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ARRS

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January 8, 2025

Sen. Stephen West, Co-Chair
Rep. Derek Lewis, Co-Chair,
Administrative Regulation Review Subcommittee
083, Capitol Annex
702 Capital Avenue
Frankfort, KY 40601

Re: Agency Amendment of 501 KAR 6:410. Corrections policies and procedures: inmate life and issues.

Sen. West and Rep. Lewis,

In light of the opinion of the Attorney General, OAG 24-13, the Department of Corrections at the January 8, 2025, meeting of the Administrative Regulations Review Subcommittee is amending the proposed administrative regulation 501 KAR 6:410. Corrections policies and procedures; inmate life and issues, along with material incorporated by reference, CPP 14.8, to completely withdraw the previously-proposed CPP 14.8, and revert to the 2018 version of CPP 14.8 originally made effective through the filing of an administrative regulation on January 12, 2018 and becoming effective on June 1, 2018, after being approved through the regulation review process outlined in KRS Chapter 13A.

Please find attached to this letter:

- 1) Attachment 1 - The agency amendment to 501 KAR 6:410. Corrections policies and procedures; inmate life and issues; and
- 2) Attachment 2 - A copy of CPP 14.8 (effective 6/1/2018).

As required by KRS 13A.320, the specific amendments the agency has made to the proposed administrative regulation and the material incorporated by reference (CPP 14.8, 6/1/18, 1/13/25) are set out below. No agency amendments have been made to the other policies attached to this administrative regulation.

Amendments to 501 KAR 6:410. Corrections policies and procedures: inmate life and issues:

Page 2
Section 1
Line 1

After “Chapter 14’”, insert “January 8, 2025”.
Delete “May 15, 2024”.


Page 2
Section 1
Line 2

After “Transgender, and Intersex Inmates”, insert “(6/1/2018; 1/8/25)”.
Delete “(5/15/24)”.

Amendments to CPP 14.8

Delete CPP 14.8. Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders (5/15/24)
in its entirety.

Insert the following version of CPP 14.8. Lesbian, Gay, Bisexual, Transgender, and
Intersex Inmates, originally filed on January 12, 2018, and effective June 1, 2018:

 <p style="text-align: center;">KENTUCKY CORRECTIONS Policies and Procedures</p>	Policy Number	Total Pages
	14.8	5
	Date Filed	Effective Date
	January 8, 2025 (originally filed on January 12, 2018, and effective on June 1, 2018)	
	Supersedes Effective Date	
Authority/References	Subject	
KRS 196.035, 197.020, 510.120, 531.090 28 C.F.R. § 115.5, 28 C.F.R. § 115.6, 28 C.F.R. § 115.15, 28 C.F.R. § 115.42, 28 C.F.R. § 115.43 ACA 4-4281-6, 4-4056; P & P ACA 3C-02, 3E-05 CPP 9.8, 18.1, 18.5	Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders	

I. DEFINITIONS

“Intersex” means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.

“LGBTI” means lesbian, gay, bisexual, transgender, or intersex.

“Staff member”, for purposes of this policy, means full-time, part-time and interim employees, interns, students, volunteers, and contractors doing business on a recurring basis with the Department of Corrections.

“Transgender” means a person whose gender identity (i.e. internal sense of feeling male or female) is different from the person’s assigned sex at birth. For example, a transgender woman (an individual who is anatomically male but self-identifies as female) may have breasts or more feminine features due to hormone therapy or plastic surgery.

II. POLICY and PROCEDURES

To provide the Kentucky Department of Corrections personnel a procedure for evaluation, placement, and treatment of offenders who present as intersex, who claim to be undergoing

transgender treatment, or are identified as transgender, and to assure appropriate medical/mental health care and offender safety.

It is the policy of the Kentucky Department of Corrections to be sensitive to the unique issues of individuals who appear to be intersex or identified as transgender and to evaluate and place those individuals in a manner that is safe and consistent with the department's mission, values and security procedures on a case-by-case basis.

It is the policy of the Kentucky Department of Corrections to have zero tolerance for sexual abuse or sexual harassment towards any offender. There is zero tolerance for the use of any derogatory terms or discriminatory acts directed towards any LGBTI offender.

A. Temporary Placement

1. If an inmate is received by the Department of Corrections (DOC) and DOC personnel is made aware through the receiving process that the offender identifies themselves as a transgender male or transgender female or is an offender that is intersex, DOC staff shall immediately notify the Shift Supervisor and institutional PREA Compliance Manager.
2. Temporary housing assignments shall be made with the safety of the inmate as priority. Transgender or intersex inmates shall not be placed in involuntary segregation unless an assessment of all available alternatives has been made and there are no alternative means available. If the inmate is placed in involuntary segregation, an assessment shall be completed within 24 hours. The inmate shall be kept in involuntary segregation only until an alternative means of separation from likely abusers can be arranged. This shall not ordinarily exceed 30 days. Transgender and Intersex inmates shall be housed in the least restrictive setting possible while considering their safety and well-being.
3. Inmate searches shall be conducted in a professional and respectful manner, in the least intrusive manner possible, and consistent with security needs.

