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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** SB 132                      **Hearing Date:** April 23, 2019  
**Author:** Wiener  
**Version:** March 14, 2019  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Corrections*

### HISTORY

**Source:** ACLU of California  
Equality California  
Lambda Legal  
TGI Justice Project  
Transgender Law Center  
TransLatin@

**Prior Legislation:** SB 990 (Wiener), held in Assembly Appropriations in 2018  
SB 310 (Atkins), Ch. 856, Stats. 2017  
SB 179 (Atkins), Ch. 853, Stats. 2017  
AB 633 (Ammiano), vetoed in 2010  
AB 382 (Ammiano), vetoed in 2009

**Support:** ACCESS Women's Health Justice; API Equality-LA; API Equality-Northern California; California Civil Liberties Advocacy; Californians United for a Responsible Budget; Ella Baker Center for Human Rights; Empowering Pacific Islander Communities; Initiate Justice; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Legal Services for Prisoners with Children; National Center for Lesbian Rights; Root & Rebound; Tides Advocacy; Women's Foundation of California

**Opposition:** None known

### PURPOSE

*The purpose of this bill is to: 1) require the Department of Corrections and Rehabilitation (CDCR) to ask each person entering into its custody specified information, including the individual's gender identity, sex assigned at birth, preferred first name, gender pronoun, honorific, and preferred gender identity of any officer who may conduct a lawful body search of the individual; 2) require CDCR to issue identification to the person with a gender marker consistent with the gender identity the individual most recently specified; 3) require staff and contractors to consistently use the gender pronoun and honorific an individual has specified in all verbal and written communications with or regarding that individual that involve the use of a pronoun or honorific; 4) require CDCR, for a person who has a gender identity that differs from their sex assigned at birth, to only conduct a search of that person by an officer of the gender identity of the person's preference; and 5) require CDCR to house a person who has a gender identity that differs from their sex assigned at birth in a correctional facility designated for men or women consistent with the incarcerated individual's gender identity, except as specified.*

*Existing law* provides the process by which a person may petition the court for a name change, including a name change to conform the petitioner's name to the petitioner's gender identity. (Code Civ. Proc., §§ 1276, 1277.5.)

*Existing law* provides that a person under the jurisdiction of CDCR or sentenced to county jail has the right to petition the court to obtain a name or gender change, as specified. (Code Civ. Proc., § 1279.5, subd. (b).)

*Existing law* requires a person under the jurisdiction of CDCR to provide a copy of the petition for a name change to the department, in a manner prescribed by the department, at the time the petition is filed. Requires a person sentenced to county jail to provide a copy of the petition for name change to the sheriff's department, in a manner prescribed by the department, at the time the petition is filed. (Code Civ. Proc., § 1279.5, subd. (c).)

*Existing law* requires that in all documentation of a person under the jurisdiction of the CDCR or imprisoned within a county jail, the new name of a person who obtains a name change to be used, and prior names to be listed as an alias. (Code Civ. Proc., § 1279.5, subd. (d).)

*Existing law* provides that a person may file a petition with the superior court in any county seeking a judgment recognizing the change of gender to female, male, or nonbinary. (Health & Saf. Code, § 103425, subd. (a).)

*Existing law* requires CDCR to consider certain factors in determining housing assignments in order to prevent violence and promote inmate safety. (Cal. Code Regs., tit. 15, § 3269.)

*Existing federal law*, the Prison Rape Elimination Act, establishes a zero-tolerance standard for the incidence of prison rape in prisons in the United States, provides for the development and implementation of national standards for the detection, prevention, reduction, and punishment of prison rape, and mandates the review and analysis of the incidence and effects of prison rape. (34 U.S.C. § 30301 et seq.)

