

<p align="center">POLICY OF STATE OF DELAWARE DEPARTMENT OF CORRECTION</p>	<p align="center">POLICY NUMBER 8.60A</p>	<p align="center">TOTAL PAGES 5 (Two Attachments)</p>
	<p>RELATED ACA STANDARDS: ACA: 4-4406, 4-4371, 4-4133, 4ALDF 6A-07; 6B 02; 4D 13-15, 4D 19 NCCHC: P-B-04, P-B-05</p>	
<p>CHAPTER: 8 Administration</p>	<p>SUBJECT: TRANSGENDER OFFENDERS</p>	
<p>APPROVED BY THE COMMISSIONER AND EFFECTIVE THIS DATE:</p>		
<p align="right"> 10/19/2016</p>		
<p>APPROVED FOR PUBLIC RELEASE</p>		

- I. **AUTHORITY:** 11 *Del. C.* §1258, §6517, §6504, 29 *Del. C.* § 8903
- II. **PURPOSE:** To provide guidelines for the Department of Correction (DOC) to follow in order to meet the federal Prison Rape Elimination Act (PREA) standards, and to address the appropriate treatment, safety, security and medical needs of transgender offenders.
- III. **APPLICABILITY:** All Department employees, volunteers, visitors, persons or organizations conducting business with the Department; all offenders under the supervision of the Department.
- IV. **DEFINITIONS:**
 - A. **Delaware Automated Correctional System (DACs):** The DOC’s correctional offender management software system.
 - B. **Gender:** The behavioral, cultural, or psychological traits typically associated with one sex.
 - C. **Gender identity:** A person's internal sense of being male, female, some combination of male and female, or neither male or female.
 - D. **Intersex:** A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.
 - E. **Pat search (Frisk search):** Pat-down search means a running of the hands over the clothed body of an offender, detainee, or resident by an employee to determine whether the individual possesses contraband.
 - F. **Prison Rape Elimination Act (PREA):** Federal law to address sexual violence in prisons, jails, and other correctional facilities. Under PREA, the National Prison Rape Elimination Commission was created with the responsibility for establishing standards for the prevention, detection, response, and monitoring of sexual abuse and violence within correctional systems.
 - G. **PREA coordinator:** DOC employee responsible for the state-wide oversight of PREA standards, compliance with standards, training, data collection and inspection.

- H. **PREA compliance manager:** DOC employee designated at each DOC facility who is responsible to coordinate the facility's efforts to comply with DOC PREA policy and the federal PREA standards.
 - I. **PREA Standards:** Written rules that require all correctional facilities to comply with minimum acceptable benchmarks in order to reduce and eliminate the incidence of prison rape. These standards are directed toward the states by the federal government, as published in 28 CFR Part 115.
 - J. **Sex:** Either of the two major forms of individuals that occur in many species and that are distinguished respectively as female or male especially on the basis of their reproductive organs and structures.
 - K. **Strip Search:** A search during which an individual is required to remove his or her clothing. All clothing is searched and then a visual inspection of his/her body cavity is performed to include anus, vagina, mouth, ears, nose, etc.
 - L. **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.
 - M. **Transgender review:** The process by which a transgender offender's housing placement and programming assignments are reassessed at least twice each year to review and document any threats to safety experienced by the offender. For both sentenced and unsentenced offenders this, will be completed using the classification module and the transgender review form.
 - N. **Transgender medical evaluation:** A medical/behavioral health evaluation as described in DOC policy 11-E-14.
 - O. **Transgender List:** A list maintained by the PREA compliance manager with all self-identified transgender offenders who have been evaluated by a medical transgender review.
- V. **POLICY:** It is the policy of the DOC to receive, evaluate, house and provide secure and humane custody of all persons who are lawfully committed or held for confinement by the Department. An offender's biological sex, and gender identity are recognized as factors in determining whether the inmate is likely to become a victim of abuse in the facility and shall be considered in applicable decision processes related to the offender. The DOC will screen offenders to help identify potential aggressors and victims.
- A. **Intake screening**
 1. A person's biological sex and their gender identity are two factors among many in determining the appropriate placement for every offender.
 2. All offenders will be asked by DOC staff if they identify as transgender, using the PREA victimization/aggression screen. Medical will also ask this question during the medical intake questionnaire.
 3. Prior to accepting an offender for the purpose of commitment from an external agency, the accepting receiving room staff shall review the following questions with the committing agency and offender:
 - a. Is the offender biologically male, female, or intersex?
 - b. Does the offender self-report as transgender?
 4. Security staff will not search/strip search a transgender offender for the sole purpose of determining biological sex or gender.
 5. When an offender self-identifies as transgender, the offender will be referred to medical for further evaluation prior to housing placement.

