

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
494**

**EVALUATION, PLACEMENT, AND TREATMENT OF
TRANSGENDER AND/OR INTERSEX INMATES**

Supersedes: AR 494 (Temporary, 07/20/17)
Effective Date: 08/30/17

AUTHORITY: NRS 209.131

RESPONSIBILITY:

The Director is responsible for the establishment of all Departmental policies to ensure public, staff and inmate safety.

The Deputy Director of Operations and the Medical Director are responsible to ensure compliance with the Administrative Regulation and managing the Non-Conforming Gender Review Committee (NGRC).

The Warden or designee is responsible to ensure that all inmates have access to evaluation, placement, and appropriate treatment while recognizing the inherent limitations of resources, and the need to maintain facility security, order and discipline, and the health and safety of all inmates.

The Inspector General is responsible to investigate any complaints related to Prison Rape Elimination Act (PREA) violations, reference Administrative Regulation (AR) 573.

The Medical Director and Mental Health Director have the responsibility to ensure both a medical and psychological evaluation for each inmate and that an appropriate plan has been established and is complied with.

All staff at NDOC must implement this regulation and all relevant operational procedures.

494.01 PURPOSE AND POLICY

To provide guidelines for evaluation, placement, and treatment of inmates who have undergone transgender treatment, or are identified as transgender, intersex or gender-variant, and to manage inmate safety and access to appropriate medical/mental health care. This regulation is intended to assist staff in identifying inmates who present with non-conforming gender upon entry to the NDOC. Whenever possible, this identification process should occur during intake processing, and in a respectful manner, considerate of each inmate. This process would assess, review, and manage inmates that present with nonconforming gender at intake, or if reported after intake, on a case-by-case basis, in a respectful manner, considering each inmate's individual circumstances,

including but not limited to the inmate's physical sexual characteristics, gender identification, physical presentation, behavior and programming needs.

494.02 DEFINITIONS OF GENDER

Gender: denotes the socially constructed roles, behaviors, activities, and attributes that a given society typically or historically assigns to men and women.

Gender identity: refers to the actual and perceived gender of an individual regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.

Nonconforming Gender: refers to a person's physical appearance and characteristics and/or behaviors that do not conform to those typically associated with a person's sex at birth or traditional societal gender expectations.

- A. Gender-variant** – refers to a person who is uncertain of gender identification, or who does not identify as either male or female.
- B. Intersex** –refers to a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.
- C. Transgender** – refers to an umbrella term describing individuals, including such examples as transsexuals, who live and/or identify themselves as a gender other than that assigned at birth. This could result in a medical definition of gender identity disorder, referred to in section 494.05.
- D. Non-Conforming Gender Review Committee (NGRC) for Housing** – comprised of the health services director, department medical director, intake/security representative, mental health director, director of nursing, warden of the facility where the inmate is currently housed, and any other department employee deemed necessary to render a decision for the health and safety of staff, public and the inmate.
- E. Transsexual** – refers to a person who seeks or has undergone a social transition from male to female or female to male. This may also involve a physical transition through genital surgery and/or cross-sex hormone therapy.
- F. Queer** – refers to a person who does not identify with one sexual orientation, and/or may be considered Gender Neutral.

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494.03 IDENTIFICATION, ASSESSMENT, REVIEW, AND MANAGEMENT OF INMATES THAT PRESENT WITH NON-CONFORMING GENDER AT INTAKE

A. Assessment

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 NDOC considers on a case-by-case basis whether a placement would manage the inmate's health and safety, and whether the placement would present management or security problems. The institutional placement based on gender identity should also reference AR 573. The NDOC does not place gay, lesbian, bisexual, transgender, gender-variant, or intersex inmates in dedicated facilities or housing units based on such identification or status, unless required to by law or court action. The NDOC shall evaluate inmates who prove to be undergoing transgender or transsexual-related treatment prior to incarceration, inmates who identify and appear to be transgender or intersex, or inmates having other clinical conditions in which the gender assignment is unclear and place accordingly. When indicated by appropriate health services staff, the department provides gender-related mental health services and other medical or mental health therapy, as medically necessary, throughout the inmate's incarceration.

B. Intake Review and Process

(1) Identification at Intake: Staff shall seek to identify inmates that present with nonconforming gender upon delivery to the NDOC during intake processing, based on available information from the county, the inmate (including the inmate's stated gender identity, if any), and as developed by staff.

