



Testimony for the House Judiciary Committee

February 21, 2023

HB 426 - Correctional Facilities - Transgender, Nonbinary, and Intersex Inmates (Transgender Respect, Agency, and Dignity Act)

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The American Civil Liberties Union of Maryland urges a favorable report on HB 426 which, among other provisions, would ensure that incarcerated people are housed and searched in accordance with their gender identity, establish mechanisms for transparency regarding the treatment of transgender, intersex, and nonbinary prisoners, and would limit the use of restrictive housing for those who identify in the aforementioned ways.

In Maryland, transgender people are routinely housed based on their sex at birth, rather than their gender identity. This puts transgender people at great risk for physical violence and harassment by other incarcerated people. The dangers that transgender people, particularly transgender women, face, in correctional facilities cannot be understated. A study of California state prisons found that sexual assault is 13 times more prevalent among incarcerated transgender people, with 59% reporting being sexually assaulted while in a California correctional facility.¹ According to a 2015 survey, almost a quarter of incarcerated transgender people reported being physically assaulted by other people in custody or staff.²

When transgender people experience violence inside, rather than being transferred to a safer facility that matches their gender identity, they are often transferred to restrictive housing. The use of solitary confinement in these situations, especially when the individual themselves present no security or management risk, is both dehumanizing and contrary to spirit of rehabilitation and reentry. Among other impacts, the use of restrictive

¹ Jenness, V., Maxson, C. L., Matsuda, K. N., & Summer, J. M. (2007, June). : Violence in California Correctional Facilities: an empirical examination of sexual assault: Retrieved February 17, 2023, from <https://cpb-us>

[e2.wpmucdn.com/sites.uci.edu/dist/0/1149/files/2013/06/BulletinVol2Issue2.pdf](https://cpb-us-e2.wpmucdn.com/sites.uci.edu/dist/0/1149/files/2013/06/BulletinVol2Issue2.pdf)

² James, S., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016, December). The Report of the The 2015 U.S. Transgender Survey. Retrieved February 17, 2023, from <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>

housing is linked to increase risk of anxiety, depression, and psychosis.³ Additionally, this practice isolates people from the normal social interactions that are necessary for successful mental rehabilitation and the adoption of pro-social outlooks and behaviors.⁴

Violence and threats of violence are not limited to interactions with other incarcerated people, but also extend to interactions with guards. A transgender woman, Sandy Brown, was sent to the state prison at Patuxent for a psychological screening. While there, Brown said she was placed in solitary confinement and kept there for 66 days. During that time, she was routinely harassed and ridiculed by prison staff. HB 426 seeks to remedy these pervasive issues by explicitly banning discrimination based on gender and mandating the use of correct pronouns and honorifics.

Regardless of gender identity, under the Eighth Amendment, the prison officials have a duty to ensure the safety of people under their supervision. Current standards not only do not ensure the safety of transgender, nonbinary, and intersex people, they open these vulnerable people up to even more abuse. Given the provisions in the bill that allow officials to deny requests in certain cases where there are articulable safety or management concerns, abuse of this new policy is highly unlikely.

The ACLU of Maryland respectfully urges a favorable report on HB 426.

³ James, K., & Vanko, E. (2021, April). The Impacts of Solitary Confinement: Evidence Brief . VERA. Retrieved February 17, 2023, from <https://www.vera.org/downloads/publications/the-impacts-of-solitary-confinement.pdf>

⁴ Corcoran, M. M. (n.d.). EFFECTS OF SOLITARY CONFINEMENT ON THE WELL BEING OF PRISON INMATES. Applied Psychology OPUS. Retrieved February 17, 2023, from https://wp.nyu.edu/steinhardt-appsych_opus/effects-of-solitary-confinement-on-the-well-being-of-prison-inmates/