

Norfolk; Stephanie Collins, in her official capacity as the DOC's Assistant Deputy Commissioner of Clinical Services; and James M. O'Gara, in his official capacity as the DOC's ADA Coordinator.

Plaintiff's motion seeks the following injunctive relief: 1) transfer to MCI-Framingham, the DOC's facility for female offenders; 2) prohibit male correction officers from conducting her strip searches; (3) train MCI-Norfolk staff to communicate with her using female pronouns and her chosen nickname; 4) provide a separate time for showering apart from male inmates; and 5) provide access to healthcare such as mammograms. Compl., ¶ 71.

STATEMENT OF FACTS

1. Plaintiff is a transgender inmate currently incarcerated at MCI-Norfolk. Compl. ¶¶ 1, 10, 25. Plaintiff began her third DOC incarceration on October 31, 2016. Plaintiff is serving a three to four year sentence for Possession of a Class A Controlled Substance with Intent to Distribute, G.L. c. 94C, § 32. Compl., ¶ 30. Presently, plaintiff has a parole eligibility date of September 16, 2018 and the date of her release from DOC custody is September 16, 2019. Affidavit of Sean Medeiros, ¶ 5. Exhibit 1.

Plaintiff's Treatment for Gender Dysphoria

2. After plaintiff's arrival at MCI-Norfolk on November 30, 2016, the facility's mental health staff were made aware of her prior GD diagnosis based on medical records from her prior DOC incarcerations. Plaintiff was previously incarcerated from October 1, 2010 to July 3, 2012, and from February 25, 2003 to September 3, 2005. *Id.* ¶ 8.

3. Inmates diagnosed with GD receive treatment pursuant to the DOC's GD policy, Identification, Treatment and Correctional Management of Inmates Diagnosed with Gender Dysphoria, 103 DOC 652.00, *et seq.* (2017). Exhibit 2.

4. The treatment available for GD inmates includes regular psychotherapy with a mental health clinician ("PCC") supervised by the GD Clinical Supervision Group, access to the same clothing and cosmetics available to females in DOC custody, and access to hormone therapy determined to be clinically appropriate and medically necessary. 103 DOC 652.06(D). All hormone therapy is monitored by endocrinologists. 103 DOC 652.06(D)(1).

5. Pursuant to the DOC's GD policy, the placement of GD inmates within DOC facilities is based upon an individualized assessment of the inmate's housing, work, education, medical/mental health, and program needs with a focus on individual safety. Affidavit of Mitzi Peterson, ¶ 14. Exhibit 3. Pursuant to 103 DOC 652.09:

These assessments will occur on a case by case basis and will include security level, criminal and discipline history, medical and mental health assessment of needs, vulnerability to sexual victimization and potential of perpetrating abuse based on prior history. A Gender Dysphoric inmate's own views with respect to his or her own safety shall be given serious consideration.

6. On November 3, 2016, plaintiff received an Initial Mental Health Appraisal conducted by a MPCH mental health professional. Compl., ¶ 46.

7. On November 14, 2016, plaintiff received a Mental Health Comprehensive Evaluation by a MPCH mental health professional. Compl., ¶¶ 47-48.

8. On December 12, 2016, plaintiff was provided with an Initial Treatment Plan which set out both short-term and long-term goals for treatment of her GD. Compl., ¶¶ 48-51.

9. On June 1, 2017, plaintiff's GD treatment was reviewed pursuant to a six-month

Treatment Plan Review. The Treatment Plan Review did not recommend changes to the Initial Treatment Plan. Compl., ¶¶ 52-53.

10. Based on her diagnosis of GD, plaintiff is able to receive the same female clothing and other feminizing items that are available for female offenders at MCI-Framingham. Plaintiff gets her hair “permed” in the MCI Norfolk Barber Shop. Peterson Aff., ¶ 5; 103 DOC 652.06.

11. Plaintiff is prescribed feminizing hormones. In documentation from her 2003 medical records, her treatment with feminizing hormones was confirmed by MCI-Concord staff during her initial assessment under her first DOC incarceration. Id. ¶ 6.

12. Plaintiff meets regularly with her primary care clinician (“PCC”) Liz Sampson of MPCH for mental health therapy. The frequency of her therapy sessions with Ms. Sampson was recently increased to twice a month based on clinical indication. Id. ¶ 7.

13. During her current incarceration, plaintiff has received numerous sessions of electrolysis/laser hair removal treatment for the removal of her facial hair. Id. ¶ 8.

14. Plaintiff works as a clerk in the canteen office, and served as the scorekeeper for the soccer league. She participates in an inmate coordinated LGBT group twice weekly. Id. ¶ 10.

15. Plaintiff completed the Correctional Recovery Academy, a six-month substance abuse program, in December 2017. Id. ¶ 11.

16. Plaintiff’s PTSD diagnosis was recently added by Dr. Berger-Hershkowitz, M.D. due to symptoms of sleeplessness, anxiety and reports of dysphoria. The PCC indicates that the PTSD diagnosis is related to “prior undisclosed trauma” which she and plaintiff have yet to address in therapy. Id. ¶ 13.

17. The GD treatment Committee has not recommended that plaintiff be placed at MCI-Framingham by reason of her GD diagnosis. During her recent reclassification, plaintiff requested placement at MCI-Framingham. Plaintiff's reclassification included an individualized assessment of plaintiff, including a review of such factors as her security level, criminal and discipline history, GD diagnosis, medical and mental health needs, vulnerability as a victim and potential for predatory behavior, and plaintiff's own views with respect to her safety. See 103 DOC 652.09; 103 CMR 420.09. On November 21, 2017, a classification board recommended that plaintiff remain at MCI-Norfolk. On December 6, 2017, in response to plaintiff's appeal of the classification decision, the Superintendent's designee upheld the classification decision. The Superintendent's designee reviewed the classification decision and found that there were no risk factors suggesting that another facility was more appropriate than MCI-Norfolk, and noted that the GD Treatment Committee had not determined that plaintiff required placement at MCI-Framingham based on her GD diagnosis. Id. ¶ 15; See Classification regulations, 103 CMR 420.00, et seq., Exhibit 4.

Access to Private Showers

18. In accordance with the federal Prison Rape Elimination Act ("PREA"), MCI-Norfolk inmates diagnosed with GD are provided with alternative showering times apart from other inmates on their housing units. GD inmates at MCI-Norfolk are now provided with letters which advise their housing unit staff that they are authorized to utilize an alternative time for showering pursuant to PREA. Medeiros Aff., ¶ 6; 103 DOC 652.09(E). During the alternative showering time for GD inmates, no other inmates are permitted to use the shower area. Id. ¶ 13.

19. All inmate showers at MCI-Norfolk must utilize plastic shower curtains specified by PREA, designed to discourage sexual activities between inmates in showers by enabling staff to detect if there is more than one inmate in the shower. The PREA required shower curtains have a large opaque portion covering the middle of the shower curtain, approximately three (3) feet wide, starting approximately one (1) foot from the bottom of the shower curtain. The bottom one (1) foot of the shower curtain and the top of the curtain, starting approximately four (4) feet from the bottom are transparent. The opaque portion of the shower curtain provides privacy for the inmate's torso. Id. ¶ 7.

20. Where, according to institutional records, plaintiff is five (5) foot, three (3) inches tall (5'3"), and the opaque portion of the PREA shower curtain, measuring approximately one (1) foot to four (4) feet off the floor, the PREA shower curtain should be sufficient to cover plaintiff's torso. Id. ¶ 17.

21. Since her arrival at MCI-Norfolk, plaintiff has been provided with an alternative showering time separate from other inmates. Id. ¶¶ 9-12.

22. Presently, plaintiff is housed in a single cell on the third floor of the 3-2 housing unit and is provided with a separate showering period apart from other inmates on her floor. Id. ¶ 16. Plaintiff confirmed with her PCC Liz Sampson on February 12, 2018 that she is provided with private showers. Peterson Aff., ¶ 9.

23. Contrary to plaintiff's allegation that "male prisoners routinely stand on the tier above the bathroom to see me naked and sexually harass me," with the exception of the 8-1 housing unit, none of the housing units plaintiff has been assigned to at MCI-Norfolk, including her current 3-2 housing unit, have tiers. Medeiros Aff., ¶ 18.

Strip Searches

24. Strip searches are conducted on inmates at MCI-Norfolk pursuant to the DOC's Search policy, 103 CMR 506.00, et seq. Exhibit 5. Strip searches are an important part of MCI-Norfolk's security procedures and assist staff in their efforts reduce the presence of drugs, weapons, and other contraband within the facility. Strip searches are employed for routine security checks or when there is a specific suspicious incident that would indicate that an inmate is perhaps carrying contraband. Specific situations in which strip searches may be used include before and after court trips, medical trips, and visits. 103 CMR 506.04(1); Id. ¶ 19.

25. Strip searches of inmates involve a visual inspection of the inmate and do not involve the correction officers conducting the search to touch the inmate. 103 CMR 506.04(1)(C). It would be improper for a correction officer to touch an unclothed inmate during a strip search. Such improper touching could also constitute a PREA violation. Id. ¶ 20.

26. The DOC Search policy provides that "[I]nmates identified as having gender identity disorder shall be identified as the gender of the facility in which they are housed." 103 CMR 506.04(1). Id. ¶ 21.

27. At the present time, MCI-Norfolk employs thirty-one (31) female correction officers: fourteen (14) on the 7:00 a.m. to 3:00 p.m. shift; six (6) on the 3:00 p.m. to 11:00 p.m. shift; four (4) on the 1:00 p.m. to 9:00 p.m. shift; two (2) on the 11:00 p.m. to 7:00 a.m. shift; and five (5) house officers who vary between the day and evening shifts. MCI-Norfolk employs approximately 340 male correction officers. Id. ¶ 22.

28. Female officers are not restricted from working any posts at MCI-Norfolk based on the applicable collective bargaining agreements between the agency and the correction

officers' unions as well as current labor law requirements. By not restricting female officers' posts, they are afforded the full range of experience they may need to be competitive for promotional opportunities. Further, not restricting where female officers can work allows the institution the greatest flexibility in utilizing its line staff. Id. ¶ 22.

29. Strip searches are performed by two correction officers and should be conducted in relative privacy rendering as much dignity to the situation as possible in accordance with the Search policy. 103 DOC 506.04(6). Id. ¶ 23.

30. However, there are not always two female correction officers readily available to conduct strip searches of GD inmates at MCI-Norfolk. If there are two female correction officers available on the shift, waiting for them to be relieved from their assigned posts may slow down the process of having the inmates complete the search procedure and enter the facility, their housing units, or other areas of the facility, or have visits. Id. ¶¶ 24-28.

ARGUMENT

I. STANDARD OF REVIEW

“A preliminary injunction is an extraordinary and drastic remedy, that is never awarded as of right.” Peoples Federal Savings Bank v. Peoples United Bank, 672 F.3d 1, 8-9 (1st Cir. 2012); Mazurek v. Armstrong, 520 U.S. 968, 978 (1997) (“It is frequently observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.”) (emphasis in original). “In each case, courts ‘must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.’” Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24 (2008) (quoting Amoco Production Co. v.

Gambell, 480 U.S. 531, 542 (1987)). “In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” Id. (quoting Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982)).

In order to succeed on a request for a preliminary injunction, “a plaintiff must establish: 1) that he is likely to prevail on the merits, 2) that he is likely to suffer irreparable harm in the absence of preliminary relief, 3) that the balance of equities tips in his favor, and 4) the injunction is in the public interest.” People’s Federal Savings, 672 F.3d at 8-9 (quoting Winter, 555 U.S. at 20). “Plaintiffs must show a strong likelihood of success, and they must demonstrate that irreparable injury will be likely absent an injunction.” Respect Maine PAC v. McKee, 622 F.3d 13, 15 (1st Cir. 2010) (citing Winter, 555 U.S. at 21.); Sindicato Puertorriqueno de Trabajadores v. Fortunao, 699 F.3d 1, 10 (1st Cir. 2012). Denial of a request for injunctive relief is warranted where the plaintiff fails to demonstrate the existence of all four factors. See Esso Standard Oil Co. v. Monroig-Zayas, 445 F.3d 13, 18 (1st Cir. 2009); Aponte v. Calderon, 284 F.3d 184, 191 (1st Cir. 2002). However, several decisions in this circuit have held that the preliminary injunction analysis should focus on the first and second factors of the four-factor test. See Respect Maine PAC, 622 F.3d at 15 (“The first two factors are the most critical.”); Swaroski Aktiengesellschaft v. Building No. 10, Inc., 706 F.3d 44, 48 (1st Cir. 2013) (“...while each factor of the four factor is important, ‘the cynosure of this four-part-test is more often than not the movant’s likelihood of success on the merits.’”) (quoting Borinquen Biscuit Corp. v. M.V. Trading Corp., 443 F.3d 112, 115 (1st Cir. 2006)).

When a government agency is involved, the requirement that the government be granted the “widest latitude in the dispatch of its own internal affairs” must be observed. Lewis v. Casey,

518 U.S. 343, 378-379 (1996). Such considerations are strengthened when a state agency is involved due to federalism concerns. O’Shea v. Littleton, 414 U.S. 488, 499 (1974) (“proper balance in the concurrent operation of federal and state courts counsels restraint against the issuance of injunctions against state officers”).

Moreover, where a party seeks injunctive relief which alters the status quo by mandating some positive act by the non-moving party, the moving party must meet a higher standard. See Braintree Laboratories, Inc. v. Citigroup Global Markets, Inc., 622 F.3d 36, 40-41 (1st Cir. 2010); W. Holding Co. v. AIG Inc., Puerto Rico, 748 F.3d 377, 383 (1st Cir. 2014) (same); Mass. Coalition of Citizens with Disabilities v. Civil Defense Agency and Office of Emergency Preparedness, 649 F.2d. 71, 76 n. 7 (1st Cir. 1981) (“Mandatory preliminary injunctions do not preserve the status quo and normally should be granted only in those circumstances when the exigencies of situation demand such relief.”); Harris v. Wall, 217 F.Supp.2d 541, 553 (D.R.I. 2016) (“By contrast, an injunction that alters the status quo, which is what Plaintiff is seeking, is atypical. Designated as a “mandatory injunction,” such relief “normally should be granted only in those circumstances when the exigencies of the situation demand such relief.”)

Further, pursuant to the Prison Litigation Reform Act (“PLRA”), 18 U.S.C. § 3626, “[t]he court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.” 18 U.S.C. § 3626(a)(1). In determining whether to grant injunctive relief, a court must give “substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.” Id. See Feliciano v. Rullan, 378 F.3d 42, 50-51 (1st Cir. 2004).

II. PLAINTIFF IS UNABLE TO SHOW A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS OF HER CLAIMS.

A. PLAINTIFF WILL NOT SUCCEED ON HER CLAIM UNDER THE ADA AND THE FRA.

Count I of the Complaint alleges a violation of plaintiff's rights under Title II of the ADA. 42 U.S.C. § 12132. Count II of the Complaint alleges a violation of plaintiff's rights under the FRA. 29 U.S.C. § 794(a). The ADA defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities of [an] individual." 42 U.S.C. § 12101(1)(A).² Title II of the ADA provides that, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by any entity." 42 U.S.C. §12132. The ADA defines a "qualified individual with a disability" as:

An individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 U.S.C. §12131(2).

In order to state a claim under Title II of the ADA, a plaintiff must allege "(1) that he is a qualified individual with a disability; (2) that he was either excluded from participation in or

² Like the ADA, the FRA defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities." 29 U.S.C. § 705(9)(b). Further, in 1992, Congress amended the FRA to include the same exclusions from the definition of "disability" found in 42 U.S.C. § 12211, including the exclusion of gender identity disorders without a physical impairment and transsexualism. See Rehabilitation Act Amendments of 1992, Pub. L. 102-569 (October 29, 1992). Because the statutory definition of "disability" is the same for the ADA and the FRA, courts have consistently applied the same analysis for both federal statutes. See Nunes v. Massachusetts Department of Correction, 766 F.3d 136, 14 (1st Cir. 2014); Kiman v. New Hampshire Department of Correction, 451 F.3d 274, 285 n. 10 (1st Cir. 2006); Katz v. City Metal Co., 87 F.3d 26, 31 n. 4 (1st Cir. 1996) (Section 504 of RA "is interpreted substantially identically to the ADA."). Accordingly, defendants will analyze the FRA claims under the ADA.

denied the benefit of some public entity's services, programs or activities, or was otherwise discriminated against; and (3) that such an exclusion, denial of benefits, or discrimination was by reason of his disability." Parker v. Universidad de Puerto Rico, 225 F.3d 1, 5 (1st Cir. 2000) (citing 42 U.S.C. §12132); Buchanan v. Maine, 469 F.3d 158, 170-171 (1st Cir. 2006) (plaintiff must satisfy all three prongs, including showing that he is a qualified individual). If these standards are met, then "reasonable accommodations" would need to be made. See Bibbo v. Massachusetts Department of Correction, 2010 WL 2991668, * 1 (D. Mass. 2010); Fulton v. Goord, 591 F.3d 37, 43-44 (2d Cir. 2009).

To the extent that a plaintiff is found to present a disability under the ADA, the claimant is entitled to a reasonable accommodation. An "[a]ccommodation is not reasonable if it either imposes 'undue financial and administrative burdens' on a grantee, or requires a 'fundamental alteration in the nature of the program.'" School Board of Nassau County v. Arline, 480 U.S. 273, 287 n. 17 (1987). In considering whether an accommodation presents an undue burden, a court must take into account the nature and cost of the accommodation, the size of the facility in terms of the financial resources and personnel, and the type of operations involved, including composition, structure, and function. Riel v. Electronic Data Systems Corp., 99 F.3d 678, 681 (5th Cir. 1996). An accommodation which presents an "extensive, substantial, or disruptive" deviation is considered an undue hardship and therefore not reasonable. 29 C.F.R. § 1630.2(p).

The ADA does not require that a plaintiff be provided with the accommodation of her choice. See Nunes, 766 F.3d at 146 (The ADA requires the Department to provide reasonable accommodations, "not to optimal ones finely tuned to [inmate's] preferences.") (citing J.D. ex rel. J.D. v. Pawlet School District, 224 F.3d 60, 70-71 (2d Cir. 2000)). A "reasonable

accommodation” does not mean that prison officials must accede to every demand of an inmate; rather, an accommodation is reasonable so long as it gives “meaningful access” to the services sought. Bibbo, 2010 WL 2991668, *1 (citing Alexander v. Choate, 469 U.S. 287, 301 (1985)); Nunes, 766 F.3d at 145-146 (change in procedures did not deny inmate meaningful access to medications); Kiman, 451 F.3d at 283; Parks v. Blanchette, 144 F.Supp.3d. 282, 339 (D. Conn. 2015) (failure to accommodate inmate’s request for specific type of housing did not violate ADA); Knox v. Massachusetts Department of Correction, 2017 WL 3401443 *10 (D. Mass. Aug. 8, 2017) (failure to change housing assignment did not violate ADA); Lopes v. Beland, 2014 WL 1289455 *12 (D. Mass. Mar. 29, 2014) (failure to provide inmate with a single cell did not violate ADA); Polansky v. New Hampshire Department of Correction, 2013 WL 1398582 at *12 (D.N.H. Mar. 25, 2013) (failing to utilize inmate’s preferred search procedure does not create an unreasonable accommodation so long as inmate has access to services).

Nor does Title II of the ADA itself mandate the provision of services. Buchanan, 469 F.3d at 174. Public entities are not obligated to provide new programs or services to the disabled which it has not previously provided to any group. Buchanan, 469 F.3d at 173 (“Although the ADA does not itself mandate the provision of services, it does prohibit discrimination against the disabled within services that *are* provided”) (emphasis in original) (citing Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 603 n. 14 (1999) (The ADA does not require States to “provide a certain level of benefits to individuals with disabilities.”). An inmate cannot state an ADA claim merely because a prison supposedly fails to attend to the needs of its disabled inmates. The ADA does not create a remedy for questions of the adequacy of treatment. See Buchanan, 469 F.3d at 175; Leslie v. Chie, 250 F.3d 47, 54-55 (1st Cir. 2001) (citing Bryant v. Madigan, 84

F.3d 246, 249 (7th Cir. 1996), reh. den. 91 F.3d 994 (7th Cir. 1996)). Further, “a State may rely upon the reasonable assessment of its own professionals in determining whether a patient meets the requirements for a particular treatment program.” Buchanan, 469 F.3d at 174.

In addition, within “the prison context, whether accommodations are reasonable must be judged ‘in light of the overall institutional requirements,’ including ‘[s]ecurity concerns, safety concerns, and administrative exigencies.’” Holmes v. Godinez, 311 F.R.D. 177, 226 (N.D. Ill. Oct. 8, 2015) (quoting Love v. Westville Correctional Center, 103 F.3d 558, 561 (7th Cir. 1996)). The First Circuit has held that great deference should be afforded to administrators in determining whether changing the current system is a reasonable accommodation. Wynne v. Tufts University School of Medicine, 976 F.2d 791, 794 (1st Cir. 1992). Courts have long held that prison officials are to be afforded wide-ranging deference in the adoption of policies and practices that in their judgment are necessary to preserve institutional order and discipline. Bell v. Wolfish, 441 U.S. 520, 547 (1979). “Such considerations are peculiarly within the province and professional expertise of correction officials, and, in the absence of substantial evidence in the record that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.” Id. at 548 (citing Pell v. Procunier, 414 U.S. 817 (1974)); see also Lewis, 518 U.S. at 361 (courts are not to engage in micro-management of prison affairs or become enmeshed in the minutiae of prison operation); Rhodes v. Chapman, 452 U.S. 337, 349 n. 14 (1981). Even in matters which involve the limitation of fundamental rights, there must be a “mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.”

Wolff v. McDonnell, 418 U.S. 539, 556 (1974). Classification decisions by prison administrators are presumptively valid and entitled to substantial deference. See Bell, 441 U.S. at 521.³

1. Plaintiff Is Not A Qualified Individual With A Disability.

In enacting the ADA in 1990, Congress specifically excluded from the definition of disability those individuals with “gender identity disorders not resulting from physical impairments.” See 42 U.S.C. § 12211(b)(1).^{4 5} Congress later amended the ADA by enacting the ADA Amendments Act of 2008 (“ADAAA”). Pub.L. No. 110-325 (2008). However, in amending the ADA, Congress left intact the exclusions from coverage set out in 42 U.S.C. § 12211. Thus, despite the opportunity to amend the ADA to eliminate the coverage exclusion for gender identity disorders in 2008, Congress explicitly left the exclusions from coverage defined in 42 U.S.C. § 12211, unchanged. Accordingly, numerous courts have excluded disability claims based on GID/GD pursuant to 42 U.S.C. § 12211(b)(1). See e.g., Michaels v. Akai Security, Inc., 2010 WL 2573988 *6 (D. Colo., June 24, 2010) (“Gender dysphoria, as a gender identity disorder, is specifically exempted as a disability by the Rehabilitation Act.”); Doe v. United Consumer Fin. Serv., 2001 WL 34350174 *6 (N.D. Ohio, Nov. 9, 2001) (finding that

³ In constitutional challenges to the DOC classification regulations, both state and federal courts have indicated that the Commissioner of Correction has absolute discretion when it comes to classifying or transferring inmates. The classification of inmates to institutions of different levels of security neither implicates any protected liberty interest nor triggers any due process protection under the state and federal constitutions. See Meachum v. Fano, 427 U.S. 215 (1976); Montanye v. Haymes, 427 U.S. 236, 242 (1976); Olim v. Wakinekona, 461 U.S. 238, 245-248 (1983). The decision where to place prisoners within the correctional system is simply a matter of administrative discretion invoked for reasons such as security, convenience or rehabilitation. Jackson v. Commissioner of Correction, 388 Mass. 700, 703 (1983); Lombardo v. Meachum, 548 F.2d 13, 14-15 (1st Cir. 1977). Nor do state statutes governing classification, G.L. c. 124, § 1 (g), and G.L. c. 127, §§ 20 and 97, create any entitlement to any particular classification. Hastings v. Commissioner of Correction, 424 Mass. 46 (1997); Harris v. Commissioner of Correction, 409 Mass. 472, 478 (1991).

⁴ 42 U.S.C. § 12211(b)(1) excludes from the definition of disability: “(1) “transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavioral disorders.”

⁵ At the same time, Congress amended the Rehabilitation Act of 1973 to include the same exclusions from the definition of “disability” found in 42 U.S.C. § 12211. See 29 U.S.C. § 706(8)(F).

