

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

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

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

[(+)] (2) (a) Except as provided in [~~Subsection (4)] Subsections (5) and (6), the sheriff~~

29 shall adopt and implement written policies for admission of [~~prisoners~~] inmates to the
 30 county jail and the classification of [~~persons~~] individuals incarcerated in the jail which
 31 shall provide for the separation of prisoners by gender and by such other factors as
 32 may reasonably provide for the safety and well-being of inmates and the community.

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

36 [~~(2)~~] (3) Except as provided in [~~Subsection (4)~~] Subsections (5) and (6), each county sheriff
 37 shall assign [~~prisoners~~] inmates to a facility or section of a facility based on classification
 38 criteria that the sheriff develops and maintains.

39 [~~(3)~~] (4) (a) Except as provided in Subsection [~~(4)~~] (6), a county sheriff may develop and
 40 implement alternative incarceration programs that may [~~or may not~~] involve housing [~~a~~
 41 ~~prisoner~~] an inmate in a jail facility.

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

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

47 (i) the jail facility is at maximum operating capacity, as established under [~~Subsection~~
 48 ~~17-22-5.5(2)~~] Section 17-22-5.5; or

49 (ii) ordered by the court.

50 (5) A jail facility shall comply with the same requirements as the Department of
 51 Corrections described in Subsections 64-13-7(4), (5), and (6) when assigning an inmate
 52 to a living area, including the reporting requirements in Subsections 64-13-45(2)(d) and
 53 (e).

54 [~~(4)~~] (6) This section [~~may not be construed to~~] does not authorize a sheriff to modify
 55 provisions of a contract with the Department of Corrections to house in a county jail [~~a~~
 56 ~~persons~~] inmates sentenced to the Department of Corrections.

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

58 **64-13-7 . Individuals in custody.**

59 (1) As used in this section:

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

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

62 (c) "Criminogenic factor" means a personal trait, condition, outside influence, or societal

- 63 factor that tends to increase an inmate's likelihood of committing a criminal offense.
- 64 (d) (i) "Living area" means a location within a correctional facility where an inmate is
65 assigned to sleep, recreate, study, or interact with other inmates.
- 66 (ii) "Living area" does not include a location within a correctional facility where an
67 inmate is temporarily placed by staff of the correctional facility to facilitate
68 transfers, visitation, medical care, or other needs of the correctional facility or
69 inmate.
- 70 (e) "Transgender inmate" means an inmate whose gender identity or expression does not
71 correspond with the inmate's biological sex at birth.
- 72 (2) ~~[All offenders]~~ An offender committed for incarceration in a state correctional facility or
73 for supervision on probation or parole, shall be placed in the custody of the department.
- 74 (3) The department shall establish procedures and is responsible for the appropriate
75 assignment or transfer of ~~[public offenders to facilities or programs.]~~ an offender to a
76 facility or program.
- 77 (4) Subject to Subsection (5), the department or a county jail may not:
- 78 (a) assign an inmate whose biological sex at birth is male to a living area where an
79 inmate whose biological sex at birth is female is assigned; or
- 80 (b) assign an inmate whose biological sex at birth is female to a living area where an
81 inmate whose biological sex at birth is male is assigned.
- 82 (5) (a) Upon a request from a transgender inmate to be assigned to a living area with
83 inmates whose biological sex at birth do not correspond with the transgender inmate's
84 biological sex at birth, or if the department or a county jail seeks to assign a
85 transgender inmate to a living area with inmates whose biological sex at birth do not
86 correspond with the transgender inmate's biological sex at birth, the department or a
87 county jail shall undertake an individualized security analysis considering
88 criminogenic and other factors including:
- 89 (i) the transgender inmate's anatomy which may be verified through a conversation
90 with the transgender inmate, reviewing the transgender inmate's medical records,
91 routine protocols applicable to all inmates, or as part of a broader medical
92 examination of the transgender inmate conducted in private by a medical
93 professional if necessary;
- 94 (ii) the physical characteristics of the transgender inmate;
- 95 (iii) the transgender inmate's criminal history, including whether the transgender
96 inmate has displayed predatory behavior against individuals whose biological sex

