

HOUSE BILL 453

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By: **Delegate Lopez**

Introduced and read first time: January 20, 2022

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

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

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

11 BY adding to
12 Article – Correctional Services
13 Section 9–618 through 9–620
14 Annotated Code of Maryland
15 (2017 Replacement Volume and 2021 Supplement)

16 Preamble

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

25 WHEREAS, The United States Supreme Court recognized that incarcerated
26 transgender individuals are particularly vulnerable to sexual abuse and sexual harassment
27 and that disregarding the known risks to a transgender woman constitutes deliberate

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 indifference in violation of the federal Constitution; and

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

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

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

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

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

26 **Article – Correctional Services**

27 **9–618.**

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

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

1 STATUS, OR POLITICAL BELIEFS.

2 9-619.

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

6 (1) THE INMATE'S GENDER IDENTITY, INCLUDING MALE, FEMALE, OR
7 NONBINARY;

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

10 (3) THE INMATE'S GENDER PRONOUNS AND HONORIFICS.

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

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

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

21 9-620.

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

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

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

1 **(D) (1) WHEN CONSIDERING A HOUSING DECISION WITHIN A FACILITY,**
2 **INCLUDING GRANTING SINGLE CELL STATUS, HOUSING AN INMATE WITH ANOTHER**
3 **INMATE OF THE INMATE'S CHOICE, OR REMOVING ANOTHER INMATE WHO POSES A**
4 **THREAT TO THE INMATE, STAFF SHALL CONSIDER THE INMATE'S PERCEPTION OF**
5 **HEALTH AND SAFETY.**

6 **(2) AN INMATE'S ASSIGNMENT, PLACEMENT, OR PROGRAMMING**
7 **SHALL BE REASSESSED ANY TIME AN INMATE RAISES CONCERNS FOR THE INMATE'S**
8 **HEALTH OR SAFETY.**

9 **(E) (1) IF AN INMATE IS LAWFULLY SEARCHED, THE INMATE SHALL BE**
10 **SEARCHED ACCORDING TO THE SEARCH POLICY FOR THE INMATE'S GENDER**
11 **IDENTITY OR ACCORDING TO THE GENDER DESIGNATION OF THE FACILITY IN WHICH**
12 **THE INMATE IS HOUSED, BASED ON THE INMATE'S PREFERENCE.**

13 **(2) IF THE INMATE'S SEARCH PREFERENCE OR GENDER IDENTITY**
14 **CANNOT BE DETERMINED, THE INMATE SHALL BE SEARCHED ACCORDING TO THE**
15 **GENDER DESIGNATION OF THE FACILITY IN WHICH THE INMATE IS HOUSED.**

16 **(F) (1) THE DEPARTMENT MAY DENY AN INMATE'S SEARCH OR HOUSING**
17 **PLACEMENT PREFERENCE DUE TO SPECIFIC AND ARTICULABLE MANAGEMENT OR**
18 **SECURITY CONCERNS.**

19 **(2) IF THE DEPARTMENT DENIES AN INMATE'S SEARCH OR HOUSING**
20 **PLACEMENT PREFERENCE, THE SECRETARY, OR THE SECRETARY'S DESIGNEE,**
21 **SHALL CERTIFY IN WRITING A SPECIFIC AND ARTICULABLE BASIS FOR THE**
22 **DEPARTMENT'S INABILITY TO ACCOMMODATE THE INMATE'S PREFERENCE.**

23 **(3) THE DEPARTMENT MAY NOT DENY AN INMATE'S SEARCH OR**
24 **HOUSING PLACEMENT PREFERENCE BASED ON A DISCRIMINATORY REASON,**
25 **INCLUDING THE INMATE'S ANATOMY OR SEXUAL ORIENTATION.**

26 **(4) (I) AN INMATE DENIED A SEARCH OR HOUSING PLACEMENT**
27 **PREFERENCE REQUEST SHALL RECEIVE A COPY OF THE WRITTEN BASIS FOR THE**
28 **DENIAL AND SHALL BE GIVEN A REASONABLE TIME FRAME FROM THE RECEIPT OF**
29 **THE DENIAL TO VERBALLY RAISE ANY OBJECTIONS TO THE DENIAL.**

30 **(II) ANY VERBAL OBJECTIONS RAISED BY THE INMATE TO THE**
31 **DENIAL SHALL BE DOCUMENTED.**

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