

OFFICE OF THE CORRECTIONS OMBUDS



Transgender, Intersex, and Gender Non-Conforming Systemic Review June 2021

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Introduction

This public report highlights issues unique to transgender, intersex, Two-Spirit, non-binary, and gender diverse prisoners, as reported to OCO from 2019 through early 2021¹. The case examples below came from more than 35 individuals at 8 Washington State prison facilities: Monroe Correctional Complex (MCC), Washington Corrections Center for Women (WCCW), Airway Heights Corrections Center (AHCC), Stafford Creek Corrections Center (SCCC), Washington State Penitentiary (WSP), Coyote Ridge Corrections Center (CRCC), Clallam Bay Corrections Center (CBCC), and Washington Corrections Center (WCC).

Note: In February 2020, the Washington Department of Corrections (DOC) published policy *490.700 Transgender, Intersex, and/or Gender Non-conforming Housing and*

¹ Systemic feedback and individual concerns reported by trans and gender nonconforming people living in WA State prisons. Names, locations, and identifying information has been removed for the confidentiality of the complainants.

Supervision. This is the first DOC policy in Washington State specific to the intersex and TGNC² population. Meanwhile, DOC has been in on-going policy and protocol negotiations with the Trans In Prisons (TIP) Justice Project of Disability Rights Washington (DRW). At the time of this report, DRW and DOC negotiations have not been finalized.

Executive Summary

- Transgender women report being housed at prisons for men and feel they cannot honestly report when they are unsafe in that setting. They also reported being targeted and harassed after coming out as trans and/or nonbinary.
- Transgender and gender nonconforming persons report being disproportionately placed in restrictive housing, such as solitary confinement or close observation areas.
- The gender dysphoria (GD) assessment through DOC mental health services is lengthy and the standards for evaluation are unclear.
- Incarcerated individuals report inadequate mental healthcare for gender dysphoria, anxiety, depression, and other mental health needs. OCO received several reports of individuals experiencing suicidal ideation, suicide attempts, and self-harm.
- Patients report delays in access to hormone replacement therapy (HRT), gender-affirming surgery, and other gender-responsive healthcare. They also report not receiving adequate follow up appointments, monitoring, and timely lab work once starting HRT.
- Trans individuals reported not being provided strip searches by staff of the gender identified on their preference form³, as required by both DOC policy and the Department of Justice PREA⁴ standards.

² TGNC = Transgender and Gender Non-Conforming

³ DOC form # 02-420 is completed if an individual identifies as transgender, intersex, and/or gender non-conforming. The form includes a question about whether the incarcerated individual feels safe being in general population at their current facility. There is also a section for people to identify the gender of staff for safe searches (more in the Strip Searches section below.)

⁴ PREA = Prison Rape Elimination Act

- Prisoners report experiencing anti-trans discrimination and targeted harassment by DOC staff, as well as lack of assistance when they are targeted and/or harassed by other incarcerated persons.
- Transgender and gender nonconforming individuals reported facing burdensome restrictions on otherwise normal friendships and feel their interactions are often sexualized by DOC staff, increasing their sense of isolation.
- DOC staff misgender individuals and use incorrect pronouns, including in witness statements, medical & mental health reports, BOEs⁵, and their own database tracking.
- Clothing policies and protocols do not fully meet the needs of gender diverse prisoners.
- DOC bathrooms and showers present ongoing concerns and safety risks for transgender individuals.
- Transgender and nonbinary prisoners report failures in the PREA reporting and investigation process. They feel the PREA system does not adequately protect them and that reporting incidents results in greater danger and harm. They also report that DOC does not offer enough support recovering from a reported PREA incident.
- Transgender, intersex, and gender nonconforming individuals also have overlapping identities that add to the level of harassment and discrimination they report experiencing.

Reported Concerns and Systemic Feedback

1. Transgender women report being housed at prisons for men and feel they cannot honestly report when they are unsafe in that setting. They also reported being targeted and harassed after coming out as trans and/or non-binary.

⁵ BOE = Behavior Observation Entry

DOC policy 490.700 outlines the new process for determining housing placements for intersex and TGNC individuals. This process includes a DOC Multidisciplinary Review Board, PREA review, and reassessment of placement every 6 months. A DOC “Preference Request” form is completed if an individual identifies as trans, intersex, or gender nonconforming.

Individuals expressed they cannot honestly report when they feel unsafe being housed as a woman in a prison for men due to fear of being placed in restrictive housing. Several people said they completed the DOC Preferences Request form, came out as trans or non-binary, then experienced targeted harassment by individuals and DOC staff. Some individuals reported revoking their trans status and turning in their alternative clothing items because of too many negative interactions and not feeling safe to be out.

Case Example (2021): She reports she should be housed in a women’s prison according to DOC policy, but she is not. She has been in protective custody for 135 days because she was assaulted twice and has been subjected to nonstop sexual harassment since arriving at the facility.

2. Transgender and gender nonconforming persons report being disproportionately placed in restrictive housing, such as solitary confinement or close observation areas.

TGNC individuals report that they are told they are being placed in solitary confinement for their “safety,” for example, pending a PREA investigation or housing decision. Other times they are placed there as a disciplinary action. Individuals experience loss of privileges that may or may not count towards sanctions while awaiting the hearing or investigation outcome. The OCO Assistant Ombuds for Gender Equity & Reentry also found infraction examples at WCCW where transgender individuals were punished more harshly than cisgender individuals who engaged in the same behaviors.

Case Example (2020): He reports getting into a serious verbal altercation with another incarcerated individual regarding gender shaming. He was put in segregation while the other person was not and reports that transgender individuals are always the ones segregated when they are in altercations with someone who is cisgender. He had suicidal thoughts while there. Grievances filed for similar situations have not been addressed.

3. The gender dysphoria assessment through DOC mental health services is lengthy and the standards for evaluation are unclear.

The assessment for a Gender Dysphoria diagnosis⁶ through mental health services creates roadblocks for patients trying to access hormones. Patients are often stuck in cycles of being reassigned new primary care and mental health providers and having to restart the assessment process. DOC has not outlined any timeline expectation for care and some patients have complained about going through this cycle for years on end, never receiving HRT or treatment.

Note: DOC policy does not require a Gender Dysphoria assessment for a patient to access HRT. Recently, in place of consults through mental health services and the Gender Dysphoria Care Review Committee (GD-CRC) at DOC headquarters, patients can now learn more about and access hormone options through their primary care providers.

Case Example (2020): She reports denial of mental healthcare, and when she does have access, she is reassigned therapists frequently which then starts the process of Gender Dysphoria diagnosis from the beginning. The incarcerated individual has repeatedly applied for gender-affirming surgery, but the screening process has stopped without explanation. DOC staff told her she is “too masculine” to qualify.

4. Incarcerated individuals report inadequate mental healthcare for gender dysphoria, anxiety, depression, and other mental health needs. OCO received several reports of individuals experiencing suicidal ideation, suicide attempts, and self-harm.

