

<b>DENVER SHERIFF DEPARTMENT Office of the Director of Corrections/Undersheriff</b>		<b>Department Order 4005.1</b>		<b>Pages: 8 + Appendices A-C</b>
<b>Previous Revision</b> N/A – New Order	<b>Current Revision:</b> June 2012	<b>Annual Review</b> April	<b>Effective Date:</b> June 6, 2012	
<b>Related Standards:</b> <a href="#">Health Insurance Portability and Accountability Act (HIPAA)</a> <a href="#">CRS: 24-34-301(7); 24-34-601(1), (2)</a> ACA: 4ALDF 6A-07; 6B 02; 4D 13-15, 4D 19 <a href="#">NCCHC: J-B-04; J-B-05; J-G-04</a> <a href="#">Denver Municipal Code 28</a> , Article IV City Ordinance: 665				
<b>Subject:</b> <b>TRANSGENDER AND GENDER-VARIANT INMATES</b>				

1. **Purpose:** This order provides guidelines for the Denver Sheriff Department (DSD) to follow in order to meet federal statutes and regulations, Colorado Revised Statutes (CRS), American Correctional Association (ACA) Standards, National Correctional Care Health Commission (NCCHC) standards, Prison Rape Elimination Act (PREA), and other Colorado State and City of Denver standards, statutes, regulations, guidelines, directives, or requirements that:
  - facilitate the elimination of discrimination against; and/or
  - address the appropriate treatment of; and/or
  - provide for the safety, security and medical needs of transgender and gender-variant inmates.
2. **Policy:** It is the policy of the Denver Sheriff Department (DSD) to receive, evaluate, house and provide secure, safe and humane custody of all persons, including transgender and gender-variant inmates, who are lawfully committed or held for confinement by the Denver Sheriff Department until their lawful and appropriate release or transfer to another authority.
3. **Cancellation:** Not applicable; this is a new Department Order.
4. **Definitions:**

**Gender** - The social construct used to classify a person as a man, woman, both or neither. Gender encompasses all relational aspects of social identity, psychological identity, and human behavior.

**Gender Identity and Expression** - Gender identity is an individual's internal, personal sense of their own gender, which is communicated to others by their gender expression, appearance, identity or behavior, regardless of the individual's birth-assigned sex.

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***Gender Identity Disorder (GID) (Also referred to as Gender Dysphoria)*** - A recognized health condition that involves a strong and consistent cross-gender identification and a persistent disassociation with a person's birth-assigned sex. GID is a stable, non-violent condition that is not due to psychosis.

***Gender-Variant*** - Individuals who display gender traits that are not generally associated with their birth-assigned sex. Gender-variant individuals may not identify as male, female, or transgender.

***Health Insurance Portability and Accountability Act (HIPAA)*** - A federal law that, in part, defines the lawful use and/or the disclosure by a third party of an individual's health information.

***Intersex*** - A person who is born with genitalia and/or secondary sex characteristics determined as neither exclusively male nor female, or which combine features of the male and female sexes.

***Lesbian, Gay, Bisexual and Heterosexual*** - An individual's enduring physical, romantic and/or emotional attraction to other people.

***Personal "Pat" or "Frisk" Search*** - A search of an inmate's clothed person, including the frisking of his/her body, the examination of his/her pockets and any hand-carried items (i.e. legal papers, prayer books, etc.), shoes and head covering. Frisking is defined as running the hands rapidly over the body in an attempt to locate a hidden item in or under the clothing.

***Sex*** - The physical anatomy and underlying chromosomal and hormonal biology that determines whether someone is male, female, or intersex.

***Strip Search:*** A visual search in which the inmate is required to remove all of his/her clothing, to expose the genitalia, breasts and other parts of the body; and may include a visual inspection of body cavities.

***Transgender:*** Transgender is an overall term used to describe people whose gender identity and/or gender expression differs from their birth-assigned sex, whether or not they have changed their biological or hormonal characteristics. The term includes transsexual persons.

***Transgender Review Board:*** A board responsible for assessing and making recommendations as to housing, medical and mental health needs for transgender/gender-variant individuals. This board is comprised of members of the Administrative Review Board, which includes the Special Management Captain, Classification Sergeant, Special Management Deputy, staff psychologist, the Medical Sergeant, and the Nurse Manager or designees.

