

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CRISTINA NICHOLE IGLESIAS
(a.k.a. CRISTIAN NOEL IGLESIAS),

Plaintiff,

v.

IAN CONNORS, *et al.*,

Defendants.

Case No. 19-cv-00415-RJN

**NOTICE IN COMPLIANCE WITH
DECEMBER 27, 2021 PRELIMINARY INJUNCTION**

Defendants respectfully submit this Notice in compliance with the Court’s December 27, 2021 Preliminary Injunction (“PI”) in this case. In the PI, the Court ordered Defendants “to have the [Transgender Executive Council (“TEC”)] meet to evaluate Iglesias’s request for [Gender Confirmation Surgery (“GCS”)] by Monday, January 24, 2022.” PI, ECF No. 177, at 1. The Court further ordered that, if the TEC does not recommend Plaintiff for GCS, Defendants must “[f]ile a notice with the Court explaining all the reasons for TEC’s decision within seven days and include the policies and procedures Iglesias does not meet, when the policies were established, all documents providing when the policies were established.” *Id.* at 3. On January 19, 2022, the Court modified the PI, in part by ordering that Defendants “shall provide a sworn declaration from a member of the TEC explaining the reasons for the TEC’s decision if the TEC does not recommend Plaintiff for surgery.” ECF No. 181.

I. The TEC’s Recommendation

Defendants report that, as specified in the PI, the TEC met on January 24, 2022 to evaluate Plaintiff’s request for GCS. As discussed in the attached Declaration of Dr. Alix M. McLearn (who

oversees and is a member of the TEC), the TEC “recommended that Iglesias be referred to a surgeon for consultation for GCS approximately one month after she is placed in a Residential Reentry Center (“RRC”) (commonly referred to as a “halfway house”)[.]” McLearen Decl. ¶ 6. The TEC made this recommendation on the “assum[ption that] she does not engage in behavior that would prevent her from continued placement in a female facility and assuming further that no other reasons develop that would make gender confirmation surgery inappropriate[.]” *Id.* Although the Court’s PI anticipated that the TEC would either (a) recommend Plaintiff for surgery and immediately refer Plaintiff to BOP’s Medical Director or (b) not recommend Plaintiff for surgery, the TEC’s decision was to recommend referral to a surgeon for consultation for GCS at a future date provided no reasons develop that would make surgery inappropriate. Thus, assuming she does not engage in behavior that would prevent her from continued placement in a female facility and assuming further that no other reasons develop that would make gender confirmation surgery inappropriate, the TEC does expect Plaintiff to be referred to a surgeon at the appropriate time.¹

There are several reasons for the TEC’s decision. First, the TEC determined that Plaintiff’s impending transfer to an RRC in a state (Florida) distant from her current location (Texas) counsels against an immediate, unqualified referral for surgery. *Id.* ¶ 10. If Plaintiff is referred to a surgeon to begin consulting about GCS now, that process would be interrupted once she is transferred to Florida. *Id.* The TEC concluded that it is prudent to begin and complete any surgical procedures with a single team of physicians, mental health care professionals, and healthcare system located in the same geographic area. *Id.* BOP maintains a contract for the provision of comprehensive medical care, including referral for GCS, for inmates in RRCs. *Id.*

¹ Although the PI requires Defendants to file a notice only if the TEC does not recommend surgery, Defendants submit this notice because the TEC’s recommendation does not involve an immediate referral for surgery.

Furthermore, the logistical process for referring Plaintiff for GCS once she is at an RRC would be more streamlined than the referral process at a secure facility such as FMC Carswell. *Id.* ¶ 11. Medical appointments for individuals in an RRC are arranged by a contractor through the Reentry Services Division, which Dr. McLearen oversees. *Id.* Therefore, when Plaintiff is housed in an RRC, the division Dr. McLearen oversees can arrange, through a contractor, for GCS consultation with the surgeon, instead of referring Plaintiff's request for GCS to BOP's Medical Director. *Id.*

The TEC also concluded that it was important to continue to monitor Plaintiff's placement at a female correctional facility while encouraging her to remain compliant with her mental health treatment. *Id.* ¶ 12. Since Plaintiff first arrived at a female facility, FMC Carswell, on May 25, 2021, she has demonstrated significant difficulty adjusting to living with women in a correctional setting, as reflected by her request in August 2021 to be transferred out of a female facility. *Id.* Plaintiff's behavioral issues led to her being placed in the Special Housing Unit in October 2021. *Id.* These behavioral issues and her request to be transferred back to a men's facility have created some concerns about whether she should remain in a female facility. *Id.* To date, however, those concerns have not risen to the level of requiring Plaintiff to be transferred to a men's facility. *Id.* Accordingly, the TEC believes it important to continue to monitor her adjustment to ensure that she can safely be housed in a female facility. *Id.* At the time that the TEC anticipates Plaintiff will be referred to a surgeon, Plaintiff will have been housed with other females for approximately eleven months—close to the 12-month period generally required by BOP policy (as discussed below), but allowing sufficient time for continued medical care before Plaintiff's anticipated release from BOP custody in December 2022.

