

# **POLICIES TO INCREASE SAFETY AND RESPECT FOR TRANSGENDER PRISONERS**

**A GUIDE FOR AGENCIES AND ADVOCATES**



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This is a guide for staff of correctional agencies and external advocates who are ready to dig into the details of writing and revising jail and prison policies relating to transgender and all LGBTQ prisoners. Each chapter covers a unique topic and includes several sample policies in place in facilities across the U.S.

For a basic overview of the issues facing transgender and all LGBTQ prisoners and their legal rights, please see

*TRANSGENDER PEOPLE BEHIND BARS: A guide to understanding the issues facing transgender prisoners and their legal rights.*

If you are an external advocate (not currently on staff at a correctional facility), you may also find the following two guides helpful:

*ENDING ABUSE OF TRANSGENDER PRISONERS: A guide for advocates on winning policy change in jails and prisons*

*LGBTQ CRIMINAL JUSTICE REFORM: Real steps LGBTQ advocates can take to reduce incarceration*

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For all press inquiries related to this document or NCTE's work regarding prison policy and its impacts on transgender people, please contact Media Relations Manager Gillian Branstetter at [Press@Transequality.org](mailto:Press@Transequality.org).

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## INTRODUCTION

LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER (LGBTQ) PEOPLE in jails, prisons, and other detention facilities often have unique needs and vulnerabilities. Research shows that LGBTQ people are overrepresented in prisons and jails,<sup>1</sup> and that they are substantially more likely to face abuse and violence behind bars than others.<sup>2</sup> Many LGBTQ prisoners have unique needs related to housing, medical treatment, privacy, and other concerns. In order to protect the health and safety of LGBTQ prisoners and treat them with decency and fairness, it is important for correctional agencies to have policies that specifically address their needs.

Many correctional agencies or staff, as well as advocates, want to make sure that LGBTQ prisoners are treated with respect and protected from harm, but they may have questions about how to craft policies to accomplish that. This guide provides agencies, staff, and advocates an overview of policies addressing key issues that affect LGBTQ prisoners, including intake procedures, placement of transgender people, access to medical care, and sexual abuse prevention and response.

Many of these policies have been implemented for years in facilities across the country, and a growing number of agencies are adopting them. Throughout the guide, we provide excerpts from policies adopted by agencies as illustrations. These examples may need to be adapted to each agency, and in many cases can be improved upon. We do not recommend copying language word-for-word from these

examples, nor do we necessarily support all other provisions of the agency policies excerpted here. These examples can give you an idea of what agencies are already doing and what you may want your policy to look like. Most of the policy elements discussed here have already been adopted by a number of corrections, juvenile detention, and/or law enforcement agencies, and full copies of many of these policies can be found online or obtained from national organizations such as NCTE.

**We encourage advocates and agencies to contact the National Center for Transgender Equality for additional assistance in developing effective policies. We also strongly encourage corrections agencies to consult with advocates in your state or locality.**

### **NATIONAL INSTITUTE OF CORRECTIONS LGBTI POLICY GUIDE: A CRITICAL COMPANION**

The National Institute of Corrections (NIC) has released an in-depth resource for custodial settings on developing policies on LGBT and intersex people, *Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings*. You may wish to use this resource as a companion to this guide and a reference for policy development. Be aware, however, that the NIC guide presents some issues in a slightly different way than we do in this toolkit. Find the NIC guide at: <http://info.nicic.gov/lgbti>.

This guide also includes legal standards relevant to each policy area. LGBTQ people who are incarcerated have specific civil rights under the U.S. Constitution and state and federal statutes.<sup>3</sup> Additionally, standards adopted in 2012 to implement the Prison Rape Elimination Act, known as the PREA Standards, include several provisions that direct agencies to pay particular attention to protecting LGBTQ people and people who do not fit gender stereotypes, as well as intersex people—including consideration of a person’s LGBTQ identity in determining risk for sexual victimization, limitations on cross-gender searches, and special considerations for housing placements of transgender and intersex individuals. The PREA Standards are legally binding on federal prisons, and state prison systems can face penalties on their federal funding or lose accreditation if they are found not to be in compliance.<sup>4</sup> Adopting and implementing robust and comprehensive policies can help agencies meet their obligations under the law.

As you work through this policy guide, keep in mind that it may not be comprehensive—it is only intended to get you started. The right policies will depend on the needs of the LGBTQ population in custody of the agency, the circumstances of each facility, and the laws of the state. Developing policies will likely require a joint effort of advocates, agency leadership, and facility staff. Those policies should be informed by input from affected members of the community, particularly people who have had first-hand experience being incarcerated under the agency or facility for which policy is being developed.

Finally, remember that developing an LGBTQ policy is just one step. Even once new policies are adopted, continued work will be needed to ensure that they are being implemented and monitored, and that individual LGBTQ prisoners are getting the support and advocacy they need.

## A NOTE ON LANGUAGE IN THIS GUIDE

In this guide, we generally use the term “prisoner” in discussing people who are being held in a confinement facility. Agencies themselves may use a variety of terms, such as “inmates,” “detainees,” and “residents.” These different terms reflect the different laws, environments, and cultures in these facilities. Accordingly, the excerpts from PREA Standards and sample agency policies included in this guide use varying terms.

<sup>1</sup> See, e.g., Meyer, I. H., Flores, A. R., Stemple, L., Romero, A. P., Wilson, B. D. M., & Herman, J. L. (2017). American Journal of Public Health 107(2). Available at: [https://williamsinstitute.law.ucla.edu/wp-content/uploads/Meyer\\_Final\\_Proofs.LGB\\_In\\_.pdf](https://williamsinstitute.law.ucla.edu/wp-content/uploads/Meyer_Final_Proofs.LGB_In_.pdf).

<sup>2</sup> See, e.g., Beck, A. J. (2014). Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12: Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates. Washington, DC: Bureau of Justice Statistics, available at [https://www.bjs.gov/content/pub/pdf/svpjri1112\\_st.pdf](https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf); Beck, A. J., Berzofsky, M., Caspar, R., & Krebs, C. (2013). Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12. Washington, DC: Bureau of Justice Statistics. Available at: <https://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

<sup>3</sup> To learn more about the rights of transgender prisoners under the Constitution and other legal standards, see TRANSGENDER PEOPLE BEHIND BARS: A guide to understanding the issues facing transgender prisoners and their legal rights at <https://transequality.org/transpeoplebehindbars>.

<sup>4</sup> Note that the PREA language provided comes from the standards for adult jails and prisons. Separate PREA Standards apply to police lockups, juvenile facilities, and community corrections facilities (e.g. halfway houses), which are often similar but have some important differences.

## NONDISCRIMINATION STATEMENTS

THE CORNERSTONE FOR ANY WRITTEN POLICY THAT ADDRESSES THE conditions of confinement for LGBT people is a clear nondiscrimination statement. Such a statement should specifically prohibit discrimination as well as verbal, physical, and sexual harassment of prisoners on the basis of actual or perceived sexual orientation, gender identity, gender expression, and transgender status by any staff member—including correctional officers, volunteers, and contractors—as well as by other prisoners.

The National Institute of Corrections, the Department of Justice agency that provides guidance for corrections departments and facilities, recommends the adoption of a nondiscrimination statement:

*Agencies should develop, adopt, and enforce policies that explicitly prohibit discrimination and mistreatment of inmates or residents on the basis of sex, age, race, national origin, disability, and actual or perceived sexual orientation and gender identity. These policies should specifically prohibit harassment and abuse of inmates or residents by staff or other inmates or residents based on gender identity or sexual orientation.*

The National Institute of Corrections provides a number of questions to help evaluate an agency's nondiscrimination policy, including:

- *Does the agency have a nondiscrimination policy for employees, inmates, residents, and/or volunteers?*
- *Does the agency policy require all LGBTI inmates or residents to be treated with fairness, dignity, and respect?*
- *Does the agency policy prohibit attempts by staff to ridicule or change an inmate's or resident's sexual orientation or gender identity?*
- *Does the agency policy define staff duty to provide safe and healthy environments in which all individuals are treated with respect and dignity?*
- *Does the agency policy define staff responsibility for protecting the civil rights of LGBTI inmates or residents while in custody, and ensuring their physical and emotional wellbeing and safety in facilities?*

### POLICY EXCERPTS: NONDISCRIMINATION STATEMENTS

**Vermont Department of Corrections—Policy No. 432.01: Gender identification, care, and custody (February 18, 2015)**

It is the policy of the Vermont Department of Corrections (DOC) to treat all persons, whether or not in custody, in a respectful, courteous, and professional manner while maintaining safety and security. DOC is opposed to and prohibits without qualification discrimination or harassment of any kind based on gender identity status and/or sexual orientation. DOC believes in the following principles as it relates to its policy toward all inmates.

- a. DOC recognizes the importance of diversity of human beings and has zero-tolerance for discrimination based on sex, sexual orientation, or gender identity by its employees, volunteers, contractors, inmates, and/or offenders.
- b. DOC believes in treating all inmates and/or offenders, regardless of sex, sexual orientation, or gender identity, with fairness, dignity, and respect.
- c. DOC has zero tolerance for staff to, or attempt to, ridicule or change an inmate or offender's sexual orientation or gender identity.
- d. DOC staff hold a duty to provide a safe and healthy environment in which all individuals, regardless of their sexual orientation, gender identity, or sex, are treated with respect and dignity to best of the staff and/or department's ability.
- e. DOC has a zero-tolerance policy for sexual harassment. This includes staff-on-inmate, inmate-on-staff, staff-on-offender, offender-on-staff, offender-on-offender, and any other combination of harassment.

***Denver Sheriff Department—Department Order 4005.1 (June 6, 2012)***

- G. 5. While in the custody of or while housed at any division of the Denver Sheriff Department, DSD staff:
- a. Shall not discriminate against transgender/gender-variant inmates.
  - b. Shall not subject transgender/gender-variant inmates to verbal or physical harassment or create a hostile environment.

***Cumberland County, Maine Sheriff's Office—Policy D-243: Transgender Inmates (December 2009)***

5. While housed at the Cumberland County Jail transgender, intersex and transsexual inmates shall not be discriminated against and shall not be subject to verbal or physical harassment or a hostile environment.

<sup>1</sup> National Institute of Corrections. (2014). Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings (2nd edition). Available at: [https://info.nicic.gov/sites/info.nicic.gov/lgbti/files/lgbti-policy-review-guide-2\\_0.pdf](https://info.nicic.gov/sites/info.nicic.gov/lgbti/files/lgbti-policy-review-guide-2_0.pdf).

<sup>2</sup> National Institute of Corrections. (2014). LGBTI Adults under Custodial Supervision Checklists. Available at: <https://info.nicic.gov/sites/info.nicic.gov/lgbti/files/LGBTI-Adults-under-Custodial-Supervision-Checklists.pdf>.

## INTAKE AND IDENTIFICATION PROCEDURES AND RISK ASSESSMENTS

INTAKE IS MOST OFTEN THE FIRST TIME FACILITY STAFF WILL COME into contact with new prisoners and will be able to identify those with specific vulnerabilities. Identifying LGBTQ prisoners and others who are vulnerable is an important first step in decreasing safety risks and addressing concerns of these prisoners. If there is no procedure in place to allow LGBTQ prisoners to safely disclose their identity or concerns about the risks they may face, the facility will have a harder time addressing specific safety concerns when making classification and housing decisions for LGBTQ prisoners and meeting the specific privacy and health care needs of transgender prisoners. Therefore, policies should include intake and identification procedures to safely and privately identify LGBTQ prisoners and those who are perceived to be LGBTQ, as well as intersex people, in order to provide for their safety and to meet their specific needs.

Federal PREA Standards require that agencies proactively assess and document indicators of prisoner risk of sexual victimization, including LGBTQ or intersex status.<sup>1</sup> Identifying LGBTQ and other potentially vulnerable persons is therefore part of an overall process of risk assessment. The assessment-screening instrument should use objective factors that are less likely to penalize LGBTQ people on the basis of bias or misunderstanding. The facility will most likely already have some policies and/or procedures in place related to risk assessments, in light of the requirements of the PREA Standards and court decisions.

### WHAT DOES “INTERSEX” MEAN?

Intersex people are born with sex characteristics (including genitals, gonads, and chromosome patterns) that do not fit typical binary notions of male or female bodies. “Intersex” is an umbrella term used to describe a wide range of natural bodily variations. According to experts, between 0.05% and 1.7% of the population is born with intersex traits—the upper estimate being similar to the number of red-haired people.

In some cases, intersex traits are visible at birth, while in others they are not apparent until puberty or later. Some chromosomal intersex variations may not be physically apparent at all. However, intersex individuals in jails and prisons can be vulnerable to abuse if others learn about their status. While intersex people may or may not identify as LGBT, the PREA Standards include intersex people in all the same protections set out for LGBT people, as well as those specific to transgender people, based on this shared potential for vulnerability.

Importantly, questions about a person’s LGBTQ status must be designed to provide people with an opportunity to self-disclose if they wish, but should not require disclosure. The Department of Justice clarifies: “[I]t is clear that the agency may not compel the inmate/resident to answer. Specifically, the adult facility standards provide that inmates/residents may not be disciplined for refusing to answer (or for not disclosing) certain enumerated factors, including whether they identify as LGBTI.”<sup>2</sup> Many LGBTQ people may not feel comfortable or safe disclosing their LGBTQ status to staff, and the purpose of this policy is not to force anyone to come out, but rather to ensure that those prisoners who are concerned about their vulnerability based on their actual or perceived identity, or those who need access to medical care or facility accommodations that respect their gender identity, have a clear opportunity during the intake process to inform facility



staff of these concerns and needs.

Existing policies, procedures, tools, or forms related to risk assessment that the facility uses should be reviewed to find out if there is any reference currently to LGBTQ people, sexual orientation, or gender identity. It is important to identify any negative language—for example, anything that may result in LGBTQ prisoners being seen as prone to abusive behavior based on their identity. It is possible that the agency’s existing procedures in this area will not include any language that is specific to LGBTQ prisoners and will need to be updated to incorporate the PREA requirements, or that the procedures will include this language but will not have effective intake questions in place. While some facilities develop separate policies focusing specifically on LGBTQ or transgender prisoners, it may be easier for staff to learn and follow provisions that are incorporated into existing general assessment policies. Any policy changes in this area should indicate that prisoners’ identification as LGBTQ, or the perception that they are LGBTQ, falls under the list of criteria used to assess prisoners’ risk of victimization and should not be used as an indication that they are likely to be abusive themselves.

## GUIDELINES FOR ASKING ABOUT LGBTQ STATUS

What intake and identification procedures look like is very facility-specific, but any policy you develop in this area should include direction related to the following questions:

### How should the question be presented?

It is important that questions about a prisoner’s LGBTQ status be presented in a way that makes the prisoner feel as comfortable as possible answering openly. It might be helpful for advocates to work with agency staff to develop the language and framing for this question, particularly if intake staff are unsure about how to ask it or if they have been asking the question in a manner that some prisoners find alienating or confusing. It may be helpful for the specific language for this question to be written out in the policy, in post orders for specific officer positions conducting intake screening (these are similar to detailed job descriptions in many correctional systems), or in training materials.

Before asking about a prisoner’s identity, it can be helpful for intake staff to explain why they are asking, clarify that all prisoners receive that question, and make sure that the individual understands that their answer is optional and that their privacy would be protected. For example: “I am going to ask you some questions that we need to ask everyone. These questions help us understand whether people in this facility have certain needs or might be vulnerable to harassment. You don’t have to answer if you don’t want to, and whatever you say will be kept private.”

There are a number of ways that the question about someone’s LGBTQ status can be posed. It may be helpful to phrase the question in a way that does not demand a yes or no answer to “Are you lesbian, gay, bisexual, transgender, queer (LGBTQ) or intersex?” Instead, after asking about other vulnerability factors, intake staff could ask, “Are there other factors that may make you vulnerable or require special consideration, such as being gay, lesbian, bisexual, or transgender (LGBTQ) or intersex?” One suggestion provided by the Department of Justice’s PREA Resource Center is for intake staff to ask people *if they would like to tell them* their sexual orientation or gender identity, rather than asking people whether they are gay, lesbian, bisexual, or transgender. Intake staff could also ask people whether they are concerned they might be perceived as being

LGBTQ, which may make some people more comfortable discussing potential vulnerabilities.

Intake staff should also keep in mind that some prisoners may not be familiar with terms like lesbian, gay, bisexual, and transgender or may use different words to describe themselves, and may benefit from questions being asked in other ways. For example, in order to determine whether someone is transgender, intake staff may ask prisoners, “Do you usually live as a man, a woman, or another gender?”

However the question is asked, intake staff should always state clearly that no one will be disciplined for not disclosing their LGBTQ status. Similarly, intake staff should ask if a person has ever been sexually abused, but make clear they will not be disciplined for not disclosing.



**QUESTION:** *Should intake officials try to identify people who are LGBTQ or gender nonconforming based on appearance, behavior, or mannerisms, or is relying on these kinds of judgments alone a form of inappropriate stereotyping?*

While gender nonconforming appearance, behaviors, or mannerisms should not be the sole basis for labeling someone as LGBTQ, staff should be looking at these factors during intake to help identify prisoners who are potentially at risk. Even if a prisoner is not LGBTQ, they may face similar vulnerabilities as LGBTQ prisoners if their appearance or behavior doesn't conform to gender stereotypes. During intake, staff should ask prisoners whether they feel vulnerable to abuse for any reason, including because they are LGBTQ or because others might perceive them to be LGBTQ even if they are not. Even if the prisoner does not indicate that they are LGBTQ, facility staff can and should take into account their own perception of whether a prisoner conforms to gender stereotypes when assessing whether they are vulnerable to abuse. However, the facility should not label a prisoner as LGBTQ simply because they don't conform to gender stereotypes.

The Department of Justice has clarified that intake staff's perceptions of a prisoner's gender nonconformity are relevant considerations: “Perception is important because if the screener perceives that an inmate/resident might be considered LGBTQI and/or gender nonconforming, then other inmates/residents (and staff) may have the same perception. Specifically, gender nonconformity is usually something that can be determined by staff, though that perception is not to be substituted for an inmate's/resident's own self-identification.”<sup>6</sup>

### **Where and when should the question be asked?**

The PREA Standards require that risk screening, including questions about a prisoner's LGBTQ status, take place within 72 hours of a prisoner's arrival at the facility, but they give facilities the discretion to choose the setting where that question is asked. For example, it may be asked as part of the regular intake process, intake medical exams, or a separate screening interview.<sup>3</sup> The right setting varies from one facility to another, but protecting prisoners' privacy should be a key consideration in determining where they receive questions about their LGBTQ status. In order to comply with the PREA Standards, agencies need to take steps to protect the confidentiality of sensitive information, like information about a prisoner's LGBTQ status.<sup>4</sup> If facility staff normally conduct the regular intake process within earshot of other staff and prisoners, questions about an

individual's LGBTQ status and medical information should be reserved for a more private setting.

### **How will LGBTQ prisoners' privacy be protected?**

The policy should include specific guidance about where information about a prisoner's LGBTQ status gets recorded, who has access to it, and what measures must be taken to protect confidentiality. For example, the policy may require that this and other sensitive information be kept in a separate record accessible only to staff who need to know it, and that it may be shared only in limited circumstances, such as to assess risk or determine housing placements.

### **What training will intake screeners receive on how to inquire about LGBTQ status?**

PREA standards require that staff be trained on “how to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates.”<sup>5</sup> This includes training on how to ask about LGBTQ status in a respectful manner. In order to make sure intake staff understand how to implement the policy, community advocates and agency staff may want to develop an in-person training session or written training materials, such as a standardized, LGBTQ-inclusive risk assessment form or an FAQ.

## **SPECIFIC GUIDANCE FOR IDENTIFYING TRANSGENDER PRISONERS**

Intake staff may need specific guidance to help them to identify prisoners who may be transgender in the ordinary course of intake assessments. Guidelines for staff might address some of the following points:

- Intake staff may learn that a prisoner is transgender if they disclose that information during the intake process. If a prisoner does not initially disclose they are transgender, staff should be aware of possible indications that the prisoner may be transgender. For example, a prisoner who asks to be referred to by a name and pronouns that are associated with a gender different from the one on their identity documents might be transgender. A prisoner's transgender status may also be reflected in their court or medical records or on other documentation. If staff think that a prisoner may be transgender or are unsure what the prisoner's gender identity is, they should respectfully ask to confirm their gender and whether they are transgender. A prisoner who does not say that they are transgender should not be classified as such, but staff can still note them as someone who may be vulnerable to abuse because of not fitting gender stereotypes.
- It is important to understand that while some prisoners may disclose during intake questioning, prisoners may use a variety of terminology to describe their identity depending on their cultural background and age, e.g., a prisoner may self-identify as transgender, transsexual, gender nonconforming, or any one of many terms that have similar meanings in a prisoner's primary language if other than English. Some transgender prisoners may describe themselves simply as gay, regardless of their actual sexual orientation. Some prisoners may not use identity terms at all but instead will make statements along the lines of “I am trapped in the wrong body,” or simply “I am a woman” or “I am a man.”
- When reviewing a prisoner's identification documents, court records, or medical records, or other documentation, staff should determine whether these documents indicate that a prisoner is transgender and whether they use a gender marker that is different from the gender the individual is living and outwardly presenting as. For transgender prisoners

who have been transferred from a local jail, their transgender status is often noted in accompanying paperwork, reports, or files. For transgender prisoners who were recently arrested, it is not uncommon for their arrest reports to note that they were dressed at the time of arrest in clothing associated with a gender different from the one they were thought to be at birth.

