

 <p>DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS</p> <p>POLICY AND PROCEDURE</p>	EFFECTIVE DATE:	October 15, 2019	Page 1 of 12
	SUPERSEDES:	4020.3F January 18, 2018	
	OPI:	DIRECTOR	
	REVIEW DATE:	October 15, 2020	
	Approving Authority	Quincy L. Booth Director	
	SUBJECT:	GENDER CLASSIFICATION AND HOUSING	
NUMBER:	4020.3G		
Attachments:	Attachment A – Gender Housing Request Form Attachment B – Transgender Shave Request Form Attachment C – Transgender Housing Committee Recommendation Form		

SUMMARY OF CHANGES:

Section	Change
	Replaced “Chief of Treatment and Community Services” as the Committee Chair with “Chief of Case Management” 6/17/2020
	<i>Significant changes throughout the policy. References to “Transsexual” or “Transgendered” were remove and replaced with “Transgender”.</i>
	<i>Definition was added “Gender Nonconformin”g was added to the policy.</i>
	<i>“Attachment A, Gender Housing Request Form has been revised”.</i>
	<i>Attachment B “Transgender Shave Request Form” was added to the policy.</i>

APPROVED:



Quincy L. Booth, Director

_____ 10/15/19 _____

Date Signed

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1. PURPOSE AND SCOPE. To establish procedures on providing the appropriate housing of transgender, intersex, gender nonconforming 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 processing and housing them 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 Housing Committee and approved in accordance with this policy.
- b. In order to address the specific needs of transgender individuals, upon initial intake at the Inmate Reception Center (IRC), 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 he or she is transgender or intersex at any time during their custody.
 - 2) An inmate’s gender identity, gender expression, or behavior differs from their assigned sex at birth.

3. A gender designation made by the medical service provider, government agency, or law enforcement agency indicates that the inmate is transgender.

4. 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.

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4. DIRECTIVES AFFECTED

a. Directives Rescinded

PP 4020.3F Gender Classification and Housing (01/018/18)

b. Directives Affected

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

PP 4090.3 Classification (Program Review)

PM 8010.1 Work Release Program

PP 3350.2 Elimination of Sexual Abuse, Sexual Assault, and Sexual Misconduct

5. AUTHORITY

- a. Farmer v. Brennan, 511 U.S. 825 (1994).
- b. Doe v. District of Columbia, 215 F. Supp. 3d 62 (D.D.C. Oct. 18, 2016).
- c. Shaw v. District of Columbia, 944 F. Supp. 2d 43 (D.D.C. May 13, 2013).
- d. D.C. Code § 24-211.02, Powers; Promulgation of Rules.
- e. D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq.
- f. Prison Rape Elimination Act, 34 USC § 30301, et seq.
- g. 28 C.F.R. Part 115, Prison Rape Elimination Act National Standards.
- h. D.C. Code § 22-3013 Sex Offenses - First Degree Sexual Abuse of a Ward, Patient, Client, or Prisoner.

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- i. D.C. Code § 22-3014 Sex Offenses - Second Degree Sexual Abuse of a Ward, Patient, Client, or Prisoner.
- j.
- k. D.C. Code § 2-1402.51;4 District Requirements in Public Accommodations Gender Identity and Expression (4DCMR §802.2; 4DCMR801.1

6. STANDARDS REFERENCED

- a. American Correctional Standard (ACA) 4th Edition, Standards for Administration of Correctional Agencies, 4th Edition 4-ALDF-4D-22-4.
- b. Prison Rape Elimination Act of 2003, Department of Justice, 28 CFR Part 115

7. DEFINITIONS

- a. **Gender Identity.** Gender Identity is defined as an individual's innermost concept of self as male, female, a blend of both or neither. – It is how individuals perceive themselves. One's gender identity can be the same or different from their sex assigned at birth and may not be visible to others.
- b. **Gender Expression.** Gender Expression is defined as the external appearance of one's gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.
- c. **Intersex.** Intersex is defined as a set of medical conditions that features a congenital irregularity of the reproductive and sexual system. A person with an intersex condition is born with sex chromosomes, external genitalia, and/or an internal reproductive system that is not considered "standard" for either male or female.
- d. **Sexual Orientation.** Sexual Orientation is defined as one's romantic, emotional and/or sexual attraction to members of the same, opposite or both sexes. Includes male or female homosexuality, heterosexuality, and bisexuality.

