



TESTIMONY IN SUPPORT OF HOUSE BILL 297

Establishing a Correctional Ombudsman Unit

TO: Members of the House Judiciary Committee

FROM: Center for Criminal Justice Reform, University of Baltimore School of Law

DATE: March 5, 2024

The University of Baltimore School of Law’s Center for Criminal Justice Reform is dedicated to supporting community driven efforts to improve public safety and address the harm and inequities caused by the criminal legal system. The Center strongly supports the creation of independent oversight of Maryland’s correctional institutions through House Bill 297.

As numerous high-profile incidents and lawsuits against the State of Maryland have made clear, incarcerated people and correctional staff continue to encounter serious threats to their health and safety, including violence and abuse inside institutions. Given that incarcerated individuals and correctional staff too often face retaliation for reporting misconduct that happens within facilities, the known harm undoubtedly represents the tip of an iceberg of more widespread systemic challenges. These challenges go beyond threats to physical and emotional safety for incarcerated people, staff, and volunteers. Other rights violations, including barriers to adequate medical care and educational, therapeutic and vocational programming, also require enforcement and oversight mechanisms ensuring standards of care are met.

House Bill 297 will establish an Independent Correctional Ombudsman Unit empowered to investigate claims made by people behind bars and their loved ones, as well as staff and volunteers. The unit will also conduct investigations of the Department of Public Safety and Corrections’ (“DPSCS”) administrative acts, perform assessments of critical DPSCS services and report this information to the legislature and public, providing much needed sunlight on critical issues behind the walls.

External oversight will promote the twin goals of transparency and accountability in Maryland prisons. An independent, external mechanism is the most effective means of collecting, analyzing, and disseminating information about the conditions of confinement and the treatment of incarcerated individuals. While useful for internal management and administration, internal accountability measures alone are insufficient to address the myriad objectives of correctional oversight. For example, internal accountability measures do not address the needs of public accountability and transparency and fail to ensure systemic legitimacy.

External oversight of Maryland prisons will advance public safety. Each year, approximately 4,000 people are released from prisons back into Maryland communities. The trauma and criminogenic effects of incarceration may be amplified by abuse, violence, and

inhumane conditions of confinement. Reducing violence, improving conditions of confinement, and otherwise promoting human dignity behind the walls through external oversight would serve to improve safety both inside institutions and in the communities to which formerly incarcerated people return.

External oversight is critical to protecting the most vulnerable among us. House Bill 297 offers protections for certain vulnerable populations in Maryland’s prisons that are especially at risk of being subjected to rights violations, mistreatment, and violence including sexual violence. These vulnerable populations include, for example, people with mental or physical disabilities and individuals placed in disciplinary and administrative segregation.

One example of a uniquely vulnerable population, and the urgent need surrounding greater oversight and enforcement mechanisms in Maryland’s institutions, is the known inadequate protection of trans and nonbinary incarcerated people. According to data published by the U.S. Department of Justice, Bureau of Justice Statistics, transgender people are nearly ten times more likely to be sexually assaulted than the general prison population, with an estimated 40% of transgender people in state and federal prisons reporting a sexual assault in the previous year.¹ Transgender women housed in men’s prisons are at especially high risk, with one statewide study in California finding that when trans women were automatically housed with men, they were 13 times more likely to be sexually assaulted than male prisoners in the same facilities.²

Yet current processes in place are clearly insufficient to protect all members of this highly vulnerable group. This has been repeatedly illuminated in recent years, including through the public testimony surrounding the Trans Respect Agency and Dignity Act introduced in previous sessions, as well as recent litigation brought by multiple trans individuals surrounding horrific violence endured behind the walls. Most recently, in partnership with the Trans Rights Advocacy Coalition, our Center engaged in a detailed analysis of the treatment of incarcerated trans people, which is attached herein as Exhibit A, in response to a November 2023 DPSCS report on the topic. We found that existing supposed protections, including reporting mechanisms and rights existing under the Prison Rape Elimination Act (PREA), remain inaccessible and inadequate. This is true notwithstanding the supposed implementation and oversight mechanisms provided through PREA. Trans and nonbinary people facing ongoing harms behind the walls are among the many individuals who need and deserve additional, independent avenues to sound the alarm and seek support.

House Bill 297 will take much needed steps forward in protecting those living, working, volunteering, and visiting Maryland’s prisons, and to strengthen the health and legitimacy of our correctional institutions. For these reasons, we urge a favorable report.

¹ LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and their Legal Rights, Natl. Cent. For Transgender Equality (last visited Jan. 18, 2024). <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>. Beck, A. J. (2014). Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12: Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates, Bureau of Justice Statistics (2014). https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf.

² Jenness, V., Maxson, C. L., Matsuda, K. N., & Sumner, J. M. Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault, p. 3. Center for Evidence-Based Corrections. (2009).

EXHIBIT A



January 29, 2024

Re: “Treatment of Transgender Incarcerated Individuals in Maryland” Report

Dear Chair Guzzone and Chair Barnes:

The Trans Rights Advocacy Coalition (TRAC) is writing in response to a recent report from the Department of Public Safety and Correctional Services entitled, “Treatment of Transgender Incarcerated Individuals.” This report was submitted to your committees pursuant to a reporting requirement in the April 2023, Joint Charmen’s Report. TRAC is very appreciative of the committees’ inclusion of this reporting requirement last session.

TRAC has reviewed the report submitted by DPSCS and found it deeply troubling, lacking in detail, and offensive. In partnership with the University of Baltimore School of Law Center for Criminal Justice Reform, TRAC engaged in a detailed analysis and drafted a comprehensive response to the department’s report illuminating these concerns and providing recommendations on the path forward. We have included this response as an attachment to this letter to provide the committees with additional information on conditions of confinement for transgender individuals in DPSCS’s care.

Members of TRAC will attend relevant budget briefings during the 2024 session. We hope to work with the Chairs and Subcommittee Chairs as TRAC continues to advocate for the rights of trans Marylanders.

