

 <p style="text-align: center;"><b>KENTUCKY CORRECTIONS</b> Policies and Procedures</p>	Policy Number	Total Pages
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## I. DEFINITIONS

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

“Gender dysphoria” means a mental health disorder characterized by clinically significant distress or 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 Department of Corrections (DOC) 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 DOC’s mission, values and security procedures. The Department of Corrections has a zero tolerance for sexual abuse or sexual harassment towards any inmate, to include LGBTI inmates. There is also zero tolerance for the use of any derogatory terms or discriminatory acts directed towards any LGBTI inmate.

### A. Institution Determination

1. An assessment to determine the institution 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, 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 inmate’s documented choice of whether a male or female institution is safest for him or her;
  - c. The inmate’s physical characteristics;
  - d. Whether the inmate identifies as male or female;
  - e. The inmate’s prior institutional history, to include incidents and grievances;
  - f. The inmate’s prior violent or sexual crime history;
  - g. The inmate’s physical appearance, age, and physical build;
  - h. Any relevant information obtained about the inmate from security, medical or mental health staff since arrival;

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- i. The ability of security staff to house and supervise the inmate to ensure his or her safety in each environment;
  - j. Any management problems that may be identified in each institution; and
  - k. Any other relevant information about the inmate’s ability to positively or negatively manage his or herself in each type of environment.
5. If a transgender or intersex inmate already housed at a DOC institution requests transfer to an institution housing the opposite gender, the request shall be reviewed by the institutional treatment team prior to being referred to TLOC. The institutional treatment team shall complete the individualized assessment outlined in subsection 4 above. The TLOC shall then review and consider the information and recommendation provided by the institutional treatment team.
6. TLOC Recommendations
- a. If TLOC recommends deferral of a transfer, a treatment plan shall be developed and included with the recommendations. Both shall be referred for review to the Commissioner.
  - b. If TLOC recommends transfer, the recommendation shall be reviewed by the Administrative Review Team. The Administrative Review Team shall make the final determination on transfer.
  - c. TLOC recommendations shall be presented to the transgender or intersex inmate by a member of the core TLOC committee.
7. All information pertaining to a TLOC transfer review shall be kept confidential except to the extent necessary for referral as required by this policy.

**B. Institution Intake**

**1. Notifications**

- a. If an inmate is received by the 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.

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- b. As soon as possible after being notified, the institutional PREA Compliance Manager shall notify medical staff, mental health staff, the Warden, and the DOC PREA Coordinator.

## 2. Initial Housing Assignment

- a. Upon intake at the assigned institution, an initial housing assignment shall be made with the safety of the LGBTI inmate as priority.
- b. LGBTI inmates shall not be involuntarily placed into restrictive housing] 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 harm is arranged. Alternative means of separation shall be arranged as soon as possible, not exceeding thirty (30) days under normal circumstances.
- c. LGBTI inmates shall be housed in the least restrictive setting possible while considering their safety and well-being.

## 3. Risk Screening

- a. A risk screening shall be completed on all inmates, including LGBTI inmates, 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 inmates shall be given the same treatment in determining access to programming and services as other inmates within the correctional facility. However, work, education, and programming assignments may vary for

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inmates if there is a documented reason to keep separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive. Classification staff shall make individualized determinations about these inmate'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 inmates in dedicated housing areas for LGBTI inmates solely on the basis of the inmate's sexual orientation, identification, or status.
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 inmate. 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 inmates shall have the right to request their housing assignment be re-evaluated. Any inmate 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 inmates shall be treated with the same rules and respect as other inmates.
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 inmates, including lesbian, gay, bisexual, transgender, intersex, or gender non-conforming inmates.

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- 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 institution, the staff member shall receive gender-specific training.
  - c. Staff shall also receive LGBTI-specific training in pre-service and in-service training.
3. To address LGBTI inmates respectfully, staff shall not engage in verbal comments, gestures, or actions of a derogatory or offensive nature, and staff shall not make demeaning references to the inmate's gender or gender identity, or sexually suggestive or derogatory comments about the body or clothing of an inmate or use obscene language or gestures. Terms such as "it," "he-she" and "that" are disrespectful to transgender inmates and shall not be tolerated.
  4. Staff shall refer to transgender inmates by their committed name and shall use the pronoun the inmate prefers to address him or her.
  5. Staff shall not attempt to change any inmate's understanding of his or her gender identity or sexual orientation.
  6. Staff shall not permit, condone, or otherwise allow any inmate to sexually harass another inmate, including a transgender inmate.
  7. 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.
  8. 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 inmates. 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 inmates; or

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b. Allowing the inmate to shower alone in a shower that has separate and private walls or curtains.

c. The institutional Warden or their designee shall determine which option is appropriate based on the showering options at the institution.