*This bill* includes the following findings and declarations:

- The United States Supreme Court recognized that incarcerated transgender individuals are particularly vulnerable to sexual abuse and sexual harassment and that disregarding the known risks to a transgender woman constitutes deliberate indifference in violation of the federal constitution.
- In California, a study of the state's prisons found that the rate of sexual assault for transgender women in those prisons was 13 times higher than for men in the same prisons.
- Official data collected by the federal Bureau of Justice Statistics confirm that, nationwide, incarcerated transgender individuals experience exceptionally high rates of sexual victimization. In a 2011–12 survey, almost 40 percent of incarcerated transgender individuals reported experiencing sexual victimization while incarcerated compared to 4 percent of all incarcerated individuals.
- A congressional study found that instances of prison rape often go unreported, and that “most prison staff are not adequately trained or prepared to prevent, report or treat inmate sexual assaults.”
- Forty percent of transgender women respondents reported harassment from other incarcerated individuals.
- Thirty-eight percent reported being harassed by correctional officers or staff.

- Correctional officers and other incarcerated people predominantly refer to transgender women as men, using masculine pronouns.

*This bill* requires CDCR, during the initial intake and classification process, to ask each individual entering into its custody to specify the individual's:

- Gender identity and sex assigned at birth.
- Preferred first name, gender pronoun, honorific.
- Preferred gender identity of any officer who may conduct a lawful body search of the individual.

*This bill* requires a person incarcerated by CDCR to be issued identification reflecting a gender marker consistent with the gender identity the individual has most recently specified.

*This bill* provides that a person incarcerated by CDCR may not be disciplined for refusing to answer, or for not disclosing complete information in response to, the questions pursuant to this section.

*This bill* provides that at any time, a person under the jurisdiction of CDCR may inform facility staff of their gender identity, and facility staff must promptly repeat the process of offering the individual an opportunity to specify the gender pronoun and honorific most appropriate for staff to use in reference to that individual, as specified above.

*This bill* requires staff and contractors of CDCR to consistently use the gender pronoun and honorific an individual has specified in all verbal and written communications with or regarding the individual that involve use of a pronoun and honorific.

*This bill* provides the following definitions:

- "Gender pronoun" means a third-person singular personal pronoun such as "he," "she," or "they."
- "Honorific" means a form of respectful address typically combined with an individual's surname, such as "Mr.," "Ms.," or "Mx."

*This bill* requires that an individual incarcerated by CDCR who has a gender identity that differs from their sex assigned at birth, with or without a diagnosis of gender dysphoria or any other physical or mental health diagnosis, and regardless of anatomy, be:

- Addressed in a manner consistent with the incarcerated individual's gender identity.
- If lawfully searched, searched by an officer of the gender identity of the incarcerated individual's preference. Requires the search be conducted by an officer whose gender identity is female if the incarcerated individual's preference or gender identity cannot be determined.
- Housed at a correctional facility designated for men or women consistent with the incarcerated individual's gender identity, unless the incarcerated individual's perception of their own health and safety needs requires a different placement, in which case the person shall be housed in accordance with their stated health and safety needs.

*This bill* requires that placement in housing within a facility, for example, single cell, double cell, dorm, protective custody, or general population, be based on the incarcerated individual's perception of health and safety, except as provided.

*This bill* requires that if there are significant security or management concerns with placing an incarcerated individual within a facility based on the individual's perception of health and safety, the Secretary of CDCR, or the secretary's designee, certify in writing a specific and articulable basis as to why a particular placement would present significant security or management concerns prior to housing the incarcerated individual in a manner contrary to the person's perception of health and safety.

*This bill* requires that if an incarcerated individual's housing and placement be reassessed if the individual raises concerns for their health or safety at any time.

