HOUSE BILL REPORT
HB 1604

As Reported by House Committee On:
Community Safety

Title: An act relating to providing parameters for conducting searches of transgender and intersex individuals confined in a local jail in compliance with federal law.

Brief Description: Providing parameters for conducting searches of transgender and intersex individuals confined in a local jail in compliance with federal law.

Sponsors: Representatives Salahuddin, Walen, Peterson, Farivar, Ramel, Gregerson, Parshley, Reed, Ormsby, Kloba, Duerr and Hill.

Brief History:
Committee Activity:
Community Safety: 2/3/25, 2/20/25 [DPS].

Brief Summary of Substitute Bill

- Requires jails to adopt and implement policies and procedures for conducting searches of confined transgender or intersex individuals.

HOUSE COMMITTEE ON COMMUNITY SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Obras.

Minority Report: Do not pass. Signed by 3 members: Representatives Graham, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Burnett.

Staff: Michelle Rusk (786-7153).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Jails.
Jails are facilities operated by cities, counties, or a combination thereof, used for housing individuals for time periods ranging from less than 30 days up to one year, and for purposes including temporary housing of adults charged with criminal offenses before trial and housing adults for punishment, correction, and rehabilitation after a criminal conviction.

Statutory Standards for Strip and Body Cavity Searches.
Washington's search and seizure laws establish standards for strip searches and body cavity searches, including, for example:

- Anyone conducting a strip search may not touch the searched person except as reasonably necessary to effectuate the search.
- Any body cavity search must be performed under sanitary conditions by a licensed physician, registered nurse, or physician assistant with applicable training.
- A search must occur at a private location away from the observation of persons not physically conducting the search, and must be performed or observed only by persons of the same sex as the searched person, except for licensed medical professionals.

Prison Rape Elimination Act.
The federal Prison Rape Elimination Act (PREA) was enacted in 2003 to provide for the analysis of the incidents and effects of prison rape in federal, state, and local institutions, and to provide information, resources, and recommendations and funding to protect individuals from prison rape. Under the PREA, national standards have been adopted for the detection, prevention, reduction, and punishment of rape in all types of correctional facilities.

The PREA and its regulations and guidance contain several standards for prisons and jails, including specified standards for searching transgender or intersex individuals confined in a state or local facility including, for example:

- Facilities may not search or physically examine a transgender or intersex inmate for the sole purpose of determining genital status. If a person's genital status is unknown, it may be determined: (1) during conversation; (2) by review of medical records; or (3) if necessary, by learning that information as part of a broader medical examination.
- An agency must train security staff in how to conduct searches of transgender and intersex inmates in a professional and respectful manner, in the least intrusive manner possible, consistent with security needs.
- Operationally, four options are in current practice for searches of transgender or intersex individuals: (1) searches conducted only by medical staff; (2) pat searches of adult inmates conducted by female staff only; (3) asking individuals to identify the gender of staff with whom they would feel most comfortable conducting the search; and (4) searches conducted in accordance with the inmate's gender identity.
- Facilities must implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent

circumstances or when such viewing is incidental to routine cell checks. Staff of the opposite gender must announce their presence when entering an inmate housing unit.
- Agencies or facilities may not conduct searches based solely on the gender designation of the facility without considering other factors such as the gender identity or expression of the individual's preference regarding the gender of the person conducting the search.
- Facilities may not conduct cross-gender strip searches or cross-gender visual body cavity searches except in exigent circumstances or when performed by medical practitioners.

Summary of Substitute Bill:

Jail Search Standards.
Local jail administrators must develop and implement policies and procedures for conducting searches of confined transgender or intersex individuals, which must minimally comply with the federal Prison Rape Elimination Act (PREA) and its rules, as well as the search standards described below. Standards complying with the foregoing must be adopted and implemented no later than September 1, 2025.

Search Parameters.
A search or physical examination of transgender or intersex individuals at a jail may not be conducted for the sole purpose of determining genital status. If genital status is unknown, it may be determined: (1) through conversations with the individual; (2) through a review of medical records; or (3) as part of a broader medical examination conducted in private by a medical practitioner.

