



New Jersey



VIA E-MAIL

August 26, 2021

Kenneth McCarthy, Warden  
Warren County Correctional Facility  
175 County Road Route 519 South  
Belvidere, NJ 07823

**RE: Obligations Under the New Jersey Law Against Discrimination Related to Housing Assignments for Transgender People in County Jails**

Dear Warden McCarthy:

On behalf of the ACLU of New Jersey and Garden State Equality, we write to you regarding the obligations of county jails under the New Jersey Law Against Discrimination, N.J.S.A 10:5-1 to 14.1 (LAD), to respect the rights of transgender people in your custody, including in housing assignments. It is our understanding that the facility you manage may have a policy or practice of housing people in units according to their sex assigned at birth, or previously did. This letter is meant to encourage you immediately to move toward a presumption of housing in line with gender identity instead, as required by the LAD. The New Jersey Department of Corrections (DOC) recently adopted such a policy, which can serve as a model for your facility.

As you know, the LAD prohibits discrimination on the basis of protected characteristics and applies to places of public accommodations, including county jails. The LAD states, in relevant part:

All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex, **gender identity or expression** or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.

[N.J.S.A. § 10:5-4 (emphasis added).]

Regarding so-called male and female facilities, the LAD explicitly provides that when the use of a public accommodation “is in its nature reasonably restricted exclusively to individuals of one sex, . . . **individuals shall be admitted based on their gender identity or expression.**” N.J.S.A. § 10:5-12(f)(1) (emphasis added).

County jails, like state prisons, are places of public accommodation.<sup>1</sup> Accordingly, discrimination on the basis of gender identity or expression – as well as other protected characteristics – is explicitly prohibited under the LAD. Moreover, because county jails have separate male and female units, they must allow admission to those facilities based on gender identity or expression. In other words, **you may not refuse to house a transgender woman in a female unit or to house a transgender man in a male unit.**

Public accommodations that do not comply with these legal requirements are subject to liability. Indeed, in 2019, the ACLU of New Jersey sued the DOC on behalf of a woman who was confined in men’s prisons because she is transgender, despite the DOC’s knowledge that she is a woman and her requests to be transferred to the women’s prison. The litigation, entitled *Sonia Doe v. NJ Department of Corrections*, concluded in a major settlement agreement this past June.<sup>2</sup> As part of the settlement terms, the DOC adopted a new policy regarding transgender, intersex and non-binary people in its custody. The DOC also agreed to pay Sonia Doe (a pseudonym) \$125,000 in damages, in addition to attorney’s fees.

The new DOC policy, which took effect July 1, 2021, is attached to this letter. It includes:

- A presumption that all people in state custody will be housed in line with their gender identity, not their sex assigned at birth, and a commitment that placement in line with gender identity will never be considered a management or security problem solely due to the person’s gender identity
- Intake and identification procedures that include questions about gender identity and pronouns, recognizing self-attestation
- A prohibition on harassment and discrimination by staff based on a person’s actual or perceived gender identity
- A requirement that staff use appropriate pronouns (she/her, he/him, they/them) and honorifics (Mr., Ms., Mx.)

---

<sup>1</sup> See, e.g., *Brown v. N.J. Dep’t Corr.*, MER-L-00503-18, Order Granting Pl.’s Mot. Partial Summary Judgment (July 6, 2018) (holding “the Edna Mahan Correctional Facility for Women (‘EMCFW’) is hereby declared a place of public accommodation pursuant to the Law Against Discrimination (‘LAD’)”).

<sup>2</sup> For more on the case, see the ACLU-NJ webpage, *Sonia Doe v. NJ Department of Corrections*, <https://www.aclu-nj.org/cases/sonia-doe-v-new-jersey-department-of-corrections-et-al>. See also Colleen O’Dea, “NJ says gender identity will determine where prisoners go,” *NJ Spotlight* (June 29, 2021), <https://www.njspotlight.com/2021/06/nj-says-gender-identity-will-determine-where-prisoners-go/>.

