

SENATE BILL REPORT

SSB 5490

As Passed Senate, March 11, 2025

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: Senate Committee on Human Services (originally sponsored by Senators Dhingra, Chapman, Hasegawa, Lovick, Nobles, Orwall, Slatter, Stanford, Trudeau, Valdez and Wilson, C.).

Brief History:

Committee Activity: Human Services: 2/04/25, 2/17/25 [DPS, DNP].

Floor Activity: Passed Senate: 3/11/25, 29-19.

Brief Summary of First Substitute Bill

- Requires local jail administrators to implement policies and procedures for conducting a search of a transgender or intersex person confined at the jail that are in compliance with the Federal Prison Rape Elimination Act as they existed on January 1, 2025.

SENATE COMMITTEE ON HUMAN SERVICES

Majority Report: That Substitute Senate Bill No. 5490 be substituted therefor, and the substitute bill do pass.

Signed by Senators Wilson, C., Chair; Frame, Vice Chair; Orwall.

Minority Report: Do not pass.

Signed by Senators Christian, Ranking Member; Warnick.

Staff: Will Trondsen (786-7552)

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.

Background: In 2003, Congress passed the Prison Rape Elimination Act (PREA), to address sexual abuse in a detention or custody setting. PREA applies nationwide to federal and state prisons, jails, police lockups, community confinement facilities, and youth detention facilities.

State law permits the strip search of a person in custody under specific conditions. Those conditions include:

- the search is conducted without any touching of the person except as reasonably necessary to effectuate the strip search;
- any body cavity search must be conducted by a physician, registered nurse, or physician assistant, licensed to practice in this state;
- the search is in a location made private from the observation of persons not physically conducting the search; and
- the person searched may permit another person to observe the search; however, the observer cannot be currently held in custody by a law enforcement agency.

State law defines gender identity to mean a person's internal sense of the person's own gender, regardless of the person's gender assigned at birth.

Summary of First Substitute Bill: Local jail administrators are required to develop and implement policies and procedures for conducting a search of a transgender or intersex individual confined at the jail that are at a minimum in compliance with the Federal Prison Rape Elimination Act as they existed on January 1, 2025.

A search or physical examination may not be conducted on a transgender or intersex individual confined at the jail for the sole purpose of determining the person's genital status. If unknown, it may be determined through conversations with the individual, by reviewing medical records, or if necessary by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

Training must be available for jail and security staff in how to conduct cross gender searches, and searches of transgender or intersex individuals in a professional and respectful manner and in the least intrusive manner possible consistent with security needs.

Strip searches for individuals that are transgender, gender nonconforming, or intersex, must be conducted in one of the following manners:

- searches conducted only by a medical professional;
- searches of adult individuals conducted by female staff only;
- asking the individual to identify the gender of staff with whom the individual would feel most comfortable conducting the search; or
- searches conducted in accordance with the individual's stated gender identity.

Local jails must implement policies and procedures that enable individuals confined at the

jail 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 a housing unit.

The inability of a jail to make available female correctional staff who are trained to perform searches of transgender or intersex individuals is not an exigent circumstance justifying a cross gender search. Searches by an individual of a different gender are allowed only when an exigent circumstance exists requiring immediate action to respond to a threat to the security or institutional order of a facility.

The existing definition of gender identity applies to this act.

Physician's assistant is changed to physician assistant.

Local jails must adopt and implement standards that comply by September 1, 2025.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on September 1, 2025.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill makes sure that all Washington citizens have their federal rights in state law in regards to the Prison Rape Elimination Act (PREA). Washington State took action in the early 1980's to protect women in making sure that searches were done by staff of the same gender. The policies are now outdated, and do not help transgender or intersex individuals. This legislation ensures that local jails will have policies that align with the PREA. Transgender and intersex persons face an elevated risk for harassment and abuse because of a lack of clear guidelines on how searches should be performed. This bill empowers correctional officers by equipping them with information on how best to demonstrate their professionalism and respect, in what can be very uncomfortable moments. This will align our state with nationwide standards. A strip search is one of the most harrowing moments for a transgender person in custody. The reason why a transgender or intersex individual is in custody does not matter, they are still legally and morally entitled to protection from cruel and unusual punishment.

OTHER: This bill does not go far enough, it would be helpful to clarify pat downs, strip searches, and body cavity searches. There should also be a statutory right for the person to choose the gender of the officer to perform the search. All corrections personnel should be shielded from viewing people when they are doing normal bodily functions,

showering, or in a state of undress. There should be protections for corrections officers as well to ensure that no officer would have to conduct a search of an individual that is not consistent with their stated gender identity.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Penny Sweet, Council Member, City of Kirkland; Ethan Frenchman, Columbia Legal Services; Danni Askini, Gender Justice League; Jenna Comstock, QLAW Association.

OTHER: James McMahan, WA Assoc Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying: CON: Atina Holan.