

POLICY 8.60A-TREATMENT OF TRANSGENDER AND INTERSEX PERSONS

<p style="text-align: center;">POLICY OF STATE OF DELAWARE DEPARTMENT OF CORRECTION</p>	<p style="text-align: center;">POLICY NUMBER 8.60A</p>	<p style="text-align: center;">TOTAL PAGES 7 (3 Attachments)</p>
<p>CHAPTER: 8 ADMINISTRATION</p>	<p>RELATED STANDARDS: ACA: 2-CO-3C-01; 5-ACI-3D-04, 5B-11, 5E-02, 6A-32; 4-ALDF-6B-02, 4C-40 NCCHC: P-E-02 (essential), J-E-02 (essential) PREA: 115.15, 115.41, 115.42, 115.86</p> <p>SUBJECT: TREATMENT OF TRANSGENDER AND INTERSEX PERSONS</p>	
<p>APPROVED BY THE COMMISSIONER AND EFFECTIVE THIS DATE: March 31, 2024 /s/ Terra Taylor</p>		
<p>APPROVED FOR PUBLIC RELEASE</p>		

I. AUTHORITY: 11 *Del. C.* §§ 6504, 6517; 29 *Del. C.* § 8903; 6 *Del. C.* § 4501

II. PURPOSE: To establish procedures for the treatment of transgender and intersex individuals in the custody of or under the supervision of the Department.

III. APPLICABILITY: All Department employees, volunteers, visitors, persons, or organizations conducting business with the Department and all individuals in the custody of or under the supervision of the Department.

IV. DEFINITIONS:

Cisgender: A person whose gender identity (i.e., internal sense of feeling male or female) is the same as the person’s assigned sex at birth.

Delaware Automated Correctional System (DACs): The Department’s offender management system.

Department of Correction Offender Identification Card: Identification card issued to all individuals committed to the Department’s custody containing the following information: Offender’s full legal name, State Bureau of Identification number, date of birth, race, hair color, height, weight, date of issue, gender, preferred pronouns, urine screen/strip search preference, and frisk search preference. Gender, preferred pronouns, urine screen/strip search preference, and frisk search preference will default to match natal sex unless otherwise approved in pursuant to this policy.

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Gender Identity: A gender-related identity, appearance, expression, or behavior of a person, regardless of the person's assigned sex at birth. Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity; provided, however, that gender identity and expression shall only be asserted for proper purposes.

Intersex: Term that refers to people born with sex or reproductive characteristics that do not fit binary definitions of female or male.

Exigent Circumstances: An unexpected or urgent event which does not allow an opportunity for prior planning, and which requires immediate action to achieve a successful resolution.

Frisk Search: A search where an Officer runs their hands over the clothed body of an offender to determine whether the individual possesses contraband.

Natal Sex: Term that refers to a person's status as male, female, or intersex based on physical characteristics. Natal sex is usually assigned at birth based on the appearance of external genitalia.

Officer: Sworn staff member in the Correctional Officer or Probation Officer series responsible for the custody, safety, security, and supervision of offenders in a DOC facility.

Prison Rape Elimination Act (PREA): Federal law designed to provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape. As a result of the legislation, the National Standards to Prevent, Detect, and Respond to Prison Rape (the PREA Standards) were adopted by the United States Department of Justice.

PREA Coordinator: An upper-level DOC staff member responsible for development, implementation, and oversight of the Department's efforts to comply with the PREA Standards.

PREA Compliance Manager: A facility-level employee who is responsible for coordinating the facility's efforts to comply with DOC Policy 8.60 and the federal PREA Standards.

PREA Standards: Written rules that require that 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.

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Strip Search: A search during which an individual is required to remove their clothing. All clothing is searched and then a visual inspection of the individual's body is performed to include anus, vagina, mouth, ears, nose, etc.

Transgender: A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

V. POLICY: It is the policy of the Department of Correction to oversee and direct treatment of all transgender and intersex individuals in the Department's custody or under the Department's supervision. The Department prohibits discrimination towards any individual based on the individual's gender, gender identity, or sexual orientation.

