

SB0550_Transgender_Respect_MLC_FAV.pdf

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR SB0550

Correctional Facilities - Transgender, Nonbinary, and Intersex Inmates (Transgender Respect, Agency, and Dignity Act)

Bill Sponsor: Senator Carter

Committee: Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0550 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of individuals and grassroots groups with members in every district in the state with well over 30,000 members.

There are so many people in our jails, many of them for relatively minor crimes, that we have to re-think the whole process of incarceration. For persons who identify as transgender, or non-binary, or inter-sex, as well as for persons who identify with a religion that is non-Christian, or do not speak English very well, and many other personal traits that set them apart from the general population, any time in a correctional facility, no matter how short, can be very fraught.

This bill will allow for an inmate to state their personal orientation privately, in non-threatening circumstances. It will also allow them to be housed in a manner that respects their personal orientation and prohibit discriminatory treatment in the programs, services or activities they are entitled to.

We can no longer think of prisons as places for criminals who are beyond redemption. They are places that too many of our youth spend time in, and can have their lives shattered even more by the treatment they receive from correctional officers. New standards must be set to mitigate these problems.

We support this bill and recommend a **FAVORABLE** report in committee.

PJC testimony SB 550 favorable.pdf

Uploaded by: Debra Gardner

Position: FAV



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SB 550 The Transgender Respect, Agency, and Dignity Act

Hearing before the Senate Judicial Proceedings Committee, February 17, 2022

Position: Favorable

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization that seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Among its projects is a longstanding commitment to achieving constitutionally adequate health care at the Baltimore City Detention Center, which is under the control of the Department of Public Safety and Correctional Services. Because of this commitment, and because SB 550 is a matter of fundamental human rights, the PJC supports SB 550.

As counsel for the class of detainees in the city jail in the case of *Duvall v. Hogan*, I have encountered human beings that have suffered all of the dangers and indignities referenced in the bill's preamble and in the studies cited by other proponents of the bill: Transgender men and women and nonbinary individuals who have been stigmatized, shamed, harassed, misgendered, denied safe housing, denied gender-affirming health care, sexually humiliated, sexually assaulted, and beaten due to their gender identity.

Though the time an individual spends in the jail may be shorter than for those serving time in Maryland's prisons, the dangers they face are no less real and life-threatening. Just last year a transgender woman died while housed with men in the jail. Her family could not obtain information about her death, and she was consistently misgendered by DPSCS representatives and medical personnel and referred to by a name she no longer used.

In her memory, I testify in favor of this bill, to prevent such atrocities in the future.

For the foregoing reasons, the PJC supports SB 550. Should you have any questions, please contact Debra Gardner, Legal Director, at 410-625-9409, ext. 228 or gardnerd@publicjustice.org.

MOPD support SB 550 final.pdf

Uploaded by: Elizabeth Hilliard

Position: FAV



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POSITION ON PROPOSED LEGISLATION

BILL: SB 0550 - Correctional Facilities - Transgender, Nonbinary, and Intersex Inmates (Transgender Respect, Agency, and Dignity Act)

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 02/16/2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 550.

The 2015 US Transgender Survey (USTS), which was the largest survey ever dedicated to the experiences of transgender people, found that 2% of respondents had been incarcerated in the past year.¹ In comparison, the incarceration rate for the total American population is 0.7%.²

In addition, 30% of respondents to the USTS who were incarcerated report being physically or sexually assaulted while incarcerated. These rates of physical and sexual assault are 5 to 10 times higher than those reported by cisgender individuals.³ In short, transgender individuals are more likely to be incarcerated, and once incarcerated experience higher rates of violence than their cisgender peers.

Currently, Maryland law does not provide specific protections for transgender, gender-expansive, or intersex (TGI+) individuals who are incarcerated. DPSCS policy requires that individuals are housed based purely on a physical exam. In particular, the policy states:

¹ S.E. James, J. L. Herman, S. Rankin, M. Keisling, L. Mottet, & M. Anafi, The Report of the 2015 U.S. Transgender Survey (2016), National Center for Transgender Equality, <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

² Peter Wagner and Wanda Bertram, What percent of the US is incarcerated? (January 16, 2020), Prison Policy Initiative, <https://www.prisonpolicy.org/blog/2020/01/16/percent-incarcerated/>.

³ See *supra* note 1.

“Incomplete surgical gender reassignment require that the patient be classified according to his or her birth sex for purposes of prison housing, regardless of how long they may have lived their life as a member of the opposite gender.”⁴

The existing policy is expressly damaging to TGI+ individuals. First, it places them at a higher risk of violence by housing them based on anatomy alone. In addition, it detracts from their mental and emotional health by denying the validity of their experiences and lived gender. This housing policy can have clear and drastic effects on a person’s physical health as well.

SB 550 codifies an anti-discrimination policy in Md Code, Corr. Svcs. § 9-618. The Maryland Office of the Public defender supports any effort that would increase protections for all persons who are incarcerated regardless of their race, ethnicity, religion, national origin, age, sex, gender identity, sexual orientation, disability, pregnancy status, or political beliefs. Thus, we support this addition.

SB 550 also further codifies efforts to protect TGI+ individuals incarcerated in Maryland institutions. First, it would require correctional officials to develop nondiscrimination policies for incarcerated persons based on specified classes, and would require correctional staff to abide by those policies. In addition, the bill would require correctional staff to ask for a person’s gender identity and pronouns upon intake, allow for the individual to update that information later, and require correctional staff, contractors, and volunteers to respect the given information. Finally, the bill allows TGI+ incarcerated persons to select the housing and search protocols they prefer, and requires that a facility that denies those preferences provide a specific reason, in writing, with time for the person to raise an objection. It also prevents a facility from denying those preferences for discriminatory reasons, including the person’s anatomy.

The Maryland Office of the Public Defender recognizes that TGI+ people are vulnerable to a greatly increased risk of violence while incarcerated. A person should not be subject to unnecessary or extraneous risks or violence while in the custody of the State. Given everything we know, failing to protect TGI+ persons from the worst abuses of the prison system represents

⁴ Dep’t of Pub. Safety & Corr. Svcs., Clinical Services & Inmate Health Evaluation Manual, <http://itcd.dpscs.state.md.us/pia/ShowFile.aspx?fileID=702>; Jessica Anderson, Better protections for LGBTQ detainees sought after transgender teen says she was discriminated against at Baltimore jail (October 29, 2021), THE BALTIMORE SUN, <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-trans-de-20211028-jxo3djt2mzajfkorn3uwntwwry-story.html>.

not only shocking indifference, but an active and harmful choice.

We believe that this bill will help to reduce violence against TGI+ people who are incarcerated in Maryland's institutions. SB 550 creates policies that work to ensure the equitable treatment of all persons who are incarcerated, and urges DPSCS to treat TGI+ people with the dignity they deserve, and contains measures designed to proactively protect their health and safety.

For these reasons, the Maryland Office of the Public Defender supports this legislation and urges this Committee to issue a favorable report on SB 550.

Submitted by: Government Relations Division of the Maryland Office of the Public Defender.

Testimony_JPC_SB0550_LR2041.pdf

Uploaded by: Elizabeth Vigna

Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Jill P. Carter
In Favor of SB0550
- The Transgender Respect, Agency and Dignity Act -
Before the Judicial Proceedings Committee
On February 17, 2022.**

Chairman Smith, Vice Chair Waldstreicher, and Members of the Committee:

Today I am introducing Senate Bill 550, a bill intended to confront extreme safety risks some Marylanders face while incarcerated. This bill changes the intake process in Maryland's carceral facilities, requiring that intake staff ask the gender identity, pronouns and honorifics of individuals at the onset of incarceration. In doing so, we can reduce safety risks for LGBTQ+ individuals through appropriate housing.

Federal data reveals that members of the LGBTQ+ community, particularly transgender women, encounter extremely high rates of violence and sexual abuse while incarcerated, especially when housed in facilities that do not match their gender identity. During incarceration, 40 percent of transgender women experience harassment and violence. These women, human beings who are our constituents, family members, and friends, experience violence at a rate 10 to 13 times higher than other incarcerated individuals.

To confront this violence, Senate Bill 550 builds on the protections outlined in the Federal Prison Rape Elimination Act of 2003. This bill takes into account the personal safety of incarcerated Marylanders who are transgender, nonbinary, genderqueer, or intersex. It is our obligation as lawmakers to ensure these protections. When data

shows us that a specific demographic - no matter how small - experiences heightened safety risks, we must use our legislative bandwidth to ameliorate it.

