DEPARTMENT OF CORRECTIONS

Policy Number:	**202.045**
Title:	**Management and Placement of Incarcerated People Who Are Transgender, Gender Diverse, Intersex, or Nonbinary**
Effective Date:	**04/01/24**

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 facility placement for incarcerated people who are transgender, gender diverse, intersex, or nonbinary. The committee is chaired by the department's assistant commissioner of health, recovery, and programming, and includes the department's assistant commissioner of facilities with oversight for MCF-Shakopee or designee, the director of the victim services and restorative justice unit or designee, the director of behavioral health or associate director/designee, and the director of nursing or associate director/designee.

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, with the exception of MCF-Togo and MCF-Willow River where it is chaired by either a captain or a correctional program director, and includes the director of clinical operations, mental health director, as well as the primary mental health provider and case manager of that facility. Appropriate and trained designees may be assigned as scheduling requires.

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."

World Professional Association for Transgender Health (WPATH) – a non-profit, interdisciplinary professional and educational organization devoted to transgender health, members of which engage in clinical and academic research to develop evidence-based medicine and strive to promote a high quality of care for transsexual, transgender, and gender-nonconforming individuals internationally.

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. Nothing in this policy prohibits an incarcerated person from making another request related to a change in their gender identity.

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 are expected to 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 client services and suppor 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. The facility gender identity committee also coordinates name-change requests under section F.6. of this policy.

3. The committees must consult with the incarcerated person to assist in making recommendations and decisions. Incarcerated people must be offered the opportunity to speak to the committees about their request prior to any decisions. If an incarcerated person declines the opportunity to attend the committee meeting, that must be documented and saved electronically by the committee with the decision documents.

4. Before any requests under this policy are reviewed by committees, the requesting person must either participate in a gender-identity mental health screening or provide access to medical or mental health records reflecting their gender identity. If a person does not participate in requested gender identity mental health screening and does not share adequate medical or mental health records reflecting their gender identity, their requests will not be reviewed by any of the facility gender identity committees or the agency gender identity committee.

5. The deputy commissioner and the facility gender identity committees must promptly review and respond to incarcerated persons' 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 electronically and must be promptly sent to the chair of the agency gender identity committee or designee for awareness and tracking purposes. The written recommendation from the agency gender identity committee and the decision letter from the deputy commissioner of client services and supports regarding a transfer request are retained electronically.

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 and designees must receive initial and annual training on understanding the experiences and treatment of incarcerated people who are transgender, gender diverse, intersex, or nonbinary.

9. 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 facility gender identity committees, with recommendations sent to the agency gender identity committee chair and the deputy commissioner of client services and supports, to review any threats to safety experienced by the incarcerated individual.

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 mental health screening unless the incarcerated person has a documented history affirming their gender identity and completes a release of information related to medical or mental health records reflecting their gender identity. At minimum,

facility mental health staff must offer to meet with the person to discuss their wellbeing, expressed needs with respect to their own safety, preference for 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 mental health screening or medical record review, the facility mental health director or appropriately trained designee must directly provide the screening to the incarcerated individual, and to the following based on the nature of the person's requests:
   a) Hormone intervention requests related to their gender identity should be forwarded to the individual's treating medical professional to review.

   b) Surgical intervention requests related to their gender identity should be logged electronically to schedule a client evaluation with the World Professional Association for Transgender Health (WPATH) certified provider.

   c) 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.

   d) Transfer requests between facilities designated for adult men must follow the procedures outlined in DOC Policy 301.095 Central Transportation – Offenders.

   e) Transfer requests between facilities designated for adult men and adult women should be forwarded to the agency gender identity committee chair who will promptly 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."

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. When someone requests to transfer under this policy, the agency gender identity committee makes recommendations to the deputy commissioner of client services and supports regarding facility placement. A transfer request to a facility matching an incarcerated person's gender identity should be approved unless the deputy commissioner determines, 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 and deputy commissioner 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, and caseworkers where the person currently resides and of the facility to which the person may be transferring. The agency gender identity committee may also consult with any contracted WPATH-certified professional.

