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POSITION ON PROPOSED LEGISLATION

BILL: SB 459 The Mandela Act

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 03/08/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 459.

It is well documented that the psychological effects of solitary can be severe. Depending on the circumstances, effects can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, obsessive thoughts, paranoia, and psychosis. Indeed, psychological stressors such as isolation can be as clinically distressing as physical torture.¹ In terms of physical ramifications, isolation has risks of morbidity and mortality comparable with those associated with smoking, obesity, sedentary lifestyle, and high blood pressure.² For vulnerable individuals, the effects can be even more devastating. In the Maryland Correctional Services Article “restricted housing” or more accurately, solitary confinement means “a form of physical separation that has not been requested by the inmate in which the inmate is placed in a locked room or cell for approximately 22 hours *or more* out of a 24-hour period.” (Emphasis supplied).³

Individuals can be relegated to restricted housing for extended lengths of time or in repeated succession. Special consideration for vulnerable individuals is lacking. Yet, remarkably, there are no comprehensive statutory or regulatory guidelines for the administration of restricted housing procedures within the Division of Correction. In fact, the definition of restricted housing

¹ Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics; Jeffrey L. Metzner and Jamie Fellner, *Journal of the American Academy of Psychiatry and the Law* Online March 2010, 38 (1) 104-108.

² American Psychiatry Should Join the Call to Abolish Solitary Confinement; Kenneth L. Appelbaum, *Journal of the American Academy of Psychiatry and the Law* Online December 2015, 43 (4) 406-415.

³ Md. Code Ann. Corr. Serv. Art. 9-614.

itself appears only in the portion of the statute requiring the DPSCS to issue an annual report on the use of restricted housing in the Division of Corrections.⁴ That legislative mandate, issued in 2016, showed that the legislature at that time understood that the use of restricted housing requires serious consideration and oversight. This bill builds on those concerns and provides real guidance for managing individuals placed in any type of restricted housing.

Most importantly, the bill provides for necessary training for all correctional personnel involved in the supervision and care of individuals placed in restrictive housing, including training necessary for personnel to understand the ramifications of their actions and the effect it could have on already vulnerable people. Certainly, the safety and well-being of staff, as well as those incarcerated, is benefitted by this. Those in opposition to this bill proffer that restricted housing contributes to the safe and orderly operation of correctional facilities when used “carefully and properly.” Without proper training, without standards, how are correctional staff to know what it means to “carefully and properly” impose restrictive housing sanctions? If there is current training available, it can only enhance safety and order to supplement that training with scientifically sound information relevant to dealing with vulnerable populations.

Moreover, according to the most recently available DPSCS Report,⁵ correctional personnel are already engaging in some practices consistent with this bill. For example, the Report states that, [i]t is the policy of DPSCS to never place a pregnant woman on restrictive housing.”⁶ Additionally, the Report specifies that it relies on the same definition for serious mental illness as that set forth in this bill.⁷ This bill serves to codify many of the practices to which the DPSCS Report indicates it already adheres, and assures that those important issues are mandated. Senate Bill 459 does not eliminate the use of restrictive housing altogether. It proposes improved definition, direction, and oversight meant to reduce the real dangers and concerns inherent in the use of solitary confinement.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on Senate Bill 459.

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

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OPD

⁴*Id.*

⁵ DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES Report on Restrictive Housing – Fiscal Year 2021 Fulfilling Reporting Requirements Correctional Services Article, § 9-614, Annotated Code of Maryland December 2021.

⁶ *Id.* at p. 12

⁷ *Id.*