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<b>Policy Number:</b>	<b>202.045</b>
<b>Title:</b>	<b>Management and Placement of Incarcerated People Who Are Transgender, Gender Diverse, Intersex, or Nonbinary</b>
<b>Effective Date:</b>	<b>1/31/23</b>

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**PURPOSE:** To provide guidelines for the wellbeing, safety, respect, evaluation, placement, and treatment of incarcerated people who are transgender, gender diverse, intersex, or nonbinary, or have gender dysphoria or other similar medical/clinical diagnoses.

**APPLICABILITY:** Department-wide

**DEFINITIONS:**

Agency Gender Identity Committee – a department-wide committee responsible for making recommendations regarding placement for incarcerated people who are transgender, gender diverse, intersex, or nonbinary. The committee is chaired by the department’s assistant commissioner of the health, recovery, and programming division, and includes the director of diversity, equity, and inclusion or designee, a representative from victim services, the department’s medical director, the director of behavioral health, and the director of nursing.

Facility Gender Identity Committee – a committee within a correctional facility responsible for making decisions regarding facility-specific requests, such as single-cell assignments, showering arrangements, and special property for incarcerated people who are transgender, gender diverse, intersex, or nonbinary. The committee is chaired by the associate warden where the person currently resides and includes the director of clinical operations, mental health director, as well as the primary mental health provider and case manager of that facility.

Gender – a set of socially-constructed roles, behaviors, activities, and attributes that society uses to classify an individual as, for example, feminine, masculine, both, or neither.

Gender identity – a person’s internal, deeply felt sense of self in relation to gender, such as being a man, a woman, both, or neither. Gender identity does not always correspond to biological sex and can be distinct from sex assigned at birth. Gender identity is a separate concept from sexuality and sexual orientation.

Intersex – means 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.

Nonbinary – means a person who does not subscribe to the gender binary and may experience a gender identity that is neither exclusively male or female or is in between, beyond, or totally independent of those two binary genders. People with nonbinary gender identities may or may not use more specific terms to describe their genders (for example, agender, genderqueer, gender fluid, two spirit, bigender, pangender, gender nonconforming, gender variant).

Pat search – see policy 301.010, “Searches.”

Sex – either of the two major forms of people that also occur in many species and that are distinguished as female or male, especially on the basis of their reproductive organs and structures.

Special property – property requested as connected to a person’s gender identity and not already allowable or authorized by DOC Policy 302.250, “Property.”

Transgender, gender diverse, and non-binary – means a person whose gender identity is different from their assigned sex at birth. Some people do not identify with these specific terms.

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

## **PROCEDURE:**

- A. Respectful Communication and Treatment
  - 1. Staff members are expected to treat all incarcerated people with respect. Staff must communicate respectfully with incarcerated people who identify as transgender, gender diverse, intersex, or nonbinary.
  - 2. An incarcerated person who makes a request under this policy may, at any time, choose to identify in an alternate gender identity. The department must then proceed with responding to the request.
- B. Pronouns and Honorifics
  - 1. At intake, incarcerated people 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 incarcerated person’s badge and all staff members must refer to the person using that pronoun and honorific.
  - 3. An incarcerated person may request to change the pronoun and honorific by which they are addressed at any time during their incarceration. To do so, the incarcerated person must follow the process set forth in Policy 302.255, “Offender/Resident Identification Cards.”
- C. Governance and Training
  - 1. The agency gender identity committee reviews facility placement requests and makes recommendations to the deputy commissioner of the facility safety and security division regarding placement for incarcerated people who are transgender, gender diverse, intersex, or nonbinary at a facility consistent with their gender identity versus their sex assigned at birth.
  - 2. The facility gender identity committees review requests and make decisions regarding matters of facility management, such as single-cell assignments, showering arrangements, special property, and search procedures.
  - 3. The committees must consult with the incarcerated person and may seek consultation from outside health care providers to assist in making recommendations and decisions.
  - 4. To determine whether an incarcerated person’s request will be reviewed by the facility gender identity committees or the agency gender identity committee, DOC medical/mental health staff may review the incarcerated person’s health records if the individual signs a

release of information form. If a person does not want to sign a release for their medical/mental health records or refuses to participate in requested gender identity psychological screening, their request will not be reviewed by the facility gender identity committees nor the agency gender identity committee.

