I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to the authority contained in 34-A M.R.S.A. Section 1403.

II. APPLICABILITY

All Juvenile Facilities

III. POLICY

It is the policy of the Maine Department of Corrections to provide a safe and discrimination-free environment that is affirming of every resident’s gender identity, including transgender, gender nonconforming, and intersex residents. The purpose of the policy is to provide guidelines for assessment, placement, management, and treatment of residents who are transgender, gender nonconforming, or intersex.

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None
VI. PROCEDURES

Procedure A: General

1. A transgender person is a person whose gender identity (sincerely held core belief regarding their gender, whether male, female, both, or neither) is different from what is generally considered typical for their sex assigned at birth.

2. A gender nonconforming person is a person whose gender expression (name, clothing, hair style, body language, and mannerisms) falls outside what is generally considered typical for their sex assigned at birth.

3. An intersex person is a person who is born with variations in sexual features that fall outside traditional conceptions of male or female bodies, including variations in external genitalia.

4. The Department uses the definition of gender dysphoria that is in the current Diagnostic and Statistics Manual. A transgender person may or may not have gender dysphoria.

5. All facility staff, volunteers, and student interns who may have contact with a resident shall receive training on this policy and issues regarding transgender, gender nonconforming, and intersex residents, including, but not limited to: how to communicate effectively and professionally with all residents, including transgender, gender nonconforming, and intersex residents; awareness of needs, risks, and challenges that transgender, gender nonconforming, and intersex residents face; resources available to transgender, gender nonconforming, and intersex residents; and ways in which to provide a safe and discrimination-free environment that is affirming of every resident’s gender identity.

6. Under no circumstances may any facility staff, volunteer, or student intern attempt to change a resident’s gender identity, gender expression, or sexual orientation.

7. All facility staff providing mental health services to residents shall be aware of issues specific to transgender, gender nonconforming, and intersex residents, such as bullying, isolation, harassment, family rejection, etc., that can have a negative effect on the resident’s well-being when providing services and, as appropriate, shall confer with providers or consultants with expertise in these issues.

8. All facility staff providing medical services to residents shall be aware of issues specific to transgender, gender nonconforming, and intersex residents, such as hormone treatment, etc., when providing services and, as appropriate, shall confer with providers or consultants with expertise in these issues.

9. A transgender resident’s gender identity or intersex resident’s sexual features is mental health and/or medical information and may be disclosed only to the
extent permitted by law and Department Policy (JF) 22.2, Confidentiality of Resident Information and any other applicable policies.

10. All facility staff providing education programs to residents shall be aware of issues specific to transgender, gender nonconforming, and intersex residents, such as acceptance of gender diversity, maintaining healthy relationships, etc., when providing the programs and, as appropriate, shall confer with consultants with expertise in these issues.

11. The facility Superintendent, or designee, shall ensure residents have access to reading materials and contact information for appropriate community resources concerned with issues specific to transgender, gender nonconforming, and intersex juveniles.

12. Discrimination against or harassment of a transgender, gender nonconforming, or intersex resident by staff, volunteers, or student interns is not tolerated and shall be addressed as set forth in applicable Department policies, including but not limited to, Policies 1.6, Prohibition on Discrimination, 2.8, Contracted Services, 6.11.3, Sexual Misconduct (PREA & Maine Statutes) Reporting and Investigation, and 6.11.4, Sexual Misconduct (PREA & Maine Statutes) Administrative Sanctions and Grievances.

13. Harassment of a transgender, gender nonconforming, or intersex resident by another resident is not tolerated and shall be addressed as set forth in applicable Department policies, including but not limited to, Policies (JF) 15.3, Resident Discipline System and 6.11.4, Sexual Misconduct (PREA & Maine Statutes) Administrative Sanctions and Grievances.

