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## Department of Public Safety and Correctional Services

### Office of Government & Legislative Affairs

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**BILL: HOUSE BILL 426**

STATE OF MARYLAND

**POSITION: LETTER OF INFORMATION**

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**EXPLANATION:** This bill adds a reporting requirement to require data on the gender identity of incarcerated individuals, and the number of requests for housing transfers. HB 426 also adds several sections to the Correctional Services Article that prohibit employees from discriminating against incarcerated individuals regarding programming and services as well as the incarcerated individual's demographics, requires the managing official of a correctional facility to implement a written policy prohibiting discrimination of incarcerated individuals regarding programming and services or the incarcerated individual's demographics, requires privacy for conducting certain aspects of intake and classification, requires staff and contractors at correctional facilities to use gender pronouns or honorifics in verbal and written communications, and specifies housing and search practices.

### **COMMENTS:**

The Department operates the Division of Correction (DOC), the Division of Pretrial Detention and Services (DPDS), and the Division of Parole and Probation (DPP).

- DOC operates 13 State correctional facilities housing offenders sentenced to periods of incarceration for 18 months and longer.
- DPDS operates the Baltimore City Pretrial Complex which houses pretrial detainees and incarcerated individuals sentenced to incarceration for periods of 18 months and less.
- DPP supervises parolees, probationers and those on mandatory release from correctional facilities.

### **Reporting**

- The DOC would be able to provide data on the gender identity of an incarcerated individual, however, it should be noted that it is up to the incarcerated individual to disclose their identity.

- The reporting requirements with regards to housing, specifically to the gender identity add a burden to officers who will be required to track data that is more detailed and involved than what our system tracks, and detracts from their current custody duties. For example, housing requests under § 9-620 (F) allow an incarcerated individual to request a change to placement ANY TIME the individual raises concerns for their health or safety.

### **Discrimination**

- The Department's policy on Standards of Conduct states "An employee shall be fair, firm, and impartial in relationships with inmates and offenders. The employee shall maintain a humane, objective and professional interest in the welfare of inmates and clients in order to contribute to the success of the programs of the Department."
- Additionally, the Standards of Conduct policy specifies, "An employee found to have engaged in discrimination on the basis of race, color, religion, national origin, political affiliation, handicap, age or sex (including sexual harassment) will be subject to disciplinary action up to and including termination depending on the degree of the infraction."
- **The additional language proposed in HB 426 including ethnicity, gender identity, or sexual orientation can be included in policy without legislation.**

### **Gender Identity**

- The Department has been proactive in its efforts to reduce victimization of the incarcerated population and under the Assessment for Risk of Sexual Victimization and Abusiveness policy, a screening instrument is utilized as part of the intake and facility transfer process and at other times deemed appropriate to assess each inmate's risk for being sexually abused or being sexually abusive toward other inmates.
- The bill proposes that housing decisions shall consider the incarcerated individual's perception of safety. Incarcerated individuals are provided the opportunity to participate in the classification case management process including presenting opinions, preferences, and requests for appropriate classification assignments in accordance with the Department's policy on Inmate Rights.
- For the safety and security of ALL incarcerated individuals, there is a classification process the Department adheres to for the purpose of ensuring the individual is housed properly and does not pose a safety risk to the individual, to other individuals, or to the facility as a whole.

An incarcerated individual's classification is reviewed at minimum every 12 months.

- All incarcerated individuals must be kept safe from victimization, harassment and assault. Allowing an individual to choose housing based solely on their preference as an LGBTQ+ individual removes from the Department the ability to ensure the safety and security of ALL individuals.
- HB 426 would require an incarcerated individual to be searched according to the search policy for the individual's gender. This already exists in policy for individuals who identify as transgender. After meeting with the designated medical/mental health provider, a search exemption card is issued and the individual is able to determine the gender of an officer who is required to perform a search.
- HB 426 would require all staff, contractors, and volunteers at a correctional facility to address an incarcerated individual in a manner consistent with the inmate's gender identity. This preference for how an incarcerated individual wishes to be addressed could be covered in training and appropriate signage could be displayed; however, the Department could not enforce this mandate for every single individual entering a facility - especially contractors or volunteers.
  - For example an emergency contractor that comes in at 6:00 p.m. on a Saturday for a water emergency could come into contact with a transgender individual in a male facility and refer to the individual as "sir" given that an escort officer would not be providing the preferred pronoun for every incarcerated individual with whom the contractor crosses paths.
  - This would result in a significant increase in the number of Administrative Remedy Procedure (ARP) complaints, ARP appeals to the Commissioner, Inmate Grievance Office (IGO) complaints and civil rights complaints filed in the United States District Court for the District of Maryland.
- HB 426 seeks to establish LGBTQ+ individuals in the Department's facilities as a protected class that is exclusive of other protected classes such as those with intellectual or developmental disabilities. The Department is responsible for ensuring the security, health, and safety of EVERY individual in its custody. Existing policies and procedures are in place to ensure that all incarcerated individuals are treated fairly and with respect.
- HB 426 would prohibit the Department from placing an LGBTQ+ individual in restrictive housing. This implies that an LGBTQ+ individual

is not capable of violently assaulting another, attempting to escape, or threatening the security and/or operations of the correctional facilities - the reasons for which an incarcerated individual is placed in restrictive housing.

**CONCLUSION:** For these reasons, the Department of Public Safety and Correctional Services respectfully urges the Committee to consider this information as it deliberates on House Bill 426.