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H.550

Introduced by Representatives Headrick of Burlington, Bluemle of Burlington,
Casey of Montpelier, Greer of Bennington, Howard of Rutland
City, McCann of Montpelier, McGill of Bridport, and Minier of
South Burlington

Referred to Committee on

Date:

Subject: Corrections; administration; health care; transgender standards

Statement of purpose of bill as introduced: This bill proposes to create intake,
classification, and housing assignment standards for transgender, nonbinary,
and intersex persons who are housed within the Department of Corrections.

An act relating to gender equity within Vermont's correctional facilities

It is hereby enacted by the General Assembly of the State of Vermont:

~~Section 1. INTENT~~
~~(a) It is the intent of the General Assembly to recognize that gender transition is a deeply personal experience that may involve some combination of social transition, legal transition, medical transition, or none of these. Some transgender, nonbinary, or intersex persons experience gender dysphoria that requires medical treatment, while others do not experience gender dysphoria.~~

1 ~~(b) It is the further intent of the General Assembly to recognize that due to~~
2 safety concerns, inconsistent medical and mental health care, and insufficient
3 education and resources, among other factors, incarceration often serves as a
4 barrier to gender transition or recognition and that, regardless of the ways in
5 which a person chooses or is able to express the person's gender or to take
6 medical, social, or legal transition steps, the person deserves respect, agency,
7 and dignity.

8 Sec. 2. 28 V.S.A. § 701b is amended to read:

9 § 701b. CLASSIFICATION OF PERSONS OR DEFENDANTS

10 (a)(1) When a defendant or person in a civil or criminal action is sentenced
11 to the custody of the Commissioner or committed to the Commissioner's
12 custody pending a prosecution on a misdemeanor charge or for sentencing, the
13 Commissioner or the Commissioner's designee shall within five days of
14 sentencing or commitment, excluding weekends and holidays, classify the
15 person to determine whether ~~he or she~~ the person shall be incarcerated, held at
16 a community work camp, or furloughed. Failure to classify within the five-
17 day period shall not create a private right of action against the State, its
18 political subdivisions, or its employees.

19 (2) When classifying or assigning an inmate to a correctional facility
20 ~~the Commissioner or the Commissioner's designee shall ensure that:~~

1 ~~(A) the inmate is addressed in a manner consistent with the inmate's~~
2 ~~gender identity;~~

3 ~~(B) if the inmate is lawfully searched, the inmate be searched~~
4 ~~according to the search policy for the inmate's gender identify or according to~~
5 ~~the gender designation of the correctional facility where the inmate is housed,~~
6 ~~based on the inmate's search preference;~~

7 ~~(C) if the inmate's gender identity cannot be determined, any lawful~~
8 ~~search shall be conducted according to the gender designation of the~~
9 ~~correctional facility where the inmate is housed;~~

10 ~~(D) the inmate is housed at a correctional facility designated for men~~
11 ~~or women based on the inmate's preference, including, if eligible, any~~
12 ~~residential treatment program within the jurisdiction of the Department; and~~

13 ~~(E) the inmate's perception of health and safety be given serious~~
14 ~~consideration in any bed assignment, placement, or programming decision~~
15 ~~within the facility in which the inmate is housed, including granting single-cell~~
16 ~~status, housing the inmate with another inmate of choice, or removing the~~
17 ~~inmate or individual who pose a threat from any location where there is access~~
18 ~~to the inmate expressing a safety concern.~~

19 ~~(3)(A) Any denial of an inmate's search or housing preference pursuant~~
20 ~~to subdivision (2) of this subsection (a) shall, before denying such a~~
21 ~~preference, document and certify in writing a specific and articulable basis~~

1 ~~why the department is unable to accommodate the search or housing~~
2 ~~preference.~~

3 ~~(B) If an inmate raises concerns about the inmate's health or safety at~~
4 ~~any time, the inmate's housing and placement shall be reassessed.~~

5 ~~(4) The Department shall not deny a search or housing placement based~~
6 ~~on any discriminatory reason including the following:~~

7 ~~(A) the anatomy, including the genitalia or other physical~~
8 ~~characteristics, of the inmate;~~

9 ~~(B) the sexual orientation of the inmate; or~~

10 ~~(C) for a denial of a housing preference, a factor present among other~~
11 ~~inmates at the preferred correctional facility.~~

12 (b) Notwithstanding 13 V.S.A. § 7554, the Commissioner may place on
13 furlough under provisions of section 808 of this title, a misdemeanor defendant
14 when the Commissioner, based upon a completed classification, has
15 determined that the defendant is likely to appear in court as directed. If the
16 Commissioner places such a defendant on furlough, the Commissioner shall
17 impose not only the conditions of release initially ordered by the judicial
18 officer, but also such additional terms or conditions deemed necessary to
19 ensure that the defendant will appear in court. The Commissioner shall
20 supervise compliance with all such conditions imposed.