ADA “explicitly excludes” GID from definition of disabilities); James v. Ranch Mart Hardware, Inc., 1994 WL 731517 *2 (D. Kan., Dec. 23, 1994) (same).

At the time Congress enacted the ADA of 1990, Gender Identity Disorder (“GID”) and the sub-category of Transsexualism were identified as mental disorders in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III) (1980) and Third Edition, Revised (1987) (“DSM-III-R”). “Transsexualism” was defined as a “persistent sense of discomfort and inappropriateness of one’s anatomic sex” and “markedly impaired” social and occupational functioning. DSM-III-R § 302.50. In 1994, the Fourth Edition, Revised, of the DSM defined GID as being characterized by a strong desire to be the other gender and “clinically significant distress or impairment in social, occupational, or other important areas of functioning.” DSM-IV-TR § 302.85. In 2013, the Fifth Edition of the DSM revised the definition of GID, including changing the term to “Gender Dysphoria.” The diagnosis of gender dysphoria in the DSM-V still required “clinically significant distress or impairment in social, occupational, or other important areas of functioning.” DSM-V § 302.85.

Recently, a federal district court, in denying the defendant employer’s motion to dismiss a claim under the Title I of ADA alleging discrimination based on GID, held that the ADA’s exclusion of individuals diagnosed with GID from its coverage was limited to individuals who identified with a different gender but did not experience any impairment related to GID. See Blatt v. Cabela’s Retail Inc., U.S.D.C. No. 5:14-cv-04822 (Denial of Partial Motion to Dismiss, May 18, 2017). The Blatt Court interpreted the exclusion of GID from ADA coverage under 42 U.S.C. § 12211(b)(1) “narrowly to refer to only the condition of identifying with a different gender, not to encompass (and therefore exclude from ADA protection) a condition like Blatt’s

gender dysphoria, which goes beyond merely identifying with a different gender and is characterized by clinically significant stress and other impairments that may be disabling.” *Id.* at *3. However, the Blatt Court’s interpretation of GID effectively strips the disorder of the underlying mental condition that must be present in order to diagnosis an individual with GD/GID. See DSM-V § 302.85(B) (“The condition is associated with clinically significant distress or social impairment in social, occupational, or other important areas of function.”). Thus, the Blatt Court seeks to create two distinct categories within the diagnosis of GD, one category contains individuals who merely identify with a different gender without experiencing any distress or impairments associated with GD and a second category of individuals who experience distress or impairments associated with GD. As described above, a clinical diagnosis of GD under the DSM-V specifically provides that the “condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.” Thus, in the absence of clinically significant distress or impairment associated with the GD, an individual cannot be diagnosed with GD. DSM-V § 302.85(B).

The Blatt Court’s “narrowing” of the ADA’s exclusion of gender identity disorders effectively rewrites the federal statute and eliminates the exclusion established by Congress in 1990 and left untouched by the ADAAA in 2008. Whether the exclusion of GD from the ADA’s definition of disability should be stricken or altered should be left to Congress. Where plaintiff will not succeed on the claims under the ADA and FRA, injunctive relief should be denied.

2. Plaintiff’s Constitutional Challenge To The ADA And FRA.

Plaintiff’s Opposition to Defendants’ Motion to Dismiss argues that the ADA’s exclusion of GID/GD from the definition of disability is unconstitutional in that the exclusion violates the

Equal Protection Clause of the Fourteenth Amendment. Pursuant to Fed. R. Civ. P. 5.1, plaintiff has filed a Notice of Constitutional Question. (ECF #36). Defendants take no position on the constitutionality of the ADA and defer to the United States Attorney General's position regarding the constitutionality of the federal statute.

3. Plaintiff Has Failed To Show That Defendants Have Engaged In Discrimination In Violation Of The ADA and FRA.

Even if this Court were to determine that plaintiff's claim is not excluded from the ADA, pursuant to 42 U.S.C. § 12211(b)(1), it is clear that plaintiff is not entitled to injunctive relief where she has failed to show that she was excluded from or denied a benefit or service or subject to discrimination *by reason of* her gender dysphoria. Plaintiff's request for injunctive relief focuses on alleged unlawful conditions of her confinement, *i.e.*, failing to reclassify her to MCI-Framingham; permitting male correction officers to conduct her strip searches; failing to provide a separate time for showering apart from male inmates; failing to train MCI-Norfolk staff to communicate with her using female pronouns or her chosen nickname; and a lack adequate medical care. Compl., ¶¶ 61-69.

Plaintiff is not entitled to a preliminary injunction where she has failed to establish a *prima facie* case for discrimination in violation of the ADA. Title II of the ADA obligates the defendants to provide plaintiff with reasonable access to programs, activities or services. Plaintiff has not articulated an ADA claim in the absence of facts which support a finding of discrimination against her on the basis of her gender dysphoria. While, for the purposes of their opposition, defendants do not dispute plaintiff's contention that she has been diagnosed with GD, plaintiff has failed to show that she has been excluded from participation in or denied the benefits of any service, program, or activity or subject to discrimination while confined at MCI-

Norfolk by reason of her GD diagnosis. See Parker, id. Nor has plaintiff demonstrated that she is excluded from services, programs or activities that are only available at MCI-Framingham. Plaintiff has failed to demonstrate that she has been discriminated against with regard to her conditions of confinement, including classification, searches, shower times, communications with staff, and medical treatment by reason of her GD. Even if plaintiff could show that she was denied a specific type of programming or benefit, she will not succeed on the claim since “the ADA prohibits discrimination because of disability, not inadequate treatment for disability.” Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1022 (9th Cir. 2010) (finding that deprivation of programs or activit[ies] to lessen his depression is not actionable under the ADA).

Here, plaintiff has failed to demonstrate that the defendants have engaged in discrimination based on her GD diagnosis, in violation of the ADA and FRA. It is undisputed that plaintiff is being provided with treatment for her GD in the form of hormone therapy, regular psychotherapy, access to the same clothing and cosmetics available to female offenders, laser hair removal, and preventative healthcare, including mammograms. Peterson Aff., ¶¶ 5-8. Plaintiff was able to participate in and complete the Correctional Recovery Academy in December 2017 and is able to engage in work at MCI-Norfolk. Id. ¶¶ 10-11. Plaintiff also participates in program and recreational activities. Id. ¶ 10. Plaintiff has a single cell on the 3-2 housing unit and is provided with an alternative time for showering separate from other inmates. Id. ¶ 9; Medieros Aff. ¶ 13. Plaintiff’s placement within the DOC underwent an individualized assessment, pursuant to the DOC’s GD policy, 103 DOC 652.09, and classification procedures, 103 CMR 420.09, in December 2017. The classification assessment considered such factors as plaintiff’s security level, criminal and discipline history, GD diagnosis, medical and mental

health needs, vulnerability to sexual victimization, and potential for perpetrating abuse. The classification decision determined that plaintiff should remain at MCI-Norfolk. The Superintendent's designee reviewed the classification decision and found that there were no risk factors suggesting that placement at MCI-Framingham was more appropriate and noted that the GD Treatment Committee had not recommended that plaintiff be placed at MCI-Framingham based on her GD diagnosis. 103 DOC 652.09; 103 CMR 420.09; Peterson Aff., ¶¶ 14-15.

Further, the DOC has provided training to staff regarding issues associated with working with GD inmates, including the proper use of pronouns. Peterson Aff. ¶ 19. Plaintiff's allegations of harassment are being investigated. Medeiros Aff. ¶¶ 29, 33. Plaintiff has opportunities to raise concerns regarding her conditions of confinement with senior prison staff via the DOC Grievance regulations, 103 CMR 491.00, et seq., and in staff access periods at MCI-Norfolk. Id. ¶¶ 29-33.

Accordingly, to the extent plaintiff can assert claims under the ADA and FRA, injunctive relief should be denied due to her failure to show that defendants have engaged in discrimination or denied her access to services, programs or benefits based on her diagnosis of GD.

4. Requested Relief Would Impose Undue Burdens On Defendants.

Plaintiff seeks an injunction that mandates plaintiff's transfer to MCI-Framingham. In the alternative, plaintiff seeks an injunction requiring that her strip searches at MCI-Norfolk be conducted solely by female correction officers. Compl., ¶ 71.

An accommodation is not reasonable if it would "fundamentally alter the nature of the service provided" or "impose an undue financial or administrative burden." Toledo v. Sanchez, 454 F.3d 24, 39 (1st Cir. 2006) (quoting Tennessee v. Lane, 541 U.S. 509, 532 (2004)); Enica v.

Principi, 544 F.3d 328, 342 (1st Cir. 2008) (defendant may show that the proposed accommodation is not feasible and would constitute an undue burden); McElwee v. County of Orange, 700 F.3d 635, 641 (2d Cir. 2012) (accommodation is unreasonable if it imposes an undue hardship on program); Tucker v. Tenn., 539 F.3d. 526, 532 (6th Cir. 2006); School Bd. of Nassau County, 480 U.S. at 287 n. 17.

i. Transfer To MCI-Framingham Would Impose Undue Burden.

Here, an accommodation requiring that plaintiff be transferred to MCI-Framingham would impose an undue burden on the defendants. Plaintiff has already received an individualized assessment regarding her placement within the DOC which considered such factors as her security level, criminal and discipline history, GD diagnosis, medical and mental health needs, vulnerability as a victim and potential for predatory behavior, and plaintiff's own views with respect to her safety. The December 2017 individualized assessment of plaintiff as to her placement within the DOC determined that she should remain at MCI-Norfolk. 103 DOC 652.09; 103 CMR 420.09; Peterson Aff. ¶¶ 14-15. The assessment also considered that fact that the DOC's GD Treatment Committee has not recommended that plaintiff be placed at MCI-Framingham as necessary for treatment of her GD. Peterson ¶ 15.

In the absence of any evidence that plaintiff's December 2017 classification process was improper and violated DOC regulations and policies, plaintiff's individualized assessment as to her DOC placement should stand. Invalidating the December 2017 assessment or requiring the defendants to conduct another individualized assessment of plaintiff would place an unreasonable burden upon the defendants. To the extent that plaintiff's request for injunctive

relief seeks to invalidate plaintiff's December 2017 classification and require defendants to conduct another individualized assessment, the request should be denied.

ii. **Strip Searches Of Plaintiff By Female Correction Officers At MCI-Norfolk Present An Undue Burden.**

Plaintiff seeks a preliminary injunction requiring that her strip searches at MCI-Norfolk be conducted solely by female correction officers. However, requiring that strip searches of plaintiff at MCI-Norfolk be conducted by female correction officers would present significant operational and security burdens. MCI-Norfolk Superintendent Medeiros describes the substantial difficulties that would confront the prison if the strip searches of the plaintiff and other GD inmates were conducted solely by female correction officers. Medeiros Aff. ¶¶ 22-29. First, MCI-Norfolk presently employs 31 female correction officers across three shifts, as compared to 340 male correction officers. *Id.* ¶ 22. Female correctional officers are not restricted in the type of posts they may have while working at the facility. Because DOC regulations require that two correction officers be present to conduct a strip search, two female correction officers would need to be relieved of their posts in order to conduct a strip search of the plaintiff or other GD inmates. *Id.* ¶ 23. Relieving female correction officers from their assigned posts in order that they may conduct strip searches of plaintiff and other GD inmates would be disruptive of the facility's operations. Inmates would likely experience delays in completing the search procedures and entering the facility, returning to their units or other areas of the facility or having visits. *Id.* ¶ 24. Further, the requirement that only female correction officers conduct strip searches of plaintiff and other GD inmates may result in tensions between male and female correction officers where female correction officers may object to conducting strip searches of plaintiff and other GD inmates who possess male genitalia and object to

restrictions on the posts they may be assigned to within the prison. Id. ¶ 27. The request for an injunction requiring that only female officers conduct strip searches of plaintiff would place an undue burden on the defendants.

B. PLAINTIFF WILL NOT SUCCEED ON THE CLAIM BROUGHT UNDER THE EQUAL PROTECTION CLAUSE.

Count III of the Complaint alleges a violation of plaintiff's rights under the Equal Protection guarantees of the Fourteenth Amendment. Plaintiff alleges that her rights under the Equal Protection Clause are violated in the absence of an individualized assessment determining whether she should be classified for placement at MCI-Framingham. Mem. P. I. at 28.

The Fourteenth Amendment's Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432, 439 (1985). "The general rule is that legislation is presumed valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." Id. at 440. See Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); Walker v. Exeter Region Coop. School Dist., 284 F.3d 42, 45 n. 4 (1st Cir. 2002) ("The underlying equal protection inquiry, ... is whether different treatment of two separately classified groups is at least marginally *reasonable*." (emphasis in original)). A plaintiff must show that a discriminatory purpose was the motivating factor in the unequal treatment. See Washington v. Harper, 494 U.S. 210, 233 (1990) (A state's interest in maintaining safety and security justifies interference with an inmate's fundamental rights as long as the interference reasonably furthers this goal.) (quoting Dartmouth Review v. Dartmouth College, 889 F.2d 13, 19 (1st Cir. 1989), overruled on other grounds by Educadores Puertorriquenos en Accion v. Hernandez, 367 F.3d 61 (1st Cir. 2004)).

On the other hand, plaintiff asserts that the DOC's GD policy, focused on the identification, treatment, and correctional management of GD inmates, constitutes gender based discrimination and requires defendants to show that the policy, with regard to the plaintiff's placement within the DOC, is substantially related to a sufficiently important government interest. See City of Cleburne, 473 U.S. at 440.

Here, it is clear that, even using an intermediate level of scrutiny, plaintiff's Equal Protection claim will not succeed where she was recently provided with an individualized assessment to determine her placement within the DOC. The GD policy provides criteria for the placement of GD inmates into DOC facilities, requiring a case-by-case assessment of each inmate:

An assessment will inform housing, work, education, and program assignments and will focus on individual safety. These assessments will occur on a case by case basis and will include security level, criminal and discipline history, medical and mental assessment of needs, vulnerability to sexual victimization and potential of perpetrating abuse based on prior history. A Gender Dysphoric inmate's own views with respect to his or her own safety shall be given serious consideration.

103 DOC 652.09(A).

The GD Treatment Committee has not recommended that Jane Doe be placed at MCI-Framingham by reason of her GD diagnosis. See 103 DOC 652.04; Peterson Aff. ¶ 15. During her recent reclassification, pursuant to 103 CMR 420.00, et seq., plaintiff requested placement at MCI-Framingham. On November 21, 2017, a classification board recommended that plaintiff remain at MCI-Norfolk. The classification decision was based on an individualized assessment of factors, including plaintiff's security level, criminal and discipline history, GD diagnosis, medical and mental health needs, vulnerability as a victim, potential for predatory behavior, and

plaintiff's own views with respect to her safety. On December 6, 2017, in response to plaintiff's appeal, the Superintendent's designee conducted a review of the classification decision. The Superintendent's designee upheld the classification decision, finding that there were no risk factors suggesting that MCI-Framingham was more appropriate for plaintiff. The Superintendent's designee noted that the GD Treatment Committee had not recommended that plaintiff be placed at MCI-Framingham based on her GD diagnosis. Peterson Aff. ¶ 15.

Here, it is clear that the DOC's GD policy does not provide a blanket requirement that all GD inmates are placed in a facility which matches their assigned birth sex, but, instead, provides for an individualized assessment for each GD inmate. The individualized assessment considers a wide variety of factors, including security level, criminal and discipline history, GD diagnosis, medical and mental needs, vulnerability, potential for predatory behavior, and the GD inmate's own views as to personal safety. In light of the December 2017 individualized assessment as to plaintiff's placement, it is clear that there has been no violation of her equal protection rights. See 103 DOC 652.09; 103 CMR 420.09. See also 28 C.F.R. § 115.42(c) (Department of Justice regulation providing that "[i]n deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would prevent management or security problems."). Accordingly, plaintiff will not succeed on her Equal Protection claim and the request for injunctive relief must be denied.

C. PLAINTIFF WILL NOT SUCCEED ON THE DUE PROCESS CLAIM.

Count IV of the Complaint raises a claim under the Fourteenth Amendment for a

violation of plaintiff's substantive due process rights. To succeed on a substantive due process claim, a "plaintiff must show *both* that the acts were so egregious as to shock the conscience *and* that they deprived him of a protected interest in life, liberty, or property." Harron v. Town of Franklin, 660 F.3d 531, 536 (1st Cir. 2011) (citing Pagan v. Calderon, 448 F.3d 54, 64 (1st Cir. 2006) (emphasis in original)). See also Martinez v. Cui, 608 F.3d 54, 64-65 (1st Cir. 2010); County of Sacramento v. Lewis, 523 U.S. 833, 845-846 (1998) (establishing the two-tiered approach of the shocks-the-conscience test and clarifying that the test applies to all substantive due process claims based on executive, as opposed to legislative, action). The First Circuit has set a high bar for showing when an executive action violates substantive due process:

Executive acts that shock the conscience must be 'truly outrageous, uncivilized, and intolerable,' and 'the requisite arbitrariness and caprice must be stunning, evidencing more than humdrum legal error. Indeed, '[a] hallmark of successful challenges is an extreme lack of proportionality, as the test is primarily concerned with violations of personal rights so severe [,] so disproportionate to the need presented, and so inspired by malice or sadism rather than merely careless or unwise zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience.

Harron, 660 F.3d at 536 (quoting Gonzales-Fuentes v. Molina, 607 F.3d 864, 880-881 (1st Cir. 2010)); Williams v. City of Brockton, 146 F.Supp.3d 290, 312 (D. Mass. 2015). "The history of the substantive due process doctrine indicates that it is to be applied with 'caution and restraint.'" Santiago de Castro v. Morales Medina, 943 F.2d 129, 130 (1st Cir. 1991).

Here, plaintiff will not succeed on her claim under the Fourteenth Amendment for a violation of her substantive due process rights. The complained of policies of the DOC regarding plaintiff's conditions of confinement as a GD inmate fall far short of the shocks-the-conscience test. In the absence of facts plausibly demonstrating that the defendants have

engaged in conduct that is “truly outrageous, uncivilized, and intolerable,” the due process claim will fail and the request for injunctive relief must be denied.

III. PLAINTIFF HAS FAILED TO DEMONSTRATE THE POTENTIAL FOR IRREPARABLE HARM.

Here, plaintiff has failed to demonstrate that she suffers from or will suffer irreparable harm in the future as a result of defendants’ alleged conduct with regard to her placement at MCI-Norfolk. It is undisputed that plaintiff is presently provided with treatment for her GD in the form of hormone therapy, psychotherapy, access to the same clothing and cosmetics available to female offenders, laser hair removal, and preventative healthcare, including mammograms. Peterson Aff., ¶¶ 5-8. Plaintiff was provided with an individualized assessment of her placement within the DOC in December 2017. *Id.* ¶ 15. Plaintiff was able to participate in and complete the Correctional Recovery Academy in December 2017 and is able to engage in work at MCI-Norfolk. *Id.* ¶¶ 10-11. Plaintiff also participates in program and recreational activities. *Id.* ¶ 10. Plaintiff has a single cell on the 3-2 housing unit and is provided with an alternative time for showering separate from other inmates. *Id.* ¶ 9; Medieros Aff. ¶ 13. Plaintiff’s allegations of harassment are being investigated. Medeiros Aff. ¶¶ 29, 33. Plaintiff has opportunities to raise concerns regarding her conditions of confinement via the DOC grievance procedures and in staff access periods at MCI-Norfolk. *Id.* ¶¶ 29-33. Further, the DOC has provided training to staff regarding issues associated with working with GD inmates, including the proper use of pronouns. Peterson Aff. ¶ 19.

Accordingly, the request for injunctive relief should be denied where plaintiff is able to demonstrate that she faces irreparable harm.

IV. DEFENDANTS WILL SUFFER THE GREATER HARM IF INJUNCTIVE RELIEF IS GRANTED.

A preliminary injunction is not warranted in this action and the DOC will suffer the greater harm should the requested injunctive relief be provided. The request for injunctive relief, in effect, seeks to have the court step in and mandate that the defendants undertake specific actions on behalf of plaintiff. As detailed above, much of the relief sought by plaintiff, *i.e.*, an individualized assessment as to placement; access to alternative shower times separate from other inmates; an adequate shower curtain, have been made available to plaintiff. In addition, the DOC provides training for staff regarding working and communicating with GD inmates. Importantly, the DOC's GD policy provides for an individualized assessment of each GD inmate with regard to placement within DOC facilities and there is no blanket policy requiring that all GD inmates be placed in a prison matching their birth sex. *See* 103 DOC 652.09. However, mandating that plaintiff be placed at MCI-Framingham despite her December 2017 individualized assessment would harm the defendants by overriding its valid administrative process. Further, mandating that only female correction officers conduct strip searches of plaintiff at MCI-Norfolk would place safety, security, and operational burdens upon the defendants. In order to provide for public safety as well as maintain institutional integrity and ensure the efficient use of scarce resources, it is imperative that prison administrators be permitted to utilize their experience and skills developed working in the difficult environments of correctional facilities to address the issues raised by plaintiff in this action, including classification, search procedures, and staff training.

V. GRANTING INJUNCTIVE RELIEF IS NOT IN THE PUBLIC'S INTEREST.

It is in the public's interest that the DOC be provided with the flexibility to respond to

issues which raise operational, safety, security, and financial concerns within the correctional system. Such issues should remain in the hands of those with the expertise and experience to handle them. The management of a prison system is an extremely difficult task and it is in the public's interest that qualified prison administrators be permitted to address operational and security issues. It is not in the public's interest for this Court to step in where the DOC has already implemented a GD policy which provides for the identification, treatment and management of GD inmates. The DOC's GD policy provides for placement of GD inmates based on individualized assessments. The DOC has already addressed the majority of the issues raised by plaintiff in this action, including providing her with an individualized assessment of her placement within the DOC, alternative times for showering, PREA shower curtains, and medical healthcare. Positive steps have been taken to address the issues raised with regard to plaintiff's conditions of confinement as an inmate diagnosed with GD while remaining cognizant of the significant operational, security and financial requirements of the correctional system. Accordingly, it is not in the public's interest for this court to enter the injunction sought by plaintiff.

CONCLUSION

For the foregoing reasons, defendants respectfully request that Plaintiff's Motion for a Preliminary Injunction be denied.

Defendants,
By their attorneys,

NANCY ANKERS WHITE
Special Assistant Attorney General

Dated: February 21, 2018

/s/ Richard C. McFarland
Richard C. McFarland, BBO# 542278

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CERTIFICATE OF SERVICE

I, Richard C. McFarland, counsel for defendants, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on 2/21/18.

/s/ Richard C. McFarland
Richard C. McFarland

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JANE DOE,
Plaintiff,

v.

MASSACHUSETTS DEPARTMENT
OF CORRECTION, et al.,
Defendants.

C.A. NO. 17-12255-RGS

AFFIDAVIT OF SEAN MEDEIROS

I, Sean Medeiros, do on oath depose and state:

1. I am an employee of the Massachusetts Department of Correction (“DOC”) and presently serve as the Superintendent of Massachusetts Correctional Institution in Norfolk, Massachusetts (“MCI-Norfolk”). I was appointed to this position in September 2014.

2. I have been employed by the DOC since September 1987. I was the Deputy Superintendent of Operations at MCI-Norfolk from September 2011 until February 2014, when I was promoted to Acting Superintendent of MCI-Norfolk. Prior to becoming the Deputy Superintendent of Operations I held the position of Director of Security at MCI-Norfolk.

3. The statements in this affidavit are based on my personal knowledge and/or upon my review of DOC records that are kept and maintained in the normal course of business.

4. As the Superintendent of MCI-Norfolk, I am responsible for the overall operation of the prison, including the maintenance of security, safety and order within the prison. See M.G.L. c. 125 § 14.



5. I am familiar with MCI-Norfolk inmate Jane Doe. I have reviewed her institutional records. According to her institutional records, Jane Doe began her third incarceration with the DOC on October 31, 2016 at MCI-Cedar Junction, the DOC's inmate reception facility. Jane Doe is presently serving a three (3) to four (4) year sentence for the crime of Possession with Intent to Distribute a Class A Drug, G.L. c. 94C, § 32. Presently, Jane Doe has a parole eligibility date of September 16, 2018 and the date of her release from DOC custody is September 16, 2019. Jane Doe's classification review, completed in December 2017, determined that she should remain at MCI-Norfolk.

6. In accordance with the federal Prison Rape Elimination Act ("PREA"), MCI-Norfolk inmates diagnosed with GD are provided with alternative showering times apart from other inmates on their housing units. GD inmates at MCI-Norfolk are now provided with letters which advise their housing unit staff that they are authorized to utilize an alternative time for showering pursuant to PREA. Attachment A.

