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SB 761 The Transgender Respect, Agency, and Dignity Act
Hearing before the Senate Judicial Proceedings Committee, March 15, 2023
Position: Favorable

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization that seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Among its projects is a longstanding commitment to achieving constitutionally adequate health care at the Baltimore City Detention Center, which is under the control of the Department of Public Safety and Correctional Services. Because of this commitment, and because SB 761 is a matter of fundamental human rights and universal human dignity, the PJC supports SB 761.

As counsel for the class of detainees in the city jail in the case of *Duvall v. Hogan*, I have encountered human beings that have suffered all of the dangers and indignities referenced in the bill and in the studies cited by other proponents of the bill: Transgender men and women and nonbinary individuals who have been stigmatized, shamed, harassed, misgendered, denied safe housing, denied gender-affirming health care, sexually humiliated, sexually assaulted, and beaten due to their gender identity.

DPSCS continues to maintain an illegal policy in its Medical Evaluation Manual regarding housing assignments that the bill will prohibit, i.e., to house all individuals who have not completed gender reassignment surgery according to their anatomy at birth. This policy violates the federal Prison Rape Elimination Act and the Americans with Disabilities Act. It is inconsistent with the Federal Bureau of Prisons' policy and the National Commission on Correctional Health Care's standards. It is even inconsistent with DPSCS's own Executive Directives on Identification, Treatment and Correctional Management of an Inmate Diagnosed with Gender Dysphoria and on Assessment for Risk of Sexual Victimization and Abusiveness.

All of these laws and policies require multi-factor, individualized determinations based on, among other things, safety, including the individual's own assessment of their safety and their housing preference. By maintaining this restrictive rule in the face of applicable law and sound policy, DPSCS flouts its legal obligations and endangers lives.

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Though the time an individual spends in the jail may be shorter than for those serving time in Maryland's prisons, the dangers they face are no less real and life-threatening. In 2021, a transgender woman died while housed with men in the jail. Her family could not obtain information about her death, and she was consistently misgendered by DPSCS representatives and medical personnel and referred to by a name she no longer used.

During an August 2022 tour of the jail, we encountered two transgender women who were suffering direct and substantial ongoing harm from the state's backward approach. They had both been forced over their objections to live in the men's general population despite having taken female hormones and lived as women in the community for years. One remained there despite having been previously assaulted by her cellmate, suffering injuries.

The other was housed in the Inpatient Mental Health Unit, not because she required any such care or treatment, but solely for her protection because she had been threatened by male detainees in general population. The depravity of this "solution" must be fully understood. The unit is reserved for individuals who present an immediate danger to themselves or others. They are subject to continuous visual observation and not allowed to wear any clothes (on the theory that they may attempt to use them to harm themselves). Thus, this transgender woman was made to take a space that someone else may have needed to save their life, and through bureaucratic rigidity, was subjected to unnecessary suicide observation. She was living naked and continuously subject to the prying eyes of guards and medical personnel for no even theoretically legitimate reason. In addition to violating the PREA's prohibition on the use of involuntary segregated housing, this "protection" is torture. And it must not be tolerated.*

For the foregoing reasons, the PJC supports SB 761. Should you have any questions, please contact Debra Gardner, Legal Director, at 410-625-9409, ext. 228 or gardnerd@publicjustice.org.

* On March 10, 2023, after class counsel's advocacy and urging by the court-appointed mental health services monitor in the *Duvall* case, class counsel was made aware of a new standard operating procedure for the IMHU that creates 3 levels of treatment and observation. If appropriately implemented, this procedure will mean that all persons housed in the IMHU will no longer be automatically and continually subjected to the extreme deprivations of suicide precautions. Nonetheless, even the lesser levels of observation involve many of the same deprivations and represent a severely restricted environment compared with general population. And this new procedure does nothing to change the policy of housing transgender individuals in the IMHU even if they do not need any such "treatment" as described in this testimony. Therefore, the state's unlawful use of involuntary segregated and highly restrictive, highly intrusive housing for certain transgender individuals persists.

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