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Your Responsibility When Using the Information Provided Below:

When we wrote this handout, we did our best to give you useful and accurate information because we know that people often have difficulty obtaining legal information in prison, and we cannot provide specific advice to all the people who request it. Laws change frequently and are subject to differing interpretations, especially in this area of law. We do not always have the resources to make changes to this handout every time the law changes. If you use this handout it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

COMMON ISSUES TRANSGENDER PEOPLE EXPERIENCE IN CALIFORNIA PRISONS
 (Updated April 2023)

We put together this information to address common issues that we see in letters from transgender, gender variant, and intersex (TGI) people in CDCR prisons. CDCR policies and relevant law on these issues are discussed below. There is also information on what to do if you believe your rights have been violated.

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I. GENERAL INFORMATION

In most cases, we recommend that you file a grievance (form 602 or 602-HC) on the issue you are facing. If you are unhappy with the response you get, we recommend that you appeal it through the final level available. In relevant sections below, we include information that we suggest you include when filing your administrative appeal.

We understand that the administrative appeals process often is imperfect and can be frustrating. However, in most cases filing and exhausting an appeal is the only way to gain access to the courts. The appeals process is also an important way to document the issues you are facing.

You can send our office a copy of any Headquarters Response you receive to an appeal. Our address is:

Prison Law Office
General Delivery
San Quentin, CA 94964

We cannot promise that we will be able to help, but we will review and consider any final level administrative appeal response you send us.

We hope you find that the following information addresses your concerns. If you have concerns or problems beyond what is covered below, you can write to us and explain your situation. Please note that in most cases, we recommend that you file grievance (form 602) on those concerns or problems, and then appeal it until you receive a final level response.

We also include addresses to transgender and legal advocacy organizations at the end of this information letter. You may want to write to them and see if they can help you.

II. CLOTHING AND PERSONAL PROPERTY

A. Transgender Access Card

In June 2019, CDCR started its Transgender Access Card program so that transgender individuals can get authorized state-issued clothing, canteen items, and packages from approved vendors.¹ The Transgender Access card is not an identification card. You are **not** required to carry it at all times. CDCR requires that you have your card on you when you request, purchase, or receive items authorized only for transgender, nonbinary, and intersex individuals.

¹ CDCR, Memorandum, Transgender Access Card for Transgender Inmates at Hub (June 19, 2019).

To get a Transgender Access Card, submit an Inmate Request for Interview, Item or Service form (form 22). If you have requested a Transgender Access Card but staff refuses to provide you with a card, we recommend that you file a grievance (the green form 602).²

B. Clothing

According to CDCR regulations, people in prison are provided a standard set of state clothing based upon whether their prison is designated for men or women.³ Transgender people and people who have “symptoms of gender dysphoria⁴ as identified and documented in SOMS⁵ by medical or mental health personnel within a CDCR institution shall be allowed to possess the state-issued clothing that corresponds to their gender identities in place of the state-issued clothing that corresponds to their assigned sex at birth in designated institutions.”⁶

CDCR policies require staff to provide transgender or intersex people “with state issued brassieres or boxer shorts via the institution clothing room” and to permit them “to purchase such items as needed.”⁷ CDCR policy currently requires individuals to have their gender identities “documented on the Medical Classification Chrono.” The full list of clothing items is documented in the Transgender Inmates Authorized Personal Property Schedule (TIAPPS).⁸

If you do not have a bra, binder, panties, boxers, athletic supporter, or other gender-specific clothing, you should file a grievance (form 602) that provides specific facts, including:

- (1) the date that you asked for gender-affirming clothing,
- (2) who you asked, and
- (3) the reason staff told you for denying your request, if any reason was provided.

You should also attach a copy of your Medical Classification Chrono (form 128-C3) with your gender dysphoria diagnosis to your appeal.

² Our handout, “How to file a CDCR Administrative Grievance and Appeal” is available for free. Please write to us and request it.

³ 15 C.C.R. § 3030.

⁴ Gender dysphoria refers to the distress that results from an incongruence (or difference) between one’s sex assigned at birth and one’s gender identity. Some, but not all, transgender people experience dysphoria. See Appendix A for more information.

⁵ SOMS is CDCR’s database.

⁶ 15 C.C.R. § 3030(c).

⁷ CDCR Department Operations Manual (DOM) § 62080.14. Note: We understand that people at the women-designated prisons may request and receive boxer shorts via the institution clothing room, even if they are not identified as transgender or intersex on their Medical Classification Chrono. Neither DOM nor Title 15 reflect this policy.

⁸ 15 C.C.R. § 3190(d).

C. Other Personal Property

After the Transgender Law Center successfully sued CDCR,⁹ the Department expanded access to clothing and commissary items for transgender people consistent with their gender identity. CDCR policy authorizes transgender individuals who are identified and documented in SOMS by medical or mental health personnel to possess personal property as listed on the TIAPPS. Transgender women are permitted to have make-up and other hygiene items (including hair styling accessories and shower items). Transgender men are permitted to have after shave. CDCR may update TIAPPS up to two times a year.¹⁰

If you are denied any of the items listed on the TIAPPS, you should file a grievance (form 602) that includes:

- (1) the date you asked for the items,
- (2) who you asked,
- (3) what items you would like, and
- (4) the reason they were not given to you.

III. HEALTH CARE

Transgender people often have concerns about gender-affirming healthcare. In general, a person should submit a Healthcare Services Request Form (form 7362) about any healthcare or medical issue, and describe their symptoms or concerns on that form. If an issue is not resolved, the person should submit a healthcare grievance (the blue appeal form 602 HC), and submit the appeal until you receive a Headquarters Level Response. You can send us a copy of any Headquarters Level Response, along with a brief description of the problems you are experiencing with your care. We will review that information to see if we can help.

A. Gender Dysphoria Diagnosis

Before transgender individuals can receive gender-affirming care and clothing in CDCR, they must be assessed for gender dysphoria. To get assessed for gender dysphoria, you can ask your Primary Care Provider (PCP), and the PCP will refer you to mental health staff.

When a mental health clinician meets with you, you can expect to discuss your gender history and other medical conditions. The assessment will determine whether you have “[a] marked incongruence” between your “experienced/expressed gender and assigned gender, of at least 6 months in duration.”

⁹ *Quine v. Beard*, Docket No. 3:14-cv-02726 (N.D. Cal. Jun 12, 2014).

¹⁰ 15 C.C.R. § 3190(d).

B. Gender-Affirming Hormones

If you want to start gender-affirming hormones, we recommend that you file a Health Care Services Request Form (form 7362) requesting to begin hormone treatment. CCHCS policy requires a diagnosis of gender dysphoria prior to beginning hormones.

Once you are diagnosed with gender dysphoria, your medical provider will also perform an assessment and evaluate your eligibility for hormone therapy. Medical providers can order labs and “identify and manage any acute and chronic care conditions present.”¹¹ Providers utilize the World Professional Association for Transgender Health’s (WPATH) criteria for determining whether a you are eligible for gender-affirming hormones.¹²

If you are already on hormones and seek to adjust them, we recommend that you file a Health Care Services Request Form (form 7362) and describe your concerns in detail. If your concerns remain unresolved after filing your request, we recommend you file a grievance (form 602-HC) requesting to have your treatment adjusted.

