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The Honorable Luke Clippinger  
House of Delegates Judiciary Committee  
Room 101  
House Office Building  
Annapolis, Maryland 21401

**Testimony of FreeState Justice**  
**IN SUPPORT OF**  
**HB453: Correctional Facilities –**  
**Transgender, Nonbinary, and Intersex Inmates**  
**(Transgender Respect, Agency, and Dignity Act)**

To the Honorable Chair Luke Clippinger, Vice Chair David Moon,  
and esteemed members of the Judiciary 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 be able to 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 to live in a safe, gender-affirming environment.

Current DPSCS policies regularly subject transgender inmates to discrimination and mistreatment. Transgender inmates are routinely housed not according to their gender identity or according to what would be safest for them, but rather according to their sex assigned at birth. When transgender inmates are then subjected to violence

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by other inmates, they are not transferred to appropriate facilities, but are instead all-too-often placed in solitary confinement, often over the objections of the incarcerated individual. Transgender inmates also suffer significant discrimination, harassment, and mistreatment from correctional staff, who have been reported to have deadnamed transgender inmates, called them by transphobic slurs, and at times even made threats of violence.

In 2014, for instance, Sandy Brown, a transgender woman, was incarcerated in Maryland's Patuxent Institution. Upon incarceration, Ms. Brown was strip searched in contravention of standard strip search procedures, and was then placed in involuntary administrative segregation for 66 days, where she was then subjected to harassment from correctional officers that included inappropriate surveillance in the showers, deadnaming, transphobic slurs, and even death threats. In 2015, Ms. Brown successfully sued Patuxent Institution for this discriminatory treatment.

The success of Ms. Brown's 2015 suit has not, however, significantly improved the conditions under which transgender incarcerated individuals are forced to live. Over the past two years, we have seen a continuing wave of violence against transgender women especially in Maryland correctional facilities. In just one example, just last year, Kim Wirtz, a transgender woman, was found dead several hours after being housed in a male cell in Baltimore's Central Booking and Intake Center. According to a public defender in Baltimore, this and other cases demonstrate that "transgender women are exceptionally vulnerable" in Baltimore Central Booking.

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.

HB 453 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 on the basis of gender identity and sexual orientation, HB0453 reaffirms and certifies that grievous discrimination and mistreatment, such as that suffered by Ms. Brown, is not allowed or tolerated under any circumstances.

Second, HB 453 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 HB 453, 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 be disciplined for refusing to answer any of the above questions.

This information, which may be updated by the inmate at any time, must be used by all staff, contractors, and volunteers at a correctional facility.

This policy would reaffirm and expand upon current DPSCS policy, which dictates 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. These questions are asked as a part of a questionnaire meant to determine inmates' risk of victimization within a facility. HB 453 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 so early after their entrance to the facility, inmates can receive specific attention and care that address health needs specific to them. 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, HB 453 ensures a safe, gender-affirming environment by mandating DPSCS to take seriously inmates' safety concerns regarding housing determinations, and to align housing placements with the transgender individual's 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 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, HB 453 prohibits making this assessment solely on the basis of 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. HB 453 thus builds on national guidelines regarding inmate housing determinations for transgender individuals (e.g., the Prison Rape Elimination Act), which require determinations be individualized, holistic and consider the safety of each inmate.

While consistent with federal law, this is a significant change from how decisions regarding housing of transgender inmates are currently made in practice by DPSCS. Although official DPSCS policy calls for housing decisions for transgender inmates to be made 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 the manner in which DPSCS centers their analysis around the theoretical (and unproven) risk the transgender inmate might prove to

other inmates, rather than the very real risk of violence and discrimination faced by the transgender inmates 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 even remotely resemble their preference or gender identity. The scales are so tipped against transgender inmates that, as of 2020, not one of the approximately 28 transgender inmates in Maryland has 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 ways that are discriminatory and arbitrary. 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 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.

HB 453 would significantly mitigate these concerns. It would provide transgender inmates with housing that affirms their gender and gives them a say in where they

would be safest. It would also help to ensure that the mistreatment that has happened to individuals like Ms. Brown and Ms. Wirtz will never happen again.

For these reasons, FreeState Justice urges a favorable report on House Bill 453.