

Representative Karianne Lisonbee proposes the following substitute bill:

INMATE ASSIGNMENT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Heidi Balderree

LONG TITLE

General Description:

This bill addresses inmate housing assignments.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits, with limited exceptions, the Department of Corrections or a county jail from assigning inmates of the opposite biological sex in the same housing area; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-22-5, as last amended by Laws of Utah 2004, Chapter 301

64-13-7, as last amended by Laws of Utah 2016, Chapter 243

64-13-45, as last amended by Laws of Utah 2019, Chapters 311, 385



26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section 17-22-5 is amended to read:

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 ~~[(1)]~~ (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 the same requirements as the Department of
55 Corrections described in Subsections 64-13-7(4), (5), and (6) when assigning an inmate to a
56 living area, including the reporting requirements in Subsections 64-13-45(2)(d) and (e).

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

60 Section 2. Section **64-13-7** is amended to read:

61 **64-13-7. Individuals in custody.**

62 (1) As used in this section:

63 (a) "Biological sex at birth" means the same as that term is defined in Section
64 26B-8-101.

65 (b) "Correctional facility" means the same as that term is defined in Section
66 77-16b-102.

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

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

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

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

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

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

82 (4) Subject to Subsection (5), the department or a county jail may not:

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

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

87 (5) (a) Upon a request from a transgender inmate to be assigned to a living area with

88 inmates whose biological sex at birth do not correspond with the transgender inmate's
89 biological sex at birth, or if the department or a county jail seeks to assign a transgender inmate
90 to a living area with inmates whose biological sex at birth do not correspond with the
91 transgender inmate's biological sex at birth, the department or a county jail shall undertake an
92 individualized security analysis considering criminogenic and other factors including:

93 (i) the transgender inmate's anatomy which may be verified through a conversation
94 with the transgender inmate, reviewing the transgender inmate's medical records, routine
95 protocols applicable to all inmates, or as part of a broader medical examination of the
96 transgender inmate conducted in private by a medical professional if necessary;

97 (ii) the physical characteristics of the transgender inmate;
98 (iii) the transgender inmate's criminal history, including whether the transgender
99 inmate has displayed predatory behavior against individuals whose biological sex at birth do
100 not correspond with the transgender inmate's biological sex at birth;

101 (iv) the history of the transgender inmate's behavior while in the department's or a
102 county jail's custody;

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

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

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

109 (A) anti-social attitudes or behaviors;
110 (B) interacting with peers who display anti-social attitudes or behaviors;
111 (C) negative family issues or influence;
112 (D) a lack of achievement in education and employment;
113 (E) not participating in pro-social leisure activities; or
114 (F) substance abuse;

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

116 (A) ensure the transgender inmate's health and safety; and
117 (B) assist the transgender inmate in successfully reentering the community; and
118 (ix) any other factor determined to be relevant by the executive director or a county

119 sheriff.

120 (b) The department or a county jail may assign a transgender inmate to a living area
121 with inmates whose biological sex at birth do not correspond with the transgender inmate's
122 biological sex at birth only if:

123 (i) the department or a county jail determines, after undertaking the individualized
124 security analysis described in Subsection (5)(a), that the assignment presents a low risk of
125 causing:

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

128 (B) disruption to correctional facility management; and

129 (C) overall security issues; and

130 (ii) there is no evidence that the transgender inmate is claiming a gender identity or
131 expression that does not correspond with the inmate's biological sex at birth solely for the
132 purpose of altering the inmate's living area assignment.

133 (6) If the department or a county jail, after complying with Subsection (5), assigns a
134 transgender inmate to a living area with inmates whose biological sex at birth do not
135 correspond with the transgender inmate's biological sex at birth, the department or a county jail
136 shall:

137 (a) (i) undertake the security analysis described in Subsection (5)(a) after a security
138 incident involving the transgender inmate and at regular intervals determined by the executive
139 director or a county sheriff to ensure that the assignment continues to meet the conditions
140 described in Subsection (5)(b); and

141 (ii) if the analysis conducted in Subsection (6)(a) demonstrates that the assignment no
142 longer meets the conditions described in Subsection (5)(b), assign the transgender inmate to a
143 living area with inmates whose biological sex at birth corresponds with the transgender
144 inmate's biological sex at birth; and

145 (b) comply with the reporting requirements described in Subsections [64-13-45\(2\)\(d\)](#)
146 and (e).