Several individuals reported a need for mental health support that was not met by DOC staff during moments of crisis and/or following PREA incidents. Additionally, people reported incidents where DOC staff exacerbated their mental health crisis, for example continuing to misgender them or not inspecting isolation cells for tools that could be used for self-harm. Some prisoners shared experiences of worsening symptoms while waiting to access healthcare, as well as a lack of mental health providers specialized in

⁶ Not all trans, intersex, and/or non-binary people experience gender dysphoria. It is important to note Gender Dysphoria as diagnosed under the DSM-5 differs from less medicalized understandings of trans experiences of gender dysphoria.

LGBTQ+ care. A few people expressed that they resorted to self-surgery while waiting for DOC to approve their gender-affirming surgery.

Case Example (2019): She reports trying to receive hormone replacement therapy since 2018. She has tried taking all the necessary steps with mental health providers, staff, and via kites, yet no progress has been made and she has not received responses. She received a few mental health sessions, but then they stopped abruptly. Her mental health provider pressured her to complete trauma therapy prior to beginning HRT because she was “not qualified to make a Gender Dysphoria diagnosis”. She added that employees do not respect her pronouns and she is becoming more depressed and anxious. A provider told her several times she would be put on the callout for an HRT consult, but she never was. “I feel like the DOC employees have no interest in my wellbeing. Most weeks I lay in bed and cry my eyes out due to my depression and the fact that I don’t feel comfortable in my own skin and my mental health is not being taken seriously.”

5. Patients report delays in access to hormone replacement therapy (HRT), gender-affirming surgery, and other gender-responsive healthcare. They also report not receiving adequate follow up appointments, monitoring, and timely lab work once starting HRT.

Most DOC medical staff are not yet trained in transgender and intersex healthcare. Additionally, protocols are unclear, leading to differential care depending on which provider a patient can access. Patients who run higher risks associated with HRT have difficulty accessing patches and other means of hormone administrations that reduce risks of complications.

Note: While DRW negotiations are not yet finalized, there have been some recent improvements for patients regarding access to HRT and trans care specialists. Some individuals followed up with OCO to share that they were finally approved and able to begin hormones this year. Others have been approved for surgeries and are awaiting their consults. Now that individuals are able to access HRT, we are receiving complaints about the way DOC providers are monitoring hormone levels and regulating doses. Several individuals have expressed a desire to change their dose (to either a higher or more frequent dose), but feel local medical staff are limiting them to a standard starting dose.

Case Example (2020): She reports delayed access to gender-affirming surgery. Facility medical staff are not submitting her case to the Gender Dysphoria Care Review Committee (GD-CRC) and staff seem unclear on policy. She also reports not receiving proper routine checkups since starting hormones. Patient reports continued and worsening gender dysphoria symptoms. She reports attempting self-surgery⁷ and self-harm.

6. Trans individuals report not being provided strip searches by staff of the gender identified on their preference form, as required by both DOC policy and the Department of Justice PREA standards⁸.

DOC Policy 490.700 includes guidance for PREA compliant strip and pat searches and urinalysis testing. For urinalysis, DOC policy states the incarcerated individual's gender preference of the employee collecting the sample will be documented and if staff cannot accommodate, a mouth swab test will be conducted instead. For strip searches, the new policy states "searches will be conducted in accordance with the individual's stated preference unless circumstances do not allow for the preference to be implemented during a pat or strip search." During circumstances where the pat or strip search is not conducted accordingly, policy states DOC will complete an incident report. This portion of the new policy is influenced by PREA safety protocols and standards outlined by the Department of Justice. However, trans individuals report that they have not been provided strip searches by staff of the gender identified on their preference form. At several prisons for men, staff reportedly have opted out of strip searches for transgender individuals, leaving nobody to offer the searches for women at those facilities. Additionally, the COVID-19 pandemic has reportedly delayed training and has also resulted in staff shortages.

Case Example (2020): She reports the new transgender policy 470.900 is not being followed, especially regarding safe strip searches. She has requested a female staff member provide strip searches and she was provided a female staff member the first few times prior to COVID, but ever since the beginning of the

⁷ Individual reported incident as "self-castration." OCO reworded for this report since some people in the trans and intersex community no longer use this terminology. Her own words are included here in the footnote for accurate representation of the concern as she reported it.

⁸ DOJ 115.15 Prison & Jails (a-f) Limits to cross-gender viewing and searches. According to the Department of Justice (DOJ) PREA Resource Center, there are four options for searches of transgender prisoners: (1) only conducted by medical staff, (2) only conducted by female staff, (3) in accordance with the individual's gender identity, or (4) by asking the individual to identify the gender of staff with whom they feel most comfortable conducting the search. Readers can find more information and updates about PREA Standards from the National PREA Resource Center.

pandemic, DOC has refused. DOC staff told her the prison will not provide female conducted strip searches for female prisoners because “searches will only be performed by volunteers, and... all volunteers have withdrawn their applications. Search volunteers must be trained, and DOC will not conduct training until there is a ‘sufficient class size’.”⁹ Individual also reported self-surgery and self-harm due to gender dysphoria.

Case Example (2020): She reports never having been strip searched by a female officer. She reports this is especially harmful and retraumatizing to her because she was previously raped by a male officer. She said she cries for hours and sometimes days after strip searches. She reports male Sergeants touching her breasts during pat searches as retaliation after she has asked for the appropriate search.

7. Prisoners report experiencing anti-trans discrimination and targeted harassment by DOC staff, as well as lack of assistance when they are targeted and/or harassed by other incarcerated persons.

Multiple individuals at prisons across the state reported grievances disappearing, being sent back for several rewrites, or dismissed with little to no explanation. Prisoners have reported retaliation when they file staff misconduct grievances related to anti-LGBTQ+ behavior. Many staff appear to assume any issue being reported by a trans prisoner should fall under PREA—staff reroute the concern to the PREA process, the issue is deemed non-PREA, and the concern is dropped. The person is then left waiting for a process to evaluate their concern, but their issue is never addressed. Some trans people believe staff are putting their complaints through this cycle on purpose, so they do not have to complete a grievance investigation. Incarcerated individuals reported a perceived lack of staff accountability.

Case Example (2019): She reports experiencing race- and gender-based physical and verbal abuse, harassment, and assault from both staff and other incarcerated individuals. She has filed PREA reports which she is told will not be investigated by the PREA Coordinator. She reports being retaliated against by staff who have harassed her in the past. DOC restrained her, while naked, for over four hours after pepper spraying her. DOC staff would not allow her to clean off her body and cuffed and restrained her so tightly that she had bruises and nerve injuries after the incident. She has been threatened for filing emergency

⁹ via DOC grievance response

grievances and any photo or video evidence she has requested has been denied.

8. Transgender and gender nonconforming individuals reported facing burdensome restrictions on otherwise normal friendships and feel their interactions are often sexualized by DOC staff, increasing their sense of isolation.