## COMMENTS

### 1. Need for This Bill

According to the author:

SB 132 addresses a very real problem facing incarcerated transgender individuals, namely, transgender people being housed according to their birth-assigned gender, not their gender identity or their perception of safety, resulting in significant risk of violence. Transgender women housed in male facilities face particular risk of rape and assault. To house incarcerated transgender people in facilities that do not correspond with their gender identity or perception of safety puts these individuals at great risk of physical assault and sexual victimization, and reduces access to programming that creates a successful transition from prison back to their community. The risk of violence often leads to incarcerated transgender people being placed in isolation "for their own protection," resulting in loss of access to medical and rehabilitation services and leads to increased recidivism rates. SB 132 also allows CDCR, if specific security or management concerns exist regarding the incarcerated person's housing placement, to exercise their judgment and override the placement.

CDCR has separate institutions for men and women. Current California law provides that incarcerated people be housed according to their sex, age, criminal sophistication, seriousness of crime charged, physical or mental health needs, assaultive/non-assaultive behavior and other criteria which will provide for the safety of the incarcerated people and staff. Current law mandates that the CDCR assess all new people entering CDCR custody, including all aspects of their backgrounds and history, in order to determine where they will be housed. After that assessment, the CDCR assigns incarcerated people "to the institution of the appropriate security level and gender population." In the case of transgender people, the California Code of Regulations establishes a process by which an incarcerated transgender person is assigned to housing at a designated institution. These processes and criteria fail to take into account a person's gender identity and their perception of safety, making them more vulnerable to violence from other incarcerated people and solitary confinement while incarcerated.

The Supreme Court correctly recognized that incarcerated transgender people are particularly vulnerable to sexual abuse and sexual harassment and that disregarding the known risks to a transgender woman constitutes deliberate indifference in violation of the Constitution. A congressional study found that instances of prison rape often go unreported, and that “most prison staff are not adequately trained or prepared to prevent, report or treat inmate sexual assaults.” Official data collected by the Bureau of Justice Statistics confirm that, nationwide, incarcerated transgender people experience exceptionally high rates of sexual victimization. In a 2011-2012 survey, almost 40% of incarcerated transgender individuals reported experiencing sexual victimization while incarcerated compared to four percent of all incarcerated individuals, and 38% reported being harassed by correctional officers or staff. In California, a study of the state’s prisons designated for men found that the rate of sexual assault for transgender women in those prisons was 13 times higher than for men in the same prisons.

## **2. CDCR Policies: Intake and Classification**

Penal Code section 2900 provides that defendants sentenced to state prison shall be delivered to the custody of the Secretary at the place designated by the Secretary to serve the term of imprisonment ordered by the court. Chapter 6 of CDCR’s Department Operations Manual (DOM) establishes the procedures for the reception, processing, and transfer of inmates into CDCR institutions.

When a person is committed to CDCR, the person first goes to a Reception Center where he or she goes through the reception and classification process. Several institutions have been designated as Reception Centers. Reception Center processing staff is responsible for collecting social and criminal history information for each inmate received by CDCR, as well as interviewing and testing newly received inmates. (DOM § 61010.4.) Classification of inmates is typically made pursuant to the CDCR Inmate Classification Score System. A staff member reviews all relevant documents available during the Reception Center process to complete the score sheet. The placement score generally determines the security level and the institution to which an inmate will be assigned. The inmate is interviewed during this process and has an opportunity to verbally contest specific score items or case factors. Certain case factors require a minimum mandatory score. For example, an inmate sentenced to a life term is subject to the mandatory minimum score requirement. (DOM § 61010.11.5.)

An inmate’s placement score will fall within one of four placement score ranges, each of which corresponds to a security level. CDCR facilities are categorized into four levels, from Level I to Level IV with Level I being the lowest security level and Level IV being the highest security level. After the inmate is recommended for placement at a specific institution, endorsement to the institution must be approved before the inmate is transported to that institution. An inmate has the opportunity to reduce their placement score as the result of programming and avoiding disciplinary actions. However, an inmate’s score and subsequent housing level can be increased due to receiving disciplinary actions.

