



*State of North Carolina
Department of Public Safety
Prisons*

Chapter: E
Section: .2700
Title: **Evaluation & Management
of Transgender Offenders**
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POLICY AND PROCEDURE

References 5th Edition Standards for Adult Correctional Institutions

Related ACA Standards 5-ACI-4B-34

28 CFR Part 115 – Prison and Jail Standards, National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA)

.2701 PURPOSE

To establish policy within the North Carolina Department of Public Safety, Prisons, regarding the manner in which evaluation and management will be provided for offenders who self-identify as transgender.

.2702 DEFINITIONS

- (a) Birth Sex – The sex that a person has or is assigned to at birth (chiefly used in contexts where it is contrasted with a person’s gender identity).
- (b) Gender – A construct used to classify a person as male, female, both, or neither. Gender encompasses aspects of social identity, psychological identity, and human behavior.
- (c) Gender Identity – A person's sense of their own gender communicated to others by their gender expression.
- (d) Gender Expression – The way in which a person communicates their gender identity, typically through their appearance, dress, and behavior.
- (e) Gender Nonconforming – A person whose appearance or manner does not conform to traditional societal gender expectations.
- (f) Transgender – A person whose gender identity, internal sense of feeling male or female, is different from their assigned sex at birth.

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- (g) Gender Dysphoria (GD) – A mental health diagnosis currently defined by Diagnostic and Statistical Manual of Mental Disorders (DSM-5) as, "A strong and persistent cross gender identification. It is manifested by a stated desire to be the opposite sex and persistent discomfort with his or her biologically assigned sex." This condition is associated with, "clinically significant distress or impairment in social, occupational, or other important areas of functioning." Not all transgender offenders have a diagnosis of GD.
 - (h) Intersex – A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.
 - (i) Transition – Process of changing one's gender presentation and/or sex characteristics to bring them into alignment with one's internal sense of gender identity, i.e., to change one's gender expression or body to better reflect one's gender identity.
 - (j) Facility Transgender Accommodation Review Committee (Facility TARC or FTARC) – A multidisciplinary committee that includes representatives from psychiatry (as needed), behavioral health, primary care provider, nursing, administration (Associate Wardens for custody and operations/programs), unit manager, and the facility PREA Compliance Manager.
 - (k) Division Transgender Accommodation Review Committee (Division TARC or DTARC) – A multidisciplinary committee that includes, at a minimum, the Medical Director, Chief of Psychiatry, Behavioral Health Director, Director of Rehabilitative Services and the PREA Director.
 - (l) Routine Accommodation – Gender identity-based accommodation requests approvable by Facility TARCs per this policy.
 - (m) Non-routine Accommodation – Gender identity-based accommodation requests requiring approval by the Division TARC per this policy.

.2703 PROCEDURES

- (a) Each Prison will have a Facility TARC. The Warden will designate TARC members to include a psychologist or other health services representative as committee chair. The Facility TARC will develop a method to ensure that staff at the facility are aware of how to contact the chair.
- (b) The Facility TARC will make routine accommodation determinations based on clinical evaluations, historical documents, and offender interviews. These determinations may

address issues including, but not limited to, safety planning, allowance, or prohibition of items designed for masculinizing or feminizing personal appearance, request for continued hormone therapy, or other treatment interventions occurring prior to incarceration, request for gender specific clothing items, private showering, and/or specific housing considerations. The Facility TARC will review all cases for compliance with PREA standards as it relates to the transgender offender defined in North Carolina, Department of Public Safety/Prisons policy, Chapter F. Section .3400 Offender Sexual Abuse and Sexual Harassment.

