

SENATE BILL 761

E5
SB 550/22 – JPR

3lr1012
CF HB 426

By: **Senator Carter**

Introduced and read first time: February 6, 2023

Assigned to: Judicial Proceedings

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

13 BY repealing and reenacting, without amendments,
14 Article – Correctional Services
15 Section 1–101(a) and 9–614(a)(1) and (3)
16 Annotated Code of Maryland
17 (2017 Replacement Volume and 2022 Supplement)

18 BY adding to
19 Article – Correctional Services
20 Section 1–101(h–1) and 9–618 through 9–620
21 Annotated Code of Maryland
22 (2017 Replacement Volume and 2022 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – Correctional Services
25 Section 3–207
26 Annotated Code of Maryland
27 (2017 Replacement Volume and 2022 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,
2 Article – State Government
3 Section 20–101(a) and (e)
4 Annotated Code of Maryland
5 (2021 Replacement Volume and 2022 Supplement)

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

8 **Article – Correctional Services**

9 1–101.

10 (a) In this article the following words have the meanings indicated.

11 **(H–1) “GENDER IDENTITY” HAS THE MEANING STATED IN § 20–101 OF THE**
12 **STATE GOVERNMENT ARTICLE.**

13 3–207.

14 (a) On or before October 31 of each year, the Commissioner shall submit an
15 annual report to the Secretary and the Governor that states, for each correctional facility
16 in the Division:

17 (1) its expenses, receipts, disbursements, condition, and progress;

18 (2) the number of inmates and each inmate’s age, sex, **GENDER IDENTITY**,
19 race, place of birth and conviction, crime, and term of confinement;

20 (3) the number of inmates who escape, are pardoned, or discharged;

21 (4) the job classifications for inmate labor in each department and facility
22 under the authority of the Division;

23 (5) the daily wage scale at each prison for each job classification under the
24 authority of the Division;

25 (6) the total number of inmates currently employed at facilities under the
26 authority of the Division, disaggregated by facility;

27 (7) the annual cost of living for inmates, including the average cost of:

28 (i) telephone calls, including calls to medical providers;

29 (ii) video calls; and

30 (iii) items available for purchase at a commissary, including:

- 1 1. feminine hygiene products;
- 2 2. toiletries; and
- 3 3. medications; [and]

4 **(8) THE HOUSING STATUS OF TRANSGENDER, NONBINARY, AND**
5 **INTERSEX INMATES, INCLUDING WHETHER SUCH INMATES ARE HOUSED IN**
6 **RESTRICTIVE HOUSING, HAVE SINGLE-CELL STATUS, OR ARE HOUSED WITH**
7 **ANOTHER INMATE, AND THE GENDER IDENTITY OF ANY INMATES SHARING A CELL**
8 **WITH A TRANSGENDER, NONBINARY, OR INTERSEX INMATE;**

9 **(9) THE NUMBER OF REQUESTS FOR HOUSING TRANSFERS UNDER §**
10 **9-620 OF THIS ARTICLE, THE OUTCOME OF EACH REQUEST, AND THE REASON FOR**
11 **ANY DENIALS; AND**

12 **[(8)] (10)** any remarks and suggestions the Commissioner considers
13 necessary to advance the interests of the correctional facility.

14 (b) The Commissioner shall submit with the report required by subsection (a) of
15 this section a statement similar to the statement that is required to be submitted under §
16 3-206 of this subtitle.

17 (c) The Commissioner shall verify the report and statement required by this
18 section.

19 (d) Subject to § 2-1257 of the State Government Article, the Governor shall
20 submit to the General Assembly the report and statement required under this section and
21 any recommendations that the Governor considers expedient.

22 9-614.

23 (a) (1) In this section the following words have the meanings indicated.

24 (3) (i) “Restrictive housing” means a form of physical separation that
25 has not been requested by the inmate in which the inmate is placed in a locked room or cell
26 for approximately 22 hours or more out of a 24-hour period.

27 (ii) “Restrictive housing” includes administrative segregation and
28 disciplinary segregation.