1 ~~Sec. 28 V.S.A. § 801 is amended to read:~~

2 § 801. MEDICAL CARE OF INMATES

3 (a) Provision of medical care. The Department shall provide health care
4 for inmates in accordance with the prevailing medical standards. When the
5 provision of such care requires that the inmate be taken outside the boundaries
6 of the correctional facility wherein the inmate is confined, the Department
7 shall provide reasonable safeguards, when deemed necessary, for the custody
8 of the inmate while the inmate is confined at a medical facility. At all times,
9 the Department and its contractors shall use best efforts to identify a licensed
10 health care provider with cultural competency to administer health care
11 services to all inmates in the Commissioner's custody, including transgender,
12 nonbinary, and intersex inmates.

13 (b) Screenings and assessments.

14 (1) Upon admission to a correctional facility for a minimum of 14
15 consecutive days, each inmate shall be given a physical assessment unless
16 extenuating circumstances exist.

17 (2) Within 24 hours after admission to a correctional facility, each
18 inmate shall be screened for substance use disorders as part of the initial and
19 ongoing substance use screening and assessment process. This process
20 ~~includes screening and assessment for opioid use disorders.~~

1 ~~(3)(A) During the initial intake and classification process, and in a~~
2 private setting, the Department shall ask each inmate to specify the following:

- 3 (i) the individual's gender identity of female, male, or nonbinary;
4 (ii) whether the individual identifies as transgender, nonbinary, or
5 intersex; and
6 (iii) the individual's gender pronoun and honorific.

7 (B) An inmate shall not be disciplined for refusing to answer, or for
8 not disclosing complete information in response to, the questions pursuant to
9 subdivision (A) of this subdivision (3).

10 (C) At any time, an inmate may inform designated facility staff of
11 the inmate's gender identity, and designated facility staff shall promptly repeat
12 the process described in subdivision (A) of this subdivision (3).

13 (D) Department staff, contractors, and volunteers shall not
14 consistently fail to use the gender pronoun and honorific an inmate has
15 specified in all verbal and written communications that involve the use of the
16 inmate's pronoun and honorific.

17 (c) Emergency care. When there is reason to believe an inmate is in need
18 of medical care, the officers and employees shall render emergency first aid
19 and immediately secure additional medical care for the inmate in accordance
20 ~~with the standards set forth in subsection (a) of this section. A correctional~~

1 ~~facility shall have on staff at all times at least one person trained in emergency~~
2 ~~first aid.~~

3 (d) Policies. The Department shall establish and maintain policies for the
4 delivery of health care in accordance with the standards in subsection (a) of
5 this section.

6 (e) Pre-existing prescriptions; definitions for subchapter.

7 * * *

8 (5) As used in this subchapter:

9 (A) "Medically necessary" describes health care services that are
10 appropriate in terms of type, amount, frequency, level, setting, and duration to
11 the individual's diagnosis or condition; are informed by generally accepted
12 medical or scientific evidence; and are consistent with generally accepted
13 practice parameters. Such services shall be informed by the unique needs of
14 each individual and each presenting situation and shall include a determination
15 that a service is needed to achieve proper growth and development or to
16 prevent the onset or worsening of a health condition.

17 (B) "Medication for opioid use disorder" has the same meaning as in
18 18 V.S.A. § 4750.

19 (C) "Cultural competency" has the same meaning as in 18 V.S.A.
20 § 251.

1 ~~(D) "Gender pronoun" means a third person singular personal~~
2 ~~pronoun, such as "he," "she," or "they."~~

3 (E) "Honorific" means a form of respectful address typically
4 combined with an individual's surname.

5 * * *

6 Sec. 4. EFFECTIVE DATE

7 ~~This act shall take effect on July 1, 2026.~~

Sec. 1. INTENT

(a) It is the intent of the General Assembly to recognize that gender transition is a deeply personal experience that may involve some combination of social transition, legal transition, medical transition, or none of these. Some transgender, nonbinary, or intersex persons experience gender dysphoria that requires medical treatment, while others do not experience gender dysphoria.

