
JAIL PROCEDURE

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Oregon Jail Standard: C-106, C-106, C-109

Transgender Booking/Custody

The policy of the Douglas County Corrections Division is to ensure the respectful, courteous and professional treatment of transgender Adults in Custody (AIC), as well as respect the sexual orientation or gender identity of any person in custody, while maintaining the safety, security and orderly operation of all correctional facilities.

PURPOSE

To provide guidelines for the appropriate accommodations of all AICs who identify as or have been determined to be transgender. This policy is intended to address the requirements as outlined in the Prison Rape Elimination Act (PREA) standards, which require zero tolerance for discrimination on the basis of sexual orientation or gender identity.

DEFINITIONS

Gender - The socially constructed roles, behaviors, activities and attributes that a given society typically or historically assigns to men or women.

Gender identity - Refers to a person's innate, deeply felt psychological identification as a man, woman or some other gender, which may or may not correspond to the sex assigned to them at birth (e.g., the sex listed on their birth certificate).

LGBTQI - An acronym that refers to lesbian, gay, bisexual, transgender, questioning and intersex individuals.

Management Plan - A plan constructed by a committee consisting of Corrections Health, Mental Health and security staff for an AIC that addresses, but is not limited to, the AIC's housing and management during custody.

Sexual Orientation - As defined in ORS 174.100; an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.

Strip Search - The visual inspection of a nude person to detect contraband or medical conditions. It includes visual examination of all body cavities, including the genitals and anus. The person is not touched in any manner during the search unless it is a forced search.

Transgender person - An umbrella term for people whose gender identity (i.e., internal sense of feeling male or female) and/or gender expression differs from the sex they were assigned at birth. This may include transsexuals, cross-dressers, gender-queer, and other gender-non-conforming people. Transgender people may identify in a variety of ways, including male, female, and female-to-male (FTM),

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male-to-female (MTF), genderqueer, or otherwise. A transgender identified person may or may not choose to alter their bodies hormonally and/or surgically.

REFERENCES AND ANCILLARY TERMS AND DEFINITIONS

- (a) Prison Rape Elimination Act (PREA)/ ORS 162.405, 162.415
- (b) 7.7.6 Frisk/Pat Searches of AICs
- (c) 9.0.4 AIC Rights and Conditions of Confinement, Generally
- (d) 12.1.6 Classification Interviews
- (e) ORS 174.100
- (f) Asexual: A person who is not romantically or sexually attracted to any gender.
- (g) Bisexuality: Has romantic attraction, sexual attraction or sexual behavior toward both males and females. It may also be defined as encompassing romantic or sexual attraction to people of all gender identities or to a person irrespective of that person's biological sex or gender. A bisexual identity does not necessarily equate to equal sexual attraction to both sexes; commonly, people who have distinct but not exclusive sexual preferences for one sex over the other also identify themselves as bisexual.
- (h) Cross-dresser: A person who engages in gender non-conforming behavior, as adopting the gender expression of the opposite sex for the purpose of sexual or emotional gratification but does not consider their gender identity different from their sex.
- (i) Gay: People who are sexually attracted to people of the same gender.
- (j) Gender Dysphoria or Gender Identity Disorder: Diagnosis used by psychologists and physicians to describe persons who experience significant discontent with the sex they were assigned at birth and/or the gender roles associated with that sex.
- (k) Gender expression: The ways in which an individual expresses their gender identity. This may be through clothing, behavior, mannerisms, speech patterns, social interaction or other characteristics. A person's gender expression does not always match their gender identity, particularly because of safety concerns for transgender individuals.
- (l) Gender queer: Having a gender identity that is neither male nor female, is between or beyond genders, or is some combination of genders, in terms of expression and/or identity.
- (m) Gender role: Theoretical construct in the social sciences and humanities that refers to a set of social and behavioral norms that, within a specific culture, are widely considered to be socially appropriate for individuals of a specific sex. Socially accepted gender roles differ widely between different cultures.
- (n) Intersex: People who possess or develop physical sex characteristics that do not fit neatly into conventional medical definitions of male or female. This can include chromosomes, genitals, hormones, and more. Intersex people have been referred to in the past as 'hermaphrodites.' Intersex is the preferred term.
- (o) Lesbian: Women who are sexually and emotionally attracted to women.
- (p) Non-conforming gender: A person's physical appearance and characteristics and/ or behaviors that do not conform to those typically associated with the person's sex at birth or traditional societal gender expectations.