II. Relevant BOP Policy

Plaintiff has not yet met the BOP's policy generally requiring that an inmate seeking GCS first spend twelve months in a gender affirming facility prior to consideration of surgery. McLearen Decl. ¶¶ 6-7. That policy was incorporated into BOP's Transgender Offender Manual ("TOM") when it

was revised on January 13, 2022. *See* TOM at 9, attached as Exhibit 1 to the McLearn Declaration.² Prior to its incorporation into the TOM, the practice had been applied by the TEC in unwritten form since approximately 2016 or 2017. McLearn Decl. ¶ 7 n.2.

The twelve-month requirement serves important purposes relating to social transitioning as well as BOP's penological interests. First, the requirement is intended to allow time for an inmate to adjust, socially transition, and consolidate one's gender identity in relationship to peers. McLearn Decl. ¶ 8. In this way, BOP's requirement serves the same purpose as the similar requirement in the standards of care published by the World Professional Association for Transgender Health ("WPATH"). The WPATH standards of care define the criteria for GCS to include "12 continuous months of living in a gender role that is congruent with their gender identity."³ The WPATH standards of care expressly recognize the importance of providing an "opportunity for patients to experience and socially adjust in their desired gender role, before undergoing irreversible surgery[.]" *Id.* They explain further that "[c]hanging gender role can have profound personal and social consequences, and the decision to do so should include an awareness of what the familial, interpersonal, educational, vocational, economic, and legal challenges are likely to be, so that people can function successfully in their gender role." *Id.* These personal and social consequences are only magnified in the correctional setting, given the sex-segregated status of the prison system and the vast differences between men's and women's facilities.

In addition, BOP's 12-month policy serves important penological interests by helping to ensure that the inmate will be able to successfully stay in gender affirming housing. McLearn Decl.

² Page 1 of the TOM indicates that it was revised on January 13, 2022 and pages 1-2 explain that the TOM was revised to, among other things, add information about gender affirming surgery.

³ *See* Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, The World Professional Association for Transgender Health (Version 7), at 60, available at: https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?t=1613669341.

¶ 8. After receiving GCS, a transgender female would by necessity be housed in a female facility, because housing such an individual in a male facility would present numerous safety and security concerns. *Id.* Accordingly, BOP needs to evaluate whether such placement in a female facility will itself pose any safety and security concerns, prior to an irreversible surgery being conducted. *Id.*

Dated: January 31, 2022

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Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CRISTINA NICHOLE IGLESIAS (a.k.a.,)	
CRISTIAN NOEL IGLESIAS),)	
)	
Plaintiff,)	
)	
vs.)	Case No. 19-cv-00415-NJR
)	
IAN CONNORS, ET AL.,)	
)	
Defendants.)	

DECLARATION OF DR. ALIX M. MCLEAREN

I, Dr. Alix M. McLearn, make the following declaration, in accordance with the provisions of 28 U.S.C. §1746:

1. I am currently employed by the Federal Bureau of Prisons (“BOP”) as Acting Assistant Director of the BOP’s Reentry Services Division. I have held my current position since December of 2021, and have been the Senior Deputy Assistant Director since May of 2020. I have been employed by the BOP for approximately 18 years.

2. As Acting Assistant Director of the BOP’s Reentry Services Division, I am responsible for the oversight of Psychology Services, Residential Reentry Management, Community Reentry Affairs, Women and Special Populations, Education, and Chaplaincy.

3. Additionally, I oversee and serve as a member of the BOP’s Transgender Executive Council (TEC). I began to participate in the TEC when it was established in 2016. I am familiar with the TEC’s recommendations regarding the Plaintiff, inmate Iglesias, Reg. No. 17248-018.

4. I am aware that the Court issued a Preliminary Injunction requiring Defendants to, among other things, “have the TEC meet to evaluate Iglesias’s request for [Gender Confirming Surgery] GCS by Monday, January 24, 2022.” (Doc. 177 at 1). In the event the TEC does not

recommend GCS, the Court required Defendants to provide a sworn declaration from a member of the TEC explaining the reasons for the TEC's decision if the TEC does not recommend Plaintiff for surgery. (Doc. 181). Although the TEC has recommended referral to a surgeon for consultation for GCS, subject to certain conditions, I am providing this declaration to explain the TEC's decision.

5. Pursuant to the Court's order (Doc. 177), the TEC met to evaluate Ms. Iglesias's request for GCS on January 24, 2022. This declaration is being provided pursuant to the Court's order of January 19, 2022 (Doc. 181).

6. On January 24, 2022, the TEC recommended that Iglesias be referred to a surgeon for consultation for GCS approximately one month after she is placed in a Residential Reentry Center ("RRC," commonly referred to as a "halfway house"), assuming she does not engage in behavior that would prevent her from continued placement in a female facility and assuming further that no other reasons develop that would make gender confirmation surgery inappropriate for Iglesias. Iglesias is currently scheduled to transfer to an RRC on March 10, 2022. Therefore, assuming Iglesias continues to show adequate placement and adjustment, a referral for consultation with a contract surgeon for GCS would be made in approximately mid-April 2022.¹ At that point, Iglesias will have been housed in female facilities for approximately eleven months, as she first transferred to a female facility (the Carswell Federal Medical Center, or FMC Carswell) on May 25, 2021.