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. Inmate 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 inmates shall have the requisite search training.

2. DOC staff shall not search or physically examine transgender or intersex inmates for the sole purpose of determining their genital status. As noted in 28 C.F.R. 115.15(e), 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 may 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 inmate'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 by institutional Warden or

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their designee and shall be documented in writing 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 and maintained in the offender management system.

#### G. Transportation

1. If possible, both a male and female staff are to be utilized on a transport that includes a transgender or intersex inmate so search options are available to the inmate 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 of the same gender as designated for searches shall be assigned to the transport.

#### H. Confidentiality

1. Because LGBTI inmates may be at particularly high risk for physical or sexual abuse or harassment, information learned about an inmate, whether received from the inmate, the PREA Risk Screening, other documents or records, or a suspicion that the inmate may be LGBTI, shall be used only for the safety and security of the inmate and facility. A person shall not share this information with others unless there is a legitimate and documented reason to do so.
2. Sexual safety risk screening information shall be locked and secured with limited access. Staff shall keep an inmate's sensitive personal information confidential.

#### I. Physical and Mental Health Treatment

1. All inmate's, 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 the assigned facility or if their identification is made at another time during their incarceration.
2. Medical and mental health practitioners shall document whether an inmate has identified as transgender or intersex after a medical assessment and mental health evaluation.
3. The DOC shall provide transgender and intersex inmates with individualized assessments and care, to include necessary and appropriate



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mental health, physical health, and if warranted, psychiatric care throughout incarceration.

4. All transgender and intersex inmates shall have a treatment plan implemented by mental health outlining their individualized plan of care.
5. All inmates who self-identify as transgender or intersex, shall be reviewed by the TLOC annually unless TLOC determines the inmate needs to be reviewed more frequently. This review shall include placement, pronoun preference, any issues with mental or physical health, use of gender affirming hormone therapy and next scheduled appointment with endocrinology.
6. If an inmate requests hormone affirming treatment, the process shall be as follows:
  - a. The inmate shall be reviewed by a mental health provider to update the treatment plan and to determine if the inmate meets the diagnostic criteria for gender dysphoria.
  - b. If the mental health provider affirms the inmate meets criteria for gender dysphoria, and current treatment interventions are found by the institutional treatment team to be insufficient in alleviating the dysphoria, the Institutional Health Services Administrator shall schedule the inmate to be presented to TLOC for review and referral to endocrinology if appropriate.
  - c. If the mental health provider does not determine the inmate meets criteria for gender dysphoria, the inmate may request a second evaluation from a DOC mental health provider. This request shall be coordinated through the Institutional Health Services Administrator.
  - d. All transgender inmates shall be reevaluated annually, and treatment plan updated to reflect necessary changes.
  - e. The endocrinologist shall make the final determination on whether gender-related hormone treatment for a transgender inmate shall be initiated or continued based on documented medical need.
7. If an inmate requests a transgender specific surgery, the process shall be as follows:
  - a. The inmate shall be scheduled to meet with a mental health provider to update the treatment plan and to determine if current treatment interventions are found by the institutional treatment team to not be sufficient in alleviating the dysphoria.

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- b. The institutional treatment team shall update the inmate's treatment plan to reflect least invasive treatment options available to inmate
- c. The institutional treatment team shall educate the inmate on more progressive treatment options and the permanence of long-term side effects.
- d. TLOC shall review the requests and the healthcare information of the inmate to include consultation with an endocrinologist.
- e. If TLOC affirms that the inmate continues to exhibit gender dysphoria and all possible avenues to alleviate the dysphoria have been attempted the inmate shall be referred for review by a separate Administrative Review Team.
- f. The Administrative Review Team shall make the final determination on whether transgender specific surgery for an inmate be initiated.

J. Staff and Inmate Discipline

Staff or inmates who are found to have participated in the abuse or harassment of an LGBTI inmate shall be reviewed for appropriate action, which may include disciplinary action up to and including dismissal for staff and disciplinary action for inmates. The DOC shall not tolerate physical, emotional, or sexual abuse or harassment of any inmate.