

 <p>KENTUCKY CORRECTIONS Policies and Procedures</p>	Policy Number	Total Pages
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Authority/References	Subject	
<p>KRS 196.035, 197.020, 510.120, 531.090 28 C.F.R. § 115.5, 28 C.F.R. § 115.6, 28 C.F.R. § 115.15, 28 C.F.R. § 115.42, 28 C.F.R. § 115.43 ACA 5-ACI-3D-14, 5-ACI-1C-09; P & P ACA 3C-02, 3E-05 CPP 9.8, 14.7, 18.1, 18.5</p>	<p>14.8</p> <p>**</p>	<p>10</p> <p>May 20, 2020</p> <p>Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders</p>

I. DEFINITIONS

“Administrative review team” is a team consisting of the Department of Corrections Commissioner, Deputy Commissioners, a member of General Council, and other staff assigned by the Commissioner.

“Gender dysphoria” means a mental health disorder characterized by clinically significant distress and impairment in social, occupational, or other important areas of functioning secondary to a marked incongruence between an individual’s experienced/expressed gender and assigned gender.

“Gender identity” is distinct from sexual orientation and refers to a person’s internal sense of being male, female, or something else.

“Institutional treatment team” is a multi-disciplinary committee that consists of medical providers, nurses, psychiatric providers, psychologists, security and other staff as needed working together on complex mental health and medical cases at the institutional level.

“Intersex” means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.

“LGBTI” means lesbian, gay, bisexual, transgender, or intersex.

“Staff member”, for purposes of this policy, means full-time, part-time and interim employees, interns, students, volunteers, and contractors doing business on a recurring basis with the Department of Corrections.

“Therapeutic Level of Care (TLOC)” is a multi-disciplinary committee that consists of medical providers, nurses, psychiatric providers, psychologists, security and other staff as needed working together on complex mental health and medical cases.

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“Transgender” means a person whose gender identity (i.e. internal sense of feeling male or female) is different from the person’s assigned sex at birth. For example, a transgender woman is an individual who was born male but identifies as female. A transgender man is an individual who was born female but identifies as male. Transgender people may or may not be prescribed hormones or have had gender affirming surgery.

II. POLICY and PROCEDURES

It is the policy of the Kentucky Department of Corrections to be sensitive to the unique issues of individuals who are LGBTI and to evaluate and place those individuals in a manner that is safe and consistent with the Prison Rape Elimination Act (PREA) standards and the department’s mission, values and security procedures. The Kentucky Department of Corrections has a zero tolerance for sexual abuse or sexual harassment towards any offender, to include LGBTI offenders. There is also zero tolerance for the use of any derogatory terms or discriminatory acts directed towards any LGBTI offender.

Additionally, it is the policy of the Kentucky Department of Corrections to provide staff members a procedure for evaluation, placement, and treatment of offenders who present as intersex or identify as transgender and to ensure appropriate medical/mental health care and offender safety.

A. Facility Determination

1. An assessment to determine the facility a transgender or intersex inmate shall be assigned to shall be made on a case-by-case basis via an individualized assessment of the inmate by the Therapeutic Level of Care (TLOC) committee, which includes input from medical and mental health staff, in consultation with the Director of Classification. A determination shall not be made based on genital status alone.
2. Staff shall consider if placement would ensure the inmate’s health and safety and if the placement would present management or security problems.
3. Staff shall give serious consideration to the inmate’s own views concerning his or her safety.
4. The individualized assessment shall consider the following:
 - a. Classification’s housing decision;
 - b. The offender’s documented choice of whether a male or female facility is safest for him or her;
 - c. The inmate’s physical characteristics;
 - d. Whether the inmate identified as male or female;

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- e. The offender's prior institutional history, to include incidents and grievances;
- f. The offender's prior violent or sexual crime history;
- g. The offender's physical appearance, age, and physical build;
- h. Any relevant information obtained about the offender from security, medical or mental health staff since arrival;
- i. The ability of security staff to house and supervise the offender to ensure his or her safety in each environment;
- j. Any management problems that can be identified in each facility; and
- k. Any other relevant information about the offender's ability to positively or negatively manage his or herself in each type of environment.

B. Facility Intake

1. Notifications

- a. If an inmate is received by the Department of Corrections (DOC) through intake and DOC staff are made aware through the receiving process or if at any time during incarceration an offender identifies as a transgender male or transgender female or is an offender who is intersex, DOC staff shall immediately notify the Shift Supervisor and institutional PREA Compliance Manager.
- b. As soon as possible after being notified the institutional PREA Compliance Manager shall notify medical staff, mental health staff, the Warden and the agency PREA Coordinator.

