

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL

February 20, 2009

Deborah M. Golden, Esq.
D.C. Prisoners' Project
Washington Lawyers' Committee for Civil Rights and Urban Affairs
11 Dupont Circle, N.W. Suite 400
Washington, D.C. 20036

Dear Ms. Golden:

Attached for your review is the Department of Corrections' (DOC's) final version of the revised policy on the classification and housing of transgender inmates that we have been discussing. DOC issued this policy today and is already taking steps to implement it. As you will see, the policy incorporates many of the recommendations you and your colleagues submitted in your letter of January 15, 2008.

We are very pleased that DOC's collaboration with the transgender community has resulted in such a forward looking approach to the treatment of transgender prisoners. Pursuant to this policy, the District will be one of only a few jurisdictions in the nation to permit transgender inmates to be housed according to their gender identity in appropriate cases, and to allow transgender inmates to initiate hormone therapy while in custody. These provisions, along with other aspects of the policy, will help to ensure that the rights of transgender prisoners are respected and that their unique needs are accommodated, to the extent practicable, while they are incarcerated.

As we noted during our recent meetings and conference call, we view the issuance of this policy as part of an ongoing dialogue with the transgender community. We look forward to continuing discussions with you and your colleagues as DOC implements the policy and considers solutions to any remaining concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Nickles". The signature is stylized and fluid, with a large loop at the end.

Peter J. Nickles
Attorney General for the District of Columbia

PJN/lae

Attachment

cc: Wayne C. Witkowski, Deputy Attorney General, Legal Counsel Division
Tonya A. Sapp, Deputy Attorney General and Director of Legislative Affairs
Laurie A. Ensworth, Senior Assistant Attorney General, Legal Counsel Division
Devon Brown, Director, Department of Corrections
Maria Amato, General Counsel, Department of Corrections
Mitchell Franks, Department of Corrections
Gustavo Velasquez, Director, Office of Human Rights
Alexis Taylor, General Counsel, Office of Human Rights
David Simmons, Chief Administrative Law Judge, Office of Human Rights
Nimesh Patel, Commissioner, Commission on Human Rights
Christopher Dyer, Director GLBT Affairs, Executive Office of the Mayor
Shomari Wade, Policy Analyst, Office of Policy and Legislative Affairs
Richard Rosendall, Vice President for Political Affairs, Gay and Lesbian Activists
Alliance
J. Rhodes Perry, Field and Policy Manager, Parents, Families and Friends of
Lesbians and Gays
Darby Hickey, Policy Associate, Just Detention International
Melissa Rothstein, East Coast Program Director, Just Detention International
Jody Herman, DCTC
Sadie Baker, D.C. Trans Coalition
Ruby Corado, Transgender Activist
Jeri Hughes, Transgender Activist
Vincent Gray, Chairman, Council of the District of Columbia
Yvette Alexander, Council of the District of Columbia
Marion Barry, Council of the District of Columbia
Muriel Bowser, Council of the District of Columbia
Kwame Brown, Council of the District of Columbia
Michael Brown, Council of the District of Columbia
David Catania, Council of the District of Columbia
Mary Cheh, Council of the District of Columbia
Jack Evans, Council of the District of Columbia
Jim Graham, Council of the District of Columbia
Phil Mendelson, Council of the District of Columbia
Harry Thomas, Jr., Council of the District of Columbia
Tommy Wells, Council of the District of Columbia



DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS

Program Statement

OPI: DIR
Number: 4020.3
Date: February 20, 2009
Subject: Gender Classification
and Housing

1. PURPOSE AND SCOPE

To establish procedures on providing the appropriate treatment of transgender, transsexual, inter-sex, and gender variant persons who are incarcerated and housed within the DC DOC.

2. POLICY

- a. It is DOC policy to provide services in a humane and respectful manner to transgender and intersex detainees while ensuring that they are processed and housed safely and efficiently to the greatest extent possible. For the safety, security and order of the facility, the DOC classifies and houses male and female offenders in separate housing units. DOC shall classify an inmate who has male genitals as a male and one who has female genitals as a female, unless otherwise classified by the Transgender Committee consistent with this policy..
- b. In order to address the special needs of transgender individuals, upon initial intake at Receiving and Discharge (R&D), or at any time that an inmate makes known to DOC staff their transgender or intersex status, staff shall follow the guidelines in this policy in order to determine the inmate's housing based on his or her safety/security needs, housing availability, gender identity and genitalia, if
 1. An inmate indicates that they are transgendered or intersex at anytime during their custody.
 2. An inmate's gender identity, appearance, overt expression, or behavior differs from their birth sex and/or genitalia.
 3. A gender designation made by any public entity, government agency or law enforcement agency indicates they are transgendered.