14. Abuse of a transgender, gender nonconforming, or intersex resident is not tolerated and shall be addressed as set forth in Department Policies 7.1, Criminal Investigations and/or 7.3, Administrative and Personnel Complaint Investigations, as applicable.

15. The Superintendent, or designee, shall assess, on at least an annual basis, the facility’s climate with respect to transgender, gender nonconforming, and intersex residents by reviewing grievances filed by and speaking with transgender, gender nonconforming, and intersex residents; conducting random surveys of residents asking them for their observations on the treatment of transgender, gender nonconforming, and intersex residents; and holding discussions with staff, volunteers, student interns, and residents to gain insight into their experiences, etc.

Procedure B: Housing

1. Separate housing dedicated specifically to transgender, gender nonconforming, or intersex residents shall not be established.

2. In general, a resident shall be placed in a housing unit in accordance with his or her sex assigned at birth, except that, in the case of a transgender, gender
nonconforming, or intersex resident, decisions about housing and program assignments shall be made on a case-by-case basis, taking into account the views of the resident, and shall be based on protecting the resident’s safety and mental health and preventing security issues, including, but not limited to, risks to the safety of other residents.

Procedure C: Intake

1. Intake staff at the facility shall, as soon as possible, contact the Superintendent, or designee, if any time during intake, a resident:
   a. reports as being transgender, gender nonconforming, or intersex;
   b. indicates a history of being perceived as transgender, gender nonconforming, or intersex;
   c. is reported by Department staff, the prosecuting or defense attorney, a parent or guardian, or another credible source to be transgender, gender nonconforming, or intersex; or
   d. is perceived by facility intake staff as being transgender, gender nonconforming, or intersex.

2. If an intake search has not already been done (including a pat search or strip search, if required), the Superintendent, or designee, shall determine, based upon information available at the time, including, but not limited to, the expressed preference of the resident and risks to safety, the gender of the staff who will conduct the intake search. Intake staff shall document in CORIS the search, including the type of search, the gender of the staff involved, and the reason stated by the Superintendent, or designee, for the determination.

3. The Superintendent, or designee, shall also determine, based upon information available at the time, including, but not limited to, risks to safety, the resident’s immediate housing placement until a further, more in-depth assessment can be conducted and intake staff shall document in CORIS the reason stated by the Superintendent, or designee, for the determination.

4. Once assigned housing, the resident shall be searched by staff of the same gender as other residents housed in the same unit, unless the Superintendent, or designee, determines otherwise. If the Superintendent, or designee, determines otherwise, the juvenile program manager, or designee, shall document in CORIS the reason stated by the Superintendent, or designee, for the determination.

5. Once the determination is made as to the gender of the staff who will conduct searches of a transgender, gender nonconforming, or intersex resident, then, except in an emergency, only staff of that gender shall conduct any pat or strip search. In addition to the staff conducting the search, except in an emergency, at least one other staff of the same gender as the staff conducting the search shall observe the search.
6. Staff shall treat the resident with professionalism and respect so as to minimize embarrassment and indignity during a search. A strip search shall be conducted in a location where persons other than staff conducting or designated to observe the search cannot see the resident.

7. Under no circumstances may a search ever be conducted for the purpose of determining a resident’s genitalia or other anatomical features.

8. All searches of a transgender, gender nonconforming, or intersex resident, whether a pat or strip search, shall be documented in the appropriate log.

9. As is the case with all residents, a transgender, gender nonconforming, or intersex resident shall be given the opportunity to shower and use toilet facilities privately.

10. A resident who at the time of intake to the facility is currently being treated with hormonal medications shall be continued on those medications at least until the resident has been seen by the facility physician, physician assistant, or nurse practitioner in accordance with Department Policy (JF) 13.7, Pharmaceuticals. Once the resident is seen, the facility medical provider shall continue the hormonal medications if determined to be medically necessary.

