

Testimony of the Human Trafficking Prevention Project

BILL NO: House Bill 426
TITLE: Correctional Facilities – Transgender, Nonbinary, and Intersex Inmates (Transgender Respect, Agency, and Dignity Act)
COMMITTEE: Judiciary
HEARING DATE: February 21, 2023
POSITION: SUPPORT

House Bill 426 would prohibit an employee of a correctional facility from discriminating against inmates on the basis of being a member of a protected class including, but not limited to, the inmate’s race, ethnicity, disability, pregnancy status, age, sexual orientation, or gender identity, and mandate that the managing official of the facility to develop a written nondiscrimination policy implementing this. It would also require the Department of Corrections and Rehabilitation to, in a private setting, ask each individual entering the department’s custody to specify their gender identity and pronouns, and prohibit staff, contractors, and volunteers from failing to consistently use this information when referring to the inmate. Finally, the bill would require the department to only conduct a search of an inmate according to the search policy for their gender identity or the gender designation of the facility where they are housed, to house inmates in the correctional facility that corresponds with their gender identity, and mandate reassessment of an inmate’s housing assignment if new concerns arise with regard to their health and safety. The Human Trafficking Prevention Project supports this bill because it centers the humanity and dignity of transgender and gender non-confirming inmates, many of whom have had to trade sex for survival.

The discrimination and isolation transgender and gender non-conforming people so often face commonly translates into circumstances that put these individuals at heightened risk of arrest, including financial instability, homelessness, and drug addiction.¹ Forced to fend for themselves in a society that routinely denies them access to safe housing and mainstream employment, many transgender people are left with few options other than trading sex to meet their survival needs, which again increases their risk of arrest and incarceration.² Once incarcerated, transgender sex workers are subject to the stigma of both being transgender and having traded sex, and accordingly, experience disproportionate amounts of discrimination and violence at the hands of other inmates, as well as prison officers and staff. A study on the experiences of transgender people in the sex trade³ found that 52.6% of incarcerated transgender sex workers reported harassment by corrections staff, while 26.9% reported being physically assaulted by other inmates. 10.7% reported sexual assault by a prison guard.⁴

While no single piece of legislation can undo the injustice and systemic oppression that transgender and gender non-conforming people face, particularly those who face incarceration, HB 426 seeks to address certain of these harms by codifying nondiscrimination policies relating to transgender and gender non-conforming inmates and mandating that correctional facilities update their intake and housing policies to meet the unique needs of this population. Respect for people’s basic humanity and dignity should not be optional, regardless of their incarceration status. Therefore, the Human Trafficking Prevention Project supports House Bill 426 and respectfully urges a favorable report.

The Human Trafficking Prevention Project, which is a partnership between the University of Baltimore School of Law and the Maryland Volunteer Lawyers Service, provides pro bono legal services to criminalized survivors of human trafficking and those populations put at highest risk of exploitation.

¹ See generally Janet M. Grant, Lisa A. Mottet, & Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011) https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf.

² National Center for Transgender Equality, *Meaningful Work: Transgender Experiences in the Sex Trade* (2015), https://transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf (citing that 79.1% of transgender sex workers reported interaction with the police compared to 51.6% of non-sex worker respondents).

³ *Id.*

⁴ *Id.*