7. The TEC generally requires twelve months in a gender affirming facility prior to consideration of surgery. *See* BOP Program Statement 5200.08 (January 13, 2022) ("Transgender Offender Manual"), Attached as Attachment 1. Specifically, the Transgender Offender Manual states that "surgery may be the final stage in the transition process and is generally considered only after one year of clear conduct and compliance with mental health, medical, and programming

¹ The actual date of the appointment is of course subject to the availability of the surgeon.

services at the gender affirming facility.”² Once that period elapses, an inmate may submit a request to his or her Warden requesting surgical consideration. The Warden will forward the request to the TEC. The TEC is the sole body who may determine that all milestones and individual goals for surgical consideration have been met. *See Transgender Offender Manual* at 9.

8. The general twelve month requirement is intended to allow time for an inmate to adjust, socially transition, and consolidate one’s gender identity in relationship to peers. The TEC believes this is consistent with the WPATH standards of care’s emphasis on the importance of social adjustment before performing irreversible anatomic surgery. The twelve month requirement also allows BOP to evaluate whether the inmate will be able to successfully stay in gender affirming housing. This is crucial from a correctional perspective given the need to safely and securely house the inmate. After receiving GCS, a transgender female would by necessity be housed in a female facility, as housing a post-surgery transgender female in a male facility would present numerous safety and security concerns. Accordingly, BOP needs to evaluate whether such placement in a female facility will itself pose any safety and security concerns, prior to an irreversible surgery being conducted.

9. In Iglesias’s case, the TEC decided to recommend referral for surgery after approximately eleven months in gender affirming facilities, assuming she does not engage in behavior that would prevent her from continued placement in a female facility and assuming further that no other reasons develop that would make gender confirmation surgery inappropriate, for several reasons.

10. First, given Iglesias’s impending transfer to an RRC (which houses both males and females) in Florida, the principles of continuity of care weigh in favor of making the referral after

²The Transgender Offender Manual was revised on January 13, 2022. While the condition that surgery is generally considered one year after one year at a gender affirming facility was not included in the prior version of the manual, it has been part of the TEC’s practice since approximately 2016 or 2017. *See, e.g.*, Decl. of A. Leukefeld ¶ 12, Doc. 99-2.

Iglesias is transferred, rather than beginning the process while she is at FMC Carswell, only for it to be interrupted by her transfer to Florida. The WPATH standards recognize that surgeons who operate on patients coming from long distances should include personal follow-up in their care plan. Also, as indicated in the WPATH standards of care, long-term postoperative care after surgical treatments for gender dysphoria are associated with good surgical and psychosocial outcomes. Under the circumstances, it is prudent to begin and complete any surgical procedures with a single team of physicians, mental health care professionals, and healthcare system located in the same geographic area. BOP maintains a contract for the provision of comprehensive medical care, including referral for GCS, for inmates in RRCs. The timing recommended by TEC would allow for more continuity of care during recovery, given Iglesias is scheduled to satisfy her sentence and release from BOP custody in December 2022.

11. Furthermore, the logistical process for referring Iglesias for GCS once she is at an RRC is different than the process that would be followed if the referral was made while she was housed at a secure facility (such as FMC Carswell where she is currently housed). Notably, medical care for an inmate at an RRC is provided by contract medical providers in that community. Medical appointments are arranged by the Reentry Services Division contractor under the final authority of my division. Accordingly, while the Transgender Offender Manual contemplates review by the BOP Medical Director,³ this step would not be necessary once Iglesias is housed in an RRC. Rather, assuming she does not engage in behavior that would prevent her from continued placement in a female facility and assuming further that no other reasons develop that would make gender confirmation surgery inappropriate, Iglesias would be referred to a contract medical provider in the

³ The Transgender Offender Manual at page 9, states that when the TEC determines that all milestones and individual goals for surgical consideration have been met, “the case is referred to the agency’s Medical Director for medical consideration. He or she may review existing records and/or interview the inmate, institution staff, and members of the TEC. After this individualized assessment, the Medical Director will determine if the surgery is medically appropriate for referral to a gender affirming surgeon.”

community for consultation. Accordingly, in Iglesias's case, making the referral to a surgeon after approximately one month in an RRC may allow for the process to be more logistically streamlined than it would be if the referral was made while Iglesias was housed in a secure facility.

12. Additionally, it is important to continue to monitor Iglesias's placement at a female correctional facility while encouraging her to remain compliant with her mental health treatment. Iglesias first arrived at a female facility, FMC Carswell, on May 25, 2021. She has been housed there since. Shortly after Iglesias arrived at FMC Carswell, the TEC considered her request for surgery on October 12, 2021. At that time her hormones were at target levels. However, she also was demonstrating significant difficulty adjusting to living with women in a correctional setting, including her request in August 2021 to be transferred out of a female facility. On October 20, 2021, Iglesias was placed in the Special Housing Unit (SHU)⁴ in conjunction with an investigation into her incurring debts with the inmates at FMC Carswell and making false allegations against them in order to avoid repaying the debts. Since then, reports reveal there have been no significant changes in her medical, mental health, or interpersonal functioning. She remains housed in SHU. Iglesias's behavioral issues at FMC Carswell and her request to be transferred to a men's facility have created some concerns about whether she should remain in a female facility. To date, however, those concerns have not risen to the level of requiring Iglesias to be transferred to a men's facility. Accordingly, TEC believes it important to continue to monitor her adjustment to ensure that she can safely be housed in a female facility.