5. The deputy commissioner and the facility gender identity committees must provide the incarcerated person with a prompt response to their requests, in writing, including a statement of reasons for any denials.
6. The written response from the facility gender identity committee regarding an incarcerated person's requests is retained in ODocS and must be promptly sent to the chair of the agency gender identity committee or designee for awareness and tracking purposes using the Facility Gender Identity Committee Decisions form (attached). The written response from the agency gender identity committee, using the Agency Gender Identity Committee Recommendations form (attached), and as approved, modified, or denied by the deputy commissioner, regarding an incarcerated person's request for facility placement is retained in ODocS and must be promptly returned to the chair of the agency gender identity committee or designee for awareness and tracking purposes.
7. The decisions made by the facility gender identity committees are monitored by the agency gender identity committee and reviewed at least quarterly to ensure consistency in the treatment of transgender, gender diverse, intersex, and nonbinary people across the department.
8. All members of the agency gender identity committee and facility gender identity committees must receive initial and annual training on understanding the experiences and treatment of incarcerated people who are transgender, gender diverse, intersex, or nonbinary.

#### D. Screening

1. When an incarcerated person identifies through intake, kite, or other communication as transgender, gender diverse, intersex, or nonbinary, facility mental health staff must complete a gender identity psychological screening, including the person's wellbeing, expressed needs with respect to their own safety, and their preference for their placement at a particular facility, or other concerns they may have related to their care and confinement.
2. Mental health or health services staff may not search or physically examine any incarcerated person for the sole purpose of determining the incarcerated person's genital status. This prohibition equally applies to people who are transgender, gender diverse, intersex, or nonbinary. If the incarcerated person's mental health or medical provider needs to know the person's genital status for the purposes of treatment or the incarcerated person's safety, 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.
3. Upon completion of the gender identity psychological screening, the facility mental health director must directly provide the screening to the incarcerated individual, and to the following based on the nature of the person's requests:

- a) Hormones and/or surgical intervention requests related to their gender identity should be forwarded to the mental health provider to schedule a care conference between the mental health provider and the treating medical professional to review and discuss this request.
- b) Single-cell placement, showering, special property, or search requests should be forwarded to the facility gender identity committee chair who will schedule a meeting with the committee to review the request.
- c) Transfer requests between facilities designated for adult men must follow the procedures outlined in DOC Policy 301.095 Central Transportation – Offenders.
- d) Transfer requests between facilities designated for adult men and adult women should be forwarded to the agency gender identity committee chair who will schedule a meeting to review the request.

E. Placement and Transfers

- 1. Facility staff determine the preliminary placement of an individual who is transgender, gender diverse, intersex, or nonbinary upon intake screening in accordance with DOC Policy 202.040, “Intake Screening and Processing,” until the agency gender identity committee makes a placement recommendation and the deputy commissioner of the facility safety and security division determines placement.
- 2. In deciding whether to assign a person who is transgender, gender diverse, intersex, or nonbinary to a facility for men or women, the department must consider on a case-by-case basis whether a placement would ensure the person’s health and safety, including taking into account the person’s own views with respect to their own safety, the best interests of the person, their ability to receive necessary and successful programming or treatment, and whether the placement would present facility security problems.

The department must not place people who are lesbian, gay, bisexual, transgender, gender diverse, intersex, or nonbinary 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 people from harm.

- 3. The agency gender identity committee makes recommendations to the deputy commissioner of the facility safety and security division regarding facility placement using the Agency Gender Identity Committee Recommendations form. A transfer request to a facility matching an incarcerated person’s gender identity should be approved unless the agency gender identity committee or the deputy commission of the facility safety and security division determine, based on the factors listed below, that such placement would pose a heightened risk of physical or sexual harm to the person or to others housed in the facility, or that the person is likely to engage in sexually inappropriate behavior there. The committee must consider the individual’s:
  - a) Views with respect to their own safety, which must be given serious consideration;
  - b) Assigned security level;
  - c) Criminal/adjudication and disciplinary history;

- d) Gender expression;
- e) Medical and mental health needs;
- f) Programming and treatment needs and whether a particular facility placement can meet those needs;
- g) Vulnerability to sexual victimization;
- h) History of perpetrating physical or sexual abuse or engaging in sexually inappropriate behavior targeted at particular people; and
- i) Any other individualized factors deemed relevant by the committee.

