

NEW JERSEY JUVENILE JUSTICE COMMISSION
Office of the Executive Director

POLICY NUMBER: ED:01.02A (2019)

EFFECTIVE DATE: November 20, 2019

LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUESTIONING
SUBJECT: AND INTERSEX (LGBTQI) JUVENILES

Attention: All JJC Staff
For Information

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Pages: 12

PART 1. GENERAL PROVISIONS

Section 1. Purpose and Scope

(a) The purpose of this Policy is to ensure that the Commission provides the highest quality of services to juveniles regardless of their gender identity or expression and/or sexual orientation. Pursuant to the terms of this Policy, Commission staff shall provide fair and equal treatment to all juveniles in our care, protect juveniles from harassment and discrimination, and provide a safe, healthy and accepting environment in which juveniles are treated with respect and dignity. By doing so, Commission staff will ensure that juveniles in our care receive the protections to which they are entitled under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12—a law that prohibits discrimination based on gender identity or expression and sexual orientation.

(b) This Policy shall apply to all Commission facilities, staff, volunteers and contractors, as well as to juveniles under the care of the Commission.

Section 2. Definitions

The following words and terms, when used in this Policy, shall have the meanings set forth below unless the context clearly indicates otherwise:

"Chosen Name" means a name selected by a person for themselves that is different from the name the person was given at birth. An individual may have chosen a new name for themselves that more accurately reflects their gender identity or expression.

"Commission" means the New Jersey Juvenile Justice Commission, established pursuant to N.J.S.A. 52:17B-170.

“Contractor” means an entity hired to perform professional or trade services at a Commission facility, and includes employees, subcontractors, agents and assigns of a contractor.

“Director of Operations” means the Commission employee, by whatever name or title, charged with oversight and management responsibilities for the overall operation and supervision of the Commission’s secure facilities.

“Executive Director” means the Executive Director of the Commission.

“Facility” means any facility or program of the Commission used to house, train or educate juveniles; it does not refer to the central or other administrative or operational offices of the Commission.

“Gay” means a person who is emotionally, spiritually, physically, and/or sexually attracted to those of the same gender.

“Gender Assigned at Birth” means the gender that someone was thought to be at birth, typically recorded on the original birth certificate. The gender someone was assigned at birth may or may not match their gender identity.

“Gender Expression” means a person’s gender-related appearance and behavior, whether or not stereotypically associated with the person’s assigned gender at birth. It is the manner in which a person represents or expresses their gender to others, such as through their behavior, clothing, hairstyles, activities, voice or mannerisms.

“Gender Identity” means a person’s internal, deeply held knowledge of their own gender, regardless of the gender they were assigned at birth. All people have a gender identity, not just transgender people.

“Gender Non-Conforming” refers to a person whose gender expression does not conform to traditional gender expectations. Not all gender non-conforming people identify as transgender.

“Gender Transition” refers to a process during which a person begins to live according to their gender identity, rather than the gender they were assigned at birth. Gender transition looks different for every person. Possible steps in a gender transition may or may not include changing one’s clothing, appearance, and name, and in some cases, changing identification documents or undergoing medical treatments. The steps each person takes depends on their individual needs and access to resources.

“Intern” means an unpaid staff person working at the Commission incidental to a formal diploma or degree program.

“Intersex” refers to a person whose biological sex characteristics may not fit medical definitions of male and female. These characteristics may include, but are not necessarily limited to, internal reproductive organs, external genitalia, and sex chromosomes.

“Juvenile” means:

1. Persons who have been adjudicated delinquent and are serving a term of incarceration under the custody of the Commission;
2. Persons who have been placed on probation by a court and who are residing in or assigned to a Community Program; and
3. Persons who have been convicted of an offense subject to waiver under the provisions of N.J.S.A. 2A:4A-26.1 and sentenced to serve a custodial sentence in a Commission facility.

“Lesbian” means a person who identifies as a woman and is emotionally, spiritually, physically, and/or sexually attracted primarily to members of the same gender.

“LGBTQI” is an acronym that stands for lesbian, gay, bisexual, transgender, questioning, and intersex. The “Q” may also stand for queer. This list is not meant to be exhaustive, and as used in this Policy, the term also includes non-binary and gender non-conforming individuals.