VI. PROCEDURE:

A. Facility Intake

1. A transgender or intersex offender will not be searched or physically examined for the sole purpose of determining the offender's natal sex. If the offender's natal sex is unknown, it may be determined during conversations with the offender, 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.
2. Upon intake into a facility, all offenders will be asked if they are intersex or identify as transgender as part of the PREA Quick Assessment. If an offender indicates that they are intersex or identify as transgender, receiving room staff will notify medical intake staff.
3. An offender who is intersex or identifies as transgender shall receive a referral for an Urgent Behavioral Health Evaluation and an Urgent Medical Evaluation. These evaluations will occur within 24-hours of the Intake screening.
4. An offender who is intersex or identifies as transgender will be evaluated by medical and behavioral health in accordance with DOC policy 11-E-14, *Treatment of Transgender Persons*. The Transgender Evaluation Recommendation Form will be used to document the individualized assessments by the medical and behavioral health providers.
5. During the Urgent Behavioral Health Evaluation, the behavioral health provider will review and complete Parts 1-5 of Attachment B: *Preference Form* with the transgender or intersex offender and complete Part 6 of the form. The behavioral health provider will provide the form to the facility PREA Compliance Manager.

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6. The behavioral health provider may modify the approvals in Part 6 of Attachment B at any time if there is reason to believe the approvals are no longer clinically appropriate. The behavioral health provider will provide the updated form to the facility PREA Compliance Manager.

B. New Identifications During Incarceration

1. If an offender identifies as transgender at any point after the facility intake process, the offender shall receive a referral for an Urgent Behavioral Health Evaluation and an Urgent Medical Evaluation.
2. Offenders who newly identify as transgender will be evaluated by medical and behavioral health in accordance with DOC Policy 11-E-14, *Treatment of Transgender Persons*. The Transgender Evaluation Recommendation Form will be used to document the individualized assessments by the medical and behavioral health providers.
3. During the Urgent Behavioral Health Evaluation, the behavioral health provider will review and complete Parts 1-5 of Attachment B: *Preference Form* with the transgender or intersex offender and complete Part 6 of the form. The behavioral health provider will provide the form to the facility PREA Compliance Manager.
4. The behavioral health provider may modify the approvals in Part 6 of Attachment B at any time if there is reason to believe the approvals are no longer clinically appropriate. The behavioral health provider will provide the updated form to the facility PREA Compliance Manager.

C. PREA Compliance Manager Responsibilities

1. The PREA Compliance Manager is responsible for maintaining a list of all transgender and intersex offenders in the facility. All approved accommodations as indicated on Attachment B: *Preference Form* will be documented and maintained on this list.
2. Upon receipt of the Attachment B: *Preference Form* from the behavioral health provider, the PREA Compliance Manager will, as soon as possible but within 72-hours of receipt, meet with the offender to review the form and collect the offender's signature. During this meeting, the PREA Compliance Manager will ensure the offender is aware of how all procedures relating to the offender's preferences will be accomplished, and how to report issues with the process.
3. The PREA Compliance Manager will ensure that each transgender or intersex offender is issued an updated Department of Correction offender identification

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card that reflects the appropriate gender, preferred pronouns, and search preferences as soon as possible, but within 72 hours of receiving the offender's Attachment B: *Preference Form* from the behavioral health provider.

