



TESTIMONY IN SUPPORT OF SB 761/ HB 426

Correctional Facilities - Transgender, Nonbinary, and Intersex Inmates (Transgender Respect, Agency, and Dignity Act)

TO: Chair and Members of the Chair and Members of the [Judicial Proceedings](#) and [Judiciary](#)

Out for Justice [supports SB 761/ HB 426](#)

This bill allows LGBTQ individuals to request transfer to gender appropriate facilities based on their housing preferences and overall safety concerns. Further this bill prohibits discrimination from an employee of a correctional facility against inmates on the basis of certain protected classes, including but not limited to ethnicity, disability, pregnancy status, age, sexual orientation, or gender identity.

In 1994, the US Supreme Court ruled that failing to protect Transgender people in custody is unconstitutional and found deliberately failing to protect incarcerated trans people from abuse or violence behind bars qualifies as cruel and unusual punishment. Nearly 30 years after that landmark Supreme Court decision many individuals that identify as Transgender are still under imminent danger while incarcerated. Far too many are raped and sexually assaulted by others prisoners and abused by correctional officers while in custody. Our members have shared that they could not report the assaults to corrections officers, for fear of retribution, including being thrown into solitary confinement. Despite robust evidence that trans women are at a significantly higher risk of abuse and assault than the general prison population, the vast majority of incarcerated trans people in America are still housed in facilities based on the sex they were assigned at birth.

In Maryland, being transgender in public can lead to an arrest under so-called “Walking While Trans” laws: anti-loitering codes officially used to target sex workers, which in practice target primarily trans women of color regardless of whether they are sex workers. Transgender people are disproportionately impacted by the criminal justice system to begin with, incarcerated at significantly higher rates than other groups. The rate of incarceration for transgender people was double that of the nation-wide rate of incarceration, and about 10 times higher for Black transgender women.

OFJ members have shared the “inhumane” and “disgraceful” treatment of trans women in custody often starts immediately upon the intake process. Trans prisoners are over nine times more likely than the prison average to be assaulted or abused by fellow prisoners, and over five times more likely to be assaulted or abused by facility staff, according to a national survey conducted by the National Center for Transgender Equality



Opponents of housing people in custody according to gender identity argue that men could falsely claim to be transgender so they are housed with women they can then assault. There is no evidence to support that this happens, while there is overwhelming evidence that trans women in men's prisons are being sexually assaulted at exponentially higher rates than the general incarcerated population.

In 2003, President George W. Bush signed the Prison Rape Elimination Act, PREA, into law. This legislation required the Department of Justice to develop federal rules for prisons and jails aimed at preventing and eliminating sexual assault and rape of prisoners. The DOJ issued those PREA Standards in 2012, which still stand today.

PREA Standards state that prison staff "must consider [housing assignments] on a case-by-case basis," and not simply on the basis of a person's "genital status." Additionally the standards state "serious consideration" should be given to an incarcerated person's "own views regarding his or her own safety."

In practice, these standards are not protecting our Transgender loved ones while incarcerated regardless of request and advocacy. Maryland statute is required to protect our citizens behind the wall.

We respectfully urge a **favorable** report on SB 761/ HB 426 .