

SUPPORT – SB 761

Correctional Facilities – Transgender, Nonbinary, and Intersex Inmates
Transgender Respect, Agency, and Dignity Act
Judicial Proceedings Committee
March 15, 2023

Chair Smith and Members of the Committee,

Thank you for the opportunity to provide written testimony in support of Senate Bill 761, on behalf of Disability Rights Maryland (DRM). DRM is a legal nonprofit and Maryland’s federally designated Protection & Advocacy agency. DRM is dedicated to advancing the civil rights of people with disabilities.

This bill provides important protections that will help reduce incidents of violence in Maryland prisons. When transgender people are incarcerated, they “are subjected to constant violence by both prison staff and other prisoners.”¹ DRM has received reports of these abuses. In our role as a monitoring agency, we have learned of transgender women being placed in cells with individuals who are known to be violent towards transgender women. When the transgender women refuse such violent housing, they are punished and placed into administrative segregation. They are allowed out of their cells for one hour per day; they lose access to programming, classes and jobs; and they may lose accumulated good conduct credits.

The conditions in our carceral institutions result in “high levels of stress, fear, social isolation, infectious disease, and violence exposure, all of which can increase disability risks.”² Maryland prison conditions punish incarcerated individuals, especially transgender women, by damaging their health and wellbeing. SB 761 will reduce some of these unjustifiable impacts.

California’s Transgender Respect, Agency, and Dignity Act

Maryland’s bill was originally based on a California bill of the same name. The California law has been an important step forward in protecting incarcerated transgender persons, and it has not led to disarray or an increase in violence in California prisons. California has approximately 1,671 incarcerated transgender, nonbinary, and intersex individuals. In the two years since the California bill was implemented, there have only been 353 housing transfer requests, and only 13% have been approved (47 approvals).³

¹ *Coming Out of Concrete Closets: A Report on Black & Pink’s National LGBTQ Prisoner Survey*, Jason Lydon, *et.al.* at 3 (2015), <https://www.issuelab.org/resources/23129/23129.pdf>.

² *The Links Between Disability, Incarceration, and Social Exclusion*, Laurin Bixby *et al.*, (Oct. 2022), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2022.00495>.

³ *Senate Bill 132 FAQs*, California Department of Corrections and Rehabilitation, <https://www.cdcr.ca.gov/prea/sb-132-faqs/>.

A group known for its anti-transgender “mis- and disinformation”⁴ sued to challenge the California law. The purported support for this lawsuit includes “false allegations and rumors,” in the words of an incarcerated woman who was misconstrued as a victim of sexual assault. In a declaration sworn under penalty of perjury, the woman stated that a transgender individual took care of her when she was sick, and afterwards, false rumors spread about a sexual assault. Due to the unfounded rumors, the transgender person is “being held indefinitely in isolation,” despite the woman’s repeated assertions that she was not harmed.⁵

In contrast to those rumors, the violence faced by incarcerated transgender women is real. According to another filing in the lawsuit, one transgender woman has faced more than 30 incidents of sexual violence while incarcerated. Another transgender woman was attacked by multiple individuals, who broke bones in her jaw and neck. A different attack cost that same transgender woman 8 teeth.⁶

There is a pending motion to dismiss the California lawsuit.⁷

Improvements to Maryland’s Bill

Given some of the rhetoric surrounding the California bill, some Maryland legislators expressed concern about potential risks to non-transgender women.

This year’s bill has made several key changes to respond to those concerns:

1. The bill now includes a definition of “gender identity,” consistent with the definition used throughout Maryland’s Code. The definition requires that gender identity be “consistent and uniform” or have “other evidence that the gender identity is sincerely held as part of the person's core identity.” This definition makes it even less likely that a non-transgender person would risk the violence imposed on who are perceived as transgender in order to access a housing transfer.
2. The bill no longer states that an incarcerated person shall be housed according to open-ended “preference.” Now, housing is only permitted in accordance with either gender identity or sex assigned at birth. In other words, the person must have a sincerely held transgender identity in order to request housing that does not align with sex assigned at birth.
3. The bill tightens up language permitting the prison to deny transfer requests. The bill now explicitly states that requests may be denied based on a “risk that the inmate may commit abuse.”

⁴ *Far-Right Groups Flood State Legislatures with Anti-Trans Bills Targeting Children*, Southern Poverty Law Center (April 26, 2021), <https://www.splcenter.org/hatewatch/2021/04/26/far-right-groups-flood-state-legislatures-anti-trans-bills-targeting-children>.

⁵ Declaration of Asia Davis, Docket No. 43-3, Case No. 1:21-cv-01657-JLT-HBT, *Chandler v. California Department of Corrections and Rehabilitation*, https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/2022-07-05_dkt_043-3_exhibit_b.pdf.

⁶ Motion to Intervene, Docket No. 19-1, Case No. 1:21-cv-01657-JLT-HBT, *Chandler v. California Department of Corrections and Rehabilitation*, <https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/19-1.pdf>.

⁷ *Chandler v. California Department of Corrections and Rehabilitation*, Lambda Legal, <https://www.lambdalegal.org/in-court/cases/chandler-v-california-department-of-corrections-and-rehabilitation>.

These changes strike the appropriate balance to ensure additional safety for all incarcerated Marylanders.

DRM urges the Committee to issue a favorable report on SB 761. Thank you for your consideration. Please contact Sam Williamson at 410-727-6352 or SamW@DisabilityRightsMd.org with any questions.