, or other abuse.⁶ As a result of such stigma, LGBTQ people experience higher levels of psychological disorders and distress, physical disorders, detrimental health behaviors and substance abuse.⁷ In addition, data show that LGBTQ and TGNC young people in out-of-home care are disproportionately young people of color, and are therefore exposed to overlapping risks of discrimination.⁸
4. A 2014 report from Maryland’s own Youth Equality Alliance estimates that there are between 47,000 and 95,000 LGBTQ youth in the State, and that 90% of them had heard anti-LGBTQ language on a regular basis.⁹ The report also emphasized the need for more comprehensive policies serving LGBTQ youth in foster care and juvenile justice systems, and those experiencing homelessness.¹⁰
5. As can be expected, discrimination and harassment of children and adolescents in their formative years may have long-lasting effects on their wellbeing.¹¹ For instance, TGNC youth are at an increased risk for self-harm; and 40% of transgender people have attempted suicide, with the vast majority of those attempts (92 %) occurring before the person turned 25.¹² A simple act, such as using the correct name and pronoun for a child, can result in a 29% decrease in suicidal ideation and a 56% decrease in suicidal behavior.¹³
6. Professional organizations that advocate for the rights of children and the treatment of youth in care have repeatedly recognized the importance of affirming and supporting LGBTQ youth.¹⁴ The Administration for Children and Families and the Department of Justice’s Federal Advisory Committee on Juvenile Justice have both recognized that LGBTQ youth should be safe and protected from discrimination.¹⁵ Additionally, in a recent case before the United States Supreme Court, the American Psychiatric Association, the American Academy of Pediatrics, and 18 other physical and mental health professionals weighed in on the importance of affirmation of identity for the health of transgender youth.¹⁶
7. This legislation will make protection of LGBTQ youth explicit and complete by expanding current nondiscrimination law to include sexual orientation, gender identity, and gender expression throughout Maryland code. Explicit protection from discrimination provides clarity for professionals regarding their obligations. It is an

essential component of policy, training, and comprehensive and appropriate care for youth in the child welfare system and youth experiencing homelessness, and for affirming LGBTQ youth and families.

8. In addition to serving youth in out-of-home care, Maryland Department of Human Services (DHS) provides food and cash supplements, energy assistance, workforce development training, social services to vulnerable and older adults, and medical assistance. Such programs are essential to the LGBTQ community, which is disproportionately at-risk to face economic instability and to be reliant on food, energy, and cash assistance programs.¹⁷ In addition, research shows that large percentages of LGBTQ individuals face stigma, discrimination, and harassment when accessing health care,¹⁸ employment,¹⁹ and other social services, including services to older adults.²⁰
9. In addition, the legislation would put all Maryland services and programs for youth and families in the child welfare system in compliance with federal law, including Title IV-E of the Social Security Act and the federal Health and Human Services (HHS) Grants Rule.²¹
10. Importantly, HB 1088/ SB 0768 does not post a fiscal liability for the state. In fact, Maryland would see economic benefits by ensuring that the state's LGBTQ youth have meaningful opportunities for productive and fulfilling futures by finding permanent guardianship and care, experiencing successful rehabilitation, and finding and maintaining safe housing and affirming career opportunities. Finally, the state, by promulgating regulations consistent with professional standards and federal legal requirements, and ensuring agency policy and practice conform, may avoid litigation expenses in the event of a successful discrimination lawsuit against it.²²

LGBTQ Marylanders deserve to have equal access to affirming government services. Issues that state consistently works to address (homelessness, food security, unemployment, incarceration, poverty, etc.) all disproportionately impact the LGBTQ community. Additionally, current efforts to address this disproportionate impact are not working. The time has come to focus on broad and comprehensive assurance of equal access and for the Maryland to declare that it does not discriminate in any of the services it delivers, and that agents of the state are trained and equipped to work with the LGBTQ community. This legislation will establish Maryland as a national leader in serving all of its residents in effective, accessible, and affirming ways.

FreeState Justice strongly urges the Committee to issue a favorable report on SB0768.

Thank you for the opportunity to comment on this important legislation, and please do not hesitate to contact us if we can be of further assistance.

Sincerely,



Jeremy LaMaster
Executive Director

¹ True Colors United and the National Homelessness Law Center. *The State Index on Youth Homelessness: 2021*. <https://www.youthstateindex.com/maryland1>

² Laura Baams, Bianca D.M. Wilson, & Stephen T. Russell, *LGBTQ Youth in Unstable Housing and Foster Care*, 143 PEDIATRICS 1 (2019), <https://pediatrics.aappublications.org/content/pediatrics/143/3/e20174211.full.pdf>.

³ LAMBDA LEGAL, CHILDREN’S RIGHTS & CTR. FOR THE STUDY OF SOC. POLICY, *Safe Havens: Closing the Gap Between Recommended Practice and Reality for Transgender and Gender Expansive Youth in Out-of-Home Care 2* (Apr. 2017), <https://www.lambdalegal.org/publications/safe-havens> [hereinafter “Safe Havens”]; Angela Irvine & Aisha Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming, and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population*, 24 J. ON GENDER, SOC. POL’Y & THE L. 243, 247 (2016), [hereinafter “Irvine & Canfield”], http://impactjustice.org/wp-content/uploads/2016/07/irvine.canfield.jgspl_2016.pdf.