Sincerely,

TRAC Leadership Team
Jamie Grace Alexander
Brige Dumais
Maya Holliday
Ngaire Philip
Sam Williamson

Attachments: Response to “Treatment of Transgender Incarcerated Individuals in Maryland” Report, Prepared by the Trans Rights Advocacy Coalition

CC: Members, Senate Subcommittee on Public Safety, Transportation, and the Environment

Members, House Subcommittee on Public Safety and Administration

Response to “Treatment of Transgender Incarcerated Individuals in Maryland” Report, Prepared by the Trans Rights Advocacy Coalition

In November 2023, the Department of Public Safety and Correctional Services (hereinafter “DPSCS” or the “Department”) published a report entitled, “Treatment of Transgender Incarcerated Individuals” (hereinafter “Report”). The contents of this Report heighten existing, grave concerns about the treatment of incarcerated trans individuals in Maryland and protection of their basic rights. This memorandum serves as a response to the Report from the Trans Rights Advocacy Coalition (“TRAC”),¹ which includes numerous community members and allies across the state, in partnership with the University of Baltimore School of Law Center for Criminal Justice Reform.

Section A of this memorandum explains how DPSCS is violating the Prison Rape Elimination Act (PREA) standards by housing incarcerated individuals strictly on the basis of genitalia. Section B describes how DPSCS includes harmful assertions and fails to address the victimization risks and actual violence experienced by incarcerated trans individuals. Section C highlights critical information that DPSCS omits from its Report. Section D demonstrates that DPSCS’s assertion that it is in full compliance with PREA is undermined by audits of its facilities. Section E describes efforts by incarcerated and formerly incarcerated trans Marylanders to uplift these concerns and vindicate their rights through civil lawsuits. Section F offers recommendations, and calls for urgent collaboration that respects and centers the experience of directly impacted trans Marylanders as necessary to advancing real change.

A. DPSCS violates the Prison Rape Elimination Act (PREA) by housing incarcerated individuals strictly on the basis of genitalia.

Although DPSCS has made strides to improve the treatment of incarcerated trans individuals, it states that “[a]ll transgender individuals are housed according to physical genitalia.”² This practice violates PREA standard 28 C.F.R. § 115.42, which requires the Department to “consider on a case-by-case basis whether a placement would ensure the inmate’s³ health and safety, and whether the placement would present management or security problems” when “deciding whether to assign a transgender or intersex inmate to a facility for

¹ TRAC is a coalition led by trans and gender-expansive Marylanders with the goal of improving the wellbeing of trans communities in Maryland. TRAC members include people with lived experience, medical professionals, lawyers, researchers, religious leaders, and allies. TRAC advocates for policies that will ensure that all Marylanders are able to live safe, affirming, and prosperous lives.

² Maryland Department of Public Safety and Correctional Services, *Treatment of Transgender Incarcerated Individuals Report*, at 5 (2024). (Because the Report does not include page numbers, “PDF” page numbers are used for citations in this memorandum).

³ A note on preferred language: The University of Baltimore School of Law Center for Criminal Justice Reform uses human-centered language wherever possible, seeking to avoid dehumanizing terms such as “inmate” or “felon”, except where quoting or requiring citation to statutory language or other source material. Please see “The Language Project” for further information on why, which hopefully could also be of value in supporting DPSCS in shifting culture surrounding the human beings in its custody and care. [The Language Project](https://www.themarshallproject.org/2021/04/12/the-language-project/), The Marshall Project (April 12, 2021), <https://www.themarshallproject.org/2021/04/12/the-language-project/>.

male or female inmates, and in making other housing and programming assignments.”⁴ By housing individuals on the singular basis of genitalia, DPSCS violates this standard and fails to account for the increased risk of experiencing physical, sexual, and other forms of violence in housing assignments for trans Marylanders.

The United States Department of Justice issued an FAQ on March 26, 2016, which leaves no ambiguity about how this standard should be interpreted, and confirms that DPSCS’s stated practice amounts to a PREA violation: “Q. Does a policy that houses transgender or intersex inmates based exclusively on external genital anatomy violate Standard 115.42(c) & (e)? A. Yes.”⁵ The FAQ summarizes well-known data behind the standard:

Being transgender is a known risk factor for being sexually victimized in confinement settings. The standard, therefore, requires that facility, housing, and programming assignments be made ‘on a case-by-case basis.’ Any written policy or actual practice that assigns transgender or intersex inmates to gender-specific facilities, housing units, or programs based solely on their external genital anatomy violates the standard. A PREA-compliant policy must require an individualized assessment. *A policy must give ‘serious consideration’ to transgender or intersex inmates’ own views with respect to safety.* The assessment, therefore, must consider the transgender or intersex inmate’s gender identity – that is, if the inmate self-identifies as either male or female. . . . The policy must allow for housing by gender identity when appropriate.⁶

The Report—which claims full compliance with PREA yet admits its own violations—erodes DPSCS’s credibility regarding its awareness and competency to implement the PREA Standards and state and federal laws that protect trans people’s rights.

B. DPSCS’s Report includes harmful assertions, while failing to acknowledge or meaningfully address the well-documented risks and realities of victimization for LGBTQI+ people in confinement settings.

Throughout the country and in Maryland, LGBTQIA+ people—particularly low-income, trans people of color—face discrimination and barriers that contribute to a far greater likelihood of being arrested, detained, and incarcerated than the general population.⁷ Profiling and bias against trans and gender non-conforming people by law enforcement, high rates of discrimination in schools and other settings, poverty, and lack of access to safe, stable housing

⁴ 28 C.F.R. § 115.42 (2022) (codifying PREA standard 115.42).

⁵ [Frequently Asked Questions](https://www.prearesourcecenter.org/frequently-asked-questions/), National PREA Resource Center (last visited Jan. 18, 2024).

⁶ *Id.* (emphasis added).

⁷ *LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and their Legal Rights*, Natl. Cent. For Transgender Equality (last visited Jan. 18, 2024). <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>; <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>; *Unjust: How the Broken Criminal Justice System Fails LGBT People of Color*, Center for American Progress & Movement Advancement Project (August 2016), www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf/

together compound disproportionate contacts with the criminal justice system.⁸ Once in confinement settings, trans people face significantly higher rates of victimization and abuse.

