



## **SB 1085: Corrections - Segregated Housing – Limitations**

### **Testimony of Maryland Centers for Independent Living**

#### **SUPPORT WITH AMENDMENTS**

Senate Judicial Proceedings, March 6, 2024

Centers for Independent Living (CIL) are created by federal law. CILs work to enhance civil rights and community services for people with disabilities. There are seven CILs throughout Maryland, operated by and for people with disabilities. At least 51% of CIL staff and Board are people with disabilities. CILs provide Information and Referral, Advocacy, Peer Support, Independent Living Skills training, and Transition Services to individuals in their communities. Housing assistance is offered by CILs as housing services are critical to independent living.

The Independent Living Network submits this written testimony in **support** of SB 1085 with consideration of the proposed amendments.

**SB 1085 Impacts People with Disabilities:** People with disabilities are overrepresented in the nation’s prisons.<sup>1</sup> Maryland’s prisons use segregation more frequently than many jurisdictions and disproportionately places individuals with disabilities in segregation. In FY 2022, the Department of Public Safety & Correctional Services (DPSCS) reported increasing its usage of restrictive housing and that 25.8% of incarcerated individuals were placed in restrictive housing. Among individuals with a serious mental illness, however, more than 38% were placed in restrictive housing.<sup>2</sup> This disproportionate number of persons with disabilities in restrictive housing (segregation) is especially troubling given that this population is known to be especially subject to harm from segregation.

**There is a consensus that segregation is psychologically painful, can be traumatic and harmful, especially for persons with serious mental illness.** Depression, post-traumatic stress

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<sup>1</sup> Rebecca Vallas, “Disabled Behind Bars The Mass Incarceration of People With Disabilities in America’s Jails and Prisons”, July, 2016, available at: <https://www.americanprogress.org/wp-content/uploads/sites/2/2016/07/2CriminalJusticeDisability-report.pdf>

<sup>2</sup> Department of Public safety and Correctional Services Report on restrictive Housing- Fiscal year 2022. Dec. 2021. <https://gocp.maryland.gov/wp-content/uploads/MSAR10904> FY 22 Restrictive-Housing-Report pdf.

disorder, psychosis, hallucinations, paranoia, claustrophobia, anxiety and suicidal ideation are frequent side effects.<sup>3</sup> Numerous organizations have condemned the practice, including:

- The American Psychiatric Association, “Prolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential for harm”.<sup>4</sup>
- The Society of Correctional Physicians “acknowledges that prolonged segregation of inmates with serious mental illness, with rare exceptions, violates basic tenets of mental health treatment.”<sup>5</sup>
- The American Public Health Association calls for correctional authorities to, “eliminate solitary confinement as a means of punishing prisoners and to develop alternatives for individuals with serious mental illnesses.”<sup>6</sup>
- The U.S. Department of Justice, Report and Recommendations Concerning the Use of Restrictive Housing, states that individuals with serious mental illness should not be placed in restrictive housing, absent exigent circumstances and then with additional services and out of cell time.<sup>7</sup>
- The National Commission on Correctional Healthcare urges that individuals with mental illness be excluded from solitary confinement.<sup>8</sup>
- The World Health Organization (WHO) has recognized, “Those with pre-existing mental illness are particularly vulnerable to the effects of solitary confinement.”<sup>9</sup>

**SB 1085, with proposed amendments from the sponsors, would end DPSCS’ harmful reliance on segregation and an inappropriate definition of “serious mental illness.”** The definition relied upon by DPSCS is not appropriate to a prison context and leaves people at risk of serious harm. The definition relied upon by DPSCS requires that even if an individual is diagnosed as psychotic or has schizophrenia, they are not considered to be “seriously mentally ill”, unless they have had this condition *for 2 years, AND meet 3 of 5 criteria*, which include criteria inapplicable to a prison context: the *inability to maintain independent employment, or inability, due to cognitive disorganization, to procure financial assistance to support living in the community*<sup>10</sup>. The listing of diagnosis eligible for consideration as “seriously mentally ill” exclude numerous mental health disabilities such as severe PTSD or trauma diagnoses, severe

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<sup>3</sup> Craig Williams v Secretary Pennsylvania Department of Corrections, No. 14-1469, No. 15-1390, 2017 WL 526483 (3d Cir. 2017).

