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Maryland Senate Judicial Proceedings Committee – Bill Hearing
Wednesday, March 6, 2024 1:00 PM
Written Testimony in Support of Senate Bill 1085

Disability Rights Maryland (DRM) is the state-designated Protection and Advocacy agency authorized under the Protection and Advocacy for Individuals with Mental Illness Act and the regulations thereto to protect and advocate for the rights of individuals with mental illness. DRM has worked to document serious issues in state correctional facilities and advocate for improved conditions, particularly in restrictive housing units. We have toured facilities across the state, reviewed thousands of pages of records, met with wardens, engaged with administrators and representatives of the Department of Public Safety and Correctional Services (DPSCS), and communicated with both incarcerated individuals and correctional staff throughout the State. As a result of our investigations, DRM filed litigation against DPSCS in the fall of 2021, alleging that DPSCS's excessive use of restrictive housing for individuals with serious mental illness and failure to provide adequate treatment to those individuals violates the Constitution, the Americans with Disabilities Act, and the Rehabilitation Act. Our testimony is informed by what we have learned through this work and from those who are directly impacted.

The horrific conditions in the restrictive housing units in Maryland's prisons are difficult to imagine for anyone who has not spent time inside them. Individuals in restrictive housing—another term for segregation or solitary confinement—are often kept in their cells for 23 hours a day; on days that do not have scheduled recreation or shower times, or when recreation or showers are cancelled, people may not leave their cells. When recreation is allowed, it is often in cages. Some people may not leave their cells for weeks at a time. Cells no larger than parking spaces may be frigid in the winter and reach extremely high temperatures in the summer. In the cells, people often have nothing to do. They may be given tablets they can use to call their families and attorneys, or, in disciplinary segregation in some of Maryland's facilities, they may have their tablets taken away, making it difficult or impossible for them to contact the outside world. People can spend prolonged time in these conditions, especially in administrative segregation. There is no limit on how long an individual may remain on administrative segregation in Maryland. And the use of restrictive housing in Maryland's

prisons is increasing; 26% of incarcerated individuals in DPSCS custody were subject to restrictive housing in 2022, compared to 18% in 2021.¹

The extreme isolation of restrictive housing, even for short amounts of time, has significant impacts on mental health. Studies have shown that confining an individual in a cell for 22 hours or more per day is a harmful practice that can cause depression, trauma, paranoia, anxiety, suicidal ideations, and exacerbate existing mental illness. And yet DPSCS uses restrictive housing for many people who already have a serious mental illness (SMI). In FY 2022, DPSCS reported that 38.5% of individuals with SMI were placed in restrictive housing at some point in the year.² Some of them were placed in restrictive housing multiple times. This is a significant increase from FY 2021, in which DPSCS reported that 22% of incarcerated individuals with serious mental illness were placed in restrictive housing.³

Inadequate, and, we believe, constitutionally insufficient mental health services are provided to individuals in restrictive housing units to mitigate its harmful effects. Health care records indicate that some individuals may not receive any structured out of cell services or programming for months at a time. Mental health treatment in segregation may be limited to psychiatric medication or work sheets that must be completed alone in cell. The quality of mental health care in these units is grossly inadequate.

The number of individuals in restrictive housing in Maryland who have a serious mental illness is almost certainly undercounted. While the National Commission on Correctional Health Care has estimated that 17.5% of individuals in state prisons have schizophrenia, bipolar disorder, or major depression, and the American Psychiatric Association has estimated that approximately 20% of individuals in American prisons have a serious mental illness, DPSCS reported that in FY 2022, 960 individuals in DPSCS were diagnosed with a serious mental illness- only 6% of the 15,807 people incarcerated by DPSCS that year.

The definition of “Serious Mental Illness” (SMI) used by DPSCS is inappropriately restrictive and not suited for the prison environment. Its continued use ensures continued undercount and underservice to people with SMI and should not be codified. DPSCS use a Maryland Department of Health definition used for certain, but not all, of the Department of Health’s programs. DPSCS has said they would amend their definition of SMI in the past, but they have not taken steps to do so, and individuals with SMI have continued to be under-identified. DPSCS has also said that they would work to improve the programming available to individuals in restrictive

¹ *Department of Public Safety and Correctional Services Report on Restrictive Housing – Fiscal Year 2022 Fulfilling Reporting Requirements of Correctional Services Article § 9-614*, December 2021, 7.

https://goccp.maryland.gov/wp-content/uploads/MSAR10904_FY-22-Restrictive-Housing-Report.pdf

² *Id.*, 13. In 2022, DPSCS identified approximately 960 incarcerated persons as diagnosed with a serious mental illness, and 370 of those individuals were placed on restrictive housing.

³ *Department of Public Safety and Correctional Services Report on Restrictive Housing – Fiscal Year 2021 Fulfilling Reporting Requirements of Correctional Services Article § 9-614*, December 2021, 12.

<https://goccp.maryland.gov/wp-content/uploads/SB946-FY21-Restrictive-Housing-Report.pdf>

housing, but very little, if any, programming is available to those who are in their cells 23 or more hours per day in Maryland.⁴

The widespread use of restrictive housing in Maryland correctional facilities must change. We understand that this bill is the result of compromise and efforts to ensure that the use of restrictive housing in Maryland prisons is minimized. We are concerned about the frequent under-identification of individuals with SMI in Maryland's prisons and support an amendment to replace the reference to DPSCS' reliance on an inappropriate definition of SMI, as well as an amendment that would entirely ban the use of restrictive housing for individuals with developmental disabilities and significant auditory, visual, or physical disabilities. DRM urges this committee to address these issues and provide a favorable recommendation for Senate Bill 1085, with amendments.

Please contact Em Holcomb, Staff Attorney at Disability Rights Maryland, with any questions. I can be reached at emh@disabilityrightsmd.org or 443-692-2536.

⁴ *Disability Rights Maryland*, *Beyond Incarceration: Lock Down for Persons with Disabilities* (2016), 11.