(2) Appropriate and Professional Questioning: Staff shall question inmates regarding their sex and gender identity only when necessary to develop information for making appropriate intake and housing assignments, classification assignments, programming assignments; to provide health care and health assessments; and as necessary for the inmate's health or safety, or for the safe, secure, and orderly operation of the facility. Staff shall question inmates in a private and professional manner to avoid subjecting the inmate to the risk of possible abuse or ridicule.

(3) Initial Placement in Holding Cell: When staff identifies an inmate as presenting with nonconforming gender during intake processing, staff shall place the inmate in a holding cell, in the receiving and/or discharge unit, to provide for the inmate's safety and to provide the inmate with a measure of privacy pending further review.

(4) Skin Searches:

(a) After one of the definitions of non-conforming gender in 494.02 is met, skin searches are performed by appropriate security staff on each inmate upon the inmate's delivery to the facility. Ordinarily, a security staff member of the same sex as the inmate will be assigned to conduct the skin search.

(b) The facility or institution 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 a broader medical examination conducted in private by a medical practitioner.

(c) Once gender is identified, the OIC shall then assign a security staff member of an appropriate sex to conduct the skin search of the inmate based on the information available and discussion with the inmate.

(d) If staff has not determined that an inmate presents with nonconforming gender, and security staff discover during the conduct of a skin search that the inmate has physical sexual characteristics of the sex opposite of the security staff member conducting the search, the security staff member will immediately cease conducting the search and notify the intake sergeant. The intake sergeant shall follow the steps in subsection (b) above to conduct the skin search.

(5) Intake Housing Assignment: Following initial placement in a holding cell, an inmate identified by staff as presenting with nonconforming gender during intake processing shall be assigned to a single cell in the Infirmary or pre-determined space as identified by the Warden or designee, on a space available basis, until the appropriate housing for the inmate has been staffed by the Non-Conforming Gender Review Committee (NGRC).

(6) Clothing at Intake Center: Inmates that have been identified by staff as presenting with nonconforming gender at intake shall be issued the following clothing to wear during intake processing - two sets of scrubs; two t-shirts; sweatshirt; two bras (if requested or needed); underwear (type issued based on inmate request); pajamas (type issued based on inmate request); and socks and intake shoes.

(7) Recreation at Intake Center: All inmates will be afforded "out-of-cell" time equal to the unit they are being housed in or as facility operation allows. A minimum out of cell time will be based on classification and consistent with all inmates with the same or similar classification, including but not limited to orientation.

(8) Shower and Hygiene at Intake Center: Inmates that have been identified by staff as presenting with nonconforming gender at intake shall shower separately from other inmates. All inmates are able to shower, perform bodily function, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks or genital area/status.

494.04 PROCEDURE – NON-CONFORMING GENDER REVIEW COMMITTEE

A. After one of the definitions of non-conforming gender in 494.02 is met, facility staff determines placement of the inmate until the NGRC determines final placement. To be diagnosed with a gender identity disorder, there must be evidence of a strong and persistent cross-gender identification (i.e., the desire to be, or the insistence that one

is, of the other sex) and evidence of persistent discomfort about one's assigned sex or a sense of inappropriateness in the gender role of that sex. While imprisonment provides special difficulties in the diagnosis and management of persons with gender identity disorders, an initial medical and mental health evaluation will be performed, followed by implementation of an individual management plan by both custody and health care staff.

- B. If an inmate is suspected of having a gender identity disorder the medical provider shall ensure that the inmate receives a complete medical history and physical examination, including a detailed genital or pelvic examination by a physician and a comprehensive evaluation by a psychiatrist or a psychologist. Specific historical details, including identifying all prior medical practitioners who have treated the inmate for gender identity disorder, and any hormonal or surgical sex reassignment or cosmetic surgical procedures, shall be included. Documents supporting any claims of prior diagnosis, treatment, and cross-gender living and working shall be provided by the inmate. The evaluations and the historical documentation shall be filed in the inmate health record.
- C. The medical unit services shall complete a history and physical examination and, if applicable, the psychiatrist or psychologist shall complete a comprehensive psychological examination, including the inmate's view with respect to his/her own safety. The health services staff does not search or physically examine a transgender, gender variant, 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.