Each determination affecting an inmate’s placement within an institution or facility, transfer between facilities, program participation, work group, or custody designation is made by a classification committee. The Institutional Classification Committee (ICC) is an institution’s highest level of committee and consists of at least three members and is chaired by the Warden or Chief Deputy Warden of the institution. (DOM § 62010.8.) It makes all decisions affecting transfer, program participation, supervision, security, housing, and safety of persons. Each

institution is required to establish an initial classification committee to review and initiate a suitable program for each inmate within 14 days after arrival at the institution. (DOM § 62010.8.3.) Each program unit is required to establish a Unit Classification Committee (UCC) to provide routine classification of inmates. (DOM § 62010.8.4.) It reviews each inmate's case at least annually to consider the accuracy of the inmate's classification score, custody designation, program and institution placement which includes recommendation for transfer.

### **3. CDCR Policies: Housing Assignments**

#### **a. Types of Inmate Housing Assignments**

Most inmates are housed in a general population setting. General population housing units are characterized as those that house minimum to medium custody inmates where work, vocational, academic, and self-help programming opportunities are available. Other types of housing include a Sensitive Needs Yard (SNY) and the Administrative Segregation Unit (ASU). SNY was designed to provide additional protection to inmates with particular safety needs (e.g., an inmate with a disability, an inmate convicted of a sex offense, an inmate who had been debriefed from a prison gang, etc.) ASU primarily houses inmates who have been accused of or found guilty of engaging in some type of serious misconduct. However, ASU may also be used to house inmates who are alleged to be the victim of an assault, or who CDCR has identified as being vulnerable to an attack. ASU is a restrictive housing setting in which inmates remain in their cells for most of the day and must be escorted by a staff member when leaving their cell.

#### **b. Specific Housing Assignment Policies**

CDCR policy provides that inmates accept all inmate housing assignments. The DOM provides: "The Warden/Administrator of the institution/facility shall be responsible for maximizing proper bed utilization, ensuring inmates are appropriately housed at the institution, implementing departmental policy in accordance with prison design and institution safety and security. Staff must use correctional experience and training, correctional awareness, and a sense of correctional reasonableness to determine suitability for dormitory, celled, and single-celled housing." (DOM § 54046.3.) Staff members involved in the review and approval of an inmate's housing assignment is required to consider all available factors prior to determining an inmate housing assignment. In making a decision about an inmate's housing assignment, the deciding authority must consider, but is not limited to, the following: length of sentence; enemies and victimization history; criminal influence demonstrated over other inmates; vulnerability of the inmate due to medical, mental health, and disabilities; reason(s) for segregation; history of "S" suffix determination; history of in-cell assaults and/or violence; prison gang or disruptive group affiliation and/or association; and nature of commitment offense. (DOM § 54046.4.)

In addition to the above, "[s]taff involved in the review of an inmate's case factors must be particularly aware of case factors that indicate an inmate has been either the victim of, or the perpetrator of, a sexual assault, and must screen for appropriate housing." (*Id.*) The DOM further provides:

A classification committee and/or the screening authority shall review the Central File (C-file) and other available information to determine if the inmate has a history of in-cell assaultive, abusive, or predatory behavior towards a cellmate, or has been the victim of a sexual assault. ... Staff shall weigh circumstances documented in the

C-file such as documented reports from a prior cellmate the inmate intimidated, threatened, forced, and/or harassed him or her for sex, documentation the cellmate refused to return to a cell occupied by the inmate because of fear, threats, or abuse perpetrated by the inmate, documentation the inmate has been the victim of a sexual assault, and adjudicated department Rules Violations Reports (RVR) where the inmate was found guilty as a perpetrator in an act of physical abuse, sexual abuse, sodomy, or other act of force against a cellmate. (*Id.*)