The same behaviors exhibited by cisgender prisoners are treated as inappropriate and sexual in nature when shown by transgender prisoners, such as friendships and spending time together in the yard or at meals. Incarcerated individuals reported this as especially true when all people involved are LGBTQ+. Individuals reported punishment including false infractions, negative Behavior Observation Reports (BOEs), and DOC staff repeatedly telling LGBTQ+ individuals to “yard in” when found spending time together. Even if the individuals had no reason to yard in, if they refused, they would get infraacted for refusing the order.

Case Example (2020): She reports that trans people and people with sex offenses on their records are not allowed the same recreational privileges as others. Individuals are told they cannot be on either end of the dayroom or go to yard because they are “blocking the cameras” however others are still allowed in those spaces. They are made to stand and are left wandering around in the middle of the dayroom without anywhere to sit. She also mentioned being continuously told by the Sergeant that she is displaying inappropriate sexual behavior by braiding people’s hair and other friendly gestures.

9. DOC staff misgender individuals and use incorrect pronouns, including in witness statements, medical & mental health reports, BOEs, and their own database tracking.

DOC’s database tracks individuals as their gender assigned at birth regardless of updated IDs and birth certificates. DOC issues badges where individuals can add an AKA, but it appears in small lettering, and their former legal name¹⁰ appears large. These badges also out individuals as trans. Most TGNC people who reported a concern to OCO also reported experiencing frequent misgendering by DOC staff.

¹⁰ Some individuals also refer to this as a “dead name” (similar to a dead language, not spoken).

Case Example (2019): She had her name legally changed to reflect her gender identity. Despite this, DOC staff refuse to respect her legal name and continue to refer to her by her former names and pronouns. DOC also hasn't issued her a new ID reflecting her legal name.

10. Clothing policies and protocols do not fully meet the needs of gender diverse prisoners.

Women, intersex, and non-binary individuals at facilities for men do not have access to the same items available at WCCW and Mission Creek Corrections Center for Women (MCCCW).¹¹ At the men's prisons, individuals can only access compression bras, which are especially painful when breasts are developing on HRT. The bras are also visible through the white state issued t-shirts, which has led to being outed and targeted with harassing comments from others.

Note: DOC recently updated its clothing policy to include a list of "alternative clothing" items available to prisoners who are trans, non-binary, or intersex and wish to access clothing that may be more affirming of their gender (alternative items are optional, not required). The list also now includes grey t-shirts, however, individuals reported not being able to access these yet.

Case Example (2019): She reports receiving a sexual harassment infraction for not wearing a bra under her DOC issued sweats. A Correctional Officer (CO) commented on the prisoner's "erect nipples and protruding breasts" as reasoning for the infraction in the infraction report. There is no current policy requiring staff to search transgender individuals for bras. She says she shouldn't be harassed by DOC staff just for existing in a trans body and her breasts should not be sexualized by staff.

11. DOC bathrooms and showers present ongoing concerns and safety risks for transgender individuals.

Women in male prisons report the bathroom and shower stalls are not sufficiently tall enough to shield their bodies (specifically their breasts) from observation by others, putting them at risk.

¹¹ OCO also received complaints from cisgender men about not being able to access make-up, hairdryers, and other items that are available at the prisons for women. For example, an Indigenous individual expressed the cultural significance of his long hair and being able to care for it. He said he was not allowed to access a hairdryer, regardless of custody level, because he was at a prison for men.

Note: Some facilities have created interim solutions to provide individuals with more privacy and safety while showering. For example, having a separate shower time for trans individuals or working with the facility maintenance team to address the length of the stall doors.

Case Example (2019): She is worried about privacy while showering. She reports the shower walls are short enough that a tall person could violate another's privacy by looking over and watching. This subjects transgender individuals to potentially being watched or their breasts being exposed during showering.

Case Example (2020): She reports shower and bathroom privacy concerns for transgender women in multi-user bathrooms in prisons for men. She has been denied a privacy screen during bathroom use and has been told by staff the current situation is "in compliance" with PREA audits, though they lack consideration for transgender safety.

12. Transgender prisoners report failures in the PREA reporting and investigation process. They feel the PREA system does not adequately protect them and that reporting incidents results in greater danger and harm. They also report that DOC does not offer enough support recovering from a reported PREA incident.

Many gender diverse prisoners do not trust the PREA process and say it often makes things worse by DOC going directly to their abusers for incident interviews, then later dismissing the concern and leaving them in greater danger of harassment or harm. Transgender survivors in prisons shared that they often keep incidences of rape to themselves or try to heal individually and with their community because it feels safer than going to DOC staff. Incarcerated individuals also shared that grievances reporting non-PREA, gender-based discrimination are often dismissed.

Case Example (2019): She reports being raped and the PREA report was not followed up until 43 days later, leaving no video evidence available. The report was deemed "unfounded" and no further follow up occurred. Multiple individuals report feeling that their PREA reports are not thoroughly investigated by facility staff and that there is a failure to even capture or retain necessary evidence (e.g. camera footage) that would substantiate their reports.

13. Transgender, intersex, and gender nonconforming individuals also have overlapping identities that add to the level of harassment and discrimination they report experiencing.

All prisoners hold a range of identities and presentations that influence how DOC staff and others interact with them. Individuals reported experiences of harassment and discrimination based on overlapping marginalized identities (related to race, gender, ethnicity, socio-economic class, religion, sexual orientation, age, ability, immigrant status, language, etc.). Black and Indigenous trans and Two-Spirit individuals report being particularly targeted. Incarcerated people also expressed a lack of cultural sensitivity and competency by DOC staff and others.

Case Example (2019): She reports that she cut her hair and was told by staff she could keep the hair in a plastic bag to burn at the next fire ceremony, as this was culturally significant for her as a Two-Spirit Indigenous woman. Before the ceremony occurred, her cell was searched, and the bag of hair was taken as contraband. She was served an infraction for keeping the bag of hair because DOC stated it could be used to fashion a disguise and attempt an escape.

Limitations and Next Steps

This report does not include a list of recommendations as DOC is currently negotiating policy and protocol changes with DRW TIP Justice Project. Here we have prioritized the issues incarcerated individuals have raised since the opening of the Office of the Corrections Ombuds. The Appendix below includes additional case examples that reflect the experiences many trans, intersex, Two Spirit, and non-binary people have while living in state prisons. Moving forward, OCO plans to release regular reports on systemic 2SLGBTQIA+¹² issues, which will include recommendations.

Future work to address the concerns above should include incarcerated individuals who are directly impacted by these policies and practices. Many individuals reported a desire to be involved in policy changes and a lack of opportunity from DOC for input before implementing 490.700.

¹² Two-Spirit, Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex, Asexual or Ace, plus encompasses additional gender and sexuality expressions outside heteronormativity and the gender binary.

