



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-150800 Transgender, Intersex, and/or Gender Non-Conforming	Issued: 08/30/17 Effective: 08/30/17	Reviewed: 02/02/23 Revised: 02/02/23
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

AUTHORITY:

- A. Prison Rape Elimination Act of 2003, 42 USCA § 15601 et seq.
- B. Policy CD-080100
- C. Policy CD-050100
- D. Policy CD-130300
- E. Policy CD-150200

REFERENCE:

- A. Health Insurance Portability and Accountability Act (HIPAA)
- B. Prison Rape Elimination Act Standards §115.11 through §115.89
- C. ACA Expected Practices 5-ACI-1D-13, 5-ACI-3A-19, 5-ACI-3D-10, 5-ACI-3D-12, and 5-ACI-3D-13, 5-ACI-5A-01, 5-ACI-5D-08 *Performance Based Standards and Expected Practices for Adult Correctional Institutions*, 5th Edition.
- D. ACA Standards 2-CO-3C-01, *Standards the Administration of Correctional Agencies*, 2nd Edition.

PURPOSE:

The purpose of this policy is to provide guidelines for the New Mexico Corrections Department (NMCD) to follow in an effort to meet federal statutes and regulations, New Mexico State Statutes, American Correctional Association (ACA) Standards, Prison Rape Elimination Act (PREA) and other statutes, standards, regulations, guidelines, directives or requirements that:

- Facilitate the elimination of discriminations against; and/or
- Address the appropriate safety, housing and communication with and of; and/or
- Provide for the safety, security and other needs of transgender and gender non-conforming inmates.
- Ensure the safety and well-being of offenders to the extent reasonably possible and protect offenders from abuse and sexual misconduct while under correctional supervision. **[2-CO-3C- 01]**

APPLICABILITY:

All employees of the New Mexico Corrections Department (NMCD), all those who contract or volunteer to perform services for the NMCD, visitors, NMCD representatives and to all persons committed to or under the supervision of the NMCD.

FORMS:

None

ATTACHMENTS:

- A. **Transgender Statement of Preference Form** Attachment (CD-150801.1)
- B. **State-Issued Property Matrix** Attachment (CD-150201.A)

DEFINITIONS:

- A. Transgender: An individual whose gender identity or gender expression, does not conform to that typically associated with the sex to which they were assigned at birth.
- B. LGBTI: Lesbian, Gay, Bisexual, Transgender, and Intersex.
- C. Lesbian: A woman whose sexual orientation is to a women.
- D. Gay: A man whose sexual orientation is to a man.
- E. Bisexual: sexually attracted not exclusively to people of one particular gender; attracted to both men and women.
- F. Intersex: A general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that does not typically fit the standard definitions of female or male. 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.
- G. Gender Expression: Gender-related traits and manners with which they express themselves that may or may not be consistent with those traits typically associated with a person’s assigned sex at birth.
- H. Gender Identity: An individual’s internal and personal sense of their own gender and feelings, which may or may not be associated with a person’s assigned sex at birth.
- I. Gender Nonconforming: Individuals who do not follow society’s ideas or stereotypes about how they should look or act based on the sex they were assigned at birth.
- J. Non-binary: is an umbrella term for gender identities that are neither male nor female—identities that are outside the gender binary.^{[2][3]} Non-binary identities fall under the transgender umbrella, since non-binary people typically identify with a gender that is different from their assigned sex,^[3] though some non-binary individuals do not consider themselves transgender
- K. Cisgender: The state of one’s gender identity matching one’s biological sex.
- L. Gender Dysphoria (GD) – a mental health diagnosis currently defined by DSM-5 as, “A strong and persistent cross-gender identification. It is manifested by a stated desire to be the opposite sex and persistent discomfort with his or her biologically assigned sex.” Not all transgender inmates will have a diagnosis of GD, and a diagnosis of GD is not required for an individual to be provided services.
- M. Offender: An adult placed under, or made subject to, supervision, probation and/or parole, as

the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

- N. *Pat Search*: A search during which an inmate is not required to remove their clothing and the officer presses the outer clothing to the body to feel for contraband.
- O. *Strip Search*: A search during which an inmate is required to remove all clothing and is subjected to a visual inspection.
- P. *Abuse*: The unlawful or unjustified use of force or other actions that jeopardize the physical or mental well-being of an inmate.