11. The Superintendent, or designee, shall notify the facility Health Services Administrator as soon as possible of the admission of the resident, and the Health Services Administrator shall expedite the process of confirming through health care records whether the resident has received a diagnosis of gender dysphoria, has received hormonal treatment, has received other transition related medical or mental health care, or there exist any other relevant factors.

12. Health care staff shall require the resident to sign any necessary release of information to obtain the appropriate health care documentation.

13. Appropriate health care staff shall determine whether the resident requires an evaluation for gender dysphoria, an expedited medical and/or mental health assessment, or medical and/or mental health counseling or treatment.

14. If appropriate, the Superintendent, or designee, shall contact juvenile community corrections to request information as to whether and for how long the resident has reported as being transgender, gender nonconforming, or intersex or has been perceived to be transgender, gender nonconforming, or intersex.

15. If a safety issue arises, whether it is a risk to the safety of the transgender, gender nonconforming, or intersex resident or another resident, that requires a change from the immediate housing placement made by the Superintendent, or designee, facility staff shall follow Department Policy (JF) 10.1, Observation Status, until the housing placement can be reviewed by the Superintendent, or designee.

16. If the Superintendent, or designee, receives information prior to intake that a
juvenile to be admitted to the facility might be transgender, gender nonconforming, or intersex, the Superintendent, or designee, may make a determination as to the intake search and the juvenile’s immediate housing placement prior to admission to the facility.

**Procedure D: After Intake**

1. If, after intake, a resident reports to staff that he or she is transgender, gender nonconforming, or intersex, the staff shall contact the Superintendent, or designee.

2. The Superintendent, or designee, shall notify the facility Health Services Administrator as soon as possible after the report, and the Health Services Administrator shall expedite the process of confirming through health care records whether the resident has received a diagnosis of gender dysphoria, has received hormonal treatment, has received other transition related medical or mental health care, or there exist any other relevant factors.

3. Health care staff shall require the resident to sign any necessary release of information to obtain the appropriate health care documentation.

4. Appropriate health care staff shall determine whether the resident requires an evaluation for gender dysphoria, an expedited medical and/or mental health assessment, or medical and/or mental health counseling or treatment.

5. If appropriate, the Superintendent, or designee, shall consult with appropriate staff of the facility and, if applicable, staff from other juvenile facilities as to whether and for how long the resident has reported as being transgender, gender nonconforming, or intersex or has been perceived to be transgender or intersex.

6. If appropriate, the Superintendent, or designee, shall also contact juvenile community corrections to request information as to whether and for how long the resident has reported as being transgender, gender nonconforming, intersex or has been perceived to be transgender or intersex.

7. The resident shall not be moved to a housing unit with residents of a different gender than the resident has been housed with and shall be searched by staff of the same gender as other residents in the unit, at least until the procedures set out below have been completed.

**Procedure E: Team Recommendations**

1. Within ten (10) working days of the admission to the facility of a resident who is described in Procedure C or within ten (10) working days of the report to staff by a resident who is described in Procedure D, the Superintendent, or designee, shall convene a meeting of a multi-disciplinary team composed of the juvenile program manager where the resident has been housed, or the juvenile program manager's designee, the facility Health Services Administrator, or designee, the
Department’s medical director, or designee, the Department’s mental health director, or designee, a facility psychiatric social worker, a member of the facility security staff, a member of the facility classification staff, the facility PREA monitor, and the appropriate juvenile community corrections officer, as well as any other staff deemed appropriate.

2. If the Superintendent, or designee, approves, the resident may participate at part or all of the meeting. If the resident is not at the meeting, the resident’s views and opinions shall be obtained and presented to the team by the juvenile program manager, or designee.

3. At the conclusion of the meeting, this team shall make recommendations about the following matters as they relate to the transgender or intersex resident:
   a. whether male or female housing is appropriate for the resident;
   b. whether male or female staff will conduct searches;
   c. clothing, grooming items, and other property items to be allowed;
   d. any special shower and toilet arrangements;
   e. any safety or security precautions required;
   f. any relevant medical issues;
   g. any relevant mental health issues;
   h. any relevant programming needs; and
   i. any other relevant decisions.

