

NEW JERSEY JUVENILE JUSTICE COMMISSION
Office of the Executive Director

POLICY NUMBER: ED:01.02A (2018) EFFECTIVE DATE: June 25, 2018

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

Attention: All JJC Staff
For Information

Contact: PREA Coordinator Phone: 609-341-3196

Pages: 9

PART I. GENERAL PROVISIONS

Section 1. Purpose and Scope

(a) The purpose of this Policy is to ensure that Commission provides the highest quality of services to juveniles regardless of actual or perceived sexual orientation, gender identity, or gender expression. Staff shall provide fair and equal treatment to all juveniles in Commission care and custody, and shall protect juveniles from harassment and discrimination. Commission staff shall work to meet the diverse needs of juveniles in their care and shall provide a safe, healthy and accepting environment in which all individuals are treated with respect and dignity.

(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:

"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 Expression**” means the manner in which a person expresses his or her gender identity to others; a combination of behavior, hairstyles, voice, body characteristics, or other gender-related behaviors.

“**Gender Identity**” means a person’s internal, deeply felt sense of being male or female, or in between, regardless of the person’s sex at birth.

“**Gender Identity Harassment**” means conduct critical or mocking of person’s 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.

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

“**Intersex**” means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.

“**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**” means lesbian, gay, bisexual, transgender, questioning and intersex individuals, including individuals who have self-identified or are perceived by others as LGBTQI.

“**PREA Policy**” means Commission Policy 13ED: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.

“**Questioning**” means a person, often an adolescent, who is exploring or unsure about issues of sexual orientation or gender identity or expression in his or her life.

“**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 the internal experience that determines whether we are physically and emotionally attracted to men, women, both, or neither (asexual).

“**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 a person whose gender identity, expression, or behavior is different from that typically associated with their sex assigned at birth.

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

Section 3. 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) Staff shall not disclose a juvenile's sexual orientation or identity as a transgender individual to other juveniles or to outside individuals or agencies, including health care or social service providers or to a juvenile's family or friends, without the juvenile's consent, unless such disclosure is necessary to comply with state or federal law.

1. Staff may communicate information within the Commission about a juvenile's LGBTQI status only when relevant and necessary for treatment, case planning and finding effective services for the juvenile or other juveniles.

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

3. Staff shall not inquire of a juvenile as to his or her LGBTQI status, unless such information is necessary for treatment, case planning and finding effective services for the juvenile or other juveniles.

4. Nothing herein shall prevent staff from discussing a juvenile's needs or services with other staff when necessary and appropriate in the course of business or resolving a juvenile grievance under the Request and Remedy Process.

PART 2. OPERATIONAL PROVISIONS

Section 4. Juvenile orientation

The Superintendent or designee shall ensure that all facility orientation materials and presentations explain to juveniles their rights under this Policy, including their rights to confidentiality set forth in Section 3, above.

Section 5. Intake and classification

(a) Classification decisions with respect to facility, assignment of roommates, education and work assignments, including referrals to a Sex Offender Classification Committee (SOCC), shall at no time be made solely on the basis of LGBTQI or gender nonconforming status or identification.

Section 6. 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.

1. 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, Gender Identity Harassment or abuse.

(b) Nothing herein shall prevent the separation of a 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 7. Respect and language

(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, and shall not refer to a juvenile by using language that conveys bias or hostility against LGBTQI people.

(b) Staff, volunteers and contractors shall not imply to or tell LGBTQI juveniles that they are abnormal, deviant or sinful based on their sexual orientation, gender identity, or gender expression, or that they can or should change their sexual orientation, gender identity, or gender expression.

Section 8. Bathrooms and showers

The Superintendent or designee shall insure that, upon request, a transgender or intersex juvenile shall be afforded privacy when using a bathroom or shower.

Section 9. Medical and mental health care

(a) The Superintendent or designee shall provide transgender juveniles with access to medical and mental health care providers who are knowledgeable about the health care needs of such juveniles.

1. The juvenile will be provided access to such transition-related assessments, therapy and treatments as have been recommended by the juvenile's health care provider, including the continuation transgender-related medical care, such as hormone therapy or supportive counseling that the juvenile was receiving prior to arriving at a Commission facility.

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

Section 10. 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.

1. Both the request for authorization to conduct a cross gender, 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 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) A transgender or intersex juvenile shall not be searched or physically examined for the sole purpose of determining the juvenile's genital status.

1. If the juvenile's genital status is unknown, it may be determined during 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 11. Training

(a) The Director of Operations, in consultation with the Supervisor of Rehabilitative and Treatment Services and the Director of Training, shall develop and implement a curriculum of initial and two-year refresher training for all employees, including interns, who may come into contact with juveniles. Such curriculum shall cover all provisions of this Policy, with emphasis on the following subjects:

1. Employee responsibilities;
2. Juvenile rights;
3. The Request and Remedy Process;
4. Sensitivity training on communicating effectively and professionally with LGBTQI and gender nonconforming juveniles; and
5. Compliance with the reporting provisions of Section 12(a) of the PREA Policy.

(b) Employee training shall be tailored to the unique needs and attributes of the gender of the juveniles at the various Commission facilities. A staff member shall receive additional training if the staff member is reassigned from a facility that houses only male residents to a facility that houses only female residents, or vice versa.

**PART 3. PROHIBITED BEHAVIORS; REPORTING;
ENFORCEMENT AND DISCIPLINE; NO RETALIATION**

Section 12. Prohibited behavior; reporting

(a) Staff, volunteers, and contractors, as well as juveniles, are prohibited from engaging in:

1. Acts of Gender Identity Harassment; and
2. Speech that violates the provisions of Section 7 of this Policy.

(b) Staff, volunteers and contractors shall report any such prohibited act, and failure to report may result in disciplinary consequences.

1. Such reporting shall be in accordance with the provisions of Section 12(a) of the PREA Policy related to the reporting of sexual harassment.

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

Section 13. 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.

1. Incidents of Gender Identity Harassment against juveniles by staff 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 14. No retaliation

(a) A juvenile shall not be subject to any coercion, discipline or other retaliation, reprisal, or retribution as a result of his or her 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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REVIEWED AND APPROVED BY THE EXECUTIVE DIRECTOR:

Signature: *Kevin M. Brown* Date: 7/2/2018
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