The number of individuals this legislation affects in Maryland is estimated to be between 30 and 40 at a given time. A sentence of incarceration should not run concurrent with a sentence of preventable violence and sexual violation.

When advocates from across the state appear in front of this legislative body to tell us about the cries for help they receive from affected individuals, it is our duty to act. With the knowledge that transgender women and other LGBTQ+ people are harrassed, assaulted, and sometimes killed because of inappropriate housing, it is nothing short of shameful not to combat this through proper housing during incarceration.

The safety of every single Marylander is our responsibility. For this reason, I urge a favorable report on Senate Bill 550. Thank you.

Respectfully,

A handwritten signature in blue ink that reads "Jill P. Carter". The signature is written in a cursive, flowing style.

Jill P. Carter

MVLS Testimony SB550_Support 2.15.22.pdf

Uploaded by: Heather Heiman

Position: FAV



EXPANDING ACCESS TO JUSTICE FOR 40 YEARS

MARYLAND SENATE JUDICIAL PROCEEDINGS COMMITTEE
TESTIMONY OF MARYLAND VOLUNTEER LAWYERS SERVICE
IN SUPPORT OF SB550: CRIMINAL LAW – CORRECTIONAL FACILITIES –
TRANSGENDER NONBIANARY AND INTERSEX INMATES (TRANSGENDER RESPECT,
AGENCY, AND DIGNITY ACT)
FEBRUARY 17, 2022

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Chair Smith and distinguished members of the Committee, thank you for the opportunity to testify in support of Senate Bill 550.

My name is Heather Heiman, and I am the Project Manager for the Human Trafficking Prevention Project at Maryland Volunteer Lawyers Service (MVLS). MVLS is the oldest and largest provider of pro bono civil legal services to low-income Marylanders. Since MVLS' founding in 1981, our statewide panel of over 1,700 volunteers has provided free legal services to over 100,000 Marylanders in a wide range of civil legal matters. In FY21, MVLS volunteers and staff lawyers provided legal services to 4,459 people across the state. In fiscal year 2017, MVLS started the Human Trafficking Prevention Project, a co-grant project through the Governor's Office of Crime, Control and Prevention with the University of Baltimore School of Law Human Trafficking Prevention Project Legal Clinic. For the reasons explained below, MVLS respectfully requests the committee return a favorable report on SB550.

The Human Trafficking Prevention Project (HTPP) at MVLS is a pro bono project that provides post-conviction relief such as expungement, shielding, and vacatur as well as assistance with consumer, housing, and family law matters to those who meet the legal definition of a victim of human trafficking, and others who are at high risk for exploitation. Since its inception, the HTPP at MVLS has served over 200 clients, including transgender or gender-nonconforming individuals, who are survivors of human trafficking or at elevated risk for exploitation.

The vast majority of the HTPP's transgender and gender-nonconforming clients have reported experiencing systemic and personal discrimination that prevented them from securing or retaining mainstream employment and safe housing. Many have had to turn to the underground economy, including trading sex, to meet their survival needs, putting them at increased risk of both being arrested and incarcerated by law enforcement AND exploitation by potential traffickers. Most critically, transgender and gender-nonconforming clients who were arrested and detained in correctional facilities in Maryland have shared with HTPP staff experiences involving persistent discrimination, blatant mistreatment, and outright violence while in detention.

Ms. D*, a transgender woman receiving legal help through MVLS, experienced and witnessed unconscionably disparate treatment while being detained in both

Baltimore City Central Booking and other county-level jails in Maryland. Ms. D was placed in facilities with male inmates despite alerting correctional facility staff to her fears of being attacked due to her female gender identity, and she endured continuous harassment and threats. Ms. D has been mis-gendered by correctional officers, and she continuously had to advocate for fair and respectful treatment of herself and others while in detention. Ms. D also had to fight against groups of other inmates who were threatening violence, including sexual assault, against her and other transgender or gender-nonconforming detainees. Correctional officers would often not intervene in these situations.

On at least one occasion, Ms. D was forced to first speak to a psychologist upon arrival at a correctional facility, and she felt pressure to “say I was psychotic because I was transgender.” Ms. D was also placed in special facilities for inmates with disabilities or in isolation, which she experienced as further instances of discrimination by the correctional system.

Ms. D also witnessed correctional officers displaying blatant disregard for transgender and gender-nonconforming detainees’ safety, including instances where officers unlocked and opened doors to let other inmates access and assault transgender individuals. She also saw officers neglecting to respond to transgender detainee’s requests for medical care and assistance, and she has coped with tragedy of learning that friends from the transgender community died in Maryland prisons, often followed by little or no information from authorities regarding the cause of death. When discussing the discrimination and abuse that she and other transgender detainees experienced, Ms. D noted that “the current system juggles with transgender people’s lives – we should not have to go through what we go through outside jail, just to lose our lives in jail.”

Although significant reforms are needed to address the systemic oppression that transgender and gender-nonconforming people face, SB 550 takes a first step to addressing harms ongoing in correctional facilities by codifying nondiscrimination policies relating to transgender and gender non-conforming inmates and mandating that correctional facilities update their intake and housing policies to meet the unique needs of this population. For these reasons, MVLS supports Senate Bill 550. We respectfully urge a favorable report.

Mister Chair and members of the Committee, thank you again for the opportunity to testify.

**Name withheld to protect client’s privacy and safety.*

Respect Agency & Dignity Testimony.pdf

Uploaded by: Jamie Grace Alexandeer

Position: FAV



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February 8, 2022

**Testimony of FreeState Justice
IN SUPPORT OF SB550: Correctional Facilities – Transgender,
Nonbinary, and Intersex Inmates (Transgender Respect, Agency, and
Dignity Act)**

Good afternoon, Senators of the Judicial Proceedings Committee,

FreeState Justice is Maryland's lesbian, gay, bisexual, transgender, and queer (LGBTQ) civil rights advocacy organization. Each year, we provide free legal services to dozens, if not hundreds, of LGBTQ+ Marylanders who could not otherwise afford an attorney, as well as advocate more broadly on behalf of the LGBTQ+ community, including efforts to improve the conditions of confinement of incarcerated transgender individuals.

We write today in strong support of House Bill 453, which will mitigate many deficiencies with current Department of Public Safety and Correctional Services (DPSCS) policies and help transgender, nonbinary, and intersex inmates live in safe, gender-affirming environment.

Current DPSCS policies regularly subject transgender inmates to discrimination and mistreatment. Transgender inmates are routinely not housed according to their gender identity or what would be safest for them, but rather according to their sex assigned at birth. When transgender inmates are then subjected to violence by other inmates, instead of being transferred to appropriate facilities, they are often placed in solitary confinement; This solitary confinement placement is often done despite the objections of the incarcerated individual. Transgender inmates also suffer significant discrimination, harassment, and mistreatment from correctional staff, who have been documented deadnaming transgender inmates, calling them transphobic slurs, and even threatening them with violence.

A clear illustration of current policy lacking in its ability to safeguard transgender inmates occurred in 2014 when Sandy Brown, a transgender woman, was incarcerated in Maryland's Patuxent Institution. Upon incarceration, Ms. Brown was strip searched in a manner contrary to usual strip-search procedures by staff who later admitted to having little training in protecting vulnerable prison populations. She was then placed into a 66 day involuntary administrative segregation where she was subjected to harassment from correctional officers, including but not limited to

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*FreeState Justice, Inc. (formerly FreeState Legal Project, Inc., merging with Equality Maryland)
is a social justice organization that works through direct legal services, legislative and policy advocacy, and community
engagement to enable Marylanders across the spectrum of lesbian, gay, bisexual, transgender, and queer identities to be
free to live authentically, with safety and dignity, in all communities throughout our state.*

inappropriate surveillance in the showers, deadnaming, transphobic slurs, and even death threats. In 2015, Ms. Brown successfully sued the Patuxent Institution for the discriminatory treatment she experienced. The success of Ms. Brown's 2015 suit has not, however, significantly improved the conditions under which incarcerated transgender individuals are forced to live. Over the past two years, we have seen a wave of violence against transgender women within Maryland correctional facilities. One example of this is Kim Tova Wirtz, a transgender woman, who in 2021 was found dead several hours after being housed in a male cell in Baltimore's Central Booking and Intake Center. This placement was made against her preference for gender-affirming housing, the facility staff ignoring Ms. Wirtz's gender identity just as many other Maryland facilities do with their transgender inmates. According to a public defender in Baltimore, this and other cases demonstrate that "transgender women are exceptionally vulnerable" in Baltimore Central Booking and conditions for their safe confinement must be closely examined.