According to data published by the U.S. Department of Justice, Bureau of Justice Statistics, transgender people are nearly ten times more likely to be sexually assaulted than the general prison population, with an estimated 40% of transgender people in state and federal prisons reporting a sexual assault in the previous year.⁹ Transgender women housed in men's prisons are at especially high risk, with one statewide study in California finding that when trans women were automatically housed with men, they were 13 times more likely to be sexually assaulted than male prisoners in the same facilities.¹⁰ In Maryland, Kim Tova Wirtz, a transgender woman who began her transition at thirteen years old, died in her cell at Baltimore Central Booking in 2021, where she was housed with men.¹¹ Her family still does not know her cause of death.¹²

Notwithstanding these well-documented realities,¹³ the Report acknowledges none of this context nor the reasons this Report was mandated in the first place. It instead contains outdated language and dehumanizing assertions. Though a Report of this subject would be an important place to acknowledge heightened levels of violence and maltreatment against members of the trans community in confinement settings, the Report instead describes “the unfortunate reality” of “high rate[s] of false reporting” and the use of “the PREA complaint process to manipulate housing assignments.”¹⁴ The Report further claims that “the PREA complaint process is also used to “check in”... describ[ing] the process of voluntarily transferring into administrative segregation to avoid an *uncomfortable situation*, usually a debt owed to other incarcerated individuals.”¹⁵ This description downplays the seriousness of the violence against incarcerated transgender people, while suggesting that transgender people are to blame for the violence

⁸ *Id.*; Lydon, J., *Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Survey* (2015), www.blackandpink.org/wp-content/uploads/Coming-Out-of-Concrete-Closets.-Black-and-Pink.-October-21-2015.pdf; Mallory, C., Hasenbush, A., & Sears, B. (2015). *Discrimination and Harassment by Law Enforcement Officers in the LGBT Community*. Los Angeles, CA: Williams Institute. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-inLaw-Enforcement-March-2015.pdf>.

⁹ *LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and their Legal Rights*, Natl. Cent. For Transgender Equality (last visited Jan. 18, 2024). <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>.

Beck, A. J. (2014). Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12: Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates, Bureau of Justice Statistics (2014). https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf/

¹⁰ Jenness, V., Maxson, C. L., Matsuda, K. N., & Sumner, J. M. Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault, p. 3. Center for Evidence-Based Corrections. (2009).

¹¹ Jessica Anderson, *Family, Advocates Seek Answers Following a Trans Woman's Death at Baltimore City Jail*, BALTIMORE SUN, (Mar. 16, 2021), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-jail-death-20210316-mqt5ri5li5eufhqwy3so7mye7a-story.html>.

¹² *Id.*

¹³ “Being LGBTQ in a U.S. jail or prison often means daily humiliation, physical and sexual abuse, and the fear that it will get worse if you complain. Many LGBTQ people are placed in solitary confinement for months or years just because of who they are.” *LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and their Legal Rights*, Natl. Cent. For Transgender Equality (last visited Jan. 18, 2024). <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>.

¹⁴ *Report, supra* note 2, at 10-11 (emphasis added).

¹⁵ *Id.* at 11 (emphasis added).

perpetrated against them. When an incarcerated person “checks in,” it is often because the risk of violence is so great that they believe the only way to avoid victimization is to suffer the harms of isolation. *Please see further discussion of the prevalence and harms of segregation in section C. below.*

Relatedly, the Report appears to misunderstand the important processes for reporting and investigating incidents of abuse and harassment. There is an important difference between “unfounded” and “unsubstantiated,”¹⁶ yet the Report seems to conflate these two dispositions and focuses exclusively on unfounded complaints. DPSCS dedicated several paragraphs on “unfounded” allegations, without even a sentence addressing or discussing the “substantiated” allegations, or the majority of allegations that were “unsubstantiated,”¹⁷ The Report, again, appears to be focused more on creating a stereotyped image of trans people as manipulative, without ever addressing the real harms and significant risks that this population regularly undergoes while in the Department’s custody.

Given the concern raised by the Department’s description of PREA investigations, there is also an alarming volume of “unfounded” sexual abuse and harassment claims, which in correctional settings can indicate a dismissive or hostile environment to providing safe and adequate channels for addressing harm. Overall, the findings of the Report raise red flags about potential biases among staff and a lack of adequate protections for members of vulnerable populations to safely disclose experiences of abuse and harassment when they are harmed. These red flags warrant further attention.

The Report also includes language denying the gender identity of trans people, such as DPSCS calling a trans woman a “male.”¹⁸ Outdated language such as this corroborates accounts from incarcerated trans people that misgendering is common in DPSCS institutions as part of a broader culture of derogatory or demeaning language and treatment which exists in certain institutions. The Report further refers to “transgendered individuals” and “the transgendered population.”¹⁹ Such language either demonstrates the Department’s lack of knowledge about the trans community or reveals a discriminatory bias against trans Marylanders in DPSCS custody.

Overall, the tone and contents of the Report indicate that DPSCS did not seek the perspective of directly impacted people, nor has it undergone sufficient internal education and culture change within. The problematic contents of the Report undermine the credibility of DPSCS to handle its responsibilities with respect to the treatment of trans, nonbinary and other LGBTQI+ people within its custody and care.

¹⁶ An “unfounded allegation” is an allegation that is investigated and determined not to have occurred. An “unsubstantiated allegation” is an allegation that is investigated, and for which the investigation produced insufficient evidence to make a final determination. *Report, supra* note 2, at 11. See also Definitions, PREA Resource Center, [s://www.prearesourcecenter.org/standard/115-5#:~:text=Unfounded%20allegation%20means%20an%20allegation,or%20not%20the%20event%20occurred.](https://www.prearesourcecenter.org/standard/115-5#:~:text=Unfounded%20allegation%20means%20an%20allegation,or%20not%20the%20event%20occurred.)

¹⁷ *See id.* at 10-11.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 7, 14 (emphasis added).