13. Accordingly, the TEC's recommendation from its January 24, 2022, meeting is that Iglesias be referred to a surgeon for consultation for GCS approximately one month after she is

⁴ Special Housing Units (SHUs) are housing units in Bureau institutions where inmates are securely separated from the general inmate population, and may be housed either alone or with other inmates. Special housing units help ensure the safety, security, and orderly operation of correctional facilities, and protect the public, by providing alternative housing assignments for inmates removed from the general population. 28 C.F.R. § 541.21.

placed in an RRC, assuming she does not engage in behavior that would prevent her from continued placement in a female facility and assuming further that no other reasons develop that would make gender confirmation surgery inappropriate for Iglesias.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 31st day of January 2022.

**ALIX
MCLEAREN**

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MCLEAREN
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Dr. Alix M. McLearn

Attachment 1



U.S. Department of Justice
Federal Bureau of Prisons

PROGRAM STATEMENT

OPI: RSD/WASPB
NUMBER: 5200.08
DATE: January 13, 2022

Transgender Offender Manual

/s/

Approved: M.D. Carvajal
Director, Federal Bureau of Prisons

1. PURPOSE AND SCOPE

To ensure the Bureau of Prisons (Bureau) properly identifies, tracks, and provides services to the transgender population.

a. Program Objectives. Expected results of this program are:

- This policy provides guidance to staff in dealing with the unique issues that arise when working with transgender inmates.
- Institutions ensure transgender inmates can access programs and services that meet their needs as appropriate, and prepare them to return to the community.
- Sufficient resources will be allocated to deliver appropriate services to transgender inmates.
- Staff will complete training, enabling them to work effectively with transgender inmates.
- To enhance staff's understanding of the increased risk of suicide, mental health issues and victimization of transgender inmates.

b. Summary of Changes

Rescinded P5200.04 CN-1 Transgender Offender Manual (5/11/2018)

This reissuance incorporates the following modifications:

- Clarified duties and responsibilities of various staff.
- Added an institution requirement for maintaining a copy of the Case Management Activity (CMA) Assignment form BP-A1110, Consent Form for Transgender Inmates. Inmates can no longer request to have a CMA assignment removed, and then re-added at a later date.
- Clarified transfer, consultation, and program requirements.

- Updated guidance regarding initial designation and redesignation procedures for transgender offenders.
- Added information about gender affirming surgery.

c. **Institution Supplement.** None required. Should local facilities make any changes outside changes required in national policy or establish any additional local procedures to implement national policy, the local Union may invoke to negotiate procedures or appropriate arrangements.

2. DEFINITIONS

Gender – a construct used to classify a person as male, female, both, or neither. Gender encompasses aspects of social identity, psychological identity, and human behavior.

Gender identity – a person’s sense of their own gender, which is communicated to others by their gender expression.

Gender expression – includes mannerisms, clothing, hairstyle, and choice of activities.

Gender nonconforming – a person whose appearance or manner does not conform to traditional societal gender expectations.

Transgender – the state of one’s gender identity not matching one’s sex assigned at birth. For the purposes of this policy, a transgender inmate is one who has met with a Bureau Psychologist and signed the form indicating consent to be identified within the agency as transgender. This step allows accommodations to be considered.

Cisgender – the state of one’s gender identity matching one’s sex assigned at birth.

Sexual orientation – the direction of one’s sexual interest towards members of the same, opposite, or both genders (e.g., heterosexual, homosexual, bisexual, asexual). Sexual orientation and gender identity are not related.

Gender Dysphoria (GD) – a mental health diagnosis currently defined by DSM-5 as, “A strong and persistent cross-gender identification. It is manifested by a stated desire to be the opposite sex and persistent discomfort with his or her biologically assigned sex.” Not all transgender inmates will have a diagnosis of GD, and a diagnosis of GD is not required for an individual to be provided services.

Intersex – a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical physiological definitions of male or female. Not all intersex people identify as

transgender; unless otherwise specified, this policy does not apply to intersex people who do not identify as transgender.

Transition – measures that change one’s gender expression or body to better reflect a person’s gender identity.

Gender Affirming – describes behaviors or interventions that support the gender identity of a person.

3. STAFF RESPONSIBILITIES

The following Bureau components are responsible for ensuring consistent establishment of the programs, services, and resource allocations necessary for transgender offenders.

a. Central Office

(1) The **Women and Special Populations Branch (WASPB)** is the agency’s primary source and point of contact on accommodation/transition, classification, management, and intervention/treatment programs and practices for transgender inmates in Bureau custody. The Branch is responsible for the following functions as they relate to transgender inmates:

- Engaging stakeholders, including serving as the primary point of contact on issues affecting transgender inmates with external entities including judges, congress, and advocacy groups.
- Ensuring the Bureau offers appropriate services to transgender inmates.
- Preparing budget requests to deliver national and pilot programs or services affecting transgender inmates.
- Providing guidance and direction to staff and institution, region, and agency leadership on transgender issues.
- Developing and implementing staff training on transgender issues.
- Building a research-based foundation for the Bureau’s work with transgender inmates, including implementation support and intervention services.
- Presenting at internal and external conferences/events regarding the agency’s transgender inmates’ practices.
- Developing and monitoring monthly reports on the transgender population and institutional programs.
- Conducting an annual survey of transgender inmates in the Bureau and sharing results with internal and external stakeholders.
- Providing national oversight of pilot programs and initiatives serving transgender offenders.
- Overseeing the Transgender Executive Council (TEC).
- Ensure that a National Program and Policy Coordinator is assigned to each Region who will meet quarterly to discuss staffing and programming needs of transgender inmates.