### **c. Transgender Inmates**

With respect to housing transgender inmates, the DOM provides: “Inmates who have been diagnosed as transgender or intersex, as documented on the Medical Classification Chrono, shall be referred to a classification committee for review of all case factors and determination of appropriate institutional placement and housing assignment.” (DOM § 62080.14.) CDCR specifies the institutions where transgender inmates are to be housed “[i]n order to ensure inmate-patients receive the necessary medical care/mental health treatment, transgender or intersex inmate-patients.” (*Id.*) Those institutions include: California Medical Facility, Richard J. Donovan, San Quentin State Prison, Mule Creek State Prison, California Substance Abuse Treatment Facility, California State Prison Sacramento, Salinas Valley State Prison, Correctional Institution for Men, Kern Valley State Prison, California Men’s Colony, California Health Care Facility, and all three of the state’s women’s prisons.

## **4. CDCR Policies: Cross-Gender Searches of Inmates**

CDCR policy provides that “[b]ody search procedures for clothed female inmates recognize, address, and minimize the effects of cross-gender contact inherent in the body search process by limiting this function to female correctional staff unless an emergency exists that threatens death, inmate escape, or great bodily injury to staff, inmates, or visitors.” (DOM § 52050.16.4.) The policy reiterates that “under no circumstances shall male correctional staff perform non-emergency clothed body searches of female inmate.” (*Id.*) With respect to unclothed searches, correctional staff, other than qualified medical staff, is prohibited from conducting unclothed body inspections or searches “of an inmate of the opposite sex, except in an emergency.” (DOM § 52050.16.5.) Routine unclothed body searches are prohibited from being completed by staff “of the opposite biological sex.” (*Id.*) Finally, CDCR policy provides that unclothed body searches of inmates “by staff of the opposite biological sex” are limited to emergency situations, and that a required cross-gender unclothed body search must be documented. (*Id.*)

## **5. Transgender Inmates are Particularly Vulnerable to Assault**

Nearly one in six transgender people, and one in two black transgender people, has been incarcerated in prison. (<[https://www.lambdalegal.org/sites/default/files/2015\\_transgender-incarcerated-people-in-crisis-fs-v5-singlepages.pdf](https://www.lambdalegal.org/sites/default/files/2015_transgender-incarcerated-people-in-crisis-fs-v5-singlepages.pdf)> [as of Apr. 17, 2019].) This population is particularly vulnerable to being assaulted while incarcerated. A UC Irvine study found that transgender inmates were 13 times more likely to be sexually assaulted in prison than non-transgender inmates. (Valerie Jenness, *Transgender Inmates in California Prisons: An Empirical Study of a Vulnerable Population* <<http://ucicorrections.seweb.uci.edu/files/2013/06/Transgender-Inmates-in-CAs-Prisons-An-Empirical-Study-of-a-Vulnerable-Population.pdf>>.) In order to maintain the safety of inmates who are particularly vulnerable to assault, including transgender inmates, CDCR sometimes remove these inmates from the general population. The removal of vulnerable inmates from the general population is subject to various laws, regulations, and department policies.

## 6. Prison Rape Elimination Act (PREA)

### a. Federal Law

PREA was passed by Congress in 2003. It applies to all correctional facilities, including prisons, jails, and juvenile facilities. Among the many stated purposes for PREA are: to establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States; to develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape; to increase of the available data and information on the incidence of prison rape to improve the management and administration of correctional facilities; and to increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape. (34 U.S.C. § 30301 et seq.) The act also created the National Prison Rape Elimination Commission and charged it with developing standards for the elimination of prison rape.

### b. PREA Standards

The PREA standards developed by the National Prison Rape Elimination Commission were issued as a final rule by the U.S. Department of Justice in 2012. (77 Fed.Reg. 37106 (Jun. 20, 2012).) Among other things, the standards require each agency and facility to: designate a PREA point person to coordinate compliance efforts; develop and document a staffing plan, taking into account a set of specified factors, that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse; and train staff on key topics related to preventing, detecting, and responding to sexual abuse. In addition, the standards provide requirements regarding the avenues for reporting sexual abuse, investigation of sexual abuse, and access to medical and mental health care for inmate victims of sexual abuse.