Appendix

OCO LGBTQIA+ Systemic Work 2020-2021

- Created a case factor for tracking LGBTQ2S+ concerns in our database.
- Hired a new LGBTQ+ Specialist for tracking systemic issues, producing annual reports, and providing self-advocacy information to the incarcerated population.
- Logged individual complaints and created a tracking system for policy and systemic feedback provided via hotline and letter.
- Updated database to include optional pronouns and chosen name for case files.
- Standardized processes for contacting individuals via mail. This is an attempt to keep someone's gender identity and chosen name confidential in case the person has not disclosed status to DOC.
- Connected with Disability Rights Washington Trans In Prisons (DRW-TIP) project. Consulted on cases and systemic issues, updates, and policy. Connected with other organizations that support LGBTQ+ prisoner rights.
- Established points of contact at DOC Headquarters to uplift issues unresolved at the facility level, ranging from policy to resolving individual trans healthcare concerns.
- Attended two LGBTQ+ prisoner group meetings, one at Monroe Correctional Complex – WA State Reformatory Unit and another at Stafford Creek Corrections Center. These occurred prior to COVID-19, which limited attending any further prison meetings in 2020, however, the hotline remained open for direct communication.
- Interviewed LGBTQIA2S+ prisoners in-person about cases that had been pending during OCO staff changes. Discussed case updates, OCO process, closed old cases and opened new ones.
- Opened more than 75 LGBTQ+ specific case investigations in addition to cases LGBTQ+ people opened with our office regarding other topics such as mail, infractions, and other issues not necessarily specific to the LGBTQ+ population.

Additional Case Examples

- A. She reports being housed at a prison for men, despite being a woman and history of housing at women's centers in the community and jail for women. She is starting to feel unsafe at current facility, but she is afraid to say so because DOC might put her in segregation. She requested to be transferred to a prison for women and her housing transfer is being denied/delayed. She said the denial is based on a false infraction and PREA report. She said that another incarcerated individual filed a false PREA report against her because she is trans (she said this happens to trans prisoners often). Requested to be placed in a women's facility or released since DOC cannot provide safe housing (2020).

- B. She has requested a more compatible cellmate. She is trying to find a solution before a serious problem arises. Her requests have not been acknowledged even though compatibility is a factor in DOC placement policy and protocol (2020).
- C. She reports excessive segregation pending PREA case investigation for 47 days plus an extension. She was asked if she would like to be housed with another woman to which she said she would, but it did not happen (2019).
- D. She reports that another incarcerated individual told staff she was trying to sell her body for food and clothing. She has been in segregation since and says this is not the first time someone has called a false PREA on her. She fears being moved to another facility. She feels that no one will listen to her because she identifies as female (2020).
- E. She came out as transgender several years ago and tried to start Hormone Replacement Therapy (HRT) in 2019. The process was delayed so she filed a grievance. She was finally able to begin the process for accessing HRT in 2020. She finished all the steps and hasn't heard anything since. Staff told her it must go in front of the GD-CRC and she never heard back (2020).
- F. She reports delays in access to HRT and was told she would receive the decision by mail, which never came. She was then told she was denied yet never received a report and is appealing the decision. [Other individuals also reported not receiving official CRC decision documents, leaving them to appeal with limited information about why the care was denied.] (2019)
- G. She reports delayed process and access to HRT due to her release date approaching. She says she is supposed to be seen by mental health every 2-6 weeks but has not been seen for 9 weeks. She also reports that she is not being called by her appropriate name and pronouns (2020).
- H. She requested HRT through their facility medical provider. New guidelines allowing patients to access HRT through their provider instead of going through the GD-CRC were supposed to be in place October 2020. Some staff at the prison told her the guidelines have not gone into effect yet and she is getting mixed information. She has been waiting 14+ months and feels DOC is also using COVID as an excuse to delay care (2021).
- I. She reports her HRT meeting with the Care Review Committee has been delayed/cancelled due to COVID-19, yet other transgender individuals have had their cases addressed. She was later informed that though she was approved for HRT, another medical issue prevents her from starting hormones. She wishes medical testing was done prior to approval rather than later revoking approval due to medical risks (2020).
- J. She reports that mental health staff approved her for HRT, but medical staff denied her access. She reports anti-transgender bias from both DOC medical staff and contracted specialists (2020).
- K. They report issues with how mental health providers handled their gender dysphoria and PTSD. They would like to work with a different provider to receive appropriate mental health treatment (2020).

- L. She reports that her mental health issues are not being taken seriously by her counselor. She reports she has received incorrect medication which made her ill. She feels she is targeted because she is transgender and is afraid to file grievances out of fear of further harassment (2020).
- M. She was subject to a strip search. Privacy screens and windows were covered, and a male officer requested she submit to the search. She announced she was transgender, but the male officer conducted the search alone anyway. This has left the individual feeling distraught, crying, and she filed medical emergencies after the incident. To date, DOC has not resolved the issue regarding proper trans strip searches, staff volunteers, and training (2021).
- N. He reported an officer for using hate speech and slurs towards transgender individuals at WCCW. OCO Assistant Ombud found other complaints regarding anti-trans hate speech from the same officer (2020).
- O. She reports harassment from staff for being transgender, and failure to protect her from harassment from other incarcerated individuals. She reports the harassment includes encouraging others to file false PREA reports against her (2020).
- P. She reports that she used to work in the kitchen but was getting teased by other incarcerated individuals. The Correctional Unit Supervisor (CUS) and her counselor let her quit, but later put a stipulation in place that she cannot seek additional employment. DOC staff told her to focus on her GED and that she cannot have another job. She is frustrated as she is indigent and needs paid work. She has requested access to employment with continued delays (2020).
- Q. She feels that LGBTQ stakeholders are being denied the opportunity to give input regarding policy that directly affects them. She is concerned about harm caused by lack of adequate policy. She reports not having visitors due to all the risks including male officers performing strip searches post visit, PREA reports coming back unsubstantiated, and staff disregarding pronouns (2018).
- R. She is unable to access makeup in a prison for men and has relied on making her own. She has received an infraction due to the homemade tools she uses to make her cosmetics and has been threatened with further discipline (2019).
- S. She reports that women are denied access to women's clothing while incarcerated in prisons for men. DOC medical and mental health staff on suicide watch denied her access to her property and bra (2019).
- T. She reports that she is continually misgendered by DOC staff and harassed via intrusive bra checks. She removed her shirt in the yard as allowed in the facility protocol. She reports still following DOC policy for males since DOC has not documented her as female and continues to track her as male. She also reports there is no female clothing policy for women at men's prisons. She was given an infraction for indecent exposure (2020).
- U. She does not want everyone to know she is transgender to protect herself from discrimination, but the DOC issued sports bras are obvious to others [because the DOC issued shirts are a thin, white material and the bras are visible through them]. She has received conflicting information about the policy regarding women's undergarments and which ones she is allowed (2020).

