A BILL ENTITLED

AN ACT concerning

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

FOR the purpose of prohibiting an employee of a correctional facility from discriminating against inmates on the basis of certain protected classes; requiring the managing official of a correctional facility to develop a written nondiscrimination policy regarding inmates; establishing certain requirements for correctional facilities relating to the gender identity of inmates and inmates who are transgender, nonbinary, or intersex; and generally relating to correctional facilities and transgender, nonbinary, and intersex inmates.

BY adding to
Article – Correctional Services
Section 9–618 through 9–620
Annotated Code of Maryland
(2017 Replacement Volume and 2021 Supplement)

Preamble

WHEREAS, The term “transgender” is broad and inclusive of all gender identities different from the gender a person was assigned at birth, including transsexual, two–spirit, and māhū. “Nonbinary” is an inclusive term used to describe individuals who may experience a gender identity that is neither exclusively male nor female or is in between or beyond both of those genders, including gender fluid, agender or without gender, third gender, genderqueer, gender variant, and gender nonconforming. The term “intersex” is a broad and inclusive term referring to people whose anatomy, hormones, or chromosomes fall outside the strict male and female binary; and

WHEREAS, The United States Supreme Court recognized that incarcerated transgender individuals are particularly vulnerable to sexual abuse and sexual harassment and that disregarding the known risks to a transgender woman constitutes deliberate
indifference in violation of the federal Constitution; and

WHEREAS, Official data collected by the U.S. Bureau of Justice Statistics confirms that nationwide, incarcerated transgender individuals experience exceptionally high rates of sexual victimization. In a 2011–2012 survey, almost 40% of incarcerated transgender individuals reported experiencing sexual victimization while incarcerated compared to 4% of all incarcerated individuals; and

WHEREAS, A congressional study found that instances of prison rape often go unreported, and that “most prison staff are not adequately trained or prepared to prevent, report or treat inmate sexual assaults”. 40% of transgender women respondents reported harassment from other incarcerated individuals, and 38% reported being harassed by correctional officers or staff; and

WHEREAS, Correctional officers and other incarcerated people predominantly refer to transgender women as men, using masculine pronouns, and transgender men as women, using feminine pronouns; and

WHEREAS, Gender transition is a deeply personal experience that may involve some combination of social transition, legal transition, medical transition, or none of these. Some transgender, nonbinary, and intersex people experience gender dysphoria that requires medical treatment, while others do not experience gender dysphoria. Due to safety concerns, inconsistent medical and mental health care, insufficient education and resources, and other factors, incarceration often serves as a barrier to gender transition. Regardless of the ways in which a person chooses or is able to express the person’s gender or to take medical, social, or legal transition steps, the person deserves respect, agency, and dignity; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Correctional Services

9–618.

(A) AN EMPLOYEE OF A CORRECTIONAL FACILITY MAY NOT DISCRIMINATE AGAINST AN INMATE WITH REGARD TO PROGRAMS, SERVICES, OR ACTIVITIES ON THE BASIS OF THE INMATE’S RACE, ETHNICITY, RELIGION, NATIONAL ORIGIN, AGE, SEX, GENDER IDENTITY, SEXUAL ORIENTATION, DISABILITY, PREGNANCY STATUS, OR POLITICAL BELIEFS.

(B) THE MANAGING OFFICIAL OF A CORRECTIONAL FACILITY SHALL IMPLEMENT A WRITTEN POLICY STATING THAT AN INMATE MAY NOT BE DISCRIMINATED AGAINST WITH REGARD TO PROGRAMS, SERVICES, OR ACTIVITIES ON THE BASIS OF THE INMATE’S RACE, ETHNICITY, RELIGION, NATIONAL ORIGIN, AGE, SEX, GENDER IDENTITY, SEXUAL ORIENTATION, DISABILITY, PREGNANCY
STATUS, OR POLITICAL BELIEFS.

9–619.

(A) DURING THE INITIAL INTAKE AND CLASSIFICATION PROCESS, AN OFFICER SHALL, IN A PRIVATE SETTING, ASK EACH INMATE TO SPECIFY THE FOLLOWING INFORMATION:

(1) THE INMATE’S GENDER IDENTITY, INCLUDING MALE, FEMALE, OR NONBINARY;

(2) WHETHER THE INMATE IDENTIFIES AS TRANSGENDER, NONBINARY, OR INTERSEX; AND

(3) THE INMATE’S GENDER PRONOUNS AND HONORIFICS.

(B) AN INMATE MAY NOT BE DISCIPLINED FOR REFUSING TO DISCLOSE INFORMATION IN RESPONSE TO THE QUESTIONS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.

(C) AT ANY TIME, ON THE REQUEST OF AN INMATE, CORRECTIONAL FACILITY STAFF SHALL PROMPTLY PROVIDE THE INMATE AN OPPORTUNITY TO UPDATE THE INFORMATION PROVIDED UNDER SUBSECTION (A) OF THIS SECTION.

(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.

9–620.

(A) THIS SECTION APPLIES TO AN INMATE WHO IS TRANSGENDER, NONBINARY, OR INTERSEX, REGARDLESS OF ANATOMY.

(B) STAFF, CONTRACTORS, AND VOLUNTEERS AT A CORRECTIONAL FACILITY SHALL ADDRESS AN INMATE IN A MANNER CONSISTENT WITH THE INMATE’S GENDER IDENTITY.

(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.
(D) (1) 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.

(2) An inmate’s assignment, placement, or programming shall be reassessed any time an inmate raises concerns for the inmate’s health or safety.

(E) (1) 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.

(2) If the inmate’s search preference or gender identity cannot be determined, the inmate shall be searched according to the gender designation of the facility in which the inmate is housed.

(F) (1) The Department may deny an inmate’s search or housing placement preference due to specific and articulable management or security concerns.

(2) If the Department denies an inmate’s search or housing placement preference, the Secretary, or the Secretary’s designee, shall certify in writing a specific and articulable basis for the Department’s inability to accommodate the inmate’s preference.

(3) The Department may not deny an inmate’s search or housing placement preference based on a discriminatory reason, including the inmate’s anatomy or sexual orientation.

(4) (I) An inmate denied a search or housing placement preference request shall receive a copy of the written basis for the denial and shall be given a reasonable time frame from the receipt of the denial to verbally raise any objections to the denial.

(II) Any verbal objections raised by the inmate to the denial shall be documented.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.