

# PENOBSCOT COUNTY SHERIFF'S OFFICE

TITLE: MANAGEMENT OF TRANSGENDER AND INTERSEX  
INMATES AND RESIDENTS

NO. F - 325

EFFECTIVE DATE: November 1, 2016

Page 1 of 6

APPROVED BY: *Sheriff Troy Morton* TM

## STANDARDS:

### I. POLICY

The purpose of the policy is to provide guidelines for assessment, placement, management, and treatment of inmates and residents who have gender dysphoria or who are transgender or intersex.

#### DEFINITIONS

Gender Dysphoria People whose gender at birth is contrary to the one they identify with.

### II. PROCEDURES

#### Procedure A: General Guidelines

- 1) A transgender person is a person whose gender identity (internal sense of being male or female) is different from the person's gender assigned at birth.
- 2) An intersex person is a person who is born with external genitalia, reproductive organs, chromosome patterns and/or endocrine systems that do not fit typical definitions of either male or female.
- 3) The Department uses the definition of gender dysphoria that is in the current Diagnostic and Statistics Manual. A transgender or intersex person may or may not have gender dysphoria.
- 4) In general, an inmate or resident shall be placed in a housing unit in accordance with his or her gender assigned at birth, except as set out below.
- 5) If an inmate or resident has fully completed sex reassignment surgery, then that person shall be housed and otherwise managed in accordance with his or her gender as reassigned.
- 6) The determination whether to assign a transgender or intersex inmate or resident who has not fully completed sex reassignment surgery to a facility for male or female inmates or residents and other housing and program assignments shall be done on a case-by-case basis, taking into account the views of the inmate or resident, and shall be based on protecting the inmate's or resident's safety and mental health and preventing security issues, including, but not limited to, risks to the safety of other inmates or residents.
- 7) Separate housing dedicated specifically to transgender or intersex inmates or residents shall not be established.

- 8) Once the determination is made as to what gender staff will conduct searches of a transgender or intersex inmate or resident, then, except in an emergency, only staff of that gender shall conduct any pat, strip, or body cavity search.
- 9) All searches of transgender or intersex inmates or residents, whether a pat, strip or body cavity search, shall be documented in the booking checklist search tab in Sentryx.

Procedure B: Inmates or Residents Who Identify at Intake

- 1) The Security Supervisor will, as soon as possible, contact the Jail Administrator, or designee, if any time during intake, an inmate or resident:
  - a) identifies as transgender or intersex;
  - b) indicates a history of being perceived as transgender or intersex;
  - c) is reported by jail staff, the prosecuting or defense attorney, a parent or guardian, or other credible source to be transgender or intersex; or
  - d) has a condition making gender unclear, is perceived by intake staff as having physical features characteristic of a gender different from that assigned at birth, or has partially completed sex reassignment surgery, for example, removal or augmentation of breasts, removal of testicles, etc.
- 2) If the intake strip search has not already been done, the Jail Administrator, or designee, shall determine, based upon information available at the time, including, but not limited to, the expressed preference of the person and risks to safety, what gender staff will conduct the intake strip search and shall document the reasons for the determination in Sentryx.
- 3) The Jail Administrator, or designee, shall also determine, based upon information available at the time, including, but not limited to, risks to safety, the inmate's or resident's immediate housing placement until a further, more in depth assessment can be conducted and shall document the reasons for the determination in Sentryx.
- 4) Once assigned housing, the inmate or resident shall be searched by staff of the same gender as other inmates or residents housed in the same unit, unless the Jail Administrator, or designee, determines otherwise and documents the reasons in Sentryx.
- 5) The inmate or resident shall be given the opportunity to shower and use toilet facilities privately until a further, more in depth assessment can be conducted.
- 6) An inmate or resident who at the time of intake to the reception facility is currently being treated with hormonal medications shall be continued on those medications at least until the inmate or resident has been seen by the facility physician, physician assistant, or nurse practitioner
- 7) The Jail Administrator, or designee, shall notify the Health Services Administrator as soon as possible of the admission of the inmate or resident, and the Health Services Administrator shall expedite the process of confirming through health care records whether the person has received a diagnosis of gender dysphoria, has received hormonal treatment, has received transgender or intersex related cosmetic surgical procedures, has partially completed sex reassignment surgery, or any other relevant factors.
- 8) Health care staff shall require the inmate or resident to sign any necessary release of information to obtain the appropriate health care documentation.

- 9) The Jail Administrator, or designee, in consultation with appropriate health care staff, shall determine whether the inmate or resident requires an evaluation for gender dysphoria or an expedited medical and/or mental health assessment.
- 10) If appropriate, the Jail Administrator, or designee, shall also contact adult or juvenile community corrections to request information as to whether and for how long the person has identified as transgender or intersex or has been perceived to be transgender or intersex.
- 11) If a safety issue arises, whether it is a risk to the safety of the transgender or intersex person or another person, that requires a change from the immediate housing placement made by the Jail Administrator, or designee, facility staff shall follow the appropriate Department policy, D-243 – Special Management Inmates, until the housing placement can be reviewed by the Jail Administrator, or designee.
- 12) If the Jail Administrator, or designee, receives information prior to intake that a person to be admitted to the facility might be transgender or intersex, the Jail Administrator, or designee, may make a determination as to the intake search and the person's immediate housing placement prior to admission to the facility.