- Guarantees regarding gender-affirming undergarments, clothing, and other personal property
- Heightened privacy protections including the opportunity to shower separately and, as a general rule, prohibitions on cross-gender strip searches and on pat-down searches of transgender women by male officers
- An acknowledgment that medical and mental health treatment, including gender-affirming care, will be provided as medically appropriate.

The new DOC policy can serve as a model to your facility, and we encourage you to implement a similar policy and corresponding practices as a matter of urgency. At a minimum, your facility's policies and practices must allow for people to be housed according to their gender identity, rather than sex assigned at birth, consistent with the Law Against Discrimination. Your staff, including corrections officers as well as Administration, Intake and Medical departments, should also be trained and your PREA protocols updated accordingly. Information should be made available to people in your custody through the inmate handbook, including other resources.

Taking steps to ensure transgender people in custody are respected in housing decisions, interactions with correctional staff, and other aspects of their lives in jail is a legal requirement. It is also good public policy. Not only has the DOC adopted the changes described above; in 2019, the Attorney General issued Law Enforcement Directive 2019-3, regarding Law Enforcement Interactions with Transgender Individuals.<sup>3</sup> We encourage you to refer to this Directive as another model for the treatment of people in custody.

We are sending this letter to county jail wardens in New Jersey, the New Jersey Association of Counties, and the New Jersey County Jail Warden's Association to inform you of your legal obligations and encourage you to adopt immediate changes, using the new DOC policy as a model. We would welcome the opportunity to discuss this matter further and to provide any assistance as you establish or revise related policies and practices to bring them into compliance with the Law Against Discrimination.

Please consider the ACLU of New Jersey and Garden State Equality as a resource as you undertake these important efforts. If you would like to discuss this further, you are welcome to contact either of us, as well as ACLU-NJ Staff Attorney Tess Borden at [tborden@aclu-nj.org](mailto:tborden@aclu-nj.org) or (973) 854-1733.

---

<sup>3</sup> Attorney General Law Enforcement Directive 2019-3, "Law Enforcement Interactions with Transgender Individuals" (Nov. 20, 2019), <https://www.nj.gov/lps/dcj/agguide/directives/ag-directive-2019-3.pdf>.

Sincerely,



Jeanne LoCicero  
Legal Director  
ACLU of New Jersey  
jlocicero@aclu-nj.org  
(973) 854-1715



Christian Fuscarino  
Executive Director  
Garden State Equality  
fuscarino@gardenstateequality.org  
(973) 509-5428

cc: Warden Eugene Caldwell, President, New Jersey County Jail Wardens Association  
John Donnadio, Executive Director, New Jersey Association of Counties

# **Exhibit A**



**NJ Department of Corrections  
Level I / III  
Internal Management Procedures**

**Internal Management  
Procedure  
PCS.001.TGI.01**

Page 1 of 11

**Internal Management Procedure Title:**

**Transgender, Intersex and Non-Binary Inmates**

**Effective Date:**

December 15, 2019

**Revised Effective:**

July 1, 2021

**Authority:** NJ DOC PCS.001.008  
**Related Authority:** Federal Prison Rape Elimination Act of 2003 (PREA) 42 U.S.C. §§15601, 28 C.F.R. § 115.86

**Promulgating Office:**

Office of the Commissioner

**Professional Association Standard cited:** NA

**Applicability:** This Level I/Level III Internal Management Procedure applies to all organizational units of the New Jersey Department of Corrections.

**Supersedes:** *PCS.001.TGI.01 dated December 15, 2019*

**Review Schedule:**

This document is scheduled for review on or about July 1, 2023.

**This document was reviewed and approved by:**

**Victoria L. Kuhn, Esq., Acting Commissioner on June 25, 2021.**

Documentation of the reviews/approvals are maintained by the APPM Unit.