<sup>4</sup> American Psychiatric Association, Position Statement on Segregation of Prisoners with Mental Illness, Approved by the Board of Trustees, December 2012.

<sup>5</sup> Society of Correctional Physicians, Position Statement on Restricted Housing of Mentally Ill Inmates (2013).

<sup>6</sup> American Public Health Association, Solitary confinement as a public health issue. Washington, DC: American Public Health Association, November 5, 2013, Policy 201310. <http://www.apha.org/policies-and-advocacy/publichealth-policy-statements/policy-database/2014/07/14/13/30/solitary-confinement-as-a-public-health-issue>.

<sup>7</sup> Department of Justice, Report and Recommendations Concerning the Use Of Restrictive Housing, Jan. 2016 at 113. <https://www.justice.gov/dag/file/815551/download>

<sup>8</sup> Solitary Confinement (Isolation), National Commission on Correctional Health Care (April 2016). <https://www.ncchc.org/solitary-confinement>.

<sup>9</sup> “Prisons and Health”, edited by Stefan Enggist, Lars Moller, Gauden Galea and Caroline Udesen, World Health Organization, Regional Office for Europe, 2014, at 29.

<sup>10</sup> COMAR 10.21.17.02

anxiety disorders, and personality disorders.<sup>11</sup> The reference in the proposed bill to this definition is nonsensical and leads to clear harm. We strongly support sponsor’s amendments to this section of their bill, and in further support note the severe undercounting of individuals with serious mental illness based on DPSCS’ reliance of an inappropriate COMAR definition.

**DPSCS’ reliance on an inappropriate definition of “serious mental illness” has resulted in significant under identification of people with disabilities.**

The American Psychiatric Association (APA)<sup>12</sup>, the National Commission on Correction Health Care<sup>13</sup> and Human Rights Watch<sup>14</sup> have each estimated that that 17-20% of individuals in U.S. prisons have serious mental illness. Studies supported by the Bureau of Justice Statistics report that 20% of incarcerated individuals have a serious mental illness.<sup>15</sup>

In 2011, DPSCS reported that 1.2% of the prison population experienced serious mental illness; in 2015 DPSCS identified 13% of the prison population as seriously mentally ill, in 2016 DPSCS identified 7% of the prison population as seriously mentally ill; in FY 2022 DPSCS identified 6.1% of the prison population as seriously mentally ill.

SB 1085, as amended, should end the under identification of individuals with serious mental illness and provide protection from harm to individuals with serious mental illness, intellectual disabilities and other disabilities. This is a vitally necessary step.

We appreciate the consideration of these comments.

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<sup>11</sup> Ibid.

<sup>12</sup> American Psychiatric Association, *Psychiatric Services in Jails and Prisons*, 2nd ed. (Washington, D.C.: American Psychiatric Association, 200), Introduction, xix.

<sup>13</sup> National Commission on Correctional Health Care, *The Health Status of Soon-to-be-Released Inmates*, A Report to Congress, March 2002, [https://www.ncjrs.gov/pdffiles1/nij/gr\\_vol.1](https://www.ncjrs.gov/pdffiles1/nij/gr_vol.1), p.22; April 2002, vol.2. [http://www.ncchc.org/pubs/pubs\\_stbr.vol1.html](http://www.ncchc.org/pubs/pubs_stbr.vol1.html); [http://www.ncchc.org/pubs/pubs\\_stbr.vol2.html](http://www.ncchc.org/pubs/pubs_stbr.vol2.html).

<sup>14</sup> Human Rights Watch, *Ill Equipped: U.S. Prisons and Offenders with Mental Illness* (Washington, D.C.: Human Rights Watch, 2003).

<sup>15</sup> Lauren E. Glaze and Doris J. James, “Mental Health Problems of Prison and Jail Inmates” (Washington: Bureau of Justice Statistics, 2006).