

# Washtenaw County Sheriff's Office

## Procedural Guideline

### Transgender Inmates

Reference Number: **5.69 PG**



Jerry L. Clayton, Sheriff

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| <b>Subject:</b>             | <b>Transgender Inmates</b>  |
| <b>Chapter:</b>             | <b>Inmate Health, Safety, Security</b>  |
| <b>Status:</b>              | <b>New</b>  |
| <b>Compliance:</b>          | <b>Class 2</b>  |
| <b>Supersedes:</b>          | <b>All Previous Directives or Specific Directives</b>                                 |
| <b>Standards Reference:</b> | <b>Michigan Sheriff's Association standard 115.15, 115.31, 115.41, 115.42, 115.86</b> |
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| <b>Issued by:</b>           | <b>Mark Ptaszek, Undersheriff</b>   |
| <b>Issuing Authority:</b>   | <b>Jerry L. Clayton, Sheriff</b>  |
| <b>Date of Issue:</b>       | <b>September 12, 2019</b>   |

#### **I. PURPOSE**

Congress passed the Prison Rape Elimination Act (PREA) in 2003 to address the widespread problem of sexual assault and harassment in prisons, jails, police lock-ups, community corrections, and immigration detention. PREA applies to prisons, jails, lock-ups, and community corrections facilities at the federal, state and local levels and include specific protections for transgender inmates. PREA compliance entails numerous policies and training that must take place to protect both the inmate and the agency.

The purpose of this policy is to align the Washtenaw County Sheriff's Office with PREA Standards and establish procedures on providing fair, equitable and appropriate treatment of transgender, transsexual, intersex, and gender variant persons who are incarcerated at the Washtenaw County Sheriff's Office.

#### **II. SCOPE**

This policy and corresponding procedures apply to all full-time and part-time Sheriff's Office employees.

#### **III. POLICY**

The Washtenaw County Sheriff's Office has a zero-tolerance policy with respect to instances of sexual abuse or discrimination based on gender

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identity. It is the policy of the Sheriff's Office is to provide for the respectful and courteous treatment of transgender inmates while maintaining a secure and orderly operation. To prevent abuse and gender identity discrimination, an inmate's gender identity will be a factor in decisions relating to booking, classification, housing and searches.

#### IV. DEFINITIONS

A. Gender Expression

A gender-related expression, appearance, identity, or behavior of an individual, regardless of the individual's gender at birth.

B. Intersex

Intersex (also known as differences of sex development) is an umbrella term describing people born with variations of internal and/or external sex anatomy resulting in bodies that can't be classified as the typical male or female.

C. Sexual Orientation

A person's emotional, romantic or sexual attraction to other people. Including but not limited to gay, bisexual, straight, and asexual.

D. Transgender

Refers to any person whose gender identity or expression differs from traditional gender expectations associated with a person's assigned sex at birth. This term includes transsexual individuals, cross-dressers, androgynous individuals, and others whose appearance or characteristics are perceived to be gender-atypical. An umbrella term describing individuals who live and/or express themselves as a gender other than that assigned to them at birth.

E. Gender Variant

Refers to any person whose gender identity or expression differs from traditional gender expectations associated with a person's

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assigned sex at birth. This term includes transsexual individuals, cross-dressers, androgynous individuals, and others whose appearance or characteristics are perceived to be gender-atypical. An umbrella term describing individuals who live and/or express themselves as a gender other than that assigned to them at birth.

F. Exigent Circumstances

Any set of temporary and unforeseen circumstances that require immediate action to combat a threat to the security or institutional order of a facility. Example, when there is reason to believe that an individual is in possession of dangerous contraband or has a potential weapon.

G. Gender Identity

One's innermost concept of self as male, female, a blend of both or neither. How individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.

## V. PROCESS

A. Determining Transgender Status

1. Sheriff employees shall only ask questions related to a person's sexual orientation, gender identity or transgender status for the purposes of intake, housing assignments, classification, programming, providing health care and health assessments, or where information is necessary to ensure the safety and security of inmates, staff, visitors, the facility, and the community. Questions related to sexual orientation, gender identity or transgender status shall be asked confidentially and in a respectful manner to preserve human dignity and to avoid subjecting the inmate to abuse, humiliation, or ridicule.
2. Officers shall follow policies and procedures governing interactions with transgender persons when either of these conditions are met:
  - a. An individual explicitly informs the officer(s) that they are transgender or are likely to be perceived as transgender.