- (c) Transgender offenders may be identified and referred to the Facility TARC during processing, upon transfer to a prison, or at any time during their incarceration. A referral can be made by any staff person by contacting the PREA Compliance Manager or the Facility TARC chair. In all cases, the PREA Compliance Manager should be informed of offenders identifying as transgender to ensure compliance with PREA standards.
- (d) A transgender offender will sign an authorization for release of information to obtain all pertinent outside medical and mental health records and to release medical and mental health information to be reviewed during Facility and Division TARC meetings. If the offender refuses to sign for release of information, the review process will move forward with the decision based on available documentation.
- (e) When a transgender offender is transferred within the system, PREA considerations will be addressed immediately upon arrival to the receiving facility. Accommodations granted previously will continue pending review by the Facility TARC.
- (f) A transgender offender requesting accommodation shall be scheduled for an interview with the Facility TARC. The offender may decline participation in the Facility TARC. If the offender refuses to meet with the Facility TARC, the Facility TARC will convene as required and complete the Facility TARC report based upon available information.
- (g) **The Facility TARC process should reflect individualized consideration and review. For this reason and to safeguard medical privacy, offenders should be interviewed separately and not as a group. Once the committee convenes, it may in a single meeting consider multiple cases, but each case should be considered separately and outside the presence of any offender**
- (h) The transgender offender shall be informed of any Facility TARC privacy and housing recommendations within 48 hours of the meeting.
- (i) The offender will be afforded the opportunity to appeal decisions made by the Facility TARC. The offender can write a letter of appeal to be submitted to the Facility TARC chair who will submit the appeal to the Division TARC for review.

(j) The following procedures will be followed for all transgender offenders who either self-identify or are referred for review:

(1) Not Requesting Accommodation

(A) If a transgender offender is NOT requesting accommodation, the Facility TARC may review safety and security considerations only. An immediate decision concerning safety or security may be made by the facility head pending review by the Facility TARC. In these circumstances, the transgender offender will not be required to undergo a behavioral health evaluation or be interviewed by the Facility TARC.

(B) When no accommodation has been requested, the assigned case manager will be notified and will meet with the transgender offender twice per year or more frequently as outlined in the offender's case management Service Priority Level plan. The case manager will assess for any risks or accommodation needs that warrant referral to the Facility TARC.

(2) Requesting Accommodation

A transgender offender who requests accommodation related to their gender identity will receive evaluations from medical and behavioral health providers. A licensed behavioral health clinician will complete an evaluation to include input from the facility staff psychiatrist for all offenders prescribed psychiatric medications or otherwise under the care of or referral to a psychiatrist. The offender shall be advised of the limits of confidentiality as they relate to the TARC process prior to the initiation of the evaluation. These evaluations will typically take place prior to convening a Facility TARC meeting, but consent from the offender should be obtained in writing on the DC-411 C (Transgender Accommodation Review Committee Consent and Authorization) form prior to convening the Facility TARC.

In the event an offender refuses to consent for the Accommodation Review process or related medical or behavioral health evaluations, the Facility TARC will meet to review safety and security considerations for that offender in accordance with PREA standards. The Facility TARC will document the offender's refusal on the DC-411F. Although consideration of new accommodations would be on hold pending the offender's consent, the offender's refusal should not impede access to previously approved accommodations or to continuation of hormone treatment if the medical consideration of the hormone

treatment continuation otherwise meets the guidance of this policy, section .2703 (j) (3) *Routine Accommodation Review, (A) Continuation of Hormone Therapy.*

- (A) When the transgender offender requests accommodation related to their gender identity, the multidisciplinary Facility TARC will convene. A
- (B) diagnosis of Gender Dysphoria is not required for an offender to be considered for accommodation.
- (C) The Facility TARC will convene to review both routine and non-routine accommodation requests. Non-routine accommodation requests will be reviewed and deferred to the Division TARC.
- (D) In preparation for the Facility TARC review:
 - (i) The medical representative will provide a synopsis of any related medical examination.
 - (ii) The PREA Compliance Manager will provide a synopsis of any PREA related allegations and infraction history.
 - (iii) The Behavioral Health Representative will provide a synopsis of any related behavioral health and psychiatric evaluations.
 - (iv) The TARC Chair will ensure each member of the TARC has a signed staff confidentiality form on file per Health & Wellness Services Confidentiality Policy #AD IV-3.
- (E) Routine accommodations (defined below) will be reviewed by the Facility TARC and approved in consultation with the Warden.
- (F) After review by the Facility TARC, each non-routine recommendation (defined below) will be referred to the Division TARC. Routine accommodations not approved at the Facility TARC or deferred will also be reviewed by the Division TARC.
- (G) All accommodation requests will be reviewed on a case by case basis considering the offender's medical and mental health history as well as risk safety profile.