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- (q) Physical Sexual Characteristics: The presence and type of primary and secondary sexual characteristics (i.e., genitals, developed breasts, hair distribution) which are typically used to define and classify a person's sex as male or female.
- (r) Questioning: Refers to the active process in which a person explores his or her own sexual orientation and/or gender identity associated with a person's assigned at birth biological sex.
- (s) Transgender Female: A person whose birth sex was male but who understands herself to be, self-identifies as, and/or lives life as a female.
- (t) Transgender Male: A person whose birth sex was female but who understands himself to be, self-identifies as, and /or lives life as a male.

GENERAL REQUIREMENTS

- (a) DCSO has zero tolerance for any staff sexual misconduct or sexual harassment directed towards LGBTQI arrestees/AICs. DCSO has zero tolerance for derogatory terms used towards LGBTQI AICs. (Examples of derogatory terms are: she-male, he-she, it, tranny.) Staff shall prevent and report all incidents of harassment and/or sexual misconduct or assault in accordance with DCSO and Corrections Division Policy/Procedure.
- (b) When discussing an arrestees/AICs sexual orientation or gender identity, for the purpose of making placement and custody decisions, Corrections Division staff must recognize the sensitive nature of the topic and potential repercussions for the AICs. Appropriate staff sharing will be conducted through the JMS system or Medical Information Policy. Sharing this information with other AICs is inappropriate, and is absolutely prohibited.
- (c) Conversations involving the transgender AIC in regards to their gender identity shall be conducted in private. Private areas may include; a medical exam room or single cell.
- (d) If an AIC discloses their sexual orientation or gender identity to staff without prompting during their custody, the staff member will report the information to their supervisor to ensure review of the AIC's classification.
- (e) In an effort to avoid confusion, and provide consistency from staff, an LGBTQI AIC's last name should be used when possible.
- (f) Staff shall not search, or physically examine a transgender-identified arrestee/AIC for the sole purpose of determining the AIC's sex at birth.
- (g) Upon identification of a transgender AIC staff shall conduct searches in accordance with the AIC's identified gender, in accordance with DCSO and Corrections Division Policy.
- (h) AICs may not be disciplined for refusing to answer or for not disclosing complete information in response to screening questions regarding gender identification.
- (i) Transgender AICs will only be held in single cells for their protection. This housing option is to be non-punitive, and must not result in any unnecessary loss of privileges, programs or access to medical or mental health care.
- (j) Transgender AICs shall have equal access to programmatic activities as non-LGBTQI AICs to include but not limited to the following;
 - 1. Showering in single person showers;
 - 2. AIC Worker positions;
 - 3. Grooming;

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4. Recreation;
5. AIC Programs; and,
6. Social Visitation.

INTAKE/ADMISSIONS

- (a) If questions are raised regarding an arrestee's gender during the initial booking process, the Intake Sergeant shall be notified that the arrestee is being processed.
- (b) If the arrestee identifies opposite of their expected gender identity, the sergeant shall ensure that the arrestee is searched by a deputy of the arrestee's identified gender.
- (c) When determining whether AICs identify as transgender, the following should be taken into consideration:
 1. An arrestee's appearance or behavior does not match the gender marker on the arrestee's custody paperwork or identification;
 2. The arrestee self-reports. If there is doubt or a question concerning the validity of the self-report, the deputy shall consult the Sergeant/WC;
 3. The arresting/transporting agency has alerted the DCSO staff to the arrestee's transgender/gender identity;
 4. Prior booking records/ medical records; and,
 5. Identification carried by the person identifies their gender, or conflicting gender markers on identification.
- (d) Upon completion of the initial booking process the Sergeant shall determine placement of the arrestee in open holding or assignment to a single cell. This determination shall be made after consulting both medical staff and the arrestee.
- (e) In accordance with DCSO and Corrections Division Policy, no LGBTQI AIC shall be subject to harassment or discrimination, and will be provided any and all AIC rights as outlined in the policy

ADMISSIONS CORRECTIONS HEALTH

- (a) During the booking process, the Booking Deputy shall assess the AIC by conducting a Medical Booking Screening and evaluation. This report will ask the AIC's gender identity and determine immediate and future medical needs if applicable.
- (b) Once determination of the AIC's gender identity is made, the Booking Deputy shall contact the Sergeant/WC to inform them of the arrestee's gender identity, for use in conducting a strip search. The Booking Deputy and/or Sergeant/WC will notify medical staff.

CLASSIFICATION CRITERIA

- (a) AICs identified as transgender shall be housed in available open holding or isolation cells as appropriate for up to 72 hours, excluding weekends and holidays, while the Transgender Review Board assesses appropriate housing options that address the following concerns;
 1. Safety;
 2. Protecting AICs at high risk for abuse; and,
 3. Minimizing perceived or actual fear of becoming a victim of violence.

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- (b) In accordance with DCSO Corrections Division Policy, LGBTQI AICs will have opportunities to seek changes in classification through submission of an AIC Request Form.