4. The PREA Compliance Manager will ensure each offender who is intersex or identifies as transgender is issued a copy of Attachment C: *Safety Information for Transgender and Intersex Individuals* as soon as possible, but within 72 hours of receiving the completed Attachment B: *Preference Form* from the behavioral health provider.
5. The PREA Compliance Manager will ensure that any offender who newly identifies as transgender receives an updated PREA 21-day Assessment as soon as possible, but within 72 hours of receiving the completed Attachment B: *Preference Form* from the behavioral health provider.
6. The PREA Compliance Manager will conduct a safety review for each transgender or intersex offender using Attachment A: *Safety Review for Transgender and Intersex Persons* every six months. As part of this review, the PREA Compliance Manager will consult with representatives from classification, security, medical, and behavioral health. The purpose of this review is to review any perceived or realized threats to safety experienced by the offender and to determine if housing, treatment, work, and education placements remain appropriate.
7. As part of the review, the PREA Compliance Manager will ensure that the offender's 21-day PREA Assessment is updated.
8. Offender requested changes to the Attachment B: *Preference Form*, will be permitted at the time of the safety review. If changes are requested, the behavioral health provider will review and complete Part 6 of the form.

D. Housing and Program Assignments

1. In deciding whether to assign a transgender or intersex offender to a male facility or female facility, and in making other housing and programming assignments, the reviewing authority will consider on a case-by-case basis whether the placement would ensure the offender's health and safety, and whether the placement would present management or security problems.
2. Transgender and intersex offenders will be housed consistent with their security and custody levels absent exigent circumstances.
3. A transgender or intersex offender's own view with respect to their own safety will be given serious consideration.
4. An offender who is intersex or identifies as transgender at facility intake will be temporarily housed in a single cell whenever possible or with an offender

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who has not scored as a potential or confirmed sexual aggressor on the 21-day PREA Assessment pending completion of the Urgent Medical and Behavioral Health Evaluations.

5. A multi-disciplinary team to include security and behavioral health will convene to determine housing placement for an offender who is intersex or has identified as transgender (at facility intake or during incarceration) after the completion of medical and behavioral health evaluations and the Transgender Evaluation Recommendation form. Consideration should be given to the clinical recommendations when making housing decisions, however final determination is the responsibility of the Department.
6. Each facility will develop procedures to allow transgender and intersex offenders to shower and disrobe privately.
7. Lesbian, gay, bisexual, transgender, or intersex offenders will not be placed in dedicated facilities, units, or wings solely based on such identification or status.

E. Staff Interactions with Transgender and Intersex Offenders

1. Staff shall perform job duties in a professional manner in accordance with Department Policy and Procedure and the DOC Code of Conduct. Staff shall not use slang, make obscene, indecent gestures or remarks, or make derogatory references to staff, members of the public, or offenders in relation to an individual's gender, gender identity, or sexual orientation.
2. Staff shall refer to offenders by their legal name.
3. If staff choose to use pronouns to refer to a transgender or intersex offender, they will use the offender's preferred pronoun. The repeated, intentional use of a non-preferred pronoun may constitute sexual harassment.
4. Staff are prohibited from attempting to change an offender's understanding of the offender's gender identity or sexual orientation.

F. Searches and Urine Screenings

1. All searches will be conducted in accordance with DOC Policy 8.32 – Contraband, Search, Seizure, and Disposition.
2. Strip searches of transgender or intersex offenders will be conducted by an Officer of the same gender indicated on the offender's DOC identification card, except when 1) exigent circumstances exist, 2) there is no Officer of the preferred gender available to conduct the search and delay would compromise institutional safety and security, or 3) failure to conduct an immediate search would jeopardize the safety of staff or offenders.