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- e. **Transgender.** Transgender is a term used to describe a person whose sense of personal identity and gender does not correspond with their birth sex.
 - f. **Gender Nonconforming.** Gender Nonconforming refers to any person whose expression of gender, (masculinity and femininity) does not conform to the dominant gender forms of Western culture.
 - g. **Vulnerability.** Vulnerability refers to any person or population targeted for physical and sexual violence and abuse based on their gender identity or presentation.
 - h. **Transgender Housing Committee.** The Transgender Housing Committee refers to a committee established by the D.C. Department of Corrections comprised of a chairperson which is the DOC Chief Case Management Case Management, DOC Mental Health Specialist, Medical Practitioner, a Mental Health Clinician, a Correctional Supervisor, a Case Manager, PREA Coordinator, Mayor’s Office on LGBTQ,, and a DOC approved volunteer who is a member of the transgender community who is experienced and knowledgeable about transgender issues or an acknowledged expert in transgender affairs. The 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 during which the inmate’s own opinion of his/her vulnerability in the jail population shall be considered.
 - i. **Transgender Advisory Committee.** The Transgender Advisory Committee (TAC) serves as a liaison among the DOC, the transgender community and its stakeholder organizations. The objectives of the TAC are to establish open communication between DOC and the Transgender community, by maintaining an ongoing dialogue on issues/problems facing the transgender community, and promote public awareness of the programs and services offered for the transgender community.
- 8. PROCEDURES.** In all circumstances, staff shall only ask questions related to 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 maintain the safety, security and order of inmates/residents, staff, visitors, the facility, and the community. Questions related to 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/resident to danger, abuse, humiliation or ridicule.

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Searches or physical examination of Transgender or Intersex inmates/detainees by any staff member, other than a physician, for the sole purpose of determining the inmate/detainee’s genital status is strictly prohibited.

- 9. INITIAL INTAKE.** Upon initial intake in the Inmate Reception Center (IRC), if an inmate’s gender-related expression, identity, appearance, or behavior differs from their sex at birth, staff shall ask the inmate how they self-identify and place the inmate in a cell by themselves during the intake process for their safety and security and the safety, security, and order of the facility.

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, staff still cannot determine the inmate’s assigned sex at birth, or the inmate refuses to cooperate, staff shall immediately notify a supervisor.
- c. Administer the Transgender Housing & Classification Gender Identity Questionnaire to gather information on the inmate’s gender housing requirements and sexual identity (Attachment D).
- d. Residents shall be called by their last names without references 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 last name..
- e. The inmate shall be taken to medical where the inmate's genital status should be determined during a medical interview, 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. Any inmate refusing to receive a complete physical examination shall be placed in protective custody on the unit of sex at birth.
- f. Upon determination of gender by inmate verification (a or b, c above) the inmate shall be treated as a protective custody inmate for the duration of the intake process.
- g. The inmate shall be escorted by staff to the appropriate unit to complete the

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intake process in a manner consistent with protective custody's requirements, including private strip search procedures.

- h. The IRC staff shall accurately record the inmate as Transgender or Intersex and record the inmate's gender identity and apparent biological gender in JACCS as well as document the incident consistent with PP 1280.2, *Reporting and Notification Procedures for Significant Incidents and Extraordinary Occurrences*.
- i. All intake documentation shall include the inmate's birth and/or legal name, the aka (also known as) name, or the name the inmate has been booked under by the arresting agency.

10. INTAKE HOUSING UNIT

- a. After completion of the initial intake process in the IRC, an inmate identified as Transgender or Intersex shall be afforded the opportunity to request and receive protective custody.
- b. Inmates identified as Transgender or Intersex shall 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 Housing Committee.

5. **Inmates who Self-Report as Transgender or Intersex.** Once an inmate makes known to DOC staff their transgender or intersex status, staff shall:

- 1) Refer the Inmate to their assigned Case Manager or on weekends, the Captain or above.
- 2) The Case Manager or the Captain shall refer the inmate to the Transgender Housing Committee to determine the inmate's housing based on his or her safety/security needs, housing availability, gender identity and sex at birth.

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6. In accordance with PP 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 sex at birth.

11. TRANSGENDER HOUSING COMMITTEE ROLES

- a. As part of the housing assessment for vulnerability, the Transgender Housing Committee shall make a recommendation as to the Transgender inmate's housing assignment after reviewing the inmate's records including the assessments (PREA, Risk Assessment and Gender Housing Classification Questionnaire) and interviewing the inmate.
- b. The Committee shall ask the inmate to offer their opinion regarding 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 shall attempt to reach a consensus, ultimately relying on majority vote when needed.
- c. A written decision by the Transgender Housing Committee shall be forwarded to the Warden for approval and shall be maintained in the inmate's institutional record and scanned into PaperClip.

An inmate identified as Transgender may waive his or her right to a Transgender Housing Committee hearing and express their request to be housed according to their assigned sex at birth by selecting Option 1 on the Gender Housing Request Form (Attachment A). By selecting option 2, the inmate shall be housed according to their sex assigned at birth and seen by the Transgender Housing Committee at their next scheduled hearing. By selecting Option 3 the inmate requests to be housed according to his or her gender expression and a Transgender Housing Committee meeting shall be scheduled to consider the request.