6. When an offender self-identifies a gender other than one that was assigned at birth and the offender's genital status is unknown, the status shall be determined during the medical intake screening process, by reviewing available medical records or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner during the initial medical examination or sick call appointment.
7. An offender who self identifies as transgender will be evaluated using DOC policy 11-E-14, Treatment of Transgender Persons, and its associated evaluation document.
8. Any offender who self-reports they are transgender, at any time after the intake process, will be evaluated by medical/behavioral health using DOC policy 11-E-14, Treatment of Transgender Persons, and the associated transgender evaluation recommendation document.
9. If the evaluation in 11-E-14, determines an offender to be transgender, the behavioral health director of the facility will notify the PREA compliance manager of the facility immediately for inclusion on the facility transgender list.
10. Once placed on the facility transgender list, no offender may be removed without approval by the Bureau Chief of Correctional Healthcare Services (or their designee), with copy to the PREA manager and PREA coordinator.
11. The PREA compliance manager, medical, and behavioral health will maintain one inclusive list for purposes of transgender reviews and other associated PREA standard requirements.

B. PREA compliance manager

1. The PREA compliance manager will place an identified transgender offender on the facility transgender list.
2. From this transgender list, the PREA manager will ensure the offender is offered the opportunity to shower separately from other offenders. The PREA manager will explain to the offender how this separate shower will be accomplished based upon facility procedures.
3. This separate shower shall also serve as the opportunity to disrobe and dress apart from other offenders.
4. The PREA compliance manager will initiate a transgender review form (ATTACHMENT A) every six months. As part of the review, the offender will have their PREA 21 day victimization/aggression screens (screens are available in DACS and explained in more detail in policy 8.60) updated. The offenders concern for their safety should be identified during the screening process.
5. Designated facility administrative staff, in conjunction with the PREA compliance manager, and relevant classification boards, will ensure the transgender review process is completed and documents uploaded in DACS.
6. The PREA manager will ensure a new PREA 21 day victimization/aggression screen is done upon any new placement on the transgender list.

C. Housing and programs

1. Transgender offenders may not be assigned to gender-specific facilities based solely on their external genital anatomy.

2. In determining housing placement, the reviewing authority will consider physical layout and offender privacy issues when determining the location for a transgender offender.
3. In making housing and programming assignments, the reviewing authority shall consider, on a case-by-case basis, the least restrictive levels of security and custody needed to promote the health and safety of the offender, and whether such placement would present management or security concerns.
4. A transgender offender's own views with respect to their safety shall be given serious consideration, including whether they believe they would be more safely housed in a male or female facility.
5. Housing considerations will include all available housing options throughout the DOC.
6. Each facility will develop procedures to promote the safety and privacy of transgender offenders from other offenders in regard to showering and disrobing.
7. Facilities will not place transgender offenders in dedicated buildings, units, or tiers solely on the basis of such identified status.
8. The Bureaus of Prisons and Community Corrections will ensure transgender offenders are housed consistent with their sentence level (Level V or Level IV) absent exigent circumstances.

D. Staff interactions with transgender offenders

1. Guidance on addressing all offenders can be found in the DOC Code of Conduct
2. All DOC staff will refer to an offender by their current, legal name.
3. DOC encourages staff to use the offender's preferred pronoun if requested by the offender.
4. When directly addressing a transgender offender, staff will not purposely use pronouns inconsistent with the offenders identified gender.
5. No DOC staff member will ridicule any offender, and will not attempt to change any offender's understanding of their gender identity or sexual orientation.

E. Searches

1. When staff are aware of a transgender offender in their housing or work area, and when a pat search is required, all staff will conduct pat searches of those offenders consistent with their training on cross-gender pat searches.
2. Each facility will develop procedures to ensure that transgender offenders are given the opportunity to be strip-searched out of the view of other offenders, except under exigent circumstances.
3. Strip searches shall not be performed as a punitive measure for any offender.
4. Strip searches will be done by a staff member of the same biological sex as the offender, except under exigent circumstances. If exigent circumstances exist, the staff member conducting the strip search will complete an Incident Report documenting the reason for the search.
5. All searches will be done in a professional and respectful manner and in accordance with other established policy and procedure.

F. Information provided to offenders

1. All newly identified transgender offenders will be provided a copy of the DOC transgender brochure by the PREA compliance manager within 72

hours of notification by medical or behavioral health that the offender is present at the facility. (ATTACHMENT B).

(Attachment A)

Transgender Safety Review

DATE: _____

Re: OFFENDER _____

Classification Committee: _____

(To be completed by first committee in review process)

This review is done as the six month transgender review as required by the PREA standards.

Transgender definition from PREA Standards:

- 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.