147 Section 3. Section **64-13-45** is amended to read:

148 **64-13-45. Department reporting requirements.**

149 (1) As used in this section:

150 (a) [(†)] "Biological sex at birth" means the same as that term is defined in Section
151 26B-8-101.

152 (b) (i) "In-custody death" means an inmate death that occurs while the inmate is in the
153 custody of the department.

154 (ii) "In-custody death" includes an inmate death that occurs while the inmate is:

155 (A) being transported for medical care; or

156 (B) receiving medical care outside of a correctional facility, other than a county jail.

157 [(Ⓣ)] (c) "Inmate" means an individual who is processed or booked into custody or
158 housed in the department or a correctional facility other than a county jail.

159 [(ⓔ)] (d) "Opiate" means the same as that term is defined in Section 58-37-2.

160 (e) "Transgender inmate" means the same as that term is defined in Section 64-13-7.

161 (2) The department shall submit a report to the Commission on Criminal and Juvenile
162 Justice[;] created in Section 63M-7-201[;] before June 15 of each year that includes:

163 (a) the number of in-custody deaths that occurred during the preceding calendar year,
164 including:

165 (i) the known, or discoverable on reasonable inquiry, causes and contributing factors of
166 each of the in-custody deaths described in Subsection (2)(a); and

167 (ii) the department's policy for notifying an inmate's next of kin after the inmate's
168 in-custody death;

169 (b) the department policies, procedures, and protocols:

170 (i) for treatment of an inmate experiencing withdrawal from alcohol or substance use,
171 including use of opiates;

172 (ii) that relate to the department's provision, or lack of provision, of medications used
173 to treat, mitigate, or address an inmate's symptoms of withdrawal, including methadone and all
174 forms of buprenorphine and naltrexone; and

175 (iii) that relate to screening, assessment, and treatment of an inmate for a substance use
176 disorder or mental health disorder;

177 (c) the number of inmates who gave birth and were restrained in accordance with
178 Section 64-13-46, including:

179 (i) the types of restraints used; and

180 (ii) whether the use of restraints was to prevent escape or to ensure the safety of the

181 inmate, medical or corrections staff, or the public; [~~and~~]

182 (d) the number of transgender inmates that are assigned to a living area with inmates
183 whose biological sex at birth do not correspond with the transgender inmate's biological sex at
184 birth in accordance with Section 64-13-45, including:

185 (i) the results of the individualized security analysis conducted for each transgender
186 inmate in accordance with Subsection 64-13-45(5)(a); and

187 (ii) a detailed explanation regarding how the security conditions described in
188 Subsection 64-13-45(5)(b) are met for each transgender inmate;

189 (e) the number of transgender inmates that were:

190 (i) assigned to a living area with inmates whose biological sex at birth do not
191 correspond with the transgender inmate's biological sex at birth; and

192 (ii) removed and assigned to a living area with inmates whose biological sex at birth
193 corresponds with the transgender inmate's biological sex at birth in accordance with Subsection
194 64-13-45(6); and

195 [~~(f)~~] (f) any report the department provides or is required to provide under federal law
196 or regulation relating to inmate deaths.

197 (3) The Commission on Criminal and Juvenile Justice shall:

198 (a) compile the information from the reports described in Subsection (2);

199 (b) omit or redact any identifying information of an inmate in the compilation to the
200 extent omission or redaction is necessary to comply with state and federal law; and

201 (c) submit the compilation to the Law Enforcement and Criminal Justice Interim
202 Committee and the Utah Substance Use and Mental Health Advisory Council before November
203 1 of each year.

204 (4) The Commission on Criminal and Juvenile Justice may not provide access to or use
205 the department's policies, procedures, or protocols submitted under this section in a manner or
206 for a purpose not described in this section.

207 Section 4. **Effective date.**

208 This bill takes effect on May 1, 2024.