

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 453 (Delegate Lopez)
 Judiciary

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

This bill (1) prohibits an employee of a correctional facility from discriminating 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; (2) requires the managing official of a correctional facility to implement a written policy prohibiting discrimination against an inmate within the specified protected classes; and (3) establishes requirements for correctional facilities relating to inmates within specified protected classes.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$1.16 million in FY 2023. Future years reflect annualization, inflation, and ongoing costs. Revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,155,100	1,314,600	1,352,700	1,388,500	1,427,300
Net Effect	(\$1,155,100)	(\$1,314,600)	(\$1,352,700)	(\$1,388,500)	(\$1,427,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Expenditures for local correctional facilities may increase in some counties. Revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

All Inmates: During the initial intake and classification process, and at any time when requested by an inmate, an officer must, in a private setting, ask each inmate to specify (1) the inmate's gender identity, as specified; (2) whether the inmate identifies as transgender, nonbinary, or intersex; and (3) the inmate's gender pronouns and honorifics. An inmate may not be disciplined for refusing to disclose information in response to the required questions. Staff, contractors, and volunteers at a correctional facility must use the gender pronouns and honorifics an inmate has specified in all verbal and written communications with or regarding the inmate.

Transgender, Nonbinary, or Intersex Inmates: The bill establishes provisions that relate specifically to transgender, nonbinary, and intersex inmates. Regardless of anatomy, staff, contractors, and volunteers must address such inmates in a manner consistent with the inmate's gender identity. Such inmates must also be housed at a correctional facility designated for men or women based on the inmate's preference, as specified. When considering a housing decision within a facility, as specified, staff must consider the inmate's perception of health and safety, and the inmate's assignment, placement, and programming must be reassessed any time the inmate raises concerns relating to the inmate's health or safety.

If an inmate is lawfully searched, the inmate must 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. If the inmate's search preference or gender identity cannot be determined, the inmate must be searched according to the gender designation of the facility in which the inmate is housed.

The Department of Public Safety and Correctional Services (DPSCS) may deny an inmate's search or housing placement preferences due to specific articulable management or security concerns. If DPSCS denies an inmate's search or housing placement preference, the Secretary, or the Secretary's designee, must certify in writing a specific and articulable basis for the department's inability to accommodate the inmate's preference.

DPSCS may not deny an inmate's search or housing placement preference based on a discriminatory reason, including anatomy or sexual orientation. An inmate denied a search or housing placement preference request must (1) receive a written copy of the denial and (2) be given a reasonable timeframe after receipt of the denial to verbally raise any objections. Any verbal objections raised by the inmate must be documented.

Current Law: Discrimination based on sexual orientation or gender identity is prohibited under specified State laws, including those regarding employment, housing, and places of public accommodation.

Commission of LGBTQ Affairs

Chapter 648 of 2021 established the Commission of LGBTQ Affairs in the Governor's Office of Community Initiatives. The commission must (1) assess the challenges facing lesbian, gay, bisexual, transgender, and queer (LGBTQ) communities; (2) collect data across State agencies on the implementation of LGBTQ-inclusive policies and complaints alleging discrimination based on sexual orientation or gender identity; (3) study and establish best practices for inclusion of LGBTQ individuals and communities; (4) inform the executive and legislative branches of State government of issues concerning women and LGBTQ persons; (5) offer testimony on issues concerning women and LGBTQ persons before legislative and administrative bodies; (6) act as a clearinghouse for activities to avoid duplication of efforts; (7) create surveys and appoint advisory committees in several specified fields; and (8) publish an annual report, and any other material the commission considers necessary, that includes recommendations on policies for LGBTQ adults and youth that work to end discriminatory practices in the State.

Prison Rape Elimination Act of 2003

The federal Prison Rape Elimination Act of 2003 (PREA) was enacted to address the problem of sexual abuse of persons in the custody of U.S. correctional agencies. The major provisions of PREA (P.L. 108-79) include:

- development of standards for detection, prevention, reduction, and punishment of prison rape;
- collection and dissemination of information on the incidence of prison rape; and
- award of grant funds to help state and local governments implement the purposes of the Act.

The Act applies to all public and private institutions that house adult or juvenile offenders and is also relevant to community-based agencies. The Governor's proposed fiscal 2023 budget includes \$22,596 in federal funds related to PREA.

State Expenditures: General fund expenditures increase by at least \$1.16 million in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of hiring one assistant attorney general, one office assistant, 16 correctional case managers, and three case manager supervisors within DPSCS to implement the bill's requirements. It includes salaries, fringe benefits, one-time start-up costs (including

computer programming), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- DPSCS has numerous [policies and procedures](#) in place regarding gender dysphoria and transgender inmates. Current policies allow for medical treatment (including hormone therapy, mental health treatment, and specialty appointments), search exception cards, prohibitions against discrimination, availability of commissary items based on an inmate’s identified gender and not based on sex assignment, and the ability to pursue legal name changes. In addition, the department’s policies are routinely reviewed for PREA compliance and have been found compliant.
- The Offender Case Management System does not allow for recording the gender identity information required under the bill; therefore, computer programming updates are needed at a cost of \$20,000.
- Under the bill, (1) an inmate may request to change the inmate’s gender identity, gender designation, and gender pronouns and honorifics at any time and correctional facility staff must promptly provide the inmate with the opportunity to update information and use the gender pronouns and honorifics requested; (2) an inmate’s assignment, placement, and programming must be reassessed any time the inmate raises concerns relating to the inmate’s health or safety; and (3) each time an inmate’s search or housing placement preference is denied, the inmate must receive a written copy of the denial and may raise verbal objections, which must be documented. In order to (1) update and disseminate the required information so that inmates may be addressed in the desired pronoun or honorific as quickly as possible, (2) reassess inmate assignment, placement, and programming every time an inmate expresses concerns, and (3) document all search and placement requests, denials, and verbal objections, a minimum of 16 correctional case managers and three case manager supervisors are needed. To the extent that additional staff are needed, costs are higher.
- Failure to meet any requirement under the bill likely results in additional complaints filed through the Inmate Grievance Office and through the courts; therefore, an additional assistant attorney general and office assistant are needed for the anticipated increase in workload.

Positions	21.0
Salaries and Fringe Benefits	\$980,861
Computer Programming	20,000
Other Operating Expenses/Equipment	<u>154,203</u>
Minimum FY 2023 State Expenditures	\$1,155,064

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include any costs for developing and implementing training for all staff, contractors, and volunteers in order to meet the bill's requirements. In addition, without actual experience under the bill, it is not possible to estimate the number of inmates who will request a change in gender identification or placement or the frequency at which such requests will be made; therefore, this estimate does not include any costs for additional medical staff or correctional officers to handle any additional evaluations and transfers between facilities as a result of the bill.

Local Expenditures: Expenditures may increase in some counties to the extent that local correctional facilities must update policies, modify procedures, and handle additional complaints as a result of the bill. Any impact likely varies by facility. For example, several counties surveyed with respect to the fiscal effect of the bill anticipate that the bill does not materially affect local finances.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 550 (Senator Carter) - Judicial Proceedings.

Information Source(s): Maryland Commission on Civil Rights; Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

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Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510