4. The recommendations shall be based on, but not be limited to, the following:
   a. any opinions of the resident with respect to the above matters;
   b. the resident’s sex assigned at birth;
   c. the resident’s views with respect to his or her own gender identity and whether or not those views are sincerely held;
   d. the resident’s views respect to his or her own safety and whether or not those views have been consistent;
   e. the steps or lack of steps taken by the resident toward transitioning;
   f. any relevant characteristics of the resident, including physical stature, any tendency toward violence or predatory behavior, and any vulnerability to violence or predatory behavior;
   g. any relevant characteristics of other residents with whom the resident might be housed or come into contact;
   h. correctional history (for example, any previous management problems that impacted on the safety of other residents or the security of the facility);
   i. history in community residential settings (for example, any previous management problems that impacted on the safety of other persons);
j. any co-occurring mental health issues; and
k. any perceived risks to the continuing safety and health of the resident or other residents.

5. The team shall make recommendations based on all information available, including any evaluation for gender dysphoria and any relevant medical and/or mental health assessment. If there has been no evaluation at the facility for gender dysphoria, the team shall make a recommendation as to the need for such an evaluation. The team may also make a recommendation with respect to the need for a further medical and/or mental health assessment.

6. Within three (3) working days of receiving the recommendations from the team, the Superintendent, or designee, shall make the final decisions as to all of the team’s recommendations, except in relation to health care and transfer to another juvenile facility.

7. If there is any legal issue, the Superintendent, or designee, shall consult with the Department’s legal representative in the Attorney General’s office prior to making the final decision on that issue.

8. Once the final decision is made as to the gender of the staff who will conduct searches of a transgender, gender nonconforming, or intersex resident, then, except in an emergency, only staff of that gender shall conduct any pat or strip search. In addition to the staff conducting the search, except in an emergency, at least one other staff of the same gender as the staff conducting the search shall observe the search.

9. Staff shall treat the resident with professionalism and respect so as to minimize embarrassment and indignity during a search. A strip search shall be conducted in a location where persons other than staff conducting or designated to observe the search cannot see the resident.

10. Under no circumstances may a search ever be conducted for the purpose of determining a resident’s genitalia or other anatomical features.

11. All searches of a transgender, gender nonconforming, or intersex resident, whether a pat or strip search, shall be documented in the appropriate log.

12. Clothing, grooming items, and other property items allowed to a transgender, gender nonconforming, or intersex resident shall not include items that are not allowed to other residents, except, if applicable, for clothing items that are consistent with a resident’s transition, e.g., padded bra for a resident transitioning to female, chest binding for a resident transitioning to male, etc.

13. Health care decisions shall be made by the relevant medical care provider or licensed clinician, as appropriate. Under no circumstances may a resident be prescribed hormonal treatment or other transition related medical care unless the resident consents to the treatment.
14. Transfer decisions shall be made by the Associate Commissioner for Juvenile Services, or designee.

15. The final decisions on the recommendations shall be used in the development of the resident’s case plan and classification and the resident shall be informed of those decisions by the juvenile program manager, or designee, as soon as practicable.

16. If an evaluation for gender dysphoria or a relevant medical and/or mental health assessment takes place after the team’s meeting, the Superintendent, or designee, shall reconvene the team within ten (10) working days of the evaluation or assessment to reconsider its prior recommendations in light of any new information.

17. Unless it has been determined not to be necessary, the Superintendent, or designee, shall reconvene the team within three (3) months of the prior meeting to reconsider its prior recommendations in light of any new information and shall reconvene the team every three (3) months thereafter to review its recommendations.

18. The Superintendent, or designee, may at any other time deemed appropriate reconvene the multi-disciplinary team to review its recommendations.