- In other cases, an individual’s appearance (e.g., clothing, wig, hair and grooming, makeup, breasts, etc.) or preferred name (or AKA) can indicate to staff that a prisoner may be transgender.
- Regardless of whether or not staff find indications that they are transgender, all prisoners should be given an opportunity to voluntarily disclose whether they are transgender, as well as whether they are lesbian, gay, or bisexual, during the intake process, and no prisoner may be penalized for not disclosing information about their transgender status during intake.

Intake staff should be aware that many transgender prisoners haven’t obtained a legal name change or updated identity documents to reflect their gender identity, and many won’t have undergone medical treatments or have a documented diagnosis of gender dysphoria. Taking these sorts of legal and medical steps can be expensive, burdensome, and inaccessible for many transgender people, especially those who are living in poverty, and many have not taken these steps for a variety of reasons. If a

prisoner has disclosed their transgender status to intake staff, the mere fact that they haven’t had medical treatment or official document changes does not indicate that they are *not* transgender. While it is legitimate for medical staff or certain intake staff to ask transgender prisoners about medical and legal steps they have taken as part of their transition (for example, in order to assess risk of victimization or current medical needs), this type of information should never be used as a threshold that transgender prisoners must meet to “prove” that they are transgender.

**While it is legitimate for medical staff or certain intake staff to ask transgender prisoners about medical and legal steps they have taken as part of their transition (for example, in order to assess risk of victimization or current medical needs), this type of information should never be used as a threshold that transgender prisoners must meet to “prove” that they are transgender.**



**QUESTION:** *Is there a risk that non-transgender men will falsely claim to be transgender women in order to be housed with women?*

The reality is that this hypothetical scenario is extremely unlikely—and even if it did happen, it would be easy to catch it. Transgender women are an extremely stigmatized population, and one well known to be highly vulnerable to abuse and violence. It is extremely unlikely that prisoners would falsely claim to be transgender and open themselves up to the immense risks that transgender prisoners face. Even if this did happen, involving a trained medical or mental health care provider in the assessment process, and asking a standard set of questions, will ensure that such rare cases would be easily identified. Additionally, agencies will continue to have the ability to make case-by-case determinations, based on a range of factors, about housing and other issues.

Once an agency identifies that a prisoner is transgender, there are some actions that must be taken in order to better protect the transgender prisoner’s safety, dignity, and privacy before final decisions are made regarding classification, housing, and medical care. You may want to consider including in your policy some guidance for intake staff on how to make these immediate decisions, and using a screening form to help identify the transgender prisoner’s needs related to their specific privacy and safety needs. Numerous jurisdictions are now employing some version of a screening form for transgender prisoners that allows them to state their safety needs related to the gender of individuals who will search them in the event a search is necessary, the name and pronouns staff should use, housing, clothing, and/or medical needs. For examples of such forms, see Appendix A.

**Some prisoners only disclose—or, in some cases, come to realize—that they are transgender during their time in prison. The agency’s policy should ensure that prisoners have an opportunity to express their needs related to**

## PREA STANDARDS AND GUIDANCE

*DOJ PREA Standards § 115.41—Screening for risk victimization and abusiveness*

- (d) The intake screening shall consider, at a minimum...to assess inmates for risk of sexual victimization:
  - (1) Whether the inmate has a mental, physical, or developmental disability;
  - (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
  - (8) Whether the inmate has previously experienced sexual victimization;
  - (9) The inmate’s own perception of vulnerability.
- (h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section.

*Screening for Risk of Sexual Victimization and for Abusiveness: Guidelines for Administering Screening Instruments and Using the Information to Inform Housing Decisions (May 2013)*

It is best to ask directly about sexual orientation and gender identity rather than to guess or try to interpret based on visible traits. Although staff’s observations may inform their first impressions about people they are screening, it is important that information provided through the screening interview be given more weight. Some staff have found they are more successful when they introduce questions about sexual orientation and gender identity by saying, “I ask you because there is no way to tell the answers from the outside” or “I’m going to ask you some questions that I ask everyone I see” or some similar phrase to indicate you are not targeting that individual.<sup>7</sup>

## POLICY EXCERPTS: IDENTIFYING TRANSGENDER PRISONERS

### ***Vermont Department of Corrections—Policy No. 432.01: Gender identification, care, and custody (February 18, 2015)***

2. a. Booking and Admission
  - i. The Booking Officer shall request the inmate’s LGBTQI status from the transporting/arresting agency.
  - ii. During the booking process the Booking Officer will issue a *Gender Preference Form*\* to all incoming inmates.
  - iii. If an incoming inmates identifies as an LGBTQI community member on the *Gender Preference Form* then the Booking Officer will notify the Correctional Facility Shift Supervisor (CFSS) and medical that the form was completed.
  - iv. The inmate will be entered into the database using their legal name and gender but will be identified by their chosen name. All communication involving LGBTQI inmates shall be in accordance with Section 4 “Respectful Communication” on page 8 of this directive.

\* The *Gender Preference Form* is the inmate or resident’s opportunity to request accommodations and to express their concerns about safety, their name, their preferred pronoun, shower preference, and searches. DOC will utilize this form in determining whether or not an LGBTQI inmate or resident will receive accommodations.

### ***New Mexico Corrections Department—CD-150800: Transgender Inmates (September 11, 2017)***

- H. During intake and the initial classification screening and when determining whether inmates are transgender or gender non-conforming, the following shall be taken into consideration:
  - a. Inmate appearance and behavior and whether or not it matches the gender marker on the inmate’s arresting paperwork or identification materials
  - b. Self-reporting from the inmate
  - c. Inmate’s past history, if known
  - d. Any alerts from the transportation agency
  - e. Any other documentation that may be available to intake and classification staff upon initial screening

### ***Santa Clara Probation Department—Juvenile Hall Transgender Procedure Guidelines (2012)***

- A. Transgender youth may be identified during admissions based on:
  1. A youth’s statements that he or she is transgender, is “trapped in the wrong body,” or is really a different sex than his or her birth sex;
  2. A minor’s request to be called by a name that is not traditionally associated with his or her birth sex;
  3. Any statements in arrest reports indicating the youth is transgender or that the police were unsure of the minor’s sex.
- B. Upon admission, a minor who, may fall under the definition of transgender as

noted above, but who has not previously filled out a Transgender Preference Form, will be admitted and processed in the following manner:

1. During the regular admit process the Admit Counselor will ask:
  - a. Do you go by another name other than the one listed here on the JCR [juvenile court record]?
  - b. Do you dress as a boy or girl in the community?
  - c. Do you see yourself as a boy or a girl?
2. The Admit Counselor will ask minor's preferred name and pronoun and note this on the unit assignment sheet and the rolodex card.
5. In order to ensure their privacy and safety, the transgender minor will be temporarily classified as an NR (no roommate) / O (Other) risk and shall be provided a single room pending further review by the United Supervisor and/or housing decisions based on the MDT [multi-disciplinary team].

***Harris County, Texas Sheriff Department—Lesbian, Gay, Bisexual, Transgender, and Intersex (L.G.B.T.I.) Policy 413 (November 13, 2013)***

- C. Identification
  1. The following shall be used as identifiers:
    - a. Prisoner's appearance or behavior — it shall be an identification indicator if a prisoner's appearance or behavior does not match the name or gender marker on the prisoner's arresting/transportation paperwork or identification.
    - b. Prisoner self-reporting.
    - c. Prior booking records.
    - d. Any questioning done by personnel shall be conducted in a private and respectful manner.
  2. Due to their vulnerability, prisoners identified as transgender shall be expedited from time of arrest to classification.

***Denver Sheriff Department—Department Order 4005.1 (June 6, 2012)***

- 5.A.1. When determining whether prisoners are transgender/gender-variant, the following should be taken into consideration:
  - a) Prisoner's appearance or behavior does not match the gender marker on the prisoners arresting/transportation paperwork or identification.
  - b) Prisoner self-reports. If there is doubt or a question concerning the validity of the self-report the DSD officer shall consult a supervisor and if necessary, medical staff.
  - c) Arresting/transporting agency has alerted the DSD staff to the prisoner's transgender/gender-variant status.
  - d) Prisoner's past history, if known.
- D. Medical Staff Notification
  1. The intake search officer will be responsible for notifying the medical staff that a transgender/gender variant inmate has been identified.
- E. Temporary Housing
  1. The transgender/gender-variant inmate shall be temporarily housed in

Administrative Segregation. This temporary housing shall be for no more than 72 hours, excluding weekends and holidays.

***Cumberland County, Maine Sheriff's Office—Policy D-243: Transgender Inmates (December 2009)***

A.1. When an individual indicates they are transgendered or intersex at any time while in custody, or an inmate's gender identity, appearance, overt expression or behavior differs from their birth sex or genitalia, jail staff shall question the individual regarding sexual identity, gender identity or gender expression.

5. Upon intake, when an inmate's gender-related expression, identity, appearance or behavior differs from their sex, staff shall place those inmates in one of the side cells in the intake area during intake, and their status will be protective custody. If the inmate has been housed previously at this facility, prior housing assignment will be considered.

B.1. After the completing of intake and the inmate has been identified as transgender or intersex, they shall be housed in one of the intake side cells on protective custody status consistent with the inmate's gender declaration for no more than 72 hours, excluding weekends and holidays until the Transgender Review Committee can arrange for their housing needs.

<sup>1</sup> 28 C.F.R. § 115.41.

<sup>2</sup> National PREA Resource Center. (Oct. 21, 2016). Does standard § 115.41 (§ 115.241, § 115.341) require facilities to affirmatively inquire of the inmates/residents about their lesbian, gay, bisexual, transgender, or intersex (LGBTI) status, in addition to making a subjective determination about perceived status? Available at: <https://www.prearesourcecenter.org/node/3250>.

<sup>3</sup> National PREA Resource Center. (Oct. 21, 2016). Does standard § 115.41 (§ 115.241, § 115.341) require facilities to affirmatively inquire of the inmates/residents about their lesbian, gay, bisexual, transgender, or intersex (LGBTI) status, in addition to making a subjective determination about perceived status? Available at: <https://www.prearesourcecenter.org/node/3250>.

<sup>4</sup> Id.

<sup>5</sup> 28 C.F.R. § 115.31(a)(9).

<sup>6</sup> National PREA Resource Center. (Oct. 21, 2016). Does standard § 115.41 (§ 115.241, § 115.341) require facilities to affirmatively inquire of the inmates/residents about their lesbian, gay, bisexual, transgender, or intersex (LGBTI) status, in addition to making a subjective determination about perceived status? Available at: <https://www.prearesourcecenter.org/node/3250>.

<sup>7</sup> Available at: <http://www.prearesourcecenter.org/sites/default/files/library/preascreeningguidelinesvera.pdf>.



# CLASSIFICATION AND PLACEMENT DECISIONS

MOST AGENCIES ALREADY HAVE A POLICY IN PLACE THAT LAYS OUT general classification and placement procedures. This policy should be reviewed in order to determine if there is anything specific to LGBTQ prisoners that may need to be changed. Some things to look for include:

- Blanket policies regarding the housing of LGBTQ prisoners, such as requiring LGBTQ prisoners to be placed in segregation or in a special unit
- Statements calling for the classification of LGBTQ prisoners as sexual offenders or other similar language
- Statements requiring housing of transgender prisoners based on genitalia or the gender they were thought to be at birth

If the current classification procedures include any of the above items, it will be important to have them amended or removed from the policy in addition to adding provisions that address some or all of the issue areas discussed below, either in the current policy or in a stand-alone LGBTQ policy.

## LIMITING THE USE OF SEGREGATION

The use of solitary confinement and other forms of isolation is not unique to LGBTQ prisoners, but it disproportionately affects LGBTQ people. For example, the Department of Justice has found that lesbian, gay, and bisexual prisoners are substantially more likely to be subjected to solitary confinement or segregation than heterosexual prisoners, with more than a quarter (28%) of LGB prisoners being placed in solitary confinement in just the past year.<sup>1</sup> Although LGBTQ people may be vulnerable to abuse at the hands of other prisoners, segregation and isolation is not the appropriate way to address this vulnerability. It is difficult or impossible for prisoners who are isolated or placed in protective custody to access education, training, recreation, employment, and other support services that are available to those in general population. This can make it harder for people to be released on parole or to receive good time credit, causing people who are subjected to long-term solitary confinement to ultimately serve more time in custody.

For many, being placed in segregation or protective custody also means being locked down for 22–24 hours a day in a small cell with very little human interaction or activity of any kind. Such conditions are often traumatic, sometimes leading to long-term psychological harm, and they can be especially damaging for youth, those with pre-existing mental health conditions, and those with cognitive or developmental disabilities.<sup>2</sup> As a result, segregation units typically have the highest rates of self-harm and suicide in correctional systems. Unfortunately, it has been common to automatically place individuals in segregation due to their LGBTQ status. Protective custody should only be used as a last resort or when addressing a specific imminent threat—and then only for the shortest period necessary.

The best policies create strict, short timelines for reviewing the use of segregation, require documentation of the reasons for the placement, and identify examples of alternatives that must be considered before individuals can be placed in segregation for protective purposes. Alternatives to segregation might include single-cell placement or placement with a similarly vulnerable cellmate within the general population, transfer to a different facility (including,

for a transgender person, from a male to a female facility or vice versa), or, when possible, consideration for parole or another form of release.<sup>3</sup> For as long as an individual remains in segregation, they should have equal access to programs, privileges, visitation, legal counsel, and recreation available to other prisoners. You may also want to consider including a statement in the policy that prisoners can opt in to protective custody if they are fearful for their own safety.

## PREA STANDARDS AND GUIDANCE

### *DOJ PREA Standards § 115.43—Protective custody*

- (a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.
- (b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. ...
- (c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.
- (d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:
  - (1) The basis for the facility’s concern for the inmate’s safety; and
  - (2) The reason why no alternative means of separation can be arranged.
- (e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need from separation from the general population.

## POLICY EXCERPTS: LIMITATIONS ON USE OF SEGREGATION

POLICY EXCERPTS

### ***Vermont Department of Corrections—Policy No. 432.01: Gender identification, care, and custody (February 18, 2015)***

POLICY EXCERPTS

#### 3. Classification and Housing

b. DOC will respond to abuse or harassment (or threat of abuse or harassment) of LGBTQI inmates or residents by considering the individual circumstances of the situation.... DOC will not rely on the isolation or segregation of LGBTQI inmates or residents in these situations and will resort to this method only if necessary to assure safety and security.

c. LGBTQI inmates will not be placed in segregation housing due to the sole purpose of their gender identity or status. Transgender and intersex inmates who are placed in administrative segregation or other special management housing for their safety and security shall adhere to DOC policies 410.03 and 410.06 [policies establishing procedures for placement and minimum conditions in restrictive housing units, including the requirement that “[p]rotective custody inmates shall be

placed in the least restrictive housing that affords the most protection”].

POLICY EXCERPTS

**Massachusetts Department of Youth Services—Prohibition of DYS Guidelines for Lesbian, Gay, Transgender, Questioning, Queer, Intersex, and Gender Non-Conforming Youth DYS Grievance Policy (July 1, 2014)**

POLICY EXCERPTS

SECTION III: YOUTH PLACEMENT

A. ...LGBTQI and GNC youth shall not collectively be placed in one location and shall not be placed in particular housing, bed or other assignments solely on the basis of such identification or status.

C. Specialized Placement: Placement at specialized LGBTQI and GNC facilities operated by voluntary agencies will be considered, when appropriate, for an individual youth. A request by a youth for placement at or transfer to a location based on gender identity, gender expression, sexual orientation and intersex condition can be made during

## CLASSIFICATION AS “SEX OFFENDERS”

Facilities should not label or treat LGBTQ prisoners as “sex offenders” or house them with people convicted of sex offenses simply because of their LGBTQ status. Classification or placement as a “sex offender” should not occur without adequate due process protections, such as a hearing, an evaluation by a qualified mental health professional, and an opportunity to appeal. If classifying LGBTQ prisoners as “sex offenders” has previously been a practice at the agency or if there is concern that intake staff need clearer guidance on this issue, the policy should include a statement that LGBTQ prisoners should not be treated as people convicted of sex offenses simply on the basis of their LGBTQ status.

## BLANKET HOUSING POLICIES AND SPECIAL UNITS

Classification and housing determinations should always be made on an individualized basis. It may be necessary to include language in the policy that specifically prohibits LGBTQ prisoners from being automatically and involuntarily placed in segregation or in specific facilities, units, or cells based solely on LGBTQ status or identity, including in special housing units for vulnerable populations generally or explicitly for LGBTQ individuals. The PREA Standards prohibit this kind of automatic segregation. Involuntary units can stigmatize LGBTQ prisoners, make them targets for staff harassment and abuse, and restrict their access to programming. The PREA Standards almost entirely prohibit such dedicated units.<sup>4</sup>

Prisoners and advocates have sometimes supported the creation of LGBTQ-only housing units that are voluntary. While these units can be beneficial when implemented properly, the PREA Standards have been interpreted by the Justice Department to generally prohibit housing units where only LGBTQ people are eligible for placement, though some agencies have continued to operate them. The PREA Standards do permit special housing units or wings for populations who are vulnerable to sexual abuse as long as non-LGBTQ people are eligible to be placed there as well. For example, protective housing units may include non-LGBTQ prisoners with certain disabilities, gender nonconforming characteristics, or a youthful appearance in addition to LGBTQ prisoners. If the agency has a special unit for vulnerable populations, it is important that the policy

clarifies that LGBTQ people can only be placed in such facilities voluntarily and at their request. It is also important to understand what the conditions in that special unit are like. Some “special” housing units have poor or overly restrictive conditions and limited or no access to the programs and privileges that other prisoners have (including programs that can help prisoners qualify for earlier release). Make sure that policies are in place to ensure that conditions and privileges in such facilities are comparable to those in general population housing and that the safety and wellbeing of prisoners placed in those facilities are protected.

## PREA STANDARDS AND GUIDANCE

*DOJ PREA Standards § 115.42—Use of screening information*

(g) The agency may not place lesbian, gay, bisexual, transgender, or intersex inmates 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 inmates.

### POLICY EXCERPTS: BLANKET HOUSING POLICIES

POLICY EXCERPTS  
POLICY EXCERPTS

***Vermont Department of Corrections—Policy No. 432.01: Gender identification, care, and custody (February 18, 2015)***

3. a. DOC will not classify inmates solely on the basis of their LGBTQI status or perceived LGBTQI status.
- b. DOC will respond to abuse or harassment (or threat of abuse or harassment) of LGBTQI inmates or residents by considering the individual circumstances of the situation....
- c. LGBTQI inmates will not be placed in segregation housing due to the sole purpose of their gender identity or status....
- e. LGBTQI inmates will not be placed 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 inmates

### GENDER-SPECIFIC HOUSING DETERMINATIONS FOR TRANSGENDER PRISONERS

In other settings—public restrooms and locker rooms, dormitories, shelters, and so forth—we advocate unequivocally that all people have full and equal access to facilities consistent with their gender identity. Indeed, this is the only approach that is truly non-discriminatory, and most courts to have considered the issue have agreed.<sup>5</sup> However, people navigating environments like prisons and jails often have needs that are specific to conditions of those settings. Particularly because of the high risk of violence many transgender prisoners face, the best place to house

a transgender prisoner may need to be assessed based on multiple factors, including the prisoner's gender identity and their views about where they would be safest. The national PREA standards call for a case-by-case approach for determining where to place transgender individuals. We recommend policies that begin with the presumption that any transgender individual will be placed consistent with their gender identity, unless that individual raises an objection based on their own safety concerns. In rare cases, an agency may override this presumption, and it is important for advocates and agency officials to work together to determine when and how such overrides are triggered.

When agencies don't have clear policies in place, transgender prisoners usually end up being placed by default in a men's or women's facility or unit based on their genitalia or the gender they were thought to be at birth. For many transgender prisoners, especially (but not exclusively) transgender women, this practice can be dangerous, often placing them at high risk of sexual abuse and violence. A blanket policy of housing transgender prisoners based on their sex assigned at birth or genital anatomy may also violate civil rights laws, including the Americans with Disabilities Act and the Equal Protection and Due Process Clauses of the Constitution.<sup>6</sup>

It is important that policies provide facility staff with guidance about how to make the often difficult decisions about where to place transgender prisoners, and they should include safeguards to make sure that staff are considering appropriate factors and implementing a fair process when making these decisions. Policies should also require documentation of the decision-making process.