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**Transition:** Altering one's birth sex is a complex progression that occurs over a long period of time. Transition includes some or all of the following: making personal, legal and medical adjustments; telling one's family, friends and/or co-workers; changing one's name and/or sex on legal documents; undergoing hormone therapy; and possibly (though not always) undergoing one or more forms of surgery.

**Transsexual:** A person who establishes a permanent identity with the opposite gender from their birth-assigned sex. Some, but not all, transsexual people undergo medical treatments to change their physical sex so that it is in line with their gender expression.

## **5. Implementation and Procedural Guidelines:**

Transgender/gender-variant prisoners will be pre-booked and processed according to defined procedures. The Division Chiefs of the County Jail (COJL) and Downtown Detention Center (DDC) will establish procedures at their facilities to implement this order using the following guidelines:

### **A. Intake and Initial Classification**

#### **1. Identifying Transgender/Gender-Variant Prisoners**

When determining whether prisoners are transgender/gender-variant, the following should be taken into consideration:

- a. Prisoner's appearance or behavior does not match the gender marker on the prisoners arresting/transportation paperwork or identification.
- b. Prisoner self reports. If there is doubt or a question concerning the validity of the self report the DSD officer shall consult a supervisor and if necessary, medical staff.
- c. Arresting/transporting agency has alerted the DSD staff to the prisoner's transgender/gender-variant status.
- d. Prisoner's past history, if known.
- e. DSD officer discretion.

### **B. Searches**

#### **1. Pat Searches**

- a. If there is prior knowledge that an inmate is transgender/gender-variant, and a **pat search** as defined in Department Order 4040 is required, the officer performing the search should be of the same sex as identified by the inmate's transgender/gender-variant search preference.
- b. The prisoner shall sign the Statement of Preference Form, indicating initial preference, preferred name, and preferred pronoun.

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## 2. Strip Searches

- a. When a **strip search** is required for a transgender/gender-variant prisoner, the search will be conducted by an officer and overseen by a supervisor and will only be performed as part of the book in process in accordance with *Department Order 4040*.
- b. The officer and the supervisor will be of the same sex that is listed on the inmate's *Statement of Preference Form* (see [Appendix A](#)) unless otherwise directed by the supervisor. Refer to *Department Order 4040*, "Inmate and Facility Searches".
- c. **Strip searches shall not be performed as a punitive measure.**
- d. Strip searches will not be done for the sole purpose of observing the prisoner's genitalia or determining gender.
- e. If the gender of the prisoner cannot be determined, or a prisoner refuses to complete the *Statement of Preference Form*, the Health Services staff may be consulted to assist in making a determination.
- f. Health Services may attempt to communicate to the inmate the need for his or her cooperation in determining sex for the purposes of housing and additional inmate services without resorting to a physical examination.
- g. The intake search officer will be responsible for notifying the medical staff that a transgender/gender-variant inmate has been identified. The transgender/gender-variant inmate shall be temporarily housed in administrative segregation. This temporary housing shall be for no more than seventy-two (72) hours, excluding weekends and holidays.

## C. Blue Cards

1. During the classification process, the Intake Classification officer will complete a *Blue Card* (see Appendix B) and give it to the transgender/gender-variant inmate. The card will contain the following information:
  - a. Search preference
  - b. Preferred name and pronoun
  - c. Criminal Descriptor (CD) number
  - d. Booking number
  - e. Booked name
  - f. Inmate signature
  - g. Supervisor signature
  - h. Date

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#### **D. Medical Staff Notification**

1. The intake search officer will be responsible for notifying the medical staff that a transgender/gender variant inmate has been identified.

#### **E. Temporary Housing**

1. The transgender/gender-variant inmate shall be temporarily housed in Administrative Segregation. This temporary housing shall be for no more than 72 hours, excluding weekends and holidays.