Procedure C: Inmates or Residents Who Identify after Intake

- 1) If, after intake, an inmate or resident reports to staff that he or she is transgender or intersex, the staff shall contact the Jail Administrator, or designee.
- 2) The Jail Administrator, or designee, shall notify the Health Services Administrator as soon as possible after the report, and the Health Services Administrator shall expedite the process of confirming through health care records whether the person has received a diagnosis of gender dysphoria, has received hormonal treatment, has received transgender or intersex related cosmetic surgical procedures, has partially completed sex reassignment surgery, or any other relevant factors.
- 3) Health care staff shall require the inmate or resident to sign any necessary release of information to obtain the appropriate health care documentation.
- 4) The Jail Administrator, or designee, in consultation with appropriate health care staff, shall determine whether the inmate or resident requires an evaluation for gender dysphoria or an expedited medical and/or mental health assessment.
- 5) The Jail Administrator, or designee, shall also consult with appropriate staff of the facility and staff from other department facilities as to whether and for how long the person has identified as transgender or intersex or has been perceived to be transgender or intersex.
- 6) If appropriate, the Jail Administrator, or designee, shall also contact adult or juvenile community corrections to request information as to whether and for how long the person has identified as transgender or intersex or has been perceived to be transgender or intersex.
- 7) The inmate or resident shall not be placed in a housing unit with persons of a different gender than the inmate or resident has been housed with and shall not be given the opportunity for private shower and toilet facilities until the procedures set out below have been completed.

Procedure D: Team Recommendations

- 1) Within thirty (30) working days of the admission to the facility of an inmate or resident who is described in Procedure B., or within thirty (30) working days of the report to staff by an inmate or resident who is described in Procedure C., the Jail Administrator, or designee, shall convene a multi-disciplinary team composed of the Jail Administrator or designee, Security Supervisor; the Health Services Administrator; the Mental Health Clinician; the Classification Corporal, and the facility PREA Coordinator, as well as any other staff deemed appropriate.
- 2) If there is a possibility that the inmate might be recommended for transfer to another facility, the Jail Administrator, or designee, of the facility where the inmate is currently housed shall contact the Jail Administrator, or designee, of the other facility for inclusion of that facility's staff on the team.
- 3) This team shall make recommendations about the following:
  - a) whether male or female housing is appropriate for the inmate or resident;
  - b) whether male or female staff will conduct searches;
  - c) property items to be allowed;
  - d) shower and toilet arrangements;
  - e) any safety or security precautions required; and
  - f) any other relevant decisions.
- 4) The team shall make recommendations based on all information available, including any evaluation for gender dysphoria and any relevant medical and/or mental health assessment. If there has been no evaluation at the facility for gender dysphoria, the team shall make a recommendation as to the need for such an evaluation. The team may also make a recommendation with respect to the need for a further medical and/or mental health assessment.
- 5) The recommendations shall be based on, but not be limited to, the following:
  - a) any gender of the inmate or resident assigned at birth;
  - b) the inmate's or resident's views with respect to his or her own identity and safety and whether or not those views have been consistent;
  - c) the steps or lack of steps taken by the inmate or resident toward sexual reassignment;
  - d) any relevant characteristics of the inmate or resident, including physical stature, any tendency toward violence or predatory behavior, and any vulnerability to violence or predatory behavior;
  - e) any relevant characteristics of other inmates or residents with whom the person might be housed or come into contact;
  - f) correctional history (for example, any previous management problems that impacted on the safety of other persons or the security of the facility);
  - g) any co-occurring mental health issues; and
  - h) any perceived risks to the continuing safety and health of the inmate and resident or others.
- 6) The Jail Administrator, or designee, shall make the final decision as to all of the team's recommendations, except in relation to health care and transfer to another facility.

- 7) If there are any legal issues, the Jail Administrator, or designee, shall consult with the Department's legal representative for the County of Penobscot prior to making the final decision.
- 8) The final decision on the recommendations shall be used in the development of the inmates or resident's case plan and classification.
- 9) If an evaluation for gender dysphoria or a relevant medical and/or mental health assessment takes place after the team's meeting, the Jail Administrator, or designee, shall reconvene the team within fifteen (15) working days of the evaluation or assessment to reconsider its prior recommendations in light of any new information.
- 10) The Jail Administrator, or designee, may at any other time deemed appropriate reconvene the multi-disciplinary team for further recommendations.
- 11) It is the responsibility of the multi-disciplinary team to reassess all transgender and intersex persons housed at the facility at least every six months, or more frequently as necessary, regarding his or her housing. Specific attention shall be given to any threats to safety experienced by the inmate or resident.
- 12) All multi-disciplinary team meetings, as well as all recommendations of the team and decisions by the Jail Administrator, or designee, including reasons, shall be documented in Sentryx.

Procedure E: Appeals

- 1) A decision as to the inmate classification is appealable through the classification appeal process.
- 2) Any other decision made pursuant to this policy is appealable through the grievance process.

**III. PROFESSIONAL STANDARDS:**

PREA

§ 115.15 Limits to cross-gender viewing and searches

- 1) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.
- 2) As of August 20, 2015, or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.
- 3) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.
- 4) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical 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 an inmate housing unit.

- 5) 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.
- 6) The agency shall train security staff in how to conduct cross-gender pat-down 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. § 115.31(9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates.

§ 115.41

- 1) whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming.

§ 115.42 Use of screening information

- 1) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.
- 2) The agency shall make individualized determinations about how to ensure the safety of each inmate.
- 3) 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.
- 4) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.
- 5) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.
- 6) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
- 7) The agency shall 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.

§ 115.86

- 1) 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.