B. Initial Screening and Placement

1. All transgender and intersex inmates shall be classified in accordance with CPP 18.1 and considering the risk of being sexually abused by other inmates or sexually abusive toward other inmates.
2. An assessment to determine the housing of transgender and intersex inmates shall be made on a case-by-case basis via an individualized assessment of the inmate with input from medical and mental health staff, security

supervisors, and classification staff within 72 hours of admission, excluding weekends and holidays. A determination shall not be made based on genital status alone.

3. Classification staff shall consider if placement would ensure the inmate's health and safety and if the placement would present management or security problems.
4. Classification staff shall give serious consideration to the inmate's own view concerning his or her safety.
5. The assessment shall consider the inmate's physical characteristics, gender identity, and whether the inmate identifies as male or female.
6. The assessment may consider the inmate's:
 - a. Security threat level;
 - b. Criminal or disciplinary history;
 - c. Current gender expression;
 - d. Medical and mental health information;
 - e. Vulnerability to sexual victimization;
 - f. Likelihood of perpetrating abuse.
7. Classification staff shall not make any determinations based primarily on the complaints of staff or other inmates when the complaints are based on gender identity.
8. Classification staff shall not place a transgender or intersex inmate in involuntary administrative segregation without adhering to the safeguards in 28 CFR §115.43.
9. Any questioning done by staff to make a determination for appropriate housing shall be conducted in private and in a respectful manner.
10. Any question relating to an inmate's anatomy or surgical status shall only be asked by authorized medical staff as necessary for proper medical treatment.
11. Classification staff shall not strive to place transgender or intersex inmates in dedicated housing areas solely on the basis of the inmate's identification or status.

12. Classification staff shall assess the placement and programming assignments for each transgender or intersex inmate twice a year in accordance with 28 C.F.R. § 115.42 to review any threats to safety experienced by the inmate. Transgender or intersex inmates shall have the right to request their housing assignment be re-evaluated. Any inmate request shall be made with an explanation for the request and the institution shall grant or deny the request based on the explanation at the discretion of the Warden or his designee.
13. A transgender or intersex inmate may request Protective Custody at any time according to the procedures in CPP 18.15.

C. Policy Review

All placements made under this policy shall be reviewed twice a year in accordance with 28 C.F.R. § 115.42 for appropriateness and updating. The Director of Population Management, Medical Services Coordinator and the Director of Programs shall identify all transgender inmates and review each for appropriate placement and treatment.

D. Staff Training and Awareness

1. All new employees shall receive familiarity training related to the transgender and intersex population during the PREA session at pre-service training.
2. The Department of Corrections shall include transgender and intersex population awareness training during the PREA session at in-service training.
3. The DOC shall provide training to security staff about how to conduct cross-gender pat-down searches and searches of transgender and intersex inmates.
4. All volunteers and contractors who have contact with inmates shall also be familiar with their responsibilities regarding transgender and intersex populations in accordance with Department policies.

E. Showers

1. Transgender and intersex inmates shall be given the opportunity to shower privately from other inmates.

2. Transgender and intersex inmates shall be given as much privacy as possible without jeopardizing the safety of the inmate and the safety and security of the institution during the shower periods.
3. DOC personnel shall conduct themselves in a professional manner when interacting with the inmates during this process.

F. Searches

1. DOC staff shall not search or physically examine transgender or intersex inmates for the sole purpose of determining their genital status. As noted in PREA Standard 28 C.F.R. 115.15(e), if an inmate's genital status is unknown, DOC may determine it through 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.
2. Security staff shall conduct these searches in a professional and respectful manner; in the least intrusive manner possible, and consistent with security needs.
3. Operationally, four options may be used for searches of transgender or intersex inmates:
 - a. Pat search of adult inmate conducted by female staff only, especially given there is no prohibition on the pat searches female staff can perform;
 - b. Ask inmate to identify the gender of staff with whom he or she would feel most comfortable conducting the search;
 - c. Search conducted in accordance with the inmate's gender identity;
 - d. Body cavity search conducted only by medical staff. See CPP 9.8.
4. A determination of the staff gender to search a transgender or intersex inmate in nonemergency situations shall be made on a case-by-case basis and shall be documented in writing with an explanation for the determination.


Sincerely,



Nathan Goens
Attorney

CC: Karen Howard, Committee Staff Administrator
Emily Caudill, Administrative Regulation Compiler

enclosures

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5. The assessment shall consider the inmate's physical characteristics, gender identity, and whether the inmate identifies as male or female.
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information as part of a broader medical examination conducted in private by a medical practitioner.

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