7. All inmate showers at MCI-Norfolk must utilize plastic shower curtains specified by PREA, designed to discourage sexual activities between inmates in showers by enabling staff to detect if there is more than one inmate in the shower. The PREA required shower curtains have a large opaque portion covering the middle of the shower curtain, approximately three (3) feet wide, starting approximately one (1) foot from the bottom of the shower curtain. The bottom one (1) foot of the shower curtain and the top of the curtain, starting approximately four (4) feet from the bottom are transparent. The opaque portion of the shower curtain provides privacy for the inmate's torso while the transparent strips at the bottom and top of the shower curtain enable staff to determine if the inmate is not alone in the shower. Attachment B. As a result of the requirements of PREA, MCI-Norfolk is not permitted to use shower curtains that are entirely opaque for inmate showers.

8. According to institutional records, shortly after Jane Doe's arrival at MCI-Norfolk the facility's mental health staff were made aware her prior diagnosis of gender dysphoria ("GD") based on medical records from her prior DOC incarcerations. Jane Doe was previously incarcerated with the DOC from October 1, 2010 to July 3, 2012, and from February 25, 2003 to September 3, 2005.

9. On November 30, 2016, Jane Doe was transferred to MCI-Norfolk. Upon arrival at MCI-Norfolk, Jane Doe was housed on the P-1 Orientation Unit. The P-1 Orientation Unit is a dormitory style unit within the general population where all newly arriving inmates are initially housed. While on the P-1 unit, as an inmate diagnosed with GD, Jane Doe was provided with an alternative showering time that was separate from the other inmates on the unit. On December 12, 2016, Jane Doe was transferred to the 8-1 housing unit of MCI-Norfolk. Jane Doe was transferred from the P-1 unit to a single cell on the 8-1 unit on December 6, 2016 in response to a request made by mental health staff members in response to Jane Doe's statements to her therapist that she felt uncomfortable being housed on the P-1 housing unit.

10. While housed on the 8-1 unit, Jane Doe was provided an alternative time for showering apart from other inmates. Jane Doe was housed on the 8-1 unit from December 6, 2016 to December 28, 2016. Jane Doe's single cell contained a toilet and sink. The showers on the 8-1 housing unit are located at the end of each tier.

11. On December 28, 2016, Jane Doe was transferred to the P-2 housing unit at her request. The P-2 housing unit is a dormitory unit similar to the P-1 unit.

12. On January 6, 2017, Jane Doe was moved to a single cell on MCI-Norfolk's 3-2 housing unit. The 3-2 housing unit houses 62 inmates in both single and double cells on three (3) floors. Each cell contains a toilet and a sink. There is a shower area on each floor on the 3-2

housing unit. While housed on the 3-2 housing unit, Jane Doe was provided with access to an alternative showering time separate from other inmates. During the alternative showering time for GD inmates, no other inmates are permitted to use the shower area.

13. Inmates on the 3-2 housing unit are required to utilize the showers located on their floor and are not permitted to take their showers on other floors. The shower area on the second and third floors of the 3-2 housing unit differ from the showers on the first floor in that the second and third floor showers have an adjacent changing area with a solid curtain. Contrary to Jane Doe's allegation, the shower on the third floor of the 3-2 housing unit is not designated as a GD shower. Jane Doe complains in her affidavit that she was told by a correction officer that she could not use the shower on the third floor when her cell was on the second floor. However, on February 22, 2017, Jane Doe was assigned to a cell on the third floor of the 3-2 housing unit and had access to the third floor shower area. Attachment B (photo of shower area on 3-2 housing unit)

14. On June 5, 2017, Jane Doe was approved for participation in the Correctional Recovery Academy ("CRA"), a substance abuse program available to MCI-Norfolk inmates. The CRA program is typically six (6) months long. Inmates participating in the CRA program are assigned to the 7-2 and 7-3 housing units for the duration of their participation in the program.

15. Due to her approval for participation in the CRA program, Jane Doe was assigned to a single cell on the 7-2 housing unit from June 5, 2017 to December 1, 2017. Jane Doe was assigned to a single cell on the 7-3 housing unit from December 1, 2017 to January 8, 2018. While housed on the 7-2 and 7-3 housing units Jane Doe was provided with an alternative showering time separate from the other inmates on the units.

16. Subsequently, Jane Doe completed the CRA program and was moved to a single cell on the 7-1 unit on January 8, 2018. On February 2, 2018, Jane Doe was moved to a single cell on the third floor of the 3-2 housing unit where she is presently housed.

17. Jane Doe has alleged in her affidavit that the PREA shower curtains do not provide privacy while she showers because the opaque portion of the curtain does go high enough to cover her breasts. However, measurements made of the PREA curtain show that the opaque portion of the curtain covers an area approximately one (1) foot to four (4) feet off the floor. Where, according to institutional records, Jane Doe is five (5) foot, three (3) inches tall (5'3"), and the opaque portion of the PREA shower curtain should be sufficient to cover Jane Doe's torso.

18. Jane Doe also alleges in her affidavit that "male prisoners routinely stand on the tier above the bathroom to see me naked and sexually harass me." However, with the exception of the 8-1 housing unit, none of the housing units Jane Doe has been assigned to at MCI-Norfolk, including her current 3-2 housing unit, have tiers.

19. Strip searches are conducted on inmates at MCI-Norfolk pursuant to the DOC's *Search* policy, 103 CMR 506.00, *et seq.* Strip searches are an important part of MCI-Norfolk's security procedures and assist staff in their efforts reduce the presence of drugs, weapons, and other contraband within the facility. Strip searches are employed for routine security checks or when there is a specific suspicious incident that would indicate that an inmate is perhaps carrying contraband. Specific situations in which strip searches may be used include before and after court trips, medical trips, and visits. 103 CMR 506.04(1).

20. Strip searches of inmates involve a visual inspection of the inmate and do not involve the correction officers conducting the search to touch the inmate. 103 CMR

506.04(1)(C). It would be improper for a correction officer to touch an unclothed inmate during a strip search. Such improper touching could also constitute a PREA violation.

21. The DOC *Search* policy provides that “[I]nmates identified as having gender identity disorder shall be identified as the gender of the facility in which they are housed.” 103 CMR 506.04(1). It would be extremely difficult to implement a policy at MCI-Norfolk to require that only female correction officers could conduct the strip searches of Jane Doe and the other GD inmates incarcerated at MCI-Norfolk.

22. At the present time, MCI-Norfolk employs thirty-one (31) female correction officers: fourteen (14) on the 7:00 a.m. until 3:00 p.m. shift; six (6) on the 3:00 p.m. to 11:00 p.m. shift; four (4) on the 1:00 p.m. to 9:00 p.m. shift; two (2) on the 11:00 p.m. to 7:00 a.m. shift; and five (5) house officers who vary between the day and evening shifts. MCI-Norfolk employs approximately 340 male correction officers. Female officers are not restricted from working any posts at MCI-Norfolk based on the applicable collective bargaining agreements between the agency and the correction officers’ unions as well as current labor law requirements. By not restricting female officers’ posts, I feel that it affords them the full range of experience they may need to be competitive for promotional opportunities. Further, not restricting where female officers can work allows the institution the greatest flexibility in utilizing its line staff.

23. Strip searches are performed by two correction officers and should be conducted in relative privacy rendering as much dignity to the situation as possible in accordance with the *Search* policy. 103 DOC 506.04(6).

24. I am aware that Jane Doe has requested that her strip searches be conducted by female correction officers. However, there are not always two female correction officers readily available to conduct strip searches. In my professional opinion, even if there were two female

correction officers are available on the shift, requiring male officers to call for two female officers from other posts to conduct a strip search of Jane Doe or other GD inmates, and then wait for the two female correction officers officer to arrive, is not an acceptable security practice, given the associated security risks. Even if the GD inmate is placed at the end of the line of inmates to be strip searched until two female correction officers are located, it nonetheless may slow down the process of having the inmates complete the search procedure and enter the facility, their housing units, or other areas of the facility, or have visits. This, in turn, could raise tensions amongst the other inmates who might perceive and be resentful of experiencing delays in their access the prison, meals, programs, and/or recreation.

25. Operationally, the process of relieving two female correction officers from their posts in order that they could conduct a strip search of Jane Doe or other GD inmates is problematic since it would cause disruptions within the security of the prison and may delay the movement of inmates throughout the prison.

26. Another problem resulting from the request that only female correction officers conduct strip searches on GD inmates such as Jane Doe, concerns the fact that some of MCI-Norfolk's female correction officers may refuse to conduct strip searches of GD inmates. Presently, there are seven (7) inmates diagnosed with GD incarcerated at MCI-Norfolk.

27. In addition to potentially causing institutional climate problems amongst MCI-Norfolk inmates, requiring female correction officers to conduct the strip searches of Jane Doe and other GD inmates would likely cause tensions to arise between male and female correction officers where female correction officers may perceive the requirement as creating additional work or curtailing the female officers from being assigned to other posts within the prison due to the need to be available to conduct strip searches of GD inmates.

28. In my opinion, Jane Doe's request to be strip searched solely by female correction officers would be very difficult to facilitate given the limited number of female correction officers on staff. I believe that requiring that Jane Doe and other GD inmates be pat searched by female officers would also create safety and security problems for the prison.

29. Pursuant to the DOC *Inmate Grievance* policy, 103 CMR 491.00, *et seq.*, inmates may submit grievances in order to bring issues to the attention of staff including issues pertaining to prison conditions, property, staff conduct, etc. *See* 103 CMR 491.11. Previously, I had not been made aware of any of the five (5) grievances submitted by Jane Doe since her arrival at MCI-Norfolk on October 31, 2016. However, as a result of this litigation, I reviewed the grievances submitted by Jane Doe. As a result of my review of Jane Doe's grievances, I located an informal grievance submitted by Jane Doe on June 8, 2017 in which she alleged that some MCI-Norfolk correction officers had touched her breasts during strip searches. Even though Jane Doe's allegation did not identify the correction officer(s) alleged to have touched her inappropriately, an investigation into the allegation should have been initiated at the time the allegation was made. Accordingly, I have now commenced an investigation into the alleged improper strip searches.

30. My recent review of Jane Doe's grievances also revealed a grievance submitted by Jane Doe on March 28, 2017 complaining that a correction officer on the 3-2 housing unit would not permit her to use the shower area on the third floor when she was housed on the second floor and had access to the shower on that floor. It is my understanding that that issue was remedied when Jane Doe was moved from a cell on the second floor to a cell on the third floor of the 3-2 housing unit on February 22, 2017.

31. MCI-Norfolk provides Staff Access periods twice weekly in which inmates may raise issues with MCI-Norfolk's senior staff members, including the Superintendent, Deputy Superintendents, Director of Treatment, Director of Security, Inner Perimeter Security ("IPS") and other staff members. While I have observed Jane Doe attend staff access on several times during her incarceration at MCI-Norfolk, I recall only one occasion that she approached me to discuss an issue with regard to her confinement. The issue raised by Jane Doe with me did not pertain to allegations of improper searches of her person or cell or harassing behavior by MCI-Norfolk staff.

32. I am aware of the incident in which a shank was found in Jane Doe's cell on the 7-2 housing unit on November 29, 2017. According to the investigation into the incident, a shank was found taped to the underside of the desk in Jane Doe's cell. Contrary to her allegation, there was no note with a homophobic slur attached to the shank. The investigation into the incident determined that it was likely that the shank had been placed in Jane Doe's cell by another inmate. It is a routine practice to conduct a search of a cell upon discovery of a shank in the cell. Jane Doe did not submit a grievance reporting that her cell had been left in disarray by the staff members conducting the search. However, as a result of the incident, Jane Doe was transferred to the 7-3 housing unit where she was able to complete the CRA program without incident.

33. I was made aware of Jane Doe's allegations regarding an incident that took place on January 11, 2018 incident involving Sergeant Clement. Jane Doe alleges that Sergeant Clement made a comment, while processing her into the facility after her return from a medical appointment, that her pants were too tight. Jane Doe then alleges that Sergeant Clement required her to take the pants off and provided her with a pair of pants that were larger. Because MCI-

Norfolk inmates are not permitted to wear pants that are too small or too tight, it would have been appropriate for Sergeant Clement to have provided her with pants that fit her better. However, an investigation has been initiated into Jane Doe's allegations that Sergeant Clement made improper and degrading comments to her.

Signed under the pains and penalties of perjury this 15th day of February, 2018.


Sean Medeiros,
Superintendent



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

DANIEL BENNETT
Secretary

December 13, 2016

[REDACTED]
MCI-Norfolk/Unit 8-1
2 Clark Street
P.O. Box 43
Norfolk, MA 02056
[REDACTED]

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Department of Correction
Massachusetts Correctional Institution Norfolk
2 Clark Street, P.O. Box 43
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THOMAS A. TURCO III
Commissioner

JOHN A. O'MALLEY
Chief of Staff

PAUL DIETL
BRUCE I. GELB
MICHAEL G. GRANT
CAROL A. MICI
Deputy Commissioners

Sean Medeiros
Superintendent

Be advised you have been authorized for alternate shower periods based on your transgender classification.

You may use the shower between 2:30PM - 3:30PM on odd days and 8:00PM - 9:00PM on even days of the month.

I trust this addresses your concerns.

Sincerely,

Richard Pizzuto,
Deputy Superintendent

RP/hlb

pc: Andy Rego, Captain
Brett Barros, Housing Lt.
8 Block Sgt.
File



Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Daniel Bennett
Secretary

*The Commonwealth of Massachusetts
Executive Office of Public Safety & Security*

*Department of Correction
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Thomas A. Turco III
Commissioner

John A. O'Malley
Chief of Staff

Paul Diel
Bruce I. Gelb
Michael G. Grant
Carol A. Mici
Deputy Commissioners

Sean Medeiros
Superintendent

January 18, 2018



MCI-Norfolk, Unit 7-1
P.O. Box 43
Norfolk, MA 02056

Dear

You are being issued a new letter in relation to your approved shower time. As you are aware you have been authorized an alternate shower time based your gender identification.

Going forward you are authorized an individual shower time between 3:00pm -3:30am each day. During your designated time the shower area will be out of bounds to other inmates assigned to your unit. If you are moved from the 7-1 Unit for any reason you may be issued a new shower letter. Additionally, due to ongoing water conservation concerns, please keep your water usage to a minimum during your scheduled shower time.

If you should have any questions or concerns please see me during access hour.

Sincerely,

Kristie Ladouceur
Deputy Superintendent

cc. Andrew Rego, Captain
Brett Barros, Housing Lt.
Block Sgt.
File



ATTACHMENT B

MASSACHUSETTS DEPARTMENT OF CORRECTION

IDENTIFICATION, TREATMENT AND CORRECTIONAL MANAGEMENT OF INMATES
DIAGNOSED WITH GENDER DYSPHORIA

103 DOC 652

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MASSACHUSETTS DEPARTMENT OF CORRECTION	DIVISION: HEALTH SERVICES
TITLE: IDENTIFICATION, TREATMENT AND CORRECTIONAL MANAGEMENT OF INMATES DIAGNOSED WITH GENDER DYSPHORIA	NUMBER: 103 DOC 652

Purpose: The purpose of this policy is to establish guidelines for the identification, treatment, and institutional management of inmates diagnosed with Gender Dysphoria.

References: M.G.L. Chapter 124, sections 1 (c) and (q)

Applicability: Staff **Public Access:** Yes

Location: DOC Central Policy File/Facility Policy File
Health Services Division Policy File/
Inmate Library

Responsible Staff for Implementation and Monitoring of Policy:

- Assistant Deputy Commissioner of Clinical Services
- Director of Behavioral Health
- Mental Health Regional Administrators; Superintendents; Program Directors and Staff of the Contractual Medical, Mental Health, Sex Offender Treatment and Program/Substance Abuse Providers

EFFECTIVE DATE: 05/19/2016

CANCELLATION: 103 DOC 652 cancels all previous department policy statements, bulletins, directives, orders, notices, rules or regulations regarding Internal Regulations/Policies which are inconsistent with this document.

SEVERABILITY CLAUSE: If any part of 103 DOC 652 is for any reason, held to be in excess of the authority of the Commissioner, such decision shall not affect any other part of this policy.

652.01 DEFINITIONS

Clinical Supervision Group - The Gender Dysphoria Clinical Supervision Group shall be comprised of all mental health primary care clinicians who are assigned to work with an inmate or inmates diagnosed with Gender Dysphoria, the contractual mental health provider's Psychiatric Medical Director, who may serve as Chair, or appoint a designee as Chair, the contractual Director of Clinical Programs, the contractual Gender Dysphoria Consultant, based upon identified need, and a Department of Correction Health Services representative. Other treatment disciplines (i.e. medical, sex offender treatment or substance abuse treatment) may participate on an as needed basis. The role of the DOC Health Services representative shall be to monitor the Group's activities for contract compliance and to ensure the integrity of the supervision process through direct observation.

DSM-5 - Diagnostic and Statistics Manual of Mental Disorders Fifth Edition (DSM-5). A publication of the American Psychiatric Association (APA), which lists specific criteria that enable a clinician to establish diagnosis of mental disorders. The DSM-5 defines the criteria for Gender Dysphoria listed below. In the case that the DSM-5 is revised, the latest published version of the DSM applies.

Director of Clinical Programs - The contractual mental health provider who is responsible for the administration, management, supervision, and development of mental health programs and delivery of behavioral health services at all Department correctional facilities. The Director of Clinical Programs provides and supervises mental health care services throughout the Department; evaluates patient care and assesses what is required by way of treatment; determines the condition and adequacy of treatment facilities and programs; identifies the need for appropriate equipment; acts as a consultant for physicians and behavioral health care staff; delivers emergency and ongoing direct clinical service; develops and reviews Treatment Plans; and evaluates inmates when clinically indicated.

Gender Dysphoria is defined by the DSM-5 as the following:

A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following:

1. A marked incongruence between one's experiences/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Gender Dysphoria Consultant - The Gender Dysphoria Consultant is an individual who is hired by/subcontracted to the Department of Correction's contractual mental health services provider. The Gender Dysphoria Consultant is Board Certified in Psychiatry and has documented experience in working with a transgender population.

Gender Dysphoria Treatment Committee - The Gender Dysphoria Treatment Committee shall be appointed by the Assistant Deputy Commissioner of Clinical Services of the Department of Correction. The Gender Dysphoria Treatment Committee shall be chaired by the

contractual mental health provider's Psychiatric Medical Director or designee, and other members shall include the contractual Gender Dysphoria Consultant, based on identified need, the contractual Director of Clinical Programs, and the Department of Correction's Director of Behavioral Health. The role of the Director of Behavioral Health shall be to monitor the committee activities for contract compliance and to ensure the integrity of the process through direct observation.

Open/Active Mental Health Case (OMH) Inmate - An inmate who is diagnosed with a mental illness or determined to be in need of mental health intervention on an ongoing basis. At any time during his or her incarceration, an inmate may become an open mental health case (OMH) based on a mental health crisis, including suicidal threats or self-injurious behavior and/or the display of signs and/or symptoms of mental illness or emotional distress. Based upon clinical indications and within the discretion of the Primary Care Clinician in consultation with the site Psychiatrist (if on medication) and/or Mental Health Director, an inmate may also be removed from the active mental health caseload. However, any inmate carrying the Gender Dysphoria diagnosis will remain an open mental health case. In the case that an inmate is suspected to no longer meet the clinical criteria for a Gender Dysphoria diagnosis, approval to change the diagnosis must be granted by the Gender Dysphoria Treatment Committee, with consultation from the contractual Gender Dysphoria Consultant as deemed necessary.

Primary Care Clinician (PCC) - a Qualified Mental Health Professional who is responsible for case management, direct treatment services and the overall mental health care of inmates assigned to his or her caseload while at a Department correctional facility. Annual training specific to diagnosis and treatment for Gender Dysphoria is required for PCCs who treat inmates with Gender Dysphoria.

Primary Care Provider (PCP) - A Qualified Medical Professional, including a medical doctor or advanced practitioner (nurse practitioner or physician assistant).

Program Medical Director - The physician in charge of the Department's medical services.

Psychiatric Medical Director - The physician in charge of the Department's mental health services provider, including Bridgewater State Hospital. The Psychiatric Medical Director is Board Certified in Psychiatry. The Psychiatric Medical Director provides and supervises psychiatric and mental health care services in the correctional setting throughout the Department; evaluates patient care and assesses what is required by way of treatment; determines the condition and adequacy of treatment facilities and programs; identifies the need for appropriate equipment; acts as a consultant for physicians and behavioral health care staff; delivers emergency and ongoing direct clinical service; reviews medical orders for mental health patients; evaluates pharmacy utilization, and develops and reviews Treatment Plans; and evaluates inmates when clinically indicated.

Qualified Mental Health Professional - includes treatment providers who are psychiatrists, psychologists, clinical social workers, licensed mental health counselors, Advanced Practice Registered Nurses, Clinical Nurse Specialists, and others, who by virtue of their education, credentials, and experience, are permitted by law to evaluate and care for the mental health needs of patients.

652.02 **POLICY**

It is the policy of the Massachusetts Department of Correction to appropriately diagnose, treat, and manage inmates with Gender Dysphoria in a humane, safe, correctional environment, sensitive to their unique adjustment issues, consistent with the core values, vision, and mission of the Department and its commitment to provide adequate medical care and mental health services to all inmates in its custody.

652.03 **RESPONSIBILITIES OF THE GENDER DYSPHORIA CLINICAL SUPERVISION GROUP**

A. Duties

The role of the Gender Dysphoria Clinical Supervision Group is to provide orientation and specialized training to mental health PCCs and other practitioners; to serve as a resource to PCCs as they develop Gender Dysphoria-related specifications to incorporate into an inmate's

individualized Treatment Plan for any inmate who has or may have Gender Dysphoria; to conduct clinical reviews of specific cases; to provide supervision to the PCCs assigned to work with inmates who have Gender Dysphoria; and to provide a forum for the discussion of challenging issues related to Gender Dysphoria. This group shall meet at least monthly or as otherwise determined by the Psychiatric Medical Director or his/her designee.

B. Supervision

1. Each Primary Care Clinician (PCC) for an inmate diagnosed with Gender Dysphoria shall meet at least monthly or as scheduled with the Gender Dysphoria Clinical Supervision Group for the purpose of receiving supervision in a group setting regarding the PCC's provision of care to those inmates diagnosed with Gender Dysphoria. Additionally, annual specialized training in the assessment and treatment of Gender Dysphoria is required for all PCCs working with Gender Dysphoria clients.
2. The Gender Dysphoria Consultant shall routinely be available for consultation to the Gender Dysphoria Clinical Supervision Group. Participation with the Gender Dysphoria Consultant may occur via conference call, in person, or by videoconference.
3. For those inmates receiving other clinical services, such as substance abuse or sex offender treatment, or who are receiving cross hormonal therapy, it may be appropriate for providers of those services to participate in the Gender Dysphoria Clinical Supervision Group process on an as needed basis, to ensure that integrated and consistent treatment is being provided to the inmate, in which case access to the inmate's relevant treatment records will be made available to them.

652.04

RESPONSIBILITIES OF THE GENDER DYSPHORIA TREATMENT COMMITTEE

A. Duties

1. The role of the Gender Dysphoria Treatment Committee is to review the individualized Treatment Plans developed for inmates diagnosed with Gender Dysphoria to determine if the proposed treatment recommendations related to the management of Gender Dysphoria are clinically appropriate and medically necessary.
2. The Gender Dysphoria Treatment Committee shall also be responsible for reviewing the overall treatment of all Gender Dysphoria diagnosed inmates on a quarterly basis.

652.05 IDENTIFICATION AND DIAGNOSIS OF INMATES WITH GENDER DYSPHORIA

A. Provisional Diagnosis

Upon admission to the Department, or at any other time during an inmate's incarceration, if the inmate either self-identifies as meeting the criteria for Gender Dysphoria or is referred secondary to possible Gender Dysphoria, a facility-based Primary Care Clinician (PCC) assigned to the inmate shall evaluate the inmate to determine whether the inmate meets the clinical criteria for a provisional diagnosis of Gender Dysphoria. This diagnosis shall be based, in part, upon a face-to-face evaluation of the inmate and a review of the medical and mental health history, as well as current medical record documentation. For persons returned to the custody of the Department of Correction with a previously confirmed diagnosis of Gender Dysphoria, a new evaluation will not be required unless clinically indicated.

1. After making this provisional diagnosis, a PCC shall seek the inmate's authorization of the appropriate Releases of Information (ROI) for access to his/her medical and mental health records prior to incarceration and shall place the inmate on the "open mental health (OMH) case" list. For a newly admitted Gender Dysphoric inmate, every effort shall be made to promptly secure medical and mental health records regarding

the delivery of Gender Dysphoria services prior to incarceration, to enhance continuity of care.

