



- a. DOC recognizes the importance of diversity of human beings and has zero-tolerance for discrimination based on sex, sexual orientation, or gender identity by its employees, volunteers, contractors, inmates, and/or offenders.<sup>1</sup>
- b. DOC believes in treating all inmates and/or offenders, regardless of sex, sexual orientation, or gender identity, with fairness, dignity, and respect.<sup>2</sup>
- c. DOC has zero tolerance for staff to, or attempt to, ridicule or change an inmate or offender's sexual orientation or gender identity.<sup>3</sup>
- d. DOC staff hold a duty to provide a safe and healthy environment in which all individuals, regardless of their sexual orientation, gender identity, or sex, are treated with respect and dignity to best of the staff and/or department's ability. DOC recognizes within this that some actions are outside of the control of staff members and/or DOC. For example, DOC is not capable of preventing every inmate from ever getting injured, yet DOC attempts to keep all inmates safe to the best of its ability.
- e. DOC staff are responsible for protecting the civil rights, the physical and emotional well-being, and the safety of LGBTQI inmates while in custody to the fullest extent possible while recognizing exigent circumstances which prevent this.
- f. DOC recognizes the individualized needs of each inmate, including their physical and emotional well-being and safety.
- g. DOC staff hold a duty to maintain objectivity and be free from individual biases during the assessment and classification of all inmates for their safe placement within the correctional facility.
- h. It is the mission of DOC to place all inmates, including vulnerable populations, in the least restrictive environment necessary to ensure safety and provide the inmate with equal access to facility services while also ensuring the safety and security of everyone within the facility and the facility itself.
- i. DOC aims to ensure the safety of all inmates, including vulnerable populations, by modeling respectful behavior; providing supervision of inmates or residents; promptly intervening to interrupt any disrespect, harassment, or abuse.

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<sup>1</sup> This is a very narrow non-discrimination clause. DOC also recognizes and incorporates by reference the policies outlined in DOC Administrative Directive #118.02.

<sup>2</sup> This incorporates the vision, mission, values and principles of the Vermont Department of Corrections.

<sup>3</sup> DOC staff who have contact with inmates or residents will undergo diversity training that includes understanding the impact of name-calling and harassment on LGBTQI inmates.

- j. DOC has a zero-tolerance policy for sexual harassment. This includes staff-on-inmate, inmate-on-staff, staff-on-offender, offender-on-staff, offender-on-offender, and any other combination of harassment.<sup>4</sup>

## **AUTHORITY**

42 U.S.C. §147 (2012); 1 V.S.A. §144 (2007).

## **REFERENCE**

28 C.F.R. §115 (2012); National Commission on Correctional Health Care Standards, U.S. Department of Justice, National Institute of Corrections, *Policy Review and Development Guide, Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings*.

## **DEFINITIONS**

Anatomy: the reproductive parts of a person's body which typically is used to determine whether a person is male or female.

Birth Sex: Sex assigned at birth by a physician based on external genitalia, internal reproductive organs, chromosome patterns, and/or endocrine systems.

Cisgender: Gender identity where an individual's experience of their own gender matches their birth gender.

Cross-Gender: Individual of a different birth sex than another person.

Gender: A socially constructed concept of classifying behavior as either "masculine" or "feminine," unrelated to one's external genitalia.<sup>5</sup>

Gender Identity: An individual's actual or perceived gender identity or gender-related characteristics intrinsically related to an individual's gender or gender-identity, regardless of the individual's assigned sex at birth.<sup>6</sup>

LGBTQI: Acronym for a group of sexual minorities, including lesbian, gay, bisexual, transgender, queer, questioning, and intersex individuals.

Lesbian: A woman who is primarily attracted to other women.<sup>7</sup>

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<sup>4</sup> This directive also incorporates by reference the policies outlined in Policy #126 which pertains to Staff Sexual Misconduct. Any substantiated claim of conduct, sexual contact or sexual harassment by a staff member towards an inmate or detainee may result in termination of the staff member's employment, referral for criminal charges, civil penalties, or other punitive actions deemed necessary.

<sup>5</sup> U.S. Department of Justice, National Institute of Corrections. (2013). *Policy Review and Development Guide, Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings*. Washington: National Institute of Corrections.

<sup>6</sup> 1 V.S.A. §144.

Gay: A person who is attracted primarily to members of the same sex. Although it can be used for any sex, e.g. gay man, gay woman, gay person, a lesbian is sometimes the preferred term for women who are attracted to women.<sup>8</sup>

Bisexual: A person who is romantically or sexually attracted to more than one gender or sexual category.<sup>9</sup>

Transgender: A person whose gender identity differs from his/her birth sex. A transgender female is a person whose birth sex is male, but who understands herself to be, and desires to live her life as a female, and vice versa.

Queer: 1) An umbrella term sometimes used by LGBTQA people to refer to the entire LGBTQ community. 2) An alternative that some people use to "queer" the idea of the labels and categories such as lesbian, gay, bisexual, etc. Similar to the concept of genderqueer. It is important to note that the word queer is an in-group term, and a word that can be considered offensive to some people, depending on their generation, geographic location, and relationship with the word.<sup>10</sup>

Questioning: For some, the process of exploring and discovering one's own sexual orientation, gender identity, or gender expression.<sup>11</sup>

Intersex: An individual born with external genitalia, internal reproductive organs, chromosome patterns, and/or endocrine systems that do not seem to fit typical definitions of male or female.<sup>12</sup>

Sexual Orientation: Means female or male homosexuality, heterosexuality, or bisexuality.<sup>13</sup>

Transition: The time period when one starts publically living their lives in accordance with their gender identity. Transition often includes a change in dress, hairstyle, and physical appearance; the use of a new name; and a change in pronoun (from "he" to "she" or vice versa). During transition, many transgender people will also begin to undergo medical treatments, such as hormone therapy, and/or gender reassignment surgery, to change their physical bodies to better match their gender identity; however, not all transgender people undergo medical treatments.

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<sup>7</sup> University of Michigan. (n.d.). *LGBT Terms and Definitions*. Retrieved 12 18, 2014, from International+LGBT: <http://internationalspectrum.umich.edu/life/definitions>

<sup>8</sup> University of Michigan. (n.d.). *LGBT Terms and Definitions*. Retrieved 12 18, 2014, from International+LGBT: <http://internationalspectrum.umich.edu/life/definitions>

<sup>9</sup> U.S. Department of Justice, National Institute of Corrections. (2013). *Policy Review and Development Guide, Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings*. Washington: National Institute of Corrections.

<sup>10</sup> University of Michigan. (n.d.). *LGBT Terms and Definitions*. Retrieved 12 18, 2014, from International+LGBT: <http://internationalspectrum.umich.edu/life/definitions>

<sup>11</sup> University of Michigan. (n.d.). *LGBT Terms and Definitions*. Retrieved 12 18, 2014, from International+LGBT: <http://internationalspectrum.umich.edu/life/definitions>

<sup>12</sup> U.S. Department of Justice, National Institute of Corrections. (2013). *Policy Review and Development Guide, Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings*. Washington: National Institute of Corrections.

<sup>13</sup> 1 V.S.A. §143.

Vulnerable populations: For the purposes of this directive, vulnerable population refers to any inmate who is at a higher risk of becoming a victim of sexual abuse and/or sexual harassment. Risk is determined by, but not limited to: (1) whether the inmate has a mental, physical, or developmental disability; (2) inmate's age; (3) the physical build of the inmate; (4) whether the inmate has previously been incarcerated; (5) whether the inmate's criminal history is exclusively non-violent; (6) whether the inmate has prior convictions for sex offenses against an adult or child; (7) whether the inmate is or is perceived to be a member of the LGBTQI community; (8) whether the inmate has previously experienced sexual victimization; (9) the inmate's own perception of vulnerability; and (10) whether the inmate is detained solely for civil immigration purposes.<sup>14</sup>

## **PROCEDURAL GUIDELINES**

### **1. Nondiscrimination**

- a. DOC staff are to report complaints of harassment, discrimination, and/or abuse by immediately reporting the complaint to the Correctional Facility Shift Supervisor (CFSS).
- b. DOC will conduct training and provide resources to inform staff about the societal, familial, and developmental challenges confronting LGBTQI inmates or offenders.
- c. LGBTQI status will not impact a determination on whether or not an inmate may undergo programming. LGBTQI inmates will be given the same treatment in determining access to programming and services as other inmates within the correctional facility.

### **2. Intake and Risk Assessment**

- a. Booking and Admission
  - i. The Booking Officer shall request the inmate's LGBTQI status from the transporting/arresting agency.
  - ii. During the booking process the Booking Officer will issue a *Gender Preference Form*<sup>15</sup> to all incoming inmates.
  - iii. If an incoming inmate identifies as an LGBTQI community member on the *Gender Preference Form* then the Booking Officer will notify the Correctional Facility Shift Supervisor (CFSS) and medical that the form was completed.
  - iv. The inmate will be entered into the database using their legal name and gender but will be identified by their chosen name. All communication involving LGBTQI inmates shall be in accordance with Section 4 "Respectful Communication" on page 8 of this directive.

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<sup>14</sup> 28 C.F.R. §115.41(d).

<sup>15</sup> The *Gender Preference Form* is the inmate or resident's opportunity to request accommodations and to express their concerns about safety, their name, their preferred pronoun, shower preference, and searches. DOC will utilize this form in determining whether or not an LGBTQI inmate or resident will receive accommodations.

- v. The CFSS will review the form and advise staff accordingly as to appearance related items such as prosthetics, clothing that conveys gender identity. Items will be searched according to security protocol and will not be taken from the offender unless necessary according to security protocol. For example, if a transgender female is in a segregated cell for suicide attempt, they will not be allowed to have a bra as it is considered a mechanism for self-harming behavior. Any items taken from an inmate will be inventoried according to the inmate property directive.
- vi. Transgender and/or intersex inmates will be permitted to wear clothing according to their gender of preference unless the facility requires all inmates to wear a standard issued uniform. If inmates are permitted to wear their own clothing, transgender and/or intersex inmates will be permitted to wear the same clothing as their fellow inmates whose gender they identify with.
- vii. The CFSS will be responsible for the initial determination of vulnerability using the *Sexual Violence Screening Tool* and any other information available to decide housing.
- viii. The mere identification of an inmate as LGBTQI is insufficient to warrant an assumption of enhanced risk that the inmate will be sexually abusive or be sexually abused.
- ix. Medical screening and designation of an LGBTQI inmate or resident will be conducted by a medical staff member, or contractor, who has undergone training regarding sensitivity in conducting interviews with LGBTQI inmates.
- x. Qualified medical practitioners are the only staff permitted to physically examine inmates or residents to gather information about gender identity. Only qualified medical providers will ask questions relating to an individual's anatomy and/or surgical status as necessary for ensuring proper medical treatment.
- xi. *The Gender Preference Form* will be reviewed and/or updated annually during a meeting between an inmate and a correction service specialist (CSS) or upon the request of DOC staff members, volunteers, or the inmate him or herself.
- xii. DOC medical and mental health staff will utilize screening tools that have been developed for LGBTQI inmates when interacting with identified LGBTQI inmates or residents.

### **3. Classification and Housing**

- a. DOC will not classify inmates solely on the basis of their LGBTQI status or perceived LGBTQI status.
- b. DOC will respond to abuse or harassment (or threat of abuse or harassment) of LGBTQI inmates or residents by considering the individual circumstances of the situation, and in a manner consistent with the facility rules and inmate discipline detailed by Directive #410.01. DOC will not rely on the isolation or segregation of LGBTQI inmates or residents in these situations and will resort to this method only if necessary to assure safety and security.
- c. LGBTQI inmates will not be placed in segregation housing due to the sole purpose of their gender identity or status. Transgender and intersex inmates who are placed

in administrative segregation or other special management housing for their safety and security shall adhere to DOC policies 410.03 and 410.06.

- d. Whenever an inmate is identified as transgender and/or intersex, the facility multi-disciplinary team will meet within seventy-two hours of the inmate's arrival or intake and conduct a review in order to assess the on-going and long-term medical, psychological and facility needs of the individual, using and considering the following criteria:
  - i. *The Gender Preference Form.*
  - ii. *Sexual Violence Screening Tool*<sup>16</sup>
  - iii. The anatomy of the inmate.
  - iv. The individual's incarcerated history.
  - v. Other psychosocial factors that may contribute to either the individual's resiliency or vulnerability.
  - vi. The inmates' privacy concerns.
  - vii. Available housing.
  - viii. Recommendations from the inmate's mental health providers.
  - ix. LGBTQI inmates can make informal requests to staff, or utilize the grievance system to express issues concerning privacy concerns, housing, factor's related to the inmate's emotional and physical well-being, and the inmate's self-evaluation of his or her safety.
- e. LGBTQI inmates will not be placed 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.
- f. Classification determinations will be made using the information from the risk screening to determine housing, bed, work, education, and program assignments with the goal of keeping separate LGBTQI inmates at risk of being sexually victimized from those at risk of being sexually abusive.
- g. The multi-disciplinary team will review the determination as necessary but within thirty days of the initial assessment to determine if any adjustments or reconsiderations need to be made.
- h. The multi-disciplinary team will review placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice a year to review any threats to safety experienced by the inmate.

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<sup>16</sup> Includes factors related to the inmate's emotional and physical well-being as well as the inmate's self-evaluation of his or her safety. Note that per 28 C.F.R. § 115.42 (e) a transgender and/or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.

- i. Transgender and intersex inmates will be given the opportunity to shower separately from other inmates.
- j. DOC can house transgender or intersex inmates according to their gender identity rather than their birth sex. 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, DOC will 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. DOC will consider the physical layout of the facility and privacy issues/concerns when determining the location of a transgender or intersex inmate. If deemed necessary for safety, DOC can place transgender or intersex inmates according to their birth sex to protect their physical and emotional well-being, while assuring the facility's safety and security. All determinations regarding the housing of a transgender and/or intersex inmate will be made by a management team consisting of the Director of Correctional Facilities; the Health Services Director; the Corrections Case Work Director; and a DOC employee with the ability and knowledge needed to represent LGBTQI interests.
- k. LGBTQI inmates can make requests to have their housing re-evaluated using the grievance system.
- l. If an indication of need arises, the facility may consult with an identified member of the LGBTQI or allied community to provide external resources and support in assistance with the LGBTQI population.

#### **4. Respectful Communication**

- a. DOC staff will identify inmates by their last name or chosen name, gender, and pronoun identified on the *Gender Preference Form*.
- b. DOC staff will use the proper pronoun, identified by the *Gender Preference Form*, in all written and verbal reports and communications concerning transgender and/or intersex inmates.
- c. DOC staff will identify the transgender and/or intersex inmate's birth gender and preferred gender in all reports where a strip or pat search was required.
- d. Staff are to maintain the privacy and confidentiality of information of LGBTQI inmates or residents to the fullest extent possible while also ensuring the safety and security of the facility. Sharing of confidential information will be permitted when it is necessary to achieve a particular focus. For example, information would be permitted to be shared when identifying an appropriate placement for an LGBTQI inmate in another facility.

## **5. Medical and Mental Health Care**

- a. DOC will provide health care to all inmates to the standards outlined in DOC policy 351.4.2 and 351.4.3.
- b. DOC will provide opportunities for inmates to access external services that address topics such as: self-acceptance and validation, concerns about disclosure of sexual orientation or gender identity, family relationships, healthy inmate relationships.
- c. As part of the medical care of LGBTQI inmates, DOC medical will annually inquire about the following<sup>17</sup>:
  - i. The inmate's safety.
  - ii. Inmate's sexual activity both before and during incarceration.
  - iii. Inmate's sexual orientation both before and during incarceration.
  - iv. Inmate's gender identity both before and during incarceration.
- d. Determination of the availability and use of gynecological and obstetrical care will be a medical decision determined by a qualified medical professional.
- e. LGBTQI inmates will be entitled to equal treatment and availability for HIV and STI testing, care, and confidentiality as other inmate's within the facility.
- f. LGBTQI inmates will be equally entitled to any sexual trauma counseling available within the facility. Counseling will be available regardless of whether or not the trauma occurred before or during incarceration.
- g. An individual's LGBTQI status is considered confidential information. This information, including electronic records, shall have strict dissemination controls. DOC shall keep screening information confidential except as necessary to conform to required protocols.

## **6. Privacy and Safety Policy**

- a. DOC does practice cross-gender supervision of inmates in all of its facilities. DOC adheres to the following policies and procedures in implementing cross-gender supervision which recognizes the need for safety, security, professionalism, and privacy.
  - i. LGBTQI inmates will be able to shower, use the toilet, and change their clothes without being viewed by nonmedical staff of the opposite gender. The exception to this policy is for incidental viewing during routine cell checks and/or special observation checks. DOC recognizes that opposite-gender staff will work in

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<sup>17</sup> This is part of medical care and is covered by medical confidentiality.

housing areas and may see an inmate naked in his/her cell while conducting routine cell checks, or in exigent circumstances.

- ii. There is a no expectation of privacy in the open areas and/or common areas of the facility.
- iii. Internal and external investigators and supervisors or managers are not prohibited from viewing cross-gender recorded camera footage in conjunction with an investigation or incident review.
- iv. DOC staff will employ a “knock and announce” practice when an opposite gender staff member enters a housing unit and, more generally, provides that facilities are to implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental or routine cell checks.
- v. All violations or complaints regarding inmate privacy and safety concerns will be reported using the grievance system.

b. Searches of LGBTQI inmates

i. Pat Searches

- A. When first entering the facility, an inmate who identifies as transgender or intersex will complete a *Gender of Preference Form* indicating their gender preference as to the gender of the staff that will perform the search. This request will be honored, unless emergent circumstances dictate otherwise. DOC staff will follow the protocol listed below in performing the search.
- B. Request to remove appearance related items such as prosthetics, clothing that conveys gender identity, and cosmetics shall be consistent with the requirements for the removal of similar items for cisgender individuals.
- C. Pat searches will be conducted in a professional and respectful manner, and in the least invasive manner possible, consistent with security needs, according to local procedure, and consistent with staff training.

ii. Strip Searches

- A. Strip searches will not be done for the sole purpose of observing the inmate’s genitalia or determining gender.
- B. Request to remove appearance related items such as prosthetics, clothing that conveys gender identity, and cosmetics shall be consistent with the requirements for the removal of similar items for cisgender individuals.
- C. Transgender and/or intersex individuals shall not be subject to more invasive searches than cisgender individuals.
- D. Strip searches will be conducted in a professional and respectful manner, and in the least invasive manner possible, consistent with security needs and according to local procedure.
- E. If an inmate has undergone a surgical procedure and gender reassignment has occurred, the search will be conducted by the inmate’s current gender status.

- F. If the gender of the inmate cannot be determined, or an inmate refuses to complete the *Gender Preference Form*, medical staff may be consulted to assist in making a determination. Medical staff will not conduct a strip search or physical search to determine gender.
- G. Medical and/or mental health staff may attempt to communicate to the inmate the need for their cooperation in determining sex for the purposes of housing and additional inmate services without resorting to a physical examination.

## 7. Sexual Abuse

- a. LGBTQI inmates are entitled to the same protections and rights as cisgender inmates. In cases of sexual abuse involving an LGBTQI inmate staff are to follow the policy and procedure outlined in administrative policy 126, and in Directive #409.09.

## 8. Clothing and Property

- a. Inmates will indicate any accommodations required upon intake.
- b. All items such as prosthetics, clothing that conveys gender identity. These items will be searched according to security protocol and will not be taken unless necessary according to security protocol.
  - i. Example: If a transgender male to female is in a segregated cell for suicide attempt, they will not be allowed to have a bra as it is considered a mechanism for self-harming behavior.
  - ii. The items will be inventoried according to the department's directive on Inmate Property.
- c. The inmate will be permitted to wear clothing according to their gender of preference regardless of the majority gender of the facility unless the facility requires all inmates to wear a standard issued uniform.
- d. Inmates requesting additional accommodations during their incarceration will do so through their CSS. The inmate's CSS will advise the facility of additional required accommodations. If an accommodation is solely medically or mental health related, then an inmate may request an accommodation from medical rather than their CSS.
- e. Property requests will be granted based upon the states allowances indicated in the property matrix. Transgender and intersex inmates at male institutions will follow the property allowances as Cisgender inmates at female institutions and vice versa.

## TRAINING

All security staff will receive training on how to communicate effectively and professionally with inmates, including LGBTQI inmates during *Advanced Communication Techniques (ACT)*. This will include specific LGBTQI scenarios.

All security staff will learn appropriate steps and circumstances in cross gender pat and strip searches during *Contraband and Searches*. This will include content specific to LGBTQI inmates.

DOC staff that has contact with inmates and/or offenders will undergo training that includes understanding the impact of name-calling and harassment on LGBTQI inmates.

DOC will develop and conduct training and provide resources to inform staff about the societal, familial, and developmental challenges confronting LGBTQI inmates.