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February 16, 2022

Chair and Members of the House Judiciary—Criminal Committee

Re: HB 5072

Dear Committee Members:

I write today to oppose HB 5072 (Manley). This bill seeks to make it a criminal offense to have sex or masturbate in any penal institution. In addition, anyone convicted two or more times under this law would be required to register as a sex offender.

For the last 40+ years, the Uptown People's Law Center has represented prisoners across Illinois in civil rights cases relating to their conditions of confinement. We currently have five class action cases pending against the IDOC, and plus over a dozen individual impact cases. As part of this work, staff from UPLC (pre-COVID) regularly visited prisons, met with prisoners in the attorney visiting rooms, and toured living units where prisoners with serious mental illnesses were housed.

I understand that this bill is an attempt to remedy a serious problem in Cook County Jail where some employees (and public defenders) have been sexually harassed by detainees masturbating in front of them. Employees of UPLC have similarly witnessed prisoners masturbating in front of them as they have toured certain units of Illinois prisons. While no one should be forced to endure sexual harassment as part of their job, sexual misconduct is already a violation of prison rules, and people are, in fact, regularly disciplined for violating these rules. Sending people to prison (or extending their time in prison) will not solve the problem. Requiring registration as a sex offender has serious negative implications for people when they are released; it is needlessly punitive and will increase recidivism.

In Illinois prisons, this behavior is almost exclusively seen where people with a serious mental illness are confined to solitary. It is almost never seen in general population, or in medium or minimum security prisons. The reason is well established: when deprived of control over every aspect of their lives as happens in solitary, some people—and particularly those whose judgment is impaired by mental illness—will turn to the one thing over which they still have control: their own bodies.

The solution is to provide better mental health treatment, and to reduce the use of solitary.

One final point: the existing rules against sexual misconduct are already abused. A prison cell is also a prisoner's bedroom and bathroom. Privacy is non-existent in prison. That means that staff are constantly able to view prisoners in settings which all of us would consider a gross invasion of our privacy. Unfortunately, there have been instances where staff have brought a false charge of sexual misconduct as a means of retaliating against prisoners. See, for example, *Pearson v. Welborn*, 471 F.3d 732 (7th Cir. 2006), where the Seventh Circuit federal court of appeals upheld a jury verdict finding that staff at Tamms supermax had retaliated against the plaintiff by falsely accusing him of masturbation. Making all sexual activity a criminal offense will open the door to more false allegations.

In sum, HB 5072 is the wrong solution to a serious problem. We urge you to vote NO on this bill.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan Mills". The signature is fluid and cursive, with the first name "Alan" being more prominent than the last name "Mills".

Alan Mills,
Executive Director