(b) It is the further intent of the General Assembly to recognize that due to safety concerns, inconsistent medical and mental health care, and insufficient education and resources, among other factors, incarceration often serves as a barrier to gender transition or recognition and that, regardless of the ways in which a person chooses or is able to express the person's gender or to take medical, social, or legal transition steps, the person deserves respect, agency, and dignity.

(c) It is the further intent of the General Assembly to recognize that, although the Department of Corrections system was built within a traditional gender framework that solely recognized the male and female genders, gender-diverse, intersex, and transgender incarcerated individuals are at a higher risk for abuse, harassment, and sexual violence.

Sec. 2. 28 V.S.A. § 3 is amended to read:

§ 3. GENERAL DEFINITIONS

As used in this title:

* * *

(5) “Gender-diverse” describes an individual with a gender identity or gender expression that is different from social and cultural expectations attributed to the person’s sex at birth. This includes an individual who identifies as nonbinary, gender expansive, gender nonconforming, or other culturally diverse identities.

(6) “Gender identity” has the same meaning as in 1 V.S.A. § 144.

(7) “Gender pronoun” means a third-person singular personal pronoun, such as “he,” “she,” or “they.”

(8) “Honorific” means a form of respectful address typically combined with an individual’s surname.

(9) “Inmate” means any person, not a child, committed to the custody of the Commissioner pursuant to the law of the State and subsequently

committed to a correctional facility and any person confined at a correctional facility during the pendency of a prosecution against ~~him or her~~ the person.

(10) "Intersex" describes an individual with a medical condition in which the individual's sexual or reproductive anatomy or chromosomal patterns fall outside traditional markers of female and male.

(6)(11) "Law" includes the laws and ordinances of the State, its political subdivisions, and municipalities.

(7)(12) "Law enforcement officer" means a State Police officer, a sheriff, a deputy sheriff, a municipal police officer, a constable, the Commissioner, or a member of the Department of Corrections when appointed in writing by the Commissioner and when ~~his or her~~ the member's appointment is filed in the Office of the Secretary of State. The Commissioner or such member shall have the same powers as a sheriff.

(8)(13) "Offender" means any person convicted of a crime or offense under the laws of this State, and, for purposes of work crew, a person found in civil contempt under 15 V.S.A. § 603.

(9)(14) "Supervising officer" means the highest administrative officer in charge of any correctional facility.

(10)(15) "Correctional officer" means any person who is an employee of the Department of Corrections whose official duties or job classification includes the supervision or monitoring of a person on parole, on probation, or

...serving any sentence of incarceration whether inside or outside a correctional facility, and who has received training, as approved by the Commissioner of Corrections, as provided in section 551a of this title.

~~(H)~~(16) “Restorative justice program” means a program developed and implemented by the Commissioner, consistent with State policy and legislative intent as provided by section 2a of this title.

~~(H)~~(17) Despite other names this concept has been given in the past or may be given in the future, “segregation” means a form of separation from the general population that may or may not include placement in a single-occupancy cell and that is used for disciplinary, administrative, or other reasons, but shall not mean confinement to an infirmary or a residential treatment setting for purposes of evaluation, treatment, or provision of services.

(18) “Transgender” describes an individual whose gender identity or gender expression is not what is typically expected for the individual’s sex at birth.

Sec. 3. 28 V.S.A. § 129 is added to read:

§ 129. GENDER IDENTIFICATION AND NONDISCRIMINATION

(a) Gender identification and address. The Department shall ensure that all individuals are addressed in a manner consistent with their gender identity.

(1) During the initial intake process, and in as private a setting as possible, the Department shall ask each individual to specify the following:

(A) the individual's gender identity of female, male, transgender, gender-diverse, or intersex;

(B) the individual's gender pronoun and honorific; and

(C) for transgender, gender-diverse, or intersex individuals, the individual's request as to the gender of staff who may perform a lawful search.

(2) An individual shall not be disciplined for refusing to answer, or for not disclosing complete information in response to, the questions pursuant to subdivision (1) of this subsection.

(3) At any time after intake, an individual may inform designated facility staff of the individual's gender identity, and designated facility staff shall promptly repeat the process described in subdivision (1) of this subsection.