ADMISSION SEARCHES

- (a) If determination of an arrestee's gender cannot be made during the initial booking process, a female Deputy shall perform the pat search. If the arrestee's gender identity has been determined, a staff member of the same gender as that identified will conduct the search.
- (b) At no time shall a strip search be conducted solely for the purpose of determining an AIC's sex at birth.
- (c) LGBTQI individuals shall not be subject to more invasive searches than other AICs.
- (d) Requests to remove appearance related items such as adaptive devices, shall be done in accordance with DCSO Corrections Division Policy regarding acceptance of medical adaptive devices at booking. Clothing that conveys gender identity, wigs, and cosmetics shall be removed consistent with the requirements for the removal of similar items established for all arrestees/AICs.
- (e) Searches shall be conducted in a professional and respectful manner, and in the least intrusive method possible.

STATEMENT OF STRIP SEARCH PREFERENCE FORM

- (a) Once an AIC's gender identity has been established, the Booking Deputy shall complete the Statement of Strip Search Preference Form.
- (b) The statement of Strip Search Preference Form shall include the following;
 - 1. AIC's name of record;
 - 2. JMS ID number; and,
 - 3. Notification that strip searches will be conducted by staff members of the same gender as the arrestee's identified gender.
- (c) The form will be completed by the Booking Deputy and signed by both the Classification Deputy and the Sergeant/WC after confirmation of gender has been determined.
- (d) The Sergeant/WC will discuss the form with the AIC in private, and determine the preferred gender to conduct a strip search. The strip search shall be conducted in accordance with the following;
 - 1. The AIC shall be strip searched by a staff member(s) of the same gender identified in the Strip Search Preference Form completed by the Booking Deputy;
 - 2. The AIC shall be strip searched in the presence of two staff members. Whenever possible, one (1) of the staff members will be a supervisor; and,
 - 3. The search will be conducted in private, away from other AICs.
- (e) The Sergeant/WC shall ensure the AIC signs the Strip Search Preference Form prior to a strip search being conducted.

BOOKING DOCUMENTATION

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- (a) Upon completion of the booking process the Booking Deputy shall notify the Sergeant/WC of the booking and forward the following documentation to the Transgender Review Board:
 - 1. Booking Custody report;
 - 2. Strip Search Preference Form.
- (b) Submit the above documentation to the Sergeant/WC who will forward the documents the Transgender Review Board.
- (c) The Booking Deputy shall also submit to the Sergeant/WC a memo outlining the booking process, gender determination, housing assignment and views expressed by the AIC regarding their safety.
- (d) If the arrestee/AIC is going to be released on their own recognizance, information shall be documented in JMS for future reference.
- (e) Upon receipt of the information, the Jail Commander will convene the Transgender Review Board.

EMPLOYEE TRAINING

- (a) The Douglas County Sheriff's Office Training Officer will be responsible for training all corrections staff that may come into contact with AICs.
- (b) Training content shall include but not be limited to;
 - 1. DCSO zero tolerance policy for sexual harassment regarding LGBTQI; population, failure to report incidents involving transgender AICs, and sanctions for violation of policies and procedures;
 - 2. Basic information about LGBTQI population;
 - 3. Booking and housing policies and procedures;
 - 4. How to communicate effectively and professionally with LGBTQI AICs in a respectful and non-discriminatory manner;
 - 5. Confidentiality;
 - 6. Conducting cross-gender pat searches and searches of transgender and intersex AICs in a professional and respectful manner, in the least intrusive manner possible, consistent with security needs;
 - 7. Legal responsibilities; and,
 - 8. Resources available to LGBTQI persons.
- (c) Continued training shall be provided annually. All continued training may be completed in an online format.

FAILURE TO COMPLY WITH SEARCHES

- (a) AICs shall be notified of the search policies of the DCSO Corrections Division and the definitions of contraband via the AIC Manual.
- (b) AICs who refuse to comply with a legal search may be subject to the disciplinary process.

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Statement of Strip Search Preference Form For Transgender AICs

AIC Name: _____ **ID #** _____

Booking Date/Time: _____

While in Douglas County Sheriff's Office custody, I prefer to be searched by a deputy of the below indicated gender. I identify as a transgender person. I understand that this preference will be respected unless the situation is an emergency.

_____ I have elected to, and it is my preference and request, to be searched by a **female** corrections deputy.

_____ I have elected to, and it is my preference and request, to be searched by a **male** corrections deputy.

AIC Signature: _____ **Date:** _____

Witnessing Deputy/Sergeant: _____ **Radio #:** _____

Classification Deputy/Sergeant: _____ **Radio #:** _____

Sergeant/WC: _____ **Date:** _____