### **Factors for Making Housing Decisions for Transgender Prisoners**

The PREA Standards require agencies to conduct a case-by-case assessment based on multiple factors to determine the appropriate housing placement for each transgender prisoner, rather than to have a blanket policy like automatically placing transgender people based on their genitalia or the gender they were thought to be at birth. Many agencies, however, have continued to place transgender individuals solely on the grounds of these bases. Through its PREA Resource Center, the Department of Justice has clarified that this practice is a violation of the PREA Standards and has provided important guidance to agencies<sup>7</sup>:

**Any written policy or actual practice that assigns transgender or intersex inmates to gender-specific facilities, housing units, or programs based solely on their external genital anatomy violates the standard. A PREA-compliant policy must require an individualized assessment.** A policy must give "serious consideration" to transgender or intersex inmates' own views with respect to safety. The assessment, therefore, must consider the transgender or intersex inmate's gender identity—that is, if the inmate self-identifies as either male or female. A policy may also consider an inmate's security threat level, criminal and disciplinary history, current gender expression, medical and mental health information, vulnerability to sexual victimization, and likelihood of perpetuating abuse. The policy will likely consider facility-specific factors as well, including inmate populations, staffing patterns, and physical layouts. **The policy must allow for housing by gender identity when appropriate.**

As a starting point, housing placement policies should include a statement that transgender prisoners should not be automatically placed solely based on their genitalia, the gender on their ID, or the gender they were assigned at birth. While this statement is a good start, additional

guidance should be provided on what factors should be considered when making these decisions.

The most important factors agency staff must consider are transgender prisoners' safety and their gender identity. Remember that, according to U.S. Justice Department data, transgender people face higher rates of abuse behind bars than any other group studied. PREA Standards require agencies to "seriously consider" transgender prisoners' own sense of where they would be safest. A good classification policy will prioritize the individual's views regarding safe placement and their gender identity over other factors, since individuals often can provide essential perspective concerning how they may be perceived and where they would be safest. Explicitly prioritizing these factors can help make up for the traditional bias toward housing individuals based on their sex assigned at birth, and allow for more genuinely individualized assessments.

**The most important factors agency staff must consider are transgender prisoners' safety and their gender identity.**

Some additional factors you may want to consider are the gender listed on an individual's identification documents, any medical treatments they have had as part of gender transition, the individual's social gender role in the community, and the views of medical and mental health staff regarding the impact of placement on the person's mental health. Keep in mind that the gender listed on someone's ID or medical steps they have taken to medically transition should never be the sole factor for determining a transgender prisoner's placement, particularly because many transgender people face prohibitive barriers to these often expensive and burdensome changes.

Some agency policies list other factors to be considered in deciding between male and female housing, such as any history of sexual victimization, other risk factors for victimization, offense and disciplinary history, expected length of stay, and catch-all categories like "other safety and security needs." While these factors are certainly relevant to housing placement more generally, using some of these factors to decide between male and female housing is problematic, since they are not used that way for non-transgender prisoners. (For example, a non-transgender woman would not be housed in a men's prison because of her offense or disciplinary history.)

Importantly, while facilities have the discretion to consider a variety of factors in these decisions, the Department of Justice also clarifies that others' discomfort with or bias towards transgender people should not be one of those factors, specifying that "a facility should not make a determination about housing for a transgender or intersex inmate based primarily on the complaints of other inmates or staff when those complaints are based on gender identity."

Because PREA's case-by-case standard leaves the agency a great deal of discretion, it will be especially important for advocates to monitor implementation of new policies to ensure that the agency does not continue to automatically place transgender people according to their genital anatomy. Advocates should find out as much as possible about how many transgender individuals have been housed consistent with their gender identity, how many have not, and the reasons documented for not doing so. This is a key reason to press for involving community stakeholders in ongoing implementation or consultation (see below) once the policy is implemented.



**QUESTION:** *How should agencies make placement decisions for prisoners whose gender is not male or female?*

While most transgender people's gender identity is either male or female, some people have a gender that is not male or female, and they may use a variety of terms to describe themselves, such as non-binary or genderqueer. People who are not male or female may face special challenges in gender-segregated facilities. However, the process of determining their housing placement is essentially the same as for transgender men and women: facility staff should give serious consideration to the prisoner's assessment of which placement would be safest for them and make a case-by-case decision based on that self-assessment and the other factors they typically consider.

### **Range of Housing Options**

When developing policy related to classification, it is important that you have an understanding of the layout of the facilities your policy will apply to. Some questions to consider include:

1. Are there separate facilities in different locations for men and women?
2. Are prisoners generally housed in single cell, with one or more roommates, or in a bunk or dorm rooms with many others?
3. Are there units that are specific to vulnerable prisoners? What conditions/restrictions do prisoners in such units face?
4. Are housing decisions made at one location like a reception center, with prisoners then being sent to a range of different types of facilities?

If the policy will apply to a facility or facilities with a range of physical layouts, the policy should require that facility layouts be considered when making a placement determination for a transgender prisoner. If a facility exclusively or occasionally uses bunk rooms, community advocates should try to talk with transgender people who have been housed in these group settings about their experiences. Some prisoners may feel that there are social or other benefits to being housed in a bunk room that they do not want to lose. Depending on their feedback and recommendations, it may or may not be appropriate to push for a policy that generally prohibits or discourages placing transgender prisoners in bunk rooms. If such a policy is adopted, it should include exceptions permitting transgender people to be placed in bunk rooms if they request it. A policy that does allow transgender people to be placed in bunk rooms should include additional safeguards that will increase safety for transgender prisoners in these group settings.

### **Documentation of Classification Decision Reasons and Reassessments**

A good classification policy requires that agency staff document the reasons that a specific classification decision was made. This type of documentation is very helpful for transgender prisoners, particularly if they are housed in gendered units that they did not want to be housed in or felt unsafe being housed in. Without documentation, getting a classification decision reviewed or reassessed at a later date is more difficult and unlikely to yield a different result. The PREA Standards require that placements for transgender prisoners must be reassessed at least twice each year in order to review threats to safety experienced by the prisoner. This is a floor for the agency and not a ceiling. Robust policies will require the reassessment to review not only threats to safety but also things such as emotional well-being of the individual, new medical

developments or steps that the prisoner has taken to transition, and respect for the prisoner’s gender identity.

### **Different Approaches for Temporary Police Lock-Ups**

Temporary police lock-ups, and other holding facilities where individuals are only held for a number of hours or up to 2–3 days, differ in important ways from those that hold individuals for weeks, months, or years. In this kind of very short-term facility, housing options may be very limited, and making individualized housing decisions may be more difficult. In this type of setting, a different approach, such as housing transgender people in single cells or in the same cell, may be appropriate. If the facility is divided by gender, another possible approach would be for transgender people to always be housed alongside the gender with which they identify, but physically separated from others. (Note that while these approaches may be worth considering in a temporary lock-up, they would be very problematic and likely violate the PREA Standards if used in the long-term setting of prison or jail.)

## **PREA STANDARDS AND GUIDANCE**

*PREA Standards § 115.42—Use of screening information*

(b) The agency shall make individualized determinations about how to ensure the safety of each inmate.

(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall 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. (d) Placement and programming assignments for each transgender or intersex inmates shall be reassessed at least twice each year to review any threats to safety experienced by the inmate. (e) A transgender or intersex inmate’s own views with respect to his or her own safety shall be given serious consideration.

### **POLICY EXCERPTS: HOUSING TRANSGENDER PRISONERS**

#### ***Massachusetts General Laws 127 § 32A (2018)***

A prisoner of a correctional institution, jail or house of correction that has a gender identity, as defined in section 7 of chapter 4, that differs from the prisoner's sex assigned at birth, with or without a diagnosis of gender dysphoria or any other physical or mental health diagnosis, shall be: ...; (iv) housed in a correctional facility with inmates with the same gender identity; provided further, that the placement shall be consistent with the prisoner's request, unless the commissioner, the sheriff or a designee of the commissioner or sheriff certifies in writing that the particular placement would not ensure the prisoner's health or safety or that the placement would present management or security problems.



**Vermont Department of Corrections—Policy No. 432.01: Gender identification, care, and custody (February 18, 2015)**

3. Classification and Housing

d. Whenever an inmate is identified as transgender and/or intersex, the facility multi-disciplinary team will meet within seventy-two hours of the inmate’s arrival or intake and conduct a review in order to assess the on-going and long-term medical, psychological and facility needs of the individual, using and considering the following criteria:

- i. The Gender Preference Form
- ii. Sexual Violence Screening Tool
- iii. The anatomy of the inmate
- iv. The individual’s incarcerated history
- v. Other psychosocial factors that may contribute to either the individual’s resiliency or vulnerability
- vi. The inmates’ privacy concerns
- vii. Available housing
- viii. Recommendations from the inmate’s mental health providers
- ix. LGBTQI inmates can make informal requests to staff, or utilize the grievance system to express issues concerning privacy concerns, housing, factors related to the inmate’s emotional and physical well-being, and the inmate’s self-evaluation of his or her own safety.

j. DOC can house transgender or intersex inmates according to their gender identity rather than their birth sex. In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, DOC will consider on a case-by-case basis whether a placement would present management or security problems. DOC will consider the physical layout of the facility and privacy issues/concerns when determining the location of a transgender or intersex inmate. If deemed necessary for safety, DOC can place transgender or intersex inmates according to their birth sex to protect their physical and emotional well-being, while assuring the facility’s safety and security. All determinations regarding the housing of a transgender and/or intersex inmates will be made by a management team consisting of the Director of Correctional Facilities; the Health Services Director; the Corrections Case Work Director; and a DOC employee with the ability and knowledge needed to represent LGBTQI interests.

k. LGBTQI inmates can make requests to have their housing re-evaluated using the grievance system.

**New York City Department of Corrections—40 N.Y.C. Admin. Code § 5-06 (November 2016)**

(d) The Department shall not assign a transgender or intersex inmate to a men’s or women’s facility based solely on the inmate’s external genital anatomy.

(h) The Department shall notify the Board [of Corrections], in writing, of each placement of a transgender or intersex inmate, all information considered in making the determination and the reasons for the housing determination. The Department shall provide the Board with such information...within two (2) business days following the end of each two-week period...

**Massachusetts Department of Youth Services—Prohibition of DYS Guidelines for Lesbian, Gay, Transgender, Questioning, Queer, Intersex, and Gender Non-Conforming Youth DYS Grievance Policy (July 1, 2014)**

SECTION III: YOUTH PLACEMENT

A. DYS state and contract provider employees in all locations shall receive training on providing services for LGBTQI and GNC youth including how to create a safe space in all placements. LGBTQI and GNC youth shall not collectively be placed in one location and shall not be placed in particular housing, bed or other assignments solely on the basis of such identification or status.

B. Intake Assessment at Detention Programs and Residential Programs: Upon conducting an intake of a youth, staff shall ask the youth in accordance with the provided intake questions how they identify by gender. A youth who identifies as a transgender or intersex youth shall be placed in a location consistent with the stated gender identity, absent a safety-based objection made in consultation with the Regional Director. Such safety-based objection shall have a specific, documented credible basis and shall not be solely based on a gender identity reason. If the youth is not currently at a location compatible with their stated gender, the program will move the youth to a location consistent with their stated gender identity at the most reasonable time, again, in consultation with the Regional Director, and consider a safety plan until such move is possible. All placements of a transgender or intersex youth shall be done in consultation with the Regional Director. A dialogue tree is available for those conducting the intake.

**Kentucky Department of Corrections—Policy Number 14.8: Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders (April 11, 2017)**

B. 2. An assessment to determine the housing of transgender and intersex inmates shall be made on a case-by-case basis via an individualized assessment of the inmate with input from medical and mental health staff, security supervisors, and classification staff within 72 hours of admission, excluding weekends and holidays. A determination shall not be made on genital status alone.

4. Classification staff shall give serious consideration to the inmate's own view concerning his or her safety.

5. The assessment shall consider the inmate's physical characteristics, gender identity, and whether the inmate identifies as male or female.

7. Classification staff shall not make any determinations primarily on the complaints of staff or other inmates when the complaints are based on gender identity.

**Denver Sheriff Department—Department Order 4005.1 (June 6, 2012)**

G. 2. Classification and placement of transgender/gender-variant inmates should not be determined solely based on the inmate's birth sex, identity documents, or physical anatomy. Classification and placement of transgender/gender-variant inmates should be made to maximize the health and safety of the individual.

3. Transgender/gender-variant inmates must be housed safely and in the least restrictive setting possible.
- Additional safety precautions may include (but are not limited to) access to private showers, single cells, etc., and will be offered if and when available.
  - Requests from a transgender/gender-variant inmate to be placed in the same cell with another transgender/gender-variant inmate should be honored when possible.

### Who is Responsible for Making Decisions Regarding Classification and Housing?

After discussing what goes into the decision-making process for housing placements for transgender prisoners, a policy should also clearly state who will be making this decision, when the decision is made, and how. Many agencies have given this responsibility to what are commonly called “transgender committees.” The membership of these committees varies, but typically includes administrators, classification staff, medical staff, mental health staff, a PREA coordinator, and sometimes community members and advocates. If you decide to use this approach, the following questions will help you address the important details related to having such a committee.

- Who is on the committee? What are their qualifications?
- What kind of training have committee members received about transgender people’s needs in prisons and jails?
- Who from the committee meets with the prisoner prior to the committee meeting and what information should they ask about? Is there a form for prisoners to complete that allows them to express their concerns and desires related to housing? (Example: the Vermont Department of Corrections gives transgender and intersex prisoners a “Gender Preference Form,” where they can indicate preferences and concerns related to housing, searches, and showers, provide the name and pronouns they go by, and request accommodations like access to certain clothing or medical treatments.)
- What type of information does the committee consider when determining placement? What concerns, if any, are prioritized (e.g., medical or mental health opinion, prisoner’s safety)?
- How long is the waiting period between a referral to the committee and a final decision?
- Will the committee reach decisions based on consensus, majority vote, or some other process?
- Is the decision of the committee final or does someone in the agency have veto power? What reasons could form the basis of such a veto?
- What is the appeals process if the prisoner feels the housing decision was inappropriate?
- What is the process for having the placement decision reassessed at least twice a year as required by PREA?
- Are there other things that the committee is responsible for providing input on, such as clothing, grooming, health care, and programming access?

***Not all agency policies call for a transgender committee to make housing determinations for transgender prisoners, although it has become a common approach. If a committee does not seem like the right option, you should identify who will be making housing determinations. Unless stated otherwise, housing determinations for transgender prisoners will likely be made by the general intake and classification officers. Transgender prisoners often fare better if medical or mental health staff, or both, are involved in housing decisions rather than only facility administrators or other staff who are likely to be less familiar with what it means for someone to be transgender.***

**POLICY EXCERPTS: TRANSGENDER COMMITTEES**

***Pennsylvania Department of Corrections—DC-ADM 008: Prison Rape Elimination Act (PREA) Manual, Section 9: Working with Transgender and Intersex Inmates (August 22, 2016)***

- 4. Once an inmate has been identified as a transgender or intersex individual, immediate notification shall be sent to the PREA Compliance Manager (PCM).
  - b. The PCM shall meet privately with the transgender or intersex inmate within five business days of notification and complete the Gender Review Committee (GRC) Checklist... Following this assessment, the inmate shall be reassessed every six months to review any threats to safety experienced by the inmate...
  - d. The purpose of the GRC is to make individualized determinations about transgender or intersex inmates’ housing and programming assignments to ensure their safety.
    - i. The GRC shall consist of, but not be limited to, the following individuals: (1) PCM; (2) Licensed Psychology Manager...; (3) Corrections Health Care Administrator...; (4) Deputy Superintendent of Centralized Services....; and (5) Deputy Superintendent of Facility Management....
    - j. The transgender or intersex inmate shall be invited to attend the GRC meeting unless contraindications exist or they choose not to attend. The inmate’s presence is not required.
    - k. The transgender or intersex inmate shall be informed of the GRC’s housing recommendation within 48 hours of the GRC meeting, and be permitted to concur or object to the recommendation.

***Arizona Department of Corrections—Department Order 810: Management of LGBTI Inmates (November 26, 2015)***

810.02 § 1.4.1 The Health Services Monitoring Bureau Medical Director shall establish and chair the Committee for the purpose of reviewing placements, security concerns, overseeing gender related accommodation needs, and overall health-related treatment plans of inmates identified as transgender or intersex.

***Harris County, Texas Sheriff Department—Lesbian, Gay, Bisexual, Transgender, and Intersex (L.G.B.T.I.) Policy 413 (November 13, 2013)***

- F. The Gender Classification Committee has the final authority in all matters related to the classification of LGBTI inmates.
- G. The Gender Classification Committee shall reassess all LGBTI inmates within 30 days from the inmate’s arrival at the facility. The Gender Classification Committee will reassess the inmate’s risk of victimization or abusiveness based upon any additional, relevant information received by the facility since intake screening.

## ENDNOTES FOR CLASSIFICATION AND PLACEMENT DECISIONS

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<sup>1</sup> Bureau of Justice Statistics. (2015). Use of Restrictive Housing in U.S. Prisons and Jails, 2011–12 (p. 4). Washington, DC: Department of Justice Statistics. Available at: <https://www.bjs.gov/content/pub/pdf/urhuspj1112.pdf>. The Department of Justice found that 28% of LGB people in prisoners were placed in solitary confinement or segregated housing in the previous year, compared to 18% of heterosexual prisoners. In jails, 22% of LGB people and 17% of heterosexual people were placed in solitary confinement or segregated housing in the previous year. Data for transgender prisoners was not available.

<sup>2</sup> For more information about the impacts of solitary confinement, see Solitary Watch's FAQ, available at: <http://solitarywatch.com/facts/faq/>. Also see Use of Restrictive Housing in U.S. Prisons and Jails, 2011-12, a Department of Justice report finding that prisoners who were placed in solitary confinement were more likely to experience a range of mental health problems (see note 1).

<sup>3</sup> You can find additional information about alternatives to segregation in Keeping Vulnerable Populations Safe under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails, a resource by the National PREA Center (available at [https://www.prearesourcecenter.org/sites/default/files/library/keepingvulnerablepopulationsSAFEunderPREAapril2015\\_0.pdf](https://www.prearesourcecenter.org/sites/default/files/library/keepingvulnerablepopulationsSAFEunderPREAapril2015_0.pdf)).

<sup>4</sup> The standards allow for assigning individuals to a specific housing unit “solely on the basis” of being LGBT only in the very rare case such a unit is created by a court order or settlement of a prisoner lawsuit.

<sup>5</sup> For examples of court decisions reaffirming that federal laws prohibiting sex discrimination protect people from anti-transgender discrimination, see <http://www.transequality.org/federal-case-law-on-transgender-people-and-discrimination>.

<sup>6</sup> See *Doe v. Massachusetts Dept. of Corrections*, No. 17-12255 (D. Mass. June 14, 2018).

<sup>7</sup> National PREA Resource Center. (March 23, 2016). Does a policy that houses transgender or intersex inmates based exclusively on external genital anatomy violate Standard 115.42(c) & (e)? Available at: <https://www.prearesourcecenter.org/node/3927> (emphasis added).

# PROCEDURES FOR MEETING ADDITIONAL SAFETY AND PRIVACY NEEDS OF TRANSGENDER INDIVIDUALS

REGARDLESS OF WHETHER THEY ARE HOUSED IN A MALE OR FEMALE facility, transgender people face specific privacy and safety concerns when showering, using multi-user restrooms, changing clothing, being searched, or being tested for drug use. Unless there is a policy that states otherwise, rules limiting cross-gender pat and strip searches and rules governing supervision often end up being applied based on the prisoner's housing assignment and/or genital anatomy, and transgender prisoners are often subjected to unnecessary risk of harm. The key to developing sound policy in these areas is to focus on the ways the agency can protect the privacy, dignity, and safety of transgender prisoners during all procedures while not singling them out or preventing them from being able to participate in education, work, visitation, and other opportunities.

## SHOWERING AND RESTROOM PRACTICES

Decisions regarding the use of showers and bathrooms should be individualized with the goal of protecting the privacy, dignity, and safety of transgender prisoners within the context of a confinement setting. Different facilities have different ways of handling showers for prisoners as well as different layouts. While in most facilities each cell will have a toilet, in many juvenile facilities and some smaller jails, or in any jail that houses prisoners in a dorm-like settings, prisoners may need to use multi-user bathrooms. If possible, advocates should visit the facility or facilities they are working on policy for to see the range of physical layouts related to showers and multi-user bathrooms and the amount of privacy that is afforded to prisoners while showering or using the toilet. If there are separated stalls with privacy shields, this may provide sufficient privacy and safety. If there is one large room with showerheads along the walls, then your policy will need to address how to ensure safety and privacy for transgender prisoners. The same is true if multi-user bathrooms have several toilets next to each other with no stall walls or doors. One option is for transgender prisoners to have the option of showering or using the bathroom at a different time than the rest of the prisoners. However, this option may make it easier for staff to isolate and abuse the transgender prisoner. Another option is to enable individuals to request the use of a shower or toilet in another unit that can provide some level of privacy (while ensuring their shower time is not reduced).

While transgender prisoners may have unique vulnerabilities, all prisoners can benefit from more privacy in these settings. Consider having facilities add privacy barriers like curtains or stalls, or make other changes that make showers and restrooms more private for all prisoners. This can help prevent sexual harassment, and make it more likely that transgender prisoners can be accommodated without being singled out or stigmatized.