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- a. When a strip search is not conducted in accordance with the offender's preferences as indicated on the offender's DOC identification card, the Shift Commander will be notified and the Officer performing the search shall complete an incident report documenting the reason for the search and why the preference was not honored.
3. Frisk searches of transgender or intersex offenders will be conducted by an Officer of the same gender indicated on the offender's DOC identification card, or by a female Officer, except when 1) exigent circumstances exist, 2) there is no female Officer or Officer of the preferred gender readily available to conduct the search and delay would compromise institutional safety and security or interfere with the flow of facility operations, or 3) failure to conduct an immediate search would jeopardize the safety of staff or offenders.
 - a. When a frisk search is not conducted in accordance with the offender's preferences as indicated on the offender's DOC identification card or by a female Officer, the Shift Commander will be notified and the Officer performing the search shall complete an incident report documenting the reason for the search and why the search was not completed according to the preference or by a female Officer.
4. Regardless of the type of search, Officers should communicate respectfully, remain professional, maintain consistency in technique, and have awareness of safety and security while conducting searches.
5. Urine screenings of transgender or intersex offenders will be conducted by an Officer of the same gender indicated on the offender's DOC identification card, except when 1) exigent circumstances exist, 2) there is no Officer of the preferred gender available to conduct the screening and delay would compromise institutional safety and security, or 3) failure to conduct an immediate screening would jeopardize the safety of staff or offenders.
 - a. When a urine screening is not conducted in accordance with the offender's preferences as indicated on the offender's DOC identification card, the Shift Commander will be notified and the Officer conducting the urine screening shall complete an incident report documenting the reason for the urine screening and why the preference was not honored.
6. The Shift Commander will notify the PREA Compliance Manager when strip searches, frisk searches, and urine screenings are not conducted in accordance with the offender's preference as indicated on the offender's DOC identification card.
7. The PREA Compliance Manager will review these incidents in consultation with the PREA Coordinator and facility administration to determine whether changes to the facility PREA Staffing Plan are necessary to facilitate compliance with the section.

Attachment A: Safety Review for Transgender and Intersex Persons

Offender's Legal Name: _____ **SBI Number:** _____

Review Participants: _____

Date: _____

Overview: The PREA Compliance Manager will initiate a safety review for each transgender and intersex offender using this form every six months. In addition to the criteria below, the committee shall consider cell/dorm capacity, area usage (specialized unit or program, such as Substance Use Disorder Treatment), staffing in the housing area, classification of other offenders in housing area, physical structure/blind spots, and offender movement/door control.

1. Is the offender on the facility list of transgender and intersex offenders? _____ **YES** _____ **NO**
2. Does the offender have any safety concerns? _____ **YES** _____ **NO**

If yes, explain below:

3. Was the offender evaluated by medical and behavioral health using DOC policy 11-E-14, Treatment of Transgender Persons, and the associated Transgender Evaluation Recommendation Form?
_____ **YES** _____ **NO**

a. What diagnosis was given, if any? _____

b. Is hormone replacement therapy taking place, recommended, or discontinued?

c. Has gender affirmation surgery been completed, planned, or ruled out at this time?

4. Current security/custody level: _____

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5. Current classification: _____

6. Current housing: _____

7. PREA investigations since last safety review:

Incident Number	Investigation Number	Incident Date	Finding

8. Grievances since last safety review:

Grievance Number	Short Description	Status

9. Disciplinary actions since last safety review:

Disciplinary Number	Short Description	Status

10. Was an updated 21-day PREA assessment completed for this offender? ____ **YES** ____ **NO**

a. Sexual victimization category (PSV, CPV, NS): _____

b. Sexual aggressor category (PSA, CSA, NS): _____

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11. Summary:

Based on the safety review, this committee believes that this offender _____ appears to be or _____ does not appear to be assigned to appropriate housing, treatment, work, and education placements at this time.

If the committee believes the offender's placements are not appropriate, explain below:

12. Signatures:

_____ PREA MANAGER SIGNATURE	_____ DATE	_____ PRINTED NAME
_____ CLASSIFICATION OFFICER SIGNATURE	_____ DATE	_____ PRINTED NAME

Attachment B: Preference Form

Legal Name: _____

Click or tap here to enter text.

SBI Number: _____

Click or tap here to enter text.

Part 1: Accommodations Request

- I am transgender or intersex and I am NOT requesting any accommodations (skip to Part 7).
- I am transgender or intersex and I am requesting accommodations that align with my gender identity.

Part 2: Preferred Pronouns

Please indicate the pronouns you would prefer staff to use when referring to you.

- She/Her
- He/Him
- They/Them

Part 3: Shower Preference

Would you like the opportunity to shower separately from other offenders?

- Yes
- No

Part 4: Clothing and Commissary Requests

Please indicate any clothing or commissary you are requesting to align with your gender identity (i.e., bra, boxer shorts, hygiene items, etc.):

Click or tap here to enter text.

