

**In the United States District Court  
Northern District of Texas  
Wichita Falls Division**

Charlsa Little, <i>et al.</i> ,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO.
	§	
v.	§	7:17-cv-00009-O
	§	
United States of America,	§	
Attorney General Jefferson B.	§	The Hon. Reed C. O'Connor
Sessions III, Acting Director	§	
of the Bureau of Prisons Hugh	§	
J. Hurwitz, Jody R. Upton,	§	
and David R. Wilson,	§	
	§	
Defendants.	§	

**BRENDA RHAMES' AMENDED VERIFIED COMPLAINT**

Plaintiff Brenda Rhames brings this lawsuit against the United States of America and named officials in their official capacities.

**I.  
Introduction**

This action arises out of a federal regulation, 28 C.F.R. § 115.42 Use of Screening Information, and two U.S. Bureau of Prisons (BOP) program statements that authorize male prison inmates to be housed in

the general population of federal women's prisons.<sup>1</sup> Such intermingling of the sexes in the confined and restricted conditions attendant to prisons violates Plaintiff Brenda Rhames' right to bodily privacy and endangers her physical and mental health.

Defendants created the regulation and program statements under the authority of the Prison Rape Elimination Act (PREA), which purposes to make the prevention of rape a top priority in federal prisons. But rather than do the obvious—keep male inmates separate from female inmates—Defendants went far beyond the authority conveyed by Congress by adopting gender identity theory, rather than biological sex, to determine whether an inmate is male or female.

By treating gender as determinative of sex, the BOP houses male inmates who profess to have a feminine gender identity in female prison facilities as a method of affirming their self-perceived gender.

Housing male inmates in women's prisons violates Ms. Rhames' right to bodily privacy; increases the risk for rape; increases the potential for consensual sex which is nonetheless prohibited by prison regulations; increases the risk for other forms of physical assault;

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<sup>1</sup> "Prison" herein denotes BOP incarceration facilities, whether designated as a penitentiary, prison camp, medical center, or other term.

violates Ms. Rhames' right to freely exercise her religion; and causes mental and emotional distress that must be promptly mitigated by injunctive relief.

Moreover, the Defendants' creation and enforcement of 28 C.F.R. § 115.42 and the 2017 and 2018 *Transgender Offender Manuals* violates the Administrative Procedures Act.

Gender identity theory sows confusion by conflating two very different concepts: sex and gender. To avoid that confusion, Plaintiff refers herein to "sex" as one's biological sex that is established at conception and which correlates to objective indicia of sex such as chromosomes, gonads, and internal and external genitalia. Sex is objectively verifiable, binary, fixed, and defined by human reproductive nature as being either male or female.

Plaintiff uses the term "gender" in the sense that Defendants use it: a social, psychological, and behavioral construct used to classify inmates as male, female, both, or neither. Gender is discerned well after birth—sometimes many decades after birth. Although gender identity advocates will refer to "male" or "female" genders, Plaintiff uses the terms masculine or feminine gender to avoid conflating sex

(being male or female) with an appearance of, or belief about, sex (i.e., masculinity or femininity). Gender as used in this suit is categorically established only by a person's self-report: there are no objective indicia that disclose or confirm one's reported gender.

Finally, "intersex" refers to a disorder of sexual physiological development in which there is an abnormal chromosomal complement; the development of deformed or ambiguous genitalia; or some combination of the two. Intersex conditions may be objectively diagnosed and are distinct from "genders" proposed by gender identity theory. Intersex conditions are irrelevant to this Complaint.

## **II.** **Parties and Service of Process**

1. Plaintiff **Brenda Rhames** is a 64 year old Caucasian female, currently residing in the Federal Prison Camp, Alderson, West Virginia. Ms. Rhames is a Christian lady with 3 children and 5 grandchildren.
2. Plaintiff **Jeanette Driever** is a female former inmate who was released from Bureau of Prisons control on April 13, 2018. She is

believed to be proceeding *pro se*, and no claims are made on her behalf in this Complaint.<sup>2</sup>

3. Plaintiff **Charlsa Little** is a female inmate currently residing in the Federal Prison Camp, Bryan, Texas. She is believed to be proceeding *pro se*, and no claims are made on her behalf in this Complaint.
4. Defendant **United States of America** is the sovereign responsible for creation and implementation of the policies being challenged in this lawsuit, and for the incarceration of the Plaintiff and the conditions in which Plaintiff lives. It may be served with process via certified mail delivered to the U.S.