4. Prior to making a placement recommendation, the agency gender identity committee must consult the wardens of the considered facilities or their designees. Additionally, the following staff may be consulted: facility directors of clinical operations, facility mental health directors, primary mental health providers, facility security representatives, caseworkers, and treating physicians where the person currently resides and of the facility to which the person may be transferring.

5. The agency gender identity committee must promptly forward its recommendations regarding facility placement and transfers between designated facilities for adult men and adult women to the deputy commissioner of the facility safety and security division for a final decision. The deputy commissioner should, whenever possible, review the committee's recommendations within five days, consult with the commissioner of corrections, and inform the committee chair whether the recommendations have been approved, rejected, or modified. The deputy commissioner's determination, including a statement of reasons for any placement or transfer rejection, is sent to the members of the agency gender identity committee and to the incarcerated person, shared with the facility gender identity committee, noted in the Correctional Operations Management System (COMS), and retained in ODocS.

6. Placement and programming assignments for each incarcerated person who is transgender, gender diverse, intersex, or nonbinary must be reassessed at least twice each year by the agency gender identity committee, with recommendations sent to the deputy commissioner of the facility safety and security division or designee, to review programming needs and any threats to safety experienced by the incarcerated individual.

#### F. Single Cell, Showers, Undergarments, and Special Property Requests

1. Incarcerated people who are transgender, gender diverse, intersex, or nonbinary may request a single-cell assignment. The facility gender identity committee must review such requests and grant a single-cell assignment where necessary and appropriate to address a significant vulnerability or risk of physical or sexual harm to the person. The facility gender identity committee may also assign the individual to housing with other individuals of their gender identity if available.
2. Incarcerated people who are transgender, gender diverse, intersex, or nonbinary must be given the opportunity to shower separately in a manner so as to prevent viewing by other

incarcerated people, unless the facility gender identity committee has articulable safety or security concerns.

3. Facility staff must provide incarcerated people who are transgender, gender diverse, intersex, or nonbinary state-issued undergarments consistent with their gender identity, and the opportunity to purchase additional undergarments, as specified in attachment 302.250C, “DOC Allowable Property List” (attached), regardless of facility placement, unless the facility gender identity committee has articulable safety or security concerns. This is required even if the incarcerated person is housed in a facility with incarcerated people who have different gender identities.
4. Incarcerated people who are transgender, gender diverse, intersex, or nonbinary who reside at a facility designated for men must be permitted to purchase clothing and property allowed for other people housed in that institution, as well as those items allowed at MCF-Shakopee, commensurate with their particular security level unless the facility gender identity committee has articulable safety or security concerns. Incarcerated people who are transgender, gender diverse, intersex, or nonbinary who reside at MCF-Shakopee must be permitted to purchase clothing and property allowed for other people housed in MCF-Shakopee, as well as those items allowed at a facility designated for men, commensurate with their particular security level unless the facility gender identity committee has articulable safety or security concerns. Whether a person has been using such products prior to incarceration is irrelevant and unnecessary for the products to be allowed while incarcerated.
5. The facility gender identity committees considers special property requests not otherwise addressed in this section. These requests must be approved if consistent with someone’s expressed gender identity and the facility gender identity committee does not have articulable safety or security concerns. If the item is not medically indicated nor prescribed by a treating medical provider, the incarcerated person is responsible for securing funds for the special property. Property staff must make reasonable attempts to assist an incarcerated person in finding an appropriate vendor once an item is approved.

G. Searches of Incarcerated People Who Are Transgender, Gender Diverse, Intersex, or Nonbinary

1. Unless otherwise requested by the incarcerated individual and approved by the facility gender identity committee, pat and unclothed body searches of incarcerated people who are transgender, gender diverse, intersex, or nonbinary must be done in accordance with the gender of the facility in which they are assigned (that is, searches must be conducted by male staff in facilities that house men and by female staff in facilities that house women). Unclothed body searches must be made in a manner designed to ensure as much privacy to the person as practicable and consistent with Policy 301.010, “Searches.”
2. Incarcerated people who are transgender, gender diverse, intersex, or nonbinary may request that they receive pat or unclothed body searches from security staff of a specific gender. Such a request must be reviewed and pre-authorized by the facility gender identity committee and should only be denied if there are articulable safety or security concerns. Any exceptions to the general rule on searches must be specifically described (for example, “pat search only by female staff”), clearly communicated to relevant staff through written means, and reflected in COMS. Incarcerated people 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. When such search requests have been granted, staff of a different

gender may only conduct a pat or unclothed body search when exigent circumstances exist, and must complete an incident report documenting the exigent circumstances.

