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**Testimony of FreeState Justice  
IN SUPPORT OF SB550: Correctional Facilities – Transgender,  
Nonbinary, and Intersex Inmates (Transgender Respect, Agency, and  
Dignity Act)**

Good afternoon, Senators of the Judicial Proceedings Committee,

FreeState Justice is Maryland’s lesbian, gay, bisexual, transgender, and queer (LGBTQ) civil rights advocacy organization. Each year, we provide free legal services to dozens, if not hundreds, of LGBTQ+ Marylanders who could not otherwise afford an attorney, as well as advocate more broadly on behalf of the LGBTQ+ community, including efforts to improve the conditions of confinement of incarcerated transgender individuals.

We write today in strong support of House Bill 453, which will mitigate many deficiencies with current Department of Public Safety and Correctional Services (DPSCS) policies and help transgender, nonbinary, and intersex inmates live in safe, gender-affirming environment.

Current DPSCS policies regularly subject transgender inmates to discrimination and mistreatment. Transgender inmates are routinely not housed according to their gender identity or what would be safest for them, but rather according to their sex assigned at birth. When transgender inmates are then subjected to violence by other inmates, instead of being transferred to appropriate facilities, they are often placed in solitary confinement; This solitary confinement placement is often done despite the objections of the incarcerated individual. Transgender inmates also suffer significant discrimination, harassment, and mistreatment from correctional staff, who have been documented deadnaming transgender inmates, calling them transphobic slurs, and even threatening them with violence.

A clear illustration of current policy lacking in its ability to safeguard transgender inmates occurred in 2014 when Sandy Brown, a transgender woman, was incarcerated in Maryland’s Patuxent Institution. Upon incarceration, Ms. Brown was strip searched in a manner contrary to usual strip-search procedures by staff who later admitted to having little training in protecting vulnerable prison populations. She was then placed into a 66 day involuntary administrative segregation where she was subjected to harassment from correctional officers, including but not limited to

*FreeState Justice, Inc. (formerly FreeState Legal Project, Inc., merging with Equality Maryland) is a social justice organization that works through direct legal services, legislative and policy advocacy, and community engagement to enable Marylanders across the spectrum of lesbian, gay, bisexual, transgender, and queer identities to be free to live authentically, with safety and dignity, in all communities throughout our state.*

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inappropriate surveillance in the showers, deadnaming, transphobic slurs, and even death threats. In 2015, Ms. Brown successfully sued the Patuxent Institution for the discriminatory treatment she experienced. The success of Ms. Brown's 2015 suit has not, however, significantly improved the conditions under which incarcerated transgender individuals are forced to live. Over the past two years, we have seen a wave of violence against transgender women within Maryland correctional facilities. One example of this is Kim Tova Wirtz, a transgender woman, who in 2021 was found dead several hours after being housed in a male cell in Baltimore's Central Booking and Intake Center. This placement was made against her preference for gender-affirming housing, the facility staff ignoring Ms. Wirtz's gender identity just as many other Maryland facilities do with their transgender inmates. According to a public defender in Baltimore, this and other cases demonstrate that "transgender women are exceptionally vulnerable" in Baltimore Central Booking and conditions for their safe confinement must be closely examined.

House Bill 453 attempts to reduce—and ideally eliminate—this discriminatory treatment of transgender inmates in three ways: first, it implements a nondiscrimination policy in correctional services; second, it adopts a new intake procedure for transgender inmates; and third, it makes the safety of transgender inmates paramount when housing decisions are made.

First, SB 550 includes a nondiscrimination policy in any correctional programs, services, or activities on the basis of, among other characteristics, an inmate's gender identity or sexual orientation. By outlawing discrimination based on gender identity and sexual orientation, SB550 reaffirms and certifies that grievous discrimination and mistreatment, such as that suffered by Ms. Brown, is not allowed or tolerated under any circumstances.

Second, SB 550 optimizes the initial intake and classification process for transgender inmates, which helps mitigate many of the difficulties they may face later during their incarceration. Under SB 550, an officer must privately ask inmates about their gender identity, whether they identify as transgender, nonbinary, or intersex, the inmate's gender pronouns, and honorifics. Furthermore, an inmate cannot face discipline for refusing to answer any of the above questions. This information, which an inmate may update at any time, must be used by all staff, contractors, and volunteers at a correctional facility.

