

Maryland, 42% of transgender individuals are unemployed, 31% have incomes of less than \$10,000, and 19% do not have their own living space (©26).

As already noted, it is unclear whether the current County Human Rights law would prohibit discrimination against a person based on that person's gender identity; therefore **the Committee recommended (3-0) that the Council amend the County Human Rights law to prohibit discrimination because of gender identity.**

2. How specific should the law be regarding public facilities?

The Council received testimony and letters questioning whether Bill 23-07 is intended to let a person use public facilities (e.g., restrooms and locker rooms) consistent with that person's chosen gender identity. Supporters of transgender anti-discrimination legislation argued that transgender individuals need access to adequate facilities. Some individuals expressed concern that if Bill 23-07 lets a person use a facility appropriate for that person's gender identity, then a non-transgender person may use that provision to excuse committing a crime. If enacted, **Bill 23-07 could not be used as a shield to protect a person who commits a crime in a public facility.** Any action that is a crime would remain a crime if the Council enacts Bill 23-07, regardless of the perpetrator's gender identity. For example, Maryland law specifically prohibits a person from conducting visual surveillance of another individual, with or without prurient interest, in a private place without the consent of that individual (Maryland's "peeping tom" law).⁵ Nothing in Bill 23-07 would protect a person from prosecution if that person entered a public facility and violated this law. Council staff contacted several jurisdictions with gender identity anti-discrimination statutes. Staff from those jurisdictions did not report any case where an individual used gender identity protections to commit or justify crime in a public facility.

The County Attorney's Office concluded that Bill 23-07 as introduced would not require or prohibit restroom designation according to gender identity or biological gender (see memorandum on ©17). This means that an employer or other public facility provider could maintain and enforce current gender-based restrictions on public facility use. **At the Committee worksession, HRC staff indicated that if Bill 23-07 were silent on the issue of public facilities, they would interpret the bill as allowing a person to use facilities based on that person's gender identity. Council staff agrees with the County Attorney's opinion because County Code §27-10(c) provides that the provisions prohibiting discrimination in public accommodations do "not apply to accommodations that are distinctly private or personal."**

The Committee discussed the following options, most of which have been adopted by at least one jurisdiction with a gender identity anti-discrimination law:

1. **Remain silent.** Several jurisdictions have not specifically addressed this issue, which allows room for the implementing agency to interpret its law on a case-by-case basis. In some jurisdictions the implementing agency has issued regulations to specify how anti-discrimination provisions relate to facility use. For example, the New York City Commission on Human Rights issued guidelines regarding gender identity discrimination that provide that it is "an unlawful discrimination practice" for a

⁵ See Maryland Code, Criminal Law §§3-901, 3-902.