## PREA STANDARDS AND GUIDANCE

*DOJ PREA Standards § 115.42—Use of screening information*

(i) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

*DOJ National PREA Resource Center—Frequently Asked Questions (April 23, 2014)*

*Standard 115.42, “Use of Screening Information,” requires that transgender inmates be allowed to shower separately. What constitutes “separate” for the purposes of complying with this standard?*

Section 115.42(f) states, “Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.” This standard was adopted to provide additional protections for these inmates, given the unique risks these populations face while incarcerated. The separation required by the regulation will be dependent on the layout of the facility, and may be accomplished either through physical separation (e.g., separate shower stalls) or by time-phasing or scheduling (e.g., allowing an inmate to shower before or after others). In any event, facilities should adopt procedures that will afford transgender and intersex inmates the opportunity to disrobe, shower, and dress apart from other

### POLICY EXCERPTS: SHOWERS AND BATHROOMS

***Pennsylvania Department of Corrections—DC-ADM 008: Prison Rape Elimination Act (PREA) Manual, Section 9: Working with Transgender and Intersex Inmates (August 22, 2016)***

Transgender and intersex inmates shall be given the opportunity to shower separately and privately from other inmates.

***Kentucky Department of Corrections—Policy Number 14.8: Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders (April 11, 2017)***

#### *E. Showers*

- 1. Transgender and intersex inmates shall be given the opportunity to shower privately from other inmates.*
- 2. Transgender and intersex inmates shall be given as much privacy as possible without jeopardizing the safety of the inmate and the safety and security of the institution during the shower periods.*

## SEARCHES

Your policy should provide guidance to agency staff on how to handle pat-downs and strip searches of transgender prisoners as well as prisoners who do not conform to gender stereotypes. Searches, especially strip searches, even when conducted in a professional manner, can be unpleasant, humiliating, and, in many cases, traumatic experiences for any prisoner, regardless of the gender of the person conducting the search. Therefore, you should determine what policies the agency already has in place that limit the times when prisoners are strip-searched and that require searches to be conducted respectfully and in a professional manner. These policies should meet the requirements laid out in the PREA Standards regarding searches, including PREA's limitations on cross-gender searches, constitutional protections limiting cross-gender searches<sup>1</sup> and searches performed in front of other prisoners, and constitutional protections prohibiting searches intended to harass LGBTQ people.<sup>2</sup> If these policies are weak or non-existent, you should consider developing a search policy that applies to the general population in addition to transgender prisoners.

There are a few transgender-specific provisions related to searches that you should include. First, in accordance with PREA regulations, strip searches of transgender prisoners should be prohibited for the purpose of observing or documenting a person's genital characteristics, or for other non-legitimate purposes such as to punish or humiliate the transgender prisoner or to amuse staff members. You may also want to include language that provides increased privacy for transgender prisoners during strip searches, as these types of searches are often done in group settings. For example, your policy could include a provision requiring that strip searches of transgender prisoners must be conducted out of sight of other prisoners and staff members who are not necessary for the search.

In addition, your policy should include directions on determining the gender of the staff member who will conduct searches of a transgender prisoner. While PREA is clear that male staff may not search female prisoners, and that cross-gender strip searches of all prisoners are generally prohibited, the standards do not provide guidance to facilities on how the limits on cross-gender searches applies to transgender prisoners. Facilities have adopted a few different approaches to determining who will conduct a strip search in these cases. The best practice is to allow transgender prisoners to state, during the intake process, the gender of staff they feel would be safest and most comfortable to conduct any searches. This policy should apply to all transgender prisoners, not only those with a Gender Dysphoria diagnosis or particular medical history.

**The best practice is to allow transgender prisoners to state, during the intake process, the gender of staff they feel would be safest and most comfortable to conduct any searches. This policy should apply to all transgender prisoners, not only those with a Gender Dysphoria diagnosis or particular medical history.**

A prisoner's can be documented by having newly admitted prisoners complete a form that allows



them to state their needs related to issues such as searches, name and pronoun, and housing placement. Some examples of these forms are included in Appendix A. Unless there are exigent circumstances, facilities with policies like this usually require that the prisoner is searched by a staff member of the gender indicated on the form. If you follow this route, your policy should also address who should conduct searches in cases where a transgender prisoner states no preference or before the prisoner has the opportunity to complete the form.

Some facilities have tasked the decision as to who will conduct the search to a transgender committee (see discussion above), which takes a prisoner's preference into consideration. DOJ guidance on the PREA standards also notes that agencies can apply search policies based on a prisoner's gender identity. While this practice is far better than searching transgender prisoners based on anatomy or facility placement, it does not provide flexibility for prisoners who may feel this is not the safest option for them. Another possible option is to have all transgender prisoners searched by female staff members, regardless of gender identity or housing placement. Although this is not the ideal situation because it does not take into account an individual's own views about who should search them, it would likely result in less abuse of transgender prisoners than a status quo of having prisoners searched by staff members who have the same genitalia as the prisoner. This is not because female staff members are necessarily less likely to commit abuse, but because transgender prisoners in general, regardless of their gender identity, are more likely to be perceived as feminine and/or female by staff. Finally, agencies may choose to have all transgender prisoners searched only by medical staff rather than correctional staff. However, agencies with a large prisoner population may view this option as impractical, and while having medical staff perform a strip search may reduce the risk of trauma and abuse in some circumstances, that is not always the case.

Some agencies have adopted a practice of having transgender people searched by a combination of female and male staff—for example, having female staff search the torso of a woman who is transgender and male staff search her from the waist down. Such practices are degrading, intrusive, and impractical. The Department of Justice has clarified that under the PREA Standards this practice is never permitted, noting that the standards require searches of transgender prisoners to be conducted “in the least intrusive manner possible” and that “[r] equiring two officers to search transgender inmates or residents would be more intrusive than necessary.”<sup>3</sup>

Occasionally, some corrections officers may express discomfort with conducting searches of transgender prisoners. It's important for officers to understand that these procedures are adopted to prevent abuse or unnecessary trauma to prisoners, and that officers may be required to search any prisoner as part of their professional duties. In order to help staff members conduct searches of transgender and gender nonconforming prisoners in the most respectful and professional manner possible, training on appropriate methods for conducting searches of this population should be provided to all of those who may be conducting both pat searches and strip searches.

## PREA STANDARDS

### *DOJ PREA Standards § 115.43—Limits to cross-gender viewing and searches*

(e) The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate’s genital status. If the inmate’s genital status is unknown, it may be determined during conversations with the inmate, 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.

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches and searches of transgender and intersex individuals in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

### *DOJ National PREA Resource Center—Frequently Asked Questions (December 2, 2016)*

Operationally, four options are in current practice for searches of transgender or intersex inmates/residents/detainees: 1) searches conducted only by medical staff; 2) pat searches of adult inmates conducted by female staff only, especially given there is no prohibition on the pat searches female staff can perform (except in juvenile facilities); 3) asking inmates/residents/detainees to identify the gender of staff with whom they would feel most comfortable conducting the search, and 4) searches conducted in accordance with the inmate’s gender identity.

## POLICY EXCERPTS: SEARCHES OF TRANSGENDER ARRESTEES AND PRISONERS

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### ***Massachusetts General Laws 127 § 32A (2018)***

A prisoner of a correctional institution, jail or house of correction that has a gender identity, as defined in section 7 of chapter 4, that differs from the prisoner's sex assigned at birth, with or without a diagnosis of gender dysphoria or any other physical or mental health diagnosis, shall be: ...; (iii) searched by an officer of the same gender identity if the search requires an inmate to remove all clothing or includes a visual inspection of the anal cavity or genitals; provided, however, that the officer's gender identity shall be consistent with the prisoner's request; and provided further, that such search shall not be conducted for the sole purpose of determining genital status;....

### ***Vermont Department of Corrections—Policy No. 432.01: Gender identification, care, and custody (February 18, 2015)***

- b. Searches of LGBTQI inmates
  - i. Pat Searches
    - A. When first entering the facility, an inmate who identifies as transgender or intersex will complete a Gender of Preference Form indicating their gender preference as to the gender of the staff that will perform the search. This

request will be honored, unless emergent circumstances dictate otherwise....

- B. Request to remove appearance related items such as prosthetics, clothing that conveys gender identity, and cosmetics shall be consistent with the requirements for the removal of similar items for cisgender individuals.
  - C. Pat searches will be conducted in a professional and respectful manner, and in the least invasive manner possible, consistent with security needs, according to local procedure, and consistent with staff training.
- ii. Strip Searches
- A. Strip searches will not be done for the sole purpose of observing the inmate's genitalia or determining gender.
  - B. Request to remove appearance related items such as prosthetics, clothing that conveys gender identity, and cosmetics shall be consistent with the requirements for the removal of similar items for cisgender individuals.
  - C. Transgender and/or intersex individuals shall not be subject to more invasive searches than cisgender individuals.
  - D. Strip searches will be conducted in a professional and respectful manner, and in the least invasive manner possible, consistent with security needs and according to local procedure.

***New York City Department of Corrections—40 N.Y.C. Admin. Code § 5-06 (November 2016)***

The Department shall train security staff in how to conduct cross-gender patdown searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible consistent with security needs. For purposes of these searches, unless exigent circumstances require otherwise, the Department shall make its best efforts to treat intersex and transgender inmates in accordance with their gender identity.

***Harris County, Texas Sheriff Department—Lesbian, Gay, Bisexual, Transgender, and Intersex (L.G.B.T.I.) Policy 413, November 13, 2013***

- D. Searches
  - 3. At no time shall any search be conducted solely for the purpose of determining an inmate or detainee's biological sex or gender..
  - 4. LGBTI individuals shall not be subject to more invasive searches than non-LGBTI individuals. Additional searches require supervisor approval.
  - 5. If a pat-down search is required and a prisoner has been identified as transgender, the prisoner shall be asked to indicate their preference as to the gender of the officer that will perform the pat-down search. A cross gender search preference form shall be made available and signed by the inmate if they wish to have a pat-down cross gender search. This request will be honored, unless exigent circumstances dictate the need for an immediate pat-down search by available personnel as determined by a supervisor.
  - 7. Requests to remove appearance related items such as prosthetics, clothing that conveys gender identity, wigs and cosmetics shall be consistent with the requirements for the removal of similar items for non-LGBTI individuals.

**Cumberland County, Maine Sheriff’s Office—Policy D-243: Transgender Inmates (December 2009)**

Prior to searching a transgender inmate, when possible complete the Statement of Preference for C-120C to determine the sex of the staff member who will be conducting the search. All searches of the transgender inmate’s person will be done by an officer of the gender requested by the transgender inmate. If the inmate does not specify a preference, then the search will be done by an officer of the same gender as the transgender inmate’s gender presentation (e.g. a female-to-male inmate expressing no preference should be searched by a male officer).

**Denver Sheriff Department—Department Order 4005.1 (June 6, 2012)****B. 1. Pat Searches**

- a. If there is prior knowledge that an inmate is transgender/gender-variant, and a pat search as defined in Department Order 4040 is required, the officer performing the search should be of the same sex as identified by the inmate’s transgender/gender-variant search preference.
- b. The prisoner shall sign the Statement of Preference Form, indicating initial preference, preferred name, and preferred pronoun.

**2. Strip Searches**

- a. When a strip search is required for a transgender/gender-variant prisoner, the search will be conducted by an officer and overseen by a supervisor and will only be performed as part of the booking process in accordance with Department Order 4040.
- b. The officer and the supervisor will be of the same sex that is listed on the inmate’s Statement of Preference Form unless otherwise directed by the supervisor. Refer to Department Order 4040, “Inmate and Facility Searches”.
- c. Strip searches shall not be performed as a punitive measure.
- d. Strip searches will not be done for the sole purpose of observing the prisoner’s genitalia or determining gender.

**U.S. Office of Refugee Resettlement, Federal Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children, 45 C.F.R. § 411.14**

- (a) Cross-gender pat-down searches of UCs [unaccompanied children] must not be conducted except in exigent circumstances. For a UC that identifies as transgender or intersex, the ORR care provider facility must ask the UC to identify the gender of staff with whom he/she would feel most comfortable conducting the search.

**CROSS-GENDER SUPERVISION**

In situations where nudity is unavoidable, such as when a staff member or probation officer is required to watch someone submit a urine sample for a drug test, you should include direction in your policy for determining the gender of the staff member who can observe drug tests and other similar situations. The options for determining the gender of the staff member to do this are

similar to those that are discussed in the section on searches above.

There are many other situations in prison where it is unavoidable that prisoners are unclothed in front of other prisoners or staff members. Limiting cross-gender supervision will make it less likely that staff members of a different gender than the prisoners in the unit will have the opportunity to view these prisoners unclothed. The PREA Standards don't specifically state how limits on cross-gender supervision apply to transgender people, but they should be interpreted in a way that is consistent with PREA guidance on the cross-gender search standards. And because many transgender prisoners are still housed in units with people who have a different gender identity than they do, it is more likely that they will be viewed unclothed by staff member of a different gender in the absence of a clear policy. Your policy should address how to increase privacy for transgender prisoners when undressing, such as permitting a transgender prisoner to undress behind a privacy barrier.

## PREA STANDARDS

### *DOJ PREA Standards § 115.43—Limits to cross-gender viewing and searches*

(d) The facility shall implement policies and procedures that enable prisoners to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering a prisoner housing unit.

<sup>1</sup> See, e.g., *Byrd v. Maricopa County Sheriff's Department*, 629 F.3d 113 (9th Cir. 2011) ("Courts throughout the country have universally frowned upon cross-gender strip searches in the absence of an emergency or exigent circumstances").

<sup>2</sup> See, e.g., *Farmer v. Perrill*, 288 F.3d 1254 (10th Cir. 2002) (holding that a transgender prisoner had a clearly established right "not to be subjected to a humiliating strip search in full view of several (or perhaps many) others unless the procedure is reasonably related to a legitimate penological interest"); see also *Elliott v. Lynn*, 38 F.3d 188 (5th Cir. 1994); *Cornwell v. Dahlberg*, 963 F.2d 912 (6th Cir. 1992); *Mays v. Springborn*, 575 F.3d 643 (7th Cir. 2009); *Franklin v. Lockhart*, 883 F.2d 654 (8th Cir. 1989); *Michenfelder v. Sumner*, 860 F.2d 328 (9th Cir. 1988); *Hayes v. Marriott*, 70 F.3d 1144 (10th Cir. 1995).

<sup>3</sup> National PREA Resource Center. (Oct. 21, 2016). Is it ever appropriate for a transgender or intersex inmate or resident to be searched by both a male officer and a female officer, the male officer searching the parts of the body that are anatomically male and the female officer searching parts of the body that are anatomically female? Available at: <https://www.prearesourcecenter.org/node/3259>.

# OTHER PRISONER MANAGEMENT PROCEDURES

A PRISONER'S LGBTQ STATUS MAY ALSO BE RELEVANT IN A RANGE OF other areas that often fall under the broader heading of prisoner management, including clothing and visitation rules.

## CLOTHING, GROOMING, AND PERSONAL ITEMS

Access to gender-appropriate clothing and personal items, and the ability to groom oneself in a manner consistent with one's gender identity, can be essential for transgender and gender nonconforming prisoners, especially those who are housed based on the gender they were assigned at birth. Being denied access to these items can amount to daily humiliation for some prisoners and can exacerbate gender dysphoria, harming their health. Courts have previously found that it may be unconstitutional to deny transgender prisoners access to items such as bras, cosmetics, or compression garments when access to those items is medically necessary for the treatment of gender dysphoria.<sup>1</sup>

Although some clothing issued by facilities is unisex in nature, you should determine what types of clothing the facility issues to female prisoners versus male prisoners and whether there are restrictions on the types of clothing prisoners can buy and possess. Some questions to think about including:

- Are there different types of undergarments issued to men and women? How is it determined who gets what? Are there any written or commonly practiced exceptions?
- Is clothing in facilities for men issued in different colors than clothing issued in facilities for women (e.g. men get grey pants while women get mauve pants)?
- Are there any catalogs of clothing and grooming items prisoners can purchase and possess, and if so, who can access which catalog?
- Are there any restrictions on the types of clothing items prisoners can possess and receive through the mail?
- Do prisoners need to request a special exception to obtain items not typically available in their facility based on gender? Who needs to approve such exceptions?

Access to undergarments in particular is often determined based on whether the facility is designated for women or for men. Policies in this area may provide for exceptions for prisoners who are transgender, but are housed in a facility consistent with the gender they were thought to be at birth, to access and possess undergarments that are provided to prisoners in the facility consistent with their gender identity (for example, providing men's undergarments for a transgender man housed in women's facilities or providing women's undergarments for transgender women housed in men's facilities). A strong policy should allow transgender prisoners to receive, purchase, and possess clothing items (not just undergarments) and other personal items that prisoners with the same gender identity are permitted to receive, purchase, and possess regardless of where the prisoner is housed. While some facilities make access to these items dependent on a medical diagnosis or approval by medical staff, a simpler and better approach is to make them equally available either to all prisoners identified as transgender, or to any prisoner who requests them. Similarly, a good policy in this area should also permit transgender prisoners to possess hygiene and other personal items appropriate for them and to groom themselves in a manner consistent with their gender identities. This includes items

such as hair care, skin care, and other personal grooming items, cosmetics, jewelry, scarves, and menstrual products. Like clothing items, these items can be necessary for prisoners' dignity and in some cases for the management of gender dysphoria. In many cases such items are already available to prisoners in some facilities and should not be restricted based on gender.

## BEST PRACTICE: GENDER NEUTRAL COMMISSARY LIST

A good practice that many facilities have adopted is to institute gender-neutral commissary lists, meaning that the commissary list includes items associated with both men and women, and all prisoners, regardless of gender, may request any item on the list. For example, the Department of Pennsylvania's commissary list makes a variety of undergarments, cosmetics, and other personal care items available in both male and female facilities.<sup>2</sup> This practice is often more straightforward for facilities than a policy that requires them to approve and verify special exceptions for transgender prisoners. It also reduces barriers for prisoners to access the clothing and grooming items they need, regardless of whether they are housed in a men's or women's facility and whether they've received prior approval for those items. A gender-neutral approach makes access easier for transgender people who may need access to both male- and female-associated items to protect their safety or hygiene or to present in a manner consistent with their gender identity. A gender-neutral commissary also allows prisoners who have not been formally identified by the facility as transgender, including non-transgender people who do not conform to gender stereotypes, to access a range of clothing and grooming items appropriate for their needs.

### POLICY EXCERPTS

#### POLICY EXCERPTS: CLOTHING, GROOMING, AND PERSONAL ITEMS

##### *Massachusetts General Laws 127 § 32A (2018)*

A prisoner of a correctional institution, jail or house of correction that has a gender identity, as defined in section 7 of chapter 4, that differs from the prisoner's sex assigned at birth, with or without a diagnosis of gender dysphoria or any other physical or mental health diagnosis, shall be: ...; (ii) provided with access to commissary items, clothing, programming, educational materials and personal property that is consistent with the prisoner's gender identity;....

### POLICY EXCERPTS

##### *Vermont Department of Corrections—Policy No. 432.01: Gender identification, care, and custody (February 18, 2015)*

### POLICY EXCERPTS

8. Clothing and Property
  - a. Inmates will indicate any accommodations required upon intake.
  - c. The inmate will be permitted to wear clothing according to their gender of preference regardless of the majority gender of the facility unless the facility requires all inmates to wear a standard issued uniform.

**Cumberland County, Maine Sheriff’s Office—Policy D-243: Transgender Inmates (December 2009)**

A.4. A transgender inmate with a female gender identity, for example, should be issued and permitted to receive and possess the same undergarments issued to other female inmates.

**Massachusetts Department of Youth Services—Prohibition of DYS Guidelines for Lesbian, Gay, Transgender, Questioning, Queer, Intersex, and Gender Non-Conforming Youth DYS Grievance Policy, 03.04.01, July 1, 2014**

SECTION IX: CLOTHING

A. All youth shall wear the clothing provided by the location or according to the clothing allowed by the location if there is no uniform required. Youth shall be not forced to wear clothing that does not match their gender identity or expression in any setting.

B. Where clothing is provided, youth may receive undergarments of their choice among available agency supplies, regardless of gender.

C. Transgender and gender non-conforming youth may possess items necessary to present their gender identity consistent with safety and security procedures including binders, packers, girdles, breast inserts, bras and other items as requested. DYS may supply items upon request through the Regional Clinical Coordinators.

SECTION X: HAIR AND OTHER PERSONAL GROOMING

A. Personnel grooming rules and restrictions, including those regarding hair, make-up, shaving, etc., shall be consistent in all male and female programs. A youth should not be prevented from, or disciplined for, a form of personal grooming that does not match typical gender norms.