⁴ *Safe Havens* at 3 (citing Megan Martin, Leann Down, & Rosalynd Erney, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare Through Cross-System Collaboration*, CTR. FOR THE STUDY OF SOC. POLICY (2016), <https://www.cssp.org/pages/body/Out-of-the-Shadows-Supporting-LGBTQ-youth-in-child-welfare-through-cross-system-collaboration-web.pdf>).

⁵ Bianca D.M. Wilson et al., *Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles*, WILLIAMS INST. 6 (Aug. 2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf; Irvine & Canfield, *supra* note 1, at 248, 257-258; TRUE COLORS FUND & NAT’L LGBTQ TASK FORCE, *At the Intersections: A Collaborative Report on LGBTQ Youth Homelessness* (2016), <http://attheintersections.org>. See also CHILD WELFARE LEAGUE OF AM. & LAMBDA LEGAL, *Getting Down to Basics: Tools to Support LGBTQ Youth in Care* (2012), <https://www.lambdalegal.org/publications/getting-down-to-basics>; N.Y.C. ADMIN. FOR CHILDREN’S SERVS., *Safe & Respected: Policy, Best Practices, & Guidance for Serving Transgender & Gender Non-Conforming Children and Youth Involved in the Child Welfare, Detention, and Juvenile Justice Systems* (2014), http://www1.nyc.gov/assets/acs/pdf/lgbtq/FINAL_06_23_2014_WEB.pdf; Jody Marksamer, Dean Spade & Gabriel Arkes, *A Place of Respect: A Guide for Group Care Facilities Serving Transgender and Gender Non-Conforming Youth*, NAT’L CTR. FOR LESBIAN RIGHTS (2011), http://www.nclrights.org/wp-content/uploads/2013/07/A_Place_Of_Respect.pdf; Shannan Wilber, Caitlin Ryan & Jody Marksamer, *CWLA Best Practice Guidelines*, CHILD WELFARE LEAGUE OF AM. (2006), <https://familyproject.sfsu.edu/sites/default/files/bestpracticeslgbtyouth.pdf>.

⁶ See Brief for States of New York, Washington, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont and Virginia, and the District of Columbia as Amici Curiae in Support of Respondent at 22, *Gloucester Cty. Sch. Bd. v. G.G. ex rel. Grimm*, 137 S. Ct. 369 (2016) (No. 16-273), 2017 WL 2061869 (listing in appendix state public accommodation laws with protections for transgender people), https://www.aclu.org/sites/default/files/field_document/16-273_bsac_states_corrected.pdf [hereinafter “G.G. Amici Brief”]; *Karnoski v. Trump*, No. C17-1297-MJP, 2018 WL 1784464 (W.D. Wash. Apr. 13, 2018)

⁷ See Mark L. Hatzenbuehler et al., *State-Level Policies and Psychiatric Morbidity in LGB Populations*, 99 AM. J.

OF PUB. HEALTH 2275 (2009), <https://bit.ly/2DzcmMN>; Sharon S. Rotosky et al., *Marriage Amendments and Psychological Distress in Lesbian, Gay, and Bisexual (LGB) Adults*, 56 J. OF COUNSELING PSYCHOL. 56 (2009), <https://bit.ly/2R1g2JK>; Ilan H. Meyer & David M. Frost, *Minority Stress and the Health of Sexual Minorities*, in HANDBOOK OF PSYCHOLOGY AND SEXUAL ORIENTATION 252 (Charlotte J. Patterson & Anthony R. D'Augelli eds., 2013), <https://bit.ly/2OdulFO>.

⁸ *Safe Havens* at 3, *supra* note 5.

⁹ YOUTH EQUALITY ALLIANCE, *Living in the Margins: A Report on the Challenges of LGBTQ Youth in Maryland Education, Foster Care, and Juvenile Justice Systems*, 5, 8 (2014), <http://freestatelegal.org/wp-content/uploads/2013/11/YEA-Report-2014.pdf>.

¹⁰ *Id.* at 15, 20, 14.

¹¹ G.G. Amici Brief, *supra* note 7, at 28.

¹² Facts About Suicide, THE TREVOR PROJECT, <https://www.thetrevorproject.org/resources/preventing-suicide/facts-about-suicide/#sm.000olacm118rldkzr8h2n8o0wnss4> (last visited Sept. 11, 2018).

¹³ Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 J. OF ADOLESCENT HEALTH (forthcoming 2018) (manuscript at 3) (on file with author) [hereinafter “Russell et al.”].

¹⁴ See, e.g., CHILD WELFARE LEAGUE OF AM., et al., *Recommended Practices to Promote the Safety and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Youth at Risk of or Living with HIV in Child Welfare Settings* (2012), <https://www.lambdalegal.org/sites/default/files/publications/downloads/recommended-practices-youth.pdf>; AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, *Sexual Orientation, Gender Identity, and Civil Rights* (2009), https://www.aacap.org/aacap/Policy_Statements/2009/Sexual_Orientation_Gender_Identity_and_Civil_Rights.aspx; AM. ACAD. OF FAMILY PHYSICIANS, *Discrimination, Patient* (2015), <https://www.aafp.org/about/policies/all/patient-discrimination.html>; AM. MEDICAL ASS'N, *Support of Human Rights and Freedom H-65.965* (2017), https://policysearch.ama-assn.org/policyfinder/detail/*?uri=%2FAMADoc%2FHOD.xml-0-5094.xml; NAT'L ADOPTION CTR., *Adoption by Members of the LGBT Community* (2008), <http://www.adopt.org/our-policies#LGBT>; NAT'L ASS'N OF SOC. WORKERS, *Social Work Speaks: National Association of Social Workers Policy Statements* 340 (9th ed. 2012).

¹⁵ Bryan Samuels, Comm'r, Admin. for Children & Families, Info. Memorandum ACYF-CB-IM-11-03, *Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care* (April 6, 2011), <https://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf> [hereinafter “Memorandum ACYF-CB-IM-11-03”]; FED. ADVISORY COMM. ON JUVENILE JUSTICE, *Recommendations of the LGBT Subcommittee: Advancing the Reform Process for LGBQ/GNCT Youth in the Juvenile Justice System* (Jan. 12, 2017), <https://facjj.ojp.gov/ojpasset/Documents/LGBT-Recommendations-Final-FACJJ.pdf>.

¹⁶ Brief of Amici Curiae AM. ACAD. OF PEDIATRICS, AM. PSYCHIATRIC ASS'N, AM. COLLEGE OF PHYSICIANS & 17 Additional Medical & Mental Health Orgs. in Support of Respondent at 24, *Gloucester Cty. Sch. Bd. v. G.G. ex rel. Grimm*, 136 S. Ct. 2442 (2016), <https://www.aclu.org/legal-document/gloucester-county-school-board-v-gg-american-academy-pediatrics-et-al> (“[E]vidence confirms that policies excluding transgender individuals from facilities consistent with their gender identity . . . undermine well-established treatment protocols for gender dysphoria and exacerbate the condition; expose these individuals to stigma and discrimination as well as potential harassment and abuse by singling them out from their peers; harm their physical health by causing them to avoid restroom use; and impair their social and emotional development, leading to poorer health outcomes throughout life.”).

¹⁷ See M.V. Lee Badgett, Laura E. Durso, & Alyssa Schneebaum, *New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community*, WILLIAMS INST. (2013), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>; Taylor N.T. Brown, Adam P. Romero, & Gary J. Gates, *Food Insecurity and SNAP Participation in the LGBT Community*, WILLIAMS INST. (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-inthe-LGBT-Community.pdf>.

¹⁸ Shabab Ahmed Mirza & Caitlin Rooney, *Discrimination Prevents LGBTQ People from Accessing Health Care*, CTR. FOR AM. PROGRESS (Jan. 18, 2018), <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>; NPR, ROBERT WOOD JOHNSON FOUNDATION, HARVARD T.H. CHAN SCHOOL OF PUB. HEALTH, *Discrimination in America: Experiences and Views of LGBTQ Americans* (2017), available at <https://www.npr.org/documents/2017/nov/nprdiscrimination-lgbtq-final.pdf> [hereinafter “*Discrimination in America*”].

¹⁹ See *Discrimination in America*, *supra* note 16.

²⁰ See MOVEMENT ADVANCEMENT PROJECT & SAGE, *Understanding Issues Facing LGBT Older Adults* (2017), <https://www.sageusa.org/wp-content/uploads/2018/05/sageusa-understanding-issues-facing-lgbt-older-adults.pdf>.

²¹ *Memorandum ACYF-CB-IM-11-03*, *supra* note 10; Title IV-E of the Social Security Act, 42 U.S.C. § 671 (“In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which . . . (10) provides—(A) for the establishment or designation of a State authority or authorities that shall be reasonably in accord with recommended standards of national organizations concerned with standards for the institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, and which shall permit use of the reasonable and prudent parenting standard.”); HHS Grants Rule, 45 C.F.R. § 75.300(c) (“It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, race, color, national origin, religion, gender identity, or sexual orientation. Recipients must comply with the public policy requirement in the administration of programs supported by HHS awards.”).

²² The implementing regulations of Title IV-E of the Social Security Act require agencies receiving federal child welfare dollars to place children in a “safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents’ home, consistent with the best interests and special needs of the child[.]” 42 U.S.C. § 675(5). In addition, Title IV-E requires State plans to document how it establishes and maintains standards for foster family homes and child care institutions that are “reasonably in accord with recommended standards of national organizations concerned with [such] standards[.]” 42 U.S.C. § 671(10). These standards include those related to admission policies, safety and protection of civil rights, and others. *Id.* Agencies are required to ensure safety, permanency, and well-being for all children in their care. 45 C.F.R. § 1355.34(b)(1)(ii); 45 C.F.R. § 1355.34(b)(1)(i). These requirements apply to all children in the child welfare system, including LGBTQ youth.