C. DPSCS’s Report lacks critical information.

The Report states that “[t]he only complaint expressed by the transgender population is with commissary items not being available.”²⁰ This assertion lands as deeply out of touch, especially for those who have experienced recent trauma within DPSCS, listened to the harrowing testimony from directly impacted individuals recounting horrific violence and rights violations during the effort to pass SB761/HB426, the Transgender Respect, Agency, and Dignity Act in the 2023 Maryland General Assembly legislative session, or paid attention to media coverage of numerous lawsuits filed against DPSCS by trans incarcerated people in Maryland. This statement also contradicts the Appendix to the Report, which tallies over 250 complaints from incarcerated trans persons on a wide range of issues, including meritorious complaints on insufficient access to medical care.²¹ The Department’s conclusion that commissary is the only issue draws attention to the Report’s failure to address the numerous legitimate issues that incarcerated trans people experience, especially when incarcerated trans people have taken great pains to alert the public and State to their lived reality.

- i. *The Report fails to acknowledge even public complaints about treatment of incarcerated trans people in Maryland.*

Testimony in support of the Transgender Respect, Agency, and Dignity Act and other accounts from within DPSCS note alarming instances of individuals being forced to choose between harmful segregation or unsafe housing placements, such as housing with individuals who have threatened to harm them.²² For example,

- Debra Gardner, legal director of the Public Justice Center, provided testimony highlighting the realities that trans incarcerated people face when subjected to unsafe and/or illegal housing decisions: “During an August 2022 tour of the jail, we encountered two transgender women who were suffering direct and substantial ongoing harm from the state’s backward approach. They had both been forced over their objections to live in the men’s general population despite having taken female hormones and lived as women in the community for years. One remained there despite having been previously assaulted by her cellmate, suffering injuries. The other was housed in the Inpatient Mental Health Unit, not because she required any such care or treatment, but solely for her protection because she had been threatened by male detainees in general population. The depravity of this ‘solution’ must be fully understood. The unit is reserved for individuals who present an immediate danger to themselves or others. They are subject to continuous visual observation and not allowed to wear any clothes (on the theory that they may attempt to use them to harm themselves). Thus, this transgender woman was made to take a space that someone else may have needed to save their life, and through bureaucratic rigidity, was subjected to unnecessary suicide

²⁰ *Id.* at 16.

²¹ *Id.* at 20-29.

²² See, Correctional Facilities – Transgender, Nonbinary, and Intersex Inmates (Transgender Respect, Agency, and Dignity Act): Hearing on S.B. 0761 Before the Jud. Proc. Comm., 2023 Leg., 445th Sess. (Md. 2023).

observation. She was living naked and continuously subject to the prying eyes of guards and medical personnel for no even theoretically legitimate reason. In addition to violating the PREA’s prohibition on the use of involuntary segregated housing, this “protection” is torture. And it must not be tolerated.²³

- Luisa Wayman provided testimony describing the brutalities that trans incarcerated women were subjected to in men’s prisons in Maryland.²⁴:
 - “In 2015, 19 year old trans woman Deiarra Venable was held in custody for four days on charges of fourth degree burglary which were later dropped. When being processed into a men’s jail, she was stripped naked and kept in a transparent glass cell for 45 minutes, while the police and corrections officers leered at her, ridiculed her, and made inappropriate lewd remarks towards her. Her bra was confiscated and she was forced wear a sheer thermal shirt, through which her breasts were visible. She was even forced to go to her court hearing in that shirt. While in custody, she was repeatedly sexually harassed and demeaned by corrections staff, other inmates, and even the bail commissioner.”
 - “In 2017, 28 year old trans woman Portia Simms was placed into a male prison awaiting sentencing. There, corrections officer Olukenle Oyenkami entered her cell and raped her. Simms is still in a male prison, where, without the Trans Respect Agency and Dignity Act, she will likely remain for the next 12 years, at daily risk of further sexual violence. Oyenkami was sentenced to 90 days, of which he served 45.”

These housing decisions hold critical implications for that person’s health and wellbeing, as well as implications for access to educational or therapeutic programming and other supports.

Further, the Report states that "access to commissary" is the only complaint from the trans community, despite dozens of public comments, over 250 internal complaints in the past three years, and repeated requests from TRAC to meet and discuss issues. To date TRAC has not received a meeting as requested with DPSCS.

ii. *The Report lacks data on the use of solitary confinement.*

The Report also fails to provide adequate data on the use of solitary confinement. It is well documented that LGBTQIA+ individuals are disproportionately and inappropriately placed in administrative segregation as a “protective” measure across the country, effectively punishing and harming them as a response to their high risk of victimization.²⁵ Furthermore, LGBTQIA+

²³ Public Justice Center Testimony, SB 761 The Transgender Respect, Agency, and Dignity Act Hearing, (March 15, 2023), https://mgaleg.maryland.gov/cmte_testimony/2023/jpr/12yKoUPjmNzY4Z2XaYDUDMhIC77qTemTI.pdf.

²⁴ Luisa Wayman Testimony, SB 761, The Transgender Respect, Agency, and Dignity Act Hearing (March 15, 2023), https://mgaleg.maryland.gov/cmte_testimony/2023/jpr/1rvyZNq3BYVHb3JRMrefJBtNXJF_bfxPT.pdf.

²⁵ *LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and their Legal Rights*, Natl. Cent. For Transgender Equality (last visited Jan. 18, 2024). <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>; *Use of Restrictive Housing in U.S. Prisons and Jails*, 2011–12 (p. 4). Washington, DC: Department of Justice Statistics. (2015). <https://www.bjs.gov/content/pub/pdf/urhuspj1112.pdf>.

individuals also face a disproportionate risk of being placed in solitary confinement as retaliation, such as for attempting to report harassment or abuse.²⁶

Extensive research has documented that being placed in conditions of solitary confinement (including administrative segregation and other forms of restrictive housing), especially for prolonged periods, can lead to significant psychological distress and sometimes irreversible harm.²⁷ The United Nations has deemed it torture to hold human beings in such conditions for more than 15 days without meaningful human contact.²⁸ Increased awareness of these profound harms and status as torture has led to the introduction or passage of laws in a growing number of states and at the federal government to ban or severely limit these practice, often with a focus on especially vulnerable populations.²⁹

The U.S. Department of Justice also made clear in its 2016 FAQ that a “facility shall not place transgender inmates in involuntary segregated housing without adhering to the safeguards in Standard 115.43.”³⁰ Despite this directive, the Report provides data demonstrating a disturbingly high numbers of placements in Administrative Segregation (Admin Seg; Admin Seg 120; Admin Seg PA), while also failing to provide critical information surrounding these numbers, including

- (1) the reason and individual was placed in administrative segregation;
- (2) the length of stay in these placements; and
- (3) the percentage of trans people placed in administrative segregation compared to the rest of the population.