#### **F. Transgender Review Board**

1. Whenever an inmate is identified as transgender/gender-variant, the Transgender Review Board will meet within seventy-two (72) hours and conduct a hearing/interview in order to assess the medical, psychological and housing needs for the individual, using and considering the following criteria:
  - The Statement of Preference Form.
  - The gender of the inmate.
  - The individual's adjustment to incarceration.
  - Other psychological factors that may contribute to either the individual's resiliency or vulnerability.
2. In considering inmate needs, the Transgender Review Board may request that an anatomy check be performed by the medical staff.
  - a. If the inmate consents to the anatomy check, the inmate will indicate such consent on the Transgender/Gender Variant Individual Search Form. *Transgender/Gender Variant Individual Search Form* (see Appendix C, One page) <ACA 4 ADLF 4D 15>
  - b. If the inmate refuses the anatomy check, the inmate will indicate such refusal on the Transgender/Gender Variant Individual Search Form. *Transgender/Gender Variant Individual Search Form* (see Appendix C, One page) <ACA 4 ADLF 4D 15>
3. If needed, the Transgender Review Board may consult with an identified member of the Gay, Lesbian, Bisexual and Transgender (GLBT) or allied community who is knowledgeable with the issues surrounding transgender and gender-variant people to assist in forming and making a recommendation for housing to the classification unit and/or programs and services needed by the individual.
4. The transgender/gender-variant inmate has the option to have a representative of the GLBT or allied community, or a department volunteer who is knowledgeable with the issues surrounding transgender and gender-variant people, to be present at the hearing/interview.

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- a. If this option is selected, the inmate will agree to waive the seventy-two hour deadline and Health Insurance Portability and Accountability Act (HIPAA) privacy rules.

#### **G. Long-term Housing and Classification**

1. The [Transgender Review Board](#) will provide recommendations to the classification unit regarding all long-term housing and classification decisions. Final decision will be made by the classification unit after considering the recommendations of the Transgender Review Board.
2. Classification and placement of transgender/gender-variant inmates should not be determined solely based on the inmates' birth sex, identity documents, or physical anatomy. Classification and placement of transgender/gender-variant inmates should be made to maximize the health and safety of the individual.
3. Transgender/gender-variant inmates must be housed safely and in the least restrictive setting possible.
  - a. Additional safety precautions may include (but are not limited to) access to private showers, single cells, etc., and will be offered if and when available.
  - b. Requests from a transgender/gender-variant inmate to be placed in the same cell with another transgender/gender-variant inmate should be honored when possible.
4. Classification staff shall document in the Jail Management System (JMS) the choices and reasons regarding housing and additional safety precautions for all transgender/gender-variant inmates.
5. While in the custody of or while housed at any division of the Denver Sheriff Department, DSD staff:
  - a. Shall not discriminate against transgender/gender-variant inmates. <ACA 4ADLF 6A 02; 6B02>
  - b. Shall not subject transgender/gender-variant inmates to verbal or physical harassment or create a hostile environment. <ACA 4ADLF 6A 02>
  - c. Should address transgender/gender-variant inmates using preferred names and pronouns as indicated on the *Statement of Preference Form*.  
Preferred names and pronouns should be used regardless of whether or not the inmate has completed a legal name change, and regardless of whether the gender marker listed on the inmate's identity documents has changed.
6. Any DSD individual who is found to engage in inmate abuse or does not follow the guidelines addressed in this department order may be subject to appropriate disciplinary action.

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7. Transgender/gender-variant inmates who are placed in administrative segregation or other special management housing for the safety and security of the transgender/gender-variant inmate shall have the same access to the provisions of services and programs as any other inmate housed in a DSD facility. <ACA 4ADLF 6B 02; 6B03>
8. Transgender/gender-variant inmates shall have the right to request that their housing assignment be re-evaluated.

#### **H. Medical Assessment and Treatment**

1. The intake search officer will be responsible for notifying the medical staff that a transgender/gender variant inmate has been identified.
2. The medical staff will follow all standards of care specified by the Medical Department Transgender Protocol in treating transgender/gender-variant individuals.
3. The Health Services department does not determine housing for transgender patients unless the determination is for medical reasons.
4. If the medical staff performs a voluntary genitalia check by request from the Transgender Review Board to determine if an inmate is anatomically male or female, this genitalia check will be performed by a Medical Doctor (MD) in a private setting. <ACA 4ALDF 4D 19>.
5. The results of such genitalia check will be given to the Transgender Review Board and classification unit. If the patient does not allow a genitalia check, a *Transgender/Gender-Variant Individual Search Form* will be completed by the inmate, and Health Services will inform the DSD staff that the inmate refused this check.