**I. PURPOSE**

To establish procedures regarding the health, safety, and dignity of transgender, intersex, and non-binary inmates in the custody of the NJDOC, including ensuring inmates' ability to live in line with their gender identity.

**II. DEFINITIONS**

The following terms, when used in this procedure, shall have the following meanings, unless the context clearly indicates otherwise:

**Cisgender** means a person whose gender assigned at birth (sometimes referred to as sex assigned at birth) matches their gender identity. For instance, if a person was assigned female at birth, and self-identifies as a woman or girl, that person is cisgender.

**Electronic Medical Record (EMR)** means the primary healthcare record of an inmate in an electronic format that contains recorded information concerning the medical, dental and mental

<p><b>Internal Management Procedure Title:</b></p> <p><b>Transgender, Intersex and Non-Binary Inmates</b></p>	<p><b>Effective Date: December 15, 2019</b></p> <p><b>Revised: July 1, 2021</b></p>	<p><b>Internal Management Procedure # PCS.001.TGI.01</b></p> <p><b>Page 2 of 11</b></p>
---	---	---

health history and related health activities of the inmate. This is the primary healthcare record of all inmates who are processed in the NJDOC system.

**Gender** means a person’s sex-related or gender-related characteristics, including one’s gender identity.

**Gender Expression** means a person’s gender-related appearance and behavior, whether or not stereotypically associated with the person’s assigned gender at birth. It is the manner in which a person represents or expresses their gender to others, such as through their behavior, clothing, hairstyles, activities, voice or mannerisms.

**Gender Identity** means a person’s internal, deeply held knowledge of their own gender, regardless of the gender they were assigned at birth. All people have a gender identity, not just transgender people.

**Gender Non-Conforming** means a person whose gender expression does not conform to traditional gender expectations.

**Inmate Personal Property** means items owned by an inmate that have been approved for inmate retention while incarcerated in a correctional facility. Inmate personal property may also be property held by a correctional facility on behalf of an inmate and handled in accordance with N.J.A.C. 10A:1-11.

**Institutional PREA Compliance Manager (IPCM)** means the NJDOC staff member designated by the institutional Administrator to coordinate and supervise PREA compliance within the facility. This position will be at the level of an Assistant Superintendent or higher.

**Intersex** means a person whose sex characteristics may not fit medical definitions of male and female. These characteristics may include, but are not necessarily limited to, internal reproductive organs, external genitalia, and sex chromosomes.

**iTAG** or **IMS** means the NJDOC’s computerized database used to track events of an inmate’s incarceration. iTAG contains inmate sentencing information, alerts, and chronological history.

**New Jersey Department of Corrections (NJDOC)** means that agency in the Executive Branch of the New Jersey State Government whose functions are to protect the public and provide for the custody, care, discipline, training and treatment of persons committed to State correctional facilities. In this document, this is also referred to as the “Department” or the “NJDOC.”

**Non-Binary** means a gender that is not exclusively male or female. The term also means those with more than one gender or with no gender at all. It is also inclusive of terms such as gender fluid, agender, bigender, or gender expansive.

**PREA** means the Federal Prison Rape Elimination Act of 2003. This act was established to provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and provide information, resources, and recommendations and funding to protect individuals from prison rape, sexual abuse and sexual harassment. The major provisions of

<b>Internal Management Procedure Title:</b>  <b>Transgender, Intersex and Non-Binary Inmates</b>	<b>Effective Date:</b> <b>December 15, 2019</b>  <b>Revised:</b> <b>July 1, 2021</b>	<b>Internal Management Procedure #</b> <b>PCS.001.TGI.01</b>  <b>Page 3 of 11</b>
--	--	--

PREA include adherence to a zero-tolerance standard for the incidence of inmate sexual assault and rape, the development of standards for the detection, prevention, reduction and punishment of prison rape and the collection and dissemination of information on the incidence of prison rape.