19. It is the responsibility of any transgender, gender nonconforming, or intersex resident’s unit treatment team to reassess the resident at least every three (3) months, or more frequently as necessary, regarding housing. This reassessment shall take place within the week prior to the next meeting of the multi-disciplinary team and the results of the reassessment shall be reported by the juvenile program manager, or designee, to the multi-disciplinary team. Specific attention shall be given to any threats to safety reportedly experienced by the resident.

20. All multi-disciplinary team meetings and unit treatment team meetings, as well as all recommendations of the teams and decisions by the Superintendent, or designee (and, if applicable, the decision of the Associate Commissioner, or designee, related to a recommended transfer), including reasons, shall be documented in CORIS.

21. If applicable, any multi-disciplinary team recommendations as to health care and decisions of the medical care provider or licensed clinician, including reasons, shall be documented in the resident’s electronic health care record.

Procedure F: Name and Pronoun Usage

1. When a facility staff, volunteer, or student intern is addressing a resident by first name, the facility staff, volunteer, or student intern shall address a transgender, gender nonconforming, or an intersex resident by the resident’s expressed first name.
2. An expressed first name shall not be used if the Superintendent, or designee, determines it indicates affiliation with a gang or terrorist group, has vulgar, obscene, or repugnant connotations, or otherwise creates a risk to safety, security, or orderly management of the facility.

3. When a facility staff, volunteer, or student intern uses a pronoun in reference to a transgender, gender nonconforming, or an intersex resident, the facility staff, volunteer, or student intern shall use a pronoun that reflects the resident’s stated gender identity.

4. Unless the resident gives consent, an expressed first name or pronoun shall not be used in the presence of or when communicating with the resident’s family nor shall it otherwise be revealed to the family that the resident is transgender, gender nonconforming, or intersex.

5. An expressed first name or pronoun shall not be used nor shall it otherwise be revealed that the resident is transgender, gender nonconforming, or intersex in other circumstances if the resident indicates that would create an unsafe situation and it is not necessary for that information to be revealed in order to carry out the functions of the Department.

6. When a facility staff, volunteer, or student intern is addressing a resident by last name, the facility staff, volunteer, or student intern shall address a transgender, gender nonconforming, or as intersex resident by using the title “Resident” in front of the last name.

7. The resident’s first and last name on the judgment and commitment or other applicable juvenile criminal record shall be used for all Department records, including, but not limited to, administrative records, case management records, health care records, and CORIS entries.

8. If different from the name on the judgment and commitment or other applicable juvenile criminal record, the expressed first name of the resident shall be entered on the alias screen in CORIS.

Procedure G: Release and Discharge Planning

1. All facility staff, volunteers, and student interns working with residents who are being released or discharged shall be familiar with community resources that provide services to transgender, gender nonconforming, and intersex youth.

2. As part of release and discharge planning for a transgender, gender nonconforming, or intersex resident in accordance with Department Policy (JF) 20.3, Release and Discharge, the resident’s unit treatment team shall include in the resident’s discharge plan any applicable referrals to community resources that provide services to transgender, gender nonconforming, and intersex youth. The unit social worker, in coordination with the juvenile community corrections officer, if applicable, shall take appropriate steps to facilitate communication between the resident and these community resources.
3. For a transgender, gender nonconforming, or intersex resident who is being released from the facility without a discharge plan, where practicable, the unit social worker shall provide information on community resources that provide services to transgender, gender nonconforming, and intersex youth and attempt to facilitate communication between the resident and these community resources.

Procedure H: Appeals

1. Any decision made pursuant to this policy is appealable through the resident grievance process as set out Department Policies (JF) 29.1, Resident Grievance Process, General and 29.2, Resident Grievance Process, Medical and Mental Health Care, except for a transfer decision, which is appealable through the classification process as set out in Department Policy (JF) 18.5, Resident Transfers.

VII. PROFESSIONAL STANDARDS:

None