

**Testimony in Support of Senate Bill 761 (Favorable)
Correctional Facilities - Transgender, Nonbinary, and Intersex Inmates
(Transgender Respect, Agency, and Dignity Act)**

To: Senator William C. Smith, Jr., Chair, and Members of the Senate Judicial Proceedings Committee

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We are student attorneys in the Youth, Education and Justice Clinic (“the Clinic”) at the University of Maryland Francis King Carey School of Law. The Clinic represents individuals serving life sentences in Maryland prisons for crimes they committed as children or emerging adults. The Clinic supports Senate Bill 761, which seeks to afford incarcerated transgender, nonbinary, and intersex people their human right to be protected from discrimination and violence.

Individuals are not sentenced to incarceration to be victimized by sexual violence. However, transwomen in men’s prisons are substantially more likely to be subjected to rape or sexual assault than the general population.¹ Moreover, issues with housing for transgender, nonbinary, and intersex people regularly lead to them being placed in segregation for prolonged periods of time despite having committed no offense within the prison. The United Nations has declared extended segregation to be torture.² Further, when transgender, nonbinary, and intersex people are placed in segregation, they can lose access to needed medical care, even though the United States Supreme Court has long declared that incarcerated individuals have a right to medical care pursuant to the Eighth Amendment.³

¹ See Valerio Bacak et al., *Gender-Affirming Housing In Jails and Prisons*, 5 LANCET PUB. HEALTH e373, e373 (2020), <https://www.thelancet.com/action/showPdf?pii=S2468-2667%2820%2930100-6> (The prevalence of sexual assault among transgender women in men’s prisons is 13 times greater than the rate for cisgender men); NATIONAL CENTER FOR TRANSGENDER EQUALITY, LGBTQ PEOPLE BEHIND BARS: A GUIDE TO UNDERSTANDING THE ISSUES FACING TRANSGENDER PRISONERS AND THEIR LEGAL RIGHTS (2018), <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf> (Incarcerated transgender people are nearly 10 times more likely to be sexually assaulted than the general population, with an estimated 40% of transgender people in state and federal prisons reporting a sexual assault in the previous year); Beth Schwartzapfel, *DOJ Tells Prisons To Put Safety First in Housing Transgender Inmates*, THE MARSHALL PROJECT (Mar. 29, 2016), <https://www.themarshallproject.org/2016/03/29/doj-tells-prisons-to-put-safety-first-in-housing-transgender-inmates> (reporting the Bureau of Justice Statistics finding that, in the preceding year, transgender prisoners had been sexually assaulted at a rate more than eight times higher than state prisoners generally).

² *Solitary confinement should be banned in most cases, UN expert says*, UN NEWS (Oct. 18, 2011), <https://news.un.org/en/story/2011/10/392012>.

³ See *Estelle v. Gamble*, 429 U.S. 97, 103 (1976) (“[Eighth Amendment] principles establish the government’s obligation to provide medical care for those whom it is punishing by incarceration.”).

It is dangerous to be a transgender person in prison. Studies have found that transwomen in prison are ten- to thirteen-times more likely to be sexually assaulted than the general population.⁴ Transwomen are also likely to be coerced into prostitution while in prison, exchanging sex for protection.⁵

In addition to the physical dangers of existing as a transgender person in prison, transgender people are also often denied the basic human right of being identified with their correct name and gender designation. Studies of transgender youth have found that using a transgender individual's chosen name dramatically decreases the risk of suicidal behavior.⁶ Transgender people who obtain gender-concordant identity documents have reduced suicidal ideations as well as improved mental health.⁷ Similarly, transgender people who are subjected to identity nonaffirmation, such as incorrect pronoun use, have significantly higher odds of experiencing depression and suicidal ideation.⁸ Thus, both denying transgender people basic safety in prison and preventing them their right to live according to their identity puts their lives in peril.

Correctional facilities are obligated to protect the people they incarcerate. Senate Bill 761 would provide Maryland's prisons and jails with a comprehensive system to properly process, place, and treat transgender, nonbinary, and intersex inmates in accord with their human and constitutional rights. This bill is a necessary step to break the cycles of violence and indignity that transgender, nonbinary, and intersex inmates face while incarcerated. For these reasons, we ask for a favorable report on this bill.

This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.

⁴ E.g., Allen J. Beck, Ph. D., U.S. DEP'T JUST., BUREAU JUST. STAT., SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES, 2011-12, SUPPLEMENTAL TABLES: PREVALENCE OF SEXUAL VICTIMIZATION AMONG TRANSGENDER ADULT INMATES (2014).

⁵ Elida Ledesma & Chandra L. Ford, *Health Implications of Housing Assignments for Incarcerated Transgender Women*, 110(5) AM. J. PUB. HEALTH 650, 652 (2020).

⁶ E.g., Sarah Steadman, "That Name is Dead to Me": Reforming Name Change Laws to Protect Transgender and Nonbinary Youth, 55 U. MICH. J.L. REFORM 1, 5 (2021).

⁷ Ayden I Scheim et al., *Gender-concordant identity documents and mental health among transgender adults in the USA: a cross-sectional study*, 5 LANCET PUB. HEALTH e196, e200-02 (2020).

⁸ Nicholas Parr & Bethany Grace Howe, *Heterogeneity of Transgender Nonaffirmation Microaggressions and Their Association With Depression Symptoms and Suicidality Among Transgender Persons*, 6 PSYCH. SEXUAL ORIENTATION & GENDER DIVERSITY 461, 461 (2019).