(2) The **Health Services Division** oversees all medical and psychiatric guidance and treatment as it applies to transgender inmates. Clinical guidance on the most current research-driven clinical medical and psychiatric care of transgender inmates will be provided at the direction of the Medical Director. The Medical Director only receives referrals from the TEC and determines whether gender affirming surgery requests will be referred to a surgeon.

(3) The **Psychology Services Branch** oversees all mental health programs and services as they apply to transgender inmates, to include providing advice and guidance on identification and evaluation of transgender inmates, and making recommendations for treatment needs of transgender inmates and/or inmates with GD.

(4) **Central Office Branches** of Correctional Services, Psychology Services, Education, Correctional Programs, Reentry Affairs, Residential Reentry Management, Health Programs, Litigation, Chaplaincy Services, Intelligence and Counter Terrorism Branch, and Trust Fund meet annually with the Women and Special Populations Branch to discuss transgender population needs and evaluate current gender-responsive services. The National Union and the Central Office LGBT Special Emphasis Program Manager will be invited to attend these meetings.

(5) The **Transgender Executive Council (TEC)** will consist of senior level staff members (GS-14 and above) from the Women and Special Populations Branch, the Psychology Services Branch, Health Services Division, and the Designation and Sentence Computation Center (DSCC). The team is led by the Senior Deputy Assistant Director, Reentry Services and also includes the Senior Deputy Assistant Director, Correctional Programs Division (DSCC), and the Senior Deputy Assistant Director, Health Services. The TEC is the agency's official decision-making body on all issues affecting the transgender population. It will meet a minimum of monthly to offer advice and guidance on unique measures related to treatment and management needs of transgender inmates and/or inmates with GD, including training, designation issues, and reviewing all transfers for approval. Staff or inmates may raise issues on specific inmates to the TEC through the Women and Special Populations Branch. The Office of General Counsel is consulted as needed.

b. Regional Offices

- Provide oversight to institutions regarding services and other relevant trends managing transgender inmates.

c. Institutions

The Warden will establish a multi-disciplinary approach to the management of transgender inmates. The Associate Warden of Programs is the primary point of contact in the institution for transgender issues and will consult as needed with the Chief Psychologist, Captain, Clinical

Director, Unit Manager, or other individuals as appropriate; and specifically to:

- Ensure transgender inmates have access to services.
- Enter tracking information for self-identified transgender inmates by updating SENTRY CMA assignments and other databases (e.g., PDS).
- Maintain a copy of the Case Management Activity (CMA) SENTRY Assignment Consent Form for Transgender Inmates (BP-A1110) in the Central File and Psychology Data System (PDS).
- Provide appropriate reentry resources that may be specific to the population.
- Advise the Local Union of transgender inmate management issues.
- Consult and refer transgender inmates to the TEC.
- Provide programming developed by the Reentry Services Division for transgender inmates.

4. STAFF TRAINING

Staff are provided specialized training in working with unique issues when managing transgender inmates as part of annual training. Institutions housing transgender inmates should provide additional training.

The Women and Special Populations Branch is responsible for developing training materials and current information on the management of transgender inmates. This information will be made available to staff via the Bureau's intranet.

In addition, the Prison Rape Elimination Act (PREA) regulations incorporated into the BOP Program Statement, **Sexually Abusive Behavior Prevention and Intervention Program** have training requirements concerning pat searches and communication skills for transgender inmates. See 28 C.F.R. § 115.15(f) and 115.31 (a) (9). Please refer to this Program Statement regarding implementation of those training requirements.

Staff will be provided adequate time to complete these trainings during duty hours. Staff will be provided proper relief to complete the training.

5. INITIAL DESIGNATIONS

The PREA regulations (section 28 C.F.R. § 115.42 (c)), incorporated into the Program Statement **Sexually Abusive Behavior Prevention and Intervention Program**, state:

“In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates...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 present management or security problems.”

Upon receipt of information from a Pre-Sentence Report, court order, U.S. Attorney's Office, defense counsel, the offender, or other source that an individual entering BOP custody is

transgender or intersex, designations staff will refer the matter to the TEC.

Institution staff managing pretrial or holdover offenders must also refer cases to the TEC for review. Any TEC recommendations concerning pretrial inmates will be coordinated with the appropriate United States Marshals Service District Office.

The TEC will consider factors including, but not limited to, an inmate's security level, criminal and behavioral/disciplinary history, current gender expression, programming, medical, and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. The TEC may also consider facility-specific factors, including inmate populations, staffing patterns, and physical layouts (e.g., types of showers available). The TEC will consider the wellbeing of all inmates while exploring appropriate options available to assist with mitigating risk to the inmate, to include but not limited to cell and/or unit assignments, application of management variables, programming missions of the facility, and security of the institution.

It will be documented on all SENTRY designation notes for transgender inmates that the TEC reviewed the inmate for appropriate institution designation.