3. NOTICE OF NON-DISCRIMINATION

In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §2.1401.01 *et seq.* (Act), the District of Columbia does not

discriminate on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

4. **DIRECTIVES AFFECTED**

- a. Rescinded OM 07-004 Gender Classification and Housing (10/30/07)

5. **AUTHORITY**

- a. Farmer v. Brennan, 511 U.S. 825 (1994).
- b. Sandin v. Conner, 515 U.S. 472 (1995).

6. **STANDARDS REFERENCED**

American Correctional Standard (ACA) 4th Edition, Standards for Administration of Correctional Agencies, 4th Edition 4-ALDF-2A-66

7. **DEFINITIONS**

- a. **Gender Expression.** A gender-related expression, appearance, identity, or behavior of an individual, regardless of the individual's gender at birth.
- b. **Inter-sex.** A set of medical conditions that features a congenital anomaly of the reproductive and sexual system. A person with an intersex condition is born with sex chromosomes, external genitalia, or an internal reproductive system that is not considered "standard" for either male or female.
- c. **Sexual Orientation.** Includes male or female homosexuality, heterosexuality, and bisexuality, by preference or practice.
- d. **Transgender.** Refers to any person whose identity or behavior differs from traditional gender expression. This term includes transsexual individuals, cross-dressers, androgynous individuals, and others whose appearance or characteristics are perceived to be gender-atypical. An umbrella term describing individuals who live and/or express themselves as a gender other than that assigned to them at birth.
- e. **Transgender Committee.** Refers to a committee established by the D.C. Department of Corrections comprised of a medical practitioner, a mental health clinician, a correctional supervisor, a Chief Case Manager and a DOC approved volunteer who is a member of the transgender community or an acknowledged expert in transgender affairs. The committee shall determine the transgender inmate's housing assignment after review of all of the inmate records and assessments, and an interview with the inmate during

which the inmate's own opinion of his/her vulnerability in the jail population shall be considered.

- f. **Transsexual.** A person whose personal sense of his or her gender conflicts with their anatomical sex. Some, but not all, transsexuals undergo medical treatments to change their physical sex so that it is in harmony with their gender expression.
- g. **Gender Variant.** Refers to any person whose expression of gender, (masculinity and femininity) does not conform to the dominant gender norms of Western culture.

8. PROCEDURES

Under all circumstances, staff shall only ask questions related to sexual identity, gender identity or gender expression for the purpose of making intake and housing assignments, classification, programming, providing health care and health assessments, or where information is necessary to ensure the safety, security and order of inmates, staff, visitors, the facility, and the community. Questions related to sexual identity, gender identity, or gender expression shall be asked in a respectful manner to preserve confidentiality as well as human dignity and avoid subjecting the inmate to abuse, humiliation or ridicule.

9. INITIAL INTAKE

Upon initial intake in Receiving and Discharge (R&D), if an inmate's gender-related expression, identity, appearance, or behavior differs from their sex, staff shall, when practical, place transgendered or intersex inmates in a holding cell by him/herself during intake.

Staff shall:

- a. Review commitment documents for gender assignment or any notification that identifies the inmate as transgender or "vulnerable."
- b. If after reviewing commitment documents and other notifications the staff still cannot determine the biological sex, the staff shall ask the inmate for verification of the sex of the genitalia. Staff must conduct this inquiry privately and in a professional manner to preserve confidentiality in order to avoid subjecting the inmate to abuse or ridicule.
- c. If the inmate's physical sex cannot be determined, and/or the inmate refuses to cooperate, staff shall notify a supervisor immediately. The supervisor shall have the inmate escorted to the medical unit for a physical examination and gender determination. Any inmate refusing to receive a complete physical examination will be placed in protective custody.
- d. Upon determination of gender by inmate verification (a and b, above) or medical exam (c, above), the inmate shall be treated as a protective custody inmate for the duration of the Intake process in order to ensure that the staff

shall escort the inmate to the appropriate R&D unit to complete the intake process in a manner consistent with that custody's requirements, including private strip search procedures.