**PREA Accommodation Committee (PAC)** means the sub-committee of the Sexual Assault Advisory Council responsible for making individualized determinations about transgender, intersex, or non-binary inmates' privacy, housing, and programming assignments.

**PREA Agency Coordinator** means the NJDOC staff member designated by the NJDOC Commissioner to coordinate and guide agency and individual facility implementation of a zero-tolerance approach to preventing, detecting and responding to sexual abuse and sexual harassment.

**PREA Standards** means written rules that require all correctional facilities to comply with minimum acceptable benchmarks in order to reduce and eliminate the incidence of prison rape. These directions are directed toward the states by the federal government, as published in 28 CFR Part 115.

**Sexual Assault Advisory Council** means the NJDOC committee that establishes guidelines and standards and works to support those guidelines and standards for the prevention, detection, protection, and elimination of prison rape within the NJDOC (referred to as "Council" in this policy).

**Sexual Orientation** means a person's romantic or sexual attraction to people of another and/or the same gender. Common terms used to describe sexual orientation include, but are not limited to, straight, lesbian, gay, bisexual, and asexual. Sexual orientation and gender identity are different: gender identity refers to one's internal knowledge of their gender, while sexual orientation refers to whom one is attracted to.

**Transgender** means people whose gender identity and/or expression is different from cultural expectations based on the gender they were assigned at birth. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc. This term is an adjective. Using this term as a verb (i.e., transgendered) or noun (i.e., transgenders) is offensive and should be avoided.

### III. POLICY

It is the policy of the NJDOC to address the needs of transgender, intersex, and non-binary inmates in a manner consistent with federal Prison Rape Elimination Act (PREA) standards, the New Jersey Law Against Discrimination (NJLAD), and in accordance with departmental regulations, policies and procedures.

Once the NJDOC learns and confirms an inmate's gender identity, using the procedures laid out in this document, it shall determine the inmate's facility and housing unit assignment, with a presumption that the inmate will be housed in line with their gender identity. The PREA Accommodation Committee (PAC) may deviate from the presumptive placement after an



<b>Internal Management Procedure Title:</b>  <b>Transgender, Intersex and Non-Binary Inmates</b>	<b>Effective Date: December 15, 2019</b>  <b>Revised: July 1, 2021</b>	<b>Internal Management Procedure # PCS.001.TGI.01</b>  <b>Page 4 of 11</b>
--	--	--

individualized determination and upon written certification that the placement would jeopardize the inmate's health and safety. When making such determinations, the inmate's own views with respect to their safety shall be given serious consideration.

#### IV. PROCEDURES

##### A. Identifying Inmates' Gender Identity

1. Inmates are able to provide information to NJDOC about their gender identity at any time during their incarceration at NJDOC. This includes, but is not limited to, initial reception, facility intake, and intra-institutional transfer or at any time during their incarceration.
2. While court documents are the documents of record for identification and reception purposes at NJDOC, these may be supplemented by other sources or records that indicate an inmate's gender identity, intersex, and/or non-binary status, of which NJDOC may receive notice.
3. Upon initial reception/intake at NJDOC, as part of the PREA Risk Assessment, and through communication with NJDOC including but not limited to communication with Medical, Social Services, or Administration, inmates shall have the opportunity to inform the NJDOC that they are transgender, intersex, or non-binary. At any time during their incarceration, inmates may identify as transgender, intersex, or non-binary or otherwise provide information about their gender identity.
4. Inmates identified as transgender, intersex, or non-binary, including those who self-identify, will be referred to the Institutional PREA Compliance Manager (IPCM).
5. Within three business days of notification, the facility IPCM shall confidentially meet with the inmate. During this meeting, the inmate will be afforded the opportunity to express their own views with respect to safety and housing and will be notified of the rights and accommodations available to them under PREA and under this Policy, including referral to the relevant section of inmate handbook or other written summary. The inmate will complete the PREA Accommodation Committee (PAC) *Gender Identity Information form*.
6. The IPCM will contact the Central Office PREA Compliance Unit to schedule a PAC housing/program review in accordance with Part IV.B. below.
7. In addition to information provided by the IPCM, the inmate handbook for each facility will contain a statement providing inmates with information on how to exercise their rights under this policy, including but not limited to how an inmate may request a meeting with the IPCM, and how to request housing in line with the inmate's gender identity.