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- b. An officer has reason to believe that the individual is transgender. This may be based on gender appearance and presentation, discrepancy between a prior name and current name and gender presentation, prior complaints of abuse, harassment or assault related to a person's transgender status or gender presentation, background checks, and/or third-party information.
    - (1) Special Note – An individual is under no obligation to disclose as transgender at any point in time, and the officer shall not compel any individual to disclose such information.
  3. When an individual self-identifies as a transgender person, officers shall not question this identity or ask about the person's surgical status except where such information is necessary for medical purposes.
  4. Sheriff's Office employees shall not subject a transgender person to more invasive or additional searches than what non-transgender persons are subjected to.
  5. If an officer has determined an inmate is transgender; s/he will explain this to the inmate prior to conducting a strip search or assigning the inmate to housing. If the inmate denies identifying as transgender, s/he shall be searched and/or housed according to non-transgender specific policies and procedures.
    - a. An inmate later identifying as transgender (or is later determined to be transgender) will be treated according to the same policies and procedures governing interactions with all transgender persons.
- B. Compliance with Searches
1. In all cases, a transgender person shall have their identity respected and shall be accorded dignity.
  2. Sheriff's Office employees will not search any person to observing their genital characteristics or "determining" their genital status including but not limited to the presence or absence of breasts. Under no circumstance shall transgender individuals be subject to more invasive search procedures than non-transgender individuals.

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3. When there is reason to believe that an individual is in possession of dangerous contraband or has a potential weapon, exigent searches of transgender persons shall be subjected to the same rules as exigent searches of all inmates.
  4. Pat-downs as well as more invasive searches of transgender individuals, including strip searches, and visual body cavity searches shall be performed by asking the individual whom they feel most comfortable performing the search. At all stages of this process, a transgender individual reserves the right to choose a male or female officer to perform the search. If the person does not divulge who they feel most comfortable with conducting the search, the search shall be performed by an officer of the same gender with which the inmate identifies.
  5. No personnel may be present who are not directly relevant to the search, and the search shall be conducted in private.
    - a. All invasive searches of transgender individuals shall be documented by writing an informational report.
- C. Housing of Transgender Inmates
1. Gender identity must be taken into consideration when housing transgender inmates. When housing transgender inmates in jail, multiple factors including gender identity, housing availability, security, and safety needs may be considered.
  2. If the individual has completed reassignment surgery and legally changed their sex, then they should be housed with the corresponding sex.
  3. As part of the housing assessment for vulnerability, jail staff shall ask the inmate his or her own opinion of his or her vulnerability in the general jail population and whether the inmate would feel safer in a men's or a women's unit, in addition to the assessments made during standard inmate classification.
  4. Based on information gathered from the inmate classification system, and the opinion of the transgender individual, command staff shall assess whether the inmate should be housed in a unit for males or females and whether in general population or administrative segregation.

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5. Transgender inmates shall only be housed on administrative segregation when there is reason to believe the inmate presents a heightened risk to himself or herself or to others, and only for that limited period during which the heightened risk exists. Grounds for administrative segregation may also exist if a transgender inmate has been, or is in fear of, vulnerability to victimization in any other housing setting, including shared vulnerable inmate housing. If an inmate requests administrative segregation that request shall be honored.
  6. Housing for transgender inmates on administrative segregation shall be reviewed every 30 days.
  7. General housing assignments for transgender inmates outside that of administrative segregation will be evaluated based on normal classification review.
  8. The inmate may choose to grieve the housing assignment and will follow normal jail procedures for inmate grievances.
  9. General housing for transgender inmates will follow the same classification process as all other inmates unless there are circumstances that necessitate the need to modify their housing.
  10. Transgender inmates on administrative segregation, or disciplinary segregation will be housed alone.
    - a. Special Note – Barring unusual circumstances or security risks, transgender inmates shall have access to all the same services as inmates in general population (e.g., meals, recreation, programming, and hygiene).
- D. Health Management
1. Transgender inmates who received hormone therapy with a prescription prior to incarceration shall have that therapy continued without interruption pending evaluation by a specialist, absent urgent medical reasons to the contrary.