2. The PCC will review the case with the site treatment team, including the Mental Health Director and psychiatric providers. If clinically indicated, the inmate will be assigned to the on-site psychiatric provider.
3. The PCC shall inform the Psychiatric Medical Director or designee, Director of Clinical Programs or designee, of the provisional diagnosis of an inmate having Gender Dysphoria, using the Gender Dysphoria Mental Health Referral Form (Attachment A). This written referral from the PCC shall be made upon determination of the provisional Gender Dysphoria diagnosis.
4. In cases where the inmate self-identifies as Gender Dysphoric and the site treatment team does not assess the inmate as meeting the clinical criteria for Gender Dysphoria, the case will be referred to the Psychiatric Medical Director and the Director of Clinical Programs for a subsequent face to face evaluation within thirty (30) calendar days of the referral.

B. Confirmation of Diagnosis

The Psychiatric Medical Director or designee of the mental health service provider shall confirm if the inmate meets the clinical criteria for diagnosis of Gender Dysphoria. This diagnosis shall be based upon, at a minimum, a review of the inmate's medical and mental health record, the referral from the PCC, a consultation with the referring site psychiatrist who has personally assessed the patient, and a face-to-face evaluation of the patient by the Psychiatric Medical Director of the mental health service provider. If there are any concerns with the validity of the Gender Dysphoria diagnosis, the Gender Dysphoria Consultant may be contacted for further evaluation. This decision by the Psychiatric Medical Director regarding an inmate's Gender Dysphoria diagnosis shall be made

within thirty (30) calendar days after the referral has been received from the PCC.

C. Confirmation of Community Diagnosis

Upon admission to the Department of Correction and verification of prescribed hormones for the treatment of Gender Dysphoria, the Psychiatric Medical Director may designate a PCC to confirm the diagnosis. This designee will be an existing member of the Gender Dysphoria Supervision Group and will have direct experience treating persons with Gender Dysphoria.

652.06

TREATMENT PLANNING FOR INMATES WITH GENDER DYSPHORIA

A. Development of the Gender Dysphoria Treatment Plan:

Following a confirmed Gender Dysphoria diagnosis, the inmate's PCC shall prepare an individualized, initial treatment plan, and/or review and revise an existing treatment plan, which incorporates the diagnosis, along with all other outstanding co-occurring mental health issues.

1. The PCC shall develop this Treatment Plan in whole or in part with consultation from the Gender Dysphoria Clinical Supervision Group. In addition, the PCC shall also consult with the inmate's treating psychiatrist and any other clinician or practitioner who may provide clinical services to the inmate. The treatment plan should be focused on the inmate's individualized needs based upon the provision of adequate medical care utilizing prudent, professional standards, to include the most current version of the "Standards of Care" set forth by the World Professional Association for Transgender Health (WPATH).

B. Treatment Plan Review and Approval:

Once the Treatment Plan has been developed, it shall be forwarded to the Gender Dysphoria Treatment Committee for review, to ensure that

all recommendations are clinically appropriate, and taking into consideration the inmate's individualized needs based upon the provision of adequate medical care utilizing the most current version of the standards of care referenced by WPATH. The Gender Dysphoria Treatment Committee may refer the inmate for specialty physician consultations if its members believe that such consultations are advisable.

1. If the Gender Dysphoria Treatment Committee recommends that cross-gender hormone therapy should be added as a component of the individualized Treatment Plan, then the inmate shall be referred and evaluated by the assigned institutional Primary Care Provider (PCP - physician or advanced practitioner). If the site medical PCP does not believe that hormone therapy presents a significant physiological threat or contraindication to the patient for medical reasons, then the PCP shall make a referral to the designated endocrinologist under agreement to the contractual medical services provider.
2. The endocrinologist shall conduct the inmate's assessment for consideration of cross-hormonal therapy as a clinical intervention in the inmate's Gender Dysphoria Treatment Plan and determine the appropriate course of hormonal treatment, when indicated, if no medical contraindications are present. The medical PCP referral to the endocrinologist shall be made no later than thirty (30) calendar days after the medical PCP has made the initial determination that there are no physiological threats or contraindications to cross-gender hormonal therapy.
3. The purpose of the referral to the endocrinologist is to determine the appropriate cross-gender hormone regimen or any medical contraindications to initiating or continuing treatment with cross-gender hormones. Any approved update to an inmate's Treatment Plan shall not include cross-gender hormone therapy as a formal

recommendation until after an endocrinologist has evaluated the inmate and determined that cross hormonal therapy does not present with any medical contraindications.

4. In the event treatment with cross-gender hormonal therapy is medically contraindicated by the endocrinologist, the determination shall be communicated to the Program Medical Director. Any and all follow-up evaluations shall be conducted by the endocrinologist on a periodic basis as clinically indicated. Any inmate refusing to be evaluated by the site PCP and/or the endocrinologist shall not receive cross-gender hormonal therapy due to the potential for clinical ramifications; medical risks involved, and need for expert medical management from an endocrinologist.

C. Essential Elements of the Treatment Plan for Gender Dysphoria Diagnosed Inmates:

1. The goal of Gender Dysphoria-related modifications to the individualized mental health Treatment Plan is to assist the Gender Dysphoria-diagnosed inmate in exploring and managing his/her issues related to Gender Dysphoria as well as any co-occurring mental health disorders.
2. Although individualized, the Treatment Plan for all inmates diagnosed with Gender Dysphoria shall contain, at a minimum, these essential elements:
 - a. The inmate is offered participation in at least monthly individual psychotherapy provided by the contractual mental health service provider;
 - b. The Treatment Plan may contain recommendations regarding access to cross-gender clothing and canteen/cosmetic items approved for inmates in accordance with the 103 CMR 403 Inmate Property policy. Commensurate with the security level of

the housing placement, Gender Dysphoria inmates housed in a male institution (Male to Female, or MTF) shall be permitted to purchase and retain clothing items and articles authorized for other male inmates housed in that institution, as well as those items authorized for females commensurate with their particular security level at the female institution. Similarly, Gender Dysphoria inmates housed in a female institution (Female to Male or FTM) shall be permitted to purchase and retain clothing items and articles authorized for other female inmates housed in that institution, as well as those items authorized for males commensurate with their particular security level at the male institutions. Inmates diagnosed with Gender Dysphoria will only be permitted to purchase and retain canteen items that are allowed within the level of security that is commensurate to their housing assignment.

3. The Treatment Plan shall become effective after the Gender Dysphoria Treatment Committee has developed clinically appropriate and medically necessary treatment recommendations. If an inmate refuses to participate in any or all aspects of the Treatment Plan as it relates to his/her treatment of Gender Dysphoria, this will be documented pursuant to 103 DOC 630.19, and clinically driven modifications will be made to the Treatment Plan.

All inmates diagnosed with Gender Dysphoria shall have their Treatment Plans updated in accordance with the 103 DOC 650 policy. All treatment plans for inmates diagnosed with Gender Dysphoria shall be revised as necessary to reflect changes in treatment recommendations, as appropriate. Such revisions shall be made in consultation with the Gender Dysphoria Clinical Supervision Group and must be approved by the Gender Dysphoria Treatment Committee.

D. Continuation of Cross-gender Hormonal Therapy upon Admission

Upon admission to the Department, any inmate for whom cross-gender hormonal therapy is currently, lawfully prescribed as part of an established regimen for Gender Dysphoria shall have this cross-gender hormonal therapy continued at the time of receipt into the Department unless a contractual medical services provider determines that such treatment is clinically contraindicated. Cross-gender hormonal therapy as described above shall be continued within the Department until an appropriate treatment plan has been developed by the PCC through consultation with the Gender Dysphoria Clinical Supervision Group, reviewed and approved by the Gender Dysphoria Treatment Committee.

1. All newly admitted Gender Dysphoria inmates receiving hormone therapy for the management of Gender Dysphoria shall be evaluated by the medical Primary Care Provider (PCP) on-site and then referred to the identified contractual endocrinologist for assessment and continuity of therapy. The endocrinologist determines whether there are any medical contraindications to cross-gender hormone treatment. If no such contraindications exist, the endocrinologist recommends the appropriate medication, dose and route for management with cross-gender hormone therapy. The site Medical Director reviews the endocrinologist's recommendation and either writes a corresponding medical order or documents the rationale for alternative treatment.
2. A refusal by an inmate to provide a Release of Information (ROI) so that medical and mental health records prior to incarceration may be obtained and reviewed may be cause for discontinuing cross-gender hormonal therapy and for interrupting or tapering the medication(s), within the discretion of the Psychiatric Medical Director. However, regardless of the status of cross-gender hormone therapy, the inmate shall be identified as OMH and continue to receive mental health services on an ongoing basis.

3. In those instances where the PCC may believe that the inmate is not competent to provide informed consent for treatment, the PCC shall consult with the Psychiatric Medical Director of the mental health service provider. If the inmate is under a guardianship then the PCC will consult with the inmate's attorney/guardian. If the inmate is in need of a guardianship, then the procedures set forth in 103 DOC 650 shall be followed.

652.07 **REPORTING**

A. Gender Dysphoria Treatment Committee:

1. The Gender Dysphoria Treatment Committee shall prepare a quarterly report regarding its review of all cases of inmates diagnosed with Gender Dysphoria. The format of this report shall be approved by the Department's Director of Behavioral Health.
2. The quarterly report of the Gender Dysphoria Treatment Committee shall be submitted within thirty (30) calendar days after the end of the quarter to the Department's Director of Behavioral Health.
3. The quarterly report shall be reviewed by the Department's Director of Behavioral Health and made available to the Deputy Commissioner of Re-Entry through the Assistant Deputy Commissioner for Clinical Services.
4. This quarterly report shall be available for review by Department staff and others on a need-to-know basis as determined by the Deputy Commissioner of Re-Entry or Commissioner.

652.08 **SECURITY REVIEW**

1. In the event that a treatment recommendation is made that may potentially present overwhelming security, safety, or operational difficulties within the correctional environment, the Director of

Behavioral Health shall refer the treatment recommendation to the Deputy Commissioner of the Prison Division and the Deputy Commissioner of Re-entry for a security review. The security review shall take into account the inmate's individual history of incarceration and present circumstances.

2. In the event that the treatment recommendation is determined to present overwhelming security, safety or operational difficulties, the security review will be forwarded to the Commissioner for final review. If the Commissioner determines that the treatment recommendation presents overwhelming security, safety or operational difficulties, he shall articulate specific and justifiable reasons for the denial of the recommended treatment, based on his overwhelming security, safety and/or operational concerns, in writing. The security review shall be completed within sixty (60) calendar days of the referral from the Director of Behavioral Health.
3. If the Gender Dysphoria Treatment Committee determines that no clinical alternatives are viable, the Commissioner shall provide articulate, specific and justifiable reasons, in writing, for the denial of the recommended treatment, based on his overwhelming security, safety and/or operational concerns.

652.09

MANAGEMENT AND PLACEMENT

Initial Classification and Placement:

- A. At the time of commitment, adjudicated individuals are court ordered into Department of Correction custody and are transported to the reception institution based upon said court order. For all new commitments, an Internal Housing Risk Factor Assessment (Attachment B) is completed and examines issues of risk of victimization and risk of violence/predatory behavior and/or abusiveness. Should an individual identify as Gender Dysphoric or appear to need additional clinical assessment, the process of confirmation will commence as

outlined in 103 DOC 652.05. An assessment will inform housing, work, education, and program assignments and will focus on individual safety. These assessments will occur on a case by case basis and will include security level, criminal and discipline history, medical and mental health assessment of needs, vulnerability to sexual victimization and potential of perpetrating abuse based on prior history. A Gender Dysphoric inmate's own views with respect to his or her own safety shall be given serious consideration. In addition, consideration of specific cases with partial completion of sex reassignment surgery, removal or augmentation of breasts, removal of testicles, etc. shall be evaluated on a case-by-case basis by the Program Medical Director and reported to the Assistant Deputy Commissioner of Classification for consideration of any safety, security and/or operational concerns presented. Consideration of these clinical recommendations should be given by the Department of Correction when making determinations regarding such issues. Final determination as to the most appropriate housing, however, is the responsibility of the Department.

B. Bi-Annual Review

An Internal Housing Risk Factor Assessment (Attachment B) will be completed at least every six months in collaboration with medical, mental health and correctional professionals to assess ongoing placement for each Gender Dysphoric inmate. This bi-annual review will include a review any threats to safety experienced by the inmate.

C. Internal Placements

Site mental health directors may provide clinical input as to their clinical recommendations related to housing of an inmate diagnosed with Gender Dysphoria within their respective facility. Consideration of these clinical recommendations should be given by the Department of Correction when making determinations regarding such issues; however, final determination regarding housing placement is the responsibility of the Department and site Superintendent.

D. Transportation

Inmates diagnosed with Gender Dysphoria will be transported per 103 DOC 530.07 Transportation Policy.

E. Hygiene

Inmates diagnosed with Gender Dysphoria shall be given the opportunity to shower separately from other inmates per 103 DOC 750.11 Hygiene Standard.

Attachment A

MASSACHUSETTS DEPARTMENT OF CORRECTION
MENTAL HEALTH SERVICES
GENDER DYSPHORIA
MENTAL HEALTH REFERRAL
(To be completed by Primary Care Clinician, PCC)

Inmate Name: _____ Date: _____
ID Number: _____ Facility: _____
Primary Care Clinician (PCC): _____
Referral Source (if other than PCC): _____

Brief Criminal History:
Date of State Incarceration (most recent): _____
Charge(s): _____
Sentence Structure: _____
Anticipated Release Date: _____

Brief Psychiatric History (including self-injurious behavior and suicidality):

DSM-5 Diagnosis:

Other Conditions That May Be a Focus of Clinical Attention:

Psychotropic Medications (current): _____

Psychiatric Hospital Admissions (include 18(a) to Bridgewater State Hospital or DMH) and Dates: _____

History of Self-Injurious and/or Suicidal Behavior: _____

History of Gender Dysphoria Diagnosis by Qualified Mental Health Professional: _____

Prior Cross-Gender Hormone Therapy with Dates: Yes No

When: _____

Duration: _____

Prescriber: _____

Medication(s) – including drug name, dosage and start date: _____

Pharmacy: _____

Current Name: _____ Name Change: _____

Diagnostic Impressions (prompting Gender Dysphoria referral): _____

Signatures:

PCC: _____ Date: _____

Site Psychiatrist: _____ Date: _____

Site Mental Health Director: _____ Date: _____

**Massachusetts Department of Correction
Internal Housing Risk Factors (Males)**

Inmate Name _____ # _____ Institution _____

Risk of victimization

To be completed by medical/mental health

- 1) Victim of institutional sexual assault yes/no
- 2) Mental Disability yes/no
- 3) Physical Disability yes/no
- 4) Developmental Disability yes/no
- 5) History of sexual victimization yes/no
- 6) Does offender perceive self as vulnerable yes/no
- 7) Is or perceived to be transgender, intersex, Gender Dysphoria, Gay, Bi-sexual,
gender non-conforming yes/no

To be completed by the CO/ CPO

- 8) Youthful age (21 or younger) yes/no
- 9) Elderly (65 +) yes/no
- 10) Physical stature (5'6" or less/ less than 140 lbs.) yes/no
- 11) First incarceration ever yes/no
- 12) Any convictions for sex offense against child or adult including current offense yes/no
- 13) Exclusively non-violent criminal history yes/no
- 14) Effeminate presentation yes/no
- 15) History of Protective Custody placement yes/no

Risk of Violence/Predatory Behavior

- 1) History of institutional sexual abuse on others, as known yes/no
- 2) History of domestic violence on others yes/no
- 3) Security Threat Group Affiliation yes/no
- 4) History of extortions or assault on others in prison yes/no
- 5) History of violent offenses yes/no

Victim Potential Victim Unknown Aggressor Potential Aggressor Unknown

Override to: Victim Potential Victim Unknown Aggressor Potential Aggressor Unknown

Rationale if override used _____

Completed by _____ Date _____

Override approved/denied _____ Date _____

Reference Guide

Vulnerable/Victim identifiers

1. *Victim of institutional sexual assault (documented)*: Check "yes" if there is any formal documentation or admission by the offender that there is a history of being the victim of a sexual assault while incarcerated in any correctional facility as either an adult or juvenile. This will be answered by medical/mental health staff. The CO/CPO should check other sources for validation (i.e. intake forms, IPS, Certified Sexual Assault Investigator/ PREA database) when the response is NO. Yes responses should result in notification to the institutional Certified Sexual Assault Investigator.
2. *Mental Disability*: a substantial disorder of thought, mood, perception, cognition or memory that grossly impairs their judgment, behavior, capacity to recognize reality or meet ordinary demands of life. This question will be answered by medical/mental health staff.
3. *Physical Disability*: any impairment which limits the physical function of limbs or fine or gross motor ability to include impairments which limit other facets of daily living. This question will be answered by medical/mental health staff.
4. *Developmental Disability*: a mental disorder described as mental retardation in the current edition of the DSM-IV which may impair the offender's ability to function in a correctional setting. This question will be answered by medical/mental health staff.
5. *History of institutional sexual abuse on others*: Check "yes" if there is any indication in any source documents that the offender has been sexually abused in any setting. Also check "yes" if the offender self-reports as being sexually abused in any setting. This will be answered by medical/mental health staff.
6. *Does inmate perceive self as vulnerable*: check "yes" if inmate self reports perception of there is any indication in source documents that inmate has self reported in the past.
7. *Is or perceived to be transgender, intersex, Gender Dysphoria, Gay, Bi-sexual, gender non-conforming*: as determined and confirmed by medical/mental health staff. This will be answered by medical/mental health staff.
8. *Youthful Age (21 or younger)*: Check "yes" if the offender is 21 or younger at the time of the screening based on the inmate's official date of birth. This will default from IMS.
9. *Elderly (65 or older)*: Check "yes" if the offender is 65 years or older at the time of the screening based on the inmate's official date of birth. This will default from IMS.
10. *Physical stature (5'6' or less and/or less than 140 lbs)* Check "yes" if the male inmate is 5'6" or less and/or is less than 140 pounds in weight based on the official record , self report or visual assessment. This will default from IMS.
11. *First Incarceration ever*: Check "yes" if the offender is serving their first incarceration of any kind, in state or out of state, adult or juvenile. This will default from IMS when possible otherwise will be answered by the CO/CPO.
12. *Any convictions for sex offense against child or adult including current offense*: Check yes if inmate has any conviction for sex offenses against an adult or a child. This will default from IMS.
13. *Exclusively Non-Violent Criminal History – Including the current offense* check "yes" if inmate's criminal history does not include any convictions for violent offenses. Violent offenses include: murder, manslaughter, vehicular homicide, assault w/i to commit murder, attempted murder, armed robbery, unarmed robbery, carjacking, assault w/DW, armed assault w/i to rob or murder, confining and putting in fear, armed assault in a dwelling, A&B (any type), A&B on a child, A&B DW, assault w/i to commit a felony, mayhem, violation of civil rights, rape adult or child (any type), assault w/i to rape, indecent A&B, unnatural acts w a child, armed burglary, B&E w/i to assault.
14. *Effeminate presentation*: Check "yes" if the offender presents in an effeminate way and by doing so may result in victimization. The "effeminate" attribute is limited to males and will be based on the staff's observation of the offender. This will be answered by the CO/CPO.

15. *History of Protective Custody Placement (adult/juvenile)*: Check "yes" if there is a documented history of being placed in a protective custody unit in an adult or juvenile correctional facility. Also check yes if the offender self reports as having been classified as a protective custody offender. This will be answered by the CO/CPO

Reference Guide

Violence/Predatory Identifiers

1. *History of institutional sexual abuse on others*: Check "yes" if there is any formal documentation or admission by the offender that there is a history of involvement in institutional sexual predatory behavior. This will default from IMS when it is known otherwise will be answered by the CO/CPO. Yes responses should result in notification to the institutional Certified Sexual Assault Investigator.
2. *History of Domestic Violence on Others*: Check "yes" if inmate has or admits to any prior history for domestic violence on others. 209A violations may be used as an indicator of a domestic violence history. This will be answered by the CO/CPO.
3. *STG (Gang) affiliation*: Check "yes" if inmate has been identified as being a validated member of a security threat group; self reports being an active member of a street gang or security threat group as indicated in IMS or when documentation exists that the inmate is likely a member of a security threat group. This will default from IMS but should be validated through other source documents if needed by the CO/CPO.
4. *History of Extortion/assaults in prison*: Check "yes" if inmate has or admits to a history of extortion of other offenders or assaulting staff or other inmates. This will be default from IMS when possible but will be answered by the CO/CPO.
5. *History of Violent Offenses (adult and juvenile)*: including current offense, check "yes" if inmate has any convictions for a violent felony. This will default from IMS when possible but will be answered by the CO/CPO.

Override Rules

Once a designation(s) has been determined, the screener should consider the accuracy of that designation. The screener, having knowledge of the inmate and/or the inmate's history should be confident in the designation. In cases where the designation is questioned, the screener may choose to have the housing risk assessment reviewed by the Deputy Superintendent of Classification and Treatment for a possible override of the designation to a different category. The rationale for that type of action needs to be documented. For example, some inmates may have the characteristics of a victim yet when observed; victimization is not likely to occur perhaps based on the offender's ability to adapt to the prison environment.

Cell Assignment Rules

- Staff responsible for cell/room assignments shall consult the Internal Housing Designation Risk Factor information prior to making a cell/room assignment.
- Staff shall not place known or potential victims with known or potential predators
- Inmates not identified in either category can be housed with anyone including those identified as a known victim or predator
- Staff shall also review for enemy issues prior to making any housing assignments
- Staff shall consider matching other factors such as length of sentence, age, medical and mental health issues, size and weight as matching these characteristics may result in a positive housing situation.

FEMALE INTERNAL HOUSING RISK FACTORS

Inmate Name _____ # _____ Institution _____

Risk of victimization

To be completed by medical/mental health

- 1. Victim of institutional sexual assault yes/no
- 2. Mental disability yes/no
- 3. Physical disability yes/no
- 4. Developmental disability yes/no
- 5. History of sexual victimization yes/no
- 6. Does offender perceive self as vulnerable yes/no
- 7. Is or perceived to be gay, lesbian, bisexual, transgender, intersex, gender nonconforming or gender dysphoria yes/no

To be completed by the CO/ CPO

- 8. Youthful age (25 or younger) yes/no
- 9. Elderly (60 or older) yes/no
- 10. Small in physical stature (less than 110lbs) yes/no
- 11. First incarceration/confinement ever yes/no
- 12. Conviction for sex offense against an adult or child yes/no
- 13. Exclusively non-violent criminal history yes/no

Risk of abusiveness

- 1. History of institutional sexual abuse toward others, as known yes/no
- 2. History of institutional violence, as known yes/no
- 3. History of sexual abuse or sexual assault toward others yes/no
- 4. History of violent offense yes/no

Victim Potential Victim Unknown Aggressor Potential Aggressor Unknown

Override to: Victim Potential Victim Unknown Aggressor Potential Aggressor Unknown

Rationale if override used _____

Completed by _____ Date _____

Override approved/denied _____ Date _____

Reference Guide

Risk of Victimization

16. **Victim of institutional sexual assault:** Check "yes" if there is any formal documentation or admission by the offender that there is a history of being the victim of a sexual assault while incarcerated in any correctional facility as either an adult or juvenile. This will be answered by medical/mental health staff.
17. **Mental Disability:** A substantial disorder of thought, mood, perception, cognition or memory that grossly impairs their judgment, behavior, capacity to recognize reality or meet ordinary demands of life. This question will be answered by medical/mental health staff.
18. **Physical Disability:** Any impairment which limits the physical function of limbs or fine or gross motor ability to include impairments which limit other facets of daily living. This question will be answered by medical/mental health staff.
19. **Developmental Disability:** A mental disorder described as mental retardation in the current edition of the DSM-IV which may impair the offender's ability to function in a correctional setting. This question will be answered by medical/mental health staff.
20. **History of Sexual victimization:** Check "yes" if there is any indication in any source documents that the offender has been sexually abused in any setting. Also check "yes" if the offender self-reports as being sexually abused in any setting. This will be answered by medical/mental health staff.
21. **Does offender perceive self as vulnerable:** Check "yes" if offender self reports perception of vulnerability or if there is any indication in source documents that inmate has self reported in the past. This will be answered by medical/mental health staff.
22. **Is or is perceived to be, gay, lesbian, bisexual, transgender, intersex, gender nonconforming or gender dysphoria:** As determined and confirmed by medical/mental health staff. This will be answered by medical/mental health staff.
23. **Youthful Age (25 or younger):** Check "yes" if the offender is 25 or younger based on the inmate's official date of birth. This will default from IMS.
24. **Elderly (60 or older):** Check "yes" if the offender is 60 years or older based on the inmate's official date of birth. This will default from IMS.
25. **Small Physical stature: (less than 110 lbs):** Check "yes" if the female offender is less than 110 pounds in weight based on the official record, self report or visual assessment. This will default from IMS
26. **First Incarceration/confinement ever:** Check "yes" if the offender is serving their first incarceration/confinement of any kind, in state or out of state, adult or juvenile, H/C, awaiting trial or civil commitment. This will default from IMS when possible otherwise will be answered by the CO/CPO.

27. **Conviction for sexual assault on adult or child:** Check "yes" if inmate has any **conviction** for sex offenses against an adult or a child. This will default from IMS when possible otherwise will be answered by the CO/CPO.
28. **Exclusively non-violent criminal history:** Check "yes" if criminal history does not include any violent offenses (regardless of disposition). Violent offenses include: murder, manslaughter, vehicular homicide, assault w/l to commit murder, attempted murder, armed robbery, unarmed robbery, carjacking, assault w/DW, armed assault w/i to rob or murder, confining and putting in fear, armed assault in a dwelling, A&B (any type), A&B on a child, A&B DW, assault w/i to commit a felony, mayhem, violation of civil rights, rape adult or child (any type), assault w/i to rape, indecent A&B, unnatural acts w a child, armed burglary, B&E w/i to assault. This will default from IMS when it is known otherwise will be answered by the CO/CPO.

Risk of Abusiveness

6. **History of institutional sexual abuse toward others:** Check "yes" if there is any formal documentation or admission by the offender that there is a history of involvement in institutional sexual aggressive behavior. This will default from IMS when it is known otherwise will be answered by the CO/CPO.
7. **History of Institutional Violence:** Institutional violence is normally captured in category 1 or category 2 DOC disciplinary reports or other incident or disciplinary reports if occurred in another jurisdiction. This will default from IMS when it is known otherwise will be answered by the CO/CPO.
8. **History of sexual abuse or sexual assault toward others:** Check "yes" if criminal history includes charges (regardless of disposition) for rape- child or adult (any type), assault w/i to commit rape, indecent assault and battery or unnatural acts with a child. Additionally, if during the interview the offender admits to sexual abuse or sexual assault on others for which no charges were sought a "yes" response is appropriate. This will be answered by the CO/CPO.
9. **History of violent offense:** Check "yes" if criminal history includes charges (regardless of disposition) for a violent offense. Violent offenses include murder, manslaughter, vehicular homicide, assault w/i to commit murder, attempted murder, armed robbery, unarmed robbery, carjacking, assault w/dw, armed assault w/i to rob or murder, confining and putting in fear, armed assault in a dwelling, A&B (any type), A&B on a child, A&B DW, assault w/i to commit a felony, mayhem, violation of civil rights, rape adult or child (any type), assault w/i to rape, indecent A&B, unnatural acts w a child, armed burglary, B&E w/i to assault. This will be answered by the CO/CPO.

Override Rules

Once a designation(s) has been determined, the screener should consider the accuracy of that designation. The screener, having knowledge of the offender and/or the offender's history should be confident in the designation. In cases where the designation is questioned, the screener may choose to have the housing risk assessment reviewed by the Deputy Superintendent of Classification and Treatment for a possible override of the designation to a different category. The rationale for that type

of action needs to be documented. For example, some offenders may have the characteristics of a victim yet when observed; victimization is not likely to occur perhaps based on the offender's ability to adapt to the prison environment.

Cell Assignment Rules

- Staff responsible for cell/room assignments shall consult the Internal Housing Designation Risk Factor information prior to making a cell/room assignment.
- Staff shall not place known or potential victims with known or a potential aggressor.
- Inmates not identified in either category can be housed with anyone including those identified as a known victim or aggressor.
- Staff shall also review for enemy issues prior to making any housing assignments
- Staff shall consider matching other factors such as length of sentence, age, medical and mental health issues, size and weight as matching these characteristics may result in a positive housing situation.

Victim if yes to question 1. Potential victim if yes to 4 or more victimization identifiers (2-13). Status unknown if yes to 3 or less victimization identifiers.

Aggressor if yes to question 1. Potential aggressor if yes to 2 or more abusiveness identifiers (2-4). Status unknown if yes to 1 or zero identifiers.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JANE DOE,
Plaintiff,

v.

MASSACHUSETTS DEPARTMENT
OF CORRECTION, et al.,
Defendants.

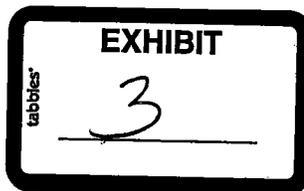
C.A. NO. 17-12255-RGS

AFFIDAVIT OF MITZI PETERSON, L.I.C.S.W.

I, Mitzi Peterson, do hereby depose and say:

1. I am an employee of the Massachusetts Department of Correction (“DOC”) and I presently serve as the Director of Behavioral Health for the DOC’s Health Services Division. I have held this position since March 2016. Prior to this position I served as a Mental Health Regional Administrator for the Health Services Division for three years. I am a licensed social worker and my primary responsibility as the Director of Behavioral Health is to monitor the mental health care provided to the inmates within DOC facilities, including inmates diagnosed with a gender dysphoria (“GD”) (previously known as gender identity disorder). The information provided herein is based upon my personal knowledge and my review of medical records.

2. I am familiar with Jane Doe, an inmate presently incarcerated at MCI-Norfolk, a medium security prison located in Norfolk, Massachusetts. Jane Doe began serving her third DOC incarceration on October 31, 2016. Jane Doe was transferred to MCI-Norfolk on November 30, 2016. Jane Doe has been diagnosed with GD and receives treatment for her GD in prison. I am familiar with Jane Doe’s treatment for GD based on my attendance at the monthly



GD Clinical Supervision Group and GD Treatment Committee meetings where her treatment for GD is discussed. I have also reviewed her medical records.

3. The DOC contracts with vendors to provide medical, dental and mental health services to inmates within the Department's custody. The medical and mental health service providers are responsible for determining the actual type, timing, and level of the medical and mental health care provided to inmates, as set out in their agreements with the DOC. *See* 103 DOC 610.01 *et seq.*, (2014), *Clinical Contract Personnel And The Role Of Doc Health Services*. On July 1, 2013, the Massachusetts Partnership for Correctional Healthcare, Inc. ("MPCH") became the DOC's contractual provider of medical, mental health and dental services for inmates.

4. Inmates diagnosed with GD receive treatment pursuant to the DOC's GD policy entitled, *Identification, Treatment and Correctional Management of Inmates Diagnosed with Gender Dysphoria*, 103 DOC 652.00, *et seq.* (2017).

5. Based on her diagnosis of GD, Jane Doe is able to receive the same female canteen items and clothing that are available for female offenders at MCI-Framingham, the DOC's facility for female offenders. While currently her financial account is subject to a freeze which precludes her ordering from the canteen, Jane Doe has female clothing and other feminizing items. Jane Doe gets her hair "permed" in the MCI Norfolk Barber Shop.

6. Jane Doe is prescribed feminizing hormones, as she has been in the community. In documentation from her 2003 medical records, her treatment with feminizing hormones was confirmed by MCI-Concord staff during her initial assessment under her first DOC incarceration.

7. Jane Doe meets regularly with her primary care clinician (“PCC”) Liz Sampson of MPCH for her mental health therapy. The frequency of her therapy sessions with Ms. Sampson was recently increased from once a month to twice a month based on clinical indication.

8. In addition, during this incarceration, Jane Doe has received numerous treatment sessions for electrolysis/laser hair removal. Accordingly to a recent medical progress note, treatment of Jane Doe’s facial areas has been completed and she will have a reassessment in March 2018.

9. Jane Doe is afforded separate shower times as noted in a posted and framed order in her unit. Male inmates are barred from entering the bathroom during times of her shower, where she showers behind a “PREA Shower Curtain” which is clear with a white opaque bar that covers an inmate’s body from the knees to upper chest. On February 12, 2018, Jane Doe confirmed with her PCC Liz Sampson that she is provided private showers.

10. Jane Doe works as a clerk in the canteen office, and was recently the scorekeeper for the soccer league. She participates in an inmate coordinated LGBT group twice weekly.

11. Jane Doe completed the Correctional Recovery Academy, a six-month substance abuse program, in December 2017.

12. Jane Doe is currently housed in a single cell on MCI Norfolk’s 3-2 housing unit.

13. Jane Doe’s PTSD diagnosis was recently added by Dr. Berger-Hershkowitz, M.D. due to symptoms of sleeplessness, anxiety and reports of dysphoria. The PCC indicates that the PTSD diagnosis is related to “prior undisclosed trauma” which she and Jane Doe have yet to address in therapy.

14. The DOC’s GD policy provides that the placement of GD inmates within DOC facilities is based on a case by case assessment of each GD inmate:

An assessment will inform housing, work, education, and program assignments and will focus on individual safety. These assessments will occur on a case by case basis and will include security level, criminal and discipline history, medical and mental assessment of needs, vulnerability to sexual victimization and potential of perpetrating abuse based on prior history. A Gender Dysphoric inmate's own views with respect to his or her own safety shall be given serious consideration.

103 DOC 652.09(A).

15. The GD treatment Committee has not recommended that Jane Doe be placed at MCI-Framingham by reason of her GD diagnosis. During her recent reclassification, pursuant to 103 CMR 420.00, et seq., Jane Doe requested placement at MCI-Framingham. On November 21, 2017, a classification board recommended that Jane Doe remain at MCI-Norfolk. On December 6, 2017, in response to Jane Doe's appeal of the classification board decision, the Superintendent's designee upheld the classification board decision. The Superintendent's designee found that there were no risk factors suggesting that another facility was more appropriate, noting that the GD Treatment Committee had not determined that Jane Doe required placement at MCI-Framingham based on her GD diagnosis.

16. I have reviewed the January 16, 2018 affidavit of Randi Ettner, Ph.D. regarding Jane Doe. In paragraph 30 of her affidavit, Dr. Ettner opines that hormonal changes in Jane Doe as a result of her long-term hormone therapy "render her unable to have erections, produce ejaculate fluid, or engage in penetrative sex." However, Jane Doe's medical records contain a summary of her June 27, 2017 clinical consultation with her endocrinologist at the Boston Medical Center. The June 27, 2017 endocrinology consultation states that Jane Doe requested an increase in her dosage of Spironolactone because she "is still getting erection [sp] that she would like to stop." Later in the assessment section of the consultation summary, the endocrinologist states that "Pt's report of residual erections will not be changed by chg. in hormone regimen."

Accordingly, based on Jane Doe's June 27, 2017 statement to the endocrinologist that she still experiences erections, Dr. Ettner's claim that Jane Doe is unable to have erections due to her long-term treatment with female hormones appears questionable. Attachment A.

17. In paragraph 31, Dr. Ettner opines that Jane Doe is not capable of reproduction due to her treatment for gender dysphoria. However, Jane Doe is a biological parent.

18. In paragraph 40, Dr. Ettner opines that Jane Doe will function well in a women's prison, as she has lived as a female her whole life. As the DOC's Director of Behavioral Health, I have spent a great deal of time working with the mental health clinicians at MCI-Framingham and I am very familiar with the female offender population. Jane Doe has not lived within a prison with females previously, and Dr. Ettner's statement does not take into consideration the response of the females at MCI-Framingham and the potential rejection of Jane Doe as a transgendered woman. This rejection may increase Jane Doe's distress and dysphoria. I am also concerned that Jane Doe's presence at MCI-Framingham, as a pre-operational male to female transgender, may create climate issues with the female offenders, the vast majority of whom have experienced significant trauma as a result of domestic abuse and sexual assaults.

19. As the Director of Behavioral Health, I have conducted numerous trainings for staff at DOC facilities with regard to the DOC's GD policy and practical skills in working with GD inmates. The training I provide staff regarding working with GD inmates also includes a discussion of the proper methods of addressing GD inmates, including use of proper pronouns. I have also created a Frequently Asked Questions information page available to all DOC staff that provides a brief description of GD, treatment for GD inmates, and working with GD inmates.

Signed under the pains and penalties of perjury this 20th day of February, 2018.



Mitz Peterson, L.I.C.S.W.
Director of Behavioral Health

[REDACTED]

Encounter Date: 06/27/2017

Patient Insurance and Address Information

1st Insurance/Plan/Policy#: CORRECTIONS/NORFOLK [REDACTED]
2nd Insurance/Plan/Policy#: SELF PAY/STANDARD/
Guarantor Name: [REDACTED]
Guarantor Address: NORFOLK
2 CLARK ST
NORFOLK, MA 020580000
Guarantor Phone: 5086605900

Boston Medical Center

[REDACTED]

[REDACTED]

[REDACTED]

MRN: [REDACTED]
Description: 52 year old male

Office Visit 6/27/2017
Endocrinology, Diabetes,
Nutrition & Weight
Management

Provider: Joshua Safer, MD (Endocrinology)
Primary diagnosis: Androgen excess
Reason for visit: New Patient; Referred by Doc Offsite Referring

Progress Notes

Joshua Safer, MD (Physician) - Endocrinology

ENDOCRINOLOGY CONSULT FROM Dr. Churchville, Norfolk MCI

Letter from Keelin Garvey to prison psych med director attesting that pt is following standard trans hormone regimen for w/o independent re-eval of diagnosis.

Called [REDACTED]

Outside labs of spring 2017
Total testosterone 7
FSH suppressed, LH 0.4
Prolactin 6
E2 105
25 OH vit D: 18
K 4.5

HPI/CC: Transgender woman here for weekly estradiol cypionate injection. Patient would also like to increase this dose from 0.5mL (on 2.5 mg) as she would like to increase her breast size from 34B to 36C. Currently taking 100mg spironolactone PO daily. Requesting an increase of his spironolactone that she is now out of. He is still getting erection that he would like to stop

PMH: Type 2 Diabetes, repair of right leg break
MEDS: metformin 500mg PO BID, spironolactone 100mg PO daily,
- estradiol cypionate 0.5mL IM (2.5 mg) q week,
ALL: none

Encounter Date: 06/27/2017

FH: none
SH: no alcohol, former smoker (quit 12 years ago 0.1 PPD for 2 years)

ROS NO C/O EYE PROTRUSION, THYROID TENDERNESS/ENLARGEMENT, TREMOR,
PALPITATIONS, RESPIRATORY DISTRESS, BM CHGS, LARGE MUSCLE WEAKNESS,
SKIN/NAIL/HAIR CHGS, MOOD CHG, HEAT/COLD INTOL

EXAM

A+OX3
MOOD GOOD
LUNGS CTA, NO RALES
HEART RRR, NO MURMER
ABD BENIGN, BS'S+
NO TREMOR, NO WEAKNESS
NL EYES, NO GRAVES EYE DZ
SKIN COOL, DRY
NO FOCAL NEURO DEF

THYROID ND/NEG NODULE/MASS (2017)
Visible breast development even clothed (2017)
GU deferred (2017)

ASSESSMENT:

Transgender women on hormone Rx for 20 years which results in female range testo levels w/ LH and FSH suppressed, E2, prolactin, and K safe. Long discussion of goals of Rx, risks (We have discussed the impact of estrogen Rx including chg in fat mass, chg in muscle mass, incr risk of thromboses (incl stroke, PE, and DVT), incr scalp hair, decr rate of growth of body hair, and breast development.), and that breast size will decrease w/ time -- not increase w/ extra E2 and/or extra spironolactone. Pt's report of residual erections will not be changed by chg in hormone regimen.

Pt aware that with age, consideration for potential decrease in regimen vs genital surgery might make sense to address tension for incr E2 risk w/ time vs incr T if E2 dose cut. Pt's prison stay may only be a few years in which case the prison med plan would be to maintain her current meds which they are doing.

PLAN:

no chg to existing long-term regimen

RTC PRN future concerns W/ LABS PRIOR - total testosterone, E2, prolactin, K, hct, LH, FSH, A1c, lipids, TSH, 25 OH vit D.

Other Notes

Amb Medical Student Note from Stephon Martin

Instructions

Visit Summary (Printed 6/27/2017)

Additional Documentation



Encounter Date: 06/27/2017

Vitals. BP 143/83 (BP Cuff Location: Left Upper Arm) Pulse 80 Wt 96.2 kg (212 lb)
Flowsheets: Amb EDN Complex Vitals Nav, Custom Formula Data, Anthropometrics
Encounter Info: Billing Info, History, Allergies, Detailed Report

Level of Service

PR OFFICE OUTPATIENT NEW 60 MINUTES [99205] Resident/Teaching Phys Serv [GC]

All Charges for This Encounter

Code	Description	Service Date	Service Provider	Modifiers	Qty
99205	PR OFFICE OUTPATIENT NEW 60 MINUTES	6/27/2017	Joshua Safer, MD	GC, KX	1
51000022	HC OFFICE OUTPATIENT NEW 60 MINUTES	6/27/2017	Joshua Safer, MD	GC, KX	1

Not recorded

BestPractice Advisories

Click to view BestPractice Advisory history

Orders Placed

None

Medication Changes

As of 6/27/2017 2:49 PM

None

Visit Diagnoses

Androgen excess E28.1

103 CMR 420: DEPARTMENT OF CORRECTION

103 CMR 420: CLASSIFICATION

Section

- 420.01 Purpose
- 420.02 Statutory Authorization
- 420.03 Cancellation
- 420.04 Applicability
- 420.05 Access to Regulations
- 420.06 Definitions
- 420.07 Classification System Goals and Objectives
- 420.08 Initial Classification Process
- 420.09 Reclassification Reviews and Hearings
- 420.10 Department Review Board
- 420.11 Time Limits
- 420.12 Inmate Transfer
- 420.13 Audits
- 420.14 Inmates Held In Other Jurisdictions
- 420.15 Emergency
- 420.16 Responsible Staff
- 420.17 Annual Review
- 420.18 Severability

420.01 Purpose

The purpose of 103 CMR 420 is to establish rules and procedures which govern the Department of Correction (DOC or Department) inmate classification system. 103 CMR 420 is not intended to confer any procedural or substantive rights or any private cause of action not otherwise granted by state or federal law.

420.02 Statutory Authorization

103 CMR 420 is issued pursuant to M.G.L. c. 124, §§ 1 (c), (f), (g), (q) and M.G.L. c. 127, §§ 20, 49A, 97 and 97A.

420.03 Cancellation

103 CMR 420 cancels all previous DOC policy statements, bulletins, directives, orders, notices, rules or regulations regarding inmate classification.

420.04 Applicability

103 CMR 420 is applicable to all DOC employees and to all criminally sentenced inmates housed within the Massachusetts DOC unless/or otherwise noted.

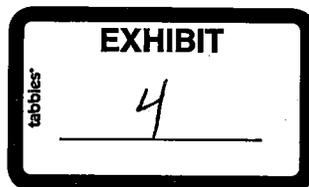
420.05 Access to Regulations

103 CMR 420 shall be maintained within the Central Policy File of the DOC and will be accessible to all DOC employees. A copy of the 103 CMR 420 shall also be maintained in each Superintendent's Central Policy File and at each inmate library. Internet access for this regulation can be obtained at: <http://www.mass.gov/eopps/law-enforce-and-cj/prisons/doc-policies>.

420.06 Definitions

Assistant Deputy Commissioner of Reentry – A senior level manager who reports to the Deputy Commissioner of Clinical Services and Reentry, and is responsible for ensuring policy compliance and standardization of procedures in such areas as classification, date computation, victim services, inmate records, inmate programs & reentry, and inmate training & education.

December 1, 2017



103 CMR 420 - 1

Business Day – Any day except Saturday, Sunday, or a Massachusetts legal holiday.

CJIS/LEAPS – Nation-wide computer details of any outstanding warrant entered by the agency holding the warrant.

Classification Board – A committee of three (3) DOC employees which makes recommendations concerning an inmate's custody level and program participation.

Commissioner – The chief executive officer of the DOC.

Commissioner's Designee – A DOC manager who is authorized by the Commissioner to review classification board recommendations and to render final decisions for the Commissioner as the Commissioner's designee.

Correctional Program Officer (CPO) – The staff person at an institution who, when assigned classification duties, collects information obtained through inmate interviews and available casework records, and who prepares a summary of this information for classification. A CPO is also responsible for monitoring an inmate's participation and compliance with a personalized program plan or program recommendations and facilitates reentry preparation.

Custody Level – The level of risk posed by an inmate to the safety and security of the institution and the public as determined by the Objective Classification Score and any applicable restriction(s) or override(s).

Departmental Disciplinary Unit (DDU). A restricted area or areas designated by the Commissioner to which an inmate has been sentenced by a special hearing officer.

Departmental Review Board – A classification board appointed by the Commissioner or designee to review an inmate's case history and program needs and to make recommendations to the Commissioner or designee regarding the inmate's classification in unusual or complex situations.

Deputy Commissioner of Clinical Services and Reentry – A Department Deputy Commissioner whose duties include, but are not limited to, the management of the Classification Division, Inmate Education and Training Division, Reentry and Program Services Division, and the Health Services Division.

Emergency – A threat to the safety, security or orderly administration of an institution or to the safety or security of staff, inmates, or other persons.

Higher Security Transfer – The transfer of an inmate to an institution that is more secure than the institution from which the inmate is being transferred. A transfer to an out of state or federal facility shall be considered a higher security transfer.

Inmate Management System (IMS) – The DOC's automated information system that provides processing, storage and retrieval of inmate-related information needed by DOC personnel and other authorized users within the criminal justice system.

Institution – Any facility within which a Massachusetts state-sentenced inmate may be incarcerated, including, but not limited to, a state or county correctional facility, a federal or other state's correctional facility, the Bridgewater State Hospital, and the Massachusetts Treatment Center.

Institutional Director of Classification – The staff person at an institution who has been designated to oversee the classification process and implementation of 103 CMR 420 at the institution level.

Internal Classification Status Review – A periodic review conducted by a CPO and subject to review by the Institutional Director of Classification.

Needs Assessment - The identification, evaluation, and estimation of criminogenic needs of an inmate and the identification of appropriate programming and placement to address those criminogenic needs areas.

Objective Point Base Classification Operational Manual – A training manual with operational definitions and instructions. The Operational Manual is used to assist staff in applying the classification criteria and appropriately scoring the variables and any applicable overrides and/or restrictions.

Objective Point Base Classification System – The standardized evaluation and custody assignment of an inmate based on objectively defined criteria. The criteria are weighed, scored, and organized into a valid and reliable classification instrument accompanied by an operational manual for applying the instrument to inmates in a systematic manner.

Official Version (OV) – A statement of the facts upon which the inmate's sentence was based.

Override – A departure from a scored custody level, based on the professional judgment of trained staff. Overrides are contained in the Male and Female Objective Point Base Classification Manuals.

Personalized Program Plan – A plan that charts the course of action for the inmate, the CPO, and the service providers on addressing the criminogenic needs of the inmate, progress made, and compliance issues. The plan begins at intake and is continuously updated based on the inmate's risk, needs assessment, if applicable, and record review including but not limited to any secondary assessment.

Receiving Institution – The institution to which an inmate will be transferred upon approval by the Commissioner or designee.

Reception Center – The institution to which the inmate is initially committed.

Reclassification – Any and all classification processes that occur after initial classification.

Restriction – A departure from a scored custody level, based on DOC's practices of restricting or limiting the custody level of certain inmates. Staff do not have the authority to disregard restrictions. Restrictions are contained in the Male and Female Objective Point Base Classification Manuals.

Risk Assessment - The identification, evaluation, and estimation of the levels of criminogenic risk factors which are characteristic of an inmate or his/her situation which then assist in predicting future criminal behavior.

Security level – The degree of security afforded by the architectural and staffing attributes of the institution and housing units within that institution.

Sending Institution – The institution from which an inmate will be transferred upon approval by the Commissioner or designee.

Secure Treatment Unit - A maximum security residential treatment program designed to provide an alternative to Segregation for inmates diagnosed with SMI who cannot be housed in general population due to safety and/or security concerns. The Department currently operates two STUs: the Secure Treatment Program (STP) and the Behavioral Management Unit (BMU). The Department also operates RTUs which are not deemed STUs because the Department operates them as general population units.

Superintendent – The chief administrative officer of an institution or a county correctional institution.

Telephone Interpreter Service – A service contracted by the DOC to provide over-the-phone interpretation services to non-English speaking inmates.

Transfer – The act of moving an inmate from one institution or security level to another institution or security level upon approval by the Commissioner or designee. An inmate's movement to an out of state or federal facility shall be considered a transfer for purposes of 103 CMR 420.

420.07 Classification System Goals and Objectives

The primary goals of the Massachusetts DOC classification process are to promote public safety and the responsible reintegration of inmates. To achieve these goals, the classification process shall objectively assess the inmate's custody requirements and programmatic needs and match those to the appropriate security level in a manner that

minimizes the potential for escape, prison violence, and inmate misconduct. In doing so, the DOC will incorporate the following objectives:

- A. Rationally use a reliable, validated set of variables to support classification decisions.
- B. Place inmates in the level of security required to ensure protection of the public, correctional staff, themselves, and other inmates.
- C. Promote, successful reintegration to a law abiding and productive community life.
- D. Involve inmates in determining individualized appropriate goals.
- E. Establish a fair and equitable mechanism for inmates to appeal classification recommendations.
- F. Maximize the use of factual and quantifiable data to make decisions and to facilitate research.
- G. Share information with other criminal justice agencies for the purpose of enhancing public safety.
- H. Establish both centralized and decentralized quality control, monitoring and evaluation of the classification process to ensure that it continues to meet its primary goals and these stated objectives.

420.08 Initial Classification Process

- A. Upon commitment to the DOC, each inmate shall be admitted to a Reception Center or assigned by the Commissioner or designee to an institution where the inmate shall undergo an initial classification process. The process shall provide an opportunity for the Reception Center staff members to become acquainted with each inmate through individual assessment, testing, and structured interviews. In instances where language barriers exist, the Telephone Interpreter Service shall be used, and its use documented. Moreover, hearing impaired inmates may request a hearing impaired interpreter pursuant to the procedures set forth in 103 DOC 408 Special Accommodations for Inmates, available at <http://www.mass.gov/eopss/law-enforcement-and-cj/prisons/doc-policies>. The initial classification process shall normally be completed within four (4) weeks of admission except in unusual circumstances which may include, but are not limited to:

1. Lack of data necessary to conduct the hearing (i.e. problems with mittimus, inmate sentence listing with date calculation, OV, CJIS checks, and adjustment information on prior incarcerations/awaiting trial);
2. Intervening medical/mental health placement;
3. Female inmates waiting to complete the First Step Program at MCI-Framingham.

In cases where the initial classification has been delayed, a board shall be scheduled as soon as possible, but no later than ninety (90) days from admission when the board shall proceed on the basis of all available information.

- B. Case Preparation. The CPO shall review all classification information compiled in the IMS database, consult with key staff members, when appropriate, and review other records as necessary, including the six-part folder, pre-sentence summary reports, the OV, and prior incarceration records, to compile the information required for initial classification. Information used for classification shall be reviewed, entered or updated as necessary. The CPO shall complete the appropriate Objective Point Base Classification Form, which involves the scoring of classification variables and the identification of potential overrides or restrictions. A risk assessment shall be completed by designated staff for male inmates serving a sentence of more than one (1) year and female inmates serving a sentence of more than 90 days as part of the initial classification process. Designated staff need only complete the criminal history section of the risk assessment for inmates serving a nonparoleable life sentence. A new assessment shall not be required for parole violators released from custody for less than a six (6) month period.
- C. Initial Classification Hearing. An inmate shall be scheduled for an initial classification hearing by the institutional Director of Classification or designee. Prior to the hearing, the inmate shall be interviewed by the assigned CPO to discuss pertinent aspects of the inmate's case. The discussion shall include, but not be limited to, the inmate's custody status, the inmate's version of the crime, the objective point base classification score including possible restrictions or overrides, and the classification appeal process. A classification board shall be convened to make recommendations to the Commissioner or designee concerning an inmate's placement. The following standards shall be adhered to regarding the initial classification process:
 1. Board Membership. All classification boards shall be comprised of three (3) DOC staff members appointed by the Superintendent or designee. One (1) board member shall be selected by the

Superintendent to act as Chairperson, and shall be responsible for the overall quality of the review process and for ensuring compliance with existing classification policies and procedures, in accordance with M.G.L. c. 127 § 20. Chairpersons shall normally be in a supervisory position. All chairpersons must complete a specialized training program prior to being assigned chairperson responsibilities.

In an institution designated by the Commissioner as maximum or medium custody, one (1) member shall be a Correction Officer. In an institution designated by the Commissioner as minimum or pre-release custody, one (1) member shall be an employee whose primary role includes security responsibilities.

Members of a Department Review Board (as described in 103 CMR 420.10) shall be appointed by the Commissioner or a designee.

2. Legal Representation. Whenever an inmate could be considered for an increased custody level, except at initial classification, the inmate may be represented by an attorney or law student at that hearing. A legal representative shall be allowed a request to reschedule so long as the request does not cause undue delay or is otherwise unreasonable. The legal representative may only make a statement on behalf of the inmate. The legal representative shall be directed by the chairperson to leave the hearing room with the inmate when the board deliberates and votes on the case.
3. Notice of Hearing. The inmate shall be provided with at least forty-eight (48) hours advance written notice of the scheduled classification hearing. Notice shall be documented and may be waived by the inmate in writing.
4. Case Presentation. The inmate's assigned CPO shall make a comprehensive oral presentation to the classification board, utilizing information compiled during the case preparation while focusing on the inmate's objective classification score and any applicable restriction(s) or override(s), as outlined in the Objective Classification Operational Manual.
5. Inmate Presentation. Following the CPO's presentation, the inmate shall appear before the classification board. In an effort to promote responsible reintegration and aid in the reentry process, inmates are expected to attend and participate in every classification hearing. The classification hearing allows for discussions regarding the objective point base classification score and applicable restrictions or overrides, adjustment issues, program goals and institution requests. In the event that the inmate is unable or unwilling to attend the classification board hearing, the Chairperson of the board shall, in the absence of justifiable reasons for the inmate's failure to attend, proceed with the hearing. Hearings held in absentia shall be documented in IMS as such.
6. Classification Board Recommendation. Once all relevant information is presented to the classification board, the Chairperson shall direct the inmate to leave the hearing room so that the board may deliberate. The board shall utilize the scored custody level and any applicable restriction or override in its final recommendation to the Commissioner or designee concerning the inmate's placement and programming within the correctional system. The final recommendation shall be determined by a majority vote. Each board member, including the Chairperson, shall have one (1) equal vote. The board's recommendation and rationale, as well as reasons, if any, for a minority vote shall be recorded. Further, any use of a restriction or override must be noted and a rationale provided for any override. The inmate shall normally be called back into the hearing room and verbally notified of the board's recommendation and thereafter in writing by receiving a copy of the decision page of the Classification Report. The recommendation will include the date of reclassification. The reclassification date will be one (1) year after the date of the hearing unless an override was used in which case the reclassification date will be six (6) months after the date of the hearing. This will be the inmate's next scheduled classification unless an earlier classification is deemed appropriate by the classification board or institutional Director of Classification. The recommendation and related materials should be submitted for quality assurance to the institutional Director of Classification or designee and then to the Commissioner or designee normally within ten (10) business days after the hearing.
7. Quality Assurance. All classification board recommendations shall undergo a quality assurance process which involves a review by the Institutional Director of Classification or designee (the

designee must not have been a member of that classification board) who shall review the report for completeness and accuracy. In the event that any data is found to be incomplete or inaccurate, the report shall be returned to the assigned CPO for correction. Further, any incomplete or inaccurate data in any source screen that contributes information to the classification report must be promptly reported and corrected. Once the quality assurance has been completed, the report will be forwarded to the Commissioner or designee.

8. Inmate Appeal. Where an inmate disagrees with the classification board recommendation; supports a recommendation made or waives the appeal process, the inmate or a legal representative shall submit an Inmate Placement Request/Appeal Form within five (5) business days of written notification of the board's recommendation. The Inmate Placement Request/Appeal Form shall be provided to inmates at the conclusion of every classification hearing or review. The Inmate Placement Request/Appeal Form will not be accepted after five (5) business days have elapsed unless otherwise approved by the Institutional Director of Classification or designee. Upon receipt of the Inmate Placement Request/Appeal Form, the CPO shall enter the information into IMS.
9. Commissioner or Designee Review. The Commissioner's designee shall review the classification information to include the objective point base classification score and applicable restrictions or overrides, and any Inmate Placement Request/Appeal submitted. The Commissioner or designee shall utilize the scored custody level and any applicable restrictions or overrides to render a final placement decision, but is not limited to consideration of same. The goal in each case is to render a decision within twenty (20) business days. Institutional personnel shall notify the inmate of the final decision by providing a copy of the decision page to the inmate. The decision of the Commissioner/designee is final and cannot be appealed.
10. Staff signatures. Staff signatures are documented via electronic signatures.
11. Decision Modifications. Classification hearing transfer decisions may be modified by the Commissioner or designee only in the following instances:
 - a. The inmate's medical/mental health cannot be met at the receiving facility;
 - b. The existence of an inmate or staff conflict;
 - c. The inmate's refusal to transfer;
 - d. Where a modification would result in an equal or lesser custody level.

Modifications must be made as soon as the need for modification is known, but no later than sixty (60) business days after an inmate's transfer. Institutional personnel shall notify the inmate of the modification by providing a copy of the decision page to the inmate.

420.09 Reclassification Reviews and Hearings

- A. Frequency:
 1. The reclassification process begins with an Internal Classification Status Review, which shall be completed at least annually for each inmate by a CPO.
 2. Inmates housed in the DDU, or a secure treatment unit while serving their DDU sanction, shall receive an Internal Classification Status Review within fourteen (14) days of admission and approximately sixty (60) days prior to their projected discharge in addition to the annual Internal Classification Status Review.
 3. Classification Schedule for Minimum and Pre-Release. All inmates transferred to minimum or pre-release security shall have an Internal Classification Status Review completed within fourteen (14) days of admission.
 4. Inmates with Parole Reserve Dates. Any inmate who receives a parole reserve date contingent upon completing a specified time in a lower level of security shall be reviewed in accordance with 103 CMR 420.08(A) and (D)(1) through (11) within thirty (30) days of receipt of the Parole Board's decision.

5. Inmates diagnosed with Gender Dysphoria shall be classified in accordance with 103 DOC 652.
6. Request for an Early Reclassification Review Date. An inmate may request a hearing or review earlier than scheduled by submitting a written request to the Institutional Director of Classification or designee at the institution in which the inmate is housed. This request should include the reason for the request and any other pertinent information. Upon receipt of such a request, the Institutional Director of Classification or designee shall review pertinent information, and make a recommendation to the Superintendent or designee whether or not an earlier reclassification hearing is warranted. The inmate shall be informed of the Superintendent or designee's decision in writing by institutional personnel.

B. Process:

The CPO periodically reviews the inmate's custody level and compliance with the personalized program plan through the Internal Classification Status Review process, as described herein:

1. The CPO shall do the following as part of an Internal Classification Status Review:
 - a. Update the inmate's Objective Point Base Classification Form;
 - b. Verify the receipt of all documents per 103 DOC 417, Criminal History Records Information, OV, and adjustment information on present and, when applicable, prior incarcerations/awaiting trial;
 - c. Review the inmate's criminal history as updated by Criminal History Records Information staff in accordance with the 103 DOC 417.00 Criminal History Records Information, available at: <http://www.mass.gov/doc/policy>;
 - d. Review work and housing evaluations, disciplinary history, and segregation placements;
 - e. The assigned CPO shall complete a risk/needs assessment for each inmate who scores moderate or high in either the Risk of Violence or Risk of Recidivism scale. The risk/needs assessment shall be completed upon transfer from the reception center during orientation at the receiving facility.
 - f. Review and update (if applicable) the inmate's personalized program plan and the inmate's compliance with same. An inmate's personalized program plan shall be reviewed within fourteen (14) days of admission at Minimum and Pre-Release and every six months thereafter. A review of the personalized program plan shall also occur sixty (60) days prior to an inmate's release

2. Scheduling Reclassification Board Hearings.

If a review of the inmate's objective classification form and factors noted in 103 CMR 420.09 (A) and (B), indicates the need for a transfer (higher, lower or lateral), the Institutional Director of Classification or designee shall schedule a classification hearing by a three (3) person board in accordance with 103 CMR 420.08(A) and (C)(1) through (11). Once this classification hearing by a three (3) person board has been scheduled, the reclassification process shall follow the process in accordance with 103 CMR 420.08.

3. Recommendations and Reclassification Dates.

The CPO shall make recommendations and enter the results of the Internal Classification Status Review into IMS. The Institutional Director of Classification or designee shall approve, modify or deny recommendations made by the CPO and the next reclassification date will be established which shall not exceed six (6) months where a discretionary override was used; and one year in all other cases. Shorter reclassification dates should be established for inmates when it is anticipated that their status may change; and for those inmates approaching parole and/or release. The inmate shall be notified verbally of the Internal Classification Status Review results and thereafter in writing by receiving a copy of the decision page.

C. Inmate Appeal.

Where an inmate disagrees with the CPO Recommendation, supports a CPO Recommendation made, or waives the appeal process, the inmate or legal representative shall complete the Inmate Placement Request/Appeal Form, and shall submit the completed Form to the inmate's assigned CPO within five (5) business days of written notification of the review results. The Inmate Placement Request/Appeal Form shall not be accepted after five (5) business days have elapsed unless otherwise approved by the Institutional Director of Classification or designee. Upon receipt of the Inmate Placement Request/Appeal Form, the CPO shall enter the information into IMS. The Superintendent or designee (the designee shall not be the Institutional Director of Classification) shall be the reviewing authority for appeals of Internal Classification Status Reviews. His/her decision is final and cannot be appealed.

D. Pre-Classification Transfer.

An initial or reclassification hearing shall normally occur before an inmate's transfer. Inmates may be transferred prior to a classification hearing whenever:

1. an inmate is being investigated for possible disciplinary offenses;
2. an inmate is charged with a disciplinary offense;
3. an inmate is found guilty of a disciplinary offense;
4. security issues exist;
5. an inmate fails to meet preconditions of the current placement;
6. an inmate has a change in medical or mental health status; or
7. otherwise as deemed necessary or appropriate by the Commissioner or designee.

Pre-Classification transfers shall be approved by the Commissioner or designee prior to their occurrence. The receiving institution shall be responsible for conducting a hearing in accordance with 103 CMR 420.08(A) and (B), which shall normally be held within twenty (20) business days of such a transfer. However, where an investigation is pending or necessary information is otherwise unavailable due to ongoing administrative processes, the hearing may be postponed until completion of the pending matter. In cases where the hearing has been delayed, a hearing will be scheduled as soon as possible, but no later than ninety (90) days from transfer when the board shall proceed on the basis of all available information.

420.10 Department Review Board

All Department Review Boards shall be held in accordance with 103 CMR 420.08 and 103 CMR 420.09.

420.11 Time Limits

- A. All procedural time limits set forth in 103 CMR 420 are directory and may be waived by the Superintendent or the Commissioner or their designees.
- B. Initial classification and reclassification may be delayed when:
 1. an inmate is on remand status;
 2. an inmate is being held on an Interstate Agreement on Detainers (IAD);
 3. an inmate is admitted to an infirmary or hospital;
 4. an inmate is awaiting medical clearance
 5. an inmate is admitted to a state hospital or the Massachusetts Treatment Center.
 6. an inmate is awaiting action on SMU status
- C. The CPO must review the inmate as soon as the above conditions no longer apply or interfere with classification. IMS should be used to track and monitor inmate review dates.

420.12 Inmate Transfer

Whenever an inmate has been approved for transfer through the appropriate classification process, the inmate shall be transferred in accordance with 103 DOC 461, Inmate Transfer, available at: <http://www.mass.gov/doc/policy>. Nothing in 103 CMR 420 is intended to limit, in any way, the discretion of the Commissioner to transfer an inmate pursuant to M.G.L. c. 127, § 97A.

420.13 Audits

The Assistant Deputy Commissioner of Reentry or designee will be responsible for conducting regular audits of the classification system. These audits shall include, at a minimum, the override rate, accuracy of IMS generated review dates,, appeals and personalized program plan.

420.14 Inmates Held in Other Jurisdictions

- A. State inmates being held in out of state or federal facilities shall be reviewed in accordance with the classification procedures and guidelines of the jurisdictions in which they are being held.
- B. State inmates held in county facilities in Massachusetts may be reviewed in accordance with the classification procedure and guidelines of the jurisdiction in which they are being held or shall be reviewed in accordance with 103 CMR 420 to the extent possible given available technology and resources.

420.15 Emergency

Whenever, in the opinion of the Commissioner or designee, or the Superintendent of a state correctional facility, an emergency exists which requires suspension of all or part of these regulations, the Commissioner or designee or the Superintendent may authorize such suspension, provided that any suspension lasting more than forty-eight (48) hours must be approved by the Commissioner.

420.16 Responsible Staff

The Deputy Commissioner Clinical Services and Reentry shall be responsible for implementing and monitoring 103 CMR 420 throughout the Department. The Superintendent of each correctional institution shall be responsible for implementing and monitoring compliance with 103 CMR 420 within the institution.

420.17 Annual Review

103 CMR 420 shall be reviewed at least annually by the Commissioner or a designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions or deletions which shall be included for the Commissioner's written approval and shall become effective pursuant to applicable law.

420.18 Severability

If an article, section, subsection, sentence, clause or phrase of 103 CMR 420 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner, or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 103 CMR 420.

REGULATORY AUTHORITY

103 CMR 420: M.G.L. c. 124, §§ 1(c), (f), (g), (q) and M.G.L. c. 127, §§ 20, 49a, 97 and 97A.

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

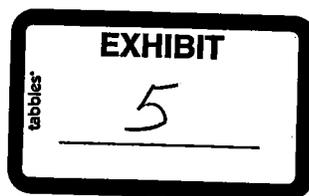
103 DOC 506

SEARCH POLICY

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MASSACHUSETTS DEPARTMENT OF CORRECTION	POLICY DEVELOPMENT AND COMPLIANCE UNIT
SEARCH POLICY	103 DOC 506

PURPOSE: The purpose of this policy is to establish internal Departmental Procedures for searching person(s) and/area(s) within the legal boundaries of each institution. Searches are conducted to detect and prevent the introduction of contraband, recover missing or stolen property, to prevent escapes and other disturbances.

REFERENCES: M.G.L. Chapter 124, Section 1 (a), (b) and (q)
DPH Drug Destruction Protocol

APPLICABILITY: Staff/Inmates **PUBLIC ACCESS:** Yes

LOCATION: DOC Central Policy File
Institution/Superintendent Central Policy File

RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:
- Director of the Policy Development and Compliance Unit
- Superintendents

EFFECTIVE DATE: 08/10/2017

CANCELLATION: This policy cancels all previous department policy statements, bulletins, directives, orders, notices, rules and regulations regarding planning which are inconsistent with this policy.

SEVERABILITY CLAUSE: If any part of this policy is for any reason held to be in excess of the authority of the commissioner, such decision will not affect any other part of this policy.

506.01 SUPERINTENDENT'S SEARCH AUTHORITY

The superintendent or his/her designee may order the search of any person entering or confined in an institution, in or on state property, including parking areas, in order to ensure the security and safety of that institution, its inmates, employees, and visitors.

Staff, inmates and visitors shall be notified in writing (e.g., handbooks, posting, etc.) of the general institution policy regarding searches and items considered to be contraband.

506.02 DEFINITIONS

Reasonable Suspicion - Reasonable suspicion exists if the facts and circumstances known to a staff member warrant rational inferences by a person with correctional experience that a person is engaged in, attempting, or about to engage in criminal or other prohibited activities, including possession of prohibited objects. Reasonable suspicion may be based on:

- Observations by staff;
- Reliable information, even if confidential;
- A positive reading by a metal detector or other electronic device;
- Finding contraband or indication of contraband during the search of a staff member's belongings.

Anonymous information cannot be the basis for reasonable suspicion without reliable corroboration. "Hunches," "gut feelings," or "mere suspicion" do not meet the reasonable suspicion standard.

Staff - For purposes of this policy, the term "staff" includes DOC employees, vendors and volunteers.

Strip Search - A search in which a person removes all clothes. A strip search may include a visual inspection of a person's oral, anal, or vaginal cavity. This also includes a thorough search of all of the individual's clothing while it is not being worn.

Pat Search - A clothed search of an individual limited to the pressing of palms of the hand against the outer surface of an individual's clothing, and examination of all pockets, shoes, caps and hairpieces. It does not include the removal of any of the person's clothing except removable outer garments (e.g. cardigan sweaters, blazers, suit jackets, coats).

506.03 INSTITUTION SEARCH PLAN

1. Each superintendent shall develop and annually update an institution search plan which will include frequent unannounced searches of inmates, inmate quarters and every other area of the facility as often as necessary to ensure the safety and security of the facility. Searches are conducted for the following reasons:

- A. To prevent the unauthorized introduction of contraband to include weapons, electronic devices and other dangerous items into an institution.
- B. To detect the manufacture of weapons, escape devices, etc. to prevent against escape or other disturbances.
- C. To discover and suppress trafficking between inmates as well as between employees and inmates, and inmates and visitors.
- D. To discourage theft and trafficking in institution stores and property.
- E. To check malicious waste or destruction of state property.
- F. To discover hazards to health and safety that may go unnoticed during a more routine inspection.
- G. To recover missing or stolen property.
- H. To discover suicide and homicide attempts or potential suicide and homicide attempts by detecting excess items such as shoelaces, metal, plastic bags, medications, etc., within an inmate's cell/room. When searching an inmate's cell/room his/her mental status should be considered.

2. Institution search plans shall include the following:

A. Medium and Maximum Security Facilities:

I. Frequency of Searches

Housing Units- All cells/bed areas shall be searched at a minimum of once per month.

Non Housing/common areas (inmate access) - All non-housing/common areas that have routine access by inmates shall be searched at a minimum of once per month, i.e., library, gym, work areas, etc.

Non housing areas - All non-housing areas that are not routinely accessible to inmates may be searched at a minimum of once per quarter.

B. Minimum and Pre-release Facilities:

I. Frequency of Searches:

Housing Units - All inmate rooms/bed areas shall be searched at a minimum of once per quarter.

Non Housing/common areas - All non housing/common areas shall be searched at a minimum of once per month.

Inmates - All inmates shall be strip searched and pat searched at a minimum of once per quarter. These searches are above and beyond those searches that occur on a routine basis.

C. All facilities:

I. Departmental Property List

This list shall be attached to the institution search plan. All items not listed shall be considered contraband.

II. Reporting

The superintendent must also establish standard reporting periods for cyclical searches.

III. Metal Detector Guidelines

Each superintendent shall develop institutional procedures respecting the use of hand-held and walk-through metal detectors in order to safeguard against the risk posed to individuals with automatic implantable cardioverter defibrillator and/or pacemakers.

At a minimum, the following sign shall be posted permanently in any institutional area where such searches are commonly done:

"Use of hand-held and walk-through metal detectors may interfere with the operation of an automatic implantable cardioverter defibrillator and/or pacemaker. Notify staff if you have such a device and an alternative search procedure will be used."

3. A tracking system to allow staff review of what searches have been conducted to date and to plan for the assignment of future searches, of areas or inmates, in advance, as appropriate.
 - A. The Schedule Cell Searches screen should be utilized to schedule specific cell or bed searches, to schedule cells that are still outstanding for the month (or quarter for Minimum and Pre-release facilities), or to use IMS to randomly schedule a selected number of cells to be searched. The Schedule Cell Searches (Auto) screen should be utilized to automatically schedule cells or beds to be searched for a specified time period and frequency by shift.
 - B. Common area searches shall be scheduled utilizing the Schedule Common Area Searches screen.
 - C. Inmate searches for Minimum and Pre-release facilities shall be scheduled utilizing the Schedule Inmate Searches screen.
 - D. The tracking system shall ensure that no particular area of the facility is either ignored or over saturated with searches.
4. A system by which search results are entered into the IMS database.
 - A. The results of all prescheduled searches shall be documented in the Cell Search Results, Common Area Search Results, or Scheduled Inmate Results screens, as applicable.

NOTE: All fields must be completed within the IMS Search Results screens (the only exceptions being the search comments and items confiscated areas if the search results were negative).

B. The results of unscheduled inmate searches shall be documented as follows:

I. Routine random inmate searches (i.e. searches of random inmates after a meal period, searches of inmates returning from outside work crews, etc.) need not be normally documented. However, if during the course of a routine random search contraband is discovered, the information shall be documented in the Unscheduled Inmate Search Results screen.

II. Unscheduled inmate strip searches of Minimum and Pre-release inmates conducted in addition to those required by 103 DOC 506.02 (B) shall be documented in the Unscheduled Inmate Search Results screen.

NOTE: The routine random search type (pat search or strip search) of the group must be entered in the "Unscheduled Searches" section of the screen. If the search type for the group is identified as a pat search and a particular inmate is subsequently strip searched, the 'strip' flag shall be checked in the "Inmates Searched" section of the screen.

III. Unscheduled searches of common areas (i.e. searches of the visiting room before and after visits, yard area searches prior to opening the yard, etc.) shall be documented in the appropriate IMS Activity Log.

C. Searches of staff members and visitors (i.e. search of the day, etc.) shall be documented in the appropriate IMS Activity Log or logbook.

5. Posts for routine searches shall be identified in the facilities procedures and will include areas that require the searching of inmates, visitors, and staff. The plan should also cite the strategic advantages and purpose for

such post assignments duties, including the type of search technique generally employed.

506.04 STRIP SEARCHES

1. Strip Searches of Inmates -

Strip searches should be employed, when necessary, for the close scrutiny of an inmate's person in determining if that inmate is carrying an item(s) considered to be contraband. Searches are to be conducted in a professional and respectful manner and in the least intrusive manner possible, consistent with security needs.

Strip searches shall be employed for routine security checks or when there is a specific suspicious incident that would indicate that an inmate is perhaps carrying contraband.

Searches or physically examining a transgender or intersex inmate for the sole purpose of determining the inmate's genital status shall not be permitted. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

Inmates identified as having gender identity disorder shall be identified as the gender of the facility in which they are housed. All searches shall be conducted accordingly.

Cross-gender strip searches or cross-gender visual body cavity searches shall not be conducted except in exigent circumstances or when performed by medical practitioners. Should such a situation arise, permission from the superintendent must be obtained prior to the search. The search must be documented in writing through a confidential incident report.

Specific situations in which strip searches may be employed, include but are not limited to:

- a. entrance or exit from a secure perimeter and area;
- b. before and after court, medical trips, or visits;

- c. after the detection of an alleged disciplinary infraction; when custodial staff have reason to believe a person may possess contraband;
- d. after an escape or attempted escape;
- e. prior to placement in segregation from the general population;
- f. routine searches of housing or work areas;
- g. transfer to/arrival at a new institution.

Note: When strip searching an inmate, make notes on observations of tattoos with sketches if possible and send information to your institution's inner perimeter security unit. Pictures of the tattoos shall be obtained and the Marks, Scars, Tattoo screen in IMS shall be completed, if not previously documented on the screen.

2. Authorization for Strip Searches of Staff -

- A. The Officer in Charge must be able to describe the subject's specific behavior(s) and other information supporting the inference of reasonable suspicion. The Officer in Charge should immediately consult with the superintendent of the facility when considering whether a strip search is justified based on reasonable suspicion. The Officer in Charge shall review the information and circumstances with the superintendent. If a superintendent believes that there is reasonable suspicion for a strip search of a staff member (i.e., a DOC employee, vendor or volunteer) to occur, s/he shall notify the Assistant Deputy Commissioner of the Northern or Southern Sector, as appropriate. The subject should remain under direct observation until the strip search occurs.
- B. A comprehensive review by the Assistant Deputy Commissioner and the Office of Investigative Services and/or the Office of Internal Affairs, depending on the case, verifying reasonable suspicion, will result in a request to the Deputy Commissioner of Prisons for approval of the actual strip search on grounds of reasonable suspicion.
- C. The Deputy Commissioner of Prisons, or his/her designee, must then make a determination of reasonable suspicion, based upon a review of the specific facts in each situation and rational inferences drawn from

the facts. The Deputy Commissioner of Prisons shall brief the Commissioner prior to the strip search of the staff member based on a determination of reasonable suspicion, or as soon thereafter as reasonably possible.

D. Body cavity searches of staff members are prohibited.

3. Procedure for Strip Searches of Staff Members When Reasonable Suspicion Exists

A. Strip searches of staff members may only be conducted when authorized by the Deputy Commissioner of Prisons or his/her designee, after a determination of reasonable suspicion that the staff member is engaging, or attempting to engage, in, prohibited activities, including possession of prohibited objects.

B. Each Superintendent shall develop a confidential report containing the documentation of sources/evidence relied upon to determine reasonable suspicion.

C. The staff member shall be offered union representation prior to the strip search. The staff member may request that a same sex union representative remain present during the strip search.

D. The staff member may not return to the parking lot prior to being searched.

E. The entire situation shall be recorded using audio recording. Date, time, place of search, all names and titles of individuals involved and role in search; circumstances justifying the search; and search results shall be stated, and the OIS/IAU officer supervising the search shall give verbal instructions and dictate the progress of the search.

F. Staff members must sign a Consent/Refusal form to be searched and audio-recorded.

G. If the staff member refuses to comply with the search or refuses to sign the Consent/Refusal form, said staff member will be immediately escorted from DOC.

property and not allowed on any DOC property, pending the results of the investigation. The staff member should receive notice that the consequences of refusal may result in immediate disciplinary action.

- H. Strip searches by members of the opposite sex shall not be permitted. If a ranking female supervisor is not available, the Deputy Commissioner of Prisons shall designate a female employee (trained in strip search procedure and holding a higher grade than the staff member being searched) from another facility or division to conduct the search. Strip searches must be supervised only by an Office of Investigative Services supervisor or Internal Affairs Unit supervisor, from another work site. All employees conducting strip searches must have received training in the Department's strip search policy from the Training Academy.
- I. No more than two employees, from OIS/IAU, trained in the Department's strip search policy may be present as part of the strip search team, in addition to the union representative of the staff member being searched. The presence of additional strip search team members must be approved by the Deputy Commissioner of Prisons.

4. Refusal by Staff to a Strip Search

Upon learning that a staff member refuses to submit to or comply with an authorized search procedure, the supervisor from OIS/IAU must inform the staff member of the potential consequences of refusal. The strip search team may not use force to require staff members to submit to searches unless there is evidence of an imminent threat of serious personal injury, or other result that imminently jeopardizes the safety, security, or orderly operation of the facility, or threatens public safety (e.g. a concealed firearm or other weapon). If the staff member refuses to comply with/consent to such search, said staff member shall be immediately escorted from DOC property and not allowed on any DOC property, pending the results of the investigation. Refusal may result in immediate disciplinary action.

5. Role of Office of Investigative Services ("OIS")/Internal Affairs Unit ("IAU") in Strip Searches of Staff Members

OIS/IAU shall develop an action plan for each site to include:

- Location of search (to be conducted in a private area);
- Time of search;
- OIS/IAU staff trained/approved to conduct strip searches on staff members;
- Males shall search males and females shall search females;
- There shall always be two same sex strip search team employees present during searches;
- Staff members must sign a consent log before the strip search and audio-recording begins;
- OIS/IAU shall maintain the consent log of staff member strip searches.

6. Recommended Strip Search Techniques for Inmates

- A. Strip searches of individual inmates should be conducted in relative privacy usually by two security personnel. Strip searches by members of the opposite sex shall not be permitted, except under extraordinary or emergency situations.
- B. In conducting a strip search, the following procedures should be followed: the inmate should remove his/her clothing, place each article in one location and then move at least five feet from that location.
- C. The custodial staff member should conduct a visual examination of the nude inmate rendering as much dignity to the situation as possible. During said search the staff member should verbally instruct the inmate through the strip search procedure to include, but not be limited to: hair (inmates shall be directed to remove hair accessories, hair extensions/weaves/wigs, curlers, barrettes, hats, etc.) ears, nose, hands, fingers, under the tongue, armpits, navel, pubic region, rectum, vaginal area, inner portion of the legs, between the legs, between the toes, and soles of feet. Inmates will also be instructed to lift excess skin or body parts (i.e., breasts, penis, scrotum, etc.) for visual inspection. The inmate should not be instructed to touch or penetrate the anal or vaginal areas. Female inmates shall be instructed to remove any sanitary napkins or

tampons. A replacement shall be given to the inmate at the conclusion of the strip search. Make note of any tattoos, puncture marks, or bruises. If band-aids are detected, have the inmate remove them. As part of the strip search, the inmate shall be instructed to turn around in the standing position, and spread their legs in such a way as to allow for visual inspection of the anal and vaginal area. The inmate shall be instructed to bend forward at the waist and spread their buttocks.

If there is suspicion that the inmate is concealing contraband, in addition to the above-noted procedures, the officer shall instruct then inmate to squat down and cough forcibly.

Any casts, bandages, or artificial limbs shall be scanned by a non-intrusive device.

- D. The inmate should be given verbal instruction, on removing the false teeth so item(s) and mouth area can be visually inspected, or on any other articles to be removed to expedite the situation.
- E. An examination of the inmate's clothing should follow, including: turning clothing inside out, checking linings, cuffs, waistbands, seams, patches, collars, and shoe heels, soles and interior. Eyeglass cases, watches and any other item found on the inmate's person shall be checked for contraband.

7. Intrusive body cavity search procedure:

- A. There will be no intrusive body cavity searches; manual or instrumental, for security reasons unless all of the following have occurred.
 - 1. Probable cause has been determined through reasonable belief that the inmate is carrying contraband or other prohibited material.
 - 2. Authorization has been given by the superintendent.
 - 3. Search warrant has been obtained.

Note: The inspection shall be done by medically trained health care personnel.

8. Rectal exams performed for medical reasons will be performed for medical cause, in private, by medical personnel, with consent and with the standard medical privacy and confidentiality in effect.
9. Fecal search procedure: The following procedure is to eliminate or minimize the employees' exposure to all body substances while carrying out his tour of duty.
 - A. The following equipment shall be supplied to conduct the fecal search:
 1. Disposal latex gloves.
 2. Disposable resistant surface barrier.
 3. Plastic or wooden utensils.
 4. Puncture proof fluid resistant container with biohazard label.
 5. Red plastic bag for garbage.
 6. Antimicrobial soap.
 7. High level disinfectant for cleaning work surface.

PROCEDURE:

1. Cover work surface with protective padding.
2. Glove or double glove if preferred.
3. Using utensils cut or mash excreta as needed.
4. If evidence is found, it is placed in fluid resistant container with biohazard label.
5. When done, roll up protective padding with all contents inside and dispose infectious waste.
6. Take gloves off and wash hands with an antimicrobial soap.
7. Spray surface with high-level disinfectant, wipe it down and spray again to leave a residue on surface.

506.05 FULLY CLOTHED SEARCHES (PAT SEARCH)

1. Pat Searches of Inmates-

General - Fully clothed searches (pat search) should be employed for the relatively quick scrutiny of an inmate's person. Searches are to be conducted in a professional and

respectful manner and in the least intrusive manner possible, consistent with security needs. Situations where fully clothed searches may be employed include, but are not limited to: egress and ingress to housing units, work sites, dining areas and recreation areas. Cross-gender pat searches of female inmates shall not be permitted absent exigent circumstances. Inmates identified as having gender identity disorder shall be identified as the gender of the facility in which they are housed. All searches shall be conducted accordingly.

2. Recommended Fully Clothed Search Techniques

- A. When searching a group of inmates, keep searched and unsearched inmates separate. Prior to the actual search, the inmate shall be instructed to remove outer garments such as jacket, sweater, hat, gloves, etc. Then with arms extended to the side at a right angle to the inmate's torso and feet apart shoulder width, the search should commence.
- B. Approaching the inmate from the rear, the custodial staff member shall remove all contents from the inmate's pockets, then custodial staff member will start at the bottom of the head, using both hands, touch or pat a direct course across the bottom of the arms to the armpits and then proceed to the bottom of the shoulders.
- C. Returning hands to the original starting position, pat the shoulders and then down the back and sides to the belt line. Search the belt line, all pockets and then up to the top of the chest area.
- D. At the back of the waistline, proceed down the back and sides of the legs to the shoe tops. Check the shoe tips, cuffs and socks and then the front and inside of the legs to the shoe tops. Check the shoe tips, cuffs and socks and then the front and inside of the legs up to the groin area.
- E. Observation should be made of the hair, ears, mouth, as well as any article carried or worn by the inmate.
- F. Special care should be exercised in the examination of necklaces and jewelry.

3. Authorization for Non-Emergency Pat Searches of Staff beyond the search of the day -
 - A. The Officer in Charge must be able to describe the subject's specific behavior(s) and other information supporting the inference of reasonable suspicion. The Officer in Charge should immediately consult with the superintendent of the facility when considering whether a pat search is justified based on reasonable suspicion. The Officer in Charge shall review the information and circumstances with the superintendent. If a superintendent believes that there is reasonable suspicion for a search of a staff member (i.e., a DOC employee, vendor or volunteer) to occur, authorization may be given. The subject should remain under direct observation until the pat search occurs.
 - B. The staff member shall be offered union representation.
 - C. The staff member may not return to the parking lot prior to being searched.
 - D. If the staff member refuses to comply with the search, said staff member will be immediately escorted from DOC property and not allowed on any DOC property, pending the results of the investigation. The staff member should receive notice that the consequences of refusal may result in immediate disciplinary action.
 - E. Pat searches of any staff shall be witnessed by a Shift Commander.
 - F. Pat searches shall be conducted by staff holding a higher grade than the staff member being searched and are to be conducted in a professional and respectful manner and in the least intrusive manner possible, consistent with security needs.
 - G. Cross gender pat searches of staff shall not be permitted.
 - H. All searches will be appropriately documented in a confidential report.

506.06 INMATE HOUSING AREA SEARCHES

1. General - In conducting searches of housing areas as with other types of searches two basic objectives are sought: identification of contraband and the detection of future escape attempts. As a result, efforts should be made to be thorough in conducting searches of these areas. Care should be taken not to damage an inmate's property or unnecessarily disarrange same. Facilities shall document

all housing area searches in the IMS Cell Search Results and Common Area Search Results screens. Mechanisms shall be established for tracking all types of searches by the designated supervisor, e.g., utilization of the IMS search reports, Morning Report, etc.

2. Searching cells is a time consuming operation, so it is important to proceed systematically. Searches of cells having up to three bunks shall entail the search of the entire room, including all bunk areas each time the room is searched. For multiple bunk and dormitory areas consisting of four or more bunks, facility procedures shall detail the approach to be taken, i.e., the number of bunks and which areas will be searched at one time and should consider the manageability of the task. The following is recommended techniques for searching housing areas.
 - A. Staff should search cells the same way each time until it becomes automatic; this will promote efficiency and thoroughness.
 - B. Remove the inmate from the cell/area, strip search and escort him or her to another secure area.
 - C. Before entering the cell, secure the cell door in the open position to avoid being accidentally locked in the cell.
 - D. Before searching the cell, look at the items that are about to be searched. See if anything is out of the ordinary. If so examine that item carefully.
 - E. Start the search with the bed and use it as a workbench when finished searching it. Remove the mattress and other bedding and examine above and below the bunk and in any crevices between the bunk frame and the wall. Look under the bed and check for items suspended from springs or fastened to the bed frame. With the mattress removed, examine the upper side of the bed frame and springs. Examine the bed frame supports to ensure that they have not been partially sawed through for easy removal.
 - F. Examine the mattress and pillows by rolling them lengthwise. Check the sides and ends for cuts and tears in the covering. Any indication of re-sewn seams calls for a more careful examination, including

opening the seams for extensive probing. A hand held metal detector is very effective in finding metallic contraband in these items.

- G. Examine the remaining bedding. Pay special attention to any seams or double thickness of cloth.
- H. Search the foot/wall locker next, one shelf at a time, and return all items to their original positions. Examine all surfaces of the locker. Contraband may be taped to the underside of shelves or concealed in shelf ledges, supports, legs, or false sides or backs of the shelves. Also, examine any paper used to line shelves.
- I. Check all clothing (including dirty laundry) piece by piece. Pay special attention to seams, double thickness of material, and pockets.
- J. Open and check every item (letters, books, magazines, toilet articles, and so forth)
- K. Examine coat hangers; certain types of plastic hangers are excellent places to conceal contraband.
- L. Check all footwear, including linings, soles, and heels: feel inside shoes all the way to the toe and remove inner soles and any removable arch supports.
- M. Shake talcum powder containers and squeeze toothpaste tubes. Remove a small contents of commonplace items to check for illegal substitutions. Check to see that cakes of soap have not been hollowed out.
- N. Look in, under, and behind the wash basin and in the drain, overflow, and gooseneck water seal (if accessible). Contraband may be suspended in the pipes or hollows on wires or threads, or stuck on with glue or tape.
- O. Examine the toilet carefully, inside and out. Check under the base of the toilet, behind the toilet where it connects to the wall, and the toilet drain.
- P. Examine the toilet paper holder and all rolls of toilet paper to make certain that currency or other contraband is not rolled up within the roll.

- Q. If there are electrical outlets or other similar access panels in the room, remove them and inspect the cavities.
- R. If there are appliances, examine them carefully. Remove backs if applicable, check battery wells, examine electrical cords, and confiscate items with tampered property seals or appear to have been altered so the insides can be searched by designated individuals prior to return to the inmate.
- S. Carefully remove any pictures from frames and examine the frame and backing material. Remove all wall coverings to see if there are any cuts in walls.
- T. Carefully scrutinize the walls, ceiling and floor for indications of sawing, digging, cutting, defacing or other possible signs of an escape attempt.
- U. Look for indications that mortar has been removed and replaced with a substitute. If the concrete is of poor quality, it is easy for the inmate to gouge out holes as hiding places for contraband.
- V. Check heat or ventilation duct openings for indications of tampering or concealed contraband. Look for strings, thread, or wire holding something suspended in the duct.
- W. Look around interior and exterior window frames and the outside window ledge. If ledges have a covering of any sort, be sure that nothing is concealed beneath them.
- X. Examine window bars for evidence of tampering. Be alert for any wires, strings, or thread fastened to the bars and suspended outside the window.
- Y. Carefully examine the cell door or grille, and the wall in which it is set. Pay particular attention to the areas above eye level. Examine the bars and cell door locking device for signs of tampering, and check the area with the door in both the open and closed positions.

506.07 NON-HOUSING, SHOP, PROGRAM AND ACTIVITY AREA SEARCHES

The following is recommended search techniques for these areas of a correctional facility:

- A. Common-areas of the institution (including areas in housing units, shops, and program areas) should be inspected at a minimum of monthly.
- B. When performed by security staff, searches in other areas of the institution ideally should be conducted in the company of the department head or manager of that section. This facilitates access to otherwise secured areas and assists in advising the staff conducting the search on questionable items.
- C. Visiting areas (including trash, furniture, shakedown areas, and toilet areas) should be thoroughly searched before and after visits. Trash removal should be completed by staff only.
- D. An element of the daily perimeter checks should include searching for items hidden next to or under fences etc.
- E. Yard areas should be inspected daily prior to opening. An element of the search plan should include that all yards on a monthly basis are scanned by a metal detection device to locate buried weapons or other contraband. Yards adjacent to roadways should be carefully searched for items thrown over the wall/fence.
- F. All institutional buildings when searched should be checked for evidence of tunnels.
- G. The vicinity of all visitor traffic points should be searched daily to discover items that are hidden or thrown by visitors that are intended for inmates. Visitor holding areas and gates should be scrutinized carefully.
- H. The ductwork and plenums (air chambers) that carry air to and from the building and into individual rooms, should be searched, not only for breaches in security, but for signs that they are being used as places of concealment for contraband.

- I. Tunnels, utility corridors, and plumbing chases should be searched.
- J. Areas outside the secure perimeter should be searched for contraband to help stem the flow of contraband into the facility.
- K. Shops, vocational training and industrial areas have a wide range of possible contraband hiding places; vents, block and brick walls, workbenches, machinery, bins, toolboxes, covered openings, elevator shafts, outbuildings, lockers and staff only areas.

506.08 VEHICLE AND SUPPLY SEARCHES

- 1. All vehicles and supplies entering and exiting an institution within a secure perimeter shall be thoroughly searched in accordance with 103 DOC 501, Vehicle Trap.
- 2. Vehicle Searches (outside the secure perimeter):
 - A. It is recognized there may be instances when it is necessary to conduct searches of all vehicles on or entering institution property outside the secured facility. For the purpose of these searches the following guidelines must be adhered to.
 - B. All vehicle entrances to institutional property must be clearly marked with signs posted in both English and Spanish, stating that all vehicles entering upon correctional institutional property are subject to a search (use of K-9 patrols, etc).

Note: All visitors refusing to comply with the search will be denied visiting privileges for that day. (Should be adapted to the institutional visiting rules and procedures).

- C. For the authorization to search vehicles not owned by the department of correction, on institutional property, one of the following requirements must be met:

The owner/operator of the vehicle to be searched, must consent and sign to the provisions according to Permission to Search Waiver. (See Attachment A)

In cases where the owner/operator refuses to submit to the search, the following actions maybe taken:

- D. If the search requested, is without probable cause, the owner/operator may refuse the vehicle search and shall be permitted to leave the property.
- E. If the search requested, is based upon probable cause, the following actions will be taken:
 - 1. Consultations with the district attorney's office or attorney general's office is recommended.
 - 2. If the vehicle to be searched cannot be secured, and if the suspected items would be considered to be hazardous in nature, or the immediate seizure is required to preserve evidence that might otherwise be destroyed, a search warrant would not be needed. Once the seizure of a vehicle has been authorized the department of correction seizure inspection report and vehicle inventory sheet be completed. A copy of the D.O.C. seizure inspection report must be maintained at the institution and one copy shall be given to the owner of the vehicle. (See Attachments B and C).
 - 3. If the vehicle to be searched can be secured, and the evidence can be preserved a search warrant must be attained. Only officers appointed as Special State Police Officers under the provisions of M.G.L. c. 127, § 127, shall complete the affidavit required to apply for a search warrant. Once this search warrant has been approved and when the seizure of a vehicle has been authorized the department of correction seizure inspection report, vehicle inventory sheet must be completed.

A copy of the D.O.C. seizure inspection report must be maintained at the institution and one copy shall be given to the owner of the vehicle (see Attachments B and C).

Note: This affidavit shall be made readily available at the institutions. In the event that the affidavit is not available the local state police can provide you with the

affidavit, application and search warrant form to be filed under the general laws chapter 276, §§ 1-7. When applying for a search warrant, the warrant must be based on probable cause, the application must provide in detail: reasons for warrant, including property and places to be searched and the person/persons to be searched.

3. Parking Lot Areas:

The use of K-9's and patrol officers to conduct random searches of vehicles in institutional parking areas is permitted. These searches are to insure that vehicles are locked and no valuables are left in the open according to D.O.C. visiting policy. In the event, a certified drug K-9 unit reacts to a vehicle, or through the officer observation, may provide probable cause. The owner/operator will be requested to submit to a search of his/her vehicle(s). If the request of the search refused, the following procedures shall be followed is 506.08 #2, (D) (E).

506.09 CELL PHONE AND CONTRABAND INTERDICTION SEARCH PLAN

Superintendents of Minimum/Pre-Release facilities shall conduct at least quarterly searches of random areas of the facility to include housing unit(s) and non-housing areas such as program space and inmate work areas. Results shall be entered into the IMS search results.

Superintendents of Minimum/Pre-Release facilities shall request canine from Special Operations to assist in at least quarterly searches for the detection of contraband. These searches will be random and based on a schedule established by Special Operations Division. An incident report via the IMS system shall be generated to document the at least quarterly search.

Superintendents of minimum and pre-release facilities shall ensure parking areas that are used by inmate visitors are searched after all visiting periods and documented in the IMS system search results.

All CWC vans, equipment, containers and other items that may conceal contraband, shall be thoroughly searched on a daily basis.

The Superintendent of all facilities shall ensure that any area that facility work crews have access without direct supervision

is searched bi-weekly and documented in the IMS system search results.

Superintendents shall ensure that all cell phone finds are posted on the intranet.

506.10 SEIZURE OF CONTRABAND/EVIDENCE

- A. When searches result in the seizure of contraband/evidence to be used for the purpose of evidence in either disciplinary proceeding or prosecution the following procedure must be followed:
1. The officer who seized the evidence must seal the evidence in an evidence bag with an evidence custody form (Attachment D) attached to the bag.
 2. Once the evidence has been tagged the evidence should be turned over to the custody of the assigned evidence officer to be logged and placed in the designated evidence locker. If the evidence was seized during times where the evidence officer is unavailable it will be placed in a secured area designed for the purpose of storing evidence until custody has been turned over to the evidence officer.
 3. A disciplinary report or incident report shall be turned in to the shift commander prior to the end of that tour of duty by the officer in charge of the search. (see 103 CMR 430, Disciplinary Actions)
 4. If the evidence / contraband is of a perishable nature (food, suspected home brew etc.) and needs to be disposed of, pictures shall be taken to serve as documentary evidence and shall be stored / filed along with the evidence custody form.
 5. Any monetary evidence discovered / seized shall be forwarded to the institution treasurer who will provide a receipt of the money which will serve as documentary evidence and shall be stored / filed along with the evidence custody form.