6. HOUSING AND PROGRAMMING ASSIGNMENTS

During Initial Classification and subsequent Program Reviews, unit management staff will review the inmate's current housing unit status and programming available for transgender inmates. This review will be documented by Unit Management staff in the inmate central file and for holdovers in the holdover file, with institution oversight by the Associate Warden.

The reviews will consider on a case-by-case basis that the inmate placement does not jeopardize the inmate's wellbeing and does not present management or security concerns.

In making housing unit and programming assignments, a transgender or intersex inmate's own views with respect to his/her own safety must be given serious consideration.

Transgender inmates shall be given the opportunity to shower separate from other inmates when individual shower stalls are unavailable.

The agency shall not place transgender or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status. The only exception is if such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

Wardens will consult with WASPB prior to submitting a designation request to the DSCC for the redesignation of transgender inmates when the designation is related to the individual's

transition. The DSCC and Office of Medical Designations will consult with WASPB prior to the designation or redesignation of all transgender inmates.

In situations where the transfer request is related to progressing the individual inmate's transition (i.e., transfer to a different sex facility) the TEC will consider the case. Prior to considering the case, the Warden will submit documentation to the TEC showing the inmate has met the minimum standards of compliance with programs, medications and mental health treatment, and meeting hormone goal levels. Ordinarily, inmates will not be submitted to the TEC for consideration until they have maintained one year clear conduct for 100 and 200 series incident report sanctions, though they may be considered for submission on a case-by-case basis by the Warden, as appropriate.

It will be noted in all SENTRY designation notes that the TEC reviewed the inmate for appropriate institution designation.

7. DOCUMENTATION AND SENTRY ASSIGNMENTS

The PREA regulations in 28 C.F.R. part 115, Subpart A, incorporated into the Program Statement **Sexually Abusive Behavior Prevention and Intervention Program** and the Program Statement **Intake Screening**, address intake screening. Screening of transgender inmates will be conducted in accordance with these policies and all other applicable policies and procedures.

a. Medical and Mental Health Information. Medical and mental health information for transgender inmates will be maintained in the current electronic recordkeeping system or health record system in accordance with the Program Statements **Health Information Management and Psychology Services Manual**. Medical and mental health information is considered confidential, and may only be released in accordance with appropriate laws, rules, and regulations.

b. Initial Screening. For initial designations, staff will assign Case Management Activity (CMA) SENTRY assignments if information in the PSR or other documentation indicates a likely transgender identity. The screening codes are:

SCRN M2F – inmate should be screened for male to female transgender identification.

SCRN F2M – inmate should be screened for female to male transgender identification.

Any inmate arriving at the designated institution with a screening code is to be referred to the Chief Psychologist or designee for review within 14 days. If the code was assigned in error, the screening code will be removed by the Psychologist. If the inmate identifies as transgender, the psychologist will replace the screening code with an identifying code, as indicated below. Holdover facilities are exempt from this initial screening requirement, as limited available

records and brevity of stay do not typically allow for a comprehensive screening.

Any inmate who arrives without a screening code but identifies as transgender during intake, or at any time during the incarceration period, is referred to the Chief Psychologist or designee and interviewed within 14 days of the inmate notification. Inmates in pretrial status at Bureau facilities may also receive a transgender screening CMA SENTRY assignment.

c. Notification to Staff and Tracking. After consultation with Psychology Services, and if the inmate affirms his/her transgender identity, the screening code will be updated to a permanent assignment by a Psychologist:

TRN M2F – inmate identifies as male to female transgender (transgender female).

TRN F2M – inmate identifies as female to male transgender (transgender male).

The inmate must request to Psychology Services staff that the Case Management Activity (CMA) assignment be entered, and the inmate consents that all staff will therefore be notified that the individual is transgender. The inmate's request will be documented on a Case Management Activity (CMA) SENTRY Assignment Consent Form for Transgender Inmates (BP-A1110). Psychology Services shall maintain the form in the electronic mental health record.

Staff should consult the transgender CMA assignment when interacting with the inmate; e.g., use of pronouns and access to accommodations. All inmates have access to transgender treatment, regardless of assignment.

If there are questions about the need to continue a CMA assignment, the Warden will contact the WASPB. Inmates may request in writing to have CMA assignments removed. If this occurs, ordinarily the assignment will not be re-added at a later date.

8. HORMONE THERAPY AND MEDICAL TREATMENT

Hormone therapy or other medical treatment may be provided after an individualized assessment of the requested inmate by institution medical staff. Medical staff will request consultation from Psychology Services regarding the mental health benefits of hormone or other medical treatment. If appropriate for the inmate, hormone treatment will be provided in accordance with the Program Statement **Patient Care** and relevant Clinical Guidance. Questions concerning hormone treatment may be referred to the WASPB or the Health Services Division.

In the event this treatment changes the inmate's appearance to the extent a new identification card is needed, the inmate will not be charged for the identification card as is standard practice.

9. SURGERY

While not all inmates who identify as transgender may be interested in seeking surgical intervention, such a decision does not preclude them from obtaining other accommodations as described in this Program Statement. For transgender inmates in Bureau custody, surgery may be the final stage in the transition process and is generally considered only after one year of clear conduct and compliance with mental health, medical, and programming services at the gender affirming facility. Once that period elapses, an inmate may submit a request to his or her Warden requesting surgical consideration. The Warden will forward the request to the TEC. The TEC is the sole body who may determine that all milestones and individual goals for surgical consideration have been met. When this occurs, the case is referred to the agency's Medical Director for medical consideration. He or she may review existing records and/or interview the inmate, institution staff, and members of the TEC. After this individualized assessment, the Medical Director will determine if the surgery is medically appropriate for referral to a gender affirming surgeon.