- 97 at birth do not correspond with the transgender inmate's biological sex at birth;
98 (iv) the history of the transgender inmate's behavior while in the department's or a
99 county jail's custody;
100 (v) the likelihood of the transgender inmate causing physical or psychological harm
101 to, or committing offenses against, inmates in the requested living area whose
102 biological sex at birth do not correspond with the transgender inmate's biological
103 sex at birth;
104 (vi) the safety of correctional facility staff if the transgender inmate were to be
105 assigned to the requested living area;
106 (vii) an analysis of whether the transgender inmate has a history or pattern of:
107 (A) anti-social attitudes or behaviors;
108 (B) interacting with peers who display anti-social attitudes or behaviors;
109 (C) negative family issues or influence;
110 (D) a lack of achievement in education and employment;
111 (E) not participating in pro-social leisure activities; or
112 (F) substance abuse;
113 (viii) whether the requested living area assignment would:
114 (A) ensure the transgender inmate's health and safety; and
115 (B) assist the transgender inmate in successfully reentering the community; and
116 (ix) any other factor determined to be relevant by the executive director or a county
117 sheriff.
118 (b) The department or a county jail may assign a transgender inmate to a living area with
119 inmates whose biological sex at birth do not correspond with the transgender inmate's
120 biological sex at birth only if:
121 (i) the department or a county jail determines, after undertaking the individualized
122 security analysis described in Subsection (5)(a), that the assignment presents a low
123 risk of causing:
124 (A) any physical or psychological harm to an inmate who resides in or will reside
125 in the living area, the correctional facility staff that manage the living area, or
126 the transgender inmate;
127 (B) disruption to correctional facility management; and
128 (C) overall security issues; and
129 (ii) there is no evidence that the transgender inmate is claiming a gender identity or
130 expression that does not correspond with the inmate's biological sex at birth solely

- 131 for the purpose of altering the inmate's living area assignment.
- 132 (6) If the department or a county jail, after complying with Subsection (5), assigns a
133 transgender inmate to a living area with inmates whose biological sex at birth do not
134 correspond with the transgender inmate's biological sex at birth, the department or a
135 county jail shall:
- 136 (a) (i) undertake the security analysis described in Subsection (5)(a) after a security
137 incident involving the transgender inmate and at regular intervals determined by
138 the executive director or a county sheriff to ensure that the assignment continues
139 to meet the conditions described in Subsection (5)(b); and
- 140 (ii) if the analysis conducted in Subsection (6)(a) demonstrates that the assignment no
141 longer meets the conditions described in Subsection (5)(b), assign the transgender
142 inmate to a living area with inmates whose biological sex at birth corresponds
143 with the transgender inmate's biological sex at birth; and
- 144 (b) comply with the reporting requirements described in Subsections 64-13-45(2)(d) and
145 (e).

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

147 **64-13-45 . Department reporting requirements.**

- 148 (1) As used in this section:
- 149 (a) [(+)] "Biological sex at birth" means the same as that term is defined in Section
150 26B-8-101.
- 151 (b) (i) "In-custody death" means an inmate death that occurs while the inmate is in
152 the custody of the department.
- 153 (ii) "In-custody death" includes an inmate death that occurs while the inmate is:
154 (A) being transported for medical care; or
155 (B) receiving medical care outside of a correctional facility, other than a county
156 jail.
- 157 [(b)] (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 [(e)] (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
 166 of 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
 174 methadone and all forms of buprenorphine and naltrexone; and
- 175 (iii) that relate to screening, assessment, and treatment of an inmate for a substance
 176 use 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
 184 biological sex at birth in accordance with Section 64-13-7, including:
- 185 (i) the results of the individualized security analysis conducted for each transgender
 186 inmate in accordance with Subsection 64-13-7(5)(a); and
- 187 (ii) a detailed explanation regarding how the security conditions described in
 188 Subsection 64-13-7(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
 194 with Subsection 64-13-7(6); and
- 195 ~~(f)~~ (f) any report the department provides or is required to provide under federal law or
 196 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
203 November 1 of each year.
- 204 (4) The Commission on Criminal and Juvenile Justice may not provide access to or use the
205 department's policies, procedures, or protocols submitted under this section in a manner
206 or for a purpose not described in this section.

207 Section 4. **Effective date.**

208 This bill takes effect on May 1, 2024.