

 <p style="text-align: center;">Massachusetts Department Of Correction</p> <h1 style="text-align: center;">POLICY</h1>	Effective Date	Responsible Division  Health Services Division
	11/19/2020	
	Annual Review Date	
	10/19/2020	
Policy Name	M.G.L. Reference: M.G.L. Chapter 124, §§ 1 (c), (q); Section 91 of Chapter 69 of the Acts of 2018 (a.k.a. Criminal Justice Reform Act)	
<p style="text-align: center;">103 DOC 653 IDENTIFICATION, TREATMENT AND CORRECTIONAL MANAGEMENT OF GENDER NON-CONFORMING INMATES</p>	DOC Policy Reference: 103 DOC 506	
	ACA/PREA Standards: PREA: 115.15; 115.42	
	Applicability: Staff	
<p style="text-align: center;">Attachments</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	<p style="text-align: center;">Inmate Library</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	
<p style="text-align: center;">Public Access</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p>Location: DOC Central Policy File/Facility Policy File Health Services Division Policy File/ Inmate Library</p>	
<p><b>PURPOSE:</b> The purpose of this policy is to establish guidelines for the identification, treatment, and institutional management of gender non-conforming inmates.</p> <p><b>RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:</b> Assistant Deputy Commissioner of Clinical Services Director of Behavioral Health Mental Health Regional Administrators Superintendents Program Directors Staff of the Contractual Medical, Mental Health, Sex Offender Treatment and Program/Substance Abuse Providers</p> <p><b>CANCELLATION:</b> 103 DOC 653 cancels all previous Department policy statements, bulletins, directives, orders, notices, rules or regulations regarding Internal Regulations/Policies which are inconsistent with this policy.</p> <p><b>SEVERABILITY CLAUSE:</b> If any part of 103 DOC 653 is, for any reason, held to be in excess of the authority of the Commissioner, such decision shall not affect any other part of this policy.</p>		

## TABLE OF CONTENTS

653.01	Definitions	3
653.02	Policy Statement	4
653.03	Management and Placement	4
653.04	Verification of Gender Non-Conforming Status	7
653.05	Property, Hygiene and Grooming	7
653.06	Continuation of Cross-Gender Hormonal Therapy Upon Admission	8
653.07	Communication	9
653.08	Security Review	9
653.09	Emergencies	9

**DEFINITIONS**

DSM-5: The Diagnostic and Statistics Manual of Mental Disorders Fifth Edition (DSM-5). A publication of the American Psychiatric Association (APA) which lists specific criteria that enable a clinician to establish a diagnosis of a mental disorder.

Program Mental Health Director: The contractual mental health provider who is responsible for the administration, management, supervision, and development of mental health programs and delivery of behavioral health services at all Department correctional facilities. The Program Mental Health Director provides and supervises mental health care services throughout the Department; evaluates patient care, and assesses what is required by way of treatment; determines the condition and adequacy of treatment facilities and programs; identifies the need for appropriate equipment; acts as a consultant for physicians and behavioral health care staff; delivers emergency and ongoing direct clinical services; develops and reviews Treatment Plans; and evaluates inmates when clinically indicated.

Exigent Circumstances: Circumstances, including institutional emergencies as set forth in the Department's regulations or policies, or emergencies in general, under which the doing of an act, or the not doing of an act, would create an unacceptable risk to the safety of any person or property.

Gender Dysphoria: Defined by the DSM-5 as the following:

- A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following:
  1. A marked incongruence between one's experiences/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
  2. 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 (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
  3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
  4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
  5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).

6. 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).

B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Gender Identity: A person's identity, appearance or behavior as it relates to gender, whether or not that gender identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth. Gender identity may be verified by providing evidence which may include, but is not limited to, medical history, mental health history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or any other evidence that the gender identity is sincerely held as part of a person's core identity; provided, however, that gender identity shall not be asserted for any improper purpose.

Gender Non-Conforming: The extent to which a person's identity, role, or expression differs from cultural norms prescribed for people of a particular biological sex. Only some gender non-conforming individuals will experience gender dysphoria at some point in their lives.

Qualified Mental Health Professionals: Treatment providers who are psychiatrists, psychologists, psychiatric social workers, psychiatric nurses, and others who by virtue of their education, credentials and experience are permitted by law to evaluate and care for the mental health needs of patients.

## **653.02 POLICY STATEMENT**

It is the policy of the Massachusetts Department of Correction to appropriately manage gender non-conforming inmates in a humane, safe, correctional environment, sensitive to their unique adjustment issues, consistent with the core values, vision, and mission of the Department and its commitment to provide adequate medical care and mental health services to all inmates in its custody.