- V. She reports that COs have been writing negative behavior observation entries (BOEs) when she puts a barrette in her hair, saying that it is not allowed to be worn, only possessed. She reports aggressive bra checks by DOC staff which target and harass transgender women. She reports that DOC staff do not conduct undergarment checks for cisgender prisoners at the facility where she lives and thus feels she is being targeted for her gender. She also reports frequent misgendering by staff, including documented in DOC records by staff. She wishes staff were open to having a productive dialogue about her situation and resolutions (2020).
- W. She reports the bras that transgender women must wear are very tight compression bras, which can be especially painful for women with developing breast tissue. She is denied recreation and other activities due to her not wanting to wear the bra during exercise because of the pain (2020).
- X. She reports since COVID-19 response measures began, women have been made to dress and undress in front of cisgender men at the prison. Previously, transgender individuals were given space to change separately. She also reports she is no longer allowed to shower separately. She is concerned, because she is on a lower tier, other people can see her undressing or using the toilet. She is concerned about PREA related risks and transgender safety protocols (2020).
- Y. She reports going to the CUS to address harassment from another incarcerated individual. The CUS was hostile and accusatory towards her safety concerns. She says DOC is responsible for the safety of prisoners and the current investigation process is ineffective. Sometimes concerns from transgender women are automatically sent to PREA for investigation simply because a transgender individual is involved, even when the issue the person is reporting is non-PREA and they want it to be addressed through the grievance process (2020).
- Z. She reports filing a PREA report when another incarcerated individual grabbed his own genitals and asked her for oral sex, as well as approaching her numerous times asking for other sexually explicit favors. She says reports to staff are ignored and filing to PREA does not work. She says the investigation of PREA allows others to know of the allegations and places the complainant in a position to be physically retaliated against by her abuser. She has requested transfer to a women's prison for safety (2020).
- AA. She reports continuous staff misgendering and making demeaning statements regarding gender. She has filed multiple PREA complaints which have been denied every time and she continues to be harassed (2020).
- BB. She reports that PREA standards say the victim is supposed to be put in least restrictive housing, however, several times this has not occurred. DOC has tried to move her into a unit with someone who had previously raped her, then into another wing with someone else she had filed a PREA against for transphobic harassment (2021).



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

August 12, 2021

Joanna Carns
Office of Corrections Ombuds
2700 Evergreen Parkway NW
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Dear Ms. Carns:

The Washington Department of Corrections (DOC) appreciates the opportunity to respond to the Office of Corrections Ombuds' (OCO) June 2021 "Transgender, Intersex, and Gender Non-Conforming Systemic Review" report. As noted in the report, information for the review was received "from 2019 through early 2021."

While the department is somewhat limited in its ability to respond to items presented in the OCO's report due to "on-going policy and protocol negotiations with the Trans In Prisons (TIP) Justice Project of Disability Rights Washington (DRW)" as noted in the OCO report, the department did want to provide the following information as support for the ongoing progressive efforts by its administration and staff throughout the state as well as to highlight the identified specific concerns and/or feedback, many of which appear to be historic with improvements in many areas in the most recent four years.

INTRODUCTION

The DOC's values include cultivating an environment of integrity and trust, respectful and inclusive interactions, people's safety, positivity in words and actions, and supporting people's success. As such, there has been much work done in recent years to increase efforts in equity, diversity, inclusion, and respect, as well as in ensuring specialized populations are treated fairly and equitably.

According to the United States Department of Justice (DOJ) Office of Justice Programs (OJP), Office for Victims of Crime (OVC), "the most common estimates" of the transgender population in the United States is 0.3 to 3.0 percent, and that between 0.5 and 1.0 percent of the population have a medical condition that falls under the intersex umbrella. The percentage of the DOC population that currently self-identifies as transgender, intersex, or gender non-confirming is just over 1.1 percent¹. This suggests that the DOC prison population mirrors the general population.

Beginning in 2017, the DOC began working on creation of an agency-wide policy

¹ https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/forge/transgender_numbers.html

regarding the housing and supervision of transgender, intersex, and gender non-conforming individuals under the jurisdiction of the agency. This was a coordinated effort between the DOC, labor partners, and DRW, and included reviewing nationally accepted best practices (at the time) for how they could be implemented in Washington state facilities. As is the case with any brand-new policy, there have been gaps and inconsistencies identified, and the next policy update will include many changes, to include updated processes and forms to be in better alignment with other policies and practices.

The department acknowledges that best practices continue to evolve around the unique needs of these populations. There have been many updates to practices and protocols over the past several years, prior to the DOC's work with external agencies. For instance, property items for transgender individuals have been topics of meeting discussions since at least 2015, with current practice allowing for items such as makeup and hygiene items to be ordered for any individual housed at any facility, which is a vast difference from just six short years ago.

This change in policy, practice and culture has been recognized by individuals that have been housed in Washington state prisons facilities on numerous occasions as noted by correspondence received. One example was a kiosk message received in May 2021 by an individual housed at Monroe Correctional Complex, which stated, "I as a trans inmate would love to thank you and DOC in general with the progress that has been made with policies for us trans inmates since my last release from TRU in 2018. Keep up the good work. Thank you."

The department has been identified consistently by the DOJ PREA Resource Center as an agency demonstrating best practices in trainings and presentations for the way it has implemented and improved upon PREA practices over the years. It is important to note that the DOC provides annual PREA reports on its external website at <https://www.doc.wa.gov/corrections/prea/resources.htm#reports>. These reports, dating back to 2013, show clear progression in how the agency has worked to advance its practices regarding PREA in general, as well as with the transgender, intersex, and gender non-conforming populations. Additionally, all department prisons and work releases are subject to federal PREA Audits conducted by a formally DOJ-certified auditor every three years, beginning in 2014. To date, 28 prison audit reports and 29 work release reports have been finalized, all of which have final reports indicating 100% compliance with all DOJ PREA standards and can be found at the same link noted above. This is a testament to the ongoing dedication by the department to ensure the sexual safety for all individuals in prisons and work releases in Washington state.

It is noteworthy that the last DOJ PREA Audit for the Washington Corrections Center for Women (WCCW), finalized on June 10, 2020, WCCW was found to have "exceeded" the provisions of DOJ PREA Standard 115.42, Subsections (c), (d), and (e), which directly relate to the housing placement and programming assignments for those individuals who identify as transgender or intersex².

² <https://www.doc.wa.gov/corrections/prea/docs/audit-2020-prison-wccw.pdf>

Within the past four years, the DOC transferred the first trans man from WCCW to a men's prison and, within the past 18 months, transferred the first trans woman from a men's facility to WCCW. Additionally, approximately two years ago, the DOC saw its first individual who had previously been housed in men's facilities during previous incarcerations now being housed at the women's facility upon re-admission.