## VISITATION, MARRIAGE, AND CONDUCT RULES

Facilities should not prohibit visits by same-sex partners of prisoners or impose restrictions on showing affection between prisoners and their same-sex partners during visits if these same restrictions do not apply to different-sex couples. Courts have held that facilities may not ban visitation by same-sex partners,<sup>3</sup> completely prohibit same-sex hugging or kissing between prisoners,<sup>4</sup> or prohibit prisoners from receiving LGBTQ publications.<sup>5</sup> Similarly, the Supreme Court has clearly ruled that prisoners have a right to marry,<sup>6</sup> and nationwide marriage equality extended this right to couples regardless of gender. This means that marriages between prisoners or between a prisoner and a partner on the outside should not be limited in a manner that discriminates against LGBTQ couples.

In some cases, concerns about protecting prisoners from abuse are misused to stigmatize LGBTQ prisoners and punish them for their identities, relationships, or any displays of affection. Prisoners sometimes report being harassed by staff or disciplined for “PREA violations” for consensual hand-holding, hugging, or kissing with another prisoner. An agency’s PREA policies and training should be reviewed to make sure they clearly distinguish between sexual abuse and consensual displays of affection between prisoners. While agencies have discretion to prohibit consensual



sexual contact between prisoners, they should not ban consensual, nonsexual touching, which has been disproportionately used against LGBTQ prisoners. At a minimum, agencies should ensure that consensual contact is clearly distinguished from sexual abuse in all policies, procedures, and training.

## PREA STANDARDS AND GUIDANCE

*DOJ PREA Standards § 115.78—Disciplinary sanctions for inmates*

(g) An agency may, in its discretion, prohibit all sexual activity between inmates and may discipline inmates for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

<sup>1</sup> See *Quine v. Beard*, No.14-cv-02726, 2017 WL 1540758 (N.D. Cal. Apr. 28, 2017) (finding that a policy limiting transgender prisoners' access to personal items such as gender-related clothing, accessories, and compression garments like binders is unconstitutional); *Kosilek*, 221 F. Supp. 2d at 167; *Konitzer v. Frank*, 711 F.Supp.2d 874 (E.D. Wis. 2010); *Tates v. Blanas*, No. S-00-2539 OMP P, 2003 WL 23864868 (E.D. Cal. 2003).

<sup>2</sup> The Pennsylvania Department of Corrections' commissary list is available at <http://www.cor.pa.gov/Inmates/Pages/Commissary-Catalogs.aspx>.

<sup>3</sup> *Doe v. Sparks*, 733 F. Supp. 227 (W.D. Pa. 1990).

<sup>4</sup> *Whitmire v. State of Arizona*, 298 F.3d 1134 (9th Cir. 2002).

<sup>5</sup> *Espinoza v. Wilson*, 814 F.2d 1093 (6th Cir. 1987).

<sup>6</sup> *Turner v. Safley*, 482 U.S. 78 (1987).

## COMMUNICATION AND INFORMATION MANAGEMENT PROCEDURES

### STAFF AND VOLUNTEERS SHOULD ALWAYS USE RESPECTFUL

language and terminology when talking to or about prisoners and should not use language that is demeaning or conveys bias or hostility towards LGBTQ people. In addition, a good policy provides facility staff direction on what name and pronoun to use when referring to transgender prisoners, as well what name to include in facility records. A good policy should direct staff to address individuals by their adopted name (even if it is not their legal name) and by pronouns consistent with their gender identity (such as “he,” “she,” or gender-neutral pronouns like “they”). Finally, information about a prisoner’s sexual orientation and gender identity is considered private information and sharing this information broadly could create unnecessary risks to an LGBTQ prisoner’s physical safety and emotional wellbeing. Facility policies should provide staff with guidance on how to protect the confidentiality and privacy of LGBTQ prisoners.

### PREA STANDARDS AND GUIDANCE

DOJ PREA Standards § 115.31(a)(9)—Employee training

- (a) The agency shall train all employees who may have contact with inmates on:
- (9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates

### DEMEANING LANGUAGE

Your policy recommendation should include a provision that directs facility staff not to use demeaning or derogatory language with LGBTQ prisoners, including not referring to transgender prisoners as “he-she” or “it.”

POLICY EXCERPTS

#### POLICY EXCERPTS: DEMEANING LANGUAGE

***Vermont Department of Corrections—Policy No. 432.01: Gender identification, care, and custody (February 18, 2015)***

- c. DOC has zero tolerance for staff to, or attempt to, ridicule or change an inmate or offender’s sexual orientation or gender identity.

POLICY EXCERPTS

***Kentucky Department of Corrections—Policy Number 14.8: Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders (April 11, 2017)***

There is zero tolerance for the use of any derogatory terms or discriminatory acts directed towards any LGBTI offender.

**Ohio Department of Rehabilitation and Correction—Policy No. 79-ISA-05: Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) Policy (July 13, 2015)**

POLICY EXCERPTS

Staff members are expected to treat all inmates with respect; however, as with all inmates staff shall be mindful ensuring the use of respectful words and avoidance of demeaning language including common slurs.

**Harris County, Texas Sheriff Department—Lesbian, Gay, Bisexual, Transgender, and Intersex (L.G.B.T.I.) Policy 413 (November 13, 2013)**

IV. A. 3. HCSO will have zero tolerance for derogatory terms used towards members of the LGBTI community including LGBTI inmates.

## NAME AND PRONOUN USE

Facility staff should call transgender prisoners by the name and pronoun that they request, even if this name differs from their legal name. Some facilities have chosen to have transgender prisoners complete a form where prisoners write down the name and pronoun they wish to be called by, among other things. This approach can be helpful to make sure all staff who have access to transgender prisoners' file will be informed of the appropriate name and pronoun before a staff member uses the wrong name or pronoun without realizing it. The policy should also indicate that the use of prisoners' appropriate names and pronouns does not require them to have completed a legal name change or have changed their gender markers on any identification documents. At a minimum it should prohibit staff from gratuitously using the name and pronouns associated with a prisoner's sex assigned at birth for the purpose of harassing them and ensure that transgender prisoners are not routinely referred to by a name that doesn't match their gender.

POLICY EXCERPTS

### POLICY EXCERPTS: NAME AND PRONOUN

**Massachusetts General Laws 127 § 32A (2018)**

A prisoner of a correctional institution, jail or house of correction that has a gender identity, as defined in section 7 of chapter 4, that differs from the prisoner's sex assigned at birth, with or without a diagnosis of gender dysphoria or any other physical or mental health diagnosis, shall be: ...; (i) addressed in a manner consistent with the prisoner's gender identity;....

**Pennsylvania Department of Corrections—DC-ADM 008: Prison Rape Elimination Act (PREA) Manual, Section 9: Working with Transgender and Intersex Inmates (August 22, 2016)**

A. 2. Intentional misuse of gender pronouns and titles is prohibited. Transgender and intersex inmates shall be referred to by their preferred pronoun. Unprofessional and derogatory references toward inmates are not acceptable under any circumstances.

**Vermont Department of Corrections—Policy No. 432.01: Gender identification, care, and custody (February 18, 2015)**

4. Respectful Communication

- a. DOC staff will identify inmates by their last name or chosen name, gender, and pronoun identified on the Gender Preference Form.
- b. DOC staff will use the proper pronoun, identified by the Gender Preference Form, in all written and verbal reports and communications concerning transgender and/or intersex inmates.

***Harris County, Texas Sheriff Department—Lesbian, Gay, Bisexual, Transgender, and Intersex (L.G.B.T.I.) Policy 413 (November 13, 2013)***

IV. A. 2. Staff will address LGBTI persons by their chosen name (including corresponding pronouns) or as “Inmate last name.” A notation of the proper name and pronoun shall be made on each transgender inmate’s classification record, armband and transfer card. At all times staff will use the proper pronoun corresponding to the individual’s gender identity.

***Delaware Department of Correction—Treatment of Transgender Persons, Policy No. 11-E-14 (October 4, 2016)***

D. Transgender individuals shall be addressed using their preferred pronouns, i.e. Mr., Ms., he, she, etc.

***Massachusetts Department of Youth Services—Prohibition of DYS Guidelines for Lesbian, Gay, Transgender, Questioning, Queer, Intersex, and Gender Non-Conforming Youth DYS Grievance Policy (July 1, 2014)***

A. All youth shall be addressed in person by their preferred name that is associated with their gender identity as preferred by the youth as well the pronouns that reflect a youth’s stated gender identity.... A request by a youth to use gender neutral pronouns such as the singular “they,” “ze/hir,” or other gender neutral pronouns should be honored, as well.

B. DYS shall work with the youth where the youth indicates that notifying the youth’s family of the preferred name will create an unsafe environment for them. Staff shall notify the youth that considerations should be made in the event the preferred name appears where the family may see the name or it is used by staff in the presence of the family.

***Denver Sheriff Department—Department Order 4005.1 (June 6, 2012)***

G. 5. While in the custody of or while housed at any division of the Denver Sheriff Department, DSD staff:

- c. Should address transgender/gender-variant inmates using preferred names and pronouns as indicated on the Statement of Preference Form. Preferred names and pronouns should be used regardless of whether or not the inmate has completed a legal name change, and regardless of whether the gender marker listed on the inmate’s identity documents has changed.

## INFORMATION MANAGEMENT AND CONFIDENTIALITY

Information concerning a prisoner’s transgender status or sexual orientation is protected by the constitutional right to privacy and may not be arbitrarily disclosed. Prisoners are protected under the Constitution from the disclosure of highly personal information like their LGBTQ status, as well

as medical information like their HIV status or their transition-related medical history.<sup>1</sup> This means that unless a prisoner has disclosed this information themselves, staff may not disclose it to other prisoners without a legitimate reason.<sup>2</sup>

Accordingly, revealing information about prisoners' sexual orientation and gender identity should only be done by the prisoner themselves. While some prisoners are out to everyone, others are not. Facility staff should respect each prisoner's privacy and never disclose a prisoner's sexual orientation or gender identity to other prisoners or to outside individuals or agencies unless the prisoner has given express permission to the staff member to do so. While it may be necessary to share this information with other staff members in the facility for the benefit of the prisoner, any such disclosure should include only the information necessary to achieve this benefit and should only be disclosed to the staff members who need to be informed. Including information about privacy in the facility's policy is recommended. Some transgender prisoners may have their transgender status revealed unavoidably simply because of where they are housed (e.g., as a woman in a men's facility). However, even in such cases, the facility must still protect the individual's privacy to the extent possible, such as with regard to specifics of a prisoner's medical history. For additional information and support about the law in this area, contact one of the LGBTQ legal organizations listed in the resource section.

## **POLICY EXCERPTS: INFORMATION MANAGEMENT AND CONFIDENTIALITY**

POLICY EXCERPTS

### ***Pennsylvania Department of Corrections—DC-ADM 008: Prison Rape Elimination Act (PREA) Manual, Section 9: Working with Transgender and Intersex Inmates (August 22, 2016)***

B. 4. a. All pertinent information regarding the transgender or intersex individual should be discussed on a need-to-know basis and shared only with the appropriate staff to provide necessary services.

POLICY EXCERPTS

### ***Vermont Department of Corrections—Policy No. 432.01: Gender identification, care, and custody (February 18, 2015)***

4. d. Staff are to maintain the privacy and confidentiality of information of LGBTQI inmates and residents to the fullest extent possible while also ensuring the safety and security of the facility. Sharing confidential information will be permitted when it is necessary to achieve a particular focus. For example, information would be permitted to share when identifying an appropriate placement for an LGBTQI inmate to another facility.

POLICY EXCERPTS

### ***Harris County, Texas Sheriff Department—Lesbian, Gay, Bisexual, Transgender, and Intersex (L.G.B.T.I.) Policy 413 (November 13, 2013)***

IV. A. 4. Questions relating to an individual's anatomy and/or surgical status shall only be asked by Gender Classification Specialists or authorized medical personnel as necessary for ensuring proper medical treatment.

POLICY EXCERPTS

J. Use of Screening Information/Confidentiality

1. A person's LGBTI status is considered confidential information. This information, including electronic records, shall have strict dissemination controls. HCSO shall keep LGBTI screening information confidential except as necessary to conform to

required protocols.

2. The HCSO shall implement appropriate controls on the dissemination within the facility and to the media in response to questions asked in order to ensure that sensitive information is not exploited to the inmate’s detriment by staff, other inmates or the media.

***Massachusetts Department of Youth Services—Prohibition of DYS Guidelines for Lesbian, Gay, Transgender, Questioning, Queer, Intersex, and Gender Non-Conforming Youth DYS Grievance Policy (July 1, 2014)***

SECTION II: DISCLOSURE

C. If a youth discloses this information [regarding their gender identity or sexual orientation] to an employee, and taking into consideration positive youth development model, they shall ask the youth to what extent they want to disclose this information and to whom. It is important to respect a youth’s confidentiality regarding their status as LGBTQI or GNC. Youth shall be told that information regarding their status as LGBTQI or GNC shall not be disclosed to their parent or legal guardian without the youth’s consent whenever possible but in no circumstances without the youth’s knowledge. In addition, DYS shall not disclose this information to outside 3rd parties such as but not limited to courts, schools, service referrals.

D. Youth shall also be informed that, under certain circumstances, the youth’s status as LGBTQI or GNC may need to be shared with other employees (i.e. in connection with a placement/transfer request) but shall not be disclosed to other employees without the youth’s knowledge.

<sup>1</sup> See, e.g., *Sterling v. Borough of Minersville*, 232 F.3d 190, 196 (3d Cir. 2000) (sexual orientation); *Powell v. Shriver*, 175 F.3d 107, (2d Cir. 1999) (transsexualism). See also *Doe v. Delie*, 257 F.3d 309, 317 (3d Cir. 2001) (HIV status); *Moore v. Prevo*, 379 F. App’x. 425, 428 (6th Cir. 2010) (same); *Thomas v. District of Columbia*, 887 F. Supp. 1, 4 (D.D.C. 1995) (sexual orientation); but see *Franklin v. McCaughtry*, 110 F. App’x 715, 719 (7th Cir. 2004) (suggesting that any such right is limited to “the purposeful dissemination of intensely private medical information” such as HIV or transsexualism).

<sup>2</sup> See also *Thomas v. District of Columbia*, 887 F. Supp. 1, 4 (D.D.C. 1995) (pattern of sexual harassment including spreading rumors concerning prisoner’s sexual orientation that resulted in emotional distress and fear for safety could establish Eighth Amendment claim).

## MEDICAL AND MENTAL HEALTH CARE

### EQUAL ACCESS TO CARE AND SOME KEY ISSUES

FOR THE MOST PART, LGBTQQ INDIVIDUALS HAVE THE SAME MEDICAL and mental health needs as others in a facility and should receive the same treatment. Some key issues, such as HIV care, treatment for anxiety and post-traumatic stress, treatment following allegations of abuse, and patient confidentiality are particularly important issues for LGBTQ people. For example, LGBTQ individuals may experience anxiety, depression, or post-traumatic stress as a result of harassment or abuse, and their requests to be evaluated by a mental health provider may not be taken seriously. Or a patient's HIV status may be discussed casually in front of others, or medication may be delivered in a careless way that could disclose their status. These are typically issues of non-compliance with existing policies.<sup>1</sup>

Transgender and intersex people may have additional needs with regard to primary care, including routine preventive screenings, which may not be typical for people of the gender with which they are housed. Facilities must provide adequate care for all serious medical needs, and all parts of the body, without regard to a person's gender identity, the gender they were thought to be at birth, or their housing assignment. For example, a transgender woman over fifty may need both breast and prostate care regardless of whether she is held in a facility for men or

POLICY EXCERPTS

#### POLICY EXCERPTS: EQUAL ACCESS TO CARE

##### ***U.S. Department of Justice, Federal Bureau of Prisons—Medical Management of Transgender Inmates (December 2016)***

###### GENERAL INTERACTIONS WITH TRANSGENDER INDIVIDUALS

Respect and trust are essential to a clinician-client (physician-patient) relationship.

Respectful language and terms should always be used when discussing or referring to all individuals regardless of gender. Once an individual has identified as TG [transgender], use of pronouns or salutations preferred by the TG individual is appropriate.... This practice is more likely to facilitate a cooperative relationship between the TG individual and others, and generally reduces the stress of gender transition.

POLICY EXCERPTS

##### ***Vermont Department of Corrections—Policy No. 432.01: Gender identification, care, and custody (February 18, 2015)***

###### Medical and Mental Health Care

e. LGBTQI inmates will be entitled to equal treatment and availability for HIV and STI testing, care, and confidentiality as other inmate's within the facility.

f. LGBTQI inmates will be equally entitled to any sexual trauma counseling available within the facility.

POLICY EXCERPTS

##### ***Delaware Department of Correction—Policy No. 11-E-14: Treatment of Transgender Persons (October 4, 2016)***

12. Gynecological care is available to all transgender and female offenders through the Medical Services contract.

POLICY EXCERPTS

## TRANSITION-RELATED HEALTH CARE FOR TRANSGENDER PEOPLE

One area where many facilities still have inadequate policies is in evaluating and treating gender dysphoria. Gender dysphoria is a serious medical condition that many transgender people have, and is marked by significant distress related to an incongruence between one's experienced gender and the gender they were thought to be at birth.<sup>2</sup> Treatment for gender dysphoria, which can involve counseling, social gender role transition (such as changing one's name, clothing, or grooming), hormone therapy, and any of a variety of possible surgical treatments, is medically necessary and effective for many people. The World Professional Association for Transgender Health (WPATH) Standards of Care, which are widely accepted as the standard protocols for treating gender dysphoria,<sup>3</sup> are fully applicable to the treatment of transgender people in confinement facilities. Failure to provide treatment for gender dysphoria can lead to serious physical and mental health consequences.

Denying prisoners access to treatment for gender dysphoria may also constitute cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution, which requires prisons to provide adequate medical care.<sup>4</sup> Courts have consistently stated that gender dysphoria is a serious medical condition that requires treatment for purposes of the Eighth Amendment,<sup>5</sup> meaning that prisons must provide transgender people who are diagnosed with gender dysphoria with adequate medical treatment, consistent with accepted medical standards.<sup>6</sup> Courts have found that blanket policies prohibiting certain kinds of medical treatment, such as an absolute ban on hormone therapy or surgery without regard for an individual's needs, are unconstitutional.<sup>7</sup> Prison officials cannot deny gender dysphoria treatments based solely on the argument that such treatments would increase the risk of violence towards the prisoners receiving the treatments<sup>8</sup> or based on financial or political factors,<sup>9</sup> and the treatment provided cannot be blatantly inappropriate.<sup>10</sup>

An adequate health care policy for transgender prisoners should incorporate each of the following key principles:

- **Treatment decisions are made by health care providers, not administrators.** Treatment decisions should be based on medical need alone, and security or administrative concerns should not be used to block or delay medically necessary treatment.
- **Treatment decisions should not be based on the level of care received prior to arrival.** Such “freeze-frame” policies have been held unconstitutional. Individuals who have never received any treatment or a specific treatment, or have taken medications without a prescription, should be evaluated and treated based on medical need.
- **Medications should not be interrupted absent a medical decision.** Cutting off any regular medication can have harmful consequences. Prisoners taking hormone medications should be maintained on such medications pending a medical evaluation, regardless of whether they were previously prescribed by a licensed health provider. Courts have found that it may be a constitutional violation to take prisoners who are already undergoing hormone therapy for gender dysphoria off such treatment without a clear medical reason to do so.
- **Evaluations and treatment provisions should be conducted by, or in consultation with, a competent provider.**<sup>12</sup> While monitoring hormone therapy is not medically complex, inexperienced providers may not understand when it is needed. Facilities should contract or consult with a knowledgeable provider to see patients in person or provide telemedicine and/or arrange for a provider to train their own staff.
- **No treatment, including surgical treatments, should be off the table.** The National



Commission on Correctional Health Care states that “[s]ex reassignment surgery should be considered on a case-by-case basis and provided when determined to be medically necessary for a patient.”<sup>13</sup> The Federal Bureau of Prisons (the agency governing all federal prisons) instructs facilities that transition-related care may include “counseling...hormone treatment, and in some cases, sex reassignment surgery” and provides criteria for assessing whether surgical treatment is medically necessary for particular individuals.<sup>14</sup> While it is generally better for policies to explicitly acknowledge that surgical treatments are possible when medically necessary, policies should at minimum have language generally allowing for transition-related treatments when they are medically necessary and refrain from having explicit exclusions of specific treatments or providing for only a limited list of treatments.

- **Prisoners should be permitted to express and be treated according to their gender identity.** For many transgender people, access to gender-appropriate undergarments and grooming items and the use of appropriate pronouns is an essential component of their medical treatment.<sup>15</sup> While these issues can be addressed separately from a medical policy (see Chapters 6 and 7 of this guide), it’s important to understand that they can have medical and legal implications.

## POLICY STATEMENTS FROM MEDICAL ORGANIZATIONS ON TREATMENT FOR INCARCERATED TRANSGENDER PEOPLE

It is the overwhelming consensus among major medical organizations—including the American Medical Association,<sup>16</sup> the American College of Physicians,<sup>17</sup> the American Psychological Association,<sup>18</sup> the American Psychiatric Association,<sup>19</sup> the American Academy of Family Physicians,<sup>20</sup> the Endocrine Society,<sup>21</sup> the American College of Obstetricians and Gynecologists,<sup>22</sup> and the World Professional Association for Transgender Health<sup>23</sup>—that transition-related treatments are safe, effective, and medically necessary for many transgender people. These leading organizations have conclusively rejected the notion that transition-related care is “cosmetic” or “experimental” and repeatedly affirmed their position that transgender people should be able to access transition-related care, including hormones and surgeries, that are appropriate for their medical needs.

