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The Honorable Chair Luke Clippinger
House of Delegates Judiciary Committee
Room 101
House Office Building
Annapolis, Maryland 21401
February 21, 2023

**Testimony of FreeState Justice
IN SUPPORT OF HB 426 - Correctional Facilities - Transgender, Nonbinary, and Intersex
Inmates (Transgender Respect, Agency, and Dignity Act)**

To the Honorable Chair Luke Clippinger 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.

I want to thank the **23 delegates who have cosponsored this bill** with Delegate Lopez. We are stronger not just because we are in coalition with these legislators but also because we are in coalition with the Trans Rights Advocacy Coalition responsible for the Trans Health Equity Act. **Most importantly, we represent the safety of our incarcerated transgender community.**

This bill will change DPSCS policy to the benefit of at risk incarcerated LGBT community members who face staggering rates of both physical & sexual violence on the basis of their identity as you'll hear from our panel. The bills nondiscrimination policy would cover not just gender identity & sexual orientation but also ethnicity, age & pregnancy status; **all identities not currently protected by DPSCS nondiscrimination policy.** Under current intake procedure, individuals are already supposed to be asked (under PREA) about their LGBT identity & other prescreening that would determine their risk within housing assessment. Expansions to this intake procedure would allow trans incarcerated people to identify how they would like to be referred to (preferred name & pronouns) in a documented setting. This would create better data for how many members of our community are currently incarcerated, **as it stand these data are woefully underreported & unrecorded.**

*FreeState Justice, Inc. (formerly FreeState Legal Project, Inc., merging with Equality Maryland)
is a social justice organization that works through direct legal services, legislative and policy advocacy, and community engagement to enable Marylanders across the spectrum of lesbian, gay, bisexual, transgender, and queer identities to be free to live authentically, with safety and dignity, in all communities throughout our state.*

Finally, this bill would allow transgender people (only) an additional avenue to **request** housing transfer to the conditions that match their gender identity & their perception of safety. These **requests could not be denied on the basis of sex or sexual orientation as they are currently.** However, the department would retain its ability to deny these requests for other substantive reasons including (Section H1) “Clear and convincing evidence of specific & articulable management or security concerns, including a present risk that the inmate will commit abuse based on the inmate’s previous behavior.” This assessment of predisposition to violence is done upon intake as another function of PREA.

Our community requires additional protection, this is acknowledged by federal law through the Prison Rape Elimination Act which I have mentioned in my explanation of the bill. PREA standards represents the start, not the end, of efforts to curb prison rape and sexual abuse. We take PREA one step further to allow transgender people not just to be placed into a housing assignment with their birth sex that is marginally safer than the general population but to request transfer across currently sex-segregated prisons into a safer housing assignment with their lived gender. We believe that **gendered housing that functions strictly off of assigned sex, with no exception, will always be additionally harmful to trans, queer & gender variant people.**

Currently, correctional facilities’ policies regarding our community vary greatly from facility to facility. Some prisons have a designated wing, like the medical wing, where our community is housed separately from the general population. Most facilities house transgender people within the general population of their assigned sex, though in a cell assignment with someone who they believe is at a lesser risk of becoming their attacker (**this is the federally legislated minimum under PREA**). Disturbingly, some facilities who don’t know what to do with their transgender inmates house them in involuntary administrative segregation or solitary confinement to avoid protecting them from the general population. A survey of 1,118 LGBTQ incarcerated people found that **85% of participants were held in solitary confinement** at least once during their sentence (Lyndon et al., 2015). Transgender individuals have frequently been placed into solitary confinement or other inhumane conditions due to being victims of violence (Sosin, 2020).

No facilities in Maryland currently house a transgender person outside of their sex. This is regardless of any gender affirming surgeries a person may have had at the time of incarceration.

This legislation is a solution to problems that already exist. I can tell you with certainty that no one would transition & willingly expose themselves to the discrimination we face in order to receive ‘special treatment’ because there is no special treatment. Indeed, such **bad actors are prevented from doing so by this bill.**

Internalize that being transgender in prison is not safe. Being in prison at all is not easy. It is my sincere hope that with the passage of this legislation, we would alleviate a small amount of these problems & make our community safer.

Jamie Grace Alexander

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