“LGBTQI Harassment” means conduct critical or mocking of person’s sexual orientation and/or gender identity or expression that may include, but is not limited to, name-calling; disrespectful gestures, jokes, or comments; inappropriate touching; threats of physical or emotional acts or negative consequences (including religious condemnation); bullying; pantomiming inappropriate behavior; shunning or isolation; or attempting to change a juvenile’s sexual orientation or gender identity.

“Non-Binary” is a term often used by people whose gender is not exclusively male or female. The term also captures those with more than one gender or with no gender at all. Individuals whose gender is neither male nor female may use other terms to describe themselves, such as gender fluid, agender, bigender, or gender expansive.

“PREA Policy” means Commission Policy ED:01.02, Prison Rape Elimination Act (PREA), as from time to time may be amended.

“Qualified Health Care Professional” means an employee of either the Commission or of an Operating Agent who is a physician, advanced practice nurse, nurse, dentist, dental

assistant, and any other professional who by virtue of education, credentials, and experience is permitted by law to evaluate and care for juveniles.

“Qualified Mental Health Care Professional” means an employee of the Commission or of an Operating Agent who is a licensed psychiatrist or psychologist, or other professional who by virtue of education, credentials, and experience in the provision of mental health assessment and counseling procedures is permitted by law to assess and counsel juveniles.

“Queer” is a term that, although pejorative when used with intent to insult (historically and at present), is increasingly used by members of the LGBTQI community as a broad umbrella under which sexual and gender minorities may identify.

“Questioning” is a term some people use when they are in the process of exploring their sexual orientation or gender identity.

“Request and Remedy Process” means the grievance process then in effect, as set forth under either Policy 12ED:01.27 or N.J.A.C. 13:90-1A.

“Sexual Orientation” means a person’s romantic, emotional, or sexual attraction to members of the same or different gender. Common terms used to describe sexual orientation include, but are not limited to, straight, lesbian, gay, bisexual, and asexual. Sexual orientation and gender identity are different: gender identity refers to one’s internal knowledge of their gender, while sexual orientation refers to whom one is attracted.

“Staff” means any person employed by the State of New Jersey and assigned to the Commission, and includes full-time employees, part-time employees, per diem employees, and interns.

“Superintendent” means the chief executive officer of a facility.

“Transgender” means any person whose gender identity or gender expression differs from societal expectations associated with the gender they were assigned at birth. Being transgender does not imply any specific sexual orientation. This term is an adjective (“transgender person,” not “transgenders” or “transgendered”).

“Transgender Boy (or Transgender Man)” means a transgender juvenile who identifies as a boy/man.

“Transgender Girl (or Transgender Woman)” means a transgender juvenile who identifies as a girl/woman.

“Volunteer” means an unpaid volunteer performing service under the auspices of the Commission’s Chaplaincy Services Unit.

PART 2. OPERATIONAL PROVISIONS

Section 3. Prohibited behavior

(a) Staff, volunteers and contractors shall not:

1. Harass or discriminate against juveniles based on their actual or perceived sexual orientation and/or gender identity or expression, which includes:

- i. Engaging in any prohibited acts of LGBTQI harassment, using offensive or derogatory words to describe LGBTQI people, and/or using language that conveys bias or hostility against LGBTQI people.
- ii. Searching any juvenile, or subjecting any juvenile to more invasive search procedures, because of that juvenile's actual or perceived sexual orientation and/or gender identity or expression, or in order to determine that juvenile's anatomy or to assign gender.
- iii. Failing to respond to a juvenile's request, delaying in responding to such a request, or treating such a request as less important because of that juvenile's actual or perceived sexual orientation and/or gender identity or expression.

2. Inquire of a juvenile as to their LGBTQI status, unless such information is necessary for treatment, case planning, and/or finding effective services for the juvenile or other juveniles.

3. Imply to or tell LGBTQI juveniles that they are abnormal, deviant or sinful based on their sexual orientation and/or gender identity or expression, or that LGBTQI juveniles can or should change their sexual orientation and/or gender identity or expression.

Section 4. Respectful Communication

(a) Staff, volunteers and contractors shall at all times use language and terminology that is respectful of, and that does not further stereotypes about, LGBTQI individuals.