5. The agency gender identity committee must promptly forward its recommendations regarding facility placement and transfers between facilities designated for adult men and adult women to the deputy commissioner of client services and supports 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 approve or deny the request.
   a) The deputy commissioner's determination, including a statement of reasons for any denial of a transfer request, is sent to the chair of the agency gender identity committee, the impacted facility wardens and gender identity committee chairs, and to the incarcerated person, and retained electronically.

b) If approved, the determination is also sent to health services, the victim services and restorative justice unit, and the individual's caseworker to prepare for transfer. The facility gender identity committee from the individual's current facility and transfer facility must schedule a followup meeting with the incarcerated person to discuss transfer needs.

c) If denied, the facility gender identity committee must offer a followup meeting with the incarcerated person to discuss any additional gender identity related needs.

6. Placement requests that were originally denied will not be considered again for a period of at least 12 months following the denial absent a material change in circumstances or new information that was not originally shared with the agency gender identity committee.

7. Placement requests that are granted are not reconsidered for a period of at least 12 months following the placement, absent exigent circumstances. Individuals transferred under this policy must be placed in single-cell accommodations for at least six months to allow for adjustment to the new facility. After that time, individuals may request a change to this single-cell accommodation in accordance with DOC Policy 202.105, "Multiple Occupancy Cell/Room Assignment," and Section F.1 of this policy.

F. Single Cell, Showers, Undergarments, Special Property, and Name Change 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. If there are capacity concerns, the facility gender identity committee may alternatively assign the individual to housing with other individuals of similar gender identity if safety concerns can be managed. Single-cell accommodations may also be assigned in accordance with Section E.7. of this policy.

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 including any combination of those items up to the allowable limit if requested, 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 medicaly 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.

6. Pursuant to Policy 202.130, "Names,"incarcerated people who are transgender, gender diverse, intersex, or non-binary who have received, whether prior to or during their incarceration, a court-ordered legal name change may obtain a name change. Facility gender identity committees must promptly forward requests to the records unit for processing under Policy 202.130, "Names."

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, identified on the incarcerated person's badge, 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. Staff do not need to complete incident reports solely based on the fact of completing an approved search.

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. The DOC provides medical care in accordance with WPATH standards of care. 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. Incarcerated people who were prescribed gender-affirming hormone therapy at the time of their commitment will be allowed to continue hormone therapy as long as it is not medically contraindicated. Nevertheless, individuals may request gender-affirming hormone therapy regardless of whether they were previously prescribed such therapy or previously diagnosed with gender dysphoria.

3. All requests for gender-affirming medical care are assessed on a case-by-case basis. For gender-affirming hormone therapy, an incarcerated person receives an individualized assessment by their treating medical provider, which, at a minimum, must consider the following factors to determine whether the requested treatment is clinically appropriate and medically necessary:
   a) 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

   b) 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.

4. If a request for gender-affirming hormone therapy is denied for reasons other than medical contraindication, the incarcerated individual may request further review by the WPATH-certified contractor to determine whether hormone therapy is clinically appropriate and medically necessary.

5. For gender-affirming surgical procedures, incarcerated individuals are evaluated by a contracted WPATH-certified professional who evaluates the surgical readiness of that individual. DOC staff review the WPATH-certified professional's recommendations upon receipt of the completed evaluation, and follow up on scheduling covered services in the standard manner for requesting outside consultation. Incarcerated individuals may pursue non-covered recommended services through Policy 500.135, " Offender-Requested Private Health Care."

6. 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.

7. Medical staff may 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 provision of gender-affirming care 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.

8. If it is unclear to the treating medical provider whether gender-related hormone or medical treatments are medically necessary, the provider must consult with the contracted WPATH-certified professional.

9. Mental health and medical decisions must be documented in the incarcerated person's electronic health record.

I. Grievances

1. Decisions of the facility gender identity committees 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, with the facility warden acting as the facility grievance authority in the chain of command.

2. Recommendations of the agency gender identity committee for placement are reviewed and either approved or rejected by the deputy commissioner of client services and supports. 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 electronically.

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 client services and supportsin response to the agency gender identity committee's placement recommendation is retained electronically.

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, and identified on the incarcerated person's badge.

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, "Management and Placement of Incarcerated People Who Are Transgender, Gender Diverse, Intersex, or Nonbinary," 1/31/23.
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, Chief of Staff
Deputy Commissioner, Client Services and Supports
Assistant Commissioner, Agency Services and Supports
Assistant Commissioner, Facilities
Assistant Commissioner, Facilities
Assistant Commissioner, Community Services and Reentry
Assistant Commissioner, Health, Recovery, and Programming