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### **POSITION ON PROPOSED LEGISLATION**

TO: The Honorable Luke Clippinger, Chair, Judiciary Committee

BILL: HB 647 – Correctional Services – Restrictive Housing

FROM: Hannibal Kemerer, Chief of Staff, Maryland Office of the Public Defender

POSITION: Favorable

DATE: March 4, 2025

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The Maryland Office of the Public Defender (“OPD”) urges the Judiciary Committee to issue a favorable report on House Bill 647, Delegate Phillips’ legislation to cabin the use of restrictive housing in Maryland prisons.

Restrictive Housing is more commonly called solitary confinement; solitary because a person is locked in a cell alone. OPD’s clients describe solitary confinement as being locked in cells smaller than the size of a parking space for 23 hours a day, with nothing but their own thoughts. They have one hour per day where they can exercise or shower, there is not generally time for both. Undoubtedly prisons are difficult work settings, and so the appeal of solitary confinement is its simplicity. However, it has not been found to either reduce behavioral infractions or reduce recidivism, but it has been found to cause great harm.

The Maryland Department of Public Safety and Correctional Services (“DPSCS”) files an annual report on its use of Restrictive Housing. In fiscal year 2021 the Division of Corrections (“DOC”) within DPSCS, housed over 18,800 people 3,300 (18%) of whom were placed in restrictive housing, more than half of those were in solitary confinement for administrative reasons, rather than for disciplinary segregation. Solitary confinement is most often used with African American people – three quarters (3/4) of the men and half (1/2) of the women placed in solitary were African American.<sup>1</sup>

Mental Health Professionals have long known that solitary confinement causes significant harm. The American Psychological Association opposes the use of prolonged solitary confinement.<sup>2</sup> Courts have also acknowledged the harms caused by solitary confinement, holding that for inmates already suffering with mental illness it can amount to cruel and unusual

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<sup>1</sup> Maryland Department of Public Safety and Correctional Services, Report on Restrictive Housing – Fiscal Year 2021 <http://goccp.maryland.gov/wp-content/uploads/SB946-FY21-Restrictive-Housing-Report.pdf>.

<sup>2</sup> APA Position Statement on Segregation of Prisoners with Mental Illness, 2017. <https://solitarywatch.org/wp-content/uploads/2018/09/APA-Position-Paper.pdf>

punishment. In fact, in 2017 the U.S. Court of Appeals for the Third Circuit vacated and remanded a decision by a Pennsylvania federal court dismissing a lawsuit alleging wrongful death where parents of a 23 year old sued based on the cruel and unusual punishment of solitary confinement causing their son's suicide;<sup>3</sup> ultimately the case settled for \$675,000.<sup>4</sup> This should be a cautionary tale for Maryland, where our DOC housed 338 people with serious mental illness (which is 500 fewer people than in 2020 and 2,000 fewer people than in 2019). While in solitary confinement 6 people made suicidal gestures, including one person who indeed died from suicide. Another 2 people died from other causes while in solitary confinement.

Former corrections executives, as amici curiae, have also opposed prolonged solitary confinement stating, “[i]mprisoning people with [severe mental illness or “SMI”] in solitary confinement is detrimental to their mental and physical health. Further punishing those people with round-the-clock, unrelenting 24/7 solitary confinement and deprivation of exercise as punishment for behaviors caused by their SMI is illogical and counterproductive to the goals of safety, security, and good order of correctional facilities.”<sup>5</sup> People with SMI experience exacerbated symptoms and are at increased risk of suicide and psychosis when placed in solitary confinement.<sup>6</sup> This exacerbation in symptoms and deterioration in their mental well-being leads to more disruptive behaviors and infractions, leading to additional time in solitary confinement. “In this way, the harm becomes cyclical, and traps incarcerated people in prolonged and unending solitary confinement without access to rehabilitative programming vital to successfully reentering society after their release.”<sup>7</sup>

Even for those without serious mental illness it is widely recognized that people in protracted solitary confinement suffer extensive harm, including anxiety, panic, hallucinations, self-mutilation, and suicidality.<sup>8</sup> Prolonged solitary confinement also leads to psychosis, depression, memory loss, paranoia, and both cognitive and physical declines.<sup>9</sup> In light of those effects of solitary confinement, it is not surprising that it does not reduce either inmate on inmate

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<sup>3</sup> *Palakovic v. Wetzel*, 854 F.3d 209, 216 (3d Cir. 2017) (noting, “Brandon informed SCI Camp Hill mental health staff that he had attempted suicide in the past and had engaged in self-harm as recently as August 2010. He also advised staff that he experienced periodic thoughts of self-harm and suicide, and that he had made plans about how to kill himself. Brandon was diagnosed with a number of serious mental disorders, including alcohol dependence, anti-social personality disorder, and impulse control disorder.”).

<sup>4</sup> Altoona Mirror. *Inmate's parents, DOC settle lawsuit* (Apr. 7, 2021) available online at <https://www.altoonamirror.com/news/local-news/2021/04/inmates-parents-doc-settle-lawsuit/> (last visited Feb. 28, 2025).

<sup>5</sup> *Johnson v. Prentice, et al.* in the Supreme Court of the United States. Brief of Former Corrections Executives Martin F. Horn, Scott Frakes, Steve J. Martin, Ron McAndrew, Richard Morgan, Dan Pacholke, Emmitt Sparkman, Phil Stanley, Eldon Vail, and Roger Weholtz as Amici Curiae in support of Petitioner at page 39, available online at [https://www.supremecourt.gov/DocketPDF/22/22-693/255497/20230224114849881\\_2023.02.21%20Amicus%20Brief%20FINAL.pdf](https://www.supremecourt.gov/DocketPDF/22/22-693/255497/20230224114849881_2023.02.21%20Amicus%20Brief%20FINAL.pdf) (last visited Feb. 28, 2025).

<sup>6</sup> Dana G. Smith, *Neuroscientists Make a Case against Solitary Confinement*, SCIENTIFIC AMERICAN (Nov. 9, 2018), <https://www.scientificamerican.com/article/neuroscientists-make-a-case-against-solitary-confinement/> (last visited Feb. 28, 2025).

<sup>7</sup> Brief of Former Corrections Executives, *supra* at 9.

<sup>8</sup> Craig Haney, *Restricting the Use of Solitary Confinement*, 1 ANN. REV. CRIMINOLOGY 285, 286 (2018).

<sup>9</sup> *Id.* note 15 at 299.

violence, or violence against correctional staff. “In fact, solitary confinement does not “inspire even short-term behavioral changes in inmates. On the contrary, prisons with higher rates of restrictive housing had higher levels of facility disorder.”<sup>10</sup> Increased use of solitary confinement is also linked to worse public safety outcomes. “Research shows a direct correlation between the length of imprisonment in solitary confinement and the odds of recidivism. One metanalysis found that the longest terms in solitary confinement were associated with the highest rates of recidivism, suggesting that increases in the length of exposure may have deleterious effects.”<sup>11</sup>

For these reasons, we urge the Judiciary Committee to favorably report HB 647.

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<sup>10</sup> Brief of Former Corrections Executives, *supra* at 19-20.

<sup>11</sup> *Id.* at 22.