Failure to keep or disclose placement length data is alarming, far beyond the treatment of trans incarcerated individuals specifically. Maryland law specifically requires the Department to annually report the “average and median lengths of stay in restrictive housing,” which is defined to include both administrative segregation and disciplinary segregation.³¹ Despite this clear legal requirement, the Department asserts that “[p]lacement length can not [sic] be determined” for

²⁶ *LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and their Legal Rights*, Natl. Cent. For Transgender Equality (last visited Jan. 18, 2024).

<https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>.

²⁷ Erica Bryant, *Solitary Confinement is Torture, Not COVID Medical Care*, Vera Institute of Justice (Mar 25, 2022) <https://www.vera.org/news/solitary-confinement-is-torture-not-covid-medical-care>.

²⁸ *The United Nations Standard Minimum Rules for the Treatment of Prisoners*, United Nations Office on Drugs and Crime (last visited Jan. 18, 2024). https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf; Méndez, J. E., Special Rapporteur of the United Nations Human Rights Council. (2011). Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhumane or Degrading Treatment of Punishment. <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

²⁹ *Banning Torture: Legislative Trends and Policy Solutions for Restricting and Ending Solitary Confinement throughout the United States*, Unlock the Box Campaign (Jan. 2023). <https://unlocktheboxcampaign.org/wp-content/uploads/2023/01/UTB-BanningTorture-TrendReport-January2023.pdf>; Erik Ortiz, *Bill to ban solitary confinement in federal prisons introduced to house*, NBC News (July. 27, 2023), <https://www.nbcnews.com/politics/politics-news/bill-ban-solitary-confinement-federal-prisons-introduced-house-lawmake-rcna96016>.

³⁰ National PREA Resource Center, *Frequently Asked Questions* (last visited Jan. 18, 2024)

<https://www.prearesourcecenter.org/frequently-asked-questions/does-policy-houses-transgender-or-intersex-inmates-based-exclusively/>.

³¹ Md. Code, Corr. Servs. § 9-614

administrative segregation.³² The Department appears to be unaware of its legal obligations on this issue.

While there is unfortunately no data provided for length of stay in administrative segregation, the average length of stay in 2023 for a trans person in disciplinary segregation was 52 days, far beyond the 15-day outer limit put forth by the UN.³³ The Report provides little detail surrounding the infraction and hearing process beyond noting that “infractions were heard by a hearing officer and resulting in guilty findings and sanctions of disciplinary segregation. Out of 438 violations, there were only 209 disciplinary segregation placements.”³⁴ It fails to answer important questions regarding the possibility of disciplinary segregation being used in a biased, retributive, or disproportionate way, especially as punishment in response to expressions of gender identity or self-protective measures in the face of threats or abuse.

iii. The Report lacks sufficient information on transfer requests and other data.

A natural and reasonable response to threats to personal safety for any person may be to request a transfer out of harms’ way. Yet the Report states, “transfer requests are an informal process and are not tracked.”³⁵ If individuals are making such requests and being denied and/or not fully heard, this could indicate a violation of PREA standard 115.41(g), which provides that “[a]n inmate’s risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate’s risk of sexual victimization or abusiveness.”³⁶

Furthermore, this could indicate risk or existence of a chilling effect on individuals who have personally made attempts to get help that are not successful or taken seriously, or who have witnessed this pattern when others report. In any case, this is information DPSCS leadership should have to inform what is going on within a facility and how to effectively mitigate harm.

Other red flags or key areas of omission include the lack of analysis on meritorious complaints of insufficient access and numerous barriers to medical care including gender affirming care, and the lack of acknowledgment that facially neutral practices, such as those concerning commissary, visitation, and mail, can have particular implications for trans and nonbinary individuals.³⁷ The Report is silent on many key issues.

³² *Report, supra* note 2, at 7.

³³ *Id.*

³⁴ *Id.*

³⁵ *Report, supra* note 2, at 9.

³⁶ 28 C.F.R. § 115.41(g) (2022) (codifying PREA standard 115.41(g)).

³⁷ For example, the Standards Manuals for Maryland Adult Detention Centers and Correctional Institutions do not mention transgender individuals at all, and their non-discrimination policies do not protect against discrimination based on sexual orientation or gender identity. *See* MD. DEPT. OF PUB. SAFETY AND CORR. SERVICES, MARYLAND COMMISSION ON CORRECTIONAL STANDARDS: ADULT CORRECTIONAL INSTITUTIONS (2022).

D. Recent PREA audits of Maryland institutions call into question DPSCS’s assertion that the state of Maryland stands in full compliance with PREA.

The Report states that PREA “audits are an effective and impartial way to determine if an agency or facility is effectively implementing policies that protect all incarcerated persons from sexual harassment and abuse.”³⁸ Unfortunately, PREA audits are at best a floor, not a ceiling, of protection.³⁹ The Report itself provides only an extremely limited review of DPSCS’s current standing when it comes to the full breadth of requirements impacting vulnerable trans people in its custody. Furthermore, a review of recent PREA audits in Maryland also revealed numerous deficiencies requiring corrective action on various standards in particular facilities.

In the Report, DPSCS selects ten PREA standard sub-sections that it describes as “accord[ing] additional accommodations and privileges” to transgender individuals and asserts that “[t]he Department has never been found to be out of compliance with any of these standards.”⁴⁰ The Department apparently omits from this analysis the many other PREA standards that concern and affect trans people presumably because those sub-sections do not include the word “transgender.” By making this selective choice, DPSCS ignores how incarcerated trans people are impacted by policies and practices that are facially neutral.

For example, PREA standards addressing access to crisis intervention, medical and forensic services, confidential support services for victims of abuse and more hold particular implementation implications for members of the trans and LGBTQIA+ community, yet are not acknowledged or addressed by the Report.

