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## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB 459/ HB 385, Maryland Mandela Act**  
**FROM: Maryland Office of the Public Defender**  
**POSITION: Favorable**  
**DATE: March 6, 2023**

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 459.

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**Submitted by: Government Relations Division of the Maryland Office of the Public Defender.**

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I am an attorney with the Office of the Public Defender. I have been practicing criminal defense for 23 years, currently in one of OPD's statewide divisions, the Forensic Mental Health Division. Over the course of my career, I have worked with many people who have been placed in "restrictive housing", some for disciplinary reasons, some for administrative reasons, some as a protective custody measure.

Restrictive Housing is more commonly called solitary confinement; solitary because a person is locked in a cell alone. My 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.

DPSCS files an annual report on their use of Restrictive Housing. In fiscal year 2021 DOC housed over 18,800 people 3,300 (18%) of them 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-- ¾ of men and half 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 has come out solidly against 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 punishment. In fact, in 2017 the U.S. Federal Court upheld a Pennsylvania 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 "Imprisoning people with SMI in solitary confinement is detrimental to their mental and physical

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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>

<sup>3</sup> Palakovic v. Wetzel, 854 F.3d. 209 (2017).

<sup>4</sup> Altoona Mirror. *Inmate's parents, DOC settle lawsuit*. April 7, 2021. <https://www.altoonamirror.com/news/local-news/2021/04/inmates-parents-doc-settle-lawsuit/>

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 Severe Mental Illness (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 people 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> 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 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>

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<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. February 23, 2023, at page 39.  
[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)

<sup>6</sup> Dana G. Smith, *Neuroscientists Make a Case against Solitary Confinement*, SCIENTIFIC AMERICAN (Nov. 9, 2018), <https://www.scientificamerican.com/article/neuroscientistsmake-a-case-against-solitary-confinement/> (last visited Feb. 21, 2023).

<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.

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

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 metaanalysis 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 ask that you pass the reforms outlined in the Mandela Act. I thank you for your time today.

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