(H) Offenders who have been previously reviewed by the Facility or Division TARC may be referred for re-evaluation. When re-evaluated by the Facility TARC the DC-411U is used to update accommodations.

(3) Routine Accommodation Review

Routine accommodation decisions will be made at the facility level by the Facility TARC and documented on the DC-411F. Exceptions may be made by the

Warden based on local safety or security considerations. Rationale for denying routine accommodations will be documented in committee reports.

Approved items available in the canteen (either male or female) will be funded from the offender's account. Routine accommodation items are:

- (A) Continuation of hormone therapy – If immediately prior to incarceration, hormone therapy was prescribed in the community by a licensed provider as part of a professionally accepted protocol toward gender affirmation, then unless clinically contraindicated, hormone therapy will be continued. Consultation with endocrinology may be requested by the facility medical provider and, if appropriate, hormone therapy may be continued while awaiting evaluation by endocrinology. Interruption in hormone therapy should be avoided unless otherwise clinically indicated.
- (B) Male or female undergarments – If approved, the offender shall be issued state undergarments; undergarments purchased from outside sources shall not be permitted. Approval of undergarments may be rescinded if worn in a manner that is disruptive or provocative.
- (C) Hygiene/hair products, cosmetics, and other canteen – Male or female items may be purchased by offenders per NCDPS Fiscal Policy and Procedure Manual .0500.
- (D) Private showering.
- (E) Facility housing considerations – Offender may be approved for alternate housing assignments within the facility to enhance staff supervision.
- (F) The Facility TARC may refer to the Division TARC any requests for additional items not listed.

(4) Non-Routine Accommodation Review

Non-routine accommodation requests shall be reviewed by the Facility TARC and forwarded to the Division TARC for review. The Division TARC review shall include summary information from the offender's psychological evaluation, medical examination report, prior medical and mental health records and if available, recent infraction history and PREA allegations. When reviewing non-routine accommodations, the Division TARC will consider on a case-by-case basis whether an accommodation will ensure the offender's health and welfare without compromising facility safety and security.

All accommodation requests for surgical intervention or gender-identity-consistent facility transfer shall be reviewed by the Division TARC with recommendations referred to the Assistant Commissioner of Prisons and Director of Health & Wellness Services for review and determination.

Determinations made by the Division TARC will be summarized on the DC-411D. The DC-411D will be scanned, attached, and filed in the electronic medical record with notification to the Facility TARC Nursing and Behavioral Health representatives.

The Division TARC will review non-routine accommodations to include but not limited to:

- (A) Initiation of hormone therapy:
 - (i) For those offenders reporting the use of hormone therapy prior to arrival to prison, but without an active prescription, a decision regarding initiating or continuing hormone therapy will be considered on a case by case basis.
 - (ii) All cases being considered for initiation of hormone treatment will be referred through the Division utilization review process for endocrinology consultation.
- (B) Gender-consistent facility assignment – Decisions to transfer an offender to a facility consistent with their gender identity are not permanent and will be continually reassessed for safety and security considerations.
- (C) Gender-affirming surgical requests.

.2704 DOCUMENTATION

- (a) The Behavioral Health evaluation used for Facility and Division TARC reviews shall summarize the offender's mental health history, including but not limited to:

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- (1) Life experiences consistent with the offender's gender identity.
 - (2) Mental health diagnoses and history.
 - (3) Mental health treatment prior to and during incarceration.
 - (4) Personality assessment using a standardized assessment instrument to include other assessment procedures as clinically indicated.
- (b) The medical examination used for Facility and Division TARC reviews shall include a focused history and physical to include but not limited to:
- (1) Social history as it relates to gender identity.
 - (2) Past medical history to include all past or current hormone therapy.
 - (3) Surgical history.
 - (4) Physical examination to include documentation of external genitalia and any secondary sexual characteristics.
 - (5) Requisition of any clinically indicated laboratory tests.
- (c) The PREA evaluations used by the PREA representative on the Facility and Division TARC reviews shall include a focused history to include but not limited to:
- (1) The offender's sexual abuse and sexual harassment investigation history at the facility.
 - (2) Disciplinary history for relevant offenses that relate to safety and security.
 - (3) Sexual orientation status of record in OPUS.
 - (4) High risk status and concerns for safety expressed during intake and case management screenings.
- (d) All medical and mental health encounters and evaluations will be documented in accordance with existing procedures for the electronic medical record (including use of the DC-411 C, Transgender Accommodation Review Committee Consent and Authorization form).
- (e) The computerized provider order screen in the electronic medical record will be used to enter appropriate Medical Duty Status identifiers related to the transgender offender.
- (f) The Facility and Division TARC reports (DC-411F, DC-411D and DC-411 U) will be filed in the electronic medical record in the Document Manager section for each offender by the Facility TARC Chair or Health Services designee respectively.
- (g) Facility and Division TARC meeting minutes will be filed in accordance with existing procedures for the required interdisciplinary meeting minutes and should not be filed in the electronic medical record.
- (h) Staff confidentiality forms will be filed along with TARC meeting minutes.
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.2705 TRAINING

Employees shall receive training specific to the care and custody of LGBTI offenders **in accordance with North Carolina, Department of Public Safety/Prisons policy, Chapter F, Section .3400 Inmate Sexual Abuse and Harassment and Chapter A, Section .0900 Employee Training as a part of initial and annual refresher training requirements.**

.2706 RESPECTFUL COMMUNICATION

- (a) Pronouns and Names: Staff interacting with transgender offenders **shall** use either gender preferred or gender-neutral communication (e.g. by the legal last name or “offender” last name).
- (b) Intentional misuse of gender pronouns is prohibited.
- (c) Staff are to maintain the privacy and confidentiality of the offender when possible while maintaining the safety and security of the facility.

.2707 ADDITIONAL CONSIDERATIONS AND PROVISIONS

- (a) Behavioral Health Services – A transgender offender may be offered individual psychotherapy to address individually identified psychotherapy goals.
 - (b) Operations Management:
 - (1) Search of offenders shall not be conducted for the purpose of determining the person's genital status.
 - (2) Routine searches while clothed, known as "Pat" or "Frisk" and complete (strip) searches, will be implemented in accordance with the North Carolina, Department of Public Safety/Prisons policy Chapter F, Section .0100 Operational Searches.
 - (3) Staff should consider the physical layout of the facility and characteristics of a transgender offender to adjust conditions of the visual search for the offender's privacy.
 - (4) ***An offender shall not be placed in Restrictive Housing on the basis of gender identity alone (5-ACI-4B-34).***
 - (c) Processing during Intersystem Admissions:
 - (1) Transgender offenders may be initially identified during admission (i.e. processing) into the prison system. During processing, it is critical that safety and security needs for transgender offenders are addressed immediately.
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- (2) Medical and mental health evaluations related to transgender accommodation and treatment requests should be completed during processing. In situations where the timing of an offender's request for accommodation does not allow the completion of medical and mental health evaluations without delaying the

- (3) offender's processing and movement to a more permanent facility, health services staff at the processing facility should initiate the protocol (i.e. interview offender, request medical and mental health records, etc.) and communicate with respective staff at the receiving facility to facilitate continuation of the evaluation process. At a minimum, the Facility TARC should meet to review safety and security concerns for all offenders that identify as transgender during processing.

.2708 RE-ENTRY SERVICES

Re-entry services will be provided in accordance with the North Carolina Department of Public Safety/Prisons policy, Chapter C. Section .1400 Case Management to provide a systematic focus on assessment and planning for the purpose of assisting the offender in adjusting to confinement and preparing for a successful transition back to the community.



Commissioner of Prisons

March 31, 2021
Date

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