

Senate Bill 761
Correctional Facilities - Transgender, Nonbinary, and Intersex Inmates
Transgender Respect, Agency, and Dignity Act
March 15, 2023
Support

The Gender Violence Clinic at the University of Maryland Francis King Carey School of Law represents criminalized survivors of violence – people who have been victims of gender-based violence (intimate partner violence, rape, sexual assault, human trafficking, and violence related to gender identity and/or sexual orientation) and whose incarceration (current or former) is related in some way to that violence. The clinic’s clients include transwomen who have experienced housing instability, discrimination, and sexual and physical violence in the Maryland prison system based on their gender identity.

The Gender Violence Clinic is submitting this testimony in support of HB 426, the Transgender Respect, Agency, and Dignity Act. This legislation would protect incarcerated transgender, nonbinary, and intersex people who face a staggering amount of discrimination and violence while incarcerated. Incarceration for transwomen in men’s prisons is particularly dangerous; one study found that 59% of the transwomen housed in men’s facilities had been sexually assaulted.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. Such extended use of segregation has been deemed torture by the United Nations. And when transgender, nonbinary, and intersex people are placed in segregation as a result of housing issues, they can lose access to needed medical care.

Inmates are not sentenced to be raped. Transwoman inmates in men’s prisons are substantially more likely to be subjected to sexual assault and rape.²

¹ Valerie Jenness, Cheryl L. Maxson, Kristy N. Matsuda, and Jennifer Macy Sumner. *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault* (2007).

² See, Valerio Bacak, Katherine Bright, and Lauren Wilson, *Gender-Affirming Housing In Jails and Prisons*, THE LANCET, 2020, <https://www.thelancet.com/action/showPdf?pii=S2468-2667%2820%2930100-6> (Finding that the prevalence of sexual assault among transgender women in men’s prisons was 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, [TransgenderPeopleBehindBars.pdf \(transequality.org\)](https://transequality.org/TransgenderPeopleBehindBars.pdf) (Identifying that incarcerated transgender people are nearly 10 times more likely to be sexually assaulted than the general population); Beth Schwartzapfel, *DOJ Tells Prisons To Put Safety First in Housing Transgender Inmates*, THE MARSHALL PROJECT, 2016, <https://www.themarshallproject.org/2016/03/29/doj-tells-prisons-to-put-safety-first-in-housing-transgender-inmates> (reporting that The Bureau of Justice Statistics found that more than a third of transgender prisoners had been sexually assaulted in the past year, a rate

Additionally, PREA data from 2015 shows that transgender people experience the highest victimization in jails.³

DPSCS' current policy for housing trans inmates is dangerous, wasteful, and inconsistent with logic. Transwomen who are incarcerated in men's housing are all too familiar with the toxic cycle of being sexually abused by a cellmate, reporting abuse, losing housing because of abuse, being subjected to segregation with a possible infraction, being reintroduced to general population, being abused by a cellmate, repeat.

Lastly, using the pronouns appropriate to someone's gender is something we now learn in grade school. It is a matter of basic human decency. Our clients have spoken about the impact of gender affirming language. Using a person's preferred pronoun leads to less adversity, more respect, and an overall safer environment. A person whose pronouns are respected is less likely to engage in harmful activity against themselves.⁴

All correctional agencies have a legal obligation to protect the people they incarcerate. Housing transgender people according to gender identity and using appropriate pronouns increases safety in prisons.

We respectfully urge this committee to return a favorable report on SB 761.

more than eight times as high as among state prisoners generally. The UC- Irvine researchers found rates as high as 60 percent); According to federal data, transgender people are nearly ten times more likely to be sexually assaulted than the general prison population, with an estimated 40% of transgender people in state and federal prisons reporting a sexual assault in the previous year, <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>.

² Valerie Jenness, *Transgender Inmates In California Prisons: An Empirical Study of a Vulnerable Population*, UCIRVINE CENTER FOR EVIDENCE-BASED CORRECTIONS, 2009, [Slide 1 \(bpb-us-e2.wpmucdn.com\)](https://www.bpb-us-e2.wpmucdn.com), (reporting that 35 percent of transgender female inmates in California would prefer to be housed in a women's facility).

³ United States Department of Justice, PREA DATA COLLECTION ACTIVITIES, 2015, <https://bjs.ojp.gov/content/pub/pdf/pdca15.pdf>

⁴ Nicholas J. Parr and Bethany Grace Howe, *Heterogeneity of Transgender Identity Nonaffirmation Microaggressions and Their Association With Depression Symptoms and Suicidality Among Transgender Persons*, 6 *PSYCHOLOGY OF SEXUAL ORIENTATION AND GENDER DIVERSITY* 461 (finding that increasing frequency of transgender identity non affirmation or denial was significantly associated with 150-240% increases in odds of past-year sadness, and hopelessness. Misgendering also has the effects of: withdrawal from regular activities, suicidal ideation, apathy, decreased social engagement, and depression) (2019), <https://psycnet.apa.org/doiLanding?doi=10.1037%2Fsgd0000347>.