Providing education to staff about the unique and sensitive needs of these populations are integral to the department's success. As such, the department has contracted with two separate consultants specifically to work with the staff and incarcerated population at WCCW since that facility appears to have the current highest need. One consultant has provided training and facilitated discussions specifically with health services staff and management teams, and the other has recently begun providing "Transgender 101" type facilitated training discussions with WCCW line staff in two-hour increments with the goal of providing these discussions with all WCCW staff by the end of 2021. These Transgender 101 discussions are being scheduled to accommodate line staff on all shifts and in all job categories.

The department will continue to work with stakeholders, both internal and external, to ensure the safety of all under its jurisdiction, and to continue to be progressive in its handling of specialized populations.

OCO REPORTED CONCERNS & SYSTEMIC FEEDBACK

1. *Transgender women report being housed at prisons for men and feel they cannot honestly report when they are unsafe in that setting. They also reported being targeted and harassed after coming out as trans and/or non-binary.*

A. Since the onset of the federal Prison Rape Elimination Act (PREA) in 2003, DOC has provided individuals multiple venues to report safety and PREA concerns. Currently:

1. Reports can be made verbally to any staff
2. Reports can be made via third party
3. Reports can be made via the resolution process
4. Reports can be made in writing
5. Reports can be made via the toll-free hotline
6. Reports can be made to external agencies, to include DOC's contracted third-party reporting agency, the Colorado Department of Corrections

** All reports can be made anonymously

** All reports are thoroughly investigated

B. All individuals who self-report to be transgender, intersex, and/or gender non-conforming receive twice-yearly housing and programming reviews.

1. Upon an individual's initial disclosure of transgender, intersex and/or gender

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- non-conforming identity at a facility, a facility Multidisciplinary (MDT) Review Committee meets every six months to conduct a housing and programming review (*DOC 02-384 Housing Protocol for Transgender, Intersex, and Gender Non-Conforming Individuals* and *DOC 02-385 Housing Review for Transgender, Intersex, and Gender Non-Conforming Individuals*) to consider factors such as risk for victimization or predation, medical or mental health concerns, security considerations, and the individual's own views regarding their safety. The facility MDT includes representation from facility management, the PREA Compliance Manager/Specialist, assigned counselor, and representatives from both medical and mental health. The MDT makes their recommendation to HQ whether to retain the individual at the current facility, or to transfer to another facility. If the recommendation is to retain and there are no concerns noted, the facility submits *DOC 02-385 Housing Review for Transgender, Intersex, and Gender Non-Conforming Individuals* to HQ. HQ will then review and approve the MDT's assessment, and no further action is taken until the next biannual review.
2. If a transfer to any other facility is recommended, regardless of whether to a men's or women's facility, the facility first confers with HQ Classification to determine placement options without keep separates, prohibitions, and that can meet medical and/or mental health needs, and will submit *DOC 02-384 Housing Protocol for Transgender, Intersex, and Gender Non-Conforming Individuals* to HQ.
 3. If the recommendation is to transfer to a like-facility (for instance, from one men's prison to another), HQ will review the request, and if supportive, will forward the form to the receiving facility, which will hold its own MDT (to include the individual via phone/virtual attendance) to discuss issues such as showering options, and any concerns. The receiving facility will complete their portion of the form and return it to HQ. HQ will then approve or deny transfer and finalize the decision.
 4. If the recommendation is to transfer from a men's prison to a women's prison, or vice versa, the HQ MDT will meet to review the case. The HQ MDT is chaired by a Deputy Prisons Director, and includes DOC's Chief Medical Officer, Chief of Psychiatry, Director of Mental Health, Security Operations Program Manager, and PREA Coordinator, and may include Superintendents of both the sending and potential receiving facilities. The group reviews programming history, infraction history, involvement with medical and mental health practitioners, how long an individual has identified and/or lived as a transgender individual, participation in hormone replacement therapy and/or other transitional treatment plans, federal legal requirements, past housing while in other confinement jurisdictions, risk of vulnerability or predation, and several other factors.
 5. The HQ MDT then completes *DOC 02-422 Transgender, Intersex, and Gender Non-Conforming Housing Multi-Disciplinary Team*, which includes decision of the HQ MDT. Additionally, the HQ MDT Chair then completes *DOC 02-385 Housing Review for Transgender, Intersex, and Gender Non-Conforming Individuals* with final housing determination. If a transfer is approved,

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consideration is also given to potential needs such as single cell assignment, particular housing unit/area, etc.

** There have been HQ MDTs that result in denial of transfer requests; there have been HQ MDTs that result in approval of transfer requests. Each case is reviewed independently and separately. No decision is made lightly.

2. *Transgender and gender non-conforming persons report being disproportionately placed in restrictive housing, such as solitary confinement or close observation areas.*
 - A. The department clearly understands that transgender individuals are at a higher risk for sexual victimization, as noted by the PREA Resource Center, Vera Institute of Justice, National Institute of Corrections, and other respected organizations. As such, DOC takes housing of these individuals seriously to ensure the safety of all.
 - B. The DOC has been completing twice-annual housing reviews to ensure safe and appropriate housing since 2014.
 - C. Per DOJ PREA Standard 115.43(a), those at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. Further, DOJ PREA Standard 115.43(c) indicated the facility shall assign such individuals to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days. There are also requirements that must occur if such housing is determined to be the only option available until there is no longer such a need for separation.
 - D. Per DOC Policy 490.820 PREA Risk Assessments and Assignments, if a transgender individual arrives at a facility without an approved housing determination, they will be housed in the facility infirmary or extended observation area until housing determination is made to ensure safety. PREA risk assessments are completed within 72 hours of intake to all department facilities. However, an individual who indicates they feel safe in general population via the DOC Preferences Form may be allowed to be housed in general population pending final housing determination with approval of the Prisons Deputy Director. To date, no requests for housing in general population have been denied by the Prisons Deputy Director.
 - E. At any time, an individual can request protective custody by providing a written confidential statement. Those individuals would be placed into administrative segregation pending investigation into their concerns, per DOC Policy 320.200 Administrative Segregation.
 - F. As noted by a transwoman who has been housed in several Washington facilities and is currently housed in a men's facility, "My experience has been good. I feel safer than I ever have here. I've seen many improvements over the years. DOC has worked hard to create protocols and has come a long way."
3. *The gender dysphoria assessment through DOC mental health services is lengthy and*

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the standards for evaluation are unclear.