House Bill 453 attempts to reduce—and ideally eliminate—this discriminatory treatment of transgender inmates in three ways: first, it implements a nondiscrimination policy in correctional services; second, it adopts a new intake procedure for transgender inmates; and third, it makes the safety of transgender inmates paramount when housing decisions are made.

First, SB 550 includes a nondiscrimination policy in any correctional programs, services, or activities on the basis of, among other characteristics, an inmate's gender identity or sexual orientation. By outlawing discrimination based on gender identity and sexual orientation, SB550 reaffirms and certifies that grievous discrimination and mistreatment, such as that suffered by Ms. Brown, is not allowed or tolerated under any circumstances.

Second, SB 550 optimizes the initial intake and classification process for transgender inmates, which helps mitigate many of the difficulties they may face later during their incarceration. Under SB 550, an officer must privately ask inmates about their gender identity, whether they identify as transgender, nonbinary, or intersex, the inmate's gender pronouns, and honorifics. Furthermore, an inmate cannot face discipline for refusing to answer any of the above questions. This information, which an inmate may update at any time, must be used by all staff, contractors, and volunteers at a correctional facility.

This would reaffirm and expand upon current DPSCS policy dictating that within the initial intake process, which must occur within the first 72 hours after an inmate's arrival to a facility, an officer must ask the inmate if they consider themselves "homosexual, bisexual, transgender, intersex, or gender nonconforming" but not about their gender pronouns and honorifics. Facility staff asks these questions as part of a questionnaire meant to determine an inmates' risk of victimization within a facility. SB 550 expands on this process to ensure that the individual is housed in a safe, gender-affirming environment. By allowing inmates to self-identify as transgender early after their entrance to the facility, inmates can receive specific attention and care which addresses their specific health needs. Ultimately, there is no way to address the vulnerabilities experienced by transgender inmates without the intake process recognizing transgender individuals' identities.

Third, and of critical importance, SB 550 ensures a safe, gender-affirming environment by mandating DPSCS consider all inmates' safety concerns regarding their housing determinations and placing them into a housing determination that aligns with their preferences. In most cases, this will mean transgender inmates are housed according to their gender identity but would allow flexibility for individuals who believe they will be safer if housed according to their sex assigned at birth.

While DPSCS would retain the ability to deny placement requests under certain circumstances, such as where housing the inmate according to their preferences would raise a security concern for other inmates, SB 550 prohibits making this assessment solely based on the transgender individual's anatomy or sexual orientation. DPSCS is further required to certify in writing why placement requests have been denied, and to provide inmates with an opportunity to raise objections. SB 550 thus builds on national guidelines regarding inmate housing determinations for transgender individuals (e.g., the Prison Rape Elimination Act), which require that determinations be individualized and consider the safety of each inmate.

While consistent with federal law, this is a significant change from how decisions regarding the housing of transgender inmates are currently made under DPSCS. Although official DPSCS policy calls for facility staff to make housing decisions for transgender inmates on an individualized, case-by-case basis, in actual practice almost all transgender inmates are housed according to their sex assigned at birth. This is due in large part to how DPSCS centers their analysis around the theoretical (and unproven) risk that transgender inmates might pose to other inmates, rather than the real risk of violence and discrimination transgender inmates face themselves.

When making housing determinations, DPSCS policy requires officials to look at several factors, including "the degree to which an assignment ensures the inmate's health and safety, whether an assignment presents management or security concerns, and the inmate's own views with respect to personal safety." DPSCS also heavily considers inmates' biological gender presentation and appearance, including mandatory consideration of whether the inmate has, "intact external genitalia and secondary sex characteristics, such as pubic hair, chest hair, facial hair [...and] specific factors, such as partial completion of sex reassignment surgery, removal or augmentation of breasts, or removal of testicles". This policy is highly problematic in several ways: it disregards transgender inmates' gender identity, subjects them to arbitrary and meaningless determinations, and jeopardizes their safety and security.

Current DPSCS policy subjects transgender inmates to housing that does not remotely match their personal preference or gender identity. Nothing demonstrates this point more than the fact that, as of 2020, not one of the approximately 28 transgender inmates in Maryland have been assigned to gender-affirming housing. Although the housing determinations are (theoretically) individualized, the absolute conformity in practice makes it clear that correctional facilities often make housing decisions for transgender individuals according to their birth sex and biological characteristics rather than their lived gender or preferences.

DPSCS policy also emphasizes prior treatment for gender dysphoria in a discriminatory and arbitrary way. While not all transgender inmates want, need, or have access to hormone replacement therapy or gender-affirming surgery, DPSCS's case-by-case determination emphasizes what medical or surgical treatments the individual has already received. This results in significant discrimination against low-income transgender individuals—especially transgender individuals of color—who may not have easy access to affordable treatment. The effect of this is the imposition by the state of a white, middle-class model of transition, rather than the case-by-case analysis that is called for.

Finally, DPSCS implements its housing policy in a manner that endangers transgender inmates—especially transgender women—who are often targeted in male units because of their gender identity. By focusing decisions primarily on the inmate's genitalia, transgender women are placed at a significantly heightened risk of harassment, injury, sexual assault, or even death.

SB 550 would significantly mitigate these concerns. It would provide transgender inmates gender-affirming housing and a say in where they would be safest. It would also help to ensure that the mistreatment experienced by individuals like Ms. Brown and Ms. Wirtz will never happen again.

For these reasons, FreeState Justice urges a favorable report on Senate Bill 550.

SB 550 HTPP Testimony FAV- FINAL.pdf

Uploaded by: Jessica Emerson

Position: FAV

Testimony of the Human Trafficking Prevention Project

BILL NO: Senate Bill 550
TITLE: Correctional Facilities – Transgender, Nonbinary, and Intersex Inmates (Transgender Respect, Agency, and Dignity Act)
COMMITTEE: Judicial Proceedings
HEARING DATE: February 17, 2022
POSITION: SUPPORT

Senate Bill 550 would prohibit an employee of a correctional facility from discriminating against inmates on the basis of being a member of a protected class including, but not limited to, the inmate's race, ethnicity, disability, pregnancy status, age, sexual orientation, or gender identity, and mandate that the managing official of the facility to develop a written nondiscrimination policy implementing this. It would also require the Department of Corrections and Rehabilitation to, in a private setting, ask each individual entering the department's custody to specify their gender identity and pronouns, and prohibit staff, contractors, and volunteers from failing to consistently use this information when referring to the inmate. Finally, the bill would require the department to only conduct a search of an inmate according to the search policy for their gender identity or the gender designation of the facility where they are housed, to house inmates in the correctional facility that corresponds with their gender identity, and mandate reassessment of an inmate's housing assignment if new concerns arise with regard to their health and safety. The Human Trafficking Prevention Project at the University of Baltimore School of Law supports this bill because it centers the humanity and dignity of transgender and gender non-confirming inmates, many of whom have had to trade sex for survival.

The discrimination and isolation transgender and gender non-conforming people so often face commonly translates into circumstances that put these individuals at heightened risk of arrest, including financial instability, homelessness, and drug addiction.¹ Forced to fend for themselves in a society that routinely denies them access to safe housing and mainstream employment, many transgender people are left with few options other than trading sex to meet their survival needs, which again increases their risk of arrest and incarceration.² Once incarcerated, transgender sex workers are subject to the stigma of both being transgender and having traded sex, and accordingly, experience disproportionate amounts of discrimination and violence at the hands of other inmates, as well as prison officers and staff. A study on the experiences of transgender people in the sex trade³ found that 52.6% of incarcerated transgender sex workers reported harassment by corrections staff, while 26.9% reported being physically assaulted by other inmates. 10.7% reported sexual assault by a prison guard.

While no single piece of legislation can undo the injustice and systemic oppression that transgender and gender non-conforming people face, particularly those who face incarceration, SB 550 seeks to address certain of these harms by codifying nondiscrimination policies relating to transgender and gender non-conforming inmates and mandating that correctional facilities update their intake and housing policies to meet the unique needs of this population. Respect for people's basic humanity and dignity should not be optional, regardless of their incarceration status. Therefore, the Human Trafficking Prevention Project at the University of Baltimore School of Law supports Senate Bill 550 and respectfully urges a favorable report.

The Human Trafficking Prevention Project, which is a partnership between the University of Baltimore School of Law and the Maryland Volunteer Lawyers Service, provides pro bono legal services to criminalized survivors of human trafficking and those populations put at highest risk of exploitation.

¹ See generally Janet M. Grant, Lisa A. Mottet, & Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011) https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf.