<p><b>Internal Management Procedure Title:</b></p> <p><b>Transgender, Intersex and Non-Binary Inmates</b></p>	<p><b>Effective Date: December 15, 2019</b></p> <p><b>Revised: July 1, 2021</b></p>	<p><b>Internal Management Procedure # PCS.001.TGI.01</b></p> <p><b>Page 5 of 11</b></p>
---	---	---

8. Transgender, intersex, or non-binary inmates will be housed in single cell status until final housing and programming assignments are made in accordance with Part IV.B below. However, single cell status as used in this paragraph shall not mean isolation or restrictive housing. This paragraph shall not prevent an inmate from requesting and being provided voluntary protective custody until the final housing and programmatic assignments are made if the inmate feels unsafe in their current placement.

## **B. Housing and Classification Reviews**

1. The NJDOC considers whether the particular placement would present management or security problems in all housing and programmatic assignments. This consideration will be applied equally to all inmates, regardless of their sex or gender identity, and may justify a deviation from an inmate's presumptive placement in line with gender identity for cisgender, transgender, intersex, and non-binary inmates alike. Although this consideration therefore applies to Part IV.B of this document, under no circumstances will a transgender, intersex, or non-binary inmate's placement in line with their gender identity be considered a management or security problem solely due to their gender identity.
2. Once the NJDOC learns and confirms the gender identity of an inmate using the procedures laid out in this document, it shall determine the inmate's facility and housing unit assignment, with a presumption that the inmate will be housed in line with their gender identity. The PREA Accommodation Committee (PAC) may deviate from the presumptive placement after an individualized determination and upon written certification that the placement would jeopardize the inmate's health and safety.
  - a. In some cases, NJDOC may learn and confirm that an inmate's gender identity is neither male nor female. In such cases, inmates shall be housed in the most appropriate placement, taking into consideration whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems. The inmate's own views with respect to their safety shall be given serious consideration.
3. In deciding transgender inmates' precise housing and programming assignments, pursuant to PREA Standard 115.42 (b-e), the NJDOC makes individualized determinations about how to ensure the safety of each inmate, and considers on a case-by-case basis whether a particular placement would ensure the inmate's health and safety. When determining such assignments, the transgender inmate's views with respect to their safety shall be given serious consideration. At all times, the facility assignment will be in compliance with Parts IV.B.1-2 of this document.
4. A transgender, intersex, or non-binary inmate's housing assignment will be reviewed by the PREA Accommodation Committee (PAC) as follows:

<b>Internal Management Procedure Title:</b>  <b>Transgender, Intersex and Non-Binary Inmates</b>	<b>Effective Date: December 15, 2019</b>  <b>Revised: July 1, 2021</b>	<b>Internal Management Procedure # PCS.001.TGI.01</b>  <b>Page 6 of 11</b>
--	--	--