With respect to its ten chosen subsections, the Report states that “[t]he Department has never been found to be out of compliance with any of these standards.”⁴¹ Nevertheless, even considering only the sub-sections cherry picked by DPSCS, a closer analysis of recent PREA audits at the individual institution level reveals indications of non-compliance and deficiency. It may be true that some of these violations were subsequently classified as corrected by the auditor retained by DPSCS (often without documented proof of the specific steps taken to correct the identified violations), but the deficiency findings can nonetheless be cited as evidence of Maryland facilities’ ongoing challenges in meeting the minimum requirements to protect trans incarcerated individuals from physical and psychological harm—much less in ensuring they are treated with humanity, dignity and respect.

For example, a 2021 PREA audit of Patuxent Institution offers evidence of PREA deficiencies. First, PREA standard 115.15(b), which was not cited in the Report, dictates that “the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates’ access to regularly available

³⁸ *Report, supra* note 2, at 16.

³⁹ JUST DET. INT’L, TRAINING MODULE 4: THE PRISON RAPE ELIMINATION ACT 11, <https://justdetention.org/wp-content/uploads/2017/02/Module-4.pdf>.

⁴⁰ *Report, supra* note 2, at 17.

⁴¹ *Id.* at 18.

programming or other out-of-cell opportunities in order to comply with this provision.”⁴² The auditor found that “one transgender inmate stated that she was restricted from going on an outside medical trip because there was not a female staff member to go on the trip.”⁴³ Second, PREA standard 115.15(d) requires DPSCS to “implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks.”⁴⁴ During the course of the audit, “two transgender inmates indicated they had been naked in front of staff of the opposite gender as they had been searched by male staff (their preference is female) because there were not female staff to search them.”⁴⁵ Because the facility denied that searches of trans women by male staff occurred, the auditor concluded that it “was unable to confirm whether this occurred.”⁴⁶ In addition to the potential PREA violations, this troubling conclusion follows a similar pattern found in PREA audits, as well as in the Report: when the word of an incarcerated individual alleging violations of policy or other harm is pitted against the word of staff or otherwise viewed as uncorroborated, it is easily dismissed.

PREA standard § 115.15(f), one of the ten cited by DPSCS, provides that “[t]he agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.”⁴⁷ The 2021 PREA audit of Jessup revealed that the facility “does not meet provision § 115.15(f)” because “[c]onfirmation of staff search training was not provided.”⁴⁸ The facility was later documented as taking corrective action to come into compliance with the standard;⁴⁹ nevertheless, it represents one of numerous instances where a facility did not have its essential tools in place or duties met prior to being confronted by an independent PREA auditor.

The most recent Baltimore Pretrial Complex audit notes in relation to PREA standard 115.42 that

interviews with staff responsible for risk screening indicate staff were unfamiliar with the agency policy prohibiting the placement of inmates at risk of victimization in involuntary segregated housing. Staff also indicated transgender inmates would be housed in involuntary segregated housing (staff indicated they rarely have transgender inmates at the facility). Immediately after the onsite audit, screening staff received refresher training on this topic. The auditor was provided with a

⁴² 28 C.F.R. § 115.15(b) (2022) (codifying PREA standard 115.15(b)).

⁴³ DEP’T OF PUB. SAFETY & CORR. SERVS., PREA FACILITY AUDIT REPORT: PATUXENT CORRECTIONAL MENTAL HEALTH CENTER 27 (2022), https://dpscs.maryland.gov/prea/docs/Audit_Reports/Patuxent-Final-Report-2021.pdf [hereinafter PATUXENT REPORT].

⁴⁴ 28 C.F.R. § 115.15(d) (2022) (codifying PREA standard 115.15(d)).

⁴⁵ PATUXENT REPORT, *supra* note 43, at 28.

⁴⁶ *Id.*

⁴⁷ 28 C.F.R. § 115.15(f) (2022) (codifying PREA standard 115.15(f)).

⁴⁸ DEP’T OF PUB. SAFETY & CORR. SERVS., PREA FACILITY AUDIT REPORT: JESSUP CORRECTIONAL INSTITUTION 20 (2021), https://dpscs.maryland.gov/prea/docs/Audit_Reports/JCI%20Final%20PREA%20Report2021.pdf.

⁴⁹ *Id.*

memo that was distributed and reviewed with screening staff. In addition, the auditor was provided with signed staff acknowledgment sheets, documenting receipt and understanding of this information. Since this minor issue was immediately addressed, the auditor has determined the facility meets this section of the standard.⁵⁰

These audits for Maryland facilities demonstrate that DPSCS's characterization of its compliance with the purpose and requirements of PREA obscures ongoing challenges and realities facing trans incarcerated people in DPSCS facilities. The discrepancies also raise questions about the accuracy and consistency of audit reports, which are used to assess the state's overall compliance.

E. Civil lawsuits brought by incarcerated and formerly incarcerated trans people in Maryland highlight DPSCS's neglect and abuse of incarcerated trans individuals in its custody.

In addition to harrowing testimony provided by numerous witnesses during public hearings for the Transgender Respect, Agency, and Dignity Act, lawsuits filed by a growing number of incarcerated and formerly incarcerated trans individuals against DPSCS and related defendants describe horrific violence, retaliation, and harassment of trans people in DPSCS facilities.⁵¹ Some of these lawsuits have also been covered in the media including in recent articles in *The Baltimore Sun* and *The Baltimore Banner*.⁵²

In a landmark lawsuit, Sandy Brown successfully sued the Maryland prison where she was held and sexually harassed in solitary confinement for 66 days.⁵³ She received death threats, was called "it" and an "animal," and received taunts that she should kill herself.⁵⁴ The administrative law judge found in 2015 that the Patuxent Institute violated PREA and ordered the institution to develop policies and training regarding treatment of trans incarcerated people, including guidance regarding strip search procedures for incarcerated trans people, housing determinations, and appropriate interaction between correctional officers and incarcerated trans

⁵⁰ DEP'T OF PUB. SAFETY & CORR. SERVS., PREA FACILITY AUDIT REPORT: BALTIMORE PRE-TRIAL COMPLEX 43 (2017), https://dpscs.maryland.gov/prea/docs/Audit_Reports/BPC-Final-Report-2017A.pdf.