- e. R&D staff shall accurately record the inmate as transgendered or intersex and the inmate's gender identity and apparent biological gender in JACCS and document the incident consistent with *PS 1280.2 Reporting and Notification Procedures for Significant Incidents and Extraordinary Occurrences*
- f. All intake documentation shall include the inmate's birth and/or legal name or the name the inmate has been booked under by the arresting agency.
- g. Inmates shall be called by their last names without reference to gender specific identifiers such as Mr., Mrs. or Miss, Ma'am or Sir or other gender specific terms used in addressing a person. Instead, the gender neutral term, "Inmate" is to be used with the last name.

10. HOUSING


- a. After completion of the initial intake process, an inmate identified as transgender or intersex shall be housed as a protective custody inmate in a single cell in the intake housing unit consistent with the gender identified at intake for no more than seventy-two (72) hours, excluding weekends, holidays and emergencies, until classification and housing needs can be assessed by the Transgender Committee.

In accordance with *PS 4090.3C Classification and Reclassification*, all transgender and intersex inmates will be classified and assigned housing based on their safety/security needs, housing availability, gender identity and genitalia. Intake staff shall assess the transgender and intersex inmates for potential vulnerability in the general population and refer them to the Transgender Committee.

- b. As part of the housing assessment for vulnerability, the Transgender Committee shall determine the transgender inmate's housing assignment after review of all of the inmate's records and assessments and an interview with the inmate. The Committee shall ask the inmate his or her own opinion of his or her vulnerability in the general jail population of the male or female units. This information shall be taken into consideration in determining the proper housing assignment. The Committee will attempt to reach consensus, ultimately relying on majority vote when needed. A written decision by the Transgender Committee shall be maintained in the inmate's medical record.
- c. The Housing assessment shall determine if the inmate will be housed in the general population or in a protective custody unit of the gender consistent with their gender identity or genitalia. If the housing assignment differs from the Transgender Committee's written recommendation, the Warden shall justify the assignment in writing to the Director. Transgender and intersex

inmates have the same right to appeal housing assignments as all inmates consistent with PS 4090.3C Classification.

- d. If it is determined that the inmate can be housed in the general population, the inmate shall be transferred to the general population as determined by the Transgender Committee after the seventy-two (72) hour assessment period has lapsed. If it is determined that the inmate requires protective custody, he or she shall be placed in this unit and his or her custody shall be reviewed by the Housing Committee consistent with standard DOC policy. Consistent with standard DOC policy, transgender and intersex inmates may be placed in communal protective custody pursuant to the determination of the Transgender Committee and subsequent reviews of inmate status.
- e. A transgender or intersex inmate will be housed in protective custody when there is reason to believe the inmate presents a heightened risk to him/herself or to others or where the inmate fears he or she will be vulnerable to victimization in any other housing setting. This assignment shall be only for the period during which the heightened risk and/or fear exists. Inmates in administrative segregation and protective custody shall have access to programs and services consistent with that status.
- f. When clinically indicated and determined by appropriate medical staff, transgender inmates who were receiving hormone treatment and therapy at the time of their incarceration shall continue to do so if the inmate desires. Inmates who were not receiving hormone treatment and therapy prior to incarceration but subsequently wish to do so shall be permitted this medication with medical authorization.
- g. Transgender, and intersex inmates will be provided standard jail attire consistent with the gender of their housing assignment. Inmates under hormone therapy with secondary sexual characteristics such as breasts shall be provided appropriate undergarments such as a bra when clinically indicated by appropriate medical staff.
- h. While incarcerated in the D.C. Department of Corrections, transgender, transsexual and intersex inmates shall not be discriminated against in their participation in services, programs, or benefits and shall not be subjected to verbal or physical harassment or a hostile environment by the staff or inmates. Individuals who are found to engage in such abuse shall be subject to appropriate disciplinary action.
- i. All searches of transgender or intersex inmates shall be conducted in a manner consistent with DOC policy outside of the presence of inmates or non-critical staff to the degree practicable.


Devon Brown
Director