Gender expression is the sole province of the individual. Therefore, self-identification for assessment of needs is required.

## **653.03 MANAGEMENT AND PLACEMENT**

At the time of their commitment, sentenced individuals are court ordered into the custody of the Department of Correction, and are transported to the Department's reception center for males or females based upon the court's order.

Once committed to the Department of Correction, placement decisions, classification, and other programming assignments for gender non-conforming inmates shall be considered on a case-by-case basis. Factors which shall be considered include, but are not limited to, the inmate's stated request, whether a placement would ensure the inmate's health and safety, and/or whether the placement would present management or security problems.

Placement and programming assignments for each gender non-conforming inmate shall be reassessed at least twice each year in order to review any threats to safety experienced by the inmate.

A gender non-conforming inmate's own views with respect to his or her own safety shall be given serious consideration.

1. Initial Classification and Placement: For all new commitments, an IMS Housing Risk Factor Assessment is completed which examines issues of risk of victimization and risk of violence/predatory behavior/abusiveness. Should an inmate identify as gender non-conforming, the additional process of the verification of the gender non-conforming status shall commence as outlined in 103 DOC 653.04. The findings of the verification of the gender non-conforming status process, along with the Housing Risk Factor Assessment, shall inform housing, work, education, and program assignments.
  - A. Bi-Annual Review: A Housing Risk Factor Assessment will be completed at least every six months for all gender non-conforming inmates. In preparing for the status review, medical staff, mental health staff, and other security personnel will collaborate to assess appropriate programming and placement within the agency for each gender non-conforming inmate. The review shall assist with decisions regarding housing, work, education, and program assignments and shall focus on individual safety. Recommendations shall be considered on a case by case basis, and shall consider whether placement will ensure the inmate's health and safety, and whether the placement would present management or security issues. Security level, criminal and discipline history, medical and mental health assessment of needs, vulnerability to sexual victimization and potential of perpetrating abuse based on a history of being sexually or physically abusive, shall all be considered. The inmate's own views with respect to his or her own safety shall also be given serious consideration. This bi-annual review shall include a review of any threats to safety experienced by the inmate.

In addition, specific cases with partial completion of sex reassignment surgery, removal or augmentation of breasts, removal

of testicles, etc., shall be evaluated on a case by case basis by the Program Medical Director. In the event that the Program Medical Director's recommendation may potentially present security, safety, or operational difficulties within the correctional environment, the Director of Behavioral Health shall refer the request to the Deputy Commissioner of the Prison Division and the Deputy Commissioner of Clinical Services and Reentry for a security review, pursuant to 103 DOC 653.08, Security Review.

- B. Internal Placements: Site mental health directors may provide input as to their clinical recommendations related to housing gender non-conforming inmates within their respective facilities. Consideration of these clinical recommendations should be given by the Department of Correction when making determinations regarding such issues; however, final determination regarding internal housing placement is the responsibility of the Superintendent.
- C. Gender non-conforming inmates will not be housed in dedicated facilities, units, or wings solely on the basis of their gender non-conforming 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.
- D. Searches will be conducted pursuant to 103 DOC 506, *Search Policy*.
- E. Upon request by the inmate, an unclothed search will be conducted by an officer of the gender with which the inmate identifies, except in exigent circumstances. Gender non-conforming inmates shall inform the Department of their strip search preference, and any transition from that preference shall require reassessment by the contracted medical vendor.

Gender non-conforming inmates shall not be searched or physically examined 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 the contracted medical provider.

The Department shall provide training to security staff regarding how to conduct gender-specific pat-down searches. Pat-down searches of gender non-conforming inmates shall be conducted in a

professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

**653.04**

**VERIFICATION OF GENDER NON-CONFORMING STATUS**

1. If, upon admission to the Department, or at any time during an inmate's incarceration, an inmate self-identifies as being gender non-conforming, a facility-based medical provider, or qualified mental health professional assigned to the inmate, shall review the inmate's gender non-conforming status to determine whether the inmate's gender identity is sincerely held as part of the inmate's core identity. This assessment shall include a thorough record review including obtaining releases of information for external providers as well as a face to face interview. Gender identity may be verified by providing to the medical provider or qualified mental health professional evidence of the inmate's gender non-conforming status which may include, but is not limited to, medical history, mental health history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or any other evidence that the gender identity is sincerely held.

For persons returned to the custody of the Department of Correction with a previously confirmed gender non-conforming status, a new gender identity verification process shall not be required unless indicated by the contracted medical provider or qualified mental health professional assigned to the inmate.

