



# DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS

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## Program Statement

<b>OPI:</b>	<b>DIR</b>
<b>Number:</b>	<b>4020.3C</b>
<b>Date:</b>	<b>December 28, 2011</b>
<b>Supersedes:</b>	<b>4020.3B (07/08/10)</b>
<b>Subject:</b>	<b>Gender Classification and Housing</b>

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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 District of Columbia Department of Corrections (DOC).
  
2. **POLICY**
  - a. It is DOC policy to provide services in a humane and respectful manner to transgender and intersex inmates 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 recommended by the Transgender Committee and approved 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 or genitalia.
    - 3) A gender designation made by any public entity, government agency or law enforcement agency indicates that the inmate is transgendered.

### 3. NOTICE OF NON-DISCRIMINATION

- a. 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, status as a victim of an intra-family offense, 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. **Directives Rescinded**

PS 4020.3B                      Gender Classification and Housing (07/08/10)

- b. **Directives Affected**

PS 1280.2                      Reporting and Notification Procedures for Significant Incidents and Extraordinary Occurrences

PS 4090.3                      Classification (Program Review)

### 5. AUTHORITY

- a. Farmer v. Brennan, 511 U.S. 825 (1994).
- b. Sandin v. Conner, 515 U.S. 472 (1995).
- c. DC Code §24-211.02, Powers; Promulgation of Rules.

### 6. STANDARDS REFERENCED

American Correctional Standard (ACA) 4th Edition, Standards for Administration of Correctional Agencies, 4<sup>th</sup> Edition 4-ALDF-6B-02.

### 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.** In 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/residents, 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/residents 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 biological sex, staff shall place transgendered or intersex inmates in a holding cell by themselves during the intake process.

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 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., Miss, Ma’am, Sir or other gender specific terms used in addressing a person. Instead, the gender neutral term, “Inmate” is to be used with the person’s last name.

## 10. HOUSING

- a. After completion of the initial intake process, an inmate identified as transgender or intersex shall be afforded the opportunity to request and receive protective custody and be housed 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 4090.3 *Classification (Program Review)*, 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 make a recommendation as to the transgender inmate's housing assignment after review of all of the inmate's records and assessments, including 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 forwarded to the Warden for approval and shall be maintained in the inmate's institutional record. An inmate identified as transgender may waive the Transgender Committee hearing by signing the Gender Housing Request/Waiver Form (Attachment A) and be housed according to their biological gender.
- c. The Transgender Committee housing assessment shall address whether 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 Warden's opinion differs from the recommendation of the Transgender Committee, the Warden shall justify the assignment in writing to the Director for final determination. Transgender and intersex inmates have the same right to appeal housing assignments as all inmates consistent with *PS 4090.3 Classification (Program Review)*.
- d. If it is decided that the inmate can be housed in the general population, the inmate shall be transferred to the general population as determined by the Classification 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. An inmate who is housed in a unit of the gender not consistent with their gender identity or genitalia and requests to be housed in a unit consistent with their gender identity or genitalia shall sign the Gender Housing Request/Waiver Form (Attachment A).
  - g. When clinically indicated and determined by appropriate medical staff, transgender inmates who were receiving hormone treatment and therapy at the time of their incarceration may continue to do so if the inmate desires. If the inmate agrees and medical staff makes the clinical assessment accordingly, treatment will be provided as needed.
  - h. Transgender and intersex inmates will be provided standard jail attire and privileges 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.
  - i. While incarcerated with the D.C. Department of Corrections, transgender, transsexual and intersex inmates shall not be discriminated against in regard to their participation in services, programs, or privileges and shall not be subjected to verbal or physical harassment or a hostile environment by the staff or fellow inmates. Individuals who are found to engage in such misconduct shall be subject to appropriate disciplinary action.
  - j. 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.

## **CONTRACT HALFWAY HOUSE HOUSING PROCEDURES**

1. **INITIAL INTAKE.** Upon intake orientation, if a resident's gender-related expression, identity, appearance, or behavior differs from their biological sex, staff shall make immediate notification to the DOC Office of Community Corrections.

Staff shall:

- a. Review commitment documents for gender assignment or any notification that identifies the resident as transgender or "vulnerable."
- b. If after reviewing commitment documents and other notifications, including prior housing assignments while incarcerated, the staff still cannot determine

- the biological sex, the staff shall ask the resident 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 resident to abuse or ridicule.
- c. Halfway House staff shall accurately record the inmate as transgendered or intersex and the inmate's gender identity and apparent biological gender in the resident's case file and document the incident consistent with PS 1280.2 *Reporting and Notification Procedures for Significant Incidents and Extraordinary Occurrences*.
  - d. 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.
  - e. Inmates shall be called by their last names without reference to gender specific identifiers such as Mr., Mrs., or Miss, Ma'am, Sir or other gender specific terms used in addressing a person. Instead, the gender neutral term, "Resident" is to be used with the last name.

## 2. HOUSING

- a. All transgender and intersex inmates will be assigned housing based on their safety/security needs, housing availability, gender identity and genitalia. Halfway House staff shall assess the transgender and intersex inmates for potential vulnerability in the Halfway House. If potential vulnerability is a concern, the Halfway House staff will place the resident in a single room or make any necessary accommodations. The DOC Office of Community Corrections will be notified immediately. The DOC Office of Community Corrections will make a referral to the Transgender Committee.
- b. As part of the housing assessment for vulnerability, the Transgender Committee shall recommend the transgender or intersex resident's housing assignment after review of all of the resident's records and assessments and an interview with the resident. The Committee shall ask the resident his or her own opinion of his or her vulnerability in the male and female halfway houses. 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 recommendation by the Transgender Committee shall be forwarded to the DOC Community Corrections Office Chief for approval and shall be maintained in the resident's institutional record.
- c. The Transgender Committee housing assessment shall make a recommendation to the DOC Community Corrections Office Chief as to whether the resident will be housed in the halfway house or returned to the Central Detention Facility (CDF) or Correctional Treatment Facility (CTF).

- If the decision of the Office Chief differs from the Transgender Committee's written recommendation, the Office Chief shall justify his/her opinion in writing to the Director for final determination. Transgender and intersex residents have the right to appeal housing assignments.
- d. 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 resident desires. If the inmate agrees and medical staff makes the clinical assessment accordingly, treatment will be provided as needed.
  - e. Transgender and intersex residents shall wear appropriate clothing according to their assigned housing. Uni-sex clothing is permissible in both male and female halfway houses.
  - f. While incarcerated with the D.C. Department of Corrections, transgender, transsexual and intersex inmates shall not be discriminated against in regard to 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 residents. Individuals who are found to engage in such abuse shall be subject to appropriate disciplinary action.
  - g. All searches of transgender or intersex residents shall be conducted in a manner consistent with DOC policy outside of the presence of other residents or non-critical staff to the degree practicable.



Thomas Faust  
Acting Director

#### Attachments

Attachment A      Gender Housing Request/Waiver