Attorney for the Northern District of Texas:

Hon. Erin Nealy Cox, U.S. Attorney  
c/o Civil-Process Clerk  
U.S. Attorney's Office, Northern District of Texas  
1100 Commerce Street, Third Floor  
Dallas, Texas 75242-1699

with copy delivered via certified mail to:

Hon. Jefferson B. Sessions, III  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW

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<sup>2</sup> Ms. Driever has moved the Court for a 30 day extension to file an amended complaint. Mot. to Extend Time to File Compl., ECF No, 190.

Washington, D.C. 20530-0001

and copy delivered via certified mail to:

Hugh J. Hurwitz  
Acting Director, Federal Bureau of Prisons  
320 First Street, NW  
Washington, D.C. 20534

5. Defendant **Hon. Jefferson B. Sessions, III** is the Attorney General of the United States and director of the U.S. Department of Justice, and is being sued in his official capacity. Among other duties, Attorney General Sessions supervises the Department of Justice, of which one division is the Federal Bureau of Prisons. He is the person responsible for the proper enforcement of BOP regulations. He may be served with process via certified mail delivered to the U.S. Attorney for the Northern District of Texas:

Hon. Erin Nealy Cox, U.S. Attorney  
c/o Civil-Process Clerk  
U.S. Attorney's Office, Northern District of Texas  
1100 Commerce Street, Third Floor  
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U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

and copy delivered via certified mail to:

Hugh J. Hurwitz  
Acting Director, Federal Bureau of Prisons  
320 First Street, NW  
Washington, D.C. 20534

6. Defendant **Hugh J. Hurwitz** is the Acting Director of the U.S. Bureau of Prisons and is being sued in his official capacity. Among other tasks, he is the official responsible for the creation, administration, and implementation of the policies and procedures of the Bureau of Prisons that are being challenged in this lawsuit. He may be served with process via certified mail delivered to the U.S. Attorney for the Northern District of Texas:

Hon. Erin Nealy Cox, U.S. Attorney  
c/o Civil-Process Clerk  
U.S. Attorney's Office, Northern District of Texas  
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Hon. Jefferson B. Sessions, III  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

and copy delivered via certified mail to:

Hugh J. Hurwitz  
Acting Director, Federal Bureau of Prisons  
320 First Street, NW  
Washington, D.C. 20534

7. Defendant **Jody R. Upton** is the warden of the Carswell Federal Medical Center, and is being sued in his official capacity. Among other tasks, he is an official responsible for the creation, administration, and implementation of the policies and procedures of the Bureau of Prisons that are being challenged in this lawsuit. He may be served with process via certified mail delivered to the U.S. Attorney for the Northern District of Texas:

Hon. Erin Nealy Cox, U.S. Attorney  
c/o Civil-Process Clerk  
U.S. Attorney's Office, Northern District of Texas  
1100 Commerce Street, Third Floor  
Dallas, Texas 75242-1699

with copy delivered via certified mail to:

Hon. Jefferson B. Sessions, III  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

and copy delivered via certified mail to:

Mr. Jody R. Upton  
FMC Carswell  
Federal Medical Center

P.O. Box 27066  
Fort Worth, Texas 76127

8. Defendant **David R. Wilson** is the warden of the Alderson Federal Prison Camp, and is being sued in his official capacity. He is an official responsible, among other tasks, for the creation, administration, and implementation of the policies and procedures of the Bureau of Prisons that are being challenged in this lawsuit. He may be served with process via certified mail delivered to the U.S. Attorney for the Northern District of Texas:

Hon. Erin Nealy Cox, U.S. Attorney  
c/o Civil-Process Clerk  
U.S. Attorney's Office, Northern District of Texas  
1100 Commerce Street, Third Floor  
Dallas, Texas 75242-1699

with copy delivered via certified mail to:

Hon. Jefferson B. Sessions, III  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

and copy delivered via certified mail to:

Mr. David R. Wilson, Warden  
FPC Alderson  
Federal Prison Camp  
Glen Ray Road, Box A  
Alderson, WV 24910

**III.**  
**Jurisdiction and Venue**

9. Jurisdiction is proper in this Court under Article III of the U.S. Constitution and 28 U.S.C. §§ 1331 and 1346 because claims in the case arise under the Constitution, laws, or treaties of the United States, including the First, Fourth, Fifth, and Eighth Amendments to the United States Constitution; the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000(bb), et seq.; and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 500 et seq.
10. The Court has jurisdiction to issue the requested declaratory relief in accordance with 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57.
11. The Court has jurisdiction to issue the requested injunctive relief in accordance with 5 U.S.C. §§ 702 and 703, 28 U.S.C. § 1343(a)(4), and Federal Rule of Civil Procedure 65.
12. The Court has jurisdiction to award attorney’s fees and costs in accordance with 28 U.S.C. § 2412, 42 U.S.C. § 1988, and the Equal Access to Justice Act.