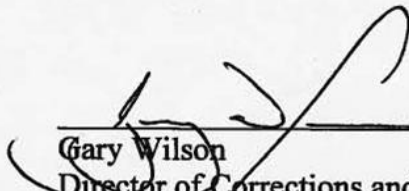
#### **7. Responsibility:**

- A. Training:** The Training Academy will ensure that the curriculum of all currently existing classes and any newly developed classes are compliant with this order.
- B. Management:** The Division Chief/Unit Commander or Unit Manager of any division or unit affected by this policy will:
  1. Ensure that existing procedures and all newly developed orders are in compliance with this order.
  2. Ensure that all affected personnel are made aware of this policy.
  3. Ensure this policy is reviewed annually for compliance with all federal, state and local laws and standards.
- C. Supervisors:** All supervisors will ensure that the provisions of this policy are being followed.

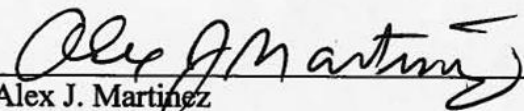
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8. Staff: All officers and employees will comply with the provisions of this policy.
9. **Effective Date:** This order becomes effective upon execution of the last official signature of approval, as indicated below:

Approved:

  
 \_\_\_\_\_  
 Gary Wilson  
 Director of Corrections and Undersheriff  
 Denver Sheriff Department

5-25-2012  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Alex J. Martinez  
 Manager of Safety  
 City and County of Denver

6/6/12  
 \_\_\_\_\_  
 Date/Effective Date





Denver Sheriff Department

**Statement of Search Preference Form**

Inmate Name: \_\_\_\_\_  
(please print)

Booking # : \_\_\_\_\_

Preferred Pronoun : \_\_\_\_\_ (i.e., he/she)

Preferred Name: \_\_\_\_\_  
(please print)

*While in custody of the Denver Sheriff's Department, I would prefer to be searched by an officer of the below indicated sex whenever possible. I understand that this preference will be respected unless the situation is an emergency, there is no one of that sex available, or the failure to conduct a search will jeopardize the safety of the staff or inmates.*

Female \_\_\_\_\_ Male \_\_\_\_\_ Both \_\_\_\_\_

**Inmate Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Witnessing Officer(s) Signature and Serial Number:**

Officer 1: \_\_\_\_\_ Serial # \_\_\_\_\_

Date Signed: \_\_\_\_/\_\_\_\_/\_\_\_\_

Officer 2: \_\_\_\_\_ Serial # \_\_\_\_\_

Date Signed: \_\_\_\_/\_\_\_\_/\_\_\_\_

## Blue Card

During the classification process, the Intake Classification officer will complete a *Blue Card* and to give it to the transgender/gender-variant inmate. The card will contain the following information:

- a. Search preference
- b. Preferred name and pronoun
- c. Criminal Descriptor (CD) number
- d. Booking number
- e. Booked name
- f. Inmate signature
- g. Supervisor signature
- h. Date

CD#	Booking #
Preferred Name:	
Preferred Pronoun:	
Booked Name:	
Search Preference:	
Inmate Signature:	Date:
Supervisor Signature:	Date:

Denver Sheriff Department

Transgender/Gender Variant Individual Genitalia Search Form  
(Please Print)

Inmate Name: \_\_\_\_\_

Booking #: \_\_\_\_\_

While in custody of the Denver Sheriff Department, I am indicating below if I choose to consent or refuse to a genitalia check. I understand that this anatomy check will be conducted by a Medical Doctor (MD) in a private setting. The results of the genitalia check will be given to the Transgender Review Board and the Classification unit to determine housing.

Consent \_\_\_\_\_

Refuse \_\_\_\_\_

**Inmate Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Medical Signature**

Medical (MD): \_\_\_\_\_ **Date:** \_\_\_\_\_