



SB761

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

MCAA Position: **OPPOSE**

TO: Judicial Proceedings Committee

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Impact on Local Detention Center Operations

The Maryland Correctional Administrator's Association (MCAA), an organization comprised of our statewide jail wardens and administrators for the promotion and improvements for best correctional practices, appreciates the opportunity to provide information regarding House Bill 426. HB426 could potentially have substantial adverse impact on local detention center operations. We extend the opportunity to work with jail wardens and administrators to work towards a mutually amicable resolution.

Local Detention Centers in the State of Maryland operate in accordance with Maryland Commission on Correctional Standards which is codified in Title 12 Department of Public Safety and Correctional Services, Subtitle 14 Commission on Correctional Standards. While the Standards Commission is a branch of the Department of Public Safety and Correctional Services (DPSCS), local detention centers do not fall under the operational purview of DPSCS which is referenced in 9-620 (F) (2). HB426 is written in language/interpretation that dictates DPSCS is solely affected and not local detention centers/jurisdictions. DPSCS and local detention centers are colleagues.

(D) STAFF, CONTRACTORS, AND VOLUNTEERS AT A CORRECTIONAL FACILITY SHALL USE THE GENDER PRONOUNS AND HONORIFICS AN INMATE HAS SPECIFIED IN ALL VERBAL AND WRITTEN COMMUNICATIONS WITH OR REGARDING THE INMATE THAT INVOLVE THE USE OF A PRONOUN OR HONORIFIC.

According to online resources, the LGBTIQA community typically uses 72 pronouns. However, pronouns can exceed this number due to the accepted practice of creating pronouns that an

individual wants to be identified by. This could cause the need for additional training to educate staff of pronouns, pronunciations, etc.

Local detention centers not only employ correctional officers but outside vendors/contractors. There is concern how local detention centers will ensure correct pronouns are used by outside vendors/contract personnel who do not have the ability to either witness or read the outcome of the classification process (which is in a private and confidential setting).

(C) SUBJECT TO SUBSECTION (F) OF THIS SECTION, AN INMATE SHALL BE HOUSED AT A CORRECTIONAL FACILITY DESIGNATED FOR MEN OR WOMEN BASED ON THE INMATE'S PREFERENCE, INCLUDING RESIDENTIAL TREATMENT FACILITIES MANAGED BY THE DEPARTMENT IF THE INMATE IS ELIGIBLE.

MCCS Standard .01 Q Separation of Sexes mandates "The managing official shall provide living quarters for male and female inmates which are separate and distinct to ensure privacy ... maintain individual integrity and ensure facility order and security." Additionally, .05 Inmate Rights B. Protection from Abuse requires local detention centers to have a "policy which establishes inmate protection from abuse and harassment."

It is a concern that housing an inmate based on the inmate's preference could potentially cause a rise in sexual assaults, Prison Rape Elimination Act (PREA) violations, etc. Heterosexual male and female inmates could use this bill, or the Department's policy based off this bill, to obtain housing with the opposite sex. This potentially allows for very serious problems including civil tort, PREA investigation and liabilities, and finally potential criminal investigations/convictions related to sexual assaults.

(E) IF AN INMATE IS LAWFULLY SEARCHED, THE INMATE SHALL BE SEARCHED ACCORDING TO THE SEARCH POLICY FOR THE INMATE'S GENDER IDENTITY OR ACCORDING TO THE GENDER DESIGNATION OF THE FACILITY IN WHICH THE INMATE IS HOUSED, BASED ON THE INMATE'S PREFERENCE.

This could potentially cause male staff to strip search biologically female inmates and female staff members to strip search biologically male inmates. This violates search procedures as well as the Maryland Commission on Correctional Standards. 01 Standards: Security and Inmate Control. J. Search Procedures (11) Strip searches – See records, if any. Searches must be in private and performed by the same sex unless there is an emergency. When correctional staff was hired, it was with the understanding when strip searches were conducted the search would be performed on inmates who were biologically the same sex. HB426 places correctional officers in a potentially precarious libelous situation.

(D) WHEN CONSIDERING A HOUSING DECISION WITHIN A FACILITY, INCLUDING GRANTING SINGLE CELL STATUS, HOUSING AN INMATE WITH ANOTHER INMATE OF THE INMATE'S CHOICE, OR REMOVING ANOTHER INMATE WHO POSES A THREAT TO THE INMATE, STAFF SHALL CONSIDER THE INMATE'S PERCEPTION OF HEALTH AND SAFETY.

Maryland State Standard .06 Classification requires all inmates to be properly classified for the safety and security of the offender as well as the overall safety of the facility. When considering a

housing decision, HB426 mandates the facility to grant a single cell while a single cell may not be available based on the available cell capacity versus facility census. In other words, most offenders would like to be single celled; however, the reality is there are not enough single cells to be able to grant to all offenders. Housing an inmate with inmate of their choice would be problematic if the inmate selects a cell mate that is not compatible based on security level. Staff shall consider the inmate's "Perception of Health and Safety" when making these decisions. This language is too vague since perception is a mental impression; therefore, this bill language needs greater clarity.

Lastly, HB426 is well intentioned; however, does not take in to account those inmates/detainees who try to manipulate situations for their own benefit. As an example, allowing the choice of housing void of including language that references security risk and classification leaves local detention centers to have to articulate this reasoning in a separate process every time, as well be forced to go through the entire process again and again "Any time" an inmate raises a concern. The operational mandate of forcing all staff, contractors, and volunteers to address inmates by their chosen gender identity, which they are also allowed to change at any time, is also setting up local detention centers to fail. This does not allow for less restrictive practices such as directing staff to use non-gender specific pronouns when referring to inmates/detainees or just directing staff to refer to inmates/detainees in a manner referencing "inmate/detainee" and their last name. It is impossible with so many staff and overtime, and various individuals coming and going that everyone would possibly know how all inmates/detainees identified themselves.

HB426 is written from a perspective everyone is acting with good intentions; however, this misses the mark for those that do not, which unfortunately encompass a lot of individuals that are housed inside our correctional facilities and jails.

The opportunity to provide information in regards this legislation is greatly appreciated and the local detention centers look forward to discussion and welcome opportunities to ensure the dignity, safety, and security of all entrusted to our care.