Medical organizations have also adopted public statements that recognize and support the need for transgender-specific care in institutional settings, such as jails, prisons, and detention facilities. For example, an APA public statement recognizes the necessity of providing transition-related care for transgender people in institutional settings and calls on institutions to provide such care.<sup>24</sup> Similarly, the National Commission on Correctional Health Care (NCCHC) has adopted a position statement that provides guidance to health professionals working in correctional settings about their responsibility to ensure the physical and mental health of transgender people in their custody.<sup>25</sup> According to NCCHC, the proper approach to transgender medical care is to follow the WPATH Standards of Care, which are widely recognized in the medical community as the established standards for the treatment of gender dysphoria. The WPATH Standards of Care state that transgender people living in institutional settings should have access to the same medical treatments as would be available to them in the community and that no treatment should be refused because an individual is behind bars or did not receive that treatment previously.<sup>26</sup>

## POLICY EXCERPTS: TRANSITION-RELATED HEALTH CARE FOR TRANSGENDER PEOPLE

### *U.S. Department of Justice, Federal Bureau of Prisons—Medical Management of Transgender Inmates (December 2016)*

#### 6. HORMONE TREATMENT: ELIGIBILITY, GOALS, OVERVIEW

Hormone supplementation is an important part of transitional treatment for many transgender individuals. Studies demonstrate improvement (in the range of 70–80%) in gender dysphoria, mental health, quality of life, and sexual function, for transgender treatment that included hormone therapy....

#### Eligibility and Readiness for Gender-Affirming Hormone Therapy

**WPATH CRITERIA:** Current WPATH guidelines identify four eligibility criteria for hormone therapy, but also emphasize the need for individualized treatment plans that may include hormone therapy in selected cases that do not meet all four criteria. The WPATH criteria are as follows:

- (1) Gender dysphoria that is persistent and documented.
- (2) Medical and/or mental health conditions, if present, are reasonably well-controlled.
- (3) Legal age of majority (currently 18 years in all states except Alabama and Nebraska, which use 19 years).
- (4) Informed consent.

#### 12. GENDER-AFFIRMING (A.K.A. SEX REASSIGNMENT) SURGERY

Although individuals may live successfully as transgender persons without surgery, gender affirming surgery may be appropriate for some and is considered on a case-by-case basis.

**CRITERIA:** In addition to the eligibility and readiness criteria for hormone therapy, general criteria for consideration of surgery include at least 12 months of successful use of hormone therapy, participation in psychotherapy as clinically indicated, full-time real life experience in their preferred gender, and consolidation of gender identity. The inmate must request consideration for and demonstrate via informed consent a practical understanding of gender-affirming surgery including, but not limited to, permanence, potential complications, and short- and long-term treatment plans.

### *Delaware Department of Correction—Policy No. 11-E-14: Treatment of Transgender Persons (October 4, 2016)*

F. 2. If a diagnosis of Gender Dysphoria is made, a proposed individualized treatment plan shall be developed which promotes the physical and behavioral stability of the offender. The development of the treatment plan is not solely dependent upon services provided or the offender’s life experiences prior to incarceration. The treatment plan may include services that were or were not provided prior to incarceration, including but not limited to:

those real life experiences consistent with the prison environment, hormone therapy and counseling. Treatment plans shall be reviewed regularly and updated as necessary.

3. Current, accepted standard of care shall be referenced for developing the treatment plan. All appropriate treatment options prescribed for inmates with Gender Dysphoria will be considered by the appropriate medical and behavioral health staff.

13. Gender re-assignment surgery, electrolysis and voice training decisions are based on the individualized treatment plan and considered on a case-by-case basis as a component of the individualized treatment plan.

***Massachusetts Department of Youth Services—Prohibition of DYS Guidelines for Lesbian, Gay, Transgender, Questioning, Queer, Intersex, and Gender Non-Conforming Youth DYS Grievance Policy (July 1, 2014)***

SECTION V: MEDICAL AND HEALTH

A. Health Services should provide appropriate medical information and health services education for all youth inclusive of LGBTQI and GNC issues.

B. As a component of medical screening provided to all youth who enter DYS, staff shall identify medications that are currently prescribed to the youth through both history and third party reports. DYS shall continue providing to the youth hormone blocking and hormone therapy medications currently prescribed when the community-based provider recommends continuation and agrees to continue the medical management of such drugs. Staff shall seek to contact the prescriber of such medications within 24 hours.

C. Youth who enter DYS using medications not prescribed will receive health services to determine the proper medical steps regarding the specific medication. When such case occurs, DYS contracted health care providers will refer to hospital or community based specialist who will evaluate for continuation.

D. Youth who request to begin hormone therapy will be referred to a qualified medical professional in an expeditious manner and receive treatment consistent with the current standard of care. Referrals will be made consistent with DYS policy regarding informed consent.

***Idaho Department of Corrections, Control Number 401.105.03.501 (June 25, 2009)***

10. Hormone Replacement Treatment and Cross-Sex Hormonal Therapy shall be provided as needed but only when medically indicated and consistent with the offender's treatment plan. An offender who is receiving hormonal medications related to Cross-Sex Hormonal Therapy at the time of incarceration will be continued on such hormonal medications unless current medical providers determine there is a medically compelling reason to discontinue treatment. An offender who is initially diagnosed with [gender dysphoria] while incarcerated at IDOC will be eligible to receive hormonal medications as provided herein.

## ENDNOTES FOR MEDICAL AND MENTAL HEALTH CARE

<sup>1</sup> On HIV/AIDS care in custodial settings, see Gay Men's Health Crisis. (2012). *Fenced In: HIV/AIDS in the Criminal Justice System*. Available at: [http://www.gmhc.org/files/editor/file/a\\_pa\\_2012\\_prison.pdf](http://www.gmhc.org/files/editor/file/a_pa_2012_prison.pdf).

<sup>2</sup> Gender dysphoria, as defined by the American Psychiatric Association, is a medical condition marked by clinical significant distress or impairment associated with the incongruence between an individual's gender identity and the gender they were assigned at birth. American Psychiatric Association. (2013). *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*. (p. 452).

<sup>3</sup> See, e.g., *De'Lonta v. Johnson*, 708 F.3d 520 (4th Cir. 2013) (WPATH Standards "are the generally accepted protocols for the treatment" of gender dysphoria); *Fields v. Smith*, 653 F.3d 550 (WPATH Standards are the "accepted standards of care").

<sup>4</sup> *Estelle v. Gamble*, 429 U.S. 97 (1976) ("[Eighth Amendment] principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration.")

<sup>5</sup> See, e.g., *De'Lonta v. Angelone*, 330 F.3d 630, 635 (4th Cir. 2003); *Cuoco v. Moritsugu*, 222 F.3d 99 (2d Cir. 2000); *Brown v. Zavaras*, 63 F.3d 967 (10th Cir. 1995); *Phillips v. Michigan Department of Corrections*, 731 F.Supp. 792, 799 (W.D. Mich. 1990); *Meriwether v. Faulkner*, 821 F.2d 408 (7th Cir. 1987).

<sup>6</sup> See *Castello v. Martin*, 197 Fed. Appx. 14, 16 (1st Cir. 2006) (holding that medical care in prisons must be "at a level reasonably commensurate with modern medical science and of a quality acceptable within prudent professional standards"); *Barrett v. Coplan*, 292 F.Supp. 2d 281, 286 (D.N.H. 2003) ("Adequate medical care" requires treatment by qualified medical personnel who provide services that are of a quality acceptable when measured by prudent professional standards in the community, tailored to a prisoner's particular medical needs, and that are based on medical considerations.")

<sup>7</sup> See, e.g., *Hicklin v. Precynth*, No. 4:16-cv-01357, 2018 WL 806764 (E.D. Mo. Feb. 9, 2018) ("The denial of hormone therapy based on a blanket rule, rather than an individualized medical determination, constitutes deliberate indifference in violation of the Eighth Amendment") *Diamond v. Owens*, 131 F.Supp.3d 1346, 1375 (M.D. Ga. 2015) (prison officials' to provide transgender prisoner with treatment they knew was medically necessary or refer her for treatment violated Eighth Amendment); *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015) (permitting Equal Protection claim where officials denied surgery even though they knew it to be medically necessary); *Rosati v. Igbinoso*, 791 F.3d 1037 (9th Cir. 2015) (holding that alleged blanket ban on surgical care was subject to constitutional challenge); *De'Lonta v. Johnson*, 708 F.3d 520 (4th Cir. 2013) (categorical refusal to even evaluate patient with persistent gender dysphoria symptoms for surgical treatment stated plausible Eighth Amendment claim); *Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011) (holding that Wisconsin's blanket rule against state funds being used to treat prisoners diagnosed with gender dysphoria constituted cruel and unusual punishment); *Allard v. Gomez*, 9 Fed. Appx. 793, 795 (9th Cir. 2001) (finding triable question of fact as to whether transgender prisoner was denied hormone therapy based on medical evaluation or as result of blanket rule); *Kosilek v. Maloney*, 221 F.Supp.2d 156 (D.Mass. 2002) (holding that blanket policy that prohibit;s a prison's medical staff from making a medical determination of an individual prisoner's medical needs violates the Eighth Amendment), *rev'd sub nom. Kosilek v. Spencer*, 774 F.3d 63, 91 (1st Cir. 2014) (en banc) (reaffirming that a blanket prohibition on care for gender dysphoria is not permissible but finding that the plaintiff's personal medical history did not support the conclusion that the denial of the requested treatment was unconstitutional).

<sup>8</sup> *Fields v. Smith*, 653 F.3d 550, 557 (7th Cir. 2011) (rejecting contention that hormone therapy would increase risk of assaults, which defendants' own expert called "an incredible stretch"); *Tates v. Blanas*, No. S-00-2539, 2003 WL 23864868, \*10 (E.D. Cal. 2003) (officials could not deny transgender woman a bra where they failed to balance security risks against medical needs and where other women were issued bras).

<sup>9</sup> See, e.g., *Harris v. Thigpen*, 941 F.2d 1495, 1509 (11th Cir. 1991) (holding that treatments cannot be denied merely because they are expensive); *White v. Farrier*, 849 F.2d 322, 325 (8th Cir. 1988) (holding that treatment must be "based on medical considerations").

<sup>10</sup> See, e.g., *Edwards v. Snyder*, 478 F.3d 831 (7th Cir. 2007) (holding that treatment cannot be "blatantly inappropriate"); *Johnson v. Doughty*, 433 F.3d 1001, 1013 (7th Cir. 2006) (holding that care cannot be such that "no minimally competent professional would have so responded under those circumstances"); *Ancata v. Prison Health Services, Inc.*, 769 F.2d 700, 704 (11th Cir. 1985) (holding that medical care cannot be "so cursory as to amount to no treatment at all").

<sup>11</sup> See *De'Lonta*, 330 F.3d 630; *Wolfe*, 130 F. Supp. 2d 648; *Phillips*, 731 F.Supp. at 800.

<sup>12</sup> Courts have found that it can be unconstitutional for a prison to deny or obstruct access to a specialist when medical staff at the facility do not have sufficient knowledge or experience with the required treatment. See, e.g., *Hayes v. Snyder*, 546 F.3d 516, 526 (7th Cir. 2008); *Mata v. Saiz*, 427 F.3d 745, 756 (10th Cir. 2005) (holding nurse's failure to performer "gatekeeper" role by referring patient to a practitioner for symptoms of cardiac emergency could be deliberate indifference); *Hartsfield v. Colburn*, 371 F.3d 454, 457 (8th Cir. 2004) (holding six weeks' delay in sending prisoner to a dentist, resulting in infection and loss of teeth, raised an Eighth Amendment claim); *LeMarge v. Wisneski*, 266 F.3d 429, 440 (6th Cir. 2001) (failure to make timely referral to specialist or tell the patient to seek one out was deliberate indifference); *Oxendine v. Kaplan*, 241 F.3d 1272, 1278-79 (10th Cir. 2001) (prison doctor who reattached accidentally severed finger, which became gangrenous, could be found deliberately indifferent for failing to refer prisoner for specialist care at any point; denial of access to "medical personnel capable of evaluating the need for treatment" and providing treatment one is not qualified for can be deliberate indifference).

<sup>13</sup> See National Commission on Correctional Health Care. (2009, rev. 2015). *Position Statement on Transgender, Transsexual, and Gender Nonconforming Health Care in Correctional Settings*. Available at: <https://www.ncchc.org/transgender-transsexual-and-gender-nonconforming-health-care>.

<sup>14</sup> For the full medical manual used by the Federal Bureau of Prisons, see [https://www.bop.gov/resources/pdfs/trans\\_guide\\_dec\\_2016.pdf](https://www.bop.gov/resources/pdfs/trans_guide_dec_2016.pdf).

<sup>15</sup> National Commission on Correctional Health Care. (2009, rev. 2015). *Position Statement on Transgender, Transsexual, and Gender Nonconforming Health Care in Correctional Settings*. Available at: <https://www.ncchc.org/transgender-transsexual-and-gender-nonconforming-health-care>.

<sup>16</sup> American Medical Association. (2008). *AMA Policies on GLBT Issues, Patient-Centered Policy H-185.950, Removing Financial Barriers to Care for Transgender Patients*.

## ENDNOTES FOR MEDICAL AND MENTAL HEALTH CARE

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<sup>17</sup> American College of Physicians. (2015). Lesbian, Gay, Bisexual and Transgender Health Disparities: A Policy Position Paper from the American College of Physicians. *Annals of Internal Medicine* 163(2), 135-137.

<sup>18</sup> American Psychological Association. (2008). *Policy on Transgender, Gender Identity & Gender Expression Non-Discrimination*.

<sup>19</sup> American Psychiatric Association. (2012). *Position Statement on Discrimination Against Transgender and Gender Variant Individuals*. Available at: <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2012-Transgender-Gender-Variant-Discrimination.pdf>.

<sup>20</sup> American Academy of Family Physicians. (2012). *Resolution No. 1004: Transgender Care*. Available at: [http://www.aafp.org/dam/AAFP/documents/about\\_us/special\\_constituencies/2012RCAR\\_Advocacy.pdf](http://www.aafp.org/dam/AAFP/documents/about_us/special_constituencies/2012RCAR_Advocacy.pdf).

<sup>21</sup> Wylie C. Hembree et al., (2009). Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline. *Journal of Clinical Endocrinology & Metabolism* 94(9), 3132-3154.

<sup>22</sup> American College of Obstetricians & Gynecologists. (2011). *Committee Opinion No. 512: Health Care for Transgender Individuals*.

<sup>23</sup> World Professional Association for Transgender Health. (2011). *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (7th edition).

<sup>24</sup> American Psychological Association. (2008). *Policy on Transgender, Gender Identity & Gender Expression Non-Discrimination*.

<sup>25</sup> See National Commission on Correctional Health Care. (2009, rev. 2015). *Position Statement on Transgender, Transsexual, and Gender Nonconforming Health Care in Correctional Settings*. Available at: <https://www.ncchc.org/transgender-transsexual-and-gender-nonconforming-health-care>.

<sup>26</sup> World Professional Association for Transgender Health. (2011). *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (7th edition).

# PRISONER EDUCATION AND POLICY DISSEMINATION

IN ORDER FOR A POLICY TO BE EFFECTIVE, PRISONERS AND STAFF NEED to know about it, understand it, and be able to reference it if need be. You will need to determine how and when prisoners are told about the LGBTQ-specific policies and other key policies and other ways new policies will be disseminated.

## INFORMING PRISONERS ABOUT LGBTQ-RELATED POLICIES

The PREA Standards require that all prisoners receive both basic information during intake about reporting sexual abuse, as well as comprehensive education about agency policies and procedures regarding sexual abuse prevention and response. A strong policy ensures that this education covers LGBTQ-related policies. The timing and procedure for informing prisoners about LGBTQ-related policies may depend on how the agency handles informing prisoners of existing policies. Most agencies have an orientation handbook that is given to all prisoners at intake and/or some type of orientation session or video. If the handbook includes other policies, the new LGBTQ policy is to be added to the orientation handbook as well. If the handbook only references facility policies and rules and does not include copies of policies, LGBTQ policies should also be referenced and copies of them should be made available to prisoners during the intake process, and upon request at any time. If there are orientation sessions or videos that all prisoners watch during or shortly after intake, LGBTQ policies should be discussed in the session or video and copies should be available during the session or video. It is important that LGBTQ-related policies specifically state how prisoners will be informed about them so there is a clear procedure that all staff can follow. And of course, all agencies should ensure they are complying with PREA's prisoner education requirements related to sexual harassment and abuse.

## POSTING LGBTQ-RELATED POLICIES

Many facilities have a designated area where important policies are posted in order to ensure that prisoners and staff are aware of them. One of these places may be where intake and assessment occur and another may be in common areas of each unit or common areas that prisoners from different units have access to, such as libraries, cafeterias, or gyms. LGBTQ-related policies should include language that requires those policies to be posted along with other important policies. If the facility does not already post policies or notices to prisoners, it is important to find a spot to post the new LGBTQ policy so that prisoners are aware of its requirements.

### POLICY EXCERPTS: INFORMATION FOR PRISONERS

POLICY EXCERPTS

***Massachusetts Department of Youth Services—Prohibition of DYS Guidelines for Lesbian, Gay, Transgender, Questioning, Queer, Intersex, and Gender Non-Conforming Youth DYS Grievance Policy (July 1, 2014)***

A. 1. Youth Education Materials: Information presented to a youth that includes but is not limited to the DYS approved intake presentation; the DYS Policies on the Youth Grievance Process and Prohibition of Harassment and Discrimination Against LGBTQI and GNC

Youth, and Guidelines; the toll-free number for the Department of Children and Families Child At Risk Hotline and listing of Massachusetts Rape Crisis Centers.

#### C. Resource and Policy Dissemination to Youth

1. DYS shall provide written information to all youth in DYS residential locations regarding this policy and the Guidelines through the youth education materials during the first scheduled clinical session, including their rights and responsibilities under this policy, the Guidelines and the procedures for reporting complaints through the DYS Youth Grievance Policy. For youth in a DYS Alternative Lockup Program, information will be disseminated upon intake to the program.

2. At all DYS locations youth shall have access to LGBTQI and GNC related resources, including a booklist, website list of community resource supports, and other appropriate materials. DYS will strive to provide these resources in languages other than English, as needed.

## PREA STANDARDS

### *DOJ PREA Standards § 115.33—Inmate education*

(j) During the intake process, inmates shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

(k) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.

(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

## POLICY IMPLEMENTATION AND OVERSIGHT

### DISSEMINATING POLICIES TO EMPLOYEES, CONTRACTORS, AND VOLUNTEERS AND OVERSIGHT OF IMPLEMENTATION

IN ORDER TO MAKE SURE THAT STAFF MEMBERS ARE AWARE OF NEW LGBTQ-related policies, all new staff members and volunteers should receive copies of the policy during their orientation and current staff and volunteers should receive a copy shortly after its adoption. In addition, a copy should be placed in any electronic folders or binders that contain other important policies so staff members can refer to it when needed. Contractors should also be informed about the nondiscrimination and non-harassment aspects of the policy and be required to abide by them when they sign contracts to work with the facility.

In addition, management and supervisors need to monitor implementation and compliance to ensure staff members are following and implementing the provisions properly. The policy should include guidance on how administrators and supervisors can measure staff compliance in evaluation procedures and when making determinations related to promotion, discipline, and termination. Staff members who are not abiding by the policy should receive additional training, targeted supervision, and other support to ensure future policy compliance. If appropriate, staff should be subject to disciplinary measures for non-compliance with policy.

Finally, LGBTQ-related policies should include regularly scheduled policy reviews to ensure compliance with other state and federal laws, identify new needs or problems, and provide opportunities for improvement.

### POLICY EXCERPTS: IMPLEMENTATION AND OVERSIGHT

POLICY EXCERPTS

#### ***U.S. Department of Justice, Federal Bureau of Prisons—Transgender Offender Manual (May 11, 2018)***

#### 3. STAFF RESPONSIBILITIES

a. (1) The Women and Special Populations Branch...is responsible for the following functions as they relate to transgender inmates:

- ...Ensuring the Bureau offers appropriate services to transgender inmates.
- ...Developing and monitoring monthly reports on the transgender population and institutional programs.
- Issuing an annual report on the state of transgender offenders in the Bureau that will be made available to all staff and stakeholders.
- Advising agency leadership on transgender inmate needs.
- Conducting an annual survey of transgender inmates in the Bureau and sharing results with internal and external stakeholders.
- Providing national oversight of pilot programs and initiatives serving transgender offenders.