² National Center for Transgender Equality, *Meaningful Work: Transgender Experiences in the Sex Trade* (2015), https://transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf (citing that 79.1% of transgender sex workers reported interaction with the police compared to 51.6% of non-sex worker respondents).

³ *Id.*

SB 550.pdf

Uploaded by: Lisa Barkan

Position: FAV



TESTIMONY TO THE SENATE JUDICIAL PROCEEDINGS COMMITTEE

**SB 550 Correctional Facilities—Transgender, Nonbinary, and Intersex
Inmates—Transgender Respect, Agency and Dignity Act**

POSITION: Support

BY: Nancy Soreng - LWVMD President

DATE: February 17, 2022

The League of Women Voters is a nonpartisan organization that works to increase understanding of major public policy issues and influence public policy through education and advocacy. The League supports social policies that secure equal rights and equal opportunity for all, and that promote social and economic justice and the health and safety of all Americans. We are concerned about the increased sexual assaults suffered by transgender, [non binary and intersex] inmates compared to the general prison population. We are also concerned about the failure, in general, of correctional staff to address transgender, non binary, and intersex inmates by the pronouns they choose and correctional staff's failure to house inmates in accordance with the inmate's expressed gender preference.

Research has shown that transgender inmates are far more likely to experience violence and abuse behind bars compared to other populations. The Baltimore Sun reported a case in which a transgender woman who was housed with men feared for her life and was frequently belittled by correctional staff as well as the men with whom she was housed. Despite her expressed preference, correctional staff referred to her as "sir." Unfortunately, her experience is far too common.

SB 550 simply allows transgender, non binary, and intersex inmates the dignity to be themselves and forbids others to dictate and disrespect their gender identity.

The LWVMD, representing 1500+ concerned citizens throughout Maryland, strongly urges a favorable report.

SB 550 - Correctional Facilities - Transgender, No

Uploaded by: Michelle Siri

Position: FAV

BILL NO.: Senate Bill 550
TITLE: Correctional Facilities – Transgender, Nonbinary, and Intersex Inmates
(Transgender Respect Agency and Dignity Act)
COMMITTEE: Judicial Proceedings
DATE: February 17, 2022
POSITION: **SUPPORT**

Senate Bill 550 would require correctional facilities to institute policies stating that an inmate may not be discriminated against with regards to programs, services, or activities based on the inmate's race, ethnicity, religion, national origin, age, sex, gender identity, sexual orientation, disability, pregnancy status, or political beliefs. Facilities would then also be required to inquire as to an inmate's gender identity and proper pronouns. Finally, all facilities must then ensure that inmates are addressed using their proper identifiers and are searched and housed according to their gender identity, not sex-at-birth.

Nearly one in six transgender Americans—and one in two black transgender people—has been to prison. For those incarcerated transgender individuals, discriminatory policies and sexual assault are constant and real threats. Because transgender incarcerated people in Maryland are still housed according to the sex assigned at birth, instead of by gender identity, they are more vulnerable to harassment or attack by staff or fellow incarcerated people. Per Lambda Legal, a recent study found that transgender people were 13 times more likely to be sexually assaulted than non-transgender people in prison¹. Segregating transgender people as an entire group within the correctional system—especially without their consent—can stigmatize them, cut them off from work opportunities, privileges and resources, and actually encourage violence by staff. Thus, it is clear that a policy is required to ensure they are properly housed, recognized, and treated with respect and dignity.

As conditions for transgender people behind bars remain discriminatory and dangerous, many jurisdictions, including Cook County, IL, Cumberland, ME, Denver, CO and Washington, DC—have had success with policies that classify people by gender identity rather than sex assigned at birth. Furthermore, this policy has successfully been in place in facilities within the United Kingdom since 2011. It is time that Maryland joins those jurisdictions in providing respect, dignity, and safer conditions to transgender inmates. As such, the WLC urges a favorable report on SB 550.

The Women's Law Center of Maryland is a private, non-profit, legal services organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change, working to ensure physical safety, economic security, and bodily autonomy for women in Maryland.

¹ Transgendered Incarcerated People In Crisis, Lamda Legal, <https://www.lambdalegal.org/know-your-rights/article/trans-incarcerated-people>

Maryland Senate Bill 550 Testimony from Stulman.pdf

Uploaded by: Amanda Stulman

Position: UNF

Maryland Senate Bill 550

"Correctional Facilities – Transgender, Nonbinary, and Intersex Inmates
(Transgender Respect, Agency, and Dignity Act)"

Position: Unfavorable

Submitted: February 16, 2022 for February 17, 2022 hearing

Amanda Stulman, USA Director, Keep Prisons Single Sex

Email: USA@KPSSinfo.org

Dear Judicial Proceedings Committee,

As you consider Senate Bill 550, I appreciate the opportunity to raise issues in opposition to the Bill.

SB 550 would place housing decisions in the hands of inmates, in particular incarcerated males

Maryland adheres to the regulations under the Prison Rape Elimination Act (PREA). This means that, after conducting an assessment of risk of victimization and abusiveness, Maryland correctional facilities will "consider on a case-by-case basis" "whether to assign a transgender...inmate to a facility for male or female inmates." (28 CFR Sec. 115.42.)

In contrast to this individualized assessment by professionals tasked with ensuring the safety of all inmates, Bill 550 hands the housing placement decision to the "inmate who is transgender, nonbinary, or intersex, regardless of anatomy" based on his preference. ("[A]n inmate **shall be housed** at a correctional facility designated for men or women **based on the inmate's preference**." (Sec. 9-620(C).) (Emphasis added.)

Under the Bill anyone can opt into the category of people privileged with the power to select themselves into cross sex housing. The categories specified in the Bill include:

- "all gender identities different from the gender a person was assigned at birth"
- "transsexual"
- "two-spirit"
- "neither exclusively male nor female"
- "is in between or beyond both [male or female] both of those genders"
- "gender fluid"
- "agender"
- "without gender"
- "third gender"
- "genderqueer"
- "gender variant"

- “gender nonconforming”

None of those categories is verifiable or disprovable.

Further, no demonstrated history or commitment of any kind to these categories is required to take advantage of the opportunity to self-select housing placement. The Bill describes that this is a “deeply personal experience that may involve some combination of social transition, legal transition, medical transition, **or none of these.**” (Emphasis added.)

Housing placement decisions should be based on the objective, stable category of “sex” not the mutable, unverifiable, self-selecting category of “gender identity”

Prison housing placement decisions should be based on the objective, stable category of “sex,” not the changeable, unprovable category of “gender identity.” Even the articulated terms (“gender fluid,” “gender nonconforming” (which could simply be men with long hair), etc.) make plain that the categories on which the Bill would permit males to opt into women’s prison are mutable and unverifiable and, also, easily accessible. Further emphasizing the fluidity of self-identification, any inmate, at any time, may “update” his declaration of “gender identity” (9-619(C)) and then be housed in accordance with his preference. (9-620(C).) Again, there is no requirement of genital surgery, hormone use, diagnosis of gender dysphoria, legally changing name, or even pre-incarceration use of a different name or assertion of a particular “gender identity.”

To be clear, even for those males who could demonstrate pre-incarceration medicalization or diagnoses, there would still remain an objection to housing those males in the women’s prison. Even males who sincerely identify themselves as women and took pre-incarceration steps to present themselves in a stereotypically “feminine” manner, should be housed and made safe in the men’s prison. A sincere belief in “gender identity” does not change one’s sex; those individuals are and will always be male.

However, that there are no objective requirements for those who wish to declare themselves out of the category of “male,” means it is also ripe for abuse by those who do not sincerely believe themselves to be “transgender.” This Bill does not purport to try to make those distinctions. This may be an acknowledgment that, because internal feelings of identifying as a gender different than one’s sex are not observable or verifiable and can be expressed in an entirely superficial manner (e.g., hair style, wearing nail polish), for purposes of creating a meaningful category in the law, there is no distinction between the group who is sincere in their belief and those who are not. For the women who would have these men housed with them, there is no difference in the adverse effects; they should not be forced to be housed with biological males.