- A. The evolution of knowledge and skills of the mental health and psychiatric staff at the department has come a long way in recent years. Through consultation with community subject matter experts, department processes have been revised and refined to better meet the needs of the population. This has included sending a department psychologist through a certification program in Transgender HealthCare to provide internal expertise.
 - B. Since 2018, there has not been a requirement of medical necessity associated with a diagnosis of gender dysphoria required for treatment with Hormone Replacement Therapy (HRT). At many locations, the Primary Care Provider will prescribe HRT without a consultation from mental health providers. At those locations where a mental health consultation is requested, the process is much more streamlined than in the past with a focus on confirming a person's identification as transgender without having to meet criteria for gender dysphoria.
 - C. The department utilizes consultation from a psychologist in the community to assess a person's readiness for gender affirming surgery and if they meet criteria for medical necessity, consistent with HCA guidelines.
 - D. A person's appearance is not considered during this assessment nor is it a criterion for accessing services.
4. *Incarcerated individuals report inadequate mental healthcare for gender dysphoria, anxiety, depression, and other mental health needs. OCO received several reports of individuals experiencing suicidal ideation, suicide attempts, and self-harm.*
- A. Mental health staff at DOC are skilled in the assessment and treatment of mental health concerns. When a patient presents or is referred for services, the therapist works with them to understand their concerns and treatment needs. There are opportunities for consultation with supervisors and subject matter experts if a therapist needs additional support to provide the most effective care for an individual.
 - B. There have been various training opportunities over the past several years to improve the knowledge and skills of the MH staff working with our transgender population. Our staff are increasingly able to help those experiencing distress associated with being transgender. We are in the process of identifying specific individuals at each major prison who will participate in a consultation group to support their work with transgender clients.
 - C. Thoughts of self-harm and suicide are taken very seriously by the department, and thorough assessments of such symptoms are conducted when made known.
5. *Patients report delays in access to hormone replacement therapy (HRT), gender affirming surgery, and other gender-responsive healthcare. They also report not receiving adequate follow up appointments, monitoring, and timely lab work once starting HRT.*
- A. The health care protocol revisions will address many of the concerns noted above to

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- include schedules for follow-up lab work and other monitoring.
- B. The DOC takes self-harm very seriously and will intervene immediately when aware of a person's distress.
 - C. Steps are being taken to standardize the care provided from both medical and mental health staff.
6. *Trans individuals report not being provided strip searches by staff of the gender identified on their preference form, as required by both DOC policy and the Department of Justice PREA Standards.*
- A. Historically searches are conducted according to DOC Policy 420.310 Searches of Offenders (published 2014). According to the policy guidelines strip searches of incarcerated individuals are conducted by male staff in male facilities and female staff in female facilities in accordance with DOJ PREA Standard 115.15.
 - 1. In February of 2020, the DOC implemented DOC Policy 490.700 Transgender, Intersex And/or Gender Non-Conforming Housing and Supervision which provides the trans population the ability to identify the gender of the staff member they prefer to be searched by, if available.
 - 2. To ensure compliance with DOJ PREA Standard 115.15, staff training was developed to train employee volunteers to conduct searches of transgender individuals.
 - 3. In March of 2020, the DOC suspended all staff training to mitigate risk associated with COVID-19. Although the curriculum was made available, only a minimal number of staff received training prior to the suspension of staff training.
 - 4. Some training of employee volunteers was completed in 2020 prior to the enactment of department wide training restrictions. As training restrictions have lifted, the number of staff trained to conduct searches according to an individual's gender continues to increase.
 - 5. As staff training efforts continue, the DOC remains in compliance with DOJ PREA Standard 115.15 by requiring staff to document and report all searches that occur not in accordance with preferred gender.
 - 6. In addition, the DOC continues to seek information regarding best practices from the National Institute of Corrections, the department of Justice PREA Resource Center, and other state corrections agencies to develop a revised and more progressive search policy. It is the DOC's intent to provide a search process consistent with security needs and humanistic values, and which respects the dignity and privacy of all incarcerated individuals. The DOC expects to fully update DOC 420.310 Searches of Offenders with revised guidelines and publish a new policy once negotiations with Disability Rights of Washington are complete.
 - B. The DOC remains in compliance with DOJ PREA Standard 115.15. The DOJ [PREA Resource Center](#) does not specifically direct female staff to search transwomen or male staff to search transmen. However, the department is committed to transforming search guidelines and agency culture necessary to

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conduct searches based on the identified gender rather than the biological sex of a transgender person and will continue collaborative efforts to develop formal policy and associated guidelines with internal and external stakeholders.

- C. Per DOJ PREA standards, all staff are required to be trained in conducting searches of transgender and intersex individuals in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs. The DOC does this and has been found to be compliant in every DOJ PREA Audit to date in this area.
7. *Prisoners report experiencing anti-trans discrimination and targeted harassment by DOC staff, as well as lack of assistance when they are targeted and/or harassed by other incarcerated persons.*
- A. The department's Resolution Program (previously known as Grievance Program) underwent a complete evaluation via a co-chartered workgroup with the OCO starting in 2019, and included stakeholders from Disability Rights Washington, Statewide Family Council, OCO, DOC, and formerly incarcerated persons. The results of that workgroup included an updated Resolution Program policy and Resolution Program Manual (RPM) in 2021.
 - B. The DOC recognized there had been a historical gap in identifying concerns brought forth that may or may not have met requirements for investigation under the DOJ PREA standards, which led to individuals' concerns not being investigated appropriately.
 - C. In the 2021 update, the RPM now clearly defines what resolution requests are unable to be processed through the Resolution Program and must be referred as a PREA allegation.
 - D. For those requests referred as a PREA allegation that are determined to not meet DOJ PREA standards for investigation, the RPM instructs the individual is to submit a new Resolution Request with the written notification received by the PREA Compliance Manager/Specialist, and their concern will be processed and handled in accordance with the Resolution Program guidelines.
 - E. This process was put into place to ensure PREA reports were handled appropriately and was vetted through the national PREA Resource Center.
 - F. For example, DOC Policy 490.700 Transgender, Intersex, Gender Non-Conforming Housing and Supervision requires employees/contract staff/volunteers to use an individual's preferred pronoun (when known) or their last name. A staff person's failure to use an individual's preferred pronoun (when known) is not a violation of DOJ PREA standards and therefore would not be investigated as a PREA complaint; however, a staff person's failure to use an individual's preferred pronoun (when known) or their last name would be considered a violation of policy and therefore accepted as a Resolution Request. If the actions are found to have merit and could result in disciplinary action against the employee/contract staff, the Appointing Authority is immediately notified to determine whether a separate administrative review is warranted. The individual will be notified of this, as well as of any outcomes of such a review.
8. *Transgender and gender nonconforming individuals reported facing burdensome*

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restrictions on otherwise normal friendships and feel their interactions are often sexualized by DOC staff, increasing their sense of isolation.