29 **9-618.**

30 **(A) AN EMPLOYEE OF A CORRECTIONAL FACILITY MAY NOT DISCRIMINATE**
31 **AGAINST AN INMATE WITH REGARD TO PROGRAMS, SERVICES, OR ACTIVITIES,**

1 INCLUDING HARASSING OR RETALIATING AGAINST THE INMATE, ON THE BASIS OF
2 THE INMATE'S RACE, ETHNICITY, RELIGION, NATIONAL ORIGIN, AGE, SEX, GENDER
3 IDENTITY, SEXUAL ORIENTATION, DISABILITY, PREGNANCY STATUS, OR POLITICAL
4 BELIEFS.

5 (B) THE MANAGING OFFICIAL OF A CORRECTIONAL FACILITY SHALL
6 IMPLEMENT A WRITTEN POLICY STATING THAT AN INMATE MAY NOT BE
7 DISCRIMINATED AGAINST WITH REGARD TO PROGRAMS, SERVICES, OR ACTIVITIES,
8 INCLUDING BEING HARASSED OR RETALIATED AGAINST, ON THE BASIS OF THE
9 INMATE'S RACE, ETHNICITY, RELIGION, NATIONAL ORIGIN, AGE, SEX, GENDER
10 IDENTITY, SEXUAL ORIENTATION, DISABILITY, PREGNANCY STATUS, OR POLITICAL
11 BELIEFS.

12 9-619.

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

16 (1) THE INMATE'S GENDER IDENTITY, INCLUDING MAN, WOMAN, OR
17 NONBINARY;

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

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

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

24 (C) (1) THE DEPARTMENT SHALL INFORM AN INMATE, VERBALLY AND IN
25 WRITING, THAT THE INMATE WILL NOT BE DISCIPLINED FOR REFUSING TO DISCLOSE
26 INFORMATION IN RESPONSE TO THE QUESTIONS REQUIRED UNDER SUBSECTION (A)
27 OF THIS SECTION.

28 (2) THE DEPARTMENT SHALL INFORM AN INMATE, VERBALLY AND IN
29 WRITING, OF THE INMATE'S RIGHTS UNDER SUBSECTION (A) OF THIS SECTION.

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

1 (E) STAFF, CONTRACTORS, AND VOLUNTEERS AT A CORRECTIONAL
2 FACILITY SHALL USE THE GENDER PRONOUNS AND HONORIFICS AN INMATE HAS
3 SPECIFIED IN ALL VERBAL AND WRITTEN COMMUNICATIONS WITH OR REGARDING
4 THE INMATE.

5 9-620.

6 (A) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE DEPARTMENT
7 PROVIDE GENDER-APPROPRIATE HOUSING PLACEMENT AND SEARCH
8 PROCEDURES, INCLUDING FOR TRANSGENDER, NONBINARY, INTERSEX,
9 TWO-SPIRIT, AND OTHER GENDER DIVERSE INDIVIDUALS.

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

13 (C) A TRANSGENDER, NONBINARY, OR INTERSEX INMATE SHALL BE GIVEN
14 THE OPPORTUNITY TO SHOWER SEPARATELY FROM OTHER INMATES.

15 (D) SUBJECT TO SUBSECTION (H) OF THIS SECTION, AN INMATE SHALL BE
16 HOUSED AT A CORRECTIONAL FACILITY DESIGNATED FOR MEN OR WOMEN BASED
17 ON WHETHER THE INMATE PREFERS TO BE HOUSED ACCORDING TO THE
18 PLACEMENT THAT MOST CLOSELY ALIGNS WITH THE INMATE'S GENDER IDENTITY
19 OR ACCORDING TO THE INMATE'S SEX ASSIGNED AT BIRTH, INCLUDING
20 RESIDENTIAL TREATMENT FACILITIES MANAGED BY THE DEPARTMENT IF THE
21 INMATE IS ELIGIBLE.

22 (E) (1) SUBJECT TO SUBSECTION (H) OF THIS SECTION, A HOUSING
23 DECISION WITHIN A FACILITY, INCLUDING GRANTING SINGLE-CELL STATUS,
24 HOUSING AN INMATE WITH ANOTHER INMATE OF THE INMATE'S GENDER IDENTITY,
25 OR REMOVING ANOTHER INMATE WHO POSES A THREAT TO THE INMATE, SHALL BE
26 BASED ON THE INMATE'S PREFERENCE AND PERCEPTION OF HEALTH AND SAFETY.