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## VI. PROCEDURE

### A. Intake Officer: (gender identification)

1. Intake Officers will notify on-duty command when an inmate is received that has gender-related expression, identity, appearance, or behavior that differs from their sex.
2. The Intake Officer will attempt to determine the gender of the inmate in a discreet, dignified, and professional manner to preserve confidentiality and to avoid subjecting the inmate to ridicule.
3. If the gender is not known, the Intake Officer shall ask the individual whom they feel most comfortable performing the pat-down search (male or female).
4. [If an individual identifies as transgender, he or she must fill out a mandatory transgender intake form prior to pat-downs or strip searches.](#) The form will include the sex that he or she wishes to identify as, as well as the sex of the officer that he or she wishes to conduct all pat-down's or strip searches. The form will be signed by the arrestee as well as the Duty Sergeant. The form will become part of the Inmate's booking jacket.
5. If at any time an Inmate changes his or her mind about their sexual identity, a new form must be filled out and placed in the Inmate's booking jacket.
6. More invasive searches of transgender individuals, including strip searches and visual body cavity searches, may be performed by asking the individual whom they feel most comfortable performing the search. At all stages of this process, including during the search, an inmate reserves the right to choose a male or female officer to perform the search. If the inmate does not divulge who they feel most comfortable with conducting the search, the search shall be performed by an officer of the same gender with which the inmate identifies.
  - a. A mandatory incident report will need to be completed.

### B. Intake Officer: (unknown gender arrest)

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1. Intake Officers will notify on-duty command when an inmate is received that has gender-related expression, identity, appearance, or behavior that differs from their assigned birth sex.
2. The Intake Officer will attempt to determine the gender of the inmate in a discreet, dignified, and professional manner to preserve confidentiality and to avoid subjecting the inmate to ridicule.
3. If an inmate refuses to inform officers of the gender with which they identify, they will be classified as the gender of any prior arrest. If the person has no prior arrests, they will be classified as the gender listed on any identification. If the person has no identification, gender identity will be based on the intake officer's reasonable belief.
4. The inmate will be placed on administrative segregation and housed in an individual cell in the ITR until a housing decision is made by command staff.
5. The inmate will be allowed all privileges afforded to other inmates; however, they will be monitored for their safety.
  - a. A mandatory incident report will need to be completed if the gender identity is unknown.

## **VII. RESPONSIBILITY AND QUALITY ASSURANCE SUMMARY BY POSITION AND RANK**

The below list of duties by position and rank is a summary. It should not be interpreted as all inclusive. Employees in the various positions may be directed to perform or be responsible for duties and tasks other than those outlined; or, the outlined duties and tasks may be modified by the Division Commander or higher.

### **A. Sergeant Responsibilities**

1. Transgender inmates will be interviewed by the Duty Sergeant to determine the gender of a new arrest if the Intake Officer was unable to do so. In either case, the Duty Sergeant will coordinate all pat-downs and search responsibilities by designating appropriate staff to perform the search after the transgender intake form has been completed and signed. Prior to housing, the Duty Sergeant and the Classification Officer will collectively interview the inmate. The Duty Sergeant / Classification Officer will ask the inmate's opinion on vulnerability in general population male or female units.

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(See Section C. Housing of Transgender Inmates to determine housing). This information, along with previous housing assignments, will be taken into consideration. Once the inmate has complied with the booking and intake process, he/she shall be housed accordingly by following the housing assignments listed above.

2. An informational report will be written by the Duty Sergeant explaining all steps taken to determine appropriate searches and housing.

B. Lieutenant Responsibilities:

1. The Lieutenant will review all reports generated for transgender inmates to determine if appropriate protocol was followed. All grievances related to transgender housing or privileges will be handled at the Lieutenant level.

#### **VIII. MODIFICATION**

A. The Sheriff, Under Sheriff, Chief Deputy, or Division Commander may modify the provisions of this special operating order.

#### **IX. COMPLIANCE**

A. All employees shall comply with all provisions of this procedural guideline. A violation of any section is a Class 2 offense and may result in corrective discipline.

B. A violation may also be a violation of other Sheriff's Office professional conduct standards which may result in corrective disciplinary action up to and including discharge.