POLICY:

- A. The NMCD has a “**zero tolerance**” policy towards all forms of sexual abuse and sexual harassment. This policy will outline NMCD’s approach to preventing, detecting, and responding to such conduct. NMCD shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities. Each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility’s efforts to comply with the PREA standards. [**§115.11**]
- B. All allegations regarding sexual abuse, sexual activity, sexual assault and sexual harassment will be referred and investigated by our Office of Professional Standards. In the event that a criminal element is identified during the course of the administrative investigation, outside Law Enforcement Agencies will be notified. [**§115.22**]
- C. Written policy, procedure, and practice protect inmates from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment. [**5-ACI-3D-08 (M)**]
- D. Inmates are screened within 24 hours of arrival at the facility for potential vulnerabilities or tendencies of acting out with sexually aggressive behavior. Housing assignments are made accordingly. [**5-ACI-3D-10**]
- E. Written policy, procedure, and practice require that inmates identified as high risk with a history of sexually assaultive behavior are assessed by a mental health or other qualified professional. Inmates with a history of sexually assaultive behavior are identified, monitored, and counseled. [**5-ACI-3D-12**]
- F. No person under the NMCD custody or supervision shall be arbitrarily exposed to physical or mental abuse, including disease or medical experimentation.
- G. 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. [**§115.15e**]
- H. 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. [§115.42a]

- I. The agency shall make individualized determinations about how to ensure the safety of each inmate. [§115.42b]
- J. 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. [§115.15d]
- K. Inmates identified as at risk for sexual victimization are assessed by a mental health or other qualified professional. Inmates at risk for sexual victimization are identified, monitored, and counseled. [5-ACI-3D-13] [§115.42]
- L. The statewide PREA Coordinator will maintain a record of transgender, intersex, and/or gender non-conforming individuals who have been committed to NMCD's care.
- M. Transgender inmates who wish to shower separately, in facilities with dorm style showers, must request to do so in writing to the Warden. The Warden will designate, by a memo, two shower times (one morning and one evening) whereas the individual making the request can shower privately during count time. These will be the only permitted count times as documented by the Warden and PREA Compliance Manager at the facility. A copy of the request and memorandum will be forwarded to the Agency PREA Coordinator.
- N. All employees, volunteers, and contract staff will address a transgender, intersex, and/or gender non-conforming individual by the inmates preference as indicated on the "Statement of Preference Form."
- O. NMCD shall set procedures that govern the controlling and safeguarding of inmate clothing and property. The Procedures shall identify what items shall be retained in an inmate's possession, and that clothing is properly fitted, climatically suitable, durable, and presentable. [5-ACI-5D-08]
- P. The facility shall provide for the issue of suitable clothing to all inmates. Clothing will be properly fitted, climatically suitable, durable, and presentable. [5-ACI-5D-08]



NEW MEXICO CORRECTIONS DEPARTMENT

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CD-150801 Transgender Inmates, intersex,
and/or Gender Non-Conforming

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Effective: 08/30/17

Reviewed: 02/02/23
Revised: 02/02/23

Alisha Tafoya Lucero, Cabinet Secretary

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AUTHORITY:

CD-150800

PROCEDURE:

A. Intake, Classification and Placement

1. During intake and the initial classification screening and when determining whether inmates are transgender or gender non-conforming, the following shall be taken into consideration:
 - a. Inmate appearance and behavior and whether or not it matches the gender marker on the inmate's arresting paperwork or identification materials
 - b. Self-Reporting from the inmate
 - c. Inmate's past history, if known
 - d. Any alerts from the transporting agency
2. Any other documentation that may be available to intake and classification staff upon initial screening to include:
 - a. Gender identity
 - b. Gender marker on identification documents
 - c. Social gender role in the community prior to incarceration (i.e. was the person living daily life as a man or woman)
 - d. Any past diagnosis or treatment for Gender Dysphoria.
 - e. The inmate's views regarding the safest placement option.
 - f. An assessment by medical and mental health staff of the potential health impact of placement in a male or female setting (e.g. on PTSD or Gender Dysphoria).
3. The inmate should be temporarily housed in a single cell, for his or her own protection, and the paperwork be immediately and confidentially forwarded to The Cabinet Secretary or Director of Adult Prisons.
4. The inmate may choose to fill out a Transgender Preference Form documenting the individual's preferred pronoun and name. The form will be retained in the inmate's file in the classification section.
5. If the intake process and classification has determined that an inmate is transgender, intersex, or gender non-conforming they will contact the Director of Adult Prisons in a confidential manner for further assessment in placing the inmate within seventy-two (72)

hours of intake.

B. Transgender Advisory Group

1. The Cabinet Secretary or Director of Adult Prisons will assign a Transgender Advisory Group when notified by intake/classification that an inmate presents as transgender, intersex, or gender non-conforming to determine individualized placement in an appropriate facility. The group will take into consideration the needs, vulnerability and safety of the inmate as well as the safety of the current population at the receiving facility.
2. 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 Transgender Advisory Group 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. . [**§115.42c**]
3. 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.[**115.42g**]
4. The Transgender Advisory Group will review the intake and classification documentation and make a determination as to the placement of the individual in an expeditious manner. The team will also take into account the inmate's
 - a. Severity of Current Conviction
 - b. Escape History
 - c. Prior Felony Convictions
 - d. Gang/Membership/Activities in past 10 years
 - e. Alcohol/Drug Abuse
5. A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration. [**115.42e**]
6. If needed, the Transgender Advisory Group may consult with an identified member of the Transgender Resource Center of New Mexico who is knowledgeable with the issues surrounding transgender and gender nonconforming people to advise on appropriate housing to the classification officer and/or the programs and services needed by the individual.
7. The Transgender Advisory Group can make recommendations concerning the inmates clothing and hygiene accommodations.
8. The Transgender Advisory Group will make decisions based on majority within fourteen (14) days of the inmate's intake date. The decisions made are for advisory only and can be overridden, changed, or enhanced by the The Cabinet Secretary or Director of Adult Prisons at any time during the process.

C. Search

1. Searches shall be conducted of facilities and inmates to control contraband and provide for its disposition. This policy shall be made available to staff and inmates. [5-ACI-3A-19]
2. During the admission of new inmates to the system all inmates and possessions shall be thoroughly searched and unauthorized personal property disposed of. [5-ACI-5A-01]
3. Pat searches should be conducted by an officer of the same sex as identified by the inmates preference indicated on the "Statement of Preference Form.." Inmate preference will be honored except in an emergency situation or if there is no one of the preferred gender available. This above statement is also applicable for urine specimen collection.
4. 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.[115.15a]
5. 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.[115.15c]
6. Derogatory remarks of any kind, relating to the searches of inmates, will not tolerated by the Department. Disciplinary action may be taken when it is established that derogatory remarks have been made.
7. Manual or instrument inspection of body cavities is conducted only when there is reason to do so and when authorized by the warden/ superintendent or designee. The inspection is conducted in private by health care personnel. [5-ACI-3A-20]
8. Except in emergency situations, visual inspections of inmate body cavities are conducted by officers of the same sex, in private, and based on reasonable belief that the inmate is carrying contraband or other prohibited material. Reasonable belief is not required when inmates return from contact with the general public or from outside the institution. In all cases, this inspection is conducted by trained personnel. [5-ACI-3A-21]

D. Property

1. Transgender female inmates, who are determined to be housed in male facility, shall be issued a bra if they desire. The issued bra will be issued in accordance with the Property Policy and will be the same bra that is issued at the female facilities. Any other request for personal items, as determined by the committee, Behavioral Health Staff, Medical Staff, or for any other reason, will be reviewed for consideration by the Committee.
2. Inmates in possession of property of a medical nature, which was previously approved, shall be allowed to retain such property. However, these items shall not be replaced without subsequent medical documentation.
3. In as much as female inmates are all housed in the same multi-custody level facility, female inmates who are classified under the various custody levels shall be provided with a list of

permissible personal property by their institution. The list shall be comparable to the list for male inmates, in addition to the following allowable personal property:

- i. Two (2) pair of earrings (no stones) not to exceed fifty dollars (\$50.00), per pair.
 - ii. Make-up not to exceed sixty dollars (\$60.00) and purchased through canteen.
4. In extraordinary circumstances, the Warden may authorize reasonable deviations from this policy. Any such deviations must be expressly stated in writing by the Warden

E. Training

1. 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. [**§115.15f**]
2. Transgender and Intersex inmates shall be screened every six months using the SRNS Screening tool. In the event of an incident, both the inmate perpetrator and/or inmate victim will be re-screened.[**5-ACI-3D-10**] [**5-ACI-3D-12**][**§115.41**]
4. Written policy, procedure, and practice provide that all correctional officers receive at least 40 hours of annual training. This training shall include at a minimum the following areas:
 - standards of conduct/ethics
 - security/safety/fire/medical/emergency procedures
 - supervision of offenders including training on sexual abuse and assault
 - use of force
5. Additional topics shall be included based upon a needs assessment of both staff and institution requirements. **5-ACI-1D-13**
6. The agency shall train all employees who may have contact with inmates on[**§115.31**]:
 - a. Its zero-tolerance policy for sexual abuse and sexual harassment;
 - b. How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures
 - c. Inmates' right to be free from sexual abuse and sexual harassment;
 - d. The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
 - e. The dynamics of sexual abuse and sexual harassment in confinement;
 - f. The common reactions of sexual abuse and sexual harassment victims;
 - g. How to detect and respond to signs of threatened and actual sexual abuse;
 - h. How to avoid inappropriate relationships with inmates;
 - i. How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and

- j. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
 - k. Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.
 - l. All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.
7. The agency shall document, through employee signature or electronic verification, that employees understand the training they have received. [**§115.31**]
 8. In addition to the general training provided to all employees, the agency shall ensure that to the extent the agency itself conducts sexual abuse investigations, that its investigators have received training in conducting such investigations in confinement settings. [**§115.34**]

TRANSGENDER Statement of PREFERENCE FORM
To be filled out either by a staff member with input from the offender

Name _____ DOB: _____

NMDC Number # _____

Birth Sex _____

Gender Identification: Male _____ Female: _____

Transgender: MTF _____ FTM _____

Name Preference: _____

Pronoun Preference (He/She): _____

Housing Preference Male Unit _____ Female Unit : _____ no preference _____

Search Preference:

Transgender may request that a male or female staff member conduct (pat and strip) searches as necessary.

I prefer to be searched by a staff member that is : Male _____ Female _____

Urine Testing:

Inmate will be tested by same sex as selected for searches.

Form will be kept in the inmates file under the Classification Section

**NEW MEXICO CORRECTIONS DEPARTMENT
STATE-ISSUED PROPERTY MATRIX**

	State Issued Property	<i>Amount Issued</i>
State Issued Clothing	Seasonal Headwear (Beanie or Cap)	1
	Boxer Shorts	3
	Jacket (issued seasonally)	1
	Uniform Pants	3
	Uniform Shirts	3
	Shoes or Boots (pairs)	1
	Shower Shoes (pairs)	1
	Socks (pairs)	3
	T-Shirts (outside detail only)	2
	Undergarments (Panties and Bras, female inmates)	3
	Sleep Wear (nightgowns, female inmates)	2
State Issued Bedding & Linens	Blankets	2
	Laundry Bag	1
	Mattress	1
	Pillow	1
	Pillow Case	1
	Sheets	2
	Towels	2
State Issued Hygiene	Toothpaste ⁽¹⁾	1
	Toothbrush ⁽¹⁾	1
	Soap ⁽²⁾	1
	Toilet Paper ⁽²⁾	1
	Shampoo ⁽¹⁾	1
	Deodorant ⁽¹⁾	1
	Sanitary Napkins, female inmates	⁽³⁾

(1)inmate must prove indigence for these state issued items, on an as needed basis

(2)the issuance of these state issue property items will be done on a weekly basis

(3)as needed