This would reaffirm and expand upon current DPSCS policy dictating that within the initial intake process, which must occur within the first 72 hours after an inmate's arrival to a facility, an officer must ask the inmate if they consider themselves "homosexual, bisexual, transgender, intersex, or gender nonconforming" but not about their gender pronouns and honorifics. Facility staff asks these questions as part of a questionnaire meant to determine an inmates' risk of victimization within a facility. SB 550 expands on this process to ensure that the individual is housed in a safe, gender-affirming environment. By allowing inmates to self-identify as transgender early after their entrance to the facility, inmates can receive specific attention and care which addresses their specific health needs. Ultimately, there is no way to address the vulnerabilities experienced by transgender inmates without the intake process recognizing transgender individuals' identities.

Third, and of critical importance, SB 550 ensures a safe, gender-affirming environment by mandating DPSCS consider all inmates' safety concerns regarding their housing determinations and placing them into a housing determination that aligns with their preferences. In most cases, this will mean transgender inmates are housed according to their gender identity but would allow flexibility for individuals who believe they will be safer if housed according to their sex assigned at birth.

While DPSCS would retain the ability to deny placement requests under certain circumstances, such as where housing the inmate according to their preferences would raise a security concern for other inmates, SB 550 prohibits making this assessment solely based on the transgender individual's anatomy or sexual orientation. DPSCS is further required to certify in writing why placement requests have been denied, and to provide inmates with an opportunity to raise objections. SB 550 thus builds on national guidelines regarding inmate housing determinations for transgender individuals (e.g., the Prison Rape Elimination Act), which require that determinations be individualized and consider the safety of each inmate.

While consistent with federal law, this is a significant change from how decisions regarding the housing of transgender inmates are currently made under DPSCS. Although official DPSCS policy calls for facility staff to make housing decisions for transgender inmates on an individualized, case-by-case basis, in actual practice almost all transgender inmates are housed according to their sex assigned at birth. This is due in large part to how DPSCS centers their analysis around the theoretical (and unproven) risk that transgender inmates might pose to other inmates, rather than the real risk of violence and discrimination transgender inmates face themselves.

When making housing determinations, DPSCS policy requires officials to look at several factors, including "the degree to which an assignment ensures the inmate's health and safety, whether an assignment presents management or security concerns, and the inmate's own views with respect to personal safety." DPSCS also heavily considers inmates' biological gender presentation and appearance, including mandatory consideration of whether the inmate has, "intact external genitalia and secondary sex characteristics, such as pubic hair, chest hair, facial hair [...and] specific factors, such as partial completion of sex reassignment surgery, removal or augmentation of breasts, or removal of testicles". This policy is highly problematic in several ways: it disregards transgender inmates' gender identity, subjects them to arbitrary and meaningless determinations, and jeopardizes their safety and security.

Current DPSCS policy subjects transgender inmates to housing that does not remotely match their personal preference or gender identity. Nothing demonstrates this point more than the fact that, as of 2020, not one of the approximately 28 transgender inmates in Maryland have been assigned to gender-affirming housing. Although the housing determinations are (theoretically) individualized, the absolute conformity in practice makes it clear that correctional facilities often make housing decisions for transgender individuals according to their birth sex and biological characteristics rather than their lived gender or preferences.

DPSCS policy also emphasizes prior treatment for gender dysphoria in a discriminatory and arbitrary way. While not all transgender inmates want, need, or have access to hormone replacement therapy or gender-affirming surgery, DPSCS's case-by-case determination emphasizes what medical or surgical treatments the individual has already received. This results in significant discrimination against low-income transgender individuals—especially transgender individuals of color—who may not have easy access to affordable treatment. The effect of this is the imposition by the state of a white, middle-class model of transition, rather than the case-by-case analysis that is called for.

Finally, DPSCS implements its housing policy in a manner that endangers transgender inmates—especially transgender women—who are often targeted in male units because of their gender identity. By focusing decisions primarily on the inmate's genitalia, transgender women are placed at a significantly heightened risk of harassment, injury, sexual assault, or even death.

SB 550 would significantly mitigate these concerns. It would provide transgender inmates gender-affirming housing and a say in where they would be safest. It would also help to ensure that the mistreatment experienced by individuals like Ms. Brown and Ms. Wirtz will never happen again.

For these reasons, FreeState Justice urges a favorable report on Senate Bill 550.