POLICY EXCERPTS

POLICY EXCERPTS

#### ***Massachusetts Department of Youth Services—Prohibition of DYS Guidelines for Lesbian, Gay, Transgender, Questioning, Queer, Intersex, and Gender Non-Conforming Youth DYS Grievance Policy (July 1, 2014)***



F. Enforcement: In accordance with DYS policy and procedures and consistent with current collective bargaining agreements, supervisors and managers shall promptly address and investigate any reported incident of alleged discrimination and/or harassment against a youth by an employee or another youth and, if determined to have occurred, will result in corrective action and may result in disciplinary action. Failure to report an allegation of harassment or discrimination against a youth by another youth or a DYS state or contract provider employee will result in discipline up to and including termination.

***Harris County, Texas Sheriff Department—Lesbian, Gay, Bisexual, Transgender, and Intersex (L.G.B.T.I.) Policy 413 (November 13, 2013)***

A. Employee conduct

1. The HCSO has zero tolerance for any staff sexual misconduct or sexual harassment directed towards LGBTI inmates or detainees. Any substantiated claim of sexual conduct, sexual contact or sexual harassment by a staff member towards an inmate or detainee may result in termination of the staff member's employment, referral for criminal charges, civil penalties, or other punitive actions as deemed appropriate.
3. HCSO will have zero tolerance for derogatory terms used towards members of the LGBTI community including LGBTI inmates. The use of derogatory terms towards LGBTI persons is a violation of this policy and Department Manual Policy #303 (1)(C)(13).

***Denver Sheriff Department—Department Order 4005.1 (June 6, 2012)***

7. B. Management: The Division Chief/Unit Commander or Unit Manager of any division or unit affected by this policy will:

1. Ensure that existing procedures and all newly developed orders are in compliance with this order.
2. Ensure that all affected personnel are made aware of this policy.
3. Ensure this policy is reviewed annually for compliance with all federal, state and local laws and standards.

C. Supervisors: All supervisors will ensure that the provisions of this policy are being followed.

## **TRAINING STAFF, CONTRACTORS, AND VOLUNTEERS**

Training is an essential step to ensure that staff members understand the requirements of the new policy and have the tools and skills to put the policy into everyday practice. All facility staff and administrators should receive training about the policy and LGBTQ people during orientation and as part of continuing education or training requirements.

A training curriculum should include at a minimum, the following topics:

1. The goals and requirements of the facility's LGBTQ policy;
2. How to manage LGBTQ prisoners in a respectful, fair, and non-discriminatory manner; and
3. How to prevent and respond to harassment and abuse against LGBTQ prisoners.

These trainings should be taught by professional trainers with experience training on this topic. The agency should maintain documentation about trainings, including who was trained, when they received training, and what the training covered.

Medical and mental health staff, as well as agency staff charged with investigating potential abuse or crimes, should receive specialized training that includes tailored guidance on working with LGBTQ prisoners. See the Resources section for specialized training resources, including on training for sexual assault in medical forensic examinations.

## PREA STANDARDS

*DOJ PREA Standards § 115.15—Limits to cross-gender viewing and searches*

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches and searches of transgender and intersex individuals in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

*DOJ PREA Standards § 115.31—Employee training*

The agency shall train all employees who may have contact with inmates on:

(9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates.

## POLICY EXCERPTS: TRAINING STAFF, CONTRACTORS, AND VOLUNTEERS

***Delaware Department of Correction—Policy No. 11-E-14: Treatment of Transgender Persons (October 4, 2016)***

### J. Training

1. Correctional staff shall receive 2.5 hours of initial training on Healthcare in the Delaware Department of Correction which includes topics on the treatment of transgender offenders during Correction Employee Initial Training (CEIT) and Basic Officer Training Court (BOTC).
2. The Medical and Behavioral Health Vendors shall develop orientation and annual refresher training plans for their employees concerning treatment of the transgender offender and coordinate the Lesson Plans with BCHS.

***Vermont Department of Corrections—Policy No. 432.01: Gender identification, care, and custody (February 18, 2015)***

### TRAINING

All security staff will receive training on how to communicate effective and professionally with inmates, including LGBTQI inmates during Advanced Communication Techniques

(ACT). This will include specific LGBTQI scenarios.

All security staff will learn appropriate steps and circumstances in cross gender pat and strip searches during Contraband and Searches. This will include content specific to LGBTQI inmates.

DOC staff that has contact with inmates and/or offenders will undergo training that includes understanding the impact of name-calling and harassment on LGBTQI inmates.

DOC will develop and conduct training and provide resources to inform staff about the societal, familiar, and developmental challenges confronting LGBTQI inmates.

***Harris County, Texas Sheriff Department—Lesbian, Gay, Bisexual, Transgender, and Intersex (L.G.B.T.I.) Policy 413 (November 13, 2013)***

V. EMPLOYEE TRAINING

The HCSO Academy shall develop LGBTI related training that all HCSO employees, volunteers, and contractors shall attend.

A. Training Content

1. The mission and core values of HCSO as they relate to the LGBTI population;
2. Basic information about the LGBTI population.
3. HCSO zero tolerance policy for sexual abuse, sexual harassment, the failure to report incidents of sexual abuse, sexual contact, or sexual harassment of inmate to inmate, or staff and inmates and the available sanctions for violations of this policy;
4. All LGBTI-related policies;
  - a. How to identify violations of policy
  - b. How to respond to violations of policy
  - c. How policies are enforced
5. Professional boundaries and avoidance of inappropriate relationships;
6. How to communicate effectively and professional with LGBTI inmates in a respectful and non-discriminatory manner;
7. Confidentiality responsibilities;
8. Legal responsibilities;
9. Detection, response and prevention of sexual abuse, sexual misconduct and victimization of LGBTI inmates by other inmates; and
10. Resources available to LGBTI persons.

B. Refresher Training

The Academy shall provide each employee with refresher training every two years to ensure that all employees know HCSO's current LGBTI policies and procedures.

***Massachusetts Department of Youth Services—Prohibition of DYS Guidelines for Lesbian, Gay, Transgender, Questioning, Queer, Intersex, and Gender Non-Conforming Youth DYS Grievance Policy (July 1, 2014)***

- C. Training for Employees: DYS shall provide training regarding this policy and the

Guidelines, including what behavior constitutes discrimination or harassment and the procedures for preventing and reporting such behavior. These trainings will include how to communicate effectively and professionally with all youth including LGBTQI and GNC youth....

In order to raise the awareness of and capacity for staff to respond to gender identity, gender expression, sexual orientation and intersex condition issues in all DYS locations, all DYS state and contracted provider employees, volunteers and interns shall attend LGBTQI and GNC training as required by DYS.

***Cook County, Illinois Department of Corrections—Interagency Directive No. 54.5.42.0 (March 7, 2011)***

E. Gender Identity Disorder Training—The CCSO Training Institute staff shall provide training to officers and supervisory staff in gender identity disorder sensitivity and the role of the Gender Identity Committee in formulating Accommodation Plans. All officers must successfully complete and be certified in the prescribed course administered by the CCSO Training Institute.

***Miami-Dade Corrections and Rehabilitation—DSOP No. 18-017 (December 28, 2009)***

IV. MDCR staff shall be provided information on transgender awareness through classroom training or an educational workbook. Training shall also be provided to volunteer and contractual staff through an educational workbook.... In addition, MDCR sworn personnel shall complete transgender awareness refresher training every 4 years as a requirement for Mandatory In-Service Training (MIST). The training shall include but is not limited to the following: Cultural awareness; Employee ethics; Prison Rape Elimination Act (PREA); Procedures for reporting inmates identified as transgender; Signs and symptoms of gender identity disorder.

## SEXUAL ABUSE PREVENTION, DETECTION, AND RESPONSE

IT IS CRITICAL TO ENSURE THAT AGENCIES FULLY IMPLEMENT ALL OF the PREA Standards related to preventing, detecting, and responding to abuse. Advocates should compare existing agency policies to the full PREA Standards in areas such as hiring, training, supervision and monitoring, reporting, investigations, health care and other support for those who report abuse, and data collection. More information about PREA Standards in this area can be found in Appendix B.

In particular, PREA requires facilities to conduct a thorough incident review at the end of every investigation of alleged sexual abuse. The review should be aimed at identifying how an incident could have been prevented and whether the facility's policies or procedures need further improvements. Critically, the PREA Standards require that this review of every incident include specific consideration of whether the victim was targeted because they were LGBTQ. This is important both because it can help to identify patterns of abuse targeting LGBTQ people, prompt the agency to consider steps it needs to take in the future, and also create a record that can be used to press for those future changes. Agencies often use standardized incident review forms that should incorporate collecting this information.

### PREA STANDARDS

*DOJ PREA Standards § 115.15—Limits to cross-gender viewing and searches*

- (a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.
- (b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.
- (c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
- (d) The review team shall:
  - (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
  - (2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
  - (6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.
- (e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

## REENTRY

### LGBTQ PEOPLE CAN FACE TREMENDOUS BARRIERS WHEN RETURNING

to the community from incarceration. Planning for reentry is supposed to start at the time of intake and intensify as a prisoner's release date approaches. In reality, reentry supports are often lacking, but many experts and policymakers have pushed for a renewed emphasis on reentry in recent years. In addition to policies for corrections agencies and reentry facilities they may contract with, there may be separate government agencies responsible for probation, parole, or reentry programs whose policies can impact LGBTQ people for better or worse. Many of the best practices and PREA requirements for prisons and jails also apply to residential reentry facilities, but there are issues unique to these settings that should be considered as well. Here are some best practices<sup>1</sup>:

- **Expressly prohibit discrimination.** Reentry facilities and programs should have an explicit nondiscrimination statement that covers discrimination based on sexual orientation, gender identity, and gender expression.
- **Ensure placement consistent with gender identity in halfway houses, treatment centers, and other residential settings.** These facilities may be subject to PREA, to fair housing or other nondiscrimination laws, or both.<sup>2</sup> Agencies should require that reentry facilities they contract with comply with these requirements.
- **Ensure continuity of transition-related care.** Reentry planning staff should ideally be familiar with transgender-competent health care providers in the state or local area, and work to ensure continuity of care for all the individual's health care needs, including transition-related care.
- **Assist transgender people with obtaining name changes and accurate ID documents.** For many transgender people, having an ID document that does not reflect their name and gender can make it harder for them to find employment, housing, and essential services after their release. Helping individuals obtain valid ID before release is a recognized best practice for reentry, but agencies often do not consider the specific challenges facing transgender people. Program staff should be familiar with name and gender change rules and processes in their jurisdiction and proactively assist with making these changes, including working with medical or mental health staff to complete documentation when required.
- **Avoid overly invasive drug testing procedures.** Many people in reentry are required to undergo regular drug tests. These tests are often conducted by direct observation of urine sampling, sometimes creating privacy and safety problems that may disproportionately affect transgender people. Agencies are increasingly switching to less invasive methods such as hair or saliva testing. If an agency continues to rely on urine testing, transgender people should be asked to indicate whether male or female staff should observe the sample collection.
- **Avoid burdensome restrictions.** Advocates should also consider how other restrictions on probationers, parolees, or reentry program participants could unfairly impact LGBTQ people. For example, travel restrictions can also be onerous for those who may need to travel across state lines for transition-related or HIV care.

## POLICY EXCERPTS: REENTRY

***U.S. Department of Justice, Federal Bureau of Prisons—Transgender Offender Manual (May 11, 2018)***

### 15. REENTRY NEEDS

In accordance with the Program Statement Release Preparation Program, institution staff should assist transgender inmates in addressing these issues prior to release or placement in a Residential Reentry Center/Home Confinement.

During initial classifications and Program Reviews, Unit Management will formulate a pre-release plan that will assist transgender inmates in obtaining appropriate identification, finding housing and employment, and providing community resources to reintegrate into the community.

The Reentry Affairs Coordinator may assist staff with identifying these resources. Institution and/or Regional Social Workers should be contacted concerning the continuity of medical care.

<sup>1</sup> Much of the content in this section is adapted from *Unjust: How the Broken Criminal Justice System Fails LGBT People*, a report by the Center for American Progress and the Movement Advancement Project, available at [www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf](http://www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf).

<sup>2</sup> See *PREA § 115.342—Placement of residents in housing, bed, program, education, and work assignments*. Available at: <https://www.prearesourcecenter.org/training-technical-assistance/prea-101/juvenile-facility-standards>; *Wilson v. Phoenix House*, 42 Misc.3d 677, 696 (2013) (finding that a residential drug treatment program provided as an alternative to prison is subject to state housing nondiscrimination law).

## ADDRESSING COMMON QUESTIONS AND CONCERNS

### AGENCY LEADERSHIP OR STAFF MAY HAVE A VARIETY OF CONCERNS

or questions about making policy changes. Below are some short answers to common questions and concerns we've heard. These examples are by no means exhaustive. Advocates are encouraged to reach out to NCTE or other groups who have done this work before.

In some cases, agencies may find it helpful to identify experts who can help them better understand and answer these concerns. Examples of experts might include medical or mental health providers with expertise in working with transgender people (and specifically with transgender prisoners), or officials at other agencies who have already successfully addressed these issues.

#### **We treat every prisoner the same. Why should some get special treatment?**

Agency staff are obligated to protect all the people in their custody, most of whom are not LGBTQ. At the same time, corrections officials understand that some populations are more vulnerable than others and may have unique needs that must be met to ensure that they are safe and healthy. LGBTQ policies are not about “special treatment”—they are about addressing the unique vulnerabilities that many LGBTQ people in prisons and jails face. For this reason, the PREA Standards require agencies to have policies specific to the needs of LGBTQ people. Research regarding abuse and other risks that LGBTQ prisoners face and court rulings regarding an agency's obligations under the Eighth Amendment and other legal standards also support this approach.

#### **This is a correctional facility. We don't make decisions about where to house people or how to search them based on their personal preferences. Why should it be different for transgender people?**

When making important decisions about transgender prisoners, such as whether to house a transgender person in a men's or women's facility and whether the prisoner should be searched by male or female staff, it is important—and required under the PREA Standards—that facility staff give serious consideration and priority to the prisoner's views regarding what would be safest for them.

We understand that ensuring the safety of both officers and prisoners is the highest priority of the agency. Our recommendations are aimed at ensuring safety in light of the unique vulnerabilities and needs of LGBTQ people, as well as facilities' obligations under the law national PREA standards. The PREA Standards recognize that in many cases, prisoners may have critical knowledge regarding their own vulnerability and what situations might expose them to greater risk of abuse. Prisoners' views regarding their own vulnerability are important because, even for members of the same group, that vulnerability will play out differently in specific situations based on individual factors such as appearance, demeanor, stature, prior victimization, and past institutional history. Asking transgender prisoners to specify whether they would feel safer if housed with, or searched by, men or women serves to minimize their risk of assault and harassment and reduce the likelihood that the facility or individual officers will be held liable for



harm experienced by the prisoner. Prisoners aren't being asked to simply give their personal preferences, but to give their view of what would be safest for them. These policies have been embraced by many state and local corrections agencies, as well as major police departments and juvenile facilities.

**Housing transgender women with other women is not possible. Has any other agency even tried to do this?**

Yes, many agencies have such policies in place. Case-by-case housing placements for transgender people, including housing transgender women in women's housing in appropriate cases, has been the policy of numerous local, state, and federal corrections agencies for a number of years. This has also been the practice or policy of the many juvenile corrections systems—including in Hawai'i since the late 1990s, New York State since 2008, Santa Clara County since 2012, and New Orleans since 2011. Because the national PREA Standards require policies that allow transgender people to be placed according to their gender identity in many instances, many more agencies are adopting this approach. Policies housing transgender people according to their gender identity have also been implemented successfully in homeless shelters, domestic violence shelters, health facilities, and school dormitories around the country, and such policies are increasingly required under state and federal laws.

This practice is also becoming common outside the United States, with many corrections agencies in Europe, Canada, and Australia housing transgender women in women's facilities on a case-by-case basis.

**Does a woman with “male” genitalia pose a safety risk in a women's facility?**

No. While a transgender woman might have genitalia that appear similar to that of a cisgender man (a non-transgender man), this does not mean she presents the same risks that a cisgender male prisoner might. There are many reasons for this difference. What is most important to understand is that a transgender woman's core psychological identity is as a woman. Typically transgender women are uncomfortable with the genitalia they were born with, and are not interested in talking about or having their bodies viewed by others. They may have a strong desire and a medical need for reconstructive surgery, but have been unable to obtain it. Prolonged hormone therapy can also eliminate both erectile function and fertility, though this should not be a prerequisite for housing placement. While any prisoner is capable of engaging in abusive conduct, there is simply no evidence to believe that transgender women present any more risk to their fellow women prisoners than other women.

In practice, a growing number of corrections facilities for youth and adults have successfully housed transgender women alongside other women, without experiencing any incidents of abuse by transgender women or other prisoners. By contrast, sexual abuse of transgender women in men's facilities is a common occurrence. A statewide study in California found that when transgender women were automatically housed with men, they were 13 times more likely to be sexually assaulted than male prisoners in the same facilities.

**Does placement of a transgender woman in a women's setting violate the privacy of other women?**

No. The mere presence of a transgender woman does not infringe upon the privacy of other

female prisoners. Again, it is important to remember that regardless of their anatomy or the gender they were assigned at birth, transgender women are women, and their presence is no more a privacy invasion than that of any other woman. Most lived their lives as women prior to incarceration, and they will continue to do so afterward.

Of course, some prisoners may feel uncomfortable or object to sharing a cell or pod with a transgender woman—just as some prisoners may feel uncomfortable being housed with a lesbian or a woman with a visible disability. If prisoners have questions about another prisoner’s placement, staff can explain that the placement was made according to official policy, based on all the circumstances, and in the interest of safety and security. Staff can also make clear that the transgender female prisoner is a woman and not a man. Finally, staff should always make clear that any harassment or other misconduct by any prisoner or staff member should be reported and will be taken seriously.

Facilities are encouraged to provide as much privacy as possible for all prisoners to change clothes, shower, and attend to bodily functions, consistent with security needs. Notably, the DOJ PREA rules require that transgender prisoners (regardless of where they are housed) be provided the opportunity to shower separately from other prisoners, and most transgender prisoners will choose to do so out of concern for their own privacy and the risk of harassment or abuse. Facilities can also take steps to provide additional privacy for showering to any prisoner who requests it, or to all prisoners, such as by providing privacy dividers or other measures that increase all prisoners’ privacy.

### **What about housing for transgender men, or for prisoners whose gender is not male or female?**

For all transgender prisoners, as well as for intersex prisoners, the PREA Standards require a case-by-case assessment that considers gender identity and the prisoner’s own sense of where they would be safest. For example, one transgender man may fit in best and be safest housed with other men, while another may have previously been incarcerated with women and feel this is the safest option for him.

Prisoners whose gender is neither male nor female sometimes face unique challenges in male or female housing, since neither fully match their gender. As a practical matter, however, agencies should apply the same policies to prisoners who are neither male nor female as they do to transgender men and women: assess the appropriate placement on a case-by-case basis, prioritizing the prisoner’s assessment of where they would be safest. Typically, prisoners who are not male or female have a well-developed understanding of whether, based on their gender presentation and other factors, they would be safest in a men’s or women’s facility.

### **Won’t housing transgender people based on their gender identity increase the risk of pregnancy among transgender men and among non-transgender women (cisgender women)?**

The reality is that the risk of pregnancy is negligible. As mentioned above, many transgender people take hormone therapy that limits or eliminates their fertility, and many have undergone surgical treatments like hysterectomies or orchiectomies that result in sterilization. Though such treatment should never be a prerequisite for appropriate placement, in practice it often means that pregnancies are highly unlikely. Additionally, agencies may already adopt rules prohibiting sexual conduct, and can continue to enforce them, just as they already do to prevent

pregnancies between staff and prisoners.

### **Would these policies violate state laws or expose the agency to legal liability?**

Policies that protect the safety and rights of LGBTQ prisoners decrease an agency’s legal risks, not increase them. The risk of liability from failing to adequately protect vulnerable LGBTQ prisoners is substantial—as evidenced by the large body of case law it has produced. On the other hand, the scenarios agencies may be worried about if they made LGBTQ-protective policy changes are typically either highly unlikely, legally unfounded, or both.

An agency would not be liable simply because a cisgender woman (a non-transgender woman) objects to being housed with a transgender woman. Courts have rejected such claims, stating that a person does not have a right to be free from a presence of another person who shares the same gender identity within a prison or other sex-segregated facility simply because the other person is transgender. Rather, when an institution has made a considered decision as to which facility is most appropriate for a transgender person, courts have deferred to that decision.

Obviously, every facility is responsible for preventing any kind of abuse, regardless of who it is committed by or against. This is the purpose of a classification system. The risk that a transgender woman could be abused in a men’s facility may be very great, while in general transgender women present no more risk to fellow women prisoners than other women. A case-by-case placement process allows agencies to consider an individual’s criminal, institutional, and other history, as well as any prior history of being victimized by sexual violence.

In general, state laws do not require agencies to house individuals according to their anatomy or the gender they were thought to be at birth rather than their gender identity. At most, state statutes may require that anatomy be considered along with a number of other factors in classifying prisoners.

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<sup>1</sup>Jenness, V., Maxson, C. L., Matsuda, K. N., & Sumner, J. M. (2009). *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, p. 3. Irvine, CA: Center for Evidence-Based Corrections.