- a. At all times, the PAC will ensure that the inmate's facility assignment complies with Parts IV.B.1-2 of this document. If the PAC has a substantiated, credible, and non-discriminatory basis for believing that an inmate is not sincere in their assertion of their gender identity and is asserting it for an improper purpose, the PAC may ask further questions to better understand the inmate's identity and offer the inmate a fair opportunity to present additional information. The PAC must make a written record of the basis for its belief, which shall be included in the inmate's classification file and available to the inmate should they challenge the PAC's decision pursuant to Part IV.B.3(e) or other procedures.
- b. Because multiple classifications and placements exist for male inmates within male facilities and female inmates within female facilities, in deciding the specific placement for a particular inmate, the PAC will consider:
  - i. All aspects of an inmate's social and medical transition when formulating recommendations to address safety and privacy concerns, including factors such as behavioral history, institutional adjustment, overall demeanor, and likely interactions with other inmates; and the inmate's own views with respect to safety.
  - ii. Whether a placement would threaten the orderly operation, management and security of the correctional facility and/or pose a risk to other inmates in the facility (e.g., considering inmates with histories of trauma, privacy concerns, etc.). This consideration will be applied equally to all inmates, regardless of their gender identity.
  - iii. The following factors on a case-by-case basis:
    1. The Gender Identity Information Form, if completed;
    2. custody level and sentencing information;
    3. criminal history;
    4. institutional disciplinary history;
    5. current gender expression;
    6. the inmate's own views regarding safety;
    7. medical and mental health needs/information/status;
    8. compliance with medically recommended treatments;
    9. vulnerability to sexual victimization;
    10. likelihood of perpetrating sexual abuse;
    11. facility-specific factors including physical layouts; and
    12. any other relevant information.

<p><b>Internal Management Procedure Title:</b></p> <p><b>Transgender, Intersex and Non-Binary Inmates</b></p>	<p><b>Effective Date: December 15, 2019</b></p> <p><b>Revised: July 1, 2021</b></p>	<p><b>Internal Management Procedure # PCS.001.TGI.01</b></p> <p><b>Page 7 of 11</b></p>
---	---	---

These factors are also considered on a case-by-case basis in deciding the specific placement for a cisgender inmate.

- iv. The considerations outlined in Part IV.B.3(b)(i) through (iii) shall not apply to decisions to place a transgender inmate in a facility in line with their gender identity.
  - c. The transgender, intersex, or non-binary inmate shall be afforded the opportunity to attend the PAC meeting unless contraindications exist or they choose not to attend. The inmate's presence is not required. If the inmate refuses to meet with the IPCM or PAC, the PAC shall convene, as required, and complete the review based upon available information. If contraindications exist and prevent attendance, the PAC must make a written record of the contraindications and the reasons they prevent attendance, which shall be included in the inmate's classification file and available to the inmate should they challenge the PAC's decision pursuant to Part IV.B.4(e) or other procedures.
  - d. The PAC will make a decision regarding housing within 14 business days. The inmate will be notified in writing of the PAC's decision, which shall include a written statement of reasons, via the classification meeting process as denoted in NJAC 10A:9. The decision will be recorded in the inmate's classification meeting notes.
  - e. If the inmate disagrees with the decision of the PAC, they may submit an appeal to the Commissioner, or the Commissioner's designee, who will render a final decision, which shall include a written statement of reasons, and notify the inmate within 14 business days. Upon request by the inmate, the full record of the decision-making of the PAC and Commissioner, or Commissioner's designee, shall be made available to the inmate within 7 business days. If any items cannot be disclosed to the inmate because of confidentiality, the inmate shall be informed why such items are confidential.
  - f. The procedures outlined in Part IV.B.3 shall apply regardless of when NJDOC learns an inmate is transgender, intersex, or non-binary, whether at intake or after a significant period of NJDOC custody. Inmates may request, via the IPCM or Administration staff, a review by the PAC pursuant to Part IV.B.3 if they believe their current placement does not align with their gender identity and considerations enumerated in this section.
5. The housing assignment/transfer of inmates approved to be housed in a different facility due to their gender identity will be handled in accordance with all applicable operational policies and procedures and the provisions set forth in N.J.A.C. 10A.