Training.
Jails must train security staff in how to conduct cross-gender searches and searches of transgender and intersex individuals in a professional and respectful manner, in the least intrusive manner possible, consistent with security needs.

Permissible Searches Types.
In accordance with Washington's search and seizure laws, strip searches of transgender and intersex individuals must be conducted:
- by a medical professional;
- by female staff only;
- based on asking the individual to identify the gender of staff with whom the individual would feel most comfortable; or
- in accordance with the individual's stated gender identity.

Daily Necessities.
Individuals must be able to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except

in exigent circumstances or when viewing is incidental to routine cell checks. Staff of the opposite gender must announce their presence when entering a housing unit. A jail's inability to make female correctional staff available who are trained to perform searches of transgender or intersex individuals is not an exigent circumstance justifying cross-gender searches.

Cross-Gender and Other Search Standards.
Searches may be conducted by someone of a different gender only when exigent circumstances exist requiring immediate action to respond to a threat to a facility's security or institutional order.

Searches may not be conducted solely based on the gender designation of a facility, without considering factors including, but not limited to, an individual's gender identity, or their expression of a preference regarding the gender of the person conducting the search.

Statutory Standards for Strip and Body Cavity Searches.
Washington's search and seizure laws concerning strip and body cavity searches are modified to include that a strip search must be performed or observed only by persons of the same gender as the searched person. If a transgender, gender nonconforming, or intersex individual is the subject of a strip search, the individual must be offered the option of having the search conducted by:

- a person whose gender is of the searched person's choosing;
- a medical professional;
- female staff; or
- in accordance with the individual's stated gender identity.

Strip searches may be conducted by an individual of a different gender only when exigent circumstances require immediate action to a threat to a facility's security or institutional order.

Substitute Bill Compared to Original Bill:

The substitute bill provides that strip searches, instead of searches, of transgender or intersex individuals at a jail must be conducted following state law requirements and occur one of four ways.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 20, 2025.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill was brought forward by the City of Kirkland, which has a city jail, and is in response to conversations concerning national standards, current state law, and federal Department of Justice clarifications put out over time on performing searches of transgender and intersex individuals. Originally, Washington's laws on strip searches were designed to protect incarcerated women and required these searches be done by someone of the same sex. Over a decade ago, national standards were set under the Prison Rape Elimination Act (PREA), which now conflict with state law, and corrections officers are facing a choice between complying with state or federal law. This bill aligns jails with certain PREA standards and also draws from Department of Corrections standards, which reflect practical experiences with these issues.

In the early 1980s, Washington adopted progressive policies requiring body searches be conducted by someone of the same sex. These once progressive policies are now outdated and do not adequately consider the needs and dignity of transgender, gender nonconforming, and intersex individuals. The more inclusive searches provided for under the bill are not allowed under state law, and the goal is to protect gender nonconforming individuals who are at high risk behind bars.

(Other) There is support for the intent of the bill, but there are some issues that still need to be worked out. In particular, there's concern that some of the bill language may take facilities out of compliance with the PREA actually, particularly with respect to the use of the term gender with respect to employees. This may introduce legal and other liability risks. Additionally, short staffing is not considered an allowable exigent circumstance under the bill, even if documented short staffing remains a considerable issue for jails.

The Washington Association of Sheriffs and Police Chiefs is also "other" because there is an even better version of the bill. Not only does the bill seek to align with the PREA and existing case law, but it is also the right thing to do to give any person, regardless of their gender identity, the choice about the gender of a corrections officer who can perform a strip search. Jail is hard and we should not make it any more miserable. However, there does need to be care with navigating existing case law about the gender of the corrections officers conducting searches of confined persons, so we hope to be a part of ongoing conversations.

Persons Testifying: (In support) Representative Osman Salahuddin, prime sponsor; Penny Sweet, Council Member, City of Kirkland; and Ethan Frenchman, Columbia Legal Services.

(Other) James McMahan, WA Assoc Sheriffs and Police Chiefs; and Brad Banks, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.