<sup>2</sup> See *Crosby v. Reynolds*, 763 F.Supp. 666 (D. Maine 1991) (rejecting claim by non-transgender female prisoner who objected to housing with transgender female prisoner). See also *Cruzan v. Special School District No. 1*, 294 F.3d 981 (8th Cir. 2002) (rejecting claims by non-transgender female employee who objected to using restroom with transgender female employee); *Students & Parents for Privacy v. U.S. Department of Education*, No. 16-cv-4945, 2017 WL 6629520 (N.D. Ill. Dec. 29, 2017) (rejecting similar claims by non-transgender students who objected to using restrooms and locker rooms with transgender students); *Doe v. Boyertown Area School District*, No. 17-1249, 2017 WL 3675418 (E.D. Pa. Aug. 25, 2017) (same).

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## APPENDIX A: SAMPLE AGENCY FORMS

IT IS GENERALLY RECOMMENDED THAT AGENCIES USE STANDARDIZED forms to allow transgender prisoners to identify their needs and make decisions about issues such as their placement or medical care. The following are examples of forms currently in use by a range of correctional and law enforcement agencies. Some of these forms deal only with searches, while others also record an individual's gender identity, the name and pronouns that should be used to refer to them, and/or the individual's view of where they would be most safely housed. These examples may need to be tailored to the circumstances of each agency, and in many case these can be improved upon.

## Pennsylvania Department of Corrections Checklist

(28 C.F.R. §115.42)

### GENDER REVIEW COMMITTEE (GRC) CHECKLIST

Inmate Name: \_\_\_\_\_ Inmate Number: \_\_\_\_\_

Date of Review: \_\_\_\_\_ Inmate Present: Yes/No

Facility: \_\_\_\_\_

This committee shall consider numerous items regarding the safety and care of the transgender/intersex individual. The GRC should meet within five working days of the administration of the PRAT regardless of whether the inmate agrees to participate or not. A determination shall be made regarding the appropriate placement of a transgender/intersex inmate based on their responses to the following questions. This information is confidential.

#### Gender at Birth:

1. Were you born a Male Female or Intersex?

#### Gender Identification:

2. Which gender do you identify as?

3. Which gender were you living your life as before your most recent incarceration?

4. If either of the above answers differ from your physical sex at birth, provide answers to the following:

a. How long have you been living as that gender?

\_\_\_\_\_

b. What name(s) were you using, if different than your legal name?

\_\_\_\_\_

#### Medical Considerations:

5. Have you had any form of gender-affirming surgery? Yes/No/Declined to Answer

a. Type(s) of surgery: \_\_\_\_\_

6. Are you on any medicine or therapy related to your gender identity? Yes/No/Declined to Answer

a. If yes, how long have you been taking these medications? \_\_\_\_\_

7. Do you know what it means to be intersex?

8. Have you been told by a medical provider that you have an intersex medical condition? Yes/No/Declined to Answer

9. Do you know what Gender Dysphoria means?

10. Have you been told by a medical provider that you have Gender Dysphoria? Yes/No/Declined to Answer

#### Legal Considerations:

11. Have you had a legal name change? Yes/No/Declined to Answer

12. Have you taken any steps to legally change your gender marker on legal ID cards/documents (i.e., Driver's License, Social Security Card, birth certificate, or other)? Yes/No/Declined to Answer

If yes, which one? \_\_\_\_\_

#### Safety/Security Considerations:

13. Explain whether your current housing placement represents a safety or security concern?

*DC-ADM 008, Prison Rape Elimination Act Procedures Manual*

*Attachment 9-A*

*Section 9 – Working with Transgender and Intersex Inmates*

**Page 1 of 2**

Issued: 8/22/2016

Effective: 9/22/2016



Vermont DOC

Directive 432.01

### Gender Identification Preference Form

Legal Name: \_\_\_\_\_ DOB: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

PID #: \_\_\_\_\_

- I do not identify as transgender or intersex and am not requesting any accommodation  
(Skip Part I & Part II – staff signature only)
- I identify as transgender or intersex and am requesting no accommodations  
(Skip Part I & Part II – inmate and staff signatures only)
- I identify as transgender or intersex and am requesting accommodation

**Part I**

Preferred Name: \_\_\_\_\_

Preferred Pronoun (circle one): Male Female They M2F F2M Other: \_\_\_\_\_

Accommodation Requests (i.e. bra, boxer shorts, hygiene items, etc.):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Part II**

While I am in custody of the Vermont Department of Corrections, I would prefer to be pat-searched by an officer of the below indicated gender whenever possible. I understand that this preference will be respected unless the situation in an emergency, there is no one of that sex available, or the failure to conduct a search will jeopardize the safety of the staff or inmates.

Female \_\_\_\_ Male \_\_\_\_ Either \_\_\_\_

Inmate Signature: \_\_\_\_\_ Today's Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Witnessing Officer's Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Today's Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Distribution: Core File, Superintendent, Medical, & Mental Health

**Delaware Department of Corrections Transgender Policy**

Attachment A Transgender Evaluation Recommendation Form

Offender Name \_\_\_\_\_ SBI \_\_\_\_\_  
Delaware Department of Correction Facility \_\_\_\_\_  
Date \_\_\_\_\_ Birth Assigned Gender \_\_\_\_\_ Self-Identified Gender \_\_\_\_\_

**Behavioral Health Evaluation**

Is there evidence of a strong and persistent cross-gender identification, which is the desire to be, or the insistence that one is, of the other gender? This cross-gender identification must not merely be a desire for any perceived cultural advantages of being the other gender.

\_\_\_\_\_

Is there evidence of persistent discomfort about one's assigned gender or a sense of inappropriateness in the gender role of that gender?

\_\_\_\_\_

In the opinion of the behavioral health provider, are there any characteristics, mannerisms, gestures, verbal cues that possibly would identify this offender as transgender and at risk for sexual exploitation?

\_\_\_\_\_

A suicide-risk assessment and victimization assessment shall be documented on separate forms.

**Medical Evaluation** (Physical examination must be performed with a chaperone)

Does the offender verbalize their identification as different from their birth-assigned gender?

\_\_\_\_\_

Does the offender provide a history of taking gender altering hormones or having undergone gender re-assignment surgery and provide the name of the treating prescribers?

\_\_\_\_\_

Are there tattoos or body markings suggesting gender identification other than the birth-assigned gender such as partner names tattoos?

\_\_\_\_\_

\_\_\_\_\_



Offender Name \_\_\_\_\_ SBI \_\_\_\_\_

Is the breast tissue consistent with the age of the birth-assigned gender, e.g. female breast size in a young birth-assigned male, or breast size and consistency of an elderly birth-assigned male versus atrophied breast tissue in a young birth-assigned female? Are there any surgical scars in the breast areas?

\_\_\_\_\_

Is there a normally shaped penis and scrotum with testicular tissue present in a birth-assigned male or is there evidence of surgical alternation of the male genitalia? Is there usual vaginal area or a surgical constructed vaginal opening?

\_\_\_\_\_

In the opinion of the medical provider, are there any characteristics, mannerisms, gestures, verbal cues that possibly would identify this offender as transgender and at risk for sexual exploitation?

\_\_\_\_\_

\_\_\_\_\_

Is there any suggestion of an adverse reaction to gender altering hormone treatments such as ascites, edema, hirsutism, breast or testicular atrophy?

\_\_\_\_\_

\_\_\_\_\_

**Recommendation to the Warden and Security Shift Commander**

Based upon the Behavioral Health and Medical assessments, we recommend this offender be housed in a \_\_\_\_\_ male facility or a \_\_\_\_\_ female facility.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Behavioral Health Provider name

\_\_\_\_\_  
Medical Provider name

**Dever Sheriff Department (Colorado)**

APPENDIX A—DEPARTMENT ORDER 4005

Denver Sheriff Department  
STATEMENT OF SEARCH PREFERENCE FORM

Inmate Name: \_\_\_\_\_  
(please print)

Booking #: \_\_\_\_\_

Preferred Pronoun (i.e., he/she): \_\_\_\_\_

Preferred Name: \_\_\_\_\_  
(please print)

While in custody of the Denver Sheriff's Department, I would prefer to be searched by an officer of the below indicated sex whenever possible. I understand that this preference will be respected unless the situation is an emergency, there is no one of that sex available, or the failure to conduct a search will jeopardize the safety of the staff or inmates.

Female \_\_\_ Male \_\_\_ Both \_\_\_

Inmate Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witnessing Officer(s) Signature and Serial Number:

Officer 1: \_\_\_\_\_ Serial #: \_\_\_\_\_

Date Signed: \_\_\_/\_\_\_/\_\_\_

Officer 2: \_\_\_\_\_ Serial #: \_\_\_\_\_

Date Signed: \_\_\_/\_\_\_/\_\_\_

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STATEMENT OF PREFERENCE

I, \_\_\_\_\_, acknowledge that I am in the course of a biological/physiological sex change procedure. I have been advised that I am under arrest and that I will be detained at the Cumberland County Jail. I have also been advised that for security reasons, a (strip) search must be conducted of my person by corrections officer(s). I prefer that this search be conducted by corrections officer(s) of the \_\_\_\_\_ sex. I hereby state that any humiliation or embarrassment inherent in such a search will be lessened by having that search conducted by corrections officer(s) of the \_\_\_\_\_ sex. I hereby acknowledge that by offering me the opportunity to express my preference, the Cumberland County Jail has minimized the invasion of my privacy inherent in a (strip) search and that the Cumberland County Jail is not liable for any invasion of my privacy caused by the sex of the particular officer(s) performing this search.

---

After being fully advised, the inmate has verbally expressed preference that the search be conducted by officer(s) of the \_\_\_\_\_ sex.

\_\_\_\_\_  
Inmate's signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

**Boston Police Department (Massachusetts)**

Boston Police Department

**STATEMENT OF SEARCH PREFERENCE FORM**

(This form is to be used when booking transgender individuals)

---

TO BE COMPLETED BY THE BOOKING OFFICER

Master Booking Name: \_\_\_\_\_

Legal Name: \_\_\_\_\_

C.R. Number: \_\_\_\_\_

Preferred Name (if different from master/legal name): \_\_\_\_\_

Preferred Pronoun (i.e. he/she): \_\_\_\_\_

---

TO BE COMPLETED BY PRISONER

For the purpose of searches conducted while in the custody of the Boston Police Department, I prefer to be searched by an officer of the gender indicated below. I understand that my preference will be respected unless there is no appropriate individual available and failure to conduct a search would jeopardize the safety of other prisoners or officers.

Female \_\_\_\_\_ Male \_\_\_\_\_

Prisoner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

---

Witnessing Offer(s) Signature(s) -- TO BE COMPLETED BY BOOKING OFFICER

1. Name: \_\_\_\_\_ ID#: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

2. Name: \_\_\_\_\_ ID#: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

0076-BFS-0413

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## APPENDIX B: SUMMARIES OF NON-LGBT-SPECIFIC PREA STANDARDS

IN ADDITION TO THE LGBTQ-SPECIFIC PREA STANDARDS DISCUSSED IN this guide, there are many other PREA Standards that are important for all prisoners, including LGBTQ prisoners. The following summaries of these non-LGBTQ-specific are intended to help identify possible gaps in the agency's policies. The full PREA Standards can be found at <http://www.prearesourcecenter.org>.

### **PREA Coordinator**

All agencies that run a confinement facility must have a written policy that mandates zero tolerance toward all forms of sexual abuse and sexual harassment and that outlines the agency's approach to preventing, detecting, and responding to such conduct. These agencies must designate an agency-wide PREA coordinator who will develop, implement, and oversee the agency's efforts to comply with the PREA standards. In addition, any agency that operates more than one facility must have a PREA compliance manager for each facility who will coordinate that facility's PREA compliance efforts.

### **Supervision and Monitoring**

An agency must ensure that each facility it operates develops, documents, and makes its best efforts to comply with a staffing plan. This staffing plan should provide for adequate levels of staffing, and, where applicable, video monitoring, to protect prisoners against sexual abuse. At least once a year, the agency, in consultation with the PREA coordinator, must determine whether adjustments are needed to the staffing plan.

Each agency operating a confinement facility must implement a policy and practice of having supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment for both day and night shifts.

### **Hiring and Promotion Decisions**

An agency must not hire or promote anyone who may have contact with prisoners if that person has attempted, engaged in, or been convicted of sexual abuse in a confinement facility. Agencies must ask all applicants and employees directly about previous sexual abuse or harassment.

An agency must conduct a criminal background records check before hiring an employee who may have contact with prisoners. After hiring an employee, the agency must conduct a background check at least every five years unless there is a system in place for otherwise gathering such information for current employees.

If an agency is asked to provide an employment reference for a former employee, it must provide information on substantiated allegations of sexual abuse or sexual harassment involving that former employee.

## **Training and Education**

All facilities must train staff on a variety of issues related to sexual abuse prevention and reporting, including interacting professionally with LGBTQ and gender nonconforming people and those with intersex conditions. This requirement also applies to volunteers, contractors, investigators, and medical and mental health care practitioners.

During and after the intake process, prisoners must receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment. This information must be continuously and readily available or visible to prisoners through posters, prisoner handbooks, or other written formats.

## **Minors in Adult Facilities**

Many correctional experts recommend that minors should never be housed in adult prisons. The Standards do not completely prohibit this practice, but they require separation of youthful prisoners from adult prisoners both inside and outside of housing units, unless there is direct staff supervision.

## **Reporting Abuse**

The Standards stipulate that individuals must have multiple ways to internally make private reports of sexual abuse and harassment, retaliation (by staff or other prisoners), and any staff negligence that may have contributed to abusive incidents.

Individuals must also have at least one way to report abuse or harassment outside of the correctional department/agency and may choose to do so anonymously. No discipline may be taken against a prisoner for filing a grievance unless the agency can demonstrate that it was filed in bad faith.

## **Support for Survivors of Abuse**

When a person has experienced sexual abuse, the Standards require facilities to ensure that the individual is separated from alleged abusers and protected from retaliation. Facilities must provide immediate and ongoing medical and mental health care as needed; gather and preserve evidence and conduct an investigation; report the allegations to appropriate law enforcement authorities; report the results of investigations to abuse survivors; and take appropriate corrective action. Facilities must also permit individuals to access support from outside organizations in as confidential a manner as possible.

## **Official Response Following a Prisoner Report**

All staff are required to immediately report to designated officials any knowledge, suspicion, or information regarding sexual abuse or sexual harassment that occurred in any facility. The first staff member to respond to an allegation of sexual abuse must separate the alleged victim and abuser, preserve and protect the crime scene for collection of evidence, and ensure that the alleged victim and abuser not take any actions that could destroy physical evidence on their persons.

An agency must establish a policy to protect all prisoners and staff from retaliation for reporting sexual abuse or harassment or cooperating with investigations of such abuse or harassment. The agency must also designate which staff members or departments are responsible for monitoring signs of retaliation.

If a facility responds to allegations of abuse by placing the victim in protective custody, the facility must ensure that all available alternatives have been assessed and that there is no alternative means of separation from alleged abusers. Alternatives might include relocating a perpetrator of abuse, providing heightened supervision, changing housing placement or cellmates, placement in a single occupancy cell within the general population, or transfer from a men's to a women's facility or vice versa.

In cases where prisoners must be placed in segregation or isolation, access to programs, education, and other opportunities must continue to the greatest extent possible. Moreover, segregation—when it must be used—cannot last for longer than 30 days. Agencies must document and review the reasons for any restrictions on programs or other opportunities and any use of segregation beyond 30 days.

## **Investigations**

Agency investigations into allegations of sexual abuse and sexual harassment must be promptly, thoroughly, and objectively completed by investigators who have received special training in sexual abuse investigations. Administrative investigations must include an effort to determine whether staff actions, or failures to act, contributed to the abuse. The investigation must be documented in written reports that include a description of the physical and testimonial evidence (including DNA evidence and witness interviews), the reasoning behind credibility assessments, and investigative facts and findings.

Where appropriate, an agency must offer all victims of sexual abuse access to forensic medical examinations and must attempt to provide a victim advocate from a rape crisis center. The advocate will accompany and support the victim throughout the forensic medical examination process, which must be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible.

After an investigation, the agency must inform the prisoner as to whether the allegation was determined to be substantiated, unsubstantiated, or unfounded. Substantiated allegations of conduct that appears to be criminal must be referred for prosecution, and the agency must inform the prisoner as to the perpetrator's punishment. In addition, the agency must retain all written investigative reports for as long as the alleged abuser is incarcerated or employed by the agency and five years afterwards.

## **Consensual Sex vs. Sexual Abuse**

The Standards define sexual abuse between prisoners as sexual contact made without consent, through threat or coercion, or when a person is unable to consent. The Standards permit facilities to prohibit sex of any kind between prisoners. However, facilities may not treat consensual sex as equivalent to sexual abuse.

The Standards define any sexual contact with prisoners by a staff member as sexual abuse.

Prisoners cannot be disciplined for sexual contact with staff unless the agency finds after investigation that the staff member did not consent.

Staff must be trained on distinguishing between consensual sexual activity and abuse, and in juvenile facilities must also be trained on applicable age of consent laws.

### **Grievances and Access to Courts**

Federal law limits prisoners' access to the courts by first requiring that they go through (exhaust) all steps of an institution's internal grievance system. In an effort to relieve some of the unfair effects of this law on survivors of sexual abuse, the Standards require agencies to adjust their procedure to deem grievances related to sexual abuse "exhausted" in certain circumstances. The Standards prohibit imposing a time limit on when a prisoner may submit a grievance regarding sexual abuse. An agency must deem a grievance regarding sexual abuse to be exhausted if it is denied at any stage of appeal, or is not responded to by a set deadline.

The Standards also require agencies to provide a way for prisoners to submit grievances without being required to address the issue directly with facility staff, and to permit prisoners to get assistance with their grievances from third parties.

If agencies fully implement the Standards, these requirements would make it easier for abuse survivors to ultimately bring their claims to court. However, individuals should be aware that their grievance will be subject to the procedures an agency has in place at the time of the grievance, whether or not they comply with the PREA Standards.

### **Discipline**

If a staff member violates an agency's policies by engaging in sexual abuse, the presumptive disciplinary sanction is termination. Disciplinary sanctions for any other violation relating to sexual abuse or harassment must be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories. Unless the activity was clearly not criminal, all terminations or resignations related to an agency's sexual abuse and harassment policy must be reported to law enforcement agencies and relevant licensing bodies.

If a prisoner is found to have engaged in prisoner-on-prisoner sexual abuse, they will be subject to disciplinary sanctions commensurate with the nature and circumstances of the abuse committed, the prisoner's disciplinary history, and the sanctions imposed for comparable offenses by other prisoners with similar histories.

Prisoners may not be disciplined for any refusal or nondisclosure during screening regarding gender identity, sexual orientation, intersex condition, disability status, or prior sexual victimization.

### **Data Collection and Review**

After every substantiated or unsubstantiated sexual abuse investigation, a facility review team must submit a report describing whether the agency needs to change its policies or practices to better prevent, detect, or respond to abuse. The facility must implement the review team's



recommendations or improvement or must document its reasons for not doing so. An agency must collect, review, report, and publish all aggregated sexual abuse data from facilities under its direct control and private facilities with which it contracts. Before this information is made public on the agency's website or through other means, all personal identifiers should be removed.

## **Audits**

All facilities must have an independent audit of PREA compliance at least once every three years. Auditors must have the opportunity to interview prisoners and receive confidential correspondence from prisoners.

While PREA does not explicitly require that facilities post information identifying auditors and their contact information, advocates should press for this information to be included in inmate education and handbooks.

PREA Standards apply to:

- State and federal prisons;
- City and county jails;
- Short-term police lock-ups (such as police stations);
- Juvenile detention centers; and
- Community confinement facilities (including halfway houses, rehabilitation centers and other community residential facilities for those completing a criminal sentence, fulfilling a condition of pre-trial release, or post-release supervision).

Specific requirements differ for each type of facility. All agencies must ensure that their contractors are in compliance with applicable Standards. Separate PREA Standards issued by the Department of Homeland Security (DHS) apply to immigration detention facilities. The Department of Health and Human Services (HHS) has also adopted its own PREA Standards which apply to facilities holding immigrant children.

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## APPENDIX C: ADDITIONAL READING AND RESOURCES

### Department of Justice Resources

National PREA Resource Center: [www.prearesourcecenter.org](http://www.prearesourcecenter.org). *The National PREA Resource Center includes a suite of publications and other resources maintained by the Department of Justice on implementing PREA Standards, including information specific to LGBT prisoners and a comprehensive FAQ ([www.prearesourcecenter.org/frequently-asked-questions](http://www.prearesourcecenter.org/frequently-asked-questions)).*

National Institute of Corrections, Online Resources on Lesbian, Gay, Bisexual, Transgender and Intersex Resources: <http://nicic.gov/LGBTI>. *The National Institute of Corrections, a Department of Justice agency, provides a range of policy resources, technical assistance, and other information about the treatment of LGBTI prisoners.*

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## About the National Center for Transgender Equality

The National Center for Transgender Equality advocates to change policies and society to increase understanding and acceptance of transgender people. In the nation's capital and throughout the country, NCTE works to replace disrespect, discrimination, and violence with empathy, opportunity, and justice.

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