C. Gender-Affirming Surgery

In January 2023, CDCR updated its care guidelines regarding gender-affirming surgery (GAS). The policy will likely continue to change as CCHCS finalizes and modifies its policies and procedures.¹³

The current process includes these steps:¹⁴

1. You tell medical staff you would like Gender-Affirming Surgery.
 - a. You can make the request to any doctor, mental health clinician, or nurse, or may submit a Health Care Services Request Form (form 7362) requesting evaluation for surgery.
2. Medical staff schedules a follow-up visit and submits request to statewide committees.
 - a. Within 14 days of your request for surgery, medical staff must schedule a follow-up visit.
 - b. After the follow-up visit, the provider will submit a request for surgery (“RFS”).
 - c. After the RFS is submitted, your mental health clinician will conduct an interview.
3. After final review at the prison, staff forward your request and information to the Statewide Medical Authorization Review Team (SMART).

¹¹ CCHCS/DHCS Care Guide: Transgender, 2 (Jan. 2023).

¹² WPATH published updated standards (Standards of Care, Version 8) in late 2022. CCHCS may update its criteria to reflect the updated standards.

¹³ A copy of the Care Guidelines for Review of Requests for Gender Affirming Surgery should be available in your prison’s law library. You can also write to us for a copy.

¹⁴ CCHCS/DHCS Care Guide: Transgender (Jan. 2023); Health Care Department Operations Manual (HCDOM) § 1.2.16.

4. SMART prepares a memorandum about the request and then sends the request to the Gender Affirming Surgery Review Committee (GASRC).
5. Within 90 days, absent extenuating (unusual) circumstances, GASRC will review your request, your doctor's report about your health, and your mental health interview.
 - a. GASRC will either approve or deny your request.
 - b. GASRC must share its decisions in writing with you.
 - c. If the GASRC recommends surgery, your PCP will schedule an appointment to discuss the decision and subsequent steps.
 - d. If the GASRC does not recommend surgery, your mental health clinician will schedule an appointment to discuss the decision within 14 days of GASRC's decision. The clinician will provide the decision to you during this appointment.
 - i. You may appeal GASRC's denial using the 602-HC process discussed above.
 - ii. You may also submit a new request for surgery no sooner than one year after GASRC issued its denial.

1. Gender Affirming Surgery Review Committee

The Gender Affirming Surgery Review Committee (GASRC) includes medical staff (physicians and other providers), mental health staff (psychologists and psychiatrists), and some custody staff (Warden or designee). The committee determines whether to approve or deny requests for gender-affirming procedures.¹⁵ While all members can participate in the meeting, the only staff who can vote on whether to approve or deny your request are medical and mental health staff.

The committee considers the following criteria¹⁶:

1. The patient has been diagnosed with gender dysphoria (GD) and diagnosis has been confirmed by a CDCR mental health provider; the diagnosis is supported with appropriate documentation and clinical justification as set forth by CCHCS policies and care guides.
2. Any known medical and/or co-existing mental health conditions have been fully assessed and have been well-controlled for at least one year.
3. The current treatment for GD being offered and received to ameliorate the patient's GD from both a medical and mental health perspective will be considered.
4. The level of distress demonstrated by the patient. The GASRC shall review whether the patient's GD symptoms are primarily due to the conditions of confinement, mental illness, or any other factor. The GASRC shall review whether there are available treatments other than GAS that are likely to improve or alleviate the patient's symptoms.

¹⁵ HCDOM § 1.2.16. Please note that CCHCS has proposed some revisions to the policies that apply to gender-affirming review procedures. The proposed changes would change the members of the review committee (GASRC), but the essential process should remain substantially the same. The law library at your facility should have the most recent version of the applicable HCDOM.

¹⁶ HCDOM § 1.2.16.

5. There is no evidence suggestive of any external coercion or predation, and the desire for GAS is freely given by the patient.
6. The patient understands that appropriate housing placement will be reviewed on a case-by-case basis by CCHCS/CDCR staff. If applicable, the patient has been provided with necessary and relevant information to enable them to understand that their environment may be evaluated after GAS and any new environment may be unfamiliar and pose significant adaptive challenges.
7. Whether evidence exists that suggests the patient does not have the ability to successfully and safely transfer, and adjust medically and psychologically to their environment postoperatively.
8. Any other information available, which may be relevant to the discussion or determination.

2. Gender-Affirming Procedures: Approvals & Denials

In both the free world and in prison, transgender people face obstacles to getting adequate, appropriate medical care and often have to navigate complex administrative systems with multiple levels of review to get approved to have medically-necessary surgeries and medical care. And, even once approved, transgender people often experience significant delays in scheduling and receiving gender-affirming care.

There are not enough providers who specialize in providing gender-affirming care to transgender people, especially who can perform gender-affirming surgeries, to meet the need of transgender people in the community. It is important to understand that long wait times are unfortunately the reality for transgender people in the free world and in prison. We wish there were more providers who could provide this necessary care.

As of November 2022, CDCR reported that incarcerated individuals have requested 742 gender-affirming surgeries since 2015. As of December 2022, CDCR/CCHCS have approved 150 patients for a total of 185 surgeries, and 20 patients had received gender-affirming surgery in CDCR custody. As of December 2022, 81 surgical requests were pending review by the GASRC. CDCR states that it is working through its current waitlist and working to schedule all of the pending surgeries.¹⁷

3. Gender-Affirming Procedures Available in CDCR

CDCR and CCHCS state that they approve and deny all gender-affirming treatment and care on an individualized basis. As of January 2023, CCHCS permits transgender individuals to ask for any gender-affirming surgery. Below, we list some common procedures.¹⁸

¹⁷ State of California, Budget Change Proposal, CDCR/CCHCS, “The Integrated Gender Affirming Healthcare Program,” Budget Request 5225-095-BCP-2023-GB, filed Jan. 10, 2023.

¹⁸ These are also the same procedures listed in the CCHCS Care Guide.

<i>Feminizing Gender-Affirming Procedures</i>	
<i>Name of Procedure</i>	<i>Definition</i>
Vaginoplasty	Make all parts of vagina including canal
Vulvoplasty	Make all the parts of vagina except canal
Orchiectomy	Remove testicles/testes
Penectomy	Remove penis
Clitoroplasty	Make clitoris
Labioplasty	Make labia
Breast Augmentation	Make or enlarge breasts
Facial Surgery	Change / feminize facial structure
Tracheal Shave	Reduce size of “Adam’s Apple” / bump on front of neck

<i>Masculinizing Gender-Affirming Procedures</i>	
<i>Name of Procedure</i>	<i>Definition</i>
Mastectomy	Flatten chest, remove breasts
Reduction mammoplasty	Make chest smaller
Vaginectomy	Remove vagina
Hysterectomy	Remove uterus
Salpingo-oophorectomy	Remove ovaries
Metoidioplasty	Lengthen clitoris
Phalloplasty	Create penis using tissue from other parts of your body (arm or thigh, usually)
Urethroplasty	Reconstruct, lengthen, or replace urethra
Scrotoplasty	Create testicular prosthesis

We are not medical professionals. We cannot provide advice on what surgery is right for you, or possible outcomes or risks of complications. You should speak with your care team, including the surgeon, your primary care doctor and others, to ensure that you and your team are well-informed about the outcomes, risks, and potential complications.