SB 550 puts incarcerated women's safety, well-being and constitutional rights at risk

As noted above, the Bill provides that the inmate's housing preference cannot be denied based on anatomy. It also provides that sexual orientation and other "discriminatory reason[s]" cannot be a basis for denial. This means a man with fully intact male genitalia, a sexual attraction to women, and legally protected medical disorders (which may include some sexual paraphilias) cannot be denied housing in a women's prison on those bases. No crimes, not even crimes of sexual violence, automatically render a man ineligible for being housed in a women's prison. That there are "trans" identifying males who would fall into any one, or several, of these categories would not be unusual: 85% of males identifying as "trans" retain male genitalia (i.e., have not had genital surgery),¹ a substantial majority have a sexual attraction to women,² and rates of sexual offending are significantly higher than the general prison population.³

In other states with law or policy similar to Bill 550, men who have committed violent crimes targeting women -- such killing of multiple female prostitutes⁴ and torture and sodomy of a woman in front of her mother⁵ -- are housed in women's prisons.

By processing this Bill for passage, you would be endorsing that such men -- no matter how petrifying to the women who would have to share toilets, showers or sleeping quarters with them -- should be housed in women's prison in Maryland.

You have the benefit of considering this law after enactment of a similar law in California. According to a court action against that law, moving men into the women's prison there has resulted in the availability of condoms, of posters describing options should inmates become pregnant while incarcerated and of sexual assaults. That suit challenges the California law on the bases of the First, Eighth and Fourteenth Amendments.⁶ A link to the Complaint is below, but I would like to highlight just one of several First Amendment arguments made in that case. If there are incarcerated women in Maryland who have sincerely held religious beliefs -- which are shared by women of many faiths -- concerning sharing intimate spaces with unrelated males, including exposure of a woman's unclothed body or uncovered hair or their being exposed to unclothed bodies of males to whom they

¹ www.ncbi.nlm.nih.gov/pmc/articles/pmc6626314/

² transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf

³ In the federal Bureau of Prisons, 48.47% of males who identify as "trans" have committed "sex offenses" (usa.kpssinfo.org/transgender-inmate-report-from-bop-12-04-2021-2/) compared to approximately 11.6% (as of 12 Feb. 2022) of the general inmate population (www.bop.gov/about/statistics/statistics_inmate_offenses.jsp)

⁴ Transgender woman convicted for slayings of 3 women who worked as prostitutes - CBS News

⁵ People v. Masbruch - 13 Cal.4th 1001 S047206 - Mon, 08/26/1996 | California Supreme Court Resources (stanford.edu)

⁶ Chandler v CDCR Complaint (squarespace.com)

are not related, placement of males in those spaces is a refusal to accommodate those women's constitutionally guaranteed right to free exercise of religion.

Additionally, in considering Eighth Amendment concerns, I would also like to highlight just one of many factors: punishment that would be rejected by society. International norms are very clear on this.

- Rule 11 of the United Nation's Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) provides that "Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate."⁷
- The Geneva Conventions articles, applicable during wartime conditions, have multiple provisions requiring that prisoners of war and civilians be accommodated in "separate dormitories" for men and women.⁸

Forcing incarcerated women to be housed with men or to exist in a perpetual state of fear that one may be housed with men, is a punishment our society does not accept. It is extraordinary that the State of Maryland is contemplating a law which would provide its incarcerated female population less consideration and protection on the basis of sex than is provided to prisoners of war.

In addition to concern for the well-being of incarcerated women in the State's care, protecting Maryland from the risk of future litigation resulting from this Bill should be a consideration as well.

SB 550 is likely to cause harm to employees of Maryland's incarceration facilities

The Bill also provides:

- "the inmate shall be searched according to the search policy for the inmate's gender identity or according to the gender designation of the facility in which the inmate is housed, based on the inmate's preference" (9-620(E))
- "staff ... shall use the gender pronouns and honorifics an inmate has specified in all verbal and written communications" (9-619(D))

The Bill's search policy requirements means your female correctional officers may be required, as a condition of their employment, to be exposed to male genitalia. Even more routine encounters between male inmates and female guards can escalate into conduct resulting in a lawsuit by female employees.⁹

⁷ www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

⁸ THE GENEVA CONVENTIONS OF 12 AUGUST 1949 (icrc.org)

⁹ Sheriff Faces Lawsuit for Not Protecting Female Employees from Harassment by Detainees | Chicago News | WTTW

Further, the Bill's requirement to use preferred pronouns and honorifics means Maryland's correctional facilities' employees, as government employees, will be compelled to use words in a manner they may find violative of their own religious beliefs, potentially threatening their own First Amendment rights.

In addition to concern for the well-being of government employees, protecting Maryland from the risk of future litigation resulting from this Bill should be a consideration as well.

Purported "bases" for SB 550 do not support its passage

As to items in the Preamble which purport to provide a basis for the Bill's requirement to house people identifying as "transgender" or "nonbinary" according to their preference:

The Supreme Court decision referenced:

Although not cited by name, the case referred to here is Farmer v. Brennan, 511 U.S. 825 (1994). The particulars of the case are important because it did not stand for the proposition that males who identify as "trans" are entitled, or even permitted, to be housed in women's prisons. The Plaintiff was not seeking to be housed in a women's prison; see footnote 1 of the decision: "Petitioner also sought an order requiring the Bureau of Prisons to place petitioner in a 'co correctional facility' (i.e., one separately housing male and female prisoners but allowing coeducational programming). Petitioner tells us, however, that the Bureau no longer operates such facilities, and petitioner apparently no longer seeks this relief." The holding in the case, not specific to "transgender" inmates, was about the legal standard for liability on prison officials for claims of "deliberate indifference." This decision does not compel, or even speak to, the housing of male inmates in women's prison. And, further, this liability standard applies equally to any "deliberate indifference" shown to incarcerated women forced to be housed with males.

Victimization rates:

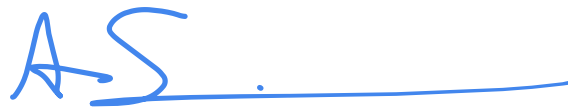
Notably absent from the data referenced here is the rate of sexual violence experienced by incarcerated women prior to confinement. A 2016 report cited that 86% of women in jail had experienced pre-incarceration sexual violence.¹⁰ The Bill fails to consider the potential impact on an already traumatized and vulnerable group of women. Incarcerated women have a right to await trial, serve their sentences and conduct their rehabilitation without being forced to cohabitate with criminal men.

¹⁰ overlooked-women-and-jails-fact-sheet.pdf (vera.org)

Conclusion

Despite claims to the contrary, it is not a human rights violation for male inmates (however they self-identify) to be denied access to showering with and sharing toilets and sleeping quarters with an already traumatized population of incarcerated women. The state owes a duty of care to all persons in its custody. It is the responsibility of the State to protect all vulnerable incarcerated men who are housed in the men's prison. It is not the responsibility of incarcerated women to be shields for men against violence from other men. Consistent with Maryland's obligation to protect the rights of incarcerated women in its custody, I ask that you reject SB 550.

Thank you for the opportunity to present this testimony to you.



Amanda Stulman
USA Director
Keep Prisons Single Sex

SB 550 gender ID - correctional facilities - MFRW

Uploaded by: Ella Ennis

Position: UNF



Ella Ennis, Legislative Chairman
Maryland Federation of Republican Women
PO Box 6040, Annapolis MD 21401
Email: eee437@comcast.net

Senator William Smith, Chairman
And Members of the Judicial Proceedings Committee
Maryland Senate
Annapolis, Maryland 21401

RE: **SB 550** – Correctional Facilities – Transgender, Nonbinary and Intersex Inmates – **OPPOSED**

Dear Chairman Smith and Committee Members,

The 1,480 members of the Maryland Federation of Republican Women strongly oppose SB 550 that would allow biological male prisoners who identify as female to be housed in a women's correctional facility in a cell with a biological woman. This legislation places women inmates in serious danger of attack.

Women inmates deserve to be treated with respect and housed in a safe environment. There is no safety for a biological woman placed in a cell with a biological male even if the biological male identifies as female. The inherent privacy limitations in a correctional setting (showers, toilets) leave inmates vulnerable under existing circumstances. Housing biological males in a women's facility would increase this danger to an unacceptable level. It is not difficult to see why male inmates would choose to make such a declaration and be housed in a women's facility. In the State of Washington, this practice has led to attacks on women and resulted in at least one pregnancy.

Respectful treatment of transgender, nonbinary or intersex individuals cannot override safety concerns for the much larger correctional population. Separate housing for transgender, nonbinary and intersex inmates within the correctional facility of their biological gender is the safest alternative for all inmates.

SB 550 would make women inmates in Maryland correctional facilities less safe. This is yet another step in what appears to be a movement to degrade the unique characteristics and biology of women by removing separate (and thereby safe) places for women. Please give SB 550 an **UNFAVORABLE** report.

