
Policy Number: 202.045
Title: Management of Transgender/Gender Non-Conforming/Intersex Offenders/Residents
Effective Date: 10/6/20

PURPOSE: To provide guidelines for the evaluation, placement, and management of offenders/residents who are transgender, intersex, or gender non-conforming, or have gender dysphoria or other similar medical/clinical diagnoses.

APPLICABILITY: Department-wide

DEFINITIONS:

Gender – a set of social, psychological, and emotional traits, often influenced by societal expectations, that classify an individual as, for example, feminine, masculine, both, or neither.

Gender identity – a person’s understanding and internal, deeply felt sense of being a man, a woman, both, or neither. Distinct from sex assigned at birth and sexual orientation.

Gender non-conforming– an umbrella term describing those who do not fit into traditional gender expectations.

Intersex – a general term for a variety of conditions in which a person is born with a reproductive or sexual anatomy that does not fit the typical definitions of male or female. Not everyone who has one of these conditions identifies as intersex.

Pat search – see policy 301.010, “Searches.”

Transgender – an umbrella term that may be used to describe people whose gender expression does not conform to cultural norms or whose gender identity is different from their assigned sex at birth. Transgender is a self-identity, and some gender non-conforming people do not identify with the term.

Transgender Committee – a committee responsible for making recommendations regarding placement, property, and programming for transgender, gender non-conforming, and intersex offenders/residents. The committee is chaired by the department’s health services director, and includes the department’s medical director, director of behavioral health, and director of nursing, along with the warden or designee, health services administrator, mental health director, and primary mental health provider of the facility where the offender/resident currently resides and of the facility to which the offender/resident may be transferring if applicable.

Unclothed body search – see policy 301.010, “Searches.”

PROCEDURE:

- A. Screening
 - 1. When an offender/resident identifies through kite or other communication as transgender, gender non-conforming, or intersex, facility mental health staff must complete a

transgender psychological screening, including the offender's/resident's view with respect to their own safety.

2. Mental health or health services staff may not search or physically examine any offender/resident for the sole purpose of determining the offender's/resident's genital status. This prohibition equally applies to transgender, gender non-conforming, or intersex offenders/residents. If the offender's/resident's mental health or medical provider needs to know the offender's/resident's genital status for the purposes of treatment or the offender's/resident's safety, it may be determined through conversations with the offender/resident, 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.
3. Facility health services staff must have an offender/resident (or a resident's guardian) sign a release of information to obtain medical/mental health records when the offender/resident:
 - a) Expresses a history of receiving care for gender dysphoria or other gender-related treatment;
 - b) Identifies as, or has self-reported to any staff member as, gender non-conforming; or
 - c) Has other medical/clinical conditions related to gender.
4. An offender/resident who makes a request under this policy, but refuses to participate in psychological screening or sign a release of information for medical/mental health records, will not have their request reviewed by the transgender committee.

B. Placement

1. Facility staff determine the preliminary placement of an offender/resident who is transgender, gender non-conforming, or intersex upon intake screening, until the transgender committee makes a placement recommendation and the deputy commissioner – facility division determines placement.
2. In deciding whether to assign a transgender, gender non-conforming, or intersex offender/resident to a facility for male or female offenders/residents, the department considers on a case-by-case basis whether a placement would ensure the offender's/resident's health and safety, and whether the placement would present management or security problems.

The department must not place lesbian, gay, bisexual, transgender, gender non-conforming, or intersex offenders/residents in dedicated facilities, units, or wings 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 offenders/residents from harm.

3. Upon completion of the transgender psychological screening, the facility mental health director must forward the screening to the chair of the transgender committee and the offender/resident. The chair schedules a meeting of the transgender committee.
4. The transgender committee makes recommendations regarding facility placement and other matters that it deems necessary to maintain the offender's/resident's safety, such as

single cell/room or shower restrictions. The committee must consult with the offender/resident and may seek consultation from outside health care providers to assist in making its recommendations. The committee considers factors such as the offender's/resident's security level, criminal/adjudication and disciplinary history, current gender expression, medical and mental health needs, vulnerability to sexual victimization, and the likelihood of perpetrating such abuse on other offenders/residents.

5. The transgender committee must promptly forward its recommendations regarding facility placement and other matters to the deputy commissioner – facility division for a final decision. The deputy commissioner should, whenever possible, review the committee's recommendations within five days and inform the committee chair whether the recommendations have been approved, denied, or modified. The deputy commissioner's determination is sent to the members of the transgender committee and to the offender/resident, and must be placed in the offender's/resident's health record.
6. A facility may seek reconsideration of the deputy commissioner's placement decision for any reason. The warden must contact the deputy commissioner, who may ask the transgender committee chair to convene another meeting and make recommendations if the deputy commissioner determines that further evaluation is needed.
7. Placement and programming assignments for each transgender, gender non-conforming, or intersex offender/resident must be reassessed at least twice each year by the deputy commissioner – facility division or designee, to review any threats to safety experienced by the offender/resident.

C. Transfers

1. For a transgender, gender non-conforming, or intersex offender/resident to be considered for a transfer to another facility, including one housing individuals of the offender's/resident's identified gender, the facility warden or transfer coordinator must notify the chair of the transgender committee prior to initiating a transfer request.
2. The transgender committee evaluates a transfer request and makes a recommendation to the deputy commissioner – facility division. The deputy commissioner should, whenever possible, review the committee's recommendation within five days and make a final decision on the transfer request.