- A. The department values people's safety, respectful and inclusive interactions, positivity in words and actions and supporting people's success. Staff are encouraged to communicate with the incarcerated population if they observe potentially harmful or risky behavior or actions taking place. Behavior observations are recorded to share information with staff and maintain continuity of staff communication. We acknowledge more focused training needs to occur in order to educate staff on best practices for communicating with and understanding the needs of the transgender population. We also anticipate as training efforts continue and policies are put into place, communication will be better delivered by staff and better received by the transgender population.
 - B. DOJ PREA standards and an obligation to report observations and/or confidential information can create unintended adverse impacts. DOC investigates PREA related reports according to DOJ PREA standards with the intent to ensure the incarcerated population remains safe and is not subjected to sexual violence. DOC acknowledges staff have a heightened awareness to reporting and preventing PREA related incidents and will encourage staff to continue to positively communicate concerns directly with the population whenever possible to prevent unnecessary restrictions while carefully following all reporting, response, and prevention standards.
9. *DOC staff misgender individuals and use incorrect pronouns, including in witness statements, medical & mental health reports, BOEs, and their own database tracking.*
- A. The department expects all staff to be respectful and professional in their interactions and communications, both verbally and in writing.
 - B. In attempts to be respectful, at a male facility for instance, staff may refer to an individual as "Mr. X". However, once notified that the individual prefers to be referred to as "Ms. X," the expectation is that staff will refer to the individual as such, or by their last name only. At larger facilities where staff may interact with hundreds of individuals on any given day, it would not be unusual to sometimes forget the request to refer to someone in their preferred manner, and accidentally refer to them again against their preferred pronoun.
 - C. However, if the individual feels the staff is intentionally misgendering them, the individual could, and should, submit a Resolution Request to ensure the behavior is looked into and addressed, if determined to be intentional.
 - D. Certain processes have been on-hold pending ongoing work between the DOC and DRW, which includes certain policy revisions and updates.
 - E. Current DOC Policy 400.280 Legal Name Change requires individuals who have received a legal name change to still use their committed name for all written and verbal communication and matters relating to their incarceration (such as their identification cards).
 - F. DOC Policy 400.280 Legal Name Change is currently under review and will include changes to allow those who have legally changed their name to be recognized in all manners by their legal name only, to include being noted as the

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only name on their identification cards. Once this policy is finalized, new identification cards will be issued to those who have legally changed their name to reflect this as their identified name for all purposes within the DOC.

10. *Clothing policies and protocols do not fully meet the needs of gender diverse prisoners.*

- A. In 2018, the department gathered feedback and recommendations from the transgender population and enacted comprehensive changes to clothing processes in effort to better meet the needs of the population. The DOC began issuing gender affirming under garments, pajamas and expanded availability of gender affirming hygiene products such as deodorants, soaps, hair care products, razors, and personal property clothing items.
- B. The DOC continues to communicate with the population and enact progressive changes to clothing and property policies. For example, Correctional Industries recently converted its entire shirt production line to change the color of the state issued t-shirt to better accommodate individuals who wear a bra. The previous approved state issued t-shirt was white in color and created a feeling of being “outed” due to the visibility of the bra through the white t-shirt.
- C. On June 14, 2021, written notification was given to all facility Superintendents, Associate Superintendents and Captains that the department was now formally transitioning to gray t-shirts and to exhaust their supply of white t-shirts. Additionally, they were directed to take immediate action to issue gray t-shirts to the transgender population housed in their facilities. Many transgender individuals have already received their gray t-shirts, and some have chosen not to take them until they are available to the entire population.
- D. In addition, the DOC added long sleeved gray t-shirts to the personal property program, allowing incarcerated individuals to purchase and retain personal clothing for the first time in over 15 years.
- E. In April of 2021 the department expanded the state issued clothing policy to provide more flexibility and choice to the transgender population regarding the type of undergarments they choose to wear and increased clothing options.
- F. The department will continue to communicate and listen to the concerns shared by the transgender population regarding state issued clothing and personal property. In addition, conversations continue with DRW to help us better understand specific and individual needs as well as general population, standard issue clothing guidelines.

11. *DOC bathrooms and showers present ongoing concerns and safety risks for transgender individuals.*

- A. DOJ PREA standard 115.15(d) states: “The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.”

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- B. DOJ PREA standard 115.42(f) states: “Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.” This is also in DOC Policy 490.820 PREA Risk Assessments and Assignments (Section VII.F.), and DOC Policy 490.700 Transgender, Intersex, and/or Gender Non-Conforming Housing and Supervision (Section VII). As such, all facilities have created Operational Memoranda to indicate how they comply with these requirements. For some facilities, this is accomplished via private shower stalls; at other facilities where that is not feasible, transgender and intersex individuals are allowed to shower at alternative times such as during count when others are not in the area. Many choose to continue to shower with the general population as well.
 - C. All Washington facilities have consistently been found in compliance with DOJ PREA standards 115.15 and 115.42.
 - D. Without more specific information, the department is unable to investigate or examine the safety risks noted.
12. *Transgender prisoners report failures in the PREA reporting and investigation process. They feel the PREA system does not adequately protect them and that reporting incidents results in greater danger and harm. They also report that DOC does not offer enough support recovering from a reported PREA incident.*
- A. DOJ PREA standards and DOC policy require those conducting sexual abuse investigations be specially trained to do so, and that these investigators shall complete specific tasks, such as gathering and preserving direct and circumstantial evidence, and interviewing known alleged victims, suspected perpetrators, and witnesses. While the OCO report does mention that individuals have reported “It often makes things worse by DOC going directly to their abusers for incident interviews...”, this is a requirement. All known alleged victims, just as all alleged abusers have the right to be interviewed about allegations. Completing an investigation without interviewing all known parties would be inappropriate and irresponsible.
 - B. DOJ PREA standards and DOC policy also protect the “right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment.” Each report of retaliation is taken seriously and investigated independent of any associated PREA investigation.
 - C. Mental Health providers will continue to respond to individuals’ requests to meet with a mental health provider within 14 days of receiving a DOC 13-509 *PREA Mental Health Notification* form. Treatment plans will be developed to address the needs expressed by the individuals.
13. *Transgender, intersex, and gender conforming individuals also have overlapping identities that add to the level of harassment and discrimination they report experiencing.*
- A. Many facilities within the DOC have created support groups and peer groups for the LGBTI populations. Unfortunately, as is the case with most programs, the COVID-19 worldwide pandemic has caused the department to suspend the ability for the

Joanna Carns
August 12, 2021
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majority of these groups to meet. However, the department is hopeful these groups will resume in the near future as opportunities for cohorted programs continue to increase.

The information provided by the OCO was useful to ensure the DOC is doing everything it can to ensure an incarcerated person's time in the agency's custody is fair for all incarcerated individuals. The department also appreciates the OCO's understanding for the unique processes across the correctional system and the addition of policies and procedures being put in place to address them. The department is working toward proactively improving quality assurance processes throughout the department.

Moving forward, the DOC will continue to collaborate with the OCO to strengthen procedures and practices that positively impact individuals' health, safety, and welfare.

Sincerely,



Melena Thompson, Director
Executive Policy Office

MT:kr

c: Cheryl Strange, Secretary
Sean Murphy, Assistant Secretary, Health Services
Patrick Glebe, Assistant Secretary, Prisons
Dr. Sara Kariko, Chief Medical Officer
Dr. Karie Rainer, Director, Mental Health
Charlotte Headley, Chief of Security