13. Venue is proper in the Northern District of Texas in accordance with 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the claims occurred in this district, and the policies being challenged are being implemented in the Northern District of Texas, among other locations.

**IV.**  
**Relevant Background Facts**

***A. General Prison Conditions***

14. Ms. Rhames is incarcerated and in custody of the Federal Bureau of Prisons, serving a sentence of 51 months. Ms. Rhames is a non-violent, minimum security inmate.
15. Both FMC Carswell (population approximately 1,652 inmates) and FPC Alderson (population approximately 958 inmates) are designated by the Bureau of Prisons (BOP) as “female only” prisons.
16. This means those facilities should house only female offenders. They are not officially designated to house male inmates.
17. Prison facilities generally house inmates 24 hours a day during their incarceration. At FMC Carswell, where this case originated after male inmates were placed in the general population (and

later, the SHU) of the women's prison, inmates are bunked in 4-person cells and are obligated to accept cellmates as assigned by Defendants. There is effectively no privacy from one's cellmates.

18. Similarly, at FPC Alderson, inmates are housed in partially walled 2 person cubicles, with about 60 cubicles per wing. Inmates are obligated to accept cellmates as assigned by Defendants. There is effectively no privacy from one's cellmates within any given wing of cubicles.
19. Inmates are under the direction, control, and supervision of BOP staff at all times while they eat, sleep, recreate, bathe, work, dress, and engage in other intimate activities such as using the restroom.
20. Many of these activities are not conducted in physically separated spaces, but are instead conducted in dormitory or "open" spaces visible to all other inmates and prison officials. This openness is mostly necessary in order to allow prison officials to keep a close eye on the activities of inmates to detect prison rule violations or harmful or harassing behavior towards other inmates or guards,

thus encouraging inmates to follow the rules to avoid discipline as well as preserving the security of the facility.

21. For the entire history of our nation, and in most nations world-wide, male prison inmates were housed in separate facilities from female inmates. There are many good reasons for this separation, including to protect the physical safety of the inmates and prison officials, bodily privacy, hygiene, and to prevent or avoid mental/sexual trauma, sexual assault, unintended pregnancies, and consensual sexual relations, which are typically prohibited by prison regulations.
22. To preserve their bodily privacy, female inmates may not be generally or routinely subjected to observation by male guards when the inmates are disrobing, showering, or toileting.
23. Similarly, to protect their bodily privacy, female inmates may not generally or routinely be subjected to pat searches by male guards.

***B. Recent Changes to Prison Regulations.***

24. In 2012 under former President Barack Obama, Defendants promulgated implementing regulations for the Prison Rape

Elimination Act, 34 U.S.C. § 30301 et seq., via notice-and-comment rulemaking to effect PREA's purpose of eliminating rape in federal and federally-funded prison facilities.

25. Among other matters, these implementing regulations stated how self-identified transgender inmates would be assigned to BOP facilities. *See* 28 C.F.R. § 115.42.
26. Subsequently, the BOP issued Program Statement number 5200.04, *Transgender Offender Manual*, effective January 18, 2017, to ensure that the BOP “properly identifies, tracks, and provides services to the transgender population.” Pls.’ Third Am. Compl. Ex. H, at 1, ECF No. 59-8 (“2017 *Transgender Offender Manual*”).
27. The 2017 *Transgender Offender Manual* expressly authorized Defendants to house transgender inmates based on their professed, self-reported gender identity.
28. The direct consequence of housing professed transgender inmates based on gender identity rather than sex was that male inmates claiming a feminine gender were placed in formerly female-only

prisons, including FMC Carswell. For ease of reference, these male inmates will be identified as “M/FG Inmates.”

29. The sole dispositive criterion for such M/FG Inmates to be treated as if they were females is their self-report.
30. There is no objectively discernible factor that establishes that a male inmate is actually a transgender person.
31. In contrast, sex means that one is either male or female as is determined by the union of male and female gametes at conception.
32. Sex is binary, objectively provable, and grounded in the fact that humans reproduce sexually.
33. The physical differences between males and females are enduring.
34. The sexes are not fungible.
35. The subjectivity of gender is evidenced by the regulations relating to professed transgender inmates, who are classified as such by this self-reported criteria:

*Gender identity* – a person’s sense of their own gender, which is communicated to others by their gender expression.

*Gender expression* – includes mannerisms, clothing, hair style, and choice of activities.

2017 *Transgender Offender Manual* at 2.

36. As is evident, a person's "**sense** of their own gender," and each of the indicia of "gender **expression**," are based solely on the self-reported declarations and volitional behaviors of the person himself, and are not objectively verifiable as is one's sex.

37. Additionally, this 2017 *Transgender Offender Manual* differentiates gender identity from sexual orientation:

*Sexual orientation* – the direction of one's sexual interest towards members of the same, opposite, or both genders (e.g., heterosexual, homosexual, bisexual, asexual). Sexual orientation and gender identity are not related.

