

## 1.4.E.13 Management of Gender Dysphoria

### I Policy Index:



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### II Policy:

It is the policy of the South Dakota Department of Corrections (DOC) to appropriately treat, manage and place inmates housed in an adult DOC facility who have a diagnosis of gender dysphoria, and to ensure the safety of all inmates, consistent with the security interests of the DOC and disciplined operation of its facilities.

### III Definitions:

#### **Consultant:**

A medical or mental health professional, qualified by virtue of their training and experience, to make non-binding recommendations regarding the diagnosis and treatment of inmates with gender dysphoria.

#### **Contraindicate:**

To make (a treatment or procedure) inadvisable.

#### **DSM-5:**

The Diagnostic and Statistics Manual of Mental Disorders Fifth Edition (DSM-5). A publication of the American Psychiatric Association which lists specific criteria that enable a clinician to establish a diagnosis of a mental disorder.

#### **Gender:**

Denotes the public (and usually legally recognized) lived role as man or women. Biological factors combined with social and psychological factors contribute to gender development.

#### **Gender Dysphoria:**

A marked incongruence between one's experienced/expressed gender and assigned gender, of at least six months duration, as manifested by two or more of the following indicators:

1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or, in young adolescents, the anticipated secondary sex characteristics).

2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or, in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

### **Gender Dysphoria Committee:**

An advisory committee composed of the following: Medical Director, Psychiatric Director, Assistant Director of Correctional Behavioral Health Services, PREA Coordinator, Director of Nursing, Correctional Health Program Administrator, Warden or Deputy Warden, Unit Manager and Behavioral Health Clinical Supervisor.

### **Gender Identity:**

The individual's internal sense of being male or female, distinct from his or her sexual orientation. The way an individual expresses his or her gender identity is frequently called "gender expression," and may or may not conform to social stereotypes associated with a particular gender, the individual's sex at birth or their physical anatomy.

### **Hormone Therapy:**

A medical intervention in which hormonal medications are prescribed by a licensed physician that masculinizes or feminizes the body. Hormones include testosterone to biologic females or estrogen to biologic males. Hormones may be prescribed with the purpose of reducing gender dysphoria and minimizing the risk for depression, anxiety or impairments in functioning.

### **Intersex:**

A person whose external genitalia, internal reproductive organs or chromosomal pattern at birth does not fit typical definitions of male or female. The person may or may not also experience gender dysphoria.

### **Sex:**

*(For this policy only)*. Assigned to persons at birth by a physician based on external genitalia, internal reproductive organs, chromosome patterns, and/or endocrine systems; or assignment of such organs and/or genitalia through Sex Reassignment Surgery, which is a surgical procedure that changes a person's sex genitalia and/or reproductive organs. Opposite sex persons do not have the same external genitalia, internal reproductive organs, chromosome patterns, or endocrine systems, i.e. male sex versus female sex. Same sex persons are those with the same external genitalia, internal reproductive organs, chromosome patterns, endocrine systems.

### **Transgender:**

Refers to the broad spectrum of individuals who identify with a gender different than their birth-assigned sex. A transgender individual may or may not have a clinical diagnosis of gender dysphoria, depending on the presence or absence of clinically significant distress or impairment caused by gender identity.

## IV Procedures:

### 1. Identification:

- A. Admissions and Orientation (A&O) staff shall conduct an intake screen on all new admissions to the facility within 72 hours of arrival to identify risks of victimization and abusiveness (PREA 115.41 (b)). As part of the screening process, each inmate will be asked if he or she chooses to identify as gay, lesbian, bisexual, transgender or intersex, and if he or she has an existing diagnosis of gender dysphoria (See DOC policy 1.4.B.16 *PREA Institutional Risk Screens*).
  1. All new admission inmates suspected or known by unit staff to have an anatomical intersex condition will be referred to Health Services, if the inmate has not already received an initial health screening/intake screening.
  2. DOC staff may not physically search an inmate to determine the inmate's genital status. Genital status may be determined by a medical professional only as part of a broader medical exam.
- B. Transgender, intersex or gender dysphoric inmates who experience distress that may be associated with their status, diagnosis or gender identity should contact Behavioral Health Services. Staff may refer inmates presenting or reporting distress to Behavioral Health Services.
  1. Inmates may self-identify as transgender at any time during incarceration.
  2. Inmates may be evaluated for gender dysphoria at any time. Such evaluation shall be initiated and managed by Behavioral Health Service staff, consistent with staff determining the inmate may meet criteria for gender dysphoria as described within the DSM-5, or most current published edition.
  3. In addition to reviewing the inmate's records, Behavioral Health staff may conduct an interview with the inmate to determine the inmate's gender identity.
  4. Inmates returning to the DOC, who have a diagnosis of gender dysphoria from the DOC consultant, are not required to have their diagnosis re-verified.
- C. Behavioral Health staff will maintain a list transgender and intersex inmates who have been approved for accommodations and all inmates currently incarcerated who have a documented diagnosis of gender dysphoria, by facility.
  1. Inmates may be assigned a clinical diagnosis of gender dysphoria by trained Behavioral Health staff or the consultant, based on DSM-5 criteria, at any time during incarceration with the DOC.
  2. Health Services and/or Behavioral Health staff will attempt to request the medical/behavioral health records of new admission inmates who have a pre-existing diagnosis of gender dysphoria from an outside clinician. The inmate must sign a release of information.
  3. Inmates identified as having a gender dysphoria diagnosis from an outside provider, may be referred to the consultant for evaluation by the Assistant Director of Correctional Behavioral Health Services. Inmates presenting with distress or who

require services from Behavioral Health, may be prioritized and placed on the list to be evaluated and assessed by the DOC consultant.

## 2. Placement and Programming:

- A. Facility housing and programming assignments for all inmates, including those that identify as transgender, intersex or who have a diagnosis of gender dysphoria, shall be made on a case-by-case basis, consistent with the inmate classification system, taking into consideration the inmate's gender identity, crimes, disciplinary history, history of violence, medical and mental health needs, risk screening, individual safety, programming needs and legitimate penological interests of the DOC. An inmate's own view regarding individual safety shall be considered when determining placement and assignments.
  - 1. Inmate housing is not based exclusively on external genital anatomy of those housed in the unit or facility.
- B. Housing placement shall be consistent with the inmate's custody level/classification, PREA score (vulnerability to sexual victimization or perpetrating abuse) and AIMS code (male facilities only).
  - 1. Requests by a transgender, intersex or gender dysphoric inmate to transfer to a facility inconsistent with the inmate's external genital anatomy (sex), may be considered. Requests will be forwarded to the Gender Dysphoria Committee for review.
  - 2. Inmate requests to move within the facility and staff initiated moves of the inmate within the facility are subject to the inmate transfer and movement process and procedures (See DOC policy 1.4.B.4 [Inmate Transfers](#)).
- C. Inmates who have underwent genital sexual reassignment surgery prior to incarceration, may be referred to the Gender Dysphoria Committee to identify appropriate housing. The Committee may provide recommendations for housing to the Director of Prison Operations. Any housing recommendation that seeks to place an inmate in a housing facility that is not consistent with the inmate's birth sex, must be reported to the Director of Prison Operations and Secretary of Corrections.
- D. Inmates who have underwent partial genital sexual reassignment surgery, i.e. some removal or augmentation of breasts and/or some removal or modification of sex organs prior to incarceration, shall be reviewed by the Gender Dysphoria Committee.
  - 1. The committee may consider housing that is not consistent with the majority results of an inmate's genital sexual reassignment surgery.
  - 2. Exigent circumstances that may negatively affect safety and security shall be considered when considering housing placement.
  - 3. Housing decisions shall be made on a case by case basis.
- E. Self-inflicted genital mutilation and genital self-harm by an inmate does not constitute genital sexual reassignment and does not solely support referral of the inmate to the Gender Dysphoria Committee for housing review.
- F. Housing assignments for transgender, intersex or gender dysphoric inmates shall be reviewed a minimum of twice a year by classification staff. Incidents or concerns that pose a threat to the inmate's safety may be reviewed by unit staff and/or forwarded to the Gender Dysphoria

Committee (See DOC policy 1.4.B.2 *Male Inmate Classification* and DOC policy 1.4.B.1 *Female Inmate Classification* and PREA 115.42).

1. Inmates may be housed at any facility owned or operated by the DOC, contract facilities and outside housing approved for placement and housing of DOC inmates.
- G. Transgender, intersex and gender dysphoric inmates shall not be placed in restricted housing solely on the basis of gender identity, intersex status or diagnosis.
  1. Transgender, intersex and gender dysphoric inmates considered for placement in protective custody for their own protection must consent to placement in protective custody unless no other housing options available and the placement is temporary.
- H. Property, showering and search accommodations granted to a transgender, intersex or gender dysphoric inmate who is approved to transfer to another DOC facility shall be included within the information provided on the inmate's transfer order. The receiving facility will continue the approved accommodation(s) without unreasonable interruption.
- I. The DOC shall not place inmates in dedicated facilities or units based solely on the basis of the inmate's gender identification or diagnosis of gender dysphoria, unless such placement is ordered through a consent decree, legal settlement or legal judgement.

### **3. Gender Dysphoria Committee:**

- A. The Gender Dysphoria Committee is a multi-disciplinary team that responds to specific requests for review of transgender, intersex or gender dysphoric inmates. The committee may consider and approve treatment for transgender, intersex or gender dysphoric inmates and respond to requests for treatment, housing or accommodation by a transgender, intersex or gender dysphoric inmate. The committee includes the following:
  1. Medical Director
  2. Psychiatric Director
  3. Assistant Director of Correctional Behavioral Health Services
  4. PREA Coordinator
  5. Director of Nursing
  6. DOH Clinical Supervisor of the facility
  7. Warden, Deputy Warden or Associate Warden at the facility where the inmate is housed
  8. Unit Manager at the facility
  9. The Behavioral Health Clinical Supervisor at the inmate's facility
- B. The committee may act on inmate requests or referrals by providing review, response, recommendation or action.
- C. The committee may consider the following:
  1. The inmate's gender identity- that is, whether the inmate self-identifies as male or female.
  2. The inmate's genital status and sex (current and at birth).
  3. Safety of the inmate and potential risks to safety, including the inmate's own view of his/her safety. Incidents of past victimization or need for protective custody shall be considered.

4. Medical and behavioral health treatment plans, treatment orders, medical/behavioral health history and records, including current diagnosis, treatment, program/group participation, recommendations from medical professionals, and direct care.
  5. Psychological and medical stability, including level of distress, as assessed by qualified individuals. Compliance with recommended programming, treatment, medical care, counseling or other behavioral health services.
  6. The amount of time an inmate has left to serve on his/her current booking and ability and resources of the inmate to continue approved and provided treatment when/if released from DOC custody, in particular, if there are risks to the inmate associated with abrupt or discontinuation of treatment outside of guidance or care by a medical professional.
  7. The inmate's custody/risk classification and criminal history, PSI, disciplinary history, etc.
- D. The committee's review, response, recommendation, findings and actions will be documented in COMS and/or the inmate's medical record.
  - E. The committee as a whole shall not make decisions regarding the medical treatment of an inmate as such decisions are ultimately made by medical staff; however, the committee may make recommendations regarding medical treatment, options, or referral to an outside medical specialist.
  - F. All inmates diagnosed with gender dysphoria by the DOC consultant shall be reviewed/staffed at least twice a year by the committee.
  - G. Any incidents of victimization or safety/risk concerns involving the housing placement of a transgender, intersex or gender dysphoric inmate may be referred to the committee for review.

#### **4. Accommodations:**

- A. Inmates may be approved by Behavioral Health staff or unit staff for specified lifestyle accommodations. Requests by an inmate for accommodations shall be considered on an individual, case by case basis, with consideration towards safety and security.
- B. Behavioral Health staff may approve an inmate with a diagnosis of gender dysphoria by the consultant to access certain personal property or commissary items (See [Attachment 1](#)). The approved accommodation will be documented in COMS and/or CorrecTek.
  1. Inmates approved for specific articles of clothing or makeup shall not wear or otherwise display these in a disruptive or provocative manner. Facility rules pertaining to inmate dress, hygiene and appearance apply.
  2. Sex Offender Management Program staff will be consulted if an gender dysphoric inmate is a sex offender or identified as having sexual issues (See DOC policy 1.4.B.9 [Sexual Behavior Issue Review](#)) and is approved for property accommodations.
- C. Transgender, intersex and gender dysphoric inmates may request separate showers and/or space to dress/undress. Separate does not imply "single" or private showers or space and may include showering and/or dressing/undressing with inmates of the same gender. All inmate requests for shower or dressing/undressing accommodation shall be forwarded to the inmate's unit manager for action.

1. Inmates with secondary sex characteristics of their desired gender, (e.g. biological males with breast development or other surgical changes) must shower separately. This is accomplished by physical separation, e.g. separate shower stalls, or by time-phasing showers so other inmates are not showering at the same time as the inmate.
  2. Approval or orders for shower or dressing space accommodation will be entered into COMS by the unit manager.
- D. Pronouns and Names:
1. The DOC shall utilize the name of an inmate as it appears on the Judgment of Conviction to positively identify the inmate and create the inmate's record in COMS. Inmates granted a name change through the court will have the name added to the alias screen in COMS.
  2. Inmates may use preferred titles of Ms., Miss., Mrs., or Mr. in correspondence, provided the inmate's name as it appears in the judgement papers and the inmate's DOC ID number is included on the correspondence.
  3. Inmates may contact unit staff to request to be addressed with gender-neutral forms of direction by staff (e.g. "Inmate Smith" or "Smith") or "he" "she" "him" "her", consistent with their identified gender. Unit staff will document the inmate's preference in COMS.
- E. Transgender, intersex and gender dysphoric inmates may contact the unit manager to request staff who are the same gender as the inmate conduct pat searches of the inmate. The inmate's preference for same-gender staff will be accommodated whenever reasonably possible. Female staff may pat search male or female gender inmates.
1. Exceptions to an inmate's preference during searches may be made in the case of an emergency where search of the inmate is time sensitive or same gender staff is not reasonably available to conduct the search. Any exception will be documented on an Informational Report.
- F. Inmates will be strip searched and body scanned by staff who are the same sex as the inmate being searched (See DOC policy 1.3.A.5 [Searches - Institutions](#)).
- G. Transgender, intersex and gender dysphoric inmates ordered to produce a urinalysis (UA) sample may be permitted to urinate into the approved cup while sitting, provided the urine stream can be visually observed by the staff member (See DOC policy 1.3.A.8 [Offender Drug Testing, Sanctions & Treatment](#)). The UA process will be observed by staff who are the same sex as the inmate, unless an exception is granted for the collection to be observed by staff who are the same gender as the inmate.
- H. Transgender, intersex inmates and gender dysphoric inmates housed in a restricted unit, i.e. restrictive housing, disciplinary housing, IP status, who do not have access to a razor in their cell, will be permitted to shave at least twice a week, unless there are compelling security concerns (See DOC policy 1.3.D.4 [Restrictive Housing](#)). In the case of safety concerns, accommodations such as supervised use of the razor or supervised access to an electric razor shall be considered.
- I. Inmates whose request for accommodation is denied or terminated may contact Behavioral Health Services or file an administrative remedy (See DOC policy 1.3.E.2 [Administrative Remedy for Inmates](#)).

## 5. Medical and Psychological Treatment for Gender Dysphoria:

- A. The DOC recognizes the World Professional Association for Transgender Health (WPATH) standards of care for transsexual, transgender and gender nonconforming individuals are intended as clinical guidelines. The DOC further recognizes these standards are intended to offer flexible directions for treatment and to offer optimal health care. The standards outline a range of treatment options for individuals. Individual professionals may modify the standards in response to a person's unique situation and serious medical needs.
- B. Health Services may utilize a transgender clinical care team, or similar group, comprised of physicians, pharmacists, psychiatrists, psychologists, consultants, specialists and clinical providers to consider and develop care and treatment for transgender, intersex and gender dysphoric inmates.
- C. Inmates diagnosed with gender dysphoria by the DOC consultant will have access to clinically appropriate treatment options that may include the following (See DOC policy 1.4.E.1 [Inmate Health Care Services](#)):
  1. Changes in gender expression and role (which may involve living part time or full time in another gender role, consistent with one's identified gender, and as permitted within a correctional environment).
  2. Psychological treatment that addresses ambivalence and/or dysphoria regarding gender and assists in adjustment to incarceration. Psychotherapy may be recommended.
  3. Appropriate psychiatric care.
  4. Hormonal treatment, in certain circumstances, as recommended by the Gender Dysphoria Committee and approved by the clinical care team or designated and authorized Health Services/medical professional(s).
  5. Other treatment or care approved by the committee, consistent with standards of care, safety and security.
- D. Established Hormone Treatment:
  1. An inmate receiving hormonal treatment at the time of admission, may be temporarily continued on the hormonal medication, provided the following are met:
    - a. The hormones represent an established treatment for an existing diagnosis of gender dysphoria by a medical professional or has otherwise been determined to be medically necessary by a qualified medical professional.
    - b. The prescription is current, lawful and ordered by a licensed physician.
    - c. The inmate must cooperate with Health Services staff in obtaining medical records documenting the treatment and verifying the diagnosis of gender dysphoria. The inmate must comply with laboratory testing or other medically necessary procedures ordered by Health Services necessary to continue hormone treatment.

- d. The clinical care team may review the inmate's current treatment plan and confirm that continuation of hormone treatment is not medically contraindicated. Co-existing medical or mental health concerns will be reviewed and under control.
  - e. The inmate may be required to meet with Behavioral Health staff or other medical professional for assessment and/or consult.
2. Failure to comply with or otherwise meet any of the above noted requirements may be cause for discontinuing, interrupting, tapering off or changing the established hormone treatment.
  3. Any continuation of hormones must be approved by the clinical care team. Certain conditions and requirements may apply. The inmate's treatment plan is subject to change, based on determinations made by the clinical care team.
  4. If an inmate chooses to discontinue hormonal medications for any reason, or the hormone treatment is terminated for any reason, any subsequent request by the inmate for hormones will be considered a new request.
- E. New hormone treatment:
1. Requests by an inmate with a diagnosis of gender dysphoria by the DOC consultant for hormone treatment will be directed to health services and the Gender Dysphoria Committee. Requests shall be considered on an individual, case-by-case basis.
  2. Inmates who request hormones who do not have a diagnosis of gender dysphoria from the DOC consultant must be assessed by Behavioral Health staff to determine if evaluation by the DOC consultant is appropriate. If the consultant's recommendation includes hormone treatment, the inmate may be referred to Health Services for a medical consult.
  3. Inmates requesting hormone treatment or other treatment, or care recognized as a therapeutic or medically appropriate response to gender dysphoria, must have documentation in COMS supporting a current diagnosis of persistent gender dysphoria by a qualified mental health professional, or a documented medical condition in CorrecTek that may benefit from the requested treatment.
  4. At a minimum, the following shall be reviewed by the committee and clinical care team:
    - a. The request for hormones or other treatment or care represents an established and medically accepted treatment for those with a diagnosis of gender dysphoria; or is determined by a medical professional to be medically necessary and appropriate.
    - b. The inmate has cooperated with Health Services and Behavioral Health staff in obtaining medical records documenting previous treatment and verifying the diagnosis of gender dysphoria (signed Release of Information is required), and any other health records necessary to consider and respond to an inmate's request and make recommendations or decisions regarding treatment. Inmates must comply with all laboratory testing or other medically necessary procedures ordered by Health Services.

- c. The clinical care team must determine whether administering hormones or approving and providing other treatment or care is medically contraindicated. If significant medical or mental health concerns are present, these must be reasonably well controlled.
  4. The inmate must demonstrate he/she understands the relevant aspects of hormone therapy or other treatment, including possible benefits and risks, prior to treatment being initiated.
  5. Failure to comply with or otherwise meet any requirements for treatment, including those requirements in place for the safety and wellbeing of the inmate, may be cause for discontinuing, interrupting, tapering off or changing the treatment.
- F. The Secretary of Corrections shall have authority to suspend all or portions of this policy and provisions contained within, at any time in the case of an emergency.

## 6. Staff Training:

- A. Facilities must train all institutional staff in how to search and communicate with transgender inmates (PREA). Staff will be provided specialized training in working with unique issues when supervising transgender inmates, with refresher training made available at annual training.

## V Related Directives:

- DOC policy 1.3.A.5 – [Searches - Institutions](#)
- DOC policy 1.3.A.8 – [Offender Drug Testing, Sanctions & Treatment](#)
- DOC policy 1.3.D.4 – [Restrictive Housing](#)
- DOC policy 1.3.E.2 – [Administrative Remedy for Inmates](#)
- DOC policy 1.4.B.4 – [Inmate Transfers](#)
- DOC policy 1.4.B.1 – [Female Inmate Classification](#)
- DOC policy 1.4.B.2 – [Male Inmate Classification](#)
- DOC policy 1.4.B.16 – [PREA Institutional Risk Screens](#)
- DOC policy 1.4.E.1 – [Inmate Health Care Services](#)

## VI Revision Log:

May 2020: New Policy

<i>Mike Leidholt (original signature on file)</i>	<i>07/13/2020</i>
Mike Leidholt, Secretary of Corrections	Date