Sincerely,
Ella Ennis
Legislative Chairman
Maryland Federation of Republican Women

SB0550_JCC_unf.pdf

Uploaded by: Jennifer Chavez

Position: UNF

February 16, 2022

Via MyMGA

Maryland Senate Judicial Proceedings Committee
11 Bladen St, Annapolis, MD 21401
Annapolis, Maryland 21401

**Re: UNFAVORABLE testimony on SB 550, Correctional Facilities -
Transgender, Nonbinary, and Intersex Inmates**

Members of the Committee: My name is Jennifer Chavez, and Maryland has been my home for the last 13 years. I am also a member of the Women's Liberation Front, a progressive feminist organization fighting for the rights of women and girls. I hereby state my opposition to SB 550 because I have had relatives and loved ones who were incarcerated and others who worked in corrections, and I believe this bill would make life harder and more dangerous for other women like them in Maryland.

This bill states that "an inmate shall be housed at a correctional facility designated for men or women based on the inmate's preference." This means that the bill allows **any incarcerated male** the chance to gain access to vulnerable incarcerated women, simply by claiming that he self-identifies as a woman, or as something other than a man such as "nonbinary."¹ There are no explicit exceptions that would exclude any class of male convicts from women's facilities, even if they are convicted rapists or have other histories of violence against women and girls.

SB 550 confuses, conflates, and misuses the concepts of "sex," "intersex," and "gender." But fixing the language to be more accurate and transparent will not fix the central problem: **Male arrestees and convicted criminals have no place in women's prisons or jails, ever.** The fact that a male may be targeted by other violent males does not somehow mean it is safe to house him with female inmates. All incarcerated males deserve protection from violence and abuse. But the problem of male violence in men's facilities needs to be solved there. Instead, this bill treats incarcerated women as human shields and therapy resources for males who may be vulnerable, or even just claim to feel vulnerable.

This bill recklessly endangers women who are already some of the most vulnerable humans in the nation. According to the ACLU, incarcerated women have extremely high rates of past trauma, with 79% reporting past physical abuse and over 60% reporting past sexual abuse. Further, women in prison are 3-4 times more likely than male prisoners to be victims of such trauma prior to incarceration.ⁱ Over 42% of incarcerated women are lesbian or bisexual.ⁱⁱ Nationwide, lesbian or bisexual individuals are more than 10 times as likely to be sexually victimized by other inmates and more than 2 times as likely to be sexually victimized by staff compared to heterosexuals.ⁱⁱⁱ Incarcerated women in Maryland are highly likely to have been victimized in prostitution.^{iv} As of 2013 Maryland had the second highest rate of sexual abuse of inmates in correctional facilities, with women more likely to be victims than men.^v

¹ While I have chosen to focus on incarcerated females and female corrections staff in women's facilities, it is obvious that SB 550 would also expose transgender-identified females to extraordinary risk of assault and rape in men's facilities, while further causing harm to the privacy and dignity of incarcerated men forced to share a cell with a female, or be searched by transgender-identified female staff.

In the face of these facts, I have to assume that the sponsors of this bill, and its twin in the House, HB 453, failed to study readily-available facts showing how nearly identical laws have played out in other places. Such facts show that women in places as near and far as Illinois, Washington, Canada, and England (and other places) have been assaulted, sexually harassed, and raped by men who were allowed to be housed in women's facilities based on their self-proclaimed gender-identities.^{vi} Correctional officers have also been sexually harassed and humiliated.^{vii}

Policies like SB 550 subject already traumatized incarcerated women to yet more fear and terror. One woman wrote from inside a California prison saying "ever since SB 132 passed I have been living in constant fear. I understand yes I am in prison however I am a survivor of abuse. So to have men incarcerated alongside of me is fearsome."^{viii} Another woman wrote:

In my opinion, as an inmate and a sexual abuse survivor, this is the most terrifying mistake made by people with power. They made an irrational, inconsiderate, malicious bill to please men who feel they have a right to be housed with women because they consider themselves a woman even with male genitals intact.^{ix}

Everything in the bill and its fiscal note makes clear it is aimed at easing the lives of incarcerated males. At no point does this bill explicitly consider the needs, preferences, feelings, or safety of incarcerated women who would be trapped in locked spaces with males who claim to self-identify as women. Nor does it consider the safety of female corrections staff conducting body searches. Instead, it mandates that "staff shall consider the inmate's health and safety," or even his own subjective "perception of health and safety."

The only exception – which is vaguely-worded and completely discretionary – is for "specific and articulable management or security concerns." This exception is practically meaningless because the presence of any male inmate should be recognized as a cause for serious management and security concerns in women's facilities. Indeed, similar language in other jurisdictions has failed to stop **even convicted rapists** from getting into women's jails.^x

Women's prisons and jails exist for women to rehabilitate while doing their time; they do not exist to validate the feelings of a relatively tiny population of male arrestees and convicts. For all these reasons I urge you to return an unfavorable report on SB 550.

Sincerely,

Jennifer Chavez
12728 Feldon Street
Silver Spring, MD 20906

SOURCES

ⁱ ACLU, "Women in Prison: An Overview," <https://www.aclu.org/other/words-prison-did-you-know>, and sources cited therein.

ⁱⁱ Meyer, et al., Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011-2012 (2016) <https://pubmed.ncbi.nlm.nih.gov/27997242/>.

iii U.S. Department of Justice, Bureau of Justice Statistics, “Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12,” May 2013 (see Table 8), <https://bjs.ojp.gov/content/pub/pdf/svpjri1112.pdf>.

iv Anne E. Fehrenbacher, et al., 2020: “Exposure to Police and Client Violence Among Incarcerated Female Sex Workers in Baltimore City, Maryland,” AMERICAN JOURNAL OF PUBLIC HEALTH 110, S152_S159, <https://doi.org/10.2105/AJPH.2019.305451>; Mary Kane & Mary Dibartolo (2002), “Complex physical and mental health needs of rural incarcerated women,” ISSUES IN MENTAL HEALTH NURSING, 23:3, 209-229, DOI: 10.1080/016128402753542974, <https://www.tandfonline.com/doi/abs/10.1080/016128402753542974>

v Baltimore has high rate of staff-inmate sex,” BALTIMORE SUN, May 16, 2013, <https://www.baltimoresun.com/news/crime/bs-xpm-2013-05-16-bs-md-prison-sexual-abuse-20130516-story.html>.

vi *Illinois*: “4 Male Inmates Secretly Moved to a Women’s Prison; One in Isolation After Raping Women,” Jan. 8, 2022, <https://www.womenarehuman.com/4-male-inmates-secretly-moved-to-a-womens-prison-one-in-isolation-after-raping-women/>;

Washington: “Male Rapist of 12-Year-Old Girl Groomed Vulnerable Woman While in Women’s Prison,” Nov. 23, 2021, <https://www.womenarehuman.com/male-rapist-of-12-year-old-girl-groomed-vulnerable-woman-while-in-womens-prison/>

England: “Transgender Policy That Led to Male Sex Offenders in Women’s Jails Set to be Reviewed,” November 6, 2021, <https://www.womenarehuman.com/transgender-policy-that-led-to-male-sex-offenders-in-womens-jails-set-to-be-reviewed/>;

Canada: “Female Prisoners Report Feeling Unsafe Housed With Males,” November 8, 2021, <https://www.womenarehuman.com/female-prisoners-report-feeling-unsafe-housed-with-males/>

vii Lauren Adams testimony to CA Dept. of Corrections about SB 132, Sept. 4, 2021, (male inmates getting erections and making sexual comments to staff during body searches) <https://www.womensliberationfront.org/news/wolfs-lauren-adams-testifies-at-cdcr-hearing>; “Female prison staff ‘uneasy’ about intimate searches of trans inmates,” The Sunday Times, Jan. 9, 2022, <https://www.thetimes.co.uk/article/female-prison-staff-uneasy-about-intimate-searches-of-trans-inmates-j5md36sgz>; “Court: No Religious Exemption From Strip-Searches by Opposite-Sex ‘Transgender’ Prison Guards; Plaintiff Files Appeal,” September 24, 2021 (Discussing incarcerated males and female staff), <https://www.womenarehuman.com/court-no-religious-exemption-from-strip-searches-by-opposite-sex-transgender-prison-guards-plaintiff-files-appeal/>.

viii Unnamed Woman, Letters from incarcerated women, June 21, 2021, <https://www.womensliberationfront.org/letters-from-incarcerated-women/ever-since-sb-132-passed-i-have-been-living-in-constant-fear>

ix *Id.*, <https://www.womensliberationfront.org/letters-from-incarcerated-women/you-are-sacrificing-our-safety-just-to-keep-a-few-men-quiet>

x See California SB 132, and testimony to the CA Dept. of Corrections at Sources, *vii*, above. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB132.