The PREA standards account in various ways for the particular vulnerabilities of inmates who are LGBTI or whose appearance or manner does not conform to traditional gender expectations. (*Id.* at 37149-37154.) The standards require training in effective and professional communication with LGBTI and gender nonconforming inmates and require the screening process to consider whether the inmate is, or is perceived to be, LGBTI or gender nonconforming. The standards also require that post-incident reviews consider whether the incident was motivated by the inmate's LGBTI identification, status, or perceived status. In addition, the standards do not allow placement of LGBTI inmates in dedicated facilities, units, or wings in adult prisons, jails, or community confinement facilities solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates. Such placement is not allowed at all in juvenile facilities.

The standards impose a complete ban on searching or physically examining a transgender inmate for the sole purpose of determining the inmate's genital status. Agencies are required to train security staff in conducting professional and respectful cross-gender pat-down searches and searches of transgender inmates. In deciding whether to assign a transgender inmate to a facility for male or female inmates, and in making other housing and programming assignments, an agency may not simply assign the inmate to a facility based on genital status. Rather, the agency must consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems, giving serious consideration to the inmate's own views regarding his or her

own safety. In addition, the standards require that transgender inmates are given the opportunity to shower separately from other inmates.

**c. CDCR PREA Policy**

AB 550 (Goldberg), Chapter 303, Statutes of 2005, established the Sexual Abuse in Detention Elimination Act. The Act made several legislative findings and declarations regarding sexual abuse at CDCR institutions and required CDCR to adopt specified policies, practices, and protocols related to the placement of inmates, physical and mental health care of inmate victims, and investigation of sexual abuse.

CDCR's PREA policy provides guidelines for the prevention, detection, response, investigation, and tracking of sexual violence, staff sexual misconduct and sexual harassment against CDCR inmates. (DOM §§ 54040.1-5404.22.) The policy applies to all offenders and persons employed by CDCR, including volunteers and independent contractors assigned to an institution, community correctional facility, conservation camp, or parole. With respect to inmates who are at a high risk for sexual victimization, CDCR's PREA policy provides:

*Offenders at high risk for sexual victimization, as identified on the electronic Initial Housing Review, shall not be placed in segregated housing unless an assessment of all available alternatives has been completed, and a determination has been made that there is no available alternative means of separation from likely abusers.*

Offenders at high risk for sexual victimization shall have a housing assessment completed immediately or within 24 hours of placement into segregated housing. If temporary segregation is required, the inmate shall be issued an Administrative Segregation Placement Notice, explaining the reason for segregation is the need to complete a housing assessment based on the high risk for sexual victimization. If a determination is made at the conclusion of the assessment that there are no available alternative means of separation from likely abusers, the inmate will be retained in segregated housing and issued an Administrative Segregation Placement Notice, explaining the reason for retention. The assigned counseling staff shall schedule the offender for appearance before the Institution Classification Committee for discussion of his/her housing needs. The offender's retention in segregation should not ordinarily exceed 30 days. (Italics added) (DOM § 54040.6.)

The policy further provides:

Based on information that the offender has been a victim of sexual violence or victimization, the custody supervisor conducting the initial screening shall discuss housing alternatives with the offender in a private location. *The custody supervisor shall not automatically place the offender into administrative segregation.* Consideration shall be given to housing this offender with another offender who has compatible housing needs. If single cell status is appropriate, the custody supervisor may designate the offender for single cell housing pending a classification review.

An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness. (DOM § 54040.7.)