Facts discussed:

- Is the OFFENDER on the facility transgender list? YES _____ NO _____
- Are the OFFENDER's current housing, treatment, work, and educational placements considered appropriate? YES _____ NO _____
 - If no, identify reasons _____

- Has the OFFENDER had a medical/mental health transgender evaluation completed, as identified in DOC policy 11-E-14? YES _____ NO _____
 - What diagnosis was given _____ (if none, state "none").
 - Was hormone treatment recommended, planned or continued? _____
 - Has surgery been completed, planned or ruled out at this time? _____

Current Security/Custody Level per DACS:

- _____

Current classification per DACS:

- _____

Current housing per DACS:

- _____

Number of PREA investigations per as DACS investigations module:

Incident #	Investigation #	Incident Date	Status (Sub/Unsub)
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

Other factors to be considered by the committee:

- Cell/dorm capacity
- Area usage (specialized unit or program, such as Key or Green Tree)
- Staffing in housing area
- Classification of other inmates in housing area
- Physical structure/blind spots
- OFFENDER movement/door control
- Camera placement

Summation: *OFFENDER* _____ *APPEARS TO BE/DOES NOT APPEAR TO BE (circle appropriate response) appropriately placed at this time, considering all the PREA Standards applicable to his case.*

Classification Officer

Date

PREA Manager

Date

Remain safe

While you are incarcerated, no one has the right to pressure you to engage in sexual acts. Rape and sexual assault are violent acts. Regardless of your age, race, size, ethnicity, or sexual orientation, offenders should have the opportunity to serve their sentences with dignity. You do not have to tolerate sexual pressure, harassment, manipulation, or assault.

Safety

“The Bureau of Justice Statistics (BJS) reports that the LGBTI population is at a higher risk for sexual abuse.... This is true for all jurisdictions including adults and juveniles in jails, prisons, and community corrections.”

Source: King, Erica and Maureen Baker, Respectful Classification Practices with LGBTI Inmates [Lessons Plans]. New York State Department of Corrections and Community Supervision, 2014. <http://nctc.gov/library/029681>

Tips

- Be aware of your surroundings at all times.
- Never put your safety in the hands of another offender. If you believe you are in danger, contact security staff and/or the facility PREA manager immediately.
- Do not accept gifts from others. Gifts and favors usually have strings attached.
- All DOC staff are mandatory reporters for sexual abuse as well as for the imminent danger (immediate possibility) of abuse.
- Be selective in your choice of friends or associates.
- Do not gamble, seek or use contraband items, or engage in any prohibited activities.
- Communicate respectfully with both staff and inmates.



You may write the state-wide PREA coordinator at:

State-Wide PREA Coordinator
245 McKee Rd.
Dover, DE 19904

NATIONWIDE ADVOCACY AGENCIES:

JUST DETENTION INTERNATIONAL HEADQUARTERS
3325 Wilshire Blvd,
Suite 340
Los Angeles, CA 90010

NATIONAL CENTER FOR TRANSGENDER EQUALITY
1400 16th St. NW
Suite 510
Washington, D.C. 20036



PREA STANDARDS & INFORMATION RELATED TO TRANSGENDERED/ INTERSEX INMATES

The Prison Rape Elimination Act of 2003 was enacted by Congress to address the problem of sexual assaults within all U.S. penal facilities.



It is the policy of the DOC to receive, evaluate, house and provide custody of all safe and humane custody of all persons, including LGBTI offenders, who are lawfully committed or held for confinement by the Department. An offender's sexual identity or preference is important to DOC as it helps to determine whether the inmate is likely to become a victim of abuse in the facility.

PREA STANDARDS & INFORMATION RELATED TO TRANSGENDERED & INTERSEX INMATES

Information for Transgendered/Intersex Inmates

- During the intake process, you were asked questions concerning your sexual preference and gender status. The reason for the questions is to assist the Department in determining your risk of becoming a victim in a prison/jail/or community confinement setting.
- The Prison Rape Elimination Act of 2003 led to a Commission being formed to study ways to prevent sexual assault and abuse in incarcerated settings.
- The Commission identified various criteria which would make offenders more susceptible to becoming a victim. Identifying as transgender is one of those criteria which may make an individual more likely to suffer abuse.
- The PREA Commission published Standards to guide Departments of Correction the best ways to protect offenders from abuse
- The information which immediately follows comes from the Prison Rape Elimination Act Standards, Prisons and Jails, 28 C.F.R. Part 115.
- The agency trains staff in how to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex (LGBTI), or gender nonconforming inmates. Any concerns may be addressed to the PREA manager.

- 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.
- A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.
- Every six months, someone from the facility will meet with you to discuss any safety concerns, prior to the facility completing a transgender review of your case.
- Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates. An offender who identifies as transgender, and has received a transgender evaluation by medical/mental health, may request the ability to shower separately.
- The PREA manager at your facility will inform you on how this process will work for you.
- You may report sexual abuse or sexual harassment to any staff member you feel comfortable talking to. You may report verbally or in writing to any person working in the Department of Correction or anyone outside the facility you want to report for you.

female) is different from the person's assigned sex at birth.

Intersex—means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

- The agency trains 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. If you have concerns about pat searches, contact the PREA manager at your facility.

PREA coordinator: DOC employee responsible for the state-wide oversight of PREA standards, compliance with standards, training, data collection and inspection.

PREA manager: DOC employee designated at each DOC facility who is responsible to coordinate the facility's efforts to comply with DOC PREA policy and the federal PREA standards.

Address concerns to the facility PREA manager at your facility.

THE PREA MANAGER AT YOUR FACILITY IS:

Definitions:

Transgender - means a person whose gender identity (i.e., internal sense of feeling male or