D. Showers, Undergarments, and Special Property Requests

1. Transgender, gender non-conforming, and intersex offenders/residents must be given the opportunity to shower separately from other offenders/residents if deemed appropriate by the transgender committee.
2. Consistent with safety and security concerns, facility staff must provide transgender, gender non-conforming, and intersex offenders/residents state-issued undergarments of their identified gender, and the opportunity to purchase such undergarments, as specified in attachment 302.250C, "DOC Allowable Property List" (attached). This is required even if the offender/resident is housed in a facility with offenders/residents who have different gender identities. After approval by the transgender committee, the department provides such undergarments throughout the offender's/resident's incarceration. (See 302.250C, "DOC Allowable Property List" for the amounts of state-issued and personal items allowed.)

3. Offender/resident requests for other types of clothing or property (such as makeup) must be made directly to the transgender committee. The transgender committee reviews the request in light of the offender's/resident's need for the requested property and any safety or security concerns that the property poses. It is not necessary for an offender/resident to have been using such products prior to incarceration for the products to be allowed while incarcerated.

E. Medical and Mental Health Services

1. The department provides transgender, gender non-conforming, and intersex offenders/residents with appropriate gender-related mental health and medical services throughout their incarceration. It is not necessary for an offender/resident to have been receiving such services prior to incarceration for the services to be provided while incarcerated.
2. Gender-related hormone or medical treatment may be provided after an individualized assessment of the offender/resident by facility medical staff. The individualized assessment should, at a minimum, consider the following factors:
 - a) Whether the offender/resident has been diagnosed with gender dysphoria, either at an earlier time or during the individualized assessment itself;
 - b) The nature and severity of any symptoms associated with gender dysphoria;
 - c) The offender's/resident's treatment and life experiences prior to and during incarceration; the absence of relevant treatment and life experiences, by itself, is not a basis for denying otherwise appropriate health services;
 - d) Whether the offender/resident is willing to participate in mental health therapy, if needed, in conjunction with medical treatments;
 - e) Available continuity of care upon the offender's/resident's release; and
 - f) Whether there are any medical and/or mental health conditions that may create an undue risk of adverse health consequences caused by hormones or other treatment.
3. Medical staff must consult with facility mental health staff regarding the mental health benefits of gender-related hormone or medical treatment. The department's medical director makes the final determination on whether gender-related hormone or medical treatments for transgender offenders/residents should be initiated or continued, consistent with generally-accepted medical practices in the treatment of gender dysphoria in correctional settings.

F. Searches of Transgender Offenders/Residents

1. Pat and unclothed body searches of transgender, gender non-conforming, or intersex offenders/residents must be done in accordance with the gender of the facility in which they are assigned (i.e., searches must be conducted by male staff in facilities that house male offenders/residents and by female staff in facilities that house female offenders). Unclothed body searches must be made in a manner designed to ensure as much privacy to the offender/resident as practicable and consistent with Policy 301.010, "Searches."

2. Transgender offenders/residents may request that they receive pat or unclothed body searches from security staff of a specific gender. Such a request must be pre-authorized by the transgender committee after consultation with the facility warden and health services staff. Any exceptions to the general rule on searches must be specifically described (e.g., “pat search only by female staff”), clearly communicated to relevant staff through written means, and reflected in the Correctional Operations Management System (COMS). Offenders/residents must be provided with a personal identifier that indicates their individual exception to be carried at all times and presented to staff prior to searches.

G. Pronouns and Honorifics

1. At intake, offenders/residents must be given the opportunity to select one of the following pronouns and honorifics by which they would like to be addressed:
 - a) She/Ms;
 - b) He/Mr; or
 - c) They/Mx (pronounced ‘mix’)
2. The pronoun and honorific selected must be displayed on the offender’s/resident’s badge and all staff members must refer to the offender/resident using that pronoun and honorific.
3. An offender/resident may request to change the pronoun and honorific by which they are addressed at any time during their incarceration. To do so, the offender/resident must follow the process set forth in Policy 302.255, “Offender/Resident Identification Cards.”

INTERNAL CONTROLS:

- A. The determination of the deputy commissioner – facility division is retained in the offender’s/resident’s health record.
- B. Transgender offenders’/residents’ authorized requests for general pat/body searches to be conducted by staff of a specific gender are maintained in COMS.

ACA STANDARDS: None

REFERENCES: [Minn. Stat. § 241.01](#)
[Policy 301.010, “Searches”](#)
[Policy 302.255, “Offender/Resident Identification Cards”](#)
[Policy 302.250, “Offender Property”](#)
[Prison Rape Elimination Act \(PREA\), 28 C.F.R. §115.15, 115.41, and 115.42 \(2012\)](#)

REPLACES: Policy 202.045, “Evaluation and Placement of Transgender/Gender Non-Conforming/Intersex Offenders,” 6/19/18, and revisions issued 8/6/20 and 8/18/20 but not yet put into effect.
All facility policies, memos, or other communications whether verbal, written or transmitted by electronic means regarding this topic.

ATTACHMENTS: [DOC Allowable Property List \(302.250C\)](#)

APPROVALS:

Deputy Commissioner, Community Services

Deputy Commissioner, Facility Services

Assistant Commissioner, Operations Support

Assistant Commissioner, Criminal Justice Policy, Research, and Performance