

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 426
 Judiciary

(Delegate Lopez, *et al.*)

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, as specified, 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. In addition, the bill expands the information that must be included in the annual report from the Commissioner of Correction to the Secretary of Public Safety and Correctional Services and the Governor regarding each correctional facility within the Division of Correction (DOC).

Fiscal Summary

State Effect: General fund expenditures increase by at least \$1.43 million in FY 2024. Future years reflect annualization, inflation, and ongoing costs. Revenues are not affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,431,200	1,675,100	1,749,500	1,827,400	1,924,000
Net Effect	(\$1,431,200)	(\$1,675,100)	(\$1,749,500)	(\$1,827,400)	(\$1,924,000)

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:

Required Information: During the initial intake and classification process, 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. The Department of Public Safety and Correctional Services (DPSCS) must inform the inmate, verbally and in writing, of the inmate's rights and that the refusal to disclose required information will not result in discipline. At any time, on the request of an inmate, correctional facility staff must promptly provide the inmate an opportunity to update the required information. 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.

Searches and Housing: The bill establishes the intent of the General Assembly that DPSCS provide gender-appropriate housing placement and search procedures, including for transgender, nonbinary, intersex, two-spirit, and other gender diverse individuals.

An inmate must be housed at a correctional facility designated for men or women based on whether the inmate prefers to be housed according to the placement that most closely aligns with the inmate's gender identity or according to the inmate's sex assigned at birth, including residential treatment facilities managed by the department if the inmate is eligible. If an inmate is lawfully searched, the inmate must be searched according to the inmate's preference of whether to be searched by an officer of the gender that most closely aligns to the inmate's gender identity or to be searched by an officer of the inmate's assigned sex at birth; however, if the inmate's search preference or gender identity cannot be determined, the inmate must be searched according to the facility gender designation in which the inmate is housed.

A housing decision within a facility, including granting single-cell status, housing an inmate with another inmate of the inmate's gender identity, or removing another inmate who poses a threat to the inmate, must be based on the inmate's preference and perception of health and safety; however, an inmate may not be placed in restrictive housing in response to the request. A transgender, nonbinary, or intersex inmate must be given the opportunity to shower separately from other inmates. In addition, an inmate's assignment, placement, or programming must be reassessed any time the inmate raises concerns for the inmate's health or safety.

Denials: DPSCS may deny an inmate's search or housing placement request due to clear and convincing evidence of specific and articulable management or security concerns, including a present risk that the inmate will commit abuse based on the inmate's previous behavior. If DPSCS denies an inmate's search or housing placement request, the Secretary of Public Safety and Correctional Services, 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 not deny an inmate's search or housing placement preference based on a discriminatory reason, as specified.

An inmate denied a search or housing placement preference request must (1) receive a copy of the written basis for the denial and (2) be given a reasonable timeframe after the receipt of the denial to verbally raise or submit a complaint with any objections to the denial. Any verbal objections raised by the inmate to the denial must be documented, and DPSCS must reassess any denied search or housing placement requests at least twice a year.

Annual Report: The Commissioner of Correction must include in the annual report to the Secretary of Public Safety and Correctional Services and the Governor for each correctional facility within DOC information regarding (1) the gender identity of inmates; (2) the housing status of transgender, nonbinary, and intersex inmates, as specified, and the gender identity of any inmates sharing a cell with a transgender, nonbinary, or intersex inmate; and (3) the number of requests for housing transfers under the bill's provisions, the outcome of each request, and the reason for any denials.

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 fiscal 2024 budget as introduced includes \$23,855 in federal funds related to PREA.

State Expenditures: General fund expenditures increase by at least \$1.43 million in fiscal 2024, which accounts for the bill's October 1, 2023 effective date. This estimate reflects the cost of hiring 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 management specialists and three correctional case management supervisors are needed. To the extent that additional staff are needed, costs are higher.

Positions	19.0
Salaries and Fringe Benefits	\$1,270,399
Computer Programming	20,000
Other Operating Expenses/Equipment	<u>140,771</u>
Minimum FY 2024 State Expenditures	\$1,431,170

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: Similar legislation has been introduced within the last three years. See HB 453 and SB 550 of 2022.

Designated Cross File: SB 761 (Senator Carter) - Judicial Proceedings.

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

Fiscal Note History: First Reader - February 17, 2023
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