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Part 5: Search Preference

What gender staff would you prefer to conduct urine screenings and strip searches?

Female Male No preference

What gender staff would you prefer to conduct frisk searches?

Female Male No preference

Part 6: Behavioral Health Review

Based upon the Behavioral Health assessments conducted on _____, I recommend that the above-stated preferences be honored, not be honored, or be honored in part.

If the provider recommends that the request not be honored or honored in part, indicate why below (if the provider recommends that the request only be honored in part, ensure to indicate what preferences should be honored):

Click or tap here to enter text.

BEHAVIORAL HEALTH PROVIDER SIGNATURE

DATE

PRINTED NAME

Part 7: Offender Acknowledgements

While staff will make every effort to use your preferred pronouns, it is possible that a staff member may unintentionally refer to you by a non-preferred pronoun. Should this occur, please inform the staff member of your preferred pronouns. If you believe a staff member is repeatedly, intentionally using non-preferred pronouns to refer to you, please report this to your facility's PREA Compliance Manager.

If approved, strip searches and urine screenings will be conducted by an Officer of your preferred gender. Preferences for strip searches and urine screenings may not be honored in exigent circumstances, if there is no Officer of your preferred gender available to conduct the search and delay

Housing Information

- The DOC will give serious consideration to your own views regarding your safety. This does not mean you will decide where you are housed, but it does mean we listen to you and take your concerns seriously
- A statewide committee that includes staff from medical, mental health, and security will meet and discuss your facility placement decision.

Do I Receive Any Additional Accommodations?

As a transgender or intersex individual, you are offered the opportunity to indicate:

- Your preferred pronouns
- Whether you prefer to shower separately from other inmates
- Whether you would prefer to be searched by a male or female staff member
- Clothing and commissary requests that align with your gender identity

Safety Reviews

All transgender and intersex individuals receive a safety review every six months. The purpose of this review is to make sure that your housing, treatment, work, and educational placements are safe and appropriate.

Your facility's PREA Compliance Manager will meet with you to explain how procedures related to your preferences will be accomplished. Preferences can only be updated during your six-month safety review.

Safety Information for Transgender and Intersex Individuals

Delaware Department
of Correction



The Prison Rape Elimination Act (PREA) was enacted in 2003 to address sexual abuse in correctional facilities. was The Department of Correction (DOC) recognizes that individuals who identify as transgender or intersex are at heightened risk for sexual abuse while incarcerated. The DOC provides this pamphlet to explain protection measures, reporting mechanisms, and other information regarding your safety while housed at this facility.

How do I Report Sexual Harassment or Sexual Abuse?

- Report to any staff member
- Write the Statewide PREA Coordinator
- Call the PREA hotline (Dial *7732 on any phone in the facility)
- Ask a third-party (friend or family) to make a report for you
- Sick call
- Grievance

While you are welcome to report in whatever way you feel most comfortable, keep in mind that making a report directly to a staff member is the quickest way to get a response.

You may write the Statewide PREA Coordinator at:
Statewide PREA Coordinator
245 McKee Road
Dover, DE 19904

Additional Resources

Survivors of Abuse in Recovery (SOAR)
405 Foulk Road
Wilmington, DE 19803

Contact Lifeline (crisis support)
P.O.Box 9525
Wilmington, DE 19809

Tips to Avoid Sexual Abuse and Sexual Harassment

- Always be aware of your surroundings
- Never put your safety in the hands of another inmate. If you believe you are in danger, contact a staff member immediately
- Do not accept gifts from others. There are usually strings attached!
- Be selective in your choice of friends and associates
- Avoid prohibited activities such as gambling, contraband, and sexual activity
- Communicate respectfully

Who do I contact if I have questions about PREA?

All staff are trained on PREA, but your facility also has a designated PREA Compliance Manager who is responsible for making sure that your facility is following the PREA standards.

The PREA Compliance Manager at Your Facility is: