



# NEW MEXICO CORRECTIONS DEPARTMENT

Secretary  
Alisha Tafoya Lucero

CD-150800 Transgender Inmates	Issued: 08/30/17 Effective: 08/30/17	Reviewed: 06/30/20 Revised: 09/13/18
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

## AUTHORITY:

- A. Prison Rape Elimination Act of 2003, 42 USCA § 15601 et seq.

## REFERENCE:

- A. Health Insurance Portability and Accountability Act (HIPAA)  
B. Prison Rape Elimination Act Standards §115.11 through §115.89  
C. ACA Expected Practices 5-3D-4281-2, 5-3D-4281-4, and 5-3D-4281-5, *Performance Based Expected Practices for Adult Correctional Institutions*, 5<sup>th</sup> Edition.  
D. ACA Standards 2-CO-3C-01, *Standards the Administration of Correctional Agencies*, 2<sup>nd</sup> Edition.

## PURPOSE:

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

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

## APPLICABILITY:

All NMCD staff, inmates and offenders.

## FORMS:

None

## ATTACHMENTS:

None

**DEFINITIONS:**

- A. Asexual: A person who is not physically, romantically or emotionally attracted to either males or females.
- B. Bisexual: A person who is physically, romantically and emotionally attracted to both males and females.
- C. Gay: A man who is physically, romantically and emotionally attracted to others of the same gender.
- D. Gender Expression: Gender-related traits and manners with which they express themselves that may or may not be consistent with those traits typically associated with a person's assigned sex at birth.
- E. Gender Identity: An individual's internal and personal sense of their own gender and feelings, which may or may not be associated with a person's assigned sex at birth.
- F. Gender Nonconforming: Individuals who do not follow society's ideas or stereotypes about how they should look or act based on the sex they were assigned at birth.
- G. Intersex: A general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that does not typically fit the standard definitions of female or male. A person with an intersex condition is born with sex chromosomes, external genitalia or an internal reproductive system that is not considered 'standard' for either male or female.
- H. Lesbian: A woman who is physically, romantically and emotionally attracted to others of the same gender.
- I. LGBTI: Lesbian, Gay, Bisexual, Transgender, and Intersex.
- J. Offender: An adult placed under, or made subject to, supervision, probation and/or parole, as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.
- K. Pat Search: A search during which an inmate is not required to remove their clothing and the officer presses the outer clothing to the body to feel for contraband.
- L. Strip Search: A search during which an inmate is required to remove all clothing and is subjected to a visual inspection.
- M. Transgender: An individual whose gender identity or gender expression, does not conform to that typically associated with the sex to which they were assigned at birth.

**POLICY:**

- A. The NMCD has a “**zero tolerance**” policy regarding abuse, sexual misconduct, sexual abuse and sexual harassment directed towards offenders. All allegations regarding sexual abuse, sexual activity, sexual assault and sexual harassment will be referred and investigated by our Office of Professional Standards. In the event that a criminal element is identified during the course of the administrative investigation, outside Law Enforcement Agencies will be notified. [**§115.11**]
- B. No person under the NMCD custody or supervision shall be arbitrarily exposed to physical or mental abuse, including disease or medical experimentation.
- C. Transgender and intersex inmates shall not be searched or examined by non-medical staff for the sole purpose of determining the inmate’s genital status. If necessary, genital status shall be determined by interviews or medical records reviews. [**§115.15**]
- D. Classification staff shall use the information from the risk screening to determine housing, bed, work, education and program assignments with the goal of keeping separate LGBTI inmates at high risk of being sexually victimized from those at high risk of being sexually abusive. A transgender or intersex inmate’s own views with respect to his or her own safety shall be given serious consideration. [**5-3D-4218-5**] [**§115.42**]
- E. Classification staff shall make individual determinations on how to ensure the safety of each inmate.
- F. All staff, custody and non-custody, will be trained prior to working with the inmate population and annually during annual refresher classes at their respective facility on: how to communicate effectively with LGBTI inmates/offenders and how to properly conduct pat-downs and strip searches of Transgender and Intersex inmates/offenders. [**§115.31**]



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## AUTHORITY:

CD-150800

## PROCEDURE:

### FACILITY PLACEMENT AND SEARCHES

- A. Transgender offenders will be placed in male or female facilities as determined on a case-by-case basis. Placement decisions shall not be made solely on the basis of anatomy or sex assigned at birth. A transgender or intersex inmates own views with respect to his or her own safety shall be given serious consideration. [**§115.42**]
- B. The inmate should be temporarily housed in a single cell, for his or her own protection, and the paperwork be immediately forwarded to the Gender Classification Committee. The Gender Classification Committee will consist of the Agency PREA Coordinator (or designee), the Director of Adult Prisons (or designee), Health Services Administrator (or designee), and the Behavioral Health Bureau Chief. The Review Board will review documentation and make a determination as to the placement of the individual in an expeditious manner. The inmates own views of their personal safety will be taken into consideration when determining housing and in determining which staff members will perform searches of that particular inmate.
- C. If needed, the Gender Classification Committee may consult with an identified member of the LGBTI Community or the Transgender Resource Center of New Mexico who is knowledgeable with the issues surrounding transgender and gender nonconforming people to advise on appropriate housing to the classification officer and/or the programs and services needed by the individual.
- D. The agency shall train security staff in how to conduct cross gender pat down searches and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs. [**§115.15**]
- E. Inmates shall be screened for classification purposes within 48 hours of arrival at the facility and reassessed 25 days after the inmate's arrival using the SRNS Screening Tool, for potential vulnerabilities or tendencies of acting out with sexually aggressive behavior. Inmates will be reassessed thereafter due to a referral, request, incident of sexual abuse, or receipt of additional information that bears upon an inmate's risk of sexual victimization or abusiveness. Housing and program assignments will be made accordingly. Transgender and Intersex inmates shall be screened every six months using the SRNS Screening tool. In the event of an incident, both the

inmate perpetrator and/or inmate victim will be re-screened.[5-3D-4281-2] [5-3D-4281-4] [§115.41]

- F. During intake and the initial classification screening and when determining whether inmates are transgender or gender non-conforming, the following shall be taken into consideration:
- a. Inmate appearance and behavior and whether or not it matches the gender marker on the inmate's arresting paperwork or identification materials
  - b. Self-Reporting from the inmate
  - c. Inmate's past history, if known
  - d. Any alerts from the transporting agency

Any other documentation that may be available to intake and classification staff upon initial screening to include:

- a. Gender identity
  - b. Gender marker on identification documents
  - c. Social gender role in the community prior to incarceration (i.e. was the person living daily life as a man or woman)
  - d. Any past diagnosis or treatment for Gender Dysphoria.
  - e. The inmate's views regarding the safest placement option.
  - f. An assessment by medical and mental health staff of the potential health impact of placement in a male or female setting (e.g. on PTSD or Gender Dysphoria).
- G. Transgender female inmates, who are determined to be housed in male facility, shall be issued a bra if they desire. The issued bra will be issued in accordance with the Property Policy and will be the same bra that is issued at the female facilities. Any other request for personal items, as determined by the committee, Behavioral Health Staff, Medical Staff, or for any other reason, will be reviewed for consideration by the Committee.
- H. Transgender inmates who wish to shower separately, in facilities with dorm style showers, must request to do so in writing to the Warden. The Warden will designate, by a memo, two shower times (one morning and one evening) whereas the individual making the request can shower privately during count time. These will be the only permitted count times as documented by the Warden and PREA Compliance Manager at the facility. A copy of the request and memorandum will be forwarded to the Agency PREA Coordinator.