

Maryland House Judiciary Committee – Bill Hearing
Tuesday, February 23, 2021 1:30 PM
Written Testimony in Support of House Bill 851

Disability Rights Maryland (DRM) is the state-designated Protection and Advocacy agency authorized under the Protection and Advocacy for Individuals with Mental Illness Act and the regulations thereto to protect and advocate for the rights of individuals with mental illness. DRM has been working to review and advocate for improved conditions in state correctional facilities, particularly in restrictive housing units. We have visited and toured several facilities, reviewed thousands of pages of records, met with wardens, engaged with administrators and representatives of the Department of Public Safety and Correctional Services (DPSCS), and spoken with both incarcerated individuals and correctional staff throughout the State. Our testimony is informed by what we have learned through this work and from those who are directly impacted.

The use of restrictive housing is our main focus in state correctional facilities. Studies have shown that confining an individual in a cell for 22 hours or more per day is a harmful practice that can cause depression, trauma, paranoia, anxiety, suicidal ideations, and exacerbate existing mental illness. Restrictive housing is particularly harmful for people with a serious mental illness (SMI). A significant group of national organizations have recognized the risk of harm to individuals with a SMI caused by restrictive housing and have endorsed ending the practice altogether.

The United States Department of Justice recommended in 2016 that individuals with serious mental illnesses should not be placed in restricted housing absent exceptional circumstances, and that if such individuals have to be in segregation, time out of cell and programming should be increased.

The National Commission on Correctional Health Care adopted a position statement in 2016 declaring, “Juveniles, mentally ill individuals, and pregnant women should be excluded from solitary confinement of any duration.”

The American Bar Association adopted a resolution in 2018 stating that “solitary confinement (also referred to as ‘segregation’ or ‘restrictive housing’) is prohibited for individuals with Intellectual Disability or serious mental illness.”

The American Psychiatric Association endorsed a position statement in 2012 asserting that, “Prolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential for harm to such inmates.”

The American Public Health Association in 2013 called upon correctional authorities to, “Exclude from solitary confinement prisoners with serious mental illnesses.”

The American College of Correctional Physicians in 2013 acknowledged that, “prolonged segregation of inmates with serious mental illness, with rare exceptions, violates basic tenets of mental health treatment.”

The World Health Organization in recognizing the harm of segregation for adults with a SMI stated in 2014, “Those with pre-existing mental illness are particularly vulnerable to the effects of solitary confinement.”

A number of jurisdictions including Colorado, Pennsylvania, and Massachusetts have responded by limiting or eliminating the use of restrictive housing for individuals with a SMI. Many states that have reduced their use of restrictive housing have seen decreases in the number of violent prison infractions as a result. For example, Ohio and Mississippi reduced their use of segregation in super-max facilities by 89 and 85 percent respectively and serious prison infractions fell in each state. South Dakota limited its use of segregation for individuals determined to present threats of violence by 18% and its violent incident rate reached its lowest point.

DRM has worked with dozens of incarcerated individuals with a SMI who have spent months and years in restrictive housing units while reporting worsening symptoms such as command hallucinations or suicidal ideations. Health care records reviewed by DRM document deterioration in mood, affect, and behavior for individuals with a SMI in restrictive housing units; sometimes leading to additional disciplinary infractions and extended time in restrictive housing. Yet, often no out of cell mental health services are provided to these individuals to mitigate the risk of harm to their mental health.

Further, DPSCS does not properly identify individuals with a SMI, which may prevent people from receiving needed mental health care. DPSCS’ current definition of SMI requires a finding of functional impairment. The criteria for functional impairment here in Maryland includes factors such as the ability to maintain independent employment or financial independence. This criteria clearly does not apply in a correctional setting such as prison and could lead some individuals to be excluded from the SMI population even if they are in need of mental health services or other forms of care. This is reflected in the number of people with SMI that the Department reports every year. National averages for SMI individuals in prison are typically between 15% and 20%. As recently as 2011, Maryland reported 1.2% of their prison population as SMI. That figure has hovered around 8% in recent years, before moving up to about 11% in FY 2019 (most recent available date). These numbers remain significantly below national averages and supports the assertion that Maryland is not identifying some individuals with a SMI, in part due to an inadequate definition.

DRM urges this committee to support House Bill 851 and address these issues by implementing a definition for SMI that is applicable in a correctional setting and significantly reducing the risk of harm to individuals with a SMI by limiting their exposure to conditions in restrictive housing units.

Respectfully,

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