506.11 STORAGE OF CONTRABAND/EVIDENCE

The following guidelines shall be utilized to ensure secure storage and accountability of evidence and seized controlled substances, firearms/ammunition, chemical agent and security impact devices.

A. The superintendent shall designate one staff person to be the evidence officer and another staff person to be the assistant evidence officer.

B. All evidence including common area finds shall be stored in a locked cabinet within a secure room with access to the room being limited. Access to the cabinet shall be limited to only the evidence officer and the assistant evidence officer.

1. The institution shall take precautions to ensure that all evidence is safely stored from water and fire damage.

C. Evidence/contraband considered a controlled substance and or associated paraphernalia shall be stored in a locked cabinet within a secure room with access to the room being limited. Access to the cabinet shall be limited to only the evidence officer and the assistant evidence officer. The cabinet shall have two separate locks on it. The evidence officer maintains the key to one lock and the assistant evidence officer maintains the key to the other lock. These keys shall not be given to any other persons or interchanged between the evidence officers. This method insures that two persons are present each time the cabinet is opened.

1. Suspected controlled substances found when the evidence and assistant evidence officer are not available shall be placed into a fixed steel drop box, which is secured by two locks. Access to the locks shall be restricted. The evidence officer shall be issued the key to access one lock and the assistant evidence officer shall be issued the key to access the other lock. When both officers are present the substance shall be removed and placed into the evidence locker.

2. All drops made into the box and items removed shall be documented with the staff name(s), date and time.
 3. A bound log shall be maintained in a secured location on ALL evidence including common area finds as well as controlled substances. Each item shall be logged and each entry should include:
 - Suspects name;
 - date of recovery;
 - location of recovery;
 - arresting and/or finding officers name;
 - detailed description of item;
 - case number;
 - inventory number;
 - storage location;
 - chain of custody;
 - disposition; and
 - logging officer's name.
 4. Controlled substances shall be duplicated in a separate in/out log. This log shall be maintained on all controlled substance evidence and is to be stored inside the controlled substance cabinet. Any evidence that leaves the controlled substance cabinet for any reason (i.e., state police lab) shall be logged in and out in this log book.
 5. Evidence submitted to the Crime Laboratory for analysis by the Drug Unit must meet the criteria set forth in Attachment I - Massachusetts State Police Drug Unit Submission Guidelines.
 6. With each piece of evidence a separate "evidence custody form" (Attachment D) shall be filled out and kept with the piece of evidence.
 7. Evidence shall be stored chronologically by year and evidence number to ensure easy accountability and access.
- D. Any firearm and/or ammunition, chemical agent and specialty impact devices classified as evidence shall be stored with the Special Operations Division.

1. Any firearm and/or ammunition, chemical agent or specialty impact device evidence discovered at a medium or maximum security facility shall be temporarily stored within the armory during non-business hours until transported to the special operations division for long term storage at the next available business day. The evidence shall be documented in accordance with this policy.
2. Any firearm and/or ammunition, chemical agent or specialty impact device evidence discovered at a minimum or prerelease facility shall be transported to the nearest facility armory for temporary storage during non-business hours until transported to the special operations division for long term storage at the next available business day. The evidence shall be documented in accordance with this policy.

506.12 DISPOSAL OF EVIDENCE/CONTRABAND

1. Evidence not associated with any disciplinary or legal matter shall be maintained at the institution where it was recovered no longer than six months.
2. Final disposition of all evidence shall be approved in writing by the director of security. Final disposition of evidence relating solely to a disciplinary or civil matter and not involving any possible criminal prosecution shall be approved in writing by the department's general counsel. All evidence related to a disciplinary matter shall be held for three years from the initial sanction date to ensure that no civil action has been brought against the department. Thus, evidence relating to a disciplinary matter that is less than three years from the initial disciplinary sanction date, shall not be submitted to the department's general counsel for approval. After the three year period has lapsed, then approval to destroy evidence through the general counsel shall be obtained. Final disposition of evidence relating to a criminal matter must be approved in writing by the district attorneys office. Once the DA's approval is obtained, the evidence shall be reviewed and approved by the general counsel to ensure no civil or potential civil litigation can be brought against the department.

3. Once approved, the evidence officer will return evidence to its rightful owner.
4. Evidence that is considered a controlled substance will be transported to a regional site for disposal with all accompanying documentation. All control substance evidence transported to the regional site must be accompanied with the required disposal forms filled out as required by the Department of Public Health's drug destruction protocol.
5. Disposal of evidence will be conducted regionally. Each region will have one facility designated as the regional evidence site. There are three regions which are as follows:

REGION 1	REGION 2	REGION 3
MCI-CJ	OCCC	MCI-S
MCI-CJ	OCCC	SHIRLEYMED/MIN
MCI-N	BSH	NCCI
BSCC	MTC	MCI-C
PCC	MASAC	NECC
MCI-F	PLYMOUTH	SBCC
SMCC		
LSH		
BPRC		

6. The evidence officer at the regional site will be responsible for the final disposal of evidence (for their institution as well as for the institutions within their region). Disposal of controlled substance evidence will be arranged through the **Millbury State Police barracks (508-358-3260)**. All efforts should be taken to dispose of any evidence transferred to the regional sites within six months of transfer. If held longer than six months, evidence of disposal requests shall be maintained on file.
7. The evidence officer at the regional site, after being contacted by a disposing facility, shall accept all evidence approved for disposal and shall sign a receipt acknowledging the change of custody. This receipt will then be maintained on file at the sending institution. The evidence officer of the sending institution shall be responsible for all appropriate documents including log entries.

8. The regional evidence officer shall be responsible for maintaining documentation on all evidence received and all evidence disposed. The regional evidence officer shall also submit an annual report to their respective assistant deputy commissioner detailing all evidence received and disposed.
9. The regional evidence officer shall ensure proper log notations are made on evidence disposal and the evidence custody documents shall be complete and kept on a permanent file.
10. Quarterly audits/inventories shall be conducted by a supervisory staff person, along with the evidence officers, of the entire evidence process to include all evidence storage, disposal, logbooks, chain of custody forms, emergency drop box locations and accountability of all evidence at the facility. These audits shall occur at all facilities during the months of January, April, July and October and shall be documented accordingly in each logbook inspected.

506.13 CRIME SCENE SEARCH AND INVESTIGATION

1. When an incident occurs that may possibly result in criminal prosecution, the superintendent or his/her designee should be notified immediately after the incident has been contained or neutralized. Each superintendent shall ensure that the following procedures are adhered to as described in attachment E. Crime scene search and investigation should be conducted in such a manner so as to ensure the legal protection of the rights of the inmate(s) and the preservation of evidence for the commonwealth.

ATTACHMENT A

MASSACHUSETTS DEPARTMENT OF CORRECTION

PERMISSION TO SEARCH VEHICLE WAIVER

I, _____ have been informed by _____ and _____ who made proper identification as (an) authorized law enforcement officer(s) of the _____ of my CONSTITUTIONAL RIGHT not to have a search made of the vehicle(s) owned by me and/or under my care, custody and control, without a search warrant.

Knowing of my lawful right to refuse to consent to such a search, I willingly give my permission to the above named officer(s) to conduct a complete search of the vehicle(s) located at _____.

The above said officer(s) further have my permission to take from my vehicle, any letters, papers, materials or any other property or things which they desire for criminal prosecution in the case or cases under investigation.

This written permission to search without a search warrant is given by me to the above officer(s) voluntarily and without any reservations on the day of _____ 20_____, at _____.

Signed _____

Witness _____ Witness _____

Address _____ Address _____

Phone (H) _____ Phone (H) _____

Phone (B) _____ Phone (B) _____

ATTACHMENT B

MASSACHUSETTS DEPARTMENT OF CORRECTION
VEHICLE INVENTORY SHEET

Institution _____
O.I.C. _____
Date _____ Time _____
Location _____

OPERATOR'S NAME _____ D.O.B. _____
OPERATOR'S ADDRESS _____ LIC. # _____
REASON FOR INVENTORY _____
OWNER'S NAME _____ ADDRESS _____
VEH. MAKE _____ MODEL _____ YEAR _____
REG. # _____ VIN # _____ COLOR _____

PURSUANT TO DEPARTMENTAL POLICY, THE ABOVE MOTOR VEHICLES' CONTENTS WERE INVENTORIED AND BELOW IS AN INVENTORY OF ITEMS FOUND AND WHERE LOCATED.

TOP OF DASHBOARD _____ ABOVE VISOR _____
GLOVE BOX OR CONSOLE _____
FRONT FLOOR DRIVERS SIDE _____
FRONT FLOOR PASSENGER SIDE _____
FRONT SEAT DRIVERS SIDE _____
FRONT SEAT PASSENGER SIDE _____
BETWEEN SEATS _____
REAR FLOOR DRIVERS SIDE _____
REAR FLOOR PASSENGERS SIDE _____
BEHIND REAR SEAT _____ TRUNK _____
STATION WAGON CARGO AREA _____
VAN CARGO AREA _____
DAMAGE/OTHER _____

Driver's Acknowledgement: I have reviewed this report, received one copy, and acknowledge that it is a true and complete description of the auto's physical condition, inventory of items, and accessory items. I hold no one legally responsible for any missing items.

Signature _____ Date _____

ATTACHMENT C

DEPARTMENT OF CORRECTION
SEIZURE INSPECTION REPORT

NAME OF INSTITUTION: _____ Date of Inspection: _____

Time: _____ Number of Photos: _____

Insured's Owner's Manual: _____

Insured's Address: _____

Home Telephone: _____

Inspector's Name: _____

Site of _____

Inspection: _____

Plate No.: _____

Interior Color: _____

Year: _____

Make: _____

Model: _____

Color: _____

Vehicle Identification No.: _____

Odometer Reading: _____

ACCESSORIES AND OPTIONAL EQUIPMENT

AIR CONDITIONER HIGH MOUNTED BRAKE LIGHT AM/FM AM RADIO

CRUISE CONTROL TRAILER HITCH BUILT STEREO NO
YES IN

POWER BRAKES VINYL TOP/ROOF TAPE PLAYER

BRAND _____ SPECIAL MIRRORS - TYPE _____ BUILT IN

POWER STEERING YES NO AUTOMATIC TRANS. OVERDRIVE C.D. PLAYER

BRAND _____ POWER LOCKS MANUAL TRANS. 3 SPD 4 SPD 5 SPD

BUILT IN YES NO SPECIAL ROOF STEREO AMPLIFIER-

POWER ANTENNA BRAND _____ TILT WHEEL FACTORY INSTALLED YES NO YES BUILT IN

NO TINTED GLASS SPECIAL INSTRUMENTATION-TYPE _____ C.B. RADIO-

BRAND _____ REAR DEFROSTER BUILT IN YES NO

REAR WIPER RADAR DETECTOR-BRAND _____

OTHER SPECIAL OPTIONS OR ADDITIONS _____

ROOF RACK CAR ALARM-

BRAND _____ BUCKET SEATS ANTI-THEFT DEVICE-

TYPE SPARE TIRE (OUTSIDE MOUNT) AUTO RECOVERY SYSTEM-

TYPE SPECIAL WHEELS CAR PHONE

ANTENNA SPECIAL HUB CAPS CAR PHONE TRANSMITTER

SPECIAL TIRES-TYPE _____ CAR PHONE-BRAND _____

BUILT IN YES NO

MISCELLANEOUS PROPERTY FOUND IN VEHICLE

MISCELLANEOUS PROPERTY FOUND IN VEHICLE

CHECK DAMAGE, POOR CONDITION, AND MISSING PARTS BELOW

DAMAGED RUSTED DAMAGED RUSTED DAMAGED

01 <input type="checkbox"/> FRONT BUMPER COVERS <input type="checkbox"/> 15	<input type="checkbox"/>	08 DOOR RIGHT REAR <input type="checkbox"/>	<input type="checkbox"/>	WHEEL
<input type="checkbox"/> 02 REAR BUMPER <input type="checkbox"/>	<input type="checkbox"/>	QUARTER PANEL LEFT REAR <input type="checkbox"/> 09	<input type="checkbox"/>	16
WINDSHIELD <input type="checkbox"/>	<input type="checkbox"/>	QUARTER PANEL RIGHT REAR <input type="checkbox"/> 10	<input type="checkbox"/>	17 <input type="checkbox"/>
<input type="checkbox"/> 03 FENDER LEFT FRONT SIDE GLASS LEFT FRONT	<input type="checkbox"/>	HOOD PANEL <input type="checkbox"/> 11	<input type="checkbox"/>	<input type="checkbox"/> 18
<input type="checkbox"/> 04 FENDER RIGHT FRONT SIDE GLASS RIGHT FRONT	<input type="checkbox"/>	ROOF PANEL <input type="checkbox"/> 12	<input type="checkbox"/>	SIDE GLASS <input type="checkbox"/> 19
<input type="checkbox"/> 05 DOOR RIGHT FRONT LEFT REAR	<input type="checkbox"/>	TRUNK LID <input type="checkbox"/> 13	<input type="checkbox"/>	SIDE GLASS <input type="checkbox"/> 20
<input type="checkbox"/> 06 DOOR LEFT FRONT RIGHT REAR	<input type="checkbox"/>	GRILL <input type="checkbox"/> 14	<input type="checkbox"/>	REAR
<input type="checkbox"/> 07 DOOR LEFT REAR WINDOW <input type="checkbox"/> 21				
WORN OR SOILED INTERIOR <input type="checkbox"/> 22				
DESCRIBE				
DAMAGE _____				

<p>This above is a true statement of any existing damage, rust or missing parts as of this date. The undersigned certifies that this inspection report is true and complete and that I have seen and photographed the vehicle stated above.</p> <p>X..... Inspector's Signature</p>	<p><input type="checkbox"/> NO EXISTING DAMAGE, MISSING PARTS.</p>
---	--

DRIVER'S ACKNOWLEDGMENT: I have reviewed this report, received one copy, and acknowledge that it is a true and complete description of the auto's physical condition and accessory items, and I hold no one legally responsible for any missing items.

Person Returning Vehicle _____
Witness _____

Date _____
Date _____

Owner's Name _____

Owner's Address _____

Signature _____

Attachment E

Protection of the Crime Scene:

1. Preservation of Life is the First Priority:

- a. Radio for assistance.
- b. Ensure your own safety.
- c. Assume the assailant is still in the vicinity.
- d. Survey the area to ensure no further injury will occur, to inmates or staff responders.
- e. If there is any question of life, remove the victim(s) to medical care or have medical care brought to him/her.
- f. If a victims injuries are life threatening the shift commander shall ensure that an escorting officer is advised of the elements of a dying declaration and that one is sought (see attachment F).
- g. Life saving measures shall be started and continued even if the victim appears dead.
- h. Life saving measures need not be started if the victim is completely decapitated.
- i. In cases where preservation of life is not an issue Secure the Scene.

2. Securing the Scene:

- a. Isolate and contain the crime scene area.
- b. Make the crime scene as large as possible (you can always decrease but never increase)
- c. If warranted ensure the securement of any secondary crime scene.
- d. Remove all inmates from the immediate area inmates should be searched (check hands and body for blood or bruising).
- e. Keep them segregated from the other inmates. (Keep them apart from each other if practical)
- f. Assign one officer to identify each inmate and make a list of names or collect IDs.
- g. Do not allow **ANYONE** in until the investigators arrive or authorization has been approved by the shift commander.

3. Do not touch anything:

- a. This rule is the most often violated by responding personnel.
- b. Make notes of everything you saw when you arrived.
 - i. Lights in room or area - on or off ?
 - ii. Door to room - open or closed ?
 - iii. Signs of struggle ?
 - iv. Look over entire area and note - TV, radio, etc. - on or off ?
 - v. Odors - any strange smells ?
 - vi. Look up - most people have a habit of looking only at eye level.

4. Crime Scene Search:

- a. **DO NOT DO IT !!!!!**
- b. Leave the search for the investigative unit.
- c. Keep accurate records of people arriving and leaving the scene.

5. Notes:

- a. Make as many notes as you think necessary and then, make plenty more!
- b. Remember the five "W's".
 - i. Who told you about it?
 - ii. When were you told?
 - iii. Where were you when you were told?
 - iv. What exactly were you told?
 - v. Why did you feel you had to respond?

6. Types of Crime Scenes:

I. Allegations of a sexual assault:

- a. If an inmate reports being victimized by a sexual assault staff will respond in accordance with 103 DOC 519 Sexually Abusive Behavior Prevention and Intervention Policy.
- b. The area where the assault occurred, the alleged victim's body, and the alleged perpetrator (s) body shall be considered the crime scene and preserved as such.
- c. Request that the alleged victim not take any actions that could destroy physical evidence,

including as appropriate, washing, brushing teeth, urinating, defecating or eating. If it is necessary for the inmate to use the restroom, the inmate should wipe before going and the wipe shall be placed into evidence.

- d. Both the alleged victim and alleged perpetrator (s) (if known) clothing (i.e. underwear, socks, shoes) is considered evidence and shall be processed in accordance with 103 DOC 506.10.
- e. The inmates should be required to stand on a clean sheet and remove all clothing including underwear, socks, and shoes.
- f. The sheet should then be folded around the clothes in such a way as to maintain any forensic evidence (semen, pubic hairs etc).
- g. The clothing and sheet should then be processed in accordance with 103 DOC 519 Sexually Abusive Behavior Prevention and Intervention Policy.
- h. To maintain its integrity (IE paper bag and refrigeration if it is to be maintained in excess of twenty-four hours).

II. Strangulation and Hangings:

- a. All victims must be removed from suspension, as soon as possible, with every effort used to preserve life.
- b. The knot is a very important piece of evidence (cut the noose above the knot).
- c. If the noose can not be cut, the body must be lifted to relieve pressure from the neck. If absolutely necessary, untie the knot.
- d. Should the noose be cut, label the loose ends. The ends may be tied back together with a string or tape.
- e. It is important to note which end of the noose was anchored.
- f. The noose should be deemed evidence and processed in accordance with 103 DOC 506.10 Seizure of Contraband/Evidence and 103 DOC 506.11 Storage of Contraband/Evidence.

III. Unattended Death:

- a. Although not every unattended inmate death is a crime (i.e. anticipated death from terminal illness), the scene shall be treated as a crime

to uphold the integrity of the investigation until such time as it is determined that a crime did not take place.

- b. The crime scene is to be maintained in a manner that will not compromise any criminal prosecution.

7. Notifications:

- a. Notifications shall be made pursuant to 103 DOC 105, Departmental Duty Officer and Institution procedures.
- b. Ensure that all appropriate notifications are complete and in accordance with applicable policies i.e. 103 DOC 622 Death Procedures, 103 DOC 519 Sexually Abusive Behavior Prevention and Intervention Policy.

Non investigative staff should refrain from interviewing an inmate who has allegedly committed an act covered by criminal law. Any information or confessions could be deemed inadmissible in a court of law if not obtained under requirements set forth by the Commonwealth of Massachusetts.

Attachment F

DYING
DECLARATION

1. INJURY RECEIVED BY THE VICTIM HAS TO BE LIFE THREATNING
2. THE VICTIM HAS TO BELIEVE THAT THEIR INJURY IS LIFE THREATENING
3. WHATEVER THE VICTIM TELLS YOU HAS TO BE DIRECTLY RELATED TO THE INJURY RECEIVED.
4. THE VICTIM HAS TO DIE.

Attachment G

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
STANDARD OPERATING PROCEDURES
ATTACHMENT TO 103 DOC 506, SEARCH POLICY
BODY ORIFICE SECURITY SCANNER (BOSS CHAIR)
Not For Public Access
Located on D.O.C. Intranet

Attachment H

Protocol for Searching Medicine Bag

When an officer searches a medicine bag for purposes of ensuring the safety and security of the institution, its inmates, employees and visitors, the following procedure will be adhered to:

1. The inmate shall be given a direct order to open his/her medicine bag and display the contents for inspection.
2. If the inmate refuses to comply with the officer's order, the medicine bag shall be confiscated (unopened) and the inmate will be detained until a supervisor arrives on the scene.
3. Once the supervisor arrives, he/she will assess and confirm the inmate's refusal to comply with the officer's directive.
4. The officer will then search the medicine bag in the presence of the inmate and supervisor.
5. The officer will open the medicine bag in a manner which is respectful, ensuring that none of the items from the medicine bag fall onto the floor.
6. Both the officer and supervisor will document the incident in an incident report and appropriate disciplinary action will be taken as a result of the inmate's refusal to follow a direct order; i.e., a disciplinary report will issue and the inmate will be removed from population.

Attachment I

Massachusetts State Police Drug Unit Submission Guidelines

Evidence submitted to the Crime Laboratory for analysis by the Drug Unit must meet certain guidelines. When submitted, all drug evidence must be:

- inventoried on the Massachusetts State Police Form SP-295 Narcotics Custody Form
- sealed in a suitable container

Submittal Procedure for the Delivering Officer

The SP-295 Narcotics Custody Form chain of custody must include the name of the officer delivering the evidence to the laboratory. It is imperative that the delivering officer makes all entries clearly and legibly, and that the inventory of evidence is accurate. The procedure for the delivering officer will be to:

1. Advise the Evidence Technician (ET) of the number of incoming cases he or she has to submit,
2. Seal the evidence in an envelope/bag (if not already sealed),
3. Complete the SP 295 Narcotic Custody Form,
4. will, be given three (3) labels by the ET, apply two (2) of the Laboratory Information Management System (LIMS) bar-code labels to the SP-295 (white and gold copies), and one (1) bar-code label to the corresponding evidence, and
5. Deliver the evidence to the evidence technician (ET) or duty chemist.

Rush Requests for Analysis

Occasionally, the submitting officer will request a rush analysis for the evidence that is dropped off. In order to do so, a Rush Analysis Request Form is completed. The form is maintained by the

Evidence Control Unit and is provided to submitting officer upon request.

Procedure for Handling Drug Evidence Containing Hypodermic Syringes

Hypodermic syringes or needles will not be analyzed if submitted for cases involving possession of a controlled substance.

The health risks associated with the handling of these items far outweigh any evidentiary value gained from the analysis of their contents or surface residue. These items will only be considered for analysis only after all other investigative avenues have been exhausted and if they meet any of the following criteria:

- homicide
- suicide
- unattended death
- with approval from a Crime Laboratory Supervisor (the Supervisor will initial and date the CL-1 Form or SP 295 Form)

Reusable sharps that are contaminated with blood or potentially infectious materials must not be stored or processed in a manner that requires Laboratory personnel to reach by-hand into the container where the sharps have been placed. If syringes or needles are submitted to the laboratory they must be submitted in a hypodermic safety container.

Packaging of Syringes, Needles and other sharp items

All syringes, needles and sharps must be submitted in a hypodermic safety container puncture-proof container. A supply of containers should be maintained in each station's contraband storage room. Syringes or needles should only be transported to the Crime Laboratory in hypodermic safety containers. The Evidence Control Unit has the names of suppliers (vendors) of the containers and single containers may be pick-up at the laboratory. The Evidence Technician will not package syringes or needles for the submitting agency.

The container should be:

- constructed of clear plastic material

- leak-proof on the sides, bottom and top
- puncture resistant
- labeled as to its contents

Packaging Knives and "Sharps" that Accompany Drug Evidence

Knives and other sharp instruments should be packaged in specialty boxes when possible. If no special packaging is available, all cutting edges/points will be covered by cardboard or layers of heavy paper, e.g., a folded paper bag. The SP-295 Form, as well as the item packaging, should be identified conspicuously with the word: "SHARP INSTRUMENT" or "KNIFE".

Narcotics Return Procedure

When an agency representative submits narcotics to the laboratory they will be required to pick-up any completed cases for their agency. Agencies are allowed to call the Evidence Unit to schedule an appointment for pick-up only. The procedure for the delivering officer will be to:

1. Agency representative must provide identification with a LIMS barcode (the laboratory will issue the LIMS barcode on your first visit)
2. Sign the SP 295 Form
3. Remove the white and yellow copies of the SP 295 Form along with the evidence (Notarized Certificate of Analysis will be attached to the evidence).

Attachment J

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
STANDARD OPERATING PROCEDURES
ATTACHMENT TO 103 DOC 506, SEARCH POLICY
B-SCAN BODY SCANNER
Not For Public Access
Located on D.O.C. Intranet