Kohm -- Testimony Opposing MD SB 550.pdf

Uploaded by: Joseph Kohm III

Position: UNF

February 15th, 2022

Senator William C. Smith, Jr.
Chairman, Senate Committee on Judicial Proceedings
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Re: Official Testimony Opposing **S.B. 550**

Dear Mr. Chairman and Members of the Committee,

My name is Joseph Kohm III, I am an attorney and the Public Policy Director for Family Policy Alliance. Family Policy Alliance advocates for policies that strengthen families and religious freedom in state capitols across the country, and federally. We host an alliance of more than 40 state-based organizations, to achieve a vision of a nation where families thrive, life is cherished, and religious freedom flourishes. Thank you for the opportunity to share with you how S.B. 550 will endanger women and violate the First Amendment rights of Maryland correctional facility employees.

First, S.B. 550 endangers women because Section 9-620(C) of the bill allows biologically male inmates to simply choose which sex they prefer to be housed with while incarcerated. Well-documented cases prove that allowing men, even men who “identify” as female, to be housed with biologically female inmates places those women in serious, increased danger of sexual assault and jeopardizes their mental health.¹² This indifference towards the safety of female inmates reflects an embrace of radical gender theory that erroneously asserts sex and gender are interchangeable and that a person’s status as a man or woman is entirely dependent upon their subjective feelings and experiences. This is a

¹ Caroline Downey, Biological Males Have Repeatedly Sexually Assaulted Females in Washington Women’s Prison, Former Inmate Claims, National Review (Dec. 29, 2021, 6:30 AM), <https://www.nationalreview.com/news/biological-males-have-repeatedly-sexually-assaulted-females-in-washington-womens-prison-former-inmate-claims/>

² Nazia Parveen, Karen White: how 'manipulative' transgender inmate attacked again, The Guardian (Oct. 11, 2018, 12:30 PM), <https://www.theguardian.com/society/2018/oct/11/karen-white-how-manipulative-and-controlling-offender-attacked-again-transgender-prison>

deeply dangerous ideology that harms not only women, but anyone who suffers from gender dysphoria because it sanctions their misbeliefs rather than providing them with the medical help they need. The state of Maryland should reject this ideology expressed in S.B. 550 and instead seek to protect female inmates and facilitate mental healthcare for inmates suffering from gender dysphoria.

Second, Sections 9-619(D) and 9-620(B) of the bill require Maryland correctional facility employees to refer to inmates by their chosen pronouns and honorifics. The Supreme Court has historically recognized government compelled speech as an illegal First Amendment violation.³ The First Amendment does not guarantee that a citizen has a right to be called by whichever gender pronouns they prefer, but it does protect citizens from being forced by the government, usually in violation of their consciences and sincerely held ethical or religious beliefs, to call someone by a pronoun inconsistent with that person's biology or appearance.

Federal Courts are already recognizing and enforcing this doctrine as applied to gender pronouns. In April 2021, the Sixth Circuit of Appeals ruled that state governments cannot compel state employees to use preferred gender pronouns in the course of their employment duties. The Sixth Circuit also ruled that such compelled speech would violate the employees' religious freedom because of the belief that sex is fixed from the moment of conception. Therefore, the Sixth Circuit ruled that the state cannot compel state employees to violate those sincerely held religious beliefs by making statements they believe are false.⁴ If passed, S.B. 550 would present the same set of legal challenges and is almost certainly to be ruled an unconstitutional violation of Maryland correctional facility employees' free speech and religious freedom rights.

In conclusion, S.B. 550 is an ill-advised piece of legislation that, if passed, will severely endanger female inmates and inmates afflicted with gender dysphoria; it will also trample upon the First Amendment rights of Maryland correctional facility employees. By rejecting this bill, Maryland will demonstrate that it protects women, values mental healthcare, and cherishes the Constitutional rights of its employees.

Therefore, we strongly urge you to reject S.B. 550.

³ *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

⁴ *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021).

Sincerely,

Joseph Kohm III, Esq.
Director, Public Policy
Family Policy Alliance

SB 550_Opposition_LA.pdf

Uploaded by: Lauren Adams

Position: UNF

February 16, 2022

Maryland Senate Judicial Proceedings Committee
Room 2, East Miller Senate Building
Annapolis, Maryland 21401

**Re: OPPOSITION to SB 550, Correctional Facilities -
Transgender, Nonbinary, and Intersex Inmates**

To the Members of the Judicial Proceedings Committee:

My name is Lauren Adams, and I am the Legal Director of the Women's Liberation Front (WoLF), a national feminist 501(c)(3) non-profit which fights for the rights of women and girls. On behalf of WoLF, I stand opposed to SB 550 because it would impose inhumane conditions on incarcerated women in Maryland.

First and foremost, I urge you to hear the voices of incarcerated women speaking out on this issue, since they cannot speak to you themselves.

- Letters from incarcerated women found at <https://www.womensliberationfront.org/letters-from-incarcerated-women>
- Incarcerated woman speaks out on the impact of being housed with male offenders: <https://youtu.be/k0q26czZZqg>
- Tomiekia's Story: <https://youtu.be/gJoKAPJe9m4>

Second, there are significant findings on a state and federal level regarding the population being proposed access to women's facilities:

- In California, since they implemented the self-ID bill being proposed in Maryland, they have seen a **30% increase** in incarcerated people identifying as transgender.
- There have been nearly **300 requests for transfer from men's to women's facilities**, and dozens have already been transferred. **One third of transfer requests are from registered sex offenders**, and the law does not disqualify those who might pose a danger to women.
- The Bureau of Prisons reports that **48% of trans-identified federal inmates are sex offenders**.

In California alone, just a few of the men who have been transferred include:

- Shawn Gustafson, who molested a 6 year-old and an 8 year-old, and has reportedly been placed into segregation multiple times for sexual infractions since his transfer;
- Patrick White, a convicted rapist and member of the Aryan Brotherhood;
- Jonathan Robertson, who is in administrative segregation pending a sexual assault investigation;
- Christian Ramirez, who sexually assaulted a woman within weeks of his transfer. His victim disclosed immediately to a staff member, and she was almost sent to solitary confinement as a result;

- Anthony Lipsey, serving life for murder, who assaulted his female cellmate and nearly broke her jaw;
- Michael Contreras Hernandez, also serving life for murder, including murdering another inmate in the men's prison where he spent two decades. Now under investigation for sexual harassment of multiple women, including voyeurism; and
- Jason Hann, on death row for murdering two infants, and is being housed in the same facility as his victims' mother. (Note: Jason is the **only** one listed here who has had his penis removed).

Third, there are serious concerns regarding data collection, both present and future. Last year, the ACLU sued the state of Washington to prevent disclosure of the number of men who had been transferred to women's facilities. Recently, a bill was introduced there to exempt info on "gender identity" from disclosure under public records laws.¹ This is aimed at obscuring the fact that the state was transferring male sex offenders to women's prisons, one of whom went on to rape a cognitively disabled woman.²

Fourth, a clarification about "anatomy" and whether trans-identified men pose a threat to women. The only high-quality longitudinal study to date showed that even after decades of hormone therapy and genital surgery to remove the penis:

*"male-to-females had a **significantly increased risk for crime** compared to female controls (aHR 6.6; 95% CI 4.1–10.8) but not compared to males (aHR 0.8; 95% CI 0.5–1.2). This indicates that they **retained a male pattern regarding criminality**. The same was true regarding violent crime."³ [emphasis added]*

But in fact, the vast majority (~90%) of trans-identified men actually retain their penises, and not all of them even take hormones. SB 550 certainly does not impose any such requirements. Under California's "self-ID" law, nearly all of the men who have been transferred to women's prisons have their penises. They are being housed in cells with women, which has already led to sexual harassment, assault, and rape. Condoms are being distributed and women are being provided birth control, and counseled on their options – abortion, adoption, or surrender to family – should they become pregnant while incarcerated.

Finally, WoLF is representing four incarcerated women in a federal civil rights lawsuit challenging the California law which the Maryland bill is modeled upon. More info about that can be found at stopsb132.com. I encourage you to familiarize yourself with the constitutional violations being alleged, as they are the same violations that would occur under Maryland's proposed law.