<p><b>Internal Management Procedure Title:</b></p> <p><b>Transgender, Intersex and Non-Binary Inmates</b></p>	<p><b>Effective Date: December 15, 2019</b></p> <p><b>Revised: July 1, 2021</b></p>	<p><b>Internal Management Procedure # PCS.001.TGI.01</b></p> <p><b>Page 8 of 11</b></p>
---	---	---

6. In keeping with PREA standard 115.42, the particular placement of a transgender, intersex, or non-binary inmate shall be reassessed by the IPCM and supplemental staff as deemed appropriate by the facility Administrator, or the Administrator's designee, at least twice each year.
7. An Administrator, or Administrator's designee, who receives an inmate at a facility consistent with the inmate's gender identity may request an immediate review when significant adjustment issues emerge, or upon the request to return to the previous facility. The Administrator shall make this request through the PAC. The Administrator, or administrator's designee, shall provide a written description of the significant adjustment issues and reasons for the request, which shall be included in the inmate's classification file and available to the inmate should they challenge the PAC's decision pursuant to Part IV.B.3(e) or other procedure.
8. In accordance with PREA standards, all transgender, intersex, and non-binary inmates will receive an in-person review every six months to assess the inmate's institutional adjustment and safety. The PREA Compliance Manager will meet with the inmate prior to this review and complete the **Gender Identity Information Reassessment form**. This form will be maintained by the IPCM. A record of these reviews will be recorded and maintained in the inmate's iTAG Progress Notes.
9. In keeping with PREA standard 115.42, NJDOC shall not place transgender, intersex, or non-binary inmates in dedicated facilities, units, or wings solely on the basis of such identification or status.

### **C. Respect and Confidentiality Responsibilities**

1. Staff shall not harass or discriminate against any inmate based on their actual or perceived gender identity. Unprofessional and derogatory references towards any inmate is not acceptable under any circumstances.
2. Like all other NJDOC inmates, transgender, intersex, and gender non-binary inmates shall be referred to in a gender-neutral form of address (e.g., by the legal last name or "Inmate" last name). However, if staff are using gender-specific pronouns, and/or honorifics (Mr., Ms., Mx. or any other used by the inmate) to refer to an inmate, they must use the pronouns and honorifics associated with that inmate's gender identity. Intentional and repeated misuse of gender pronouns or titles is prohibited. The name entered on the inmate's Judgment of Conviction/Commitment Order and court documents will remain the official committed name for all departmental records (incident reports, progress reviews, sentence calculations, etc.). However, any additional names or aliases can be entered into ITAG as appropriate.
3. With respect to requests by inmates for legal name changes or to change gender markers on their official legal forms of identification, NJDOC has no authority over

<b>Internal Management Procedure Title:</b>  <b>Transgender, Intersex and Non-Binary Inmates</b>	<b>Effective Date:</b> <b>December 15, 2019</b>  <b>Revised:</b> <b>July 1, 2021</b>	<b>Internal Management Procedure #</b> <b>PCS.001.TGI.01</b>  <b>Page 9 of 11</b>
--	--	--

such procedures and such requests shall be processed in accordance with the governing agency's procedures and in accordance with applicable state law.

4. Staff shall only share information regarding transgender, intersex or non-binary status for purposes of risk assessment, classification, or housing placement, medical and mental health care, programming placement, and any other reason that could affect the safety and security of the inmate and/or of the correctional facility.
5. Any references to an inmate's transgender, intersex, or non-binary status shall be redacted from non-medical reports prior to issuance, to include any OPRA requests.

#### **D. Medical Treatment**

1. Medical/mental health treatment of transgender, intersex, and non-binary inmates, including but not limited to medically appropriate gender-affirming care, will be provided as medically necessary in accordance with procedures determined by the Department's health care provider.
2. Staff shall not handle an inmate's request for medical attention with any less urgency or respect because of that inmate's actual or perceived gender identity or gender expression.

#### **E. Privacy and Searches**

1. Pursuant to PREA Standard 115.15, transgender, intersex, and non-binary inmates shall be given the opportunity to shower separately from other inmates.
2. Pursuant to PREA Standards, Staff shall conduct searches of inmates, including transgender, intersex, or non-binary inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs. Search procedures for all inmates are delineated in *Internal Management Procedure CUS.001.SEA.01 Searches of Inmates and Correctional Facilities*.