(4) The Department shall ensure Department staff and contractors receive gender-responsive training proportional to their level of interaction with inmates.

(b) Nondiscrimination. The Department's decision not to accommodate a transgender, gender-diverse, or intersex individual's search, classification or housing placement request shall not be based solely on the individual's:

(1) anatomy, including the genitalia;

(2) other physical characteristics; or

(3) diverse gender expression.

Sec. 4. 28 V.S.A. § 130 is added to read:

§ 130. SEARCHES

(a) The Department shall conduct any lawful searches in accordance with this section, including clothed searches, unclothed searches, urinalysis, and body scans.

(b) The Department shall not search or physically examine, or request that contractors search or physically examine, any individual for the sole purpose of determining the individual's genital status.

(c) The Department shall consider on an individualized basis whether a transgender, gender-diverse, or intersex individual's request as to the gender of staff who may perform a lawful search would best support the individual's health and safety and whether accommodating the inmate's request would pose risks to safety or security.

Sec. 5. 28 V.S.A. § 701c is added to read:

§ 701c. CLASSIFICATION AND HOUSING PLACEMENT
DETERMINATIONS

(a) The Department shall make classification and housing placement determinations for transgender, gender-diverse, and intersex inmates consistent with this section.

(b) During the initial intake process, and in as private a setting as possible, the Department shall ask each transgender, gender-diverse, or intersex inmate to specify the inmate's request as to housing placement.

(c) The Department shall make classification and housing placement determinations for transgender, gender-diverse, or intersex inmates based on review by the Department's multidisciplinary review panels. The multidisciplinary review panels shall consult with medical personnel, mental health professionals with experience in gender dysphoria or gender-affirming care, and personnel who have received training aligned with nationally recognized standards for gender-affirming care.

(d) The Department shall consider on an individualized basis whether a classification or housing placement would best support a transgender, gender-diverse, or intersex inmate's health and safety and whether the placement would pose risks to safety or security. The Department may determine that a classification or housing placement would not best protect health or safety at that time, but may recommend discussing reassessment with the inmate at a later time.

(1) The Department shall give serious consideration to the inmate's classification or housing placement request. If the Department finds that accommodating the inmate's request would pose an unreasonable risk to institutional safety or security, the inmate's health or safety, or the safety or

security of other inmates or staff, the Department may decide that it cannot accommodate the request.

(2) The Department shall make its classification and housing placement determinations on an objective basis.

(e) If the Department does not accommodate an inmate's classification or housing placement request, the Department shall, upon determining that it will not accommodate the request, document in writing a specific reason the Department is unable to accommodate the inmate's classification or housing placement request.

(f) The Department shall consider on an individualized basis whether placement at a facility outside the State would best support a transgender, gender-diverse, or intersex inmate's health and safety and whether the placement would pose risks to safety or security. The Department shall coordinate with any facility outside the State to assess and reassess placement determinations.

(g) The Department shall reassess an inmate's housing placement at any time if:

(1) the inmate requests a reassessment or raises concerns about the inmate's health or safety; or

(2) the inmate engages in misconduct, including conduct that poses a safety risk to the inmate or to other inmates.

(h) The Department shall give a transgender, gender-diverse, or intersex inmate's perception of health and safety serious consideration in making bed assignment and housing placement decisions, including:

(1) selecting the inmate with whom the inmate is housed to best support safety and security; and

(2) if there is an articulable risk to the inmate, removing the risk, where possible, or otherwise alleviating the risk.

Sec. 6. 28 V.S.A. § 820 is added to read:

§ 820. PRISON RAPE ELIMINATION STANDARDS

(a) The Department of Corrections shall adopt and comply with the Prison Rape Elimination Act national standards, 28 C.F.R. Part 115, in effect as of January 1, 2024, for the prevention, detection, and monitoring of, and response to, sexual abuse in correctional facilities, including:

(1) zero tolerance of sexual abuse;

(2) contracting with other entities for the confinement of inmates;

(3) inmate or detainee supervision;

(4) heightened protection for vulnerable detained individuals;

(5) limits to different-gender viewing and searches;

(6) accommodating inmates with special needs;

(7) hiring and promotion decisions;

(8) assessment and use of monitoring technology;

(9) evidence protocol and forensic medical examinations;

(10) agreements with outside public entities and community service providers;

(11) agreements with outside law enforcement agencies;