There are also legal challenges to gender identity policies in Florida and New Jersey, with more anticipated in other jurisdictions where women continue to be abused and have their

¹ <https://app.leg.wa.gov/billsummary?BillNumber=1956&Year=2021&Initiative=false>

² <https://www.womensliberationfront.org/news/washington-aclu-male-rapists-confirmed>

³ Dhejne C, Lichtenstein P, Boman M, Johansson AL, Långström N, Landén M. Long-term follow-up of transsexual persons undergoing sex reassignment surgery: cohort study in Sweden. *PLoS One*. 2011;6(2):e16885. Published 2011 Feb 22. doi:10.1371/journal.pone.0016885

human rights violated in this way. In Illinois, a woman is suing the state after being raped by her male cellmate, who transferred on the basis of self-declared “gender identity” after he beat his male cellmate to death in the men’s prison. Maryland would be opening itself up to immense liability by increasing the risk to incarcerated women of violence, rape, and pregnancy.

Women are not human shields. Solve the problem of male violence in men's prisons where it happens.

Thank you for the opportunity to submit testimony today on this important issue.

Regards,
Lauren Adams
Legal Director
Women's Liberation Front

SB 550_SP_UNF.pdf

Uploaded by: Sarah Reichert-Price

Position: UNF

Senator William Smith, Chairman
And Members of the Judicial Proceedings Committee
Maryland Senate
Annapolis, Maryland 21401

RE: **SB 550** – Correctional Facilities – Transgender, Nonbinary and Intersex Inmates **OPPOSED**

Dear Chairman Smith and Committee Members,

I strongly oppose SB 550 that would allow biological male prisoners who identify as female to be housed in a women's correctional facility in a cell with a biological woman. This legislation places women inmates in serious danger of attack.

Women inmates deserve to be treated with respect and housed in a safe environment. There is no safety for a biological woman placed in a cell with a biological male even if the biological male identifies as female. The inherent privacy limitations in a correctional setting (showers, toilets) leave inmates vulnerable under existing circumstances. Housing biological males in a women's facility would increase this danger to an unacceptable level. It is not difficult to see why male inmates would choose to make such a declaration and be housed in a women's facility. In the State of Washington, this practice has led to attacks on women and resulted in at least one pregnancy.

Respectful treatment of transgender, nonbinary or intersex individuals cannot override safety concerns for the much larger population of any given correctional facility. Separate housing for transgender, nonbinary, and intersex inmates within the correctional facility of their biological gender is the safest alternative for all inmates.

SB 550 would make women inmates in Maryland correctional facilities less safe. This is yet another step in what appears to be a movement to degrade the unique characteristics and biology of women by removing separate (and thereby safe) places for women.

Please give SB 550 an **UNFAVORABLE** report.

Thank you for your time,

Sarah Price
221 Miller Street
Westernport, MD

SB0550 - Transgender, Nonbinary, and intersex Inma

Uploaded by: Jennifer Beskid

Position: INFO



Department of Public Safety and Correctional Services Office of the Secretary

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CAROLYN L. SODOLICE

BILL: SENATE BILL 550

POSITION: LETTER OF INFORMATION

EXPLANATION: Senate Bill 550 prohibits an employee of a correctional facility from discriminating against an inmate and requires the managing official of a correctional facility to implement a written policy prohibiting discrimination. SB 550 also prescribes procedures for determining an inmate's gender identity during intake, prohibits discipline for refusal to disclose gender identity, allows an individual to update their gender identity at any time, and requires specified individuals to use specific pronouns and honorifics in communications. Additionally, for transgender, nonbinary, or intersex individuals, specified personnel shall address an individual in a manner consistent with their gender identity, house an individual at a facility for males or females based on their preference, consider the inmate's perception of safety when housing them, search the inmate according to the existing policy for their stated gender, and allows the Department to deny the search or housing of an individual based on specific and articulable management or security concerns.

COMMENTS:

- The Department of Public Safety and Correctional Services (Department) oversees the Division of Correction which operates 13 State correctional facilities, housing offenders sentenced to periods of incarceration for 18 months and longer. The Department also oversees the Division of Pretrial Detention and Services which operates the Baltimore City Pretrial Complex. The Department does not oversee any other local jail or detention facility.

Discrimination

- The Department's policy on Standards of Conduct states "An employee shall be fair, firm and impartial in relationships with inmates and offenders. The employee shall maintain a humane, objective and professional interest in the welfare of inmates and clients in order to contribute to the success of the programs of the Department."
- In addition, the Standards of Conduct policy specifies, "An employee found to have engaged in discrimination on the basis of race, color, religion, national origin, political affiliation, handicap, age or sex (including sexual harassment) will be subject to disciplinary action up to and including termination depending on the degree of the infraction." The additional language proposed in SB 550 including ethnicity, gender identity, or sexual orientation can be included in policy without legislation.

Gender Identity

- The Department has been proactive in its efforts to reduce victimization of the incarcerated population and under the Assessment for Risk of Sexual Victimization and Abusiveness policy, a screening instrument is utilized as part of the INTAKE and FACILITY TRANSFER process and at other times deemed appropriate to assess each inmate's risk for being sexually abused or being sexually abusive toward other inmates.
- This policy also specifically prohibits disciplining an incarcerated individual for refusing to disclose their gender identity.
- SB 550 would allow an incarcerated individual to update their gender identity at any time. This practice would be detrimental to the safety and security of the operations of all facilities.
 - The Bureau of Prisons defines a transgender inmate as "one who has met with a Bureau of Prisons psychologist and signed a form indicating consent to be identified within the agency as transgender."¹
 - The use of a consent form allows for accommodations to be considered.
- Transgender is an umbrella term used for people whose gender identity (self-identification as male, female, intersex, nonbinary, etc.) is different from their assigned sex at birth. A transgender woman is a woman whose sex assigned at birth was male, but who understands herself to be female and a transgender man is a man whose sex assigned at birth was female but who understands himself to be male.² While the definition further states some transgender people identify as neither male nor female, there were no definitions that indicated an individual would inconsistently change the gender with which they identify as SB 550 would allow.
- The bill proposes that housing decisions shall consider the incarcerated individual's perception of safety. Incarcerated individuals are provided the opportunity to participate in the classification case management process including presenting opinions, preferences, and requests for appropriate classification assignments in accordance with the Department's policy on Inmate Rights.
- For the safety and security of ALL incarcerated individuals, there is a classification process the Department adheres to for the purpose of ensuring the individual is housed properly and does not pose a safety risk to the individual, to other individuals and the facility as a whole. An incarcerated individual's classification is reviewed every 12 months, at minimum.
- All incarcerated individuals must be kept safe from victimization, harassment and assault. Allowing an individual to choose housing removes from the Department the ability to ensure the safety and security of ALL individuals.

¹ U.S. Department of Justice. (2017). Transgender offender manual. Retrieved from <https://www.bop.gov/policy/progstat/5200.04.pdf>

² Legal Information Institute. (2021). transgender. Cornell Law School. Retrieved from <https://www.law.cornell.edu/wex/transgender>

- SB 550 would require an incarcerated individual to be searched according to the search policy for the individual's gender. This already exists in policy for individuals who identify as transgender. After meeting with the designated medical/mental health provider, a search exemption card is issued and the individual is able to determine the gender of an officer who is required to perform a search.
- SB 550 would require all staff, contractors, and volunteers at a correctional facility to address an incarcerated individual in a manner consistent with the inmate's gender identity. This preference for how an inmate wishes to be addressed could be covered in training and appropriate signage could be displayed; however, the Department could not enforce this mandate for every single individual entering a facility. This would result in a significant increase in the number of Administrative Remedy Procedure (ARP) complaints, Headquarters ARP appeals to the Commissioner, Inmate Grievance Office (IGO) complaints and civil rights complaints filed in the United States District Court for the District of Maryland.
- SB 550 includes language identical to California legislation that passed in 2020 and has resulted in complaints from women incarcerated in a women's prison in California. The lawsuit asserts that:
 - two female inmates, a Roman Catholic and a Muslim, claim that they are being placed in "in an intimate setting with unrelated men" and "being housed in facilities with men" violates their rights to practice religious freedoms.
 - another female inmate was sexually assaulted by an individual transferred to the women's prison under the California law³
- The Department is responsible for ensuring the security, health, and safety of every individual in its custody. Existing policies and procedures are in place to ensure that all incarcerated individuals are treated fairly and with respect.

CONCLUSION: For these reasons, the Department of Public Safety and Correctional Services respectfully urges the Committee to consider this information as it deliberates on Senate Bill 550.

³ Ferrannini, J. (2021, Nov. 23). Lawsuit targets Wiener law to protect incarcerated trans people. *Bay Area Reporter*. https://www.ebar.com/news/latest_news/310815