⁵¹ See, e.g., Third Amended Complaint, *Gilliam v. Dep't of Pub. Safety & Corr. Svcs.*, No. 23-cv-1047 (D. Md. Nov. 2, 2023).

⁵² See, e.g., Maya Lora, 'An Added Punishment': Under Conflicting Policies, Critics Say Maryland Houses Trans Prisoners According to Birth Sex, *Balt. Sun*, (Dec. 14, 2023, 11:15 AM), <https://www.baltimoresun.com/2023/12/14/maryland-prison-trans-housing/>; Ben Conarck, *First, Sexual Assault; Then Confinement: Trans Woman Details Alleged Baltimore Jail Abuses in Lawsuit*, *BALT. BANNER*, (Apr. 19, 2023, 9:56 AM), <https://www.thebaltimorebanner.com/community/criminal-justice/transgender-woman-sexual-assault-jail-745HQHBBLVGUJIUMTWC3ASPK3A/>; Ben Conarck, *In State Prisons and Baltimore Jails, Trans People Choose Between Harassment or Confinement*, *BALTIMORE BANNER*, (Mar. 22, 2023, 5:30 AM), <https://www.thebaltimorebanner.com/community/criminal-justice/trans-people-maryland-prisons-jails-PMRXCS4W55EDXCN2B6H36AGYHY/>.

⁵³ *Brown v. Patuxent Institution*, OAH No. DPSC-IGO-002V-14-33232, IGO No. 20141133 (Aug. 17, 2015), <https://freestatelegal.org/wp-content/uploads/2015/09/Brown-2015.08.17-Decision-of-Secretary-and-ALJ.pdf>.

⁵⁴ *Id.* at 26–27.

people.⁵⁵ Ms. Brown received a financial award for violation of her rights.⁵⁶ A DPSCS official recently told The Baltimore Sun, eight years after Ms. Brown’s successful lawsuit, that “[t]he intake policy specifically addressing the processing of transgender individuals at intake is still pending completion.”⁵⁷

DPSCS faces continued liability due to serial violations of civil rights occurring within its facilities. Chloe Grey, Chelsea Gilliam, and Kennedy Holland are actively litigating against DPSCS for violations of their rights, bringing 10 counts against DPSCS and related defendants.⁵⁸ Together, they allege that while incarcerated by DPSCS, “they have been housed with men, left unprotected from assault, harassed, held in solitary confinement, and denied necessary medical treatment.”⁵⁹ Ms. Grey, who is currently in DPSCS custody, also alleges that a DPSCS employee refused to allow her to file a PREA complaint with the psychologist, saying that “isn’t what [we] do here.”⁶⁰ DPSCS’s denial of Ms. Grey’s attempt to file a PREA complaint after the man she was sharing a cell with attempted to rape her twice only serves to further highlight the shortcomings of the PREA audit process and the grave dangers that trans incarcerated people face with no meaningful or adequate recourse.

On December 4, 2023, Ms. Grey obtained a temporary restraining order requiring DPSCS to (1) conduct an assessment to determine whether Ms. Grey should be transferred to a women’s facility, (2) provide the court with a report regarding the results of Ms. Grey’s housing assessment, (3) provide date-stamped video proof that Ms. Grey is receiving hormone medication consistent with her prescriptions, (4) provide Ms. Grey with facial hair inhibitor product and razors, and (5) ensure that the officials Ms. Grey alleged assaulted her have no contact or access to her.⁶¹ DPSCS filed a status report in response to its obligations under the court’s December 4 order.⁶² On December 18, 2023, Ms. Grey was transferred to North Branch Correction Institution, a men’s prison, where she was placed in administrative segregation.⁶³ In its status report, DPSCS avers that it considered four facilities for Ms. Grey, two that house women and two that house men.⁶⁴ DPSCS cited “[t]he general potential for harm to

⁵⁵ *Id.* at 30.

⁵⁶ *Id.*

⁵⁷ Lora, *supra* note 52.

⁵⁸ These counts are: (1) violation of 42 U.S.C. § 1983: Fourteenth Amendment Failure to Protect; (2) violation of 42 U.S.C. § 1983: Fourteenth Amendment Failure to Provide Adequate Medical Care; (3) violation of 42 U.S.C. § 1983: Fourteenth Amendment Cruel and Unusual Punishment; (4) violation of 42 U.S.C. § 1983: Fourteenth Amendment Discrimination Based on Sex; (5) violation of 42 U.S.C. § 1983: Fourteenth Amendment Discrimination on the Basis of Disability; (6) violation of Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; (7) discrimination on the basis of disability in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*; (8) two counts of Common-Law Negligence; and (9) Intentional Infliction of Emotional Distress.

⁵⁹ Third Amended Complaint at 1, Gilliam v. Dep’t of Pub. Safety & Corr. Svcs., No. 23-cv-1047 (D. Md. Nov. 2, 2023).

⁶⁰ *Id.* at 13.

⁶¹ Gilliam v. Dep’t of Pub. Safety & Corr. Svcs., No. MJM-23-1047 (D. Md. Dec. 4, 2023) (order *granting* temporary restraining order and preliminary injunction in part).

⁶² Defendant’s Status Report, Gilliam v. Dep’t of Pub. Safety & Corr. Svcs., No. 23-cv-1047-MJM (D. Md. Jan. 4, 2024).

⁶³ *Id.* at 4.

⁶⁴ *Id.* at 3–4.