(b) Each juvenile may select a chosen name and pronoun that reflect their gender identity to be used at the facility, even if their name has not been legally changed, provided that any such selection shall be in writing, and shall include information indicating whether the juvenile wants the chosen name and pronoun shared with anyone outside of the facility. Staff, volunteers, and contractors shall use the chosen name and pronoun accordingly. Nothing herein addresses the

use of names other than a juvenile's legal name in official Commission records, which is governed by Section 5(d) of this Policy.

Section 5. Recognizing and Recording Gender Identity Information

(a) As laid out under Section 6 of the PREA Policy, as part of the detailed social history and medical/dental examination undertaken at reception, under the provisions of N.J.A.C. 13:100-2.1(e), and periodically thereafter, the agency shall attempt to ascertain information about the juvenile's gender identity.

(b) At any time thereafter, a juvenile may communicate information to the Commission about their gender identity. As laid out in Section 4(b) of this Policy, each juvenile may also select a chosen name and pronoun that reflect their gender identity to be used at the facility, even if their name has not been legally changed, provided that any such selection shall be in writing, and shall include information indicating whether the juvenile wants the chosen name and pronoun shared with anyone outside of the facility.

(c) Once the Commission is made aware that a juvenile identifies as transgender, gender non-conforming, non-binary, or intersex, that juvenile will be referred to the Special Intake Team, which will develop an intake record for that juvenile. There is no specific medical or mental health diagnosis or treatment requirement that a juvenile must meet in order to have their gender identity recognized and respected. If, however, the Special Intake Team has a substantiated, credible, and non-discriminatory basis for believing that a juvenile is not sincere in their assertion of their gender identity and is asserting it for an improper purpose, that Special Intake Team may ask further questions to better understand the juvenile's identity and offer the juvenile with a fair opportunity to present additional information. Such a substantiated, credible, and non-discriminatory basis for questioning a juvenile's gender identity will be rare.

(d) A notation of the juvenile's chosen name and pronoun shall be made on the Juvenile Information Management System (JIMS) record. While that permanent file will also retain the juvenile's legal name and gender recorded in JIMS, identification cards and wristbands will be updated to reflect the juvenile's gender identity and chosen name.

Section 6. Gender-Segregated Housing, Facilities, and Programming

(a) Once a juvenile's gender identity has been determined by the Special Intake Team as laid out in Section 5, that juvenile is entitled to be housed in line with their gender identity,

regardless of the gender they were assigned at birth and/or their anatomical characteristics, unless the Executive Director certifies in writing that the individualized safety assessment required by federal PREA standards requires alternate housing for that particular juvenile after giving serious consideration to the juvenile's own views with respect to their safety. In then evaluating which male facility and what placement in that facility is appropriate for a transgender boy/man, and which female facility and what placement in that facility is appropriate for a transgender girl/woman, the Special Intake Team on a case-by-case basis will consider all of the factors laid out in Section 6(a) of the PREA Policy and will consider how to ensure the health and safety of the juvenile, other juveniles, and staff, as well as the secure operation of the facility.

(b) Juveniles with a gender identity that is neither male nor female shall be housed, placed, or otherwise detained with individuals of the gender that is safest for them, and allow them to use the restrooms of the gender that is safest for them, giving serious consideration to the juvenile's own views with respect to which gender they express to be safest for them. In then evaluating which facility and what placement in that facility is appropriate, the Special Intake Team on a case-by-case basis will consider all of the factors laid out in Section 6(a) of the PREA Policy and will consider how to ensure the health and safety of the juvenile, other juveniles, and staff, as well as the secure operation of the facility.

(c) In accordance with federal PREA standards, the Commission shall not place LGBTQI juveniles in dedicated facilities, units, or wings on the basis of such identification or status, and shall not make roommate assignments, education and work assignments, and referrals to the Sex Offender Classification Committee (SOCC) on those bases either.

(d) When a transgender, non-binary, gender non-conforming, or intersex juvenile requests to have a private room or space, that request will be accommodated where such room or space is available at the facility and where doing so is practicable and will ensure the health and safety of the juvenile. The denial of such a request shall be documented in writing.