- d. The Transgender Housing Committee's housing assessment shall address whether the inmate shall be housed in the general population or in a protective custody unit of the gender consistent with their gender identity or sex at birth. If the Warden's opinion differs from the recommendation of the Transgender Housing 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

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consistent with PP 4090.3, *Classification (Program Review)*.

- e. 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 Transgender Housing Committee after completion of initial classification and upon housing availability. Transgender or Intersex inmates shall be housed in a single cell or with another Transgender or Intersex inmate in their assigned housing unit, no exceptions.
- f. A Transgender or Intersex inmate shall 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 restrictive housing and protective custody shall have access to programs and services consistent with that status.
- g. If it is determined that the inmate requires protective custody, he or she shall be placed in such a unit and his or her custody shall be reviewed by the Transgender Housing Committee consistent with standard DOC policy.
- h. Consistent with standard DOC policy, Transgender and Intersex inmates may be placed in communal protective custody pursuant to the determination of the Transgender Housing Committee and subsequent reviews of the inmate's status from the Housing Board.

12. INSTITUTIONAL OPERATIONS ACCOMMODATIONS

- a. When clinically indicated by appropriate medical staff, Transgender inmates on hormone therapy may continue to receive hormone treatment.
- b.
 - 1) In accordance with PP 4010.2, Inmate Personal Grooming, wigs are not permitted except in special circumstances and/or for medical conditions with the Warden's written approval. When artificial hair, including hair extensions and weaves, becomes loose or starts to come unglued from the scalp, the inmate shall have the responsibility of removing it.

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- 2) If (s)he wants to retain the artificial hair, the inmate shall be allowed to do so. The hair shall be inventoried and stored in the inmate's unauthorized/ excess property and scheduled for pick-up pursuant to PP 4050.1, *Inmate Property*. Otherwise, the Major shall establish procedures for a safe and sanitary place for the inmate to remove artificial hair and a process for confiscation and destruction of the item.

c. *Inmate Clothing.*

- 1) Transgender or Intersex inmates may request replacement underclothing using the Inmate Request Slip every 60 days. Hygiene kits are available to indigent inmates who have less than \$5.00 dollars in their inmate's finance account for fourteen (14) days.
- 2) Transgender or Intersex inmates shall be provided institutional clothing 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 underclothing (such as a bra) during the intake process.

d. *Inmate Accommodation and Grooming.*

- 1) Transgender or Intersex inmates who are indigent may request institutional approved shaving cream once every 30 days by completing the Transgender Shave Request form (Attachment B).
- 2) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

e.

- 1) While incarcerated with the D.C. Department of Corrections, Transgender and Intersex inmates shall not be discriminated against in regard to their participation in services, programs, or privileges consistent with their housing assignment 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.

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- 2) **Inmate Detail Assignment.** Transgender or Intersex inmates assigned to the detail or program unit shall be housed in a single cell or with another Transgender or Intersex inmate. If accommodations cannot be made at the time of assignment, the Shift Supervisor shall be contacted immediately for appropriate housing.
- f. **Inmate Searches.** All searches of Transgender or Intersex inmates shall be conducted in a professional and respectful manner, in the least intrusive manner possible, consistent with DOC policy outside of the presence of inmates or unnecessary staff to the degree practicable.

CONTRACT HALFWAY HOUSE HOUSING PROCEDURES

a. Halfway House Referral

- 1) As part of the Halfway Housing assessment for vulnerability, the Transgender Housing Committee shall recommend 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 to provide their 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 shall attempt to reach a consensus, ultimately relying on majority vote when needed. A written recommendation (Attachment C) by the Transgender Housing Committee shall be forwarded to the DOC Community Corrections Program Administrator for approval and shall be maintained in the resident's institutional record.
- 2) The Transgender Housing Committee housing assessment shall make a recommendation to the DOC Community Corrections Program Administrator as to whether the resident should be housed in the male or female halfway house.
- 3) When clinically indicated as determined by appropriate medical staff, residents may access their primary health care provider for hormone treatment and therapy.
- 4) Transgender and Intersex residents shall wear appropriate clothing

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according to their assigned housing.

Halfway House Staff shall:

- a. Accurately record the resident as Transgender or Intersex and the resident's gender identity and apparent biological gender in the resident's case file and document for the record consistent with PP 1280.2, *Reporting and Notification Procedures for Significant Incidents and Extraordinary Occurrences*.
- b. Confirm that all intake documentation includes the resident's birth and/or legal name or the name the resident ~~inmate~~ has been booked under by the arresting agency.
- c. Residents shall be called by their last names without references 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 "Resident" is to be used with the last name.
- d. Residents 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.
- e. To the degree practicable, searches of Transgender or Intersex residents shall be conducted in a manner consistent with DOC policy outside the presence of other residents or non-critical staff.
- f. Transgender and Intersex residents shall be given the opportunity to shower separately from other residents.

Attachments

Attachment A – Gender Housing Request Form

Attachment B – Transgender Shave Request Form

Attachment C – Transgender Housing Committee Halfway House Recommendation