2. If an inmate's gender non-conforming status is denied by the contracted medical provider or qualified mental health professional assigned to the inmate, the inmate may appeal to the Statewide Medical Director within thirty (30) days of the denial. The Statewide Medical Director shall issue his/her decision for the appeal within sixty (60) days of receipt of the appeal. The grounds for the appeal decision shall be in writing and given to the inmate. The Statewide Medical Director's decision is final.

If an inmate's gender non-conforming status is denied, the inmate may request a re-verification process by the facility-based medical provider or qualified mental health professional assigned to the inmate after one year of the prior denial.

**653.05**

**PROPERTY, HYGIENE, AND GROOMING**

1. At the time of commitment, an inmate who self identifies as gender non-conforming shall be assessed by the contracted medical and/or mental health provider to confirm the inmate's gender identity. If the inmate's gender non-conforming status is affirmed, the inmate shall be provided access to clothing

and canteen items of the inmate's gender identity. In addition, personal property consistent with the inmate's gender identity shall be available for the inmate to purchase through the canteen. The personal property must be commensurate with the security level of the facility. As such, not all items are available universally.

2. Any item utilized to feminize or masculinize which is not property approved by the Department (e.g., chest binders, breast forms, etc.) though deemed necessary by medical providers may be ordered by a Primary Care Provider (PCP) and noted as a medical device in IMS.
3. All gender non-conforming inmates shall be provided notice by the facility PREA Manager or Deputy Superintendent of Reentry that they shall be given the opportunity to shower separately from other inmates. An appropriate schedule shall be included within said notice.

#### **653.06**

#### **CONTINUATION OF CROSS-GENDER HORMONAL THERAPY UPON ADMISSION**

Upon admission to the Department, any inmate who has a current, lawful prescription for cross-gender hormonal therapy which is part of an established regimen for the inmate's gender non-conforming status and/or Gender Dysphoria shall have the cross-gender hormonal therapy continued at the time of placement into the Department's custody unless a contracted medical provider determines that such cross-gender hormonal therapy which is part of an established regimen for the inmate's treatment is clinically contraindicated. Cross-gender hormonal therapy as described above shall be continued within the Department until an appropriate treatment plan has been developed by the PCP.

1. All newly committed gender non-conforming inmates receiving hormone therapy shall be evaluated by the medical PCP on-site and then referred to the identified contracted endocrinologist for assessment and continuity of therapy. The endocrinologist determines whether there are any medical contraindications to cross-gender hormone treatment. If no such contraindications exist, the endocrinologist shall recommend the appropriate medication, dose and management with cross-gender hormone therapy. The site Medical Director shall review the endocrinologist's recommendation and shall write a corresponding medical order or shall document the rationale for alternative treatment.
2. A refusal by an inmate to provide a Release of Information (ROI) so that medical and mental health records prior to incarceration may be obtained and reviewed may be cause for discontinuing cross-gender hormonal therapy and for interrupting or tapering the medication(s), within the discretion of the Statewide Medical Director.



**653.07 COMMUNICATION**

All correctional staff shall communicate with all inmates in a respectful manner at all times. In order to communicate effectively and professionally with gender non-conforming inmates, correctional staff shall utilize the inmate's preferred pronoun, if using a pronoun, when speaking to, speaking about, or writing about the inmate. Otherwise, correctional staff shall utilize the inmate's first and/or last name when speaking to, speaking about, or writing about the inmate.

**653.08 SECURITY REVIEW**

1. A gender non-conforming inmate may request to be housed in a facility of the gender with which the inmate identifies. Upon receipt of the request, the site administration shall notify the Department's Director of Behavioral Health. In the event that a request may potentially present security, safety, or operational difficulties within the correctional environment, the Director of Behavioral Health shall refer the request to the Deputy Commissioner of the Prison Division and the Deputy Commissioner of Clinical Services and Reentry for a security review. The security review shall take into account the inmate's individual history of incarceration and present circumstances.
2. Arrangements for transition to the facility of the gender with which the inmate identifies shall occur unless the Commissioner certifies in writing that the particular placement would not ensure the inmate's health or safety or that the placement would present management or security problems.

The Commissioner shall articulate specific and justifiable reasons based on security, safety and/or operational concerns, in writing. The security review shall be completed within ninety (90) calendar days of the referral from the Director of Behavioral Health.

**653.09 EMERGENCIES**

Whenever, in the opinion of the Commissioner or the Deputy Commissioner of Prisons, an emergency exists which requires suspension of all or part of 103 DOC 653, he/she may order such suspension, provided that any such suspension ordered by the Deputy Commissioner of Prisons lasting beyond forty-eight (48) hours is authorized by the Commissioner.