(e) The Special Intake Team shall prepare and submit to the Executive Director or designee a written recommendation, signed by all participating Special Intake Team members, as to the appropriate placement of the transgender, gender non-conforming, non-binary, or intersex juvenile, in line with Section (a)-(d) of this policy. The Executive Director shall review the recommendations and exercise sound discretion in accepting or rejecting the written determination of the Special Intake Team.

(f) Juveniles will be entitled to access any items (including clothing, personal property, and appearance-related items) or programming (including educational programming) in line with their gender identity or expression, regardless of the gender they were assigned at birth and/or their anatomical characteristics.

(g) The Superintendent or designee shall also ensure that, on request, a transgender, non-binary, gender non-conforming, or intersex juvenile is afforded privacy when using a bathroom or shower.

Section 7. Separation from general population

(a) Consistent with the rules governing the Behavior Accountability Unit (N.J.A.C. 13:95-7), and Protective and Temporary Close Custody and Room Restriction for Control (N.J.A.C. 13:95-11), juveniles may be separated from the general population for only the period necessary to maintain safety and security.

(b) An LGBTQI juvenile in a secure facility shall not be placed in either temporary close custody or room restriction for control, or be referred to the Behavior Accountability Unit, as a means of keeping them safe from discrimination, LGBTQI harassment, or abuse.

(c) But nothing herein shall prevent the separation of any juvenile when deemed necessary for the juvenile's health or safety by either a Qualified Health Care Professional or a Qualified Mental Health Care Professional.

Section 8. Cross gender search restrictions

(a) Both cross gender searches and cross gender viewing of undressed juveniles are prohibited, except in an emergency situation:

1. In a Secure Facility, when ordered by the Superintendent, Assistant Superintendent or the highest-ranking custody supervisor on duty; and

2. In Community Programs, when ordered by the Superintendent.

(b) All pat down and strip searches shall conform to the requirements of applicable Commission rules found at N.J.A.C. 13:95-5.6 and 13:95-5.7, for Secure Facilities, and N.J.A.C. 13:103-11.6 and 13:103-11.7, for Community Programs. Both the request for authorization to conduct a cross gender search, including an explanation of the emergency requiring the cross gender search and the order to undertake such a search, as are provided for in N.J.A.C. 13:95-5.6(d), 13:95-5.7(d)4, 13:103-11.6(d) and 13:95-11.7(c)4, shall be in writing.

(c) The Superintendent or designee shall implement procedures permitting transgender, non-binary, gender non-conforming, and intersex juveniles to request that either a male or female staff member conduct a strip search. Such a request shall be granted to the extent consistent with the orderly operation of the facility.

(d) As laid out above, a juvenile shall never be searched or physically examined for the purpose of determining the juvenile's genital status. If the juvenile's genital status is unknown, it may be determined during private conversations with the juvenile, 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.

Section 9. Medical and mental health care

(a) Staff, volunteers and contractors shall never handle a juvenile's request for medical attention with any less urgency or respect because of that juvenile's actual or perceived gender identity or expression and/or sexual orientation.

(b) The Superintendent or designee shall provide LGBTQI juveniles with access to medical and mental health care providers who are knowledgeable about the health care needs of such juveniles. Juveniles will be provided access to such transition-related assessments, therapy and treatments as have been recommended by the juvenile's health care provider, including but not limited to hormone therapy and supportive counseling.

(c) To the extent that an LGBTQI juvenile requires sex offender treatment or counseling, treatment shall not discriminate based on sexual orientation and/or gender identity or expression, and shall not delegitimize the juvenile's sexual orientation and/or gender identity or expression.

Section 10. Confidentiality

(a) Records and statements in the possession of the Commission relating to juveniles are covered by the confidentiality provisions of N.J.S.A. 2A:4A-60, 60.2, and 60.3 may be reviewed when necessary and appropriate in the course of business. However, at no time shall this permitted use of such records and statements release or exempt them from the confidentiality provisions of this section.

