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The Protection and Advocacy System for the State of Maryland

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DISABILITY RIGHTS MARYLAND
SB 702: Correctional Services - Restrictive Housing
Senate Judicial Proceedings Committee
February 19, 2025
Position: Support with Amendments

Disability Rights Maryland (DRM) is Maryland's state-designated Protection and Advocacy organization with responsibility under law to protect individuals with disabilities from abuse, neglect and rights violations. Over the past decade, DRM has investigated the mental health care and conditions for individual with mental illness state correctional facilities. DRM has found the care and conditions seriously inadequate, and that individuals with disabilities in segregation are exposed to harm and significant risk of serious harm.¹ DRM has toured many of the state's facilities, reviewed thousands of pages of medical records and state policies and engaged with representatives of the Department of Public Safety and Correctional Services (DPSCS) and incarcerated individuals throughout the State.

DRM is grateful that SB 702 limits the use of restrictive housing (segregation) for individuals with disabilities. The proposed bill supports social science research that has led numerous organizations to call for the elimination or severe restriction of the use of segregation for persons with mental illness. Organizations recognizing such harm include the: National Commission on Correctional Health Care; Society of Correctional Physicians; American Psychiatric Association American Public Health Organization; American Psychological Association, and the U.S. Department of Justice.

However, there are dangers in the proposed bill's language for those with mental illness, for which DRM proposes two amendments, both to Section 9-614.(3)(i),

Page 4, lines 4-10 states:

"Restrictive housing" means a form of physical separation that has not been requested by the incarcerated individual in which the incarcerated individual is placed in a locked room or cell for [approximately 22] 17 hours or more out of a 24-hour period **OTHER THAN: 1. DURING A FACILITY-WIDE EMERGENCY; OR 2. FOR THE PURPOSE OF PROVIDING MEDICAL OR MENTAL HEALTH TREATMENT WITHIN A CLINICAL AREA OF THE FACILITY.** (emphasis added).

¹ To remedy the substantial risk of harm to Marylanders with serious mental illness in restricted housing in DPSCS facilities, DRM filed *DRM v. Scruggs*, Civil Action No. 1:21-cv-02959-MJM. That case is still pending in U.S. District Court.

The second exception allows unlimited use of restricted housing, for up to 24 hours per day, for individuals with mental health disabilities if they are in “clinical area of the facility.” There is no definition of a “clinical area” raising concern about when the existence of clinical services in an area of a correctional unit creates a “clinical area” for purposes of this Bill. For instance:

- i. a mental health professional performs weekly rounds and a nurse distributes medications for individuals with serious mental illness in segregation units operated by the Department of Public Safety and Correctional Services (DPSCS);
- ii. some DPSCS facilities have a small office within a segregation housing unit that is used for health professionals to visit and offer medical or mental health services to individuals restricted to cells on the unit;
- iii. DPSCS houses some individuals with developmental or mental health disabilities on ‘special needs units’ or ‘mental health tiers’ and claims to provide enhanced mental health programming in those units.

The above scenarios are illustrative, but not all inclusive. Exempting the above scenarios from any limitation on restrictive housing eviscerates the protections that SB 702 otherwise offers to individual with mental health disabilities and permits harm to a population most at risk from the harms of restrictive housing.

DRM’s Proposed Amendment:

DRM proposes that the exception in Section 9-614(3)(i) be amended to read as follows:

“Restrictive housing” means a form of physical separation..... in which the incarcerated individual is placed in a locked room or cell for [approximately 22] 17 hours or more out of a 24-hour period **OTHER THAN: 1. DURING A FACILITY-WIDE EMERGENCY; OR 2. WHEN A LICENSED PHYSICIAN HAS DETERMINED IN WRITING THAT RESTRICTIVE HOUSING IS MEDICALLY NECESSARY DUE TO: (a) A CONTAGIOUS CONDITION OR NEED FOR QUARANTINE; OR (b) FOR UP TO SEVEN (7) CALENDAR DAYS WHEN THE INDIVIDUAL IS SUFFERING A MENTAL HEALTH CRISIS AND PRESENTS AN IMMINENT RISK TO THEIR HEALTH OR SAFETY THAT CANNOT BE MITIGATED WITH LESS RESTRICTIVE MEASURES, WHICH EXCEPTION MAY BE EXTENDED FOR AN ADDITIONAL SEVEN (7) CALENDAR DAYS.**

DRM also suggests a modification of lines 4-5 on page 4 of the bill, to section 9–614.(3)(i), which reads:

“Restrictive housing” means a form of physical separation **that has not been requested by the incarcerated individual** in which the incarcerated individual is placed in a locked room or cell.....(emphasis added)

DRM routinely meets with individuals with disabilities that request to be in restrictive housing because they have a credible fear of being harmed if in general population. They may have histories of being assaulted or sexually abused, victimized or being vulnerable to harm in a general housing correctional unit. Many DPSCS correctional facilities lack protective custody units, resulting in individuals requesting to be in segregation for their protection. These individuals with disabilities should not be punished and subjected to the harms of segregation, which is known to be harmful to their mental health.

DRM’s Proposed Amendment #2:

DRM suggests that lines 4-5 on page 4 of the bill, § 9-614 (3)(i), be modified to read:

“Restrictive housing” means a form of physical separation that has not been requested by the incarcerated individual, **UNLESS THE INDIVIDUAL HAS DISABILITIES AND HAS REQUESTED SELF-PROTECTION BASED ON A CREDIBLE FEAR OF HARM IF HOUSED IN GENERAL POPULATION AND HAS NOT BEEN OFFERED PROTECTIVE CUSTODY**, AND in which the incarcerated individual is placed in a locked room or cell.....

DRM respectfully offers that these two amendments will further the intent of SB 702 and provide a meaningful way in which to implement critically needed limitations on the use of segregation for individuals with disabilities. Even short-term segregation carries a substantial risk of serious harm. 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. Maryland has a legal and moral obligation to ensure adequate care and protection from harm for those in its custody.

Thank you for your consideration of these suggested amendments.

If there are questions, please feel free to contact: Luciene Parsley, Litigation Director, lucienep@disabilityrightsmd.org; 443-692-2494.