## 7. Effect of this Legislation

### *Changes that Apply to All Inmates*

This bill makes various changes to CDCR's initial intake and classification process, as well as inmate identification. Specifically, this bill requires:

- CDCR to ask each person entering into its custody to specify the individual's gender identity and sex assigned at birth; preferred first name, gender pronoun, honorific; and preferred gender identity of any officer who may conduct a body search of the individual.
- CDCR to issue identification to inmates that reflect a gender marker consistent with the gender identity the inmate has most recently specified.
- CDCR staff to promptly repeat the process of offering the individual an opportunity to specify the gender pronoun and honorific most appropriate for staff to use in reference to that individual after being informed by an inmate of their gender identity, which may occur at any time.
- CDCR staff and contractors to consistently use the gender pronoun and honorific an inmate has specified in all verbal and written communications with or regarding the inmate that involve use of a pronoun and honorific.

### *Changes that Apply to Transgender Inmates*

This bill makes a number of changes to the treatment of inmates who identify as transgender. Specifically, this bill requires that an inmate who has a gender identity that differs from their sex assigned at birth, with or without a diagnosis of gender dysphoria or any other physical or mental health diagnosis, and regardless of anatomy, be:

- Addressed in a manner consistent with the inmate's gender identity.
- Searched by an officer of the gender identity of inmate's preference, and if the inmate's preference or gender identity cannot be determined, then the search must be conducted by a female officer.
- Housed at a facility designated for men or women consistent with the inmate's gender identity, unless the inmate's perception of their own health and safety needs requires a different placement, in which case the inmate must be housed in accordance with their stated health and safety needs.

This bill mandates that the housing placement of the inmate be based on the inmate's perception of health and safety. However, in the event that there are significant security or management concerns with placing an inmate within a facility based on the inmate's perception of health and safety, this bill authorizes a different placement but requires the Secretary of CDCR, or the secretary's designee, to certify a specific and articulable basis as to why the inmate's preferred placement would present significant security or management concerns prior to making that housing assignment. Finally, this bill requires that an inmate's housing and placement be reassessed if the inmate raises concerns for their health or safety at any time.

## 7. Comments

While several of the bill's provisions are consistent with current policy or law as well as the department's proposed internal policy changes, the provisions related to searches of inmates are a noticeable departure from existing law and policy. Specifically, this bill would require that all inmates be afforded an opportunity at intake to specify the preferred gender identity of an officer in the event of a body search. This bill also requires that a transgender inmate be searched by an officer of the inmate's preferred gender identity. And, in the case of an inmate whose preference or gender identity cannot be determined, this bill requires that the body search be conducted by a female officer. Current policy permits male and female officers to conduct clothed searches of male inmates. (DOM § 52050.16.4.) Only female officers are permitted to conduct clothed searches of female inmates unless there is an emergency. (*Id.*) For unclothed searches, searches of inmates "by staff of the opposite biological sex" are limited to emergency situations and must be documented. (DOM § 52050.16.5.)

Although the exact ratio of male to female correctional officers is unknown, it appears likely—based on anecdotal evidence—that there are significantly more male than female officers employed by CDCR. In acknowledging that the proposed Penal Code section 2605, subdivision (a)(3), only requires CDCR to ask each an inmate to specify the preferred gender identity of an officer who conducts a body search, it is unclear whether the department will be able to meet the expectations of inmates in the event that a high percentage of inmates expressed a preference for female officers to conduct a search. In addition, there may be some instances where an inmate's expressed preference may not be appropriate (e.g., it may not be appropriate for a self-identified male inmate with a history of sex offenses against women to express a preference to be searched by self-identified female officers). Notably, the proposed Penal Code section 2606, subdivision (b), requires that a transgender inmate be searched by an officer of the gender identity of the inmate's preference. In the event that a high percentage of transgender inmates express a preference to be searched by female officers, it is unclear whether CDCR will be able to comply this mandate.

Other notable provisions of the bill aim to eliminate the practice of placing transgender inmates in segregated housing units when the inmate does not perceive a risk of violence or victimization if housed in another type of housing, and to require that transgender inmates are housed at a facility consistent with the inmate's gender identity.

-- END --