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## POSITION ON PROPOSED LEGISLATION

**BILL: SB 0761 - Correctional Facilities - Transgender, Nonbinary, and Intersex Inmates (Transgender Respect, Agency, and Dignity Act)**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable**

**DATE: 03/14/2023**

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 761.

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.<sup>1</sup> In comparison, the incarceration rate for the total American population is 0.7%.<sup>2</sup>

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.<sup>3</sup> In short, transgender people 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+) people who are incarcerated. DPSCS policy requires that people be housed based purely on a physical exam. In particular, the policy states: “Incomplete surgical gender reassignment require that the patient be classified according to his or her birth

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<sup>1</sup> 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>.

<sup>2</sup> 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/>.

<sup>3</sup> See *supra* note 1.

sex for purposes of prison housing, regardless of how long they may have lived their life as a member of the opposite gender.”<sup>4</sup>

The existing policy is expressly damaging to TGI+ people. 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 761 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 761 also further codifies efforts to protect TGI+ people 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 person to update that information later, and require correctional staff, contractors, and volunteers to respect the given information. Finally, the bill allows TGI+ incarcerated people 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+ people from the worst abuses of the prison system represents

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<sup>4</sup> 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-jxo3djt2mzajfkorn3uwntwry-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 761 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 urges this Committee to issue a favorable report on SB 761.**

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

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