

28 17-22-5. Sheriff's classification of jail inmates -- Classification criteria --
29 Alternative incarceration programs -- Limitation.

30 (1) As used in this section, "living area" means the same as that term is defined in
31 Section 64-13-7.

32 ~~[(+)]~~ (2) (a) Except as provided in ~~[Subsection (4)]~~ Subsections (5) and (6), the sheriff
33 shall adopt and implement written policies for admission of ~~[prisoners]~~ inmates to the county
34 jail and the classification of ~~[persons]~~ individuals incarcerated in the jail which shall provide
35 for the separation of prisoners by gender and by such other factors as may reasonably provide
36 for the safety and well-being of inmates and the community.

37 (b) To the extent authorized by law, any written admission policies adopted and
38 implemented under this Subsection (2) shall be applied equally to all entities using the county
39 correctional facilities.

40 ~~[(2)]~~ (3) Except as provided in ~~[Subsection (4)]~~ Subsections (5) and (6), each county
41 sheriff shall assign ~~[prisoners]~~ inmates to a facility or section of a facility based on
42 classification criteria that the sheriff develops and maintains.

43 ~~[(3)]~~ (4) (a) Except as provided in Subsection ~~[(4)]~~ (6), a county sheriff may develop
44 and implement alternative incarceration programs that may ~~[or may not]~~ involve housing ~~[a~~
45 ~~prisoner]~~ an inmate in a jail facility.

46 (b) ~~[A prisoner]~~ An inmate housed under an alternative incarceration program under
47 Subsection ~~[(3)(a)]~~ (4)(a) shall be considered to be in the full custody and control of the sheriff
48 for purposes of Section 76-8-309.

49 (c) ~~[A prisoner]~~ An inmate may not be placed in an alternative incarceration program
50 under Subsection ~~[(3)(a)]~~ (4)(a) unless:

- 51 (i) the jail facility is at maximum operating capacity, as established under ~~[Subsection~~
52 ~~17-22-5.5(2)]~~ Section 17-22-5.5; or
- 53 (ii) ordered by the court.

54 (5) A jail facility shall comply with ~~H→~~ the same requirements as the Department of
54a Corrections described in ~~←H~~ Subsections 64-13-7(4) ~~H→~~ [and] , ~~←H~~ (5) ~~H→~~ , and (6) ~~←H~~
54b when assigning an
55 inmate to a living area, including the reporting requirements in ~~H→~~ [Subsection] Subsections ~~←H~~
55a 64-13-45(2)(d) ~~H→~~ and (e) ~~←H~~ .

56 ~~[(4)]~~ (6) This section ~~[may not be construed to]~~ does not authorize a sheriff to modify
57 provisions of a contract with the Department of Corrections to house in a county jail ~~[persons]~~
58 inmates sentenced to the Department of Corrections.

59 Section 2. Section ~~64-13-7~~ is amended to read:

60 **64-13-7. Individuals in the custody of the department.**

61 (1) As used in this section:

62 (a) "Biological sex at birth" means the same as that term is defined in Section

63 26B-8-101.

64 (b) "Correctional facility" means the same as that term is defined in Section

65 77-16b-102.

66 (c) "Criminogenic factor" means a personal trait, condition, outside influence, or
67 societal factor that tends to increase an inmate's likelihood of committing a criminal offense.

68 (d) (i) "Living area" means a location within a correctional facility where an inmate is
69 assigned to sleep, recreate, study, or interact with other inmates.

70 (ii) "Living area" does not include a location within a correctional facility where an
71 inmate is temporarily placed by staff of the correctional facility to facilitate transfers, visitation,
72 medical care, or other needs of the correctional facility or inmate.

73 (e) "Transgender inmate" means an inmate whose gender identity or expression does
74 not correspond with the inmate's biological sex at birth.

75 (2) [~~All offenders~~] An offender committed for incarceration in a state correctional
76 facility or for supervision on probation or parole, shall be placed in the custody of the
77 department.

78 (3) The department shall establish procedures and is responsible for the appropriate
79 assignment or transfer of [~~public offenders to facilities or programs.~~] an offender to a facility or
80 program.

81 (4) Subject to Subsection (5), the department may not:

82 (a) assign an inmate whose biological sex at birth is male to a living area where an
83 inmate whose biological sex at birth is female is assigned; or

84 (b) assign an inmate whose biological sex at birth is female to a living area where an
85 inmate whose biological sex at birth is male is assigned.

86 (5) (a) Upon a request from a transgender inmate to be assigned to a living area with
87 inmates whose biological sex at birth do not correspond with the transgender inmate's
88 biological sex at birth, ~~H~~→ or if the department seeks to assign a transgender inmate to a living
88a area with inmates whose biological sex at birth do not correspond with the transgender
88b inmate's biological sex at birth, ←~~H~~ the department shall undertake an individualized security
88c analysis
89 considering criminogenic and other factors including:

90 (i) the transgender inmate's anatomy ~~H~~→ [as verified by a medical professional] which may
 90a be verified through a conversation with the transgender inmate, reviewing the transgender
 90b inmate's medical records, routine protocols applicable to all inmates, or as part of a broader
 90c medical examination of the transgender inmate conducted in private by a medical professional
 90d if necessary ←~~H~~ :

91 (ii) the physical characteristics of the transgender inmate;

92 (iii) the transgender inmate's criminal history, including whether the transgender
 93 inmate has displayed predatory behavior against individuals whose biological sex at birth do
 94 not correspond with the transgender inmate's biological sex at birth;

95 (iv) the history of the transgender inmate's behavior while in the department's custody;

96 (v) the likelihood of the transgender inmate causing physical or psychological harm to,
 97 or committing offenses against, inmates in the requested living area whose biological sex at
 98 birth do not correspond with the transgender inmate's biological sex at birth;

99 (vi) the safety of correctional facility staff if the transgender inmate were to be assigned
 100 to the requested living area;

101 (vii) an analysis of whether the transgender inmate has a history or pattern of:

102 (A) anti-social attitudes or behaviors;

103 (B) interacting with peers who display anti-social attitudes or behaviors;

104 (C) negative family issues or influence;

105 (D) a lack of achievement in education and employment;

106 (E) not participating in pro-social leisure activities; or

107 (F) substance abuse;

108 (viii) whether the requested living area assignment would:

109 (A) ensure the transgender inmate's health and safety; and

110 (B) assist the transgender inmate in successfully reentering the community; and

111 (ix) any other factor determined to be relevant by the executive director.

112 (b) The department may assign the transgender inmate to the transgender inmate's
 113 requested living area as described in Subsection (5)(a) only if:

114 (i) the department determines, after undertaking the individualized security analysis
 115 described in Subsection (5)(a), that the assignment presents a low risk of causing:

116 (A) any physical or psychological harm to an inmate who resides in or will reside in the
 117 living area, the correctional facility staff that manage the living area, or the transgender inmate;

118 (B) disruption to correctional facility management; and

119 (C) overall security issues; and

120 (ii) there is no evidence that the transgender inmate is claiming a gender identity or