(12) agreements with the prosecuting authority;

(13) employee training;

(14) volunteer and contractor training;

(15) inmate education;

(16) attorney and contractor notification of agency zero-tolerance policy;

(17) specialized training related to investigations;

(18) specialized training related to medical care, including mental health care;

(19) screening for risk of victimization and abusiveness;

(20) use of screening information;

(21) inmate reporting;

(22) exhaustion of administrative remedies;

(23) inmate access to outside confidential support services or legal representation;

(24) third-party reporting;

(25) staff and facility or agency head reporting duties;

- (26) reporting to other confinement facilities;
- (27) staff first responder duties;
- (28) coordinated response;
- (29) agency protection against retaliation;
- (30) duty to investigate;
- (31) criminal and administrative agency investigations;
- (32) evidence standard for administrative investigations;
- (33) disciplinary sanctions for staff;
- (34) disciplinary sanctions for inmates;
- (35) referrals for prosecution for inmate-on-inmate sexual abuse;
- (36) medical screenings, including mental health screenings, related to history of sexual abuse;
- (37) access to emergency medical services, including mental health services;
- (38) ongoing medical care, including mental health care, for sexual abuse victims and abusers;
- (39) immediate and ongoing access to sexual assault crisis services;
- (40) sexual abuse incident reviews;
- (41) data collection;
- (42) data review for corrective action;
- (43) data storage, publication, and destruction; and

(44) audits of standards.

(b) Starting in 2027, the Commissioner of Corrections shall annually submit a report to the House Committee on Corrections and Institutions and the Senate Committee on Institutions that provides the data required under 28 C.F.R. § 115.87.

(c) On or before January 15, 2027, the Commissioner of Corrections shall adopt policies to implement the provisions of subsection (a) of this section.

Sec. 7. 28 V.S.A. § 551a is amended to read:

§ 551a. LAW ENFORCEMENT POWERS OF CORRECTIONAL

OFFICERS; TRAINING REQUIREMENTS

* * *

(b) The Commissioner may also authorize and designate any correctional officer as defined in subdivision ~~3(10)~~(15) of this title to become certified by the Vermont Criminal Justice Council as a law enforcement officer pursuant to the provisions of 20 V.S.A. chapter 151. The Commissioner and the Executive Director of the Vermont Criminal Justice Council shall develop curriculum subject to the approval of the Council. The Commissioner by Department policy may prescribe the use of those law enforcement powers consistent with the official duties and job descriptions of the correctional officer, and may direct that the correctional officer not carry any weapon while on duty. Any person hereby certified shall be sworn by the Commissioner.

Sec. 8. 28 V.S.A. § 127 is amended to read:

*§ 127. DEPARTMENT OF CORRECTIONS; PEER SUPPORT PROGRAM;
CONFIDENTIALITY*

(a) As used in this section:

** * **

(7) “Staff member” means a supervising officer as defined in subdivision 3(9)(14) of this title, a correctional officer as defined in subdivision 3(10)(15) of this title, and any other employee of the Department.

** * **

Sec. 9. 28 V.S.A. § 701a is amended to read:

*§ 701a. SEGREGATION OF INMATES WITH A SERIOUS FUNCTIONAL
IMPAIRMENT*

** * **

(b) As used in this section, “segregation” shall ~~have~~ has the same meaning as in subdivision 3(12)(17) of this title.

** * **

Sec. 10. SEARCH POLICY REVIEW

(a) On or before August 1, 2026, the Department of Corrections shall submit a revised search policy to the Joint Legislative Justice Oversight Committee.

(b) The Joint Legislative Justice Oversight Committee shall review the policy and recommend whether updates to the policy are warranted and what, if any, statutory changes might be warranted.

Sec. 11. PRISON RAPE ELIMINATION STANDARDS AND REPORTING

On or before December 15, 2027, the Department of Corrections shall submit a report to the House Committee on Corrections and Institutions and the Senate Committee on Institutions. The report shall identify any changes to the standards or reporting requirements under the Prison Rape Elimination Act, 34 U.S.C. §§ 30301–30309, as may be amended.

Sec. 12. GENDER-AFFIRMING CARE

On or before October 15, 2026, the Joint Legislative Justice Oversight Committee shall review current practices related to gender-affirming care in correctional settings and submit a report to the House Committee on Corrections and Institutions and the Senate Committee on Institutions. The report shall include recommended statutory language.

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2026.