[incarcerated women] from an intact biological male” among its reasons for not transferring Ms. Grey to a women’s facility.⁶⁵

This lawsuit has rightfully garnered meaningful attention from the press. A December 14, 2023, article in The Baltimore Sun documents the Department’s many failures in its treatment of incarcerated trans individuals and emphasizes the contradictions contained in DPSCS’s own policies.⁶⁶ For example, a 2016 directive (likely following the issuance of the official PREA FAQ) requires that “housing placement [be] based on a number of factors, including the incarcerated individual’s personal feelings about their health, safety, security and well-being.”⁶⁷ On the other hand, a current agency manual states that “surgical gender reassignment require[s] that the patient be classified according to his or her birth sex for purposes of prison housing, regardless of how long they may have lived their life as a member of the opposite gender.”⁶⁸ In the article, Kennedy Holland recounts in devastating terms her treatment while in DPSCS custody, saying, “a male guard at one DPSCS facility opened the door to the shower stall where she was naked and invited incarcerated men to watch her shower, all while calling her ‘it.’”⁶⁹

In addition to its legal and ethical obligations to trans individuals in its custody, DPSCS’s conduct is costly to Maryland taxpayers in a period of structural budget deficits. Because of the Department’s violations, in 2023, the state approved a \$92,000 settlement for the unlawful withholding of gender-affirming care from an incarcerated trans person.⁷⁰ Per our state Treasurer, Maryland is on track to pay \$42 million in settlements for lawsuits against the Department.⁷¹ DPSCS’s ongoing mistreatment of incarcerated, trans individuals ensures that the State will continue to incur significant expense in litigation costs in addition to any monetary judgments or settlements awarded to incarcerated or formerly incarcerated trans Marylanders.⁷²

F. Recommendations and the path forward.

We appreciate that the Report notes that DPSCS is working on developing updated policies; however, it is clear from demonstrated delays, lack of internal competencies and awareness of the lived experiences of those most vulnerable within its custody and care, that DPSCS’s efforts would be greatly served by collaboration with partners who can help to provide

⁶⁵ *Id.* at 3–4.

⁶⁶ Lora, *supra* note 52.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Dan Belson, “Activists seek review of gender identity rules at Baltimore jails, citing lawsuits alleging mistreatment of transgender women, Balt. Sun, (April 27, 2023), <https://www.baltimoresun.com/2023/04/27/activists-seek-review-of-gender-identity-rules-at-baltimore-jails-citing-lawsuits-alleging-mistreatment-of-transgender-women/>.

⁷¹ BOARD OF PUBLIC WORKS, *March 1, 2023 Minutes* 8, [HTTPS://BPW.MARYLAND.GOV/MEETINGDOCS/2023-MAR-01-TRANSCRIPT.PDF](https://bpw.maryland.gov/MEETINGDOCS/2023-MAR-01-TRANSCRIPT.PDF).

⁷² Incarcerated trans Marylanders face many barriers in accessing the civil justice system, but a number of lawsuits have been filed by incarcerated trans people against DPSCS and related defendants *pro se*. See *Dodson v. Wagwu*, No. 19-CV-01824 (D. Md. June 20, 2019); *Tetlow v. Hogan*, No. 19-CV-00356 (D. Md. Feb. 4, 2019); *Tetlow v. Md. Dep’t of Pub. Safety Servs.*, No. 18-CV-01522 (D. Md. May 24, 2018); *Rodriguez v. Kopp*, No. 17-CV-03827 (D. Md. Dec. 27, 2017); *Jones v. John Doe*, No. 15-cv-03065 (D. Md. Oct. 8, 2015).

necessary perspectives and expertise. This includes, for example, collaboration with the Trans Rights Advocacy Coalition, and organizations and individuals dedicated to providing guidance to correctional agencies across the country on best practices for appropriately and humanely addressing the needs of LGBTQIA+ individuals.

Far better and more effective policies and procedures come from true collaboration on the front end and throughout the process, rather than simply waiting for external voices to react to a policy after it is drafted or released. Similarly, implementation success and true oversight also require ongoing collaboration with external entities, especially when trust in DPSCS's ability to protect the rights, safety, and dignity of trans people has been eroded to this degree.

In the words of Bryan Stevenson, “the true measure of our commitment to justice, the character of our society, our commitment to the rule of law, fairness, and equality cannot be measured by how we treat the rich, the powerful, the privileged, and the respected among us. The true measure of our character is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned.”⁷³

We are hopeful that the illumination of these challenges impacting some of the most vulnerable among us will propel meaningful action. The Marylanders whose rights, safety, and dignity are at stake at this very moment deserve nothing less.

The following recommendations are concrete ways that key stakeholders across corrections and the advocacy community can work together to address these challenges and liabilities, and most importantly, forge a path forward which protects the safety and rights of trans Marylanders under the United States Constitution, PREA, the Americans with Disabilities Act and state law.⁷⁴

- Recommendation: The General Assembly should require DPSCS to again submit a report as outlined in the April, 2023 Joint Chairmen's report on p. 160 titled “Report on Treatment of Transgender Inmates.” The Department's first such report on the treatment of trans individuals in its custody that is the subject of this response make clear that the legislature cannot reasonably rely on DPSCS to accurately self-report. Consequently, the Maryland General Assembly should require DPSCS to solicit external input and

⁷³ Bryan Stevenson, *Just Mercy* 17 (2014).

⁷⁴ *Farmer v. Brennan*, 511 U.S. 825 (1994); *Williams v. Kincaid*, 45 F.4th 759 (4th Cir. 2022). Under *Farmer v. Brennan*, prison officials can be held liable under the Eighth Amendment for knowingly and recklessly disregarding the high risk of assault for incarcerated transgender individuals, and for inhumane confinement conditions including sexual harassment. In *Williams v. Kincaid*, the U.S. Court of Appeals for the Fourth Circuit reversed a district court's dismissal of a transgender woman's claims that her treatment while incarcerated constituted a violation of the Americans with Disabilities Act (ADA) (42 U.S.C. § 1983 (1996)) and the Rehabilitation Act (29 U.S.C. § 701 (2014)). The court further concluded that a policy of housing incarcerated individuals based solely on their genitalia constitutes gross negligence.

partnership from directly impacted Marylanders and advocates, such as TRAC, as part of its subsequent reporting requirements.

- Recommendation: Work with formerly incarcerated individuals, trans rights advocates, and PREA Subject Matter Experts to review and update the Department's policies and practices to ensure full compliance with standard 115.42 and ensuring the safety of incarcerated trans individuals across all of Maryland's facilities.
- Recommendation: As part of the above recommendation and beyond, DPSCS should seek Training and Technical Assistance from the PREA Resource Center or other outside consultant with specialized knowledge and experience in supporting correctional agencies efforts to achieve effective, compliant policy and practice, and advance necessary underlying culture change.
- Recommendation: DPSCS would greatly benefit from a collaboration that allows an external advocate or provider to be a part of the case-by-case housing determinations that are such a fundamental part of the process of keeping an incarcerated trans person safe.