2. Initial Housing Assignment

- a. Upon intake at their assigned facility an initial housing assignment shall be made with the safety of the LGBTI inmate as priority.
- b. LGBTI inmates shall not be placed into restrictive housing involuntary unless an assessment of all available alternatives has been made and there are no alternative means available. If the inmate is placed in restrictive housing involuntarily, an assessment shall be completed within 24 hours. The inmate shall be kept in restrictive housing involuntarily only until an alternative means of separation from likely abusers can be arranged. This shall not ordinarily exceed 30 days.
- c. LGBTI inmates shall be housed in the least restrictive setting possible while considering their safety and well-being.

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3. Risk Screening

- a. A risk screening shall be completed on all offenders, including LGBTI offenders, as required in CPP 14.7
- b. If the result of the risk screening or any other assessments completed after the initial housing assignment is given indicate a need for a change in housing assignment, this shall be done as soon as possible after the screening or assessment is completed.

C. Bed, Housing, Work, and Program Assignments

1. All LGBTI inmates shall be classified in accordance with CPP 18.1. Classification staff shall use the results of the risk screening required in CPP 14.7 to help determine bed, housing, work and program assignments as well as safety and custody decisions.
2. Classification staff shall give serious consideration to the inmate's own view concerning his or her safety.
3. LGBTI offenders shall be given the same treatment in determining access to programming and services as other offenders within the correctional facility. However, work, education, and programming assignments can vary for offenders if there is a documented reason to keep separate those offenders at high risk of being sexually victimized from those at high risk of being sexually abusive. Classification staff shall make individualized determinations about these offender's assignments without discrimination.
4. Classification staff shall not make any determinations based primarily on the complaints of staff or other inmates when the complaints are based on gender identity.
5. Any questioning done by staff to make a determination for appropriate housing shall be conducted in a private and respectful manner.
- 6.. Any question relating to an inmate's anatomy or surgical status shall only be asked by authorized medical staff as necessary for proper medical treatment.
7. Classification staff shall not place LGBTI offenders in dedicated housing areas for LGBTI offenders solely on the basis of the offender's sexual orientation, identification or status.

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8. Classification staff shall assess the placement and programming assignments for each transgender or intersex inmate twice a year to review any threats to safety experienced by the offender. This shall be completed at least once every six (6) months during the inmate's reclassification required by CPP 18.1.
9. Transgender or intersex offenders shall have the right to request their housing assignment be re-evaluated. Any offender request shall be made in writing to the Warden or designee of their assigned facility with an explanation of the reason for the request. The Warden or designee shall review and grant or deny the request based on the explanation at their discretion. The decision of the Warden or designee shall be documented.
10. A transgender or intersex inmate may request Protective Custody at any time according to the procedures in CPP 18.15.

D. Staff Training and Awareness – Respectful Communication

1. LGBTI offenders shall be treated with the same rules and respect as other offenders.
2. All DOC employees shall be required to attend training in pre-service and annually in in-service on PREA, which includes how to communicate effectively and professionally with offenders, including lesbian, gay, bisexual, transgender, intersex, or gender non-conforming offenders.
 - a. In-service training shall include gender-specific reference and training to staff as it relates to the specific population supervised.
 - b. If a staff member transfers to a different facility, they shall receive gender-specific training.
 - c. Staff shall also receive LGBTI-specific training in pre-service and in-service training.
3. Respectful communication with transgender offenders is vital to facility safety and security. All staff are responsible for behaving professionally and responsibly around all offenders, to include LGBTI offenders, to maintain order and composure on their shift.
4. To address LGBTI offenders respectfully, staff may not engage in unwelcome verbal comments, gestures, or actions of a derogatory or offensive nature, nor shall staff make demeaning references to the offender's gender or gender identity, or sexually suggestive or derogatory comments about the body or clothing of an offender or use obscene

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language or gestures. Terms such as “it,” “he-she” and “that” are disrespectful to transgender offenders and shall not be tolerated.

5. Staff shall refer to transgender offenders by their legal last name and shall use the pronoun the offender prefers to address him or her.
6. Staff shall not attempt to change any offender's understanding of his or her gender identity or sexual orientation.
7. Staff shall not permit, condone, or otherwise allow any offender to sexually harass other offenders, including transgender offenders.
8. The DOC shall provide training to security staff about how to conduct cross-gender frisk searches and searches of transgender and intersex inmates in a professional and respectful manner.
9. All volunteers and contractors who have contact with inmates shall also be familiar with their responsibilities regarding LGBTI populations in accordance with Department policies.

E. Showers

1. Transgender and intersex inmates shall be given the opportunity to shower separately from other offenders. They shall not be required to shower separately but shall have the opportunity if they wish to do so. This shall be accomplished by:
 - a. Allowing the inmate to shower alone in a community shower at a time separate from other offenders; or
 - b. Allowing the inmate to shower alone in a shower that has separate and private walls or curtains.
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.