If applicable, facility health services staff shall require the inmate to sign a release of information to obtain medical/mental health records when an inmate:

1. Indicates a history of transgender or transsexual-related treatment; or
 2. Identifies as, or is reported by staff to be gender-variant; or
 3. Has other clinical conditions in which gender assignment is unclear, such as cross dressing or physical features characteristic of a gender different from that assigned at birth.
- D. If cases where an inmate refuses to provide a complete medical history, physical examination, a psychological examination (if applicable), and/or refuses to sign a release of information form for medical/psychological (if applicable), then the health services staff shall seek a court order to obtain these records.
 - E. The NGRC meets and recommends placement and a treatment plan to the Offender Management Division (OMD) within 15 days of identifying criteria. The recommendations must include: single cell restrictions (if appropriate), shower restrictions (if appropriate), hormone therapy (if medically appropriate as determined by NDOC, if legally prescribed prior to incarceration and consistent with Nevada's Division

of Health Care Policy and Financing (Medicaid) allowable services, and any other recommendations as the NGRC deems necessary to maintain the inmate's safety. The NGRC may, at its discretion, consult with the inmate and outside health care providers to assist in making its recommendations.

- F. The Deputy Director of Operations determines the placement of the inmate, in consultation with the OMD, within five days of receiving the recommendation from the NCGR and informs the warden to arrange for such placement. The determination shall be placed in the inmate's I-file, mental health, and medical record.
- G. A facility may seek reconsideration of the placement for any reason. The warden must contact the OMD. If the Warden or designee determines further evaluation is needed, he/she must contact the NGRC Chair, Deputy Director of Operations, to convene the committee for evaluation and recommendation. The Attorney General's Office will be included as part of the NGRC. The final decision is made by the Director or designee.
- H. The chair of the NGRC identifies all transgender inmates quarterly for review of appropriate placement and treatment, unless determined that a review is required earlier.

**494.05 INDIVIDUAL MANAGEMENT PLAN AND PLACEMENT FOR
 GENDER IDENTITY DISORDER**

- A. If the medical/mental health evaluations support a diagnosis of gender identity disorder, the medical provider shall formulate an individual management plan to include requirements for visits to a mental health provider for supportive psychotherapy. The visits initially shall be required by the medical professional and consistent with policies of the State Medicaid Plan to ensure consistency with allowable services upon release of the inmate in the community.
- B. The NDOC Medical Director must sign off the final plan.
- C. The NDOC Medical Director shall consult with OMD regarding the plan and, if approved, appropriate placement of the inmate. A copy of the Individual Management Plan for Gender Identity Disorder shall be provided to the appropriate mental health psychologist, and included in the inmate files and in the inmate health record.
- D. The inmate shall be seen by an appropriate medical provider at least annually for the medical provider to determine if any changes are needed to the approved individual management plan. Any recommended changes to the plan shall be specifically identified in the medical and mental health records. Any inmate who fails to cooperate or agree to undergo this yearly review shall be subject to cessation or reduced treatment until the review can be conducted unless cessation of treatment is deemed a serious risk to the health of the inmate.

494.06 HORMONAL TREATMENT

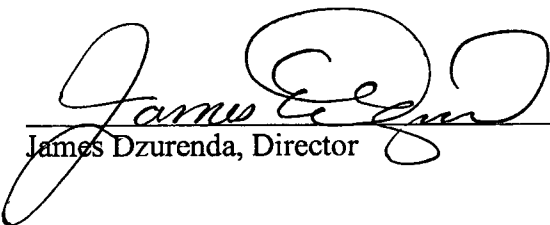
Hormonal treatment of inmate with a gender identity disorder may be undertaken only if approved by the NDOC Medical Director and only if one or more of the following apply:

- A. The inmate was scheduled for sex reassignment surgery no later than six (6) months prior to incarceration and was receiving hormonal treatment at a recognized university affiliated gender identity disorder clinic (as documented by receipt of definitive records) and was receiving hormonal treatment under that legally licensed clinic's supervision;
- B. The inmate has been surgically castrated (confirmed anatomically or, in biological females, by receipt of definitive records); and
- C. The inmate had a valid and legal prescription prior to incarceration for hormonal treatment.

Prior to beginning hormonal treatment of the inmate, the inmate shall be advised of potential side effects and dangers of the treatment. The treatment shall begin only after the inmate provides written informed consent to receive the treatment. Only hormones approved by the NDOC Medical Director shall be used in the treatment, as identified as eligible by the Nevada State Medicaid Manual to ensure transition of the inmate to the community results in continuity-of-care and services for the safety of the public, staff and inmate. "Dosages shall be at the discretion of the CMO and NDOC Medical Director."

APPLICABILITY:

- 1. This Administrative Regulation requires a medical and mental health operational procedure that applies to all facilities and institutions.
- 2. This Administrative Regulations requires an audit.


James Dzurenda, Director

8/30/17
Date