10. OTHER MENTAL HEALTH SERVICES

Bureau Psychologists provide assessment and treatment services for transgender inmates, as appropriate. Guidance on assessment procedures is available on the Psychology Services intranet page.

If an inmate identifies as transgender, the Psychologist will provide the inmate with information regarding the range of treatment options available in the Bureau and their implications. In addition, based upon the Psychologist's preliminary assessment and the inmate's expressed interest, a referral to the Clinical Director and/or Chief Psychiatrist may be generated. While the initial interview must be scheduled within 14 days, an assessment may take longer in some instances.

In addition to a referral for medical services, a transgender inmate may be offered individual psychotherapy. Individual psychotherapy goals might include: (1) helping the inmate to live more comfortably within a gender identity and deal effectively with non-gender issues; (2) emphasizing the need to set realistic life goals related to daily living, work, and relationships, including family of origin; (3) seeking to define and address issues that may have undermined a stable lifestyle, such as substance abuse and/or criminality; and (4) addressing any co-occurring mental health issues. Mood disorders, anxiety disorders, substance use disorders, and personality disorders, etc., may also be present; any effective treatment plan will fully address these symptoms. Group treatment may also be recommended.

Common concerns of transgender inmates, which can be addressed effectively in a group setting, include self-esteem issues and relationship issues.

Psychologists who provide mental health treatment for transgender inmates address all mental health needs, including suicide risk, if present. If an inmate who identifies as a transgender harms, attempts to remove, or removes his or her genitalia or other gender-specific anatomy, a suicide risk assessment is conducted consistent with the Program Statement, Suicide Prevention Program. In addition, the treating psychologist notifies the Chief Psychologist who in turn notifies the Regional Psychology Services Administrator and the Psychology Services Branch.

Psychologists working with transgender inmates are encouraged to consult the Reentry Services Division in Central Office for additional resources.

11. SPECIAL POPULATIONS SERVICES

Some facilities have Special Populations Coordinators on staff. These individuals are responsible for delivering First Step Act and other programs, which includes programs developed specifically for inmates who identify as transgender. In the absence of such staff, the Warden will seek consultation from WASPB regarding the delivery of group interventions and services.

12. PRONOUNS AND NAMES

Staff interacting with inmates who have a CMA assignment of transgender, shall either use the authorized gender-neutral communication with inmates (e.g., by the legal last name or “Inmate” last name) or the pronouns associated with the inmate’s identified gender. Deliberately and repeatedly mis-gendering an inmate is not permitted.

The name entered on the inmate’s Judgment and Commitment Order is the official committed name for all Bureau records (incident reports, progress reviews, sentence calculations, etc.). An official committed name change while in BOP custody must be done consistent with the Program Statement **Correctional Systems Manual**. Any additional names or aliases should be entered into SENTRY, as appropriate.

13. PAT SEARCH ACCOMMODATIONS

Pat searches of transgender inmates will be conducted in accordance with the Program Statement **Searches of Housing Units, Inmates, and Inmate Work Areas**.

Pat search information refers only to individuals at male facilities who identify as female. The Bureau does not offer “male only” pat searches.

Unless there is a history of inappropriate sexual behavior suggesting approval poses risks to staff, requests are ordinarily approved by the Warden’s Office. Inmates may request denials be reviewed by the TEC through the Administrative Remedy Program. Inmates who are granted this exception under policy may have it reversed by the Warden if found to have violated

institution rules concerning contraband.

In exigent circumstances, any staff member may conduct a pat search of any inmate consistent with the Program Statement **Searches of Housing Units, Inmates, and Inmate Work Areas**.

14. VISUAL SEARCHES

For purposes of a visual search, inmates will be searched in accordance with the gender of the institution, or housing assignment, to which they are assigned. The visual search shall be made in a manner designed to ensure as much privacy to the inmate as practicable. Staff should consider the physical layout of the institution, and the characteristics of an inmate with a transgender CMA assignment, to adjust conditions of the visual search as needed for the inmate's privacy.

Transgender inmates may also request an exception to be visually searched by a staff member of the inmate's identified gender. The exception must be pre-authorized by the Warden, after consultation with staff from Health Services, Psychology Services, Unit Management, and Correctional Services. Exceptions must be specifically described (e.g., "visual search only by female staff"), clearly communicated to relevant staff through a memorandum, and reflected in SENTRY (or other Bureau database). Inmates should be provided a personal identifier (e.g., notation on identification, etc.) that indicates their individual exception, to be carried at all times and presented to staff prior to visual searches.

Inmates request an exception by submitting an Inmate Request to Staff (BP-A0148) to the Warden. The Warden will consult with the departments listed above, and the memo approving or denying the request will be generated by the Warden's Office. Inmates may request denials be reviewed by the TEC through the Administrative Remedy Program. Inmates who are granted this exception may have it reversed by the Warden if found to have violated institution rules concerning contraband.