(b) All records pertaining to juveniles charged as a delinquent, adjudicated delinquent, or found to be part of a juvenile-family crisis, including records relating to the suicide or suicide attempt of a juvenile, are confidential. All such records:

1. Shall be strictly safeguarded from public access;
2. Shall not be released, except when release is authorized under the provisions of N.J.S.A. 2A:4A-60; and
3. Shall not be subject to public inspection or copying pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

(c) Unless otherwise required by law, statements made by a juvenile in the course of any suicide prevention or mental health screening, and any reports or records created to report the results of such screening shall not be:

1. Disclosed to any party, including prosecutors and law enforcement personnel; and
2. Used in any investigation, or in any delinquency or criminal proceeding then pending or subsequently initiated. (See N.J.S.A. 2A:4A-60.2.)

(d) No report or record relating to mental health services provided to a juvenile prior to an adjudication of delinquency, or any other finding of guilt, shall be disclosed or released to a court unless and until after such an adjudication or finding occurs. (See N.J.S.A. 2A:4A-60.3.)

(e) A Qualified Health Care Professional and a Qualified Mental Health Care Professional shall obtain informed consent from a juvenile who is 18 years of age or older before reporting information about prior sexual victimization that did not occur in an institutional setting.

(f) Information about prior sexual victimization for a juvenile less than 18 years of age is subject to the reporting requirements set forth in Section 12(a) of the PREA Policy.

(g) Staff shall not disclose a juvenile's sexual orientation or gender identity or expression without the juvenile's consent to any party (including other juveniles, outside individuals or agencies, health care or social service providers, a juvenile's family or friends, or others within the Commission), unless such disclosure is:

1. Expressly permitted by this Policy;
2. Necessary to comply with state or federal law; or
3. Limited to others within the Commission, and only where relevant and necessary for treatment, case planning, and/or finding effective services for the juvenile or other juveniles, or if necessary and appropriate in the course of business or resolving a juvenile grievance under the Request and Remedy Process.

(h) Any disclosure of confidential information related to a juvenile's LGBTQI status shall be limited to only the information necessary to achieve a specific beneficial purpose and shall be communicated to only the individuals necessary to achieve that purpose.

PART 3. IMPLEMENTATION AND ENFORCEMENT

Section 11. Orientation

The Superintendent or designee shall ensure that all orientation materials and presentations explain to juveniles their rights under this Policy, including their rights to confidentiality.

Section 12. Training

All staff, volunteers, and contractors shall be trained on the requirements of this Policy in conjunction with the trainings already conducted pursuant to Section 8(a) of the PREA Policy.

Section 13. Reporting

(a) A juvenile may report an allegation of prohibited behavior under this Policy using one or more of the methods set forth in Sections 12(b)1, 3 and 4 of the PREA Policy.

(b) Staff, volunteers and contractors shall report any prohibited behavior under this Policy of which they become aware, and failure to report may result in disciplinary consequences. Such reporting shall be in accordance with the provisions of Section 12(a) of the PREA Policy related to the reporting of sexual harassment.

Section 14. Enforcement and discipline for violation by staff, volunteers and contractors

(a) The PREA Coordinator is responsible for enforcement of, and compliance with, this Policy.

(b) Violations of this Policy will be enforced in the same manner as other Commission policies. Violation may result in formal discipline, up to and including dismissal. Incidents of harassment by staff of any juveniles based on actual or perceived sexual orientation and/or gender identity, in violation of Section 3 of this Policy, will be disciplined strictly.

(c) The Commission shall take such other protective and remedial measures as it deems appropriate, including prohibiting further contact with juveniles, in the case of a violation of this Policy by a contractor or volunteer.

Section 15. No retaliation


(a) No juvenile shall be subject to any coercion, discipline or other retaliation, reprisal, or retribution as a result of filing a report of behavior by a staff member, volunteer, or contractor alleged to be a violation of Section 12(a) of this Policy.


(b) Nothing herein shall be construed to prevent the charging of any juvenile who commits a violation under the provisions of N.J.A.C. 13:101-4.1.

OFFICIAL SIGNATURES ON FILE IN THE COMMISSION'S OFFICE OF ADMINISTRATION

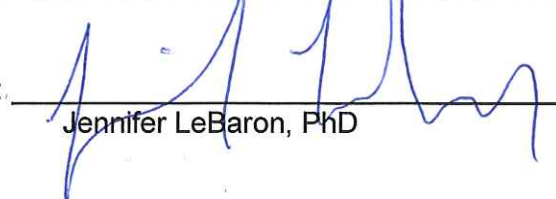
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