We encourage you, once you are approved for surgery, to make sure that your surgeon shares pre-surgery preparation requirements and post-surgery planning with you and your doctor at your facility. For example, before surgery, you may have to prepare your body for surgery and drink special fluids. After surgery, you may need special durable medical equipment (DME), including dilators and lube, pads or diapers, wound cleaning supplies, chest compression garments, and other medical supplies. You may also need special clothing, like button-down shirts, or extra sets of clothing. You should make sure that your team has considered your surgery prep and post-surgical care.

If you have an urgent medical concern, you tell staff immediately. For other medical care needs, you should file a Healthcare Services Request Form (form 7362). If you need certain disability-related accommodations, like a wheelchair or walker, you should file a Reasonable Modification or Accommodation Request (form 1824) and explain exactly what you're experiencing and why you need an accommodation.

IV. HOUSING

A. Gender-Congruent Housing Screening and Assignments

In 2020, California passed a Senate Bill (SB) 132, "The Transgender Respect, Agency, and Dignity Act." This Act added §§ 2605 and 2606 to the Penal Code, and became effective on January 1, 2021.¹⁹

This law requires CDCR to ask each person entering custody their gender identity; whether they identify as transgender, nonbinary, or intersex; and the individual's gender pronoun and honorific.²⁰ An incarcerated person who refuses to answer any of these questions may not be disciplined for their refusal.²¹ Additionally, if an incarcerated person chooses not to disclose this information at initial screening, they may do so at any later time, and the staff must still ask for the person's preferred gender pronoun and honorific.²²

The law requires CDCR to house transgender, intersex, and nonbinary people "at a correctional facility designated for men or women based on the individual's preference."²³ This requirement applies "regardless of anatomy," and is applicable to residential programs.²⁴

CDCR has not adopted any regulations or Department Operations Manual provisions that describe its implementation of this law. However, CDCR's current process is detailed in two sources: an internal memo,²⁵ and a flow chart.²⁶

If you would like to transfer to a prison that matches your gender, there are several steps you must take:²⁷

¹⁹ Appendix B includes the complete language of the bill.

²⁰ Cal. Penal Code § 2605(a)(1)-(3).

²¹ Cal. Penal Code § 2605(b).

²² Cal. Penal Code § 2605(c).

²³ Cal. Penal Code § 2606(a)(3).

²⁴ Cal. Penal Code § 2606(a)(1).

²⁵ CDCR, Memorandum: Senate Bill 132 Implementation, Dec. 18, 2020.

²⁶ CDCR, Inmate Housing Request Flow Chart, undated. .

²⁷ CDCR, Memorandum: Senate Bill 132 Implementation, Dec. 18, 2020; CDCR, Inmate Housing Request Flow Chart, undated.

1. You must submit a Request for Interview Services (form GA 22). Your request could state something like “I am transgender (or nonbinary or intersex) and want to be transferred to a facility for women (or men) per the requirements in SB 132/ Cal. Penal Code § 2606.” You can also file a grievance (form 602) saying the same thing. It does not matter which form you use.
 - a. CDCR policy requires that all housing requests be forwarded to the PREA Compliance Manager (PCM) within 24 hours.
2. The PCM will meet with you to review your request. If you have not already completed a Gender Identity Questionnaire (GIQ), you will take one at your meeting with the PCM. After you answer the questions, the PCM will forward your responses and your housing request to a CCII (correctional counselor supervisor).
3. The CCII will interview you and will ask you questions about your gender identity and the reasons you are requesting a transfer. These questions will include
 - a. When you started expressing your gender identity and your understanding of your gender,
 - b. Whether you have health or safety-related concerns in your housing assignments, and
 - c. What type of housing would be the safest for you and why, and what else the committee should consider regarding your health and safety.
4. The CCII will notify Mental Health and Medical staff of the request, and prepare a report for the Institutional Classification Committee (ICC). The report will include your answers to the GIQ, your answers to the interview questions, as well as your criminal history, CDCR disciplinary history, and any victimization and abusiveness concerns.
5. The CCII will schedule an ICC meeting. The committee includes the Warden, Assistant Warden (AW), Captain, PCM, CCII, Classification and Parole Representative (C&PR), and a representative from either Medical or Mental Health. The Receiving Warden and PREA Coordinator may be included in the ICC meeting, but CDCR policy does not require their attendance.
6. The members of the ICC will vote on your transfer.

If CDCR approves your transfer request, the committee will forward the approval to the Classification Services Representative (CSR), and you will be transferred to an appropriate Reception Center.

If CDCR denies your transfer request, the ICC must give you a copy of the Classification Chrono. If you do not agree with the ICC’s decision, you have the right to grieve the decision. We recommend you do this by filing a grievance (form 602-1), or appealing (form 602-2). You have 30 days after receiving the Classification Chrono to grieve the decision.

Under SB 132, “[i]f an incarcerated individual raises concerns for their health or safety at any time, their housing and placement shall be reassessed.”²⁸ We recommend that if safety concerns arise, you should file a request (form GA 22) or grievance (form 602) requesting a housing change, including the reasons you feel unsafe.

If a transgender person has multiple case factors that CDCR believes present challenges to housing them in one of the recommended institutions, staff from the Health Care Placement Oversight Program (HCPOP), Classification Services Unit (CSU), California Correctional Health Care Services (CCHCS), and Population Management Unit (PMU) will meet to determine “most appropriate level of care/institution suitable for housing consistent with the inmate-patient’s case factors.”²⁹

CDCR cannot deny your request to be housed in a facility designated for men or women based on your preference based on “any discriminatory reason.”³⁰ Discriminatory reasons include, but are not limited to, anatomy, genitalia, physical characteristics, sexual orientation, or “a factor present among other people incarcerated at the preferred type of facility.”³¹ If CDCR denies your request to be housed in a facility designated for men or women, CDCR must certify in writing “a specific and articulable basis why the department is unable to accommodate” your preference.³²

B. “Right Person, Right Prison” Class

According to a CDCR memo, CDCR requires individuals to take a class prior to transfer to a gender-congruent prison.³³ The class is currently called, “Right Person, Right Prison.” It is a 16-hour class and consists of eight classes that are two hours long. The class lasts for four weeks. Upon transfer to a gender-congruent facility, CDCR requires individuals to take “Beyond Violence” and “Healing Trauma” classes.

C. Transgender Hubs in CDCR

According to CDCR policy, people “who have been diagnosed as transgender or intersex, as documented on the Medical Classification Chrono, shall be referred to a classification committee for review of all case factors and determination of appropriate institutional placement and housing assignment.”³⁴ The DOM further states that “to the maximum extent practical,” transgender people shall be housed at the following institutions:³⁵

²⁸ Cal. Penal Code § 2606(e).

²⁹ DOM 62080.14.

³⁰ Cal. Penal Code § 2606(c).

³¹ Cal. Penal Code § 2606(c).

³² Cal. Penal Code § 2606(b).

³³ CDCR, Memo, “SB 132 Updates,” undated.

³⁴ DOM § 62080.14.

³⁵ DOM § 62080.14.

- California Medical Facility (CMF)
- Richard J. Donovan (RJD) ^[1]_{SEP}
- San Quentin State Prison (SQ) ^[1]_{SEP}
- Mule Creek State Prison (MCSP)
- California Substance Abuse Treatment Facility (SATF)
- California Men’s Colony (CMC)
- California Health Care Facility (CHCF)
- Salinas Valley State Prison (SVSP)
- California State Prison – Sacramento (SAC)
- California Institution for Men (CIM)
- Kern Valley State Prison (KVSP)
- California Institution for Women (CIW)
- Central California Women’s Facility (CCWF)

D. Housing Assignments Within a Prison

Some transgender people report that they would feel safer if they were housed in a single cell or with another incarcerated person they choose, and if they were able to remove individuals who pose a threat from their housing or yard assignment.