Transgender inmates placed at an institution or in a housing unit that does not correspond with their identified gender, and who are granted an exemption as indicated above, will be searched by staff of the inmate's identified gender who consent to participate in the search, or Health Services clinical staff.

Transgender inmates placed at an institution or in a housing unit of their identified gender will be searched by staff of the inmate's identified gender who consent to participate in the search or medical staff.

Institutions should consider using available body scanning technology in lieu of visual searches of transgender inmates.

In exigent circumstances, any staff member may conduct a visual search of any inmate consistent with the Program Statement **Searches of Housing Units, Inmates, and Inmate Work Areas**.

15. CLOTHING, COMMISSARY ITEMS, AND OTHER ACCOMMODATIONS

Consistent with safety and security concerns, inmates with the CMA assignment of transgender will have the opportunity to have undergarments of their identified gender even if they are not housed with inmates of the identified gender. Institutional laundry will have available institutional undergarments that fulfill the needs of transgender inmates. Undergarments will not have metal components.

Standardized lists of Commissary items for transgender inmates are available in accordance with the Program Statement **Trust Fund/Deposit Manual** and the information on the RSD intranet page.

Additional items based on an individualized assessment of the transgender inmate population may be approved by the Warden. Additional items may be provided by the institution or purchased by the inmate, as appropriate. Any concerns regarding such items are directed to the WASPB.

Inmates who purchase and/or are provided items under this section will be subject to disciplinary sanctions, including the removal of these items, if they are found to have violated institution rules relating to the possession of these items.

Any other accommodation requests are discussed with the TEC through the WASPB.

16. REENTRY NEEDS

In accordance with the Program Statement **Release Preparation Program**, institution staff assist transgender inmates in addressing reentry issues prior to release or placement in a Residential Reentry Center/Home Confinement.

During Initial Classification and Program Reviews, unit management formulates a pre-release plan that assists transgender inmates in obtaining identification, finding housing and employment, and providing community resources to assist with reintegration into the community.

The Reentry Affairs Coordinator will assist staff with identifying these resources. Community Treatment Services staff or Institution and/or Regional Social Workers may be contacted concerning the continuity of medical care.

The WASPB can be contacted to provide guidance and resources for any additional reentry

needs of transgender inmates. All accommodation and treatment decisions for inmates in community custody are made by the Residential Reentry Management Branch in consultation with the TEC.

17. ADMINISTRATIVE REMEDIES

Inmates who wish to seek formal review of any issue relating to this policy may use the procedures in the Program Statement **Administrative Remedy Program**.

REFERENCES

Program Statements

P1330.18	Administrative Remedy Program (1/6/14)
P4500.12	Trust Fund/Deposit Fund Manual (3/15/18)
P5100.08	Security Designation and Custody Classification Manual (9/4/19)
P5290.15	Intake Screening (3/30/09)
P5310.17	Psychology Services Manual (08/25/16)
P5310.16	Treatment and Care of Inmates with Mental Illness (5/1/14)
P5322.13	Inmate Classification and Program Review (5/16/14)
P5324.08	Suicide Prevention (4/5/07)
P5324.12	Sexually Abusive Behavior Prevention and Intervention Program (6/4/15)
P5325.07	Release Preparation Program (8/15/19)
P5521.06	Searches of Housing Units, Inmates, and Inmate Work Areas (6/4/15)
P5800.15	Correctional Systems Manual (9/23/16)
P6031.04	Patient Care (6/3/14)
P6090.04	Health Information Management (3/2/15)

Federal Regulations

28 CFR part 115

Additional Resources For Clinicians

Diagnostic and Statistical Manual of Mental Disorders (DSM), most current version. World Professional Association for Transgender Health (WPATH) standards.

ACA Standards

- American Correctional Association Standards for Adult Correctional Institutions, 5th Edition: 5-ACI-1C-09, 5-ACI-1D-12, 5-ACI-1D-13, 5-ACI-2C-02, 5-ACI-1D-08, 5-ACI-3D-05, 5-ACI-3D-08(M), 5-ACI-3D-09, 5-ACI-3D-10, 5-ACI-3D-11, 5-ACI-3D-12, 5-ACI-3D-13, 5-ACI-3D-14, 5-ACI-3D-15, 5-ACI-3D-16, 5-ACI-6A-21(M), 5-ACI-6A-32(M), 5-ACI-6C-14(M)
- American Correctional Association Performance Based Standards for Adult Local Detention Facilities, 4th Edition: 4-ALDF-2A-29, 4-ALDF-2A-32, 4-ALDF-2A-34, 4-ALDF-6B-03, 4-ALDF-2C-03, 4-ALDF-4C-22M, 4-ALDF-4C-30M, 4-ALDF-4D-22, 4-ALDF-4D-22-1, 4-

ALDF-4D-22-2, 4-ALDF-4D-22-3, 4-ALDF-4D-22-4, 4-ALDF-4D-22-5, 4-ALDF-4D-22-6M, 4-ALDF-4D-22-7, 4-ALDF-4D-22-8, 4-ALDF-7B-08, 4-ALDF-7B-10, 4-ALDF-7B-10-1.

- American Correctional Association Standards for Administration of Correctional Agencies, 2nd Edition: None.
- American Correctional Association Standards for Correctional Training Academies: None.

Records Retention

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on Sallyport.