#### H. Medical and Mental Health Services

1. The department provides incarcerated people who are transgender, gender diverse, intersex, or nonbinary with appropriate gender-related mental health and medical services throughout their incarceration. It is not necessary for a person 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 to an incarcerated person after an individualized assessment by facility medical staff. The individualized assessment should, at a minimum, consider the following factors to determine whether the requested treatment is clinically appropriate and medically necessary to address gender dysphoria:
  - a) Whether the incarcerated person 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 and any alternative methods of treatment that may be equally effective at addressing or treating the gender dysphoria;
  - c) The treatment and life experiences of the incarcerated person 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 incarcerated person is willing to participate in mental health therapy, if needed, in conjunction with medical treatments;
  - e) Available continuity of care upon the individual's release, including considerations of residency upon release, availability of care, and the nature and length of the proposed care to be provided; 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. The role of mental health staff in responding to requests from incarcerated people who are transgender, gender diverse, intersex, or nonbinary to the facility gender identity committees and/or agency gender identity committee is to provide information related to the incarcerated individual's mental health stability.
4. Medical staff must consult with facility mental health staff regarding the mental health benefits of gender-related hormone or medical treatment. The medical provider treating the incarcerated person makes the final determination on whether gender-related hormone or medical treatments for the incarcerated person who is transgender, gender diverse, intersex, or nonbinary should be initiated or continued, consistent with generally-accepted medical practices in the treatment of gender dysphoria in correctional settings. This decision is made in consultation with the incarcerated individual, including education about potential risks and benefits as well as consideration of any alternative methods of treatment that may be equally effective at addressing or treating the gender dysphoria. Requests for gender-affirming surgical treatment, if considered medically necessary for treatment of the

incarcerated individual's gender dysphoria, would be managed by the medical provider in the standard manner for requesting outside consultation.

5. If it is unclear to the treating medical provider whether gender-related hormone or medical treatments are medically necessary to treat gender dysphoria, a consultation with a provider who specializes in transgender health care must be initiated.
6. Mental and medical decisions must be documented in the incarcerated person's electronic health record.

**I. Grievances**

1. Decisions of the facility gender identity committee must be grieved following the procedures outlined in DOC Policy 303.100, Grievance Procedure, for adult facilities and DOC Policy 303,095, Juvenile Grievance Procedure, for juveniles.
2. Recommendations of the agency gender identity committee for placement are reviewed and either approved or rejected by the deputy commissioner of the facility safety and security division. The deputy commissioner's decision is final and cannot be grieved because the deputy commissioner is the highest level on the chain of command for grievance/appeal review and determination.

**INTERNAL CONTROLS:**

- A. The written response from the facility gender identity committee regarding an incarcerated person's requests is retained in ODocS and must be promptly sent to the chair of the agency gender identity committee or designee for awareness and tracking purposes using the Facility Gender Identity Committee Decisions form.
- B. The decisions made by the facility gender identity committees are monitored by the agency gender identity committee and reviewed at least quarterly to ensure consistency in the treatment of transgender, gender diverse, intersex, and nonbinary people across the department.
- C. The determination and response of the deputy commissioner of the facility safety and security division in response to the agency gender identity committee's placement recommendation is noted in COMS and retained in ODocS.
- D. Mental health and medical decisions are documented in the incarcerated person's electronic health record.
- E. 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,” 10/06/20.  
All facility policies, memos, or other communications whether verbal, written or transmitted by electronic means regarding this topic.

**ATTACHMENTS:** [Agency Gender Identity Committee Recommendations form](#) (202.045A)  
[Facility Gender Identity Committee Decision form](#) (202.045B)  
[DOC Allowable Property List](#) (302.250C)

**APPROVALS:**

Deputy Commissioner, Reintegration and Restorative Services  
Deputy Commissioner, Facility Safety and Security  
Assistant Commissioner, Organizational and Regulatory Services  
Assistant Commissioner, Chief of Staff  
Assistant Commissioner, Health, Recovery, and Programming