



Department of Public Safety and Correctional Services
Office of the Secretary

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STATE OF MARYLAND

BILL: HOUSE BILL 453

LARRY HOGAN
GOVERNOR

POSITION: LETTER OF INFORMATION

BOYD K. RUTHERFORD
LT. GOVERNOR

EXPLANATION: House Bill 453 prohibits an employee of a correctional facility from discriminating against an inmate and requires the managing official of a correctional facility to implement a written policy prohibiting discrimination. HB 453 also prescribes procedures for determining an inmate's gender identity during intake, prohibits discipline for refusal to disclose gender identity, allows an individual to update their gender identity at any time, and requires specified individuals to use specific pronouns and honorifics in communications. Additionally, for transgender, nonbinary, or intersex individuals, specified personnel shall address an individual in a manner consistent with their gender identity, house an individual at a facility for males or females based on their preference, consider the inmate's perception of safety when housing them, search the inmate according to the existing policy for their stated gender, and allows the Department to deny the search or housing of an individual based on specific and articulable management or security concerns.

ROBERT L. GREEN
SECRETARY

RACHEL SESSA
CHIEF OF STAFF

SASHA VAZQUEZ-GONZALEZ
ACTING
DEPUTY SECRETARY
ADMINISTRATION

COMMENTS:

WAYNE HILL
DEPUTY SECRETARY
OPERATIONS

- The Department of Public Safety and Correctional Services (Department) oversees the Division of Correction which operates 13 State correctional facilities, housing offenders sentenced to periods of incarceration for 18 months and longer. The Department also oversees the Division of Pretrial Detention and Services which operates the Baltimore City Pretrial Complex. The Department does not oversee any other local jail or detention facility.

CAROLYN J. SCRIGGS

Discrimination

- The Department's policy on Standards of Conduct states "An employee shall be fair, firm and impartial in relationships with inmates and offenders. The employee shall maintain a humane, objective and professional interest in the welfare of inmates and clients in order to contribute to the success of the programs of the Department."
- In addition, the Standards of Conduct policy specifies, "An employee found to have engaged in discrimination on the basis of race, color, religion, national origin, political affiliation, handicap, age or sex (including sexual harassment) will be subject to disciplinary action up to and including termination depending on the degree of the infraction." The additional language proposed in HB 453 including ethnicity, gender identity, or sexual orientation can be included in policy without legislation. Further, the Department currently enforces anti-discrimination laws and policies, in employment and in the provision of good

and services, for all individuals, in furtherance of fostering a environment that is inclusive, diverse and protects the rights of all persons.

Gender Identity

- The Department has been proactive in its efforts to reduce victimization of the incarcerated population and under the Assessment for Risk of Sexual Victimization and Abusiveness policy, a screening instrument is utilized as part of the INTAKE and FACILITY TRANSFER process and at other times deemed appropriate to assess each inmate's risk for being sexually abused or being sexually abusive toward other inmates.
- This policy also specifically prohibits disciplining an incarcerated individual for refusing to disclose their gender identity.
- HB 453 would allow an incarcerated individual to update their gender identity at any time. This practice would be detrimental to the safety and security of the operations of all facilities. However, the Department allows incarcerated individuals to self-identify their gender identity/affiliation as appropriate, and subject to bonafide requests, and annual re-assessment of classification.
 - The Bureau of Prisons defines a transgender inmate as "one who has met with a Bureau of Prisons psychologist and signed a form indicating consent to be identified within the agency as transgender."¹
 - The use of a consent form allows for accommodations to be considered.
- Transgender is an umbrella term used for people whose gender identity (self-identification as male, female, intersex, nonbinary, etc.) is different from their assigned sex at birth. A transgender woman is a woman whose sex assigned at birth was male, but who understands herself to be female and a transgender man is a man whose sex assigned at birth was female but who understands himself to be male.² While the definition further states some transgender people identify as neither male nor female, there were no definitions that indicated an individual would inconsistently change the gender with which they identify as HB 453 would allow. Nevertheless, the Department engages and shall continue to engage in interactive processes with inmates, on issues related to gender identity/affiliation, as the inmate self-identifies and in all phases of transition. The Department shall continue to make appropriate consideration of inmates' issues and requests related to gender identity/affiliation in housing, medical treatment and any other provisions of services while incarcerated in the facility and light of safety and operational concerns. Such consideration shall include inmates who identify as transgender, intrasex, non-binary and other terms affiliated with gender identification/affiliation.

¹ U.S. Department of Justice. (2017). Transgender offender manual. Retrieved from <https://www.bop.gov/policy/progstat/5200.04.pdf>

² Legal Information Institute. (2021). transgender. Cornell Law School. Retrieved from <https://www.law.cornell.edu/wex/transgender>

- The bill proposes that housing decisions shall consider the incarcerated individual's perception of safety. Incarcerated individuals are provided the opportunity to participate in the classification case management process including presenting opinions, preferences, and requests for appropriate classification assignments in accordance with the Department's policy on Inmate Rights.
- For the safety and security of ALL incarcerated individuals, there is a classification process the Department adheres to for the purpose of ensuring the individual is housed properly and does not pose a safety risk to the individual, to other individuals and the facility as a whole. An incarcerated individual's classification is reviewed every 12 months, at minimum. The Department's existing process is and shall remain an interactive process which considers an inmate's request, and appropriate classification and safety protocol.
- All incarcerated individuals must be kept safe from victimization, harassment and assault. Allowing an individual to choose housing removes from the Department the ability to ensure the safety and security of ALL individuals. The Department shall continue to engage in interactive processes with inmates regarding housing classification requests, and in consideration of the numerous factors including but not limited to gender, gender identity and classification criteria related to the welfare and safety of the inmate population.
- HB 453 would require an incarcerated individual to be searched according to the search policy for the individual's gender. This already exists in policy for individuals who identify as transgender. After meeting with the designated medical/mental health provider, a search exemption card is issued and the individual is able to determine the gender of an officer who is required to perform a search.
- HB 453 would require all staff, contractors, and volunteers at a correctional facility to address an incarcerated individual in a manner consistent with the inmate's gender identity. This preference for how an inmate wishes to be addressed could be covered in training and appropriate signage could be displayed; however, the Department could not enforce this mandate for every single individual entering a facility. This would result in a significant increase in the number of Administrative Remedy Procedure (ARP) complaints, Headquarters ARP appeals to the Commissioner, Inmate Grievance Office (IGO) complaints and civil rights complaints filed in the United States District Court for the District of Maryland.
- HB 453 includes language identical to California legislation that passed in 2020 and has resulted in complaints from women incarcerated in a women's prison in California. The lawsuit asserts that:
 - two female inmates, a Roman Catholic and a Muslim, claim that they are being placed in "in an intimate setting with unrelated men" and "being housed in facilities with men" violates their rights to practice religious freedoms.

- another female inmate was sexually assaulted by an individual transferred to the women's prison under the California law³
- The Department is responsible for ensuring the security, health, and safety of every individual in its custody. Existing policies and procedures are in place to ensure that all incarcerated individuals are treated fairly and with respect.

CONCLUSION: For these reasons, the Department of Public Safety and Correctional Services respectfully urges the Committee to consider this information as it deliberates on House Bill 453.

³ Ferrannini, J. (2021, Nov. 23). Lawsuit targets Wiener law to protect incarcerated trans people. *Bay Area Reporter*. https://www.ebar.com/news/latest_news/310815