

INMATE ASSIGNMENT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: _____

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

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

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 ~~[(+)]~~ (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 Subsections 64-13-7(4) and (5) when assigning an
55 inmate to a living area, including the reporting requirements in Subsection 64-13-45(2)(d).

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, the department shall undertake an individualized security analysis
89 considering criminogenic and other factors including:

- 90 (i) the transgender inmate's anatomy as verified by a medical professional;
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

121 expression that does not correspond with the inmate's biological sex at birth solely for the
 122 purpose of altering the inmate's living area assignment.

123 (6) If the department, after complying with Subsection (5), assigns a transgender
 124 inmate to the transgender inmate's requested living area, the department shall:

125 (a) (i) undertake the security analysis described in Subsection (5)(a) after a security
 126 incident involving the transgender inmate and at regular intervals determined by the executive
 127 director to ensure that the assignment continues to meet the conditions described in Subsection
 128 (5)(b); and

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

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

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

136 **64-13-45. Department reporting requirements.**

137 (1) As used in this section:

138 (a) ~~(f)~~ "Biological sex at birth" means the same as that term is defined in Section
 139 [26B-8-101](#).

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

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

143 (A) being transported for medical care; or

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

145 ~~(b)~~ (c) "Inmate" means an individual who is processed or booked into custody or
 146 housed in the department or a correctional facility other than a county jail.

147 ~~(c)~~ (d) "Opiate" means the same as that term is defined in Section [58-37-2](#).

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

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

151 (a) the number of in-custody deaths that occurred during the preceding calendar year,

152 including:

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

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

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

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

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

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

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

167 (i) the types of restraints used; and

168 (ii) whether the use of restraints was to prevent escape or to ensure the safety of the
169 inmate, medical or corrections staff, or the public; ~~and~~

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

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

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

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

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

180 (ii) removed and assigned to a living area with inmates whose biological sex at birth
181 corresponds with the transgender inmate's biological sex at birth in accordance with Subsection
182 64-13-45(6); and

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

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

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

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

189 (c) submit the compilation to the Law Enforcement and Criminal Justice Interim
190 Committee and the Utah Substance Use and Mental Health Advisory Council before November
191 1 of each year.

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

195 Section 4. **Effective date.**

196 This bill takes effect on May 1, 2024.