



TESTIMONY IN FAVOR OF HOUSE BILL 647

Correctional Services – Restrictive Housing

TO: Members of the House Judiciary Committee

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

DATE: February 28, 2025

The University of Baltimore School of Law’s Center for Criminal Justice Reform (“Center”) 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 would like to provide critical background for why legislation to address the harmful misuse and overuse of restrictive housing is urgently necessary in Maryland, in particular for protecting vulnerable incarcerated populations currently experiencing significant rights violations and harm.

House Bill 647 prohibits anyone from being placed in isolation for longer than 15 consecutive days or for more than 20 days in a 60-day period. It further requires that “member[s] of a vulnerable population,” including people who are 21 years or younger, individuals who are 55 years or older, pregnant women, and LGBT people, may not be placed in restrictive housing—subject to certain limitations.

The prolonged use of restrictive housing under current Maryland law and practice is inhumane, violates international standards, and undermines the rehabilitative purposes of incarceration. International standards, including guidance from the United Nations, recognize restrictive housing placement of 15 days or more as torture.¹ American courts have also recognized the brutality of restrictive housing. For example, in *Ruiz v. Johnson*, a federal judge in Texas found that “segregation units are virtual incubators of psychoses-seeding illness in otherwise healthy [incarcerated people].”²

¹ United Nations, United States: Prolonged solitary confinement amounts to psychological torture, says UN expert, Feb. 2020, <https://www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture>.

² *Ruiz v. Johnson*, 154 F.Supp.2d 975 (S.D.Tex.2001)

The prolonged use of restrictive housing unnecessarily wastes Maryland’s resources without making prisons or our communities safer. According to the Interfaith Action for Human Rights, other jurisdictions that have limited the use of solitary confinement have experienced significant cost savings. For example, Mississippi saved \$8 million after 2010, and Illinois saved \$26 million after implementing limitations on the use of restrictive housing in 2010 and 2013 respectively. Similarly, California’s Department of Corrections and Rehabilitation budget was projected to decrease by \$28 million after limiting the use of solitary in 2016-2017.

House Bill 647 is also likely to save Maryland money in multiple ways, including by decreasing recidivism. In 2022, 135 people were released directly to the community after spending an average of 59 days in restrictive housing. Restrictive housing deprives incarcerated people of the opportunity to engage in rehabilitative, supportive programming designed to prevent recidivism while also causing and exacerbating mental health challenges such as depression, psychosis and suicidality. According to the Department of Public Safety and Correctional Services (DPSCS or the Department), 25.8% of incarcerated individuals were in restrictive housing at least once in 2022. The average length of stay in restrictive housing was 42.5 days in our state, well beyond the limits provided for by House Bill 647.

As reflected in the protections included in House Bill 647, trans incarcerated people in Maryland are disproportionately subjected to rights violations. These include the illegal use of restrictive housing, often as a result of DPSCS’s PREA violations, as detailed in a response by the Trans Rights Advocacy Coalition to the Department’s 2023 report on the treatment of transgender individuals in its custody.³ A recent national survey by the Vera Institute of Justice found that 89% of transgender respondents in state prisons had experienced solitary confinement at some point during their incarceration. Many of those respondents reported that their placement in solitary was “either because prison staff put them in solitary confinement as a way to harass or target them or because the incarcerated person requested it as a safety strategy.” In Maryland, the Department’s past and ongoing housing placements of trans people in restrictive housing, coupled with its failure to comply with this legislature’s requirements to provide data concerning the placement of trans people in restrictive housing, counsels in favor of a blanket ban prohibiting the placement of trans people in restrictive housing as included in this bill.

Although DPSCS has made progress to improve the treatment of incarcerated trans individuals, its current policy states that “[a]ll transgender individuals are housed according to physical genitalia.”⁴ 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

³ Conarck, Ben, The Baltimore Banner, Are Maryland prisons out of bounds with federal requirements for trans prisoners?, 22. Feb. 2024, <https://www.thebaltimorebanner.com/community/criminal-justice/maryland-trans-prisoners-compliance-prea-6MFYNZQ3UZFYJMX34TO4QJEQ4E/>.

⁴ 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).

inmate’s^{5]} 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 male or female inmates, and in making other housing and programming assignments.”⁶ 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 practical result of the implementation of this standard contributes to the pervasive reality that trans Marylanders are disproportionately subjected to restrictive housing “for their own protection.”

The Prison Rape Elimination Act limits the use of involuntary restrictive housing for more than 24 hours as a means of protecting incarcerated people who are at high risk of sexual victimization.⁷ Trans people are at particularly high risk of sexual victimization; nearly ten times that of the general prison population.⁸ Maryland’s current practice of placing trans incarcerated people in restrictive housing for their own protection violates federal law. 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.”⁹ Despite this directive, the DPSCS’s October 2023 Report provides data demonstrating a disturbingly high numbers of placements in Administrative Segregation.

Civil lawsuits brought by incarcerated and formerly incarcerated trans people in Maryland highlight DPSCS’s ongoing neglect and abuse of incarcerated trans individuals in its custody, including specifically the misuse of restrictive housing. The Department entered into three settlements with incarcerated or formerly incarcerated trans individuals in 2024, amounting to approximately \$835,000, more than a third of the settlement dollars paid out by the Department last year.¹⁰ There is a desperate need to protect vulnerable populations, including trans Marylanders, who are at particular risk of being subjected to constitutional, federal and state rights violation – and torture - in Maryland’s restrictive housing environments.

⁵ 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. [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/>.

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

⁷ See 28 C.F.R. § 115.43 (2022) (codifying PREA standard 115.43).

⁸ *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).

⁹ National PREA Resource Center, [Frequently Asked Questions](https://www.prearesourcecenter.org/frequently-asked-questions/does-policy-houses-transgender-or-intersex-inmates-based-exclusively/) (last visited Jan. 18, 2024)

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¹⁰ Conarek, Ben, The Baltimore Banner, Maryland inches toward reforming trans prisoner policies as it pays out legal settlements, Feb. 15, 2025, <https://www.thebaltimorebanner.com/community/criminal-justice/maryland-trans-prisoner-policies-O4G4GK2B4RCARJEJSZZWTXSDMM/>.

The overuse of the solitary confinement is one of the most significant sources of human suffering in Maryland's prisons and jails, negatively impacting the health and wellbeing of not only those who are subjected to it, but the correctional workforce and the communities to which these individuals return. As the General Assembly engages in these crucial reforms, it should similarly consider the need to require that those in restrictive housing be afforded at least four hours of time out of their cells and that programming be made available to such persons.