27 (2) AN INMATE MAY NOT BE PLACED IN RESTRICTIVE HOUSING, AS
28 DEFINED IN § 9-614 OF THIS SUBTITLE, IN RESPONSE TO A REQUEST MADE UNDER
29 PARAGRAPH (1) OF THIS SUBSECTION.

30 (F) AN INMATE'S ASSIGNMENT, PLACEMENT, OR PROGRAMMING SHALL BE
31 REASSESSED ANY TIME THE INMATE RAISES CONCERNS FOR THE INMATE'S HEALTH
32 OR SAFETY.

33 (G) (1) SUBJECT TO SUBSECTION (H) OF THIS SECTION, IF AN INMATE IS
34 LAWFULLY SEARCHED, THE INMATE SHALL BE SEARCHED ACCORDING TO THE

1 INMATE'S PREFERENCE OF WHETHER TO BE SEARCHED BY AN OFFICER OF THE
2 GENDER THAT MOST CLOSELY ALIGNS TO THE INMATE'S GENDER IDENTITY OR TO
3 BE SEARCHED BY AN OFFICER OF THE INMATE'S ASSIGNED SEX AT BIRTH.

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

7 (H) (1) THE DEPARTMENT MAY DENY AN INMATE'S SEARCH OR HOUSING
8 PLACEMENT REQUEST DUE TO CLEAR AND CONVINCING EVIDENCE OF SPECIFIC AND
9 ARTICULABLE MANAGEMENT OR SECURITY CONCERNS, INCLUDING A PRESENT RISK
10 THAT THE INMATE WILL COMMIT ABUSE BASED ON THE INMATE'S PREVIOUS
11 BEHAVIOR.

12 (2) IF THE DEPARTMENT DENIES AN INMATE'S SEARCH OR HOUSING
13 PLACEMENT REQUEST, THE SECRETARY, OR THE SECRETARY'S DESIGNEE, SHALL
14 CERTIFY IN WRITING A SPECIFIC AND ARTICULABLE BASIS FOR THE DEPARTMENT'S
15 INABILITY TO ACCOMMODATE THE INMATE'S PREFERENCE.

16 (3) THE DEPARTMENT MAY NOT DENY AN INMATE'S SEARCH OR
17 HOUSING PLACEMENT PREFERENCE BASED ON A DISCRIMINATORY REASON,
18 INCLUDING THE INMATE'S ANATOMY, PAST OR CURRENT PHYSICAL
19 CHARACTERISTICS, HISTORY OR LACK OF GENDER-AFFIRMING MEDICAL
20 TREATMENT, OR SEXUAL ORIENTATION.

21 (4) (I) AN INMATE DENIED A SEARCH OR HOUSING PLACEMENT
22 PREFERENCE REQUEST SHALL RECEIVE A COPY OF THE WRITTEN BASIS FOR THE
23 DENIAL AND SHALL BE GIVEN A REASONABLE TIME FRAME AFTER THE RECEIPT OF
24 THE DENIAL TO VERBALLY RAISE OR SUBMIT A COMPLAINT WITH ANY OBJECTIONS
25 TO THE DENIAL.

26 (II) ANY VERBAL OBJECTIONS RAISED BY THE INMATE TO THE
27 DENIAL SHALL BE DOCUMENTED.

28 (III) THE DEPARTMENT SHALL REASSESS ANY DENIED SEARCH
29 OR HOUSING PLACEMENT REQUESTS AT LEAST TWICE A YEAR.

30 **Article – State Government**

31 20–101.

32 (a) In Subtitles 1 through 11 of this title the following words have the meanings
33 indicated.

1 (e) “Gender identity” means the gender–related identity, appearance, expression,
2 or behavior of a person, regardless of the person’s assigned sex at birth, which may be
3 demonstrated by:

4 (1) consistent and uniform assertion of the person’s gender identity; or

5 (2) any other evidence that the gender identity is sincerely held as part of
6 the person’s core identity.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2023.