*Id.*

38. This differentiation means that male inmates could be heterosexual in their orientation and thus attracted to women, while also claiming to be an M/FG Inmate.

39. Thus, under Defendants' policies, a male inmate who is sexually attracted to women may gain access to a captive female prison population.

40. Intermingling males and females within a federal women's prison increases the risk of prison rape occurring.

41. Regardless of sexual orientation, male inmates may use their male sexual organs to harass, threaten, or harm females.
42. For victims of sexual abuse—as many women in prison are—exposure to male sexual organs can be even more severely mentally distressing and harmful.
43. Upon information and belief, there are at least four M/FG professed transgender inmates who were placed into the female populations of federal women’s prisons: Linda Thompson; Peter Langan; Andre Saunders; and Darnell Nash.
44. Inmates Saunders and Nash have prison disciplinary records for violent incidents.
45. Inmate Langan presents himself as having a propensity for violence, and has verbally threatened other inmates with death.
46. Most or all of the M/FG Inmates currently housed in federal women’s prisons retain their male genitalia, including testicles and penises as well as their male physical stature.
47. For instance, Inmate Thompson, an approximately 6 foot, 4 inch tall, 230 pound male bank robber was housed along with Ms. Rhames in the female population at FMC Carswell.

48. Thompson still has his male genitalia, is much larger than the typical female inmates, and poses a physical threat to not only other inmates but also to prison staff, many of whom are smaller females.
49. Thompson has threatened various inmates with sexual assault if he did not get his way on certain issues—for example, when he might be assigned to a cell with a female inmate whom he disliked.
50. The constant risk of Ms. Rhames' unconsented viewing of male genitalia, and of her being observed by male inmates when she is disrobing, partially nude, or fully nude, deprives Ms. Rhames of her Constitutional rights to bodily privacy and freedom from mental and physical assault. The following incidents typify the risks to Ms. Rhames and exemplify the systemic impacts of the Defendants' policies:
  51. On or about March 14, 2017, during a fire drill, Inmate Thompson dropped his pants and urinated, exposing his genitals and buttocks to a crowd of approximately 400 female inmates, including Ms. Rhames who was standing behind Thompson

during the incident. *See also* Pls.’ Third Am. Compl. Ex. B, ECF No. 59-2 (“Decl. by Cheree Cockrell”) and Pls.’ Third Am. Compl. Ex. D, ECF No. 59-4 (“Decl. by Kathleen Nelson”) (describing incident).

52. In early 2017, Inmate Thompson was challenged by a guard regarding the way he was wearing his uniform. In protest, he stripped naked and walked about in the presence of over 100 women.
53. While Ms. Rhames was on kitchen duty at FMC Carswell, Inmate Thompson would wear his prison issue skirt without any underwear, then sit where Ms. Rhames would see him while spreading his legs to expose himself to her.
54. In another instance, while Ms. Rhames was watching a stage production, Inmate Saunders, who was wearing short shorts had a “wardrobe malfunction” where his male genitalia were exposed to Ms. Rhames and the audience while he was dancing on stage.
55. Other inmates have experienced similar violations of bodily privacy and safety. For instance, Inmates Theresa Martinez and Leslie Garrison asserted that they were housed in the Special

Housing Unit (“SHU”) administrative segregation cells with Inmate Thompson, during which time they had to shower, undress, and use the toilet in full view of Thompson. Verified Claims for which Intervention is Sought 2-3, ECF No. 141.

56. Inmate Kathleen Nelson reported exposure to male bodies and witnessed the fire drill incident in which Inmate Thompson exposed himself while urinating. Decl. by Kathleen Nelson 1, ECF No. 59-4.
57. Inmate Julie Hatcher has been exposed to male inmates, including being exposed to full frontal nudity of Inmate Thompson, and to Thompson’s genitals, on a daily basis. Decl. by Julie Hatcher 1, ECF No. 44.
58. Inmate Nakeisha Hall has been exposed to a male inmate in her shower and bathroom area, when he entered without warning the women of his presence. App. to Pls.’ Reply to Defs.’ Opp’n to Pls.’ Mot. for Prelim. Inj. 3 (“Decl. by Nakeisha Hall”), ECF No. 105.
59. Inmate Megan Kemp was locked in a segregation cell with Inmate Thompson and suffered sexual harassment. Mot. for Notice to

Potential Pls. and/or Interested Parties Ex. A (“Decl. of Megan Kemp”), ECF No. 172.

60. Sexual assault in prison is a very serious national problem, which is why then-Senator Jefferson Sessions sponsored and helped pass the Prison Rape