

Corrections Management (Management of Transgender Detainees and Detainees Born with Variations in Sex Characteristics) Policy 2018

Notifiable instrument NI2018-689

made under the

Corrections Management Act 2007, s14 (Corrections policies and operating procedures)

1 Name of instrument

This instrument is the *Corrections Management (Management of Transgender Detainees and Detainees Born with Variations in Sex Characteristics) Policy 2018**.

2 Commencement

This instrument commences on the day after its notification day.

3 Policy

I make this policy to facilitate the effective and efficient management of correctional services.

4. Revocation

This instrument revokes the *Corrections Management (Reception and Management of Transgender and Intersex Detainees) Policy 2014* [NI2014-542].

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10 December 2018

*Name amended under Legislation Act, s 60

MANAGEMENT OF TRANSGENDER DETAINEES AND DETAINees BORN WITH VARIATIONS IN SEX CHARACTERISTICS

POLICY NO. D2

ACT CORRECTIVE SERVICES



ACT
Government

Justice and Community Safety

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1 PURPOSE

ACT Corrective Services (ACTCS) respectfully and safely manages transgender detainees and detainees born with variations in sex characteristics while in ACTCS custody.

Being transgender and/or born with variations in sex characteristics is not a lifestyle and is not a choice. ACTCS respects and upholds a person's ability to identify with a particular gender, or no gender.

2 SCOPE

This policy applies to all correctional centres in the ACT.

3 DEFINITIONS

Transgender

The term transgender is a general term for a person who may identify their gender as different to their sex at birth. Some people may identify as neither exclusively male nor female. Some transgender people may undertake medical interventions as part of their transition that alters their sex characteristics.

Sex Characteristics

A person's physical features relating to sex, including genitalia, and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty.

Gender

Gender is part of a person's personal and social identity. It refers to the way a person feels, presents and is recognised within the community. A person's gender may be reflected in outward social markers, including their name, outward appearance, mannerisms and dress.

People born with Variations in Sex Characteristics

The term 'people born with variations in sex characteristics' encompasses many different variations and diagnoses as well as people of all gender identities, ethnicities, abilities, and sexualities. This can include people who are born with genetic, hormonal or physical sex characteristics that are not typically 'male' or 'female'. People born with variations in sex characteristics have a diversity of bodies and gender identities, and may identify as male or female or neither. Some people born with variations in sex characteristics identify with the term intersex.

4 MANAGEMENT PRINCIPLES FOR TRANSGENDER DETAINEES AND DETAINEES BORN WITH VARIATIONS IN SEX CHARACTERISTICS

- 4.1 Self-identification as a transgender person or a person born with a variation in sex characteristics is the only criteria for identification under this policy in an ACT correctional centre.
- 4.2 Transgender detainees and detainees born with variations in sex characteristics must be managed according to their current self-identified gender. If a detainee was previously in ACTCS custody, staff must not rely on their gender identity at that time.
- 4.3 The management of transgender detainees and detainees born with variations in sex characteristics is not dependent on:
- whether someone has legal recognition of their gender identity; and/or
 - whether someone has had medical or surgical intervention, such as hormone treatment.
- 4.4 ACTCS manages transgender detainees and detainees born with variations in sex characteristics in ACTCS custody by providing:
- individualised management;
 - preserving dignity, safety and privacy; and
 - enabling the maintenance of a detainee’s gender or non-gender identity.
- 4.5 Transgender detainees and detainees born with variations in sex characteristics have equal access and rights to:
- associate with other detainees; and
 - participate in programs, education, employment and all other activities, as other detainees, unless risks to safety, security and good order of the correctional centre have been identified and assessed under ACTCS policy.
- 4.6 The respect and dignity of any detainee who identifies as transgender and/or born with variations in sex characteristics must be respected.
- 4.7 ACTCS recognises that people who identify as transgender and/or born with variations in sex characteristics, are at an increased level of vulnerability and risk of experiencing sexual coercion and psychological distress from other detainees. This heightened risk will be reflected in detainee risk assessments.
- 4.8 Staff must give consideration to the elevated risk factors for transgender detainees and detainees born with variations in sex characteristics in a

correctional centre when managing the Incentives and Earned Privileges program.

- 4.9 Detainees who identify as transgender and/or born with variations in sex characteristics must not share a compartment of a transport vehicle with another detainee.

5 ADMISSION AND IDENTIFICATION

- 5.1 Staff must confirm a detainee's sex or gender identification on admission into ACTCS custody, prior to any search processes. All detainees must have their identified sex or gender recorded accurately on the electronic detainee record system.
- 5.2 Staff must ask detainees what their preferred name is, and record their preferred name on the electronic detainee record system.
- 5.3 Staff must also ask the detainee what their preferred pronouns are, including:
- She/her
 - He/him
 - They/their
- and record their preferred pronouns on the electronic detainee record system.
- 5.4 Staff must respect the choice of the detainee and address them according to their preferred name and pronouns.
- 5.5 Staff must immediately notify Justice Health when a transgender detainee and/or detainee born with variations in sex characteristics is admitted into ACTCS custody, or is identified while in ACTCS custody.
- 5.6 If a detainee has not, or refuses to, confirm their gender identity, staff must cease processing and request an assessment according to section 79(5) of the *Corrections Management Act 2007 (ACT)*.

6 ACCOMMODATION AND PLACEMENT

- 6.1 Each transgender detainee and detainee born with variations in sex characteristics will have their accommodation and placement assessed on an individual basis, with reasons for placement clearly documented on the electronic detainee record system.
- 6.2 During the induction period and as far as operational and capacity requirements allow, detainees who identify as transgender and/or born with variations in sex

characteristics must be accommodated in a single cell, in an accommodation unit according to their gender identification, unless:

- the General Manager Custodial Operations directs that the detainee share a double-bunked cell with another transgender and/or detainee born with variations in sex characteristics, who is also completing induction.

6.3 Transgender detainees and detainees born with variations in sex characteristics have the right to be housed in an accommodation area of their identified gender, unless it is determined through risk assessments that the detainee should not be placed there.

6.4 When making a placement decision, staff must consider the following factors:

- any risk the detainee may pose to the safety, security and good order of the correctional centre;
- the nature of the offending;
- the detainee's personal circumstances;
- the risk to the detainee or to other detainees at the correctional centre;
- the views of the assessing medical practitioner or psychiatrist;
- the detainee's preference for accommodation in a male or female accommodation unit;
- any concerns expressed by staff and the detainee in relation to the detainee's safety; and
- any other factors considered relevant.

6.5 If a detainee makes an application to be identified as transgender and/or born with variations in sex characteristics while in ACTCS custody, the detainee must then be assessed and managed in accordance with this policy.

7 SEARCHES AND URINALYSIS

7.1 Transgender detainees and detainees born with variations in sex characteristics have the right to choose the gender of staff conducting strip searches and urinalysis. A detainee's preference must be followed.

7.2 In some circumstances it may be necessary to have a male and female staff member conduct different parts of a body search.

7.3 Detainees are unable to choose the staff member who will conduct the search.

8 PRIVACY

- 8.1 Staff must uphold privacy and confidentiality principles for all detainees, including detainees who identify as transgender and/or born with variations in sex characteristics.

9 RELATED DOCUMENTS AND FORMS

- A – Admissions Procedure
- B – Escort Policy and Operating Procedure
- C – Searching Policy
- D – Searching Procedure



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ACT Corrective Services
10 December 2018

Document details

Criteria	Details
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