Under SB 132, an individual who is transgender, nonbinary, or intersex, regardless of anatomy, shall “[h]ave their perception of health and safety given serious consideration in any bed assignment . . . including, but not limited to, granting single-cell status, housing the individual with another incarcerated person of their choice, or removing the individual or individuals who pose a threat from any location where they may have access to the individual who has expressed a safety concern.”³⁶

Single Cell

If you feel that you should be in single-cell housing, you should file a grievance (form 602) specifying why you believe that single-cell status is necessary for you, including any specific safety concerns you have. If you have an immediate safety concern, you should verbally tell staff. You can also file a grievance (form 602) and include specific information your safety concerns. If you are not granted a single cell, CDCR must write the reasons for denying your request and share those reasons with you.

It is important to note that this law requires CDCR to give “serious consideration” to your “perception of health and safety” for any housing assignment. It does not give you a “right” to get a single cell, and it does not require CDCR to grant your requests for single cell.

³⁶ Cal. Penal Code § 2606(a)(4).

Housing or Bunking with Another Incarcerated Person of Your Choice

If you feel that you will be safer housing or bunking with another incarcerated person you choose, you should file a grievance (form 602) specifying any safety concerns you have and ask to be housed with the individual. If you have an immediate safety concern, you should verbally tell staff. You can also file a grievance (form 602) and include specific information your safety concerns. If CDCR does not grant your request for a cell mate or bunkmate, CDCR must write the reasons for denying your request and share those reasons with you.

It is important to note that this law requires CDCR to give “serious consideration” to your “perception of health and safety” for any housing assignment. It does not give you a “right” to choose your cell mate, and it does not require CDCR to grant your requests to choose your cellmate or bunkmate.

Individuals Who Pose a Threat to Transgender, Nonbinary, and Intersex people

If you feel that you will be safer if CDCR removed another incarcerated person who represents a safety threat to you, you should file a grievance (form 602) specifying any safety concerns you have and the locations you are concerned about. If you have an immediate safety concern, you should verbally tell staff. You can also file a grievance (form 602) and include specific information your safety concerns. If CDCR does not grant your request to remove an individual who presents a threat to you, CDCR must write the reasons for denying your request and share those reasons with you.

It is important to note that this law requires CDCR to give “serious consideration” to your “perception of health and safety” for any housing assignment. It does not give you a “right” to remove individuals from your housing or yard, and it does not require CDCR to remove individuals who pose a threat to you.

V. PRIVACY

We often receive letters from people concerned about privacy, including issues with confidentiality, showers and searches. We discuss each issue below.

A. Sexual Orientation and Gender Identity

CDCR policy requires staff to “handle” information about gender identity and sexuality in a “confidential manner.” Information about gender identity and sexual orientation “should only be communicated to staff when there a justified ‘Need to Know’” and should “never be communicated to other [incarcerated persons.]”³⁷

³⁷ DOM § 52050.16.7.

If you have experienced staff “outing” or sharing your gender identity information without your consent to other incarcerated individuals, you could file a grievance (form 602).

B. Showers

The Prison Rape Elimination Act (PREA) requires prisons to implement “procedures that enable [incarcerated persons] to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia,” except when conducting routine cell checks or when there are emergencies.³⁸

CDCR’s PREA policy requires modesty screens to be “placed strategically in areas that prevent incidental viewing” of breasts, buttocks, and genitalia, when placing screens does not impact safety and security.³⁹ The screen is supposed to be sufficiently large to prevent viewing breasts, buttocks, and genitalia.

PREA also requires that prisons allow intersex and transgender persons be allowed the opportunity to shower separately from others.⁴⁰ Consistent with PREA, CDCR policy states, “upon request, transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.”⁴¹ You can request to shower separately and/or at a different time if a privacy screen is not available, not feasible, or is not working to keep other people from viewing your breasts, buttocks, or genitalia.

If you are being denied a privacy screen in a shower, changing area, and/or toilet area, or are not being permitted to shower separately from others, we advise you to file a grievance (form 602) explaining:

- (1) how your current situation does not afford you privacy, and
- (2) the impact it has on you.

C. Custody Searches

1. Searches to Determine Genital Status

Under PREA, custody staff may not search or physically examine people in prison to determine genital status. Staff can ask the individual, review medical records, or request a private evaluation by medical staff.⁴² CDCR policy states:

³⁸ 28 C.F.R. § 115.15(d); 77 Fed. Reg. 37131 (June 20, 2012). See Appendix F for selections from the PREA Standards.

³⁹ DOM § 54040.4.

⁴⁰ 28 C.F.R. § 115.42(f). See Appendix F for selections from the PREA Standards.

⁴¹ DOM § 54040.4.

⁴² 28 C.F.R. § 115.15(e). See Appendix F for selections from the PREA Standards.

In the event that an individual's genital status is ambiguous, the search shall be conducted by a staff member that is the same biological sex as indicated in the inmate's records (i.e., paperwork indicates male, inmate will be searched by a male staff member).

If staff are unable to determine the genital status through medical records or an interview with the inmate, the inmate shall be placed on single-cell status or in administrative segregation for his/her safety, until the standard intake medical evaluation is completed. The standard medical examination will establish the genital status of the inmate.⁴³

2. Security Searches

Under PREA, prisons are required to train to custody staff on conducting searches of transgender people, and searches are to be conducted in the least intrusive manner possible consistent with security needs.⁴⁴

a. What if I want to be searched by staff based on my gender identity?

Under the law effective January 2021, people who identify as transgender, intersex, or nonbinary shall "be searched according to the search policy for their gender identity or according to the gender designation of the facility where they are housed, based on the individual's search preference."⁴⁵

In other words, you can request to be searched by staff of a specific gender. If you are currently searched by male officers and would like to be searched by female officers (or vice versa), we advise you to file a grievance (form 602).

CDCR cannot deny your search preference for "any discriminatory reason."⁴⁶ Discriminatory reasons for search preferences include, but are not limited to, anatomy, genitalia, physical characteristics, and sexual orientation.⁴⁷ If CDCR denies your search preference, CDCR must certify in writing "a specific and articulable basis why the department is unable to accommodate" your preference.⁴⁸

⁴³ DOM 52050.16.7.

⁴⁴ 28 C.F.R. §§ 115.15, 115.115, 115.215, 115.315. See Appendix F for selections from the PREA Standards.

⁴⁵ Cal. Penal Code § 2606(a)(3).

⁴⁶ Cal. Penal Code § 2606(c).

⁴⁷ Cal. Penal Code § 2606(c).

⁴⁸ Cal. Penal Code § 2606(b).

If you believe your search preference was denied for either of these reasons, we advise you to file a grievance (form 602) explaining this. We also recommend that you submit appeals until you receive a Headquarters Level Response. You can send us a copy of any Headquarters Level Response, along with a brief description of the problems you are experiencing with your care. We will review that information to see if we can help.

b. May I be searched in a private area?

If you are searched in front of other incarcerated people, you can ask to be searched in a private area, although CDCR policy does not currently appear to require it.

CDCR policy does require that routine unclothed body searches “be conducted in a safe manner and in an area that allows the inmate to preserve some measure of dignity and self-respect.”⁴⁹

c. What if staff searched me inappropriately?