In line with N.J.A.C. 10A:3-5.7, strip searches shall be conducted by staff of the same gender identity as the inmate, except under emergent conditions as ordered by the Administrator, Associate Administrator, Assistant Superintendent or the highest ranking custody supervisor on duty. In line with PREA Standard 115.15, pat-downs of female inmates, including cisgender and transgender women, shall be conducted by staff of the same gender identity as the inmate, except under emergent conditions as ordered by the Administrator, Associate Administrator, Assistant Superintendent or the highest ranking custody supervisor on duty.

3. Staff shall not search or physically examine a transgender, intersex, or non-binary inmate for the sole purpose of determining the inmate's genital status.

<p><b>Internal Management Procedure Title:</b></p> <p><b>Transgender, Intersex and Non-Binary Inmates</b></p>	<p><b>Effective Date: December 15, 2019</b></p> <p><b>Revised: July 1, 2021</b></p>	<p><b>Internal Management Procedure # PCS.001.TGI.01</b></p> <p><b>Page 10 of 11</b></p>
---	---	--

## **F. Personal Property**

1. Inmates identified as transgender, intersex, or non-binary shall be issued, allowed to purchase, and allowed to retain undergarments, clothing, and other personal property in line with their gender identity, subject to the requirements of Part IV.E.2, regardless of which facility they are in and consistent with their custody status.
  
2. Inmates will be informed of their ability to obtain gender-specific personal property as outlined in the *Gender Identity Information form*, regardless of housing assignment. For transgender, intersex, or non-binary inmates housed in line with their gender assigned at birth, but nevertheless in compliance with Parts IV.B.1-2 of this Policy:
  - a. Any such gender-specific personal property requests will be processed by the institutional PREA Compliance Manager and reviewed by the facility Administrator, or the Administrator's designee, and Operations Director for safety and security purposes prior to approval.
  
  - b. The facility Administrator, or the Administrator's designee, will coordinate having the appropriate number of approved items sent to the facility for purchase/distribution to the inmate. Retention amounts of these items shall be in accordance with *Policy Statement IMM.010.001 Basic Inmate Clothing Issues, Bedding and Linen* and its associated Internal Management Procedures.

<b>Internal Management Procedure Title:</b>  <b>Transgender, Intersex and Non-Binary Inmates</b>	<b>Effective Date:</b> <b>December 15, 2019</b>  <b>Revised:</b> <b>July 1, 2021</b>	<b>Internal Management Procedure #</b> <b>PCS.001.TGI.01</b>  <b>Page 11 of 11</b>
--	--	---

**V. CROSS REFERENCE DOCUMENTS AND POLICIES**

<b>Document/Policy Number</b>	<b>Title</b>	<b>Effective - Revision Date</b>
PCS.001.008	PREA Compliance	April 2020
IMM.001.004	Zero Tolerance Policy: Sexual Assault	April 2019 revised
CLS.005.001	Review of inmates by Classification and Review Committees	January 2019 revised
CUS.001.011	Searches of Inmates and Correctional Facilities	September 2020 revised
IMM.009.001	Inmate Personal Property	June 2007
IMM.010.001	Inmate Clothing Issues, Bedding and Linens	September 2009
CUS.001.SEA.001	Searches of Inmates and Correctional Facilities	August 2020 revised
MED.MHS.001.001	Access to Mental Health Services	January 2021 revised
MED.IMA.001	Health Appraisals at Reception	February 2021 revised
MED.IMA.005	Intersystem Transfers	February 2021 revised

**VI. APPLICABLE FORMS**

<b>Form Number</b>	<b>Form Title</b>	<b>Effective/ Revision Date</b>
	Consolidated Gender Identity Information Form	Pending