F. Searches

1. Offender searches shall be conducted in a professional and respectful manner, in the least intrusive manner possible, and consistent with security needs. Staff who frisk and strip search transgender and intersex offenders must have the requisite search training.

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2. DOC staff shall not search or physically examine transgender or intersex inmates for the sole purpose of determining their genital status. If an inmate's genital status is unknown, DOC may determine it through 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.
3. Operationally, four options may be used for searches of transgender or intersex inmates:
 - a. Frisk search conducted by female staff only, especially given there is no prohibition on the frisk searches female staff can perform;
 - b. Ask inmate to identify the gender of staff with whom he or she would feel most comfortable conducting the search;
 - c. Search conducted in accordance with the inmate's gender identity; or
 - d. Search conducted only by medical staff.
4. At no time shall one gender staff search a top half of an offender's body and another gender search a bottom half.
5. A determination of the staff gender to search a transgender or intersex inmate shall be made on a case-by-case basis and shall be documented in writing and documented within the offender management system with an explanation for the determination.
6. If the inmate requests to change this determination at any time, it shall be documented and a review completed. The results of the review shall also be documented.

G. Transportation

1. Whenever possible, both a male and female staff should be on a transport that includes a transgender or intersex offender so search options are available to the offender depending on the circumstance, gender identity, and PREA requirements that prohibit cross-gender pat searches.
2. If it is not possible for both a male and female staff to be assigned on a transport that includes a transgender or intersex inmate, a staff member the same gender as designated for searches shall be assigned to the transport.

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H. Confidentiality

1. Because LGBTI offenders may be at particularly high risk for physical or sexual abuse or harassment, information learned about an offender, whether received from the offender, from the PREA Risk Screening, from other documents or records, or from a suspicion the offender may be LGBTI, shall be used only for the safety and security of the offender and facility. No person shall share this information with others unless there is a legitimate and documented reason to do so.
2. Sexual safety risk screening information is required to be locked and secured with limited access. Staff shall keep an offender's sensitive personal information confidential.

I. Physical and Mental Health Treatment

1. All offenders, to include those who self-identify or screen on the PREA Risk Screening as transgender or intersex, shall be referred to medical for a review of needs within fourteen (14) days of arrival at their assigned facility or of their identification if made at another time during their incarceration.
2. Medical and mental health practitioners shall document whether an offender has identified as transgender or intersex after a medical assessment and mental health evaluation.
3. DOC shall provide transgender and intersex offenders with individualized assessments and care, to include necessary and appropriate mental health services and, when warranted, hormone treatment throughout their incarceration.
4. If an inmate requests hormone treatment the process shall be as follows:
 - a. The inmate shall be reviewed by a Psychologist and a Psychiatrist to determine if the inmate meets the appropriate criteria for hormone treatment. If the Psychologist and Psychiatrist disagree, an independent practitioner shall be brought in to review the inmate.
 - b. If it is determined that the inmate meets the criteria for hormone treatment, the inmate shall be reviewed by the institutional treatment team.

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- c. If the institutional treatment team agrees that the inmate meets the criteria for hormone treatment the inmate shall be referred for review by the TLOC committee.
 - d. If TLOC agrees that the inmate meets the criteria for hormone treatment, the inmate shall be referred for an appointment with an outside endocrinologist.
 - e. The endocrinologist shall make the final determination on whether gender-related hormone treatment for a transgender offender should be initiated or continued based on documented medical need.
5. Only medical practitioners shall make decisions regarding gender-related hormone treatment needs.
6. If an inmate requests a transgender specific surgery the process shall be as follows:
- a. The inmate shall be reviewed by a Psychologist and a Psychiatrist to determine if the inmate meets the appropriate criteria for transgender specific surgery. If the Psychologist and Psychiatrist disagree, an independent practitioner shall be brought in to review the inmate.
 - b. If it is determined that the inmate meets the criteria, the inmate shall be reviewed by the institutional treatment team.
 - c. If the institutional treatment team agrees that the inmate meets the criteria the inmate shall be referred for review by the TLOC committee.
 - d. TLOC shall review the requests and the healthcare information of the inmate to include consultation with an endocrinologist. If TLOC agrees that the inmate meets the criteria, the inmate shall be referred for review by a separate Administrative Review Team.
 - e. The Administrative Review Team shall make the final determination on whether transgender specific surgery for an offender should be initiated.

J. Staff and Offender Discipline

Staff or offenders who are found to have participated in the abuse or harassment of an LGBTI offender shall be reviewed for appropriate action, which may include

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disciplinary action up to and including dismissal for staff and disciplinary action for offenders. DOC shall not tolerate physical, emotional, or sexual abuse or harassment of any offender.