Staff are supposed to receive training on conducting pat-down searches and unclothed body cavity searches of transgender people and are supposed to conduct such searches “in a professional, respectful manner, and in the least intrusive manner possible consistent with security needs.”⁵⁰ Furthermore, staff are supposed to receive training on how to communicate professionally with transgender people.⁵¹

If you believe you have been subjected to an inappropriate search, we advise you to file a grievance⁵² (form 602) explaining:

- (1) when the search took place,
- (2) who conducted the search, and
- (3) what happened during the search.

We also recommend that you submit appeals until you receive a Headquarters Level Response. You can send us a copy of any Headquarters Level Response, along with a brief description of the problems you are experienced. We will review that information to see if we can help.

⁴⁹ DOM 52050.16.5.

⁵⁰ DOM 54040.4.

⁵¹ DOM 54040.4.

⁵² Please note that this grievance will be treated as a staff complaint.

VI. PRONOUNS, NAMES

A. Pronouns

Transgender people want to be referred to by pronouns that match their gender identity. “Misgendering” is when someone refers to a person by pronouns that do not match the person’s gender identity, for example, by referring to a transgender woman as “he” or “him.” SB 132 states that transgender, nonbinary, and intersex individuals “shall be addressed in a manner consistent with the incarcerated individual’s gender identity.”⁵³ CDCR policy prohibits staff from repeatedly misgendering or misnaming transgender people and from using derogatory remarks, insults, or epithets, and states that such behavior may constitute a violation of CDCR’s PREA policy.⁵⁴

If you are being misgendered by staff, you could consider speaking with them, if you feel comfortable doing so. You can also file a grievance (form 602), which will be treated as a staff complaint.

B. Name and Gender Marker Changes

Some transgender people want to change their legal name and gender marker while incarcerated. California passed a bill—SB 310: Name and Dignity Act for Incarcerated People—that creates a right for people in California prison to petition the court to obtain a name or gender change.⁵⁵ If you want a packet that includes necessary paperwork and detailed instructions (created by Transgender Law Center and TGI Justice Project), please write to TGIJP, Transgender Law Center, or our office and request the packet.

Please note that CDCR has specific procedures that you must follow to change your name.⁵⁶

VII. VIOLENCE, SEXUAL ABUSE, AND SAFETY

Unfortunately, transgender people face a heightened risk of physical and sexual violence in CDCR compared to non-transgender people in prison.

A. Safety and Threats of Violence

The Eighth Amendment of the United States Constitution requires prison officials to protect everyone in their custody from violence by other people in prison and staff, including from sexual violence and abuse.⁵⁷

⁵³ Cal. Penal Code § 2606(a)(1).

⁵⁴ DOM 54040.4.1. See Appendix E for transgender-related DOM/CDCR policies.

⁵⁵ See Appendix C for the language of the bill. See also, Ca. Civ. Pro. § 1279.5.

⁵⁶ See Appendix D for the language of the CDCR regulations. See also 15 C.C.R. § 3294.5.

⁵⁷ *Farmer v. Brennan*, 511 U.S. 825 (1994).

1. *What should I do if I am threatened or feel unsafe?*

It is important to report to staff if you receive threats or feel unsafe, and it is important for staff to be aware of any risk of harm you are facing. It is best to report in writing so that you can demonstrate later that you have raised your concerns to staff.

We know that some people have safety concerns with putting this information in writing through the grievance process (especially listing who threatened them). We encourage you to use your judgment about how best to stay safe. This information is intended to give you information about how to protect legal claims and CDCR's own process for addressing safety claims.

If prison officials do not properly respond to your concerns about harassment or the threat of a physical or sexual assault, then you should file a grievance (form 602) that includes the following information:

- (1) who threatened you,
- (2) when you were threatened,
- (3) how you were threatened,
- (4) the date that you told staff and which staff you told,
- (5) what staff's response to your concern was, and
- (6) any harm you faced as a result of staff's inaction.

2. *What if I am moved to Ad-Seg?*

Unfortunately, raising safety concerns sometimes results in CDCR moving people into Administrative Segregation (Ad-Seg). If you report safety concerns, you are only supposed to be placed in Ad-Seg if staff have determined that there are no other ways to keep you safe. If you are placed in Ad-Seg, you are supposed to receive a housing assessment within 24 hours of placement.⁵⁸ The Prison Rape Elimination Act (PREA) Standards also state that you may be in segregation only while officials determine where to safely house you, unless CDCR determines that there is no available alternative means of separation from likely abusers.⁵⁹

If you think you have been wrongly placed in Ad-Seg for raising safety concerns or that you have not been appropriately assessed, you should file a grievance (form 602) that includes the following information:

- (1) the safety concern that you raised,
- (2) when you were placed in Ad-Seg,
- (3) how long you have been in Ad-Seg, and
- (4) whether a housing assessment has been completed.

⁵⁸ DOM 54040.6.

⁵⁹ 28 C.F.R 115. See Appendix F for selections from the PREA Standards.

B. Sexual Assault

Rape and other types of forced or coerced sexual assault are crimes under California law.⁶⁰ The criminal laws apply regardless of whether the person who commits the assault is an incarcerated person or prison employee. California law and CDCR policy also prohibit “any sexual behavior” between staff and incarcerated people, regardless of whether it was consensual or not.⁶¹

1. *What should I do if I am sexually assaulted?*

We recognize that deciding whether to report a sexual assault can be a very difficult decision involving many considerations. From a legal standpoint, if you have been sexually assaulted, we recommend that you let staff know so that they can respond to medical and safety concerns.

You can report sexual assault in several ways:⁶²

- 1) in writing to any CDCR staff member;
- 2) by speaking with any CDCR staff member;
- 3) through the CDCR appeals process;
- 4) through a third party;
- 5) by calling the sexual assault hotline (the phone number should be listed on PREA posters posted throughout your facility); and
- 6) by writing to the Ombudsman for Sexual Abuse in Detention Elimination in the Office of the Inspector General at 1011 Old Placerville Road, Suite 110, Sacramento, CA 95827.

We also recommend that you seek immediate medical attention for any injuries, to prevent or detect the transmission of sexually transmitted infections, and for collection of evidence to prove the rape or assault allegations. A person who has been sexually assaulted and who wants emotional support is also entitled to seek counseling from mental health staff, a religious advisor, or a volunteer or peer counselor

2. *What happens next?*

CDCR’s Prison Rape Elimination Policy (PREA Policy) outlines in detail what happens after someone reports sexual violence.⁶³ Staff are required to report to the appropriate supervisor/staff member any information indicating that a person in prison has experienced sexual violence. If you choose to report, you have the right to a victim advocate and a victim support person of your

⁶⁰ Cal. Penal Code § 261.

⁶¹ DOM 54040.2; Cal. Penal Code §289.6

⁶² DOM 54040.7.

⁶³ See DOM §§ 54040 *et seq.* We also have a handout on Sexual Assault and Harassment in Prison. Let us know if you want a copy.

choosing to be present at any interview by law enforcement, the district attorney, or defense attorneys, and medical examinations, if you are the victim of certain crimes, including rape, sodomy, oral copulation, and forcible acts of sexual penetration.⁶⁴ The victim advocate typically is a person employed by a local rape crisis center. If an outside victim advocate is not available, a designated employee will fill that role.⁶⁵

If you report a sexual assault and believe the prison's response is inadequate, or that the prison did not adequately act to prevent a sexual assault, you should file a 602 explaining:

- (1) when the sexual assault occurred,
- (2) what happened,
- (3) who was involved or witnessed the sexual assault,
- (4) the date that you told staff and who you told, and
- (5) how staff responded.

There are no time limits on filing a grievance (form 602) about a sexual assault.

3. What if the prison doesn't provide me with adequate care after the assault?

CDCR must provide adequate medical care. If you have been prescribed certain types of medications post-assault, including post-exposure prophylaxis (PEP) and/or other forms of treatment for exposure to sexually transmitted infections, medical staff should provide those treatments within specified time frames. For example, if a provider prescribes PEP, you must initiate that treatment within 72 hours of exposure.

If this does not happen or you do not think it will happen within the requisite time frame, submit a Health Care Services Request Form (form 7362) and a grievance (form 602-HC) as quickly as possible to ensure you will be treated. You should also raise this verbally with staff.

If you are assaulted and staff fail to or refuse to provide you with medical care, please reach out to our office. We may be able to advocate for you to receive medical care.

4. Is there anyone else I can contact?

Just Detention International (JDI) is a health and human rights organization that seeks to end sexual abuse in all forms of detention. JDI provides advice, support and information for incarcerated people who are facing, or who are survivors of, sexual abuse.

Just Detention International
3325 Wilshire Blvd., Suite 340
Los Angeles, CA 90010

⁶⁴ DOM § 54040.8.2.

⁶⁵ DOM § 54040.3.

VIII. OTHER RESOURCES

These organizations also provide support and advocacy for transgender people:

Transgender Law Center
P.O. Box 70976
Oakland, CA 94612
(510) 380-8229 (collect)

Transgender Gender Variant and
Intersex (TGI) Justice Project
370 Turk Street #370
San Francisco, CA 94102
(415) 829-7285

Rights Behind Bars
416 Florida Avenue NW, #26152
Washington, DC 20002

ACLU of Northern California
39 Drumm Steet
San Francisco, CA 94111

ACLU of Southern California
1313 West 8th Street
Los Angeles, CA 90017

California Coalition for Women Prisoners
Bay Area Chapter
4400 Market Street
Oakland, CA 94608

APPENDIX A: GENDER DYSPHORIA

The Diagnostic and Statistical Manual of Mental Disorders (DSM-5) is a diagnostic tool published by the American Psychiatric Association. In 2013, the American Psychiatric Association revised the historical diagnosis for transgender people, called Gender Identity Disorder.

The Association stated, “DSM-5 aims to avoid stigma and ensure clinical care for individuals who see and feel themselves to be a different gender than their assigned gender. It replaces the diagnostic name “gender identity disorder” with “gender dysphoria,” as well as makes other important clarifications in the criteria. It is important to note that gender nonconformity is not in itself a mental disorder. The critical element of gender dysphoria is the presence of clinically significant distress associated with the condition”⁶⁶

The Association also stated, “For a person to be diagnosed with gender dysphoria, there must be a marked difference between the individual’s expressed/experienced gender and the gender others would assign him or her, and it must continue for at least six months. In children, the desire to be of the other gender must be present and verbalized. This condition causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.”

CCHCS/DHCS Care Guide for transgender people includes the following information:

DSM-5 gender dysphoria diagnostic criteria include:

- A marked incongruence (difference) between one’s experienced/expressed gender and assigned gender, of at least 6 months in duration, as manifested by at least 2 of the following:
 - A marked incongruence between one’s experienced/expressed gender and primary and/or secondary sex characteristics
 - 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
 - A strong desire for the primary and/or secondary sex characteristics of the other gender
 - A strong desire to be the other gender (or some alternative gender different from one’s designated gender)
 - A strong desire to be treated as other gender (or some alternative gender different from assigned gender)
 - 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)
- The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.⁶⁷

⁶⁶ American Psychiatric Association, Gender Dysphoria, 2013

⁶⁷ CCHCS/DHCS Care Guide: Transgender, Jan. 2023.

APPENDIX B: SENATE BILL 132, CODIFIED AS CAL. PENAL CODE §§ 2605, 2606

Cal. Penal Code § 2605.

(a) During the initial intake and classification process, and in a private setting, the Department of Corrections and Rehabilitation shall ask each individual entering into the custody of the department to specify all of the following:

- (1) The individual's gender identity of female, male, or nonbinary.
- (2) Whether the individual identifies as transgender, nonbinary, or intersex.
- (3) The individual's gender pronoun and honorific.

(b) A person incarcerated by the department may not be disciplined for refusing to answer, or for not disclosing complete information in response to, the questions pursuant to this section.

(c) At any time, a person under the jurisdiction of the department may inform designated facility staff of their gender identity, and designated facility staff shall promptly repeat the process of offering the individual an opportunity to specify the gender pronoun and honorific most appropriate for staff to use in reference to that individual, in accordance with subdivision (a).

(d) Staff, contractors, and volunteers of the department shall not consistently fail to use the gender pronoun and honorific an individual has specified in all verbal and written communications with or regarding the individual that involve use of a pronoun and honorific.

(e) For the purposes of this section, the following terms have the following meanings:

- (1) "Gender pronoun" means a third-person singular personal pronoun, such as "he," "she," or "they."
- (2) "Honorific" means a form of respectful address typically combined with an individual's surname.

Cal. Penal Code § 2606.

(a) An individual incarcerated by the Department of Corrections and Rehabilitation who is transgender, nonbinary, or intersex, regardless of anatomy, shall:

- (1) Be addressed in a manner consistent with the incarcerated individual's gender identity.
- (2) If lawfully searched, be searched according to the search policy for their gender identity or according to the gender designation of the facility where they are housed, based on the individual's search preference. If the incarcerated individual's preference or gender identity cannot be determined, the search shall be conducted according to the gender designation of the facility where they are housed.
- (3) Be housed at a correctional facility designated for men or women based on the individual's preference, including, if eligible, at a residential program for individuals under the jurisdiction of the department. These programs include, but are not limited to, the Alternative Custody Program, Custody to Community Transitional Reentry Program, Male Community Reentry Program, or Community Prisoner Mother Program.

(4) Have their perception of health and safety given serious consideration in any bed assignment, placement, or programming decision within the facility in which they are housed pursuant to paragraph (3) of subdivision (a) or subdivision (b), including, but not limited to, granting single-cell status, housing the individual with another incarcerated person of their choice, or removing the individual or individuals who pose a threat from any location where they may have access to the individual who has expressed a safety concern. If, pursuant to this paragraph, the individual is not granted an alternative based on their perception of health and safety, the department shall document the reasons for that denial and share them with the individual.

(b) If the Department of Corrections and Rehabilitation has management or security concerns with an incarcerated individual's search preference pursuant to paragraph (2) of subdivision (a) or preferred housing placement pursuant to paragraph (3) of subdivision (a), the Secretary of the Department of Corrections and Rehabilitation, or the secretary's designee, shall, before denying a search preference or housing the incarcerated individual in a manner contrary to the person's preferred housing placement, certify in writing a specific and articulable basis why the department is unable to accommodate that search or housing preference.

(c) The Department of Corrections and Rehabilitation shall not deny a search preference pursuant to paragraph (2) of subdivision (a) or a housing placement pursuant to paragraph (3) of subdivision (a) based on any discriminatory reason, including, but not limited to, any of the following:

- (1) The anatomy, including, but not limited to, the genitalia or other physical characteristics, of the incarcerated person.
- (2) The sexual orientation of the incarcerated person.
- (3) For a denial of a housing preference pursuant to paragraph (3) of subdivision (a), a factor present among other people incarcerated at the preferred type of facility.

(d) The incarcerated individual shall receive a copy of the written statement described in subdivision (b) and, within a reasonable time following the individual's receipt of the statement, the Department of Corrections and Rehabilitation shall provide the individual with a meaningful opportunity to verbally raise any objections to that denial, and have those objections documented.

(e) If an incarcerated individual raises concerns for their health or safety at any time, their housing and placement shall be reassessed.

APPENDIX C: SENATE BILL 310, CODIFIED AS CAL. CIV. P. § 1279.5

Cal. Civ. P. § 1279.5.

- (a) Except as provided in subdivision (e) or (f), this title does not abrogate the common law right of a person to change his or her name.
- (b) A person under the jurisdiction of the Department of Corrections and Rehabilitation or sentenced to county jail has the right to petition the court to obtain a name or gender change pursuant to this title or Article 7 (commencing with Section 103425) of Chapter 11 of Part 1 of Division 102 of the Health and Safety Code.
- (c) A person under the jurisdiction of the Department of Corrections and Rehabilitation shall provide a copy of the petition for a name change to the department, in a manner prescribed by the department, at the time the petition is filed. A person sentenced to county jail shall provide a copy of the petition for name change to the sheriff's department, in a manner prescribed by the department, at the time the petition is filed.
- (d) In all documentation of a person under the jurisdiction of the Department of Corrections and Rehabilitation or imprisoned within a county jail, the new name of a person who obtains a name change shall be used, and prior names shall be listed as an alias.
- (e) Notwithstanding any other law, a court shall deny a petition for a name change pursuant to this title made by a person who is required to register as a sex offender under Section 290 of the Penal Code, unless the court determines that it is in the best interest of justice to grant the petition and that doing so will not adversely affect the public safety. If a petition for a name change is granted for an individual required to register as a sex offender, the individual shall, within five working days, notify the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and additionally with the chief of police of a campus of a University of California or California State University if he or she is domiciled upon the campus or in any of its facilities.
- (f) For the purpose of this section, the court shall use the California Law Enforcement Telecommunications System (CLETS) and Criminal Justice Information System (CJIS) to determine whether or not an applicant for a name change is required to register as a sex offender pursuant to Section 290 of the Penal Code. Each person applying for a name change shall declare under penalty of perjury that he or she is not required to register as a sex offender pursuant to Section 290 of the Penal Code. If a court is not equipped with CLETS or CJIS, the clerk of the court shall contact an appropriate local law enforcement agency, which shall determine whether or not the petitioner is required to register as a sex offender pursuant to Section 290 of the Penal Code.

APPENDIX D: 15 C.C.R. § 3294.5: INMATE AND PAROLEE NAME CHANGE

15 C.C.R. § 3294.5: Inmate and Parolee Name Change

- (a) An inmate or parolee who wishes to petition the court for a legal name change shall submit a CDCR Form 2010 (06/18). Notice of Legal Name Change Petition. which is incorporated by reference, with a copy of all documents submitted to the court to the Warden or Regional Parole Administrator (RPA) at the time the petition is submitted to the court.
- (b) Upon receipt from the court, the inmate or parolee shall provide a copy of the Order to Show Cause (OSC) to the Warden or RPA within three calendar days of receipt.
- (c) Upon receipt of the CDCR 2010 by the Warden or RPA, a Correctional Counselor (CC) II or the Division of Adult Parole Operations (DAPO) Regional Litigation Coordinator shall be assigned to conduct a review of the inmate or parolee's records. Within ten business days of receipt, the assigned CC II or DAPO Regional Litigation Coordinator shall document their review in a memorandum with a recommendation provided on the CDCR Form 2010 to the Warden or RPA. This review shall include the research, evaluation, and documentation of the following:
- (1) Commitment offense(s).
 - (2) Whether the inmate or parolee is required to register pursuant to Penal Code Section 290.
 - (3) Identification of victim(s) name(s).
 - (4) Whether the requested name is offensive (for example. racial epithets, vulgar, or a racial slur) or could be disruptive in an institution setting.
 - (5) Whether there is documentation indicating the request is intended for a fraudulent purpose.
- (d) Within three business days of receipt, the Warden or RPA shall review the recommendation provided by the assigned reviewer and document their recommendation on the CDCR 2010. The Warden or RPA shall ensure a copy of the memorandum and the CDCR Form 2010 is scanned and placed into the miscellaneous section of the inmate or parolee's central file via the Electronic Records Management System (ERMS), as defined in section 3000.
- (e) If there is cause to object to the petition, within one business day after completing the review, the Warden or RPA shall forward the memorandum, petition, OSC, any supporting documents and the CDCR Form 2010 to the Office of Legal Affairs (OLA) at Headquarters for review. OLA shall review the recommendation within five business days to determine if an objection is warranted. If OLA determines the objection is warranted, OLA shall seek assistance from the Office of the Attorney General to file an objection to the name change with the court.
- (f) If a court order denying a petition is received from the court, a copy of the court order shall be scanned and placed in the miscellaneous section of the inmate or parolee's central file via ERMs.
- (g) Within five business days of receiving from the court a certified court order granting a name change, the Correctional Case Records Manager (CCRM) shall ensure the new name is reflected

within the Strategic Offender Management System (SOMS), as defined in section 3000. Once the new name is changed within SOMS, the inmate shall be provided an updated identification card reflecting their new name and shall be charged for the replacement cost unless the inmate has been determined to be indigent as defined in section 3000. The CCRM shall notify the inmate or parolee, the inmate's assigned correctional counselor, inmate assignment office, mailroom, receiving and release, visiting room, and the Office of Victim and Survivor Rights Services if the offender is incarcerated; or shall notify the agent of record if the offender is on parole. The court order shall be placed in the miscellaneous section of the inmate or parolee's ERMS file, along with any other documents related to the request for a name change.

(h) The inmate shall be notified to inform all persons who may visit or write them that they must use the inmate's departmental identification number when using the inmate's new name.

APPENDIX E: TRANSGENDER-RELATED CDCR REGULATIONS

Note: These are provisions of the Department Operations Manual (DOM). Your facility's law library will have a copy, and you should be able to access the manual on the tablets.

§ 52050.16.7 Unclothed and Clothed Body Searches of Transgender or Intersex Inmates

In the event that there is an individual going through Receiving and Release (R&R) who self-identifies as transgender or self-identifies with a gender that seems not to match their biological sex, the search will be conducted by staff of the same biological sex as the inmate to be searched.

In the event that an individual's genital status is ambiguous, the search shall be conducted by a staff member that is the same biological sex as indicated in the inmate's records. (i.e., paperwork indicates male, inmate will be searched by a male staff member).

If staff are unable to determine the genital status through medical records or an interview with the inmate, the inmate shall be placed on single-cell status or in administrative segregation for his/her safety, until the standard intake medical evaluation is completed. This standard medical examination will establish the genital status of the inmate. Once the information is collected and documented on the CDCR Form 128-C3, the Institution Classification Committee should determine appropriate classification and housing placement.

Many inmates consider their sexual orientation and gender identity to be private information, and the widespread knowledge of this information could impact the safety and well-being of sexual minorities such as lesbian, gay, bisexual, transgender and intersex (LGBTI) inmates. This information is considered sensitive and should be handled in a confidential manner. The information should only be communicated to staff when there is a justified "Need to Know." This information should never be communicated to other offenders. This will protect the rights and safety of the involved inmate.

§ 54040.4 Education and Prevention

Staff Training

All staff, including employees, volunteers, and contractors, shall receive instruction related to the prevention, detection, response, and investigation of offender sexual violence, staff sexual misconduct, and sexual harassment. This training will be conducted during new employee orientation, annual training, and will be included in the curriculum of the Correctional Training Academy. The training will be gender specific based on the offender population at the assigned institution. Participation in the training will be documented on a CDCR 844, Training Participation Sign-in Sheet.

Employees shall also be trained in how to conduct cross-gender pat-down searches, transgender pat-down searches, and unclothed body cavity searches. When conducting these types of searches, employees shall ensure that these searches are conducted in a professional, respectful manner, and in the least intrusive manner possible consistent with security needs. Searches shall be conducted in accordance with policy, procedure and training as per CCR, Title 15, Section 3287(b).

Institutions shall train all staff on how to communicate professionally with inmates, including inmates who identify themselves as Lesbian, Gay, Bisexual, Transgender, Intersex,

and Gender Non-Conforming in accordance with Inmate/Staff Relations Training, on file with the Peace Office Selection and Employee Development (POSED).

Preventative Measures

Each institution shall enable offenders to shower, perform bodily functions, and change clothing without non-medical staff of the opposite biological sex viewing their breast, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Except in circumstances where there would be an impact to safety and security, modesty screens shall be placed strategically in areas that prevent incidental viewing. Per 28 CFR, Standard §115.42, upon request, transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

In order to minimize cross gender exposure, staff of the opposite biological sex shall announce their presence when entering the housing unit. This announcement is required at the beginning of each shift and/or when the status quo within the housing unit changes.

This policy shall be included in each institution's orientation handbook. This will allow the inmate to take into consideration that staff of the opposite gender may be present when performing bodily and bathing functions

§ 54040.4.1 Communication and Pronoun Usage with Transgender Inmates

The language used by staff toward inmates helps to create a culture of safety and respect and can impact the emotional well-being of inmates, including transgender inmates.

When communicating with a transgender inmate, there are acceptable methods for addressing the transgender inmate. These are:

- Use of gender-neutral language which means referring to them by the legal last name such as “inmate Jones” or “inmate Smith” or simply by the term “inmate”.
- Use of the preferred pronoun, if staff is aware of the preference of the inmate. These pronouns would be “she” and “her” for a transgender woman and “he” and “him” for a transgender man.

The type of prohibited discriminatory, harassing, or retaliatory behavior which may be found to constitute a violation of CDCR's PREA policy includes, but is not limited to:

- Bullying or abusive conduct, including repeated infliction of verbal abuse and use of derogatory remarks, insults, and epithets.
- Repeatedly calling a transgender inmate by the wrong pronouns or name, after the transgender inmate has provided notice of his or her gender identity to staff.

§ 54040.14.2 Transgender Biannual Reassessment for Safety in Placement and Programming

On a bi-annual basis, Division of Adult Institutions (DAI) staff will send each PREA Compliance Manager (PCM) a list of identified transgender and intersex inmates, as known to the Department. This list will reflect the institution's respective inmates, along with the month of the inmate's next scheduled annual classification review.

If an inmate is due to be seen for his/her annual classification review during the identified review period (August through January or February through July), the assigned

caseworker will ask the inmate about any threats they have received during the pre-committee interview. In addition to interviewing the inmate, the assigned caseworker shall review the inmate's case factors in SOMS and ERMS for any additional information, which may indicate the inmate, has any placement or programming concerns. After the annual review is completed, the assigned caseworker will document his/her actions, as they relate to the PREA Biannual Assessment, in the Classification Committee Chrono.

If the inmate is not scheduled to be seen for his/her annual classification review during the identified review period (August through January or February through July), the assigned caseworker shall conduct a Transgender Biannual Assessment-PREA and complete a pre-formatted CDC Form 128-B, General Chrono. This form includes information to be asked of the inmate during a face-to-face interview to assess any threats to their safety. In addition to interviewing the inmate, the assigned caseworker shall review the inmate's case factors in SOMS and ERMS for any additional information, which may indicate the inmate, has any placement or programming concerns.

If, during the interview for either the annual review or the Transgender Biannual Assessment-PREA, the inmate discloses threats to safety, the assigned caseworker shall immediately notify a Custody Supervisor. Any information related to a PREA allegation shall be documented and forwarded to the institution's Locally Designated Investigator according to the DOM, Article 44, Prison Rape Elimination Policy

§ 62080.14 Transgender or Intersex Inmates

Inmates who have been diagnosed as transgender or intersex, as documented on the Medical Classification Chrono, shall be referred to a classification committee for review of all case factors and determination of appropriate institutional placement and housing assignment. In order to ensure inmate-patients receive the necessary medical care/mental health treatment, transgender or intersex inmate-patients, to the maximum extent practical, shall be housed at the following institutions:

- California Medical Facility (CMF)
- Richard J. Donovan (RJD)
- San Quentin State Prison (SQ)
- Mule Creek State Prison (MCSP)
- California Substance Abuse Treatment Facility (SATF)
- California State Prison – Sacramento (SAC)
- Salinas Valley State Prison (SVSP)
- Correctional Institution for Men (CIM)
- Kern Valley State Prison (KVSP)
- California Men's Colony
- California Health Care Facility
- Central California Women's Facility (CCWF)
- California Institution for Women (CIW)
- Folsom Women's Facility

In cases where an inmate-patient has multiple case factors which make it difficult to

house them in one of the above listed institutions, a case conference consisting of Health Care Placement Oversight Program, Classification Services Unit, California Correctional Health Care Services, and Population Management Unit staff, shall be conducted to determine the most appropriate level of care/institution suitable for housing consistent with the inmate-patient's case factors.

Inmates identified as transgender or intersex on the Medical Classification Chrono shall, upon request, be provided with state issued brassieres or boxer shorts via the institution clothing room and permitted to purchase such items as needed.

APPENDIX F: PRISON RAPE ELIMINATION ACT, PRISON AND JAIL STANDARDS (SELECTIONS)

§ 115.6 Definitions related to sexual abuse.

For purposes of this part, the term Sexual abuse includes—

- (1) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident;
and
- (2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;
- (7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
- (8) Voyeurism by a staff member, contractor, or volunteer.

Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

Sexual harassment includes—

- (1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and
- (2) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

§ 115.15 Limits to cross-gender viewing and searches.

- (a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.
- (b) As of August 20, 2015, or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.
- (c) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.
- (d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.
- (e) The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. 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.
- (f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

§ 115.42 Use of screening information.

- (a) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.
- (b) The agency shall make individualized determinations about how to ensure the safety of each inmate.
- (c) In 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 present management or security problems.
- (d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

- (e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.
- (f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
- (g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless 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.

§ 115.43 Protective custody.

- (a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.
- (b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document: (1) The opportunities that have been limited; (2) The duration of the limitation; and (3) The reasons for such limitations.
- (c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.
- (d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document: (1) The basis for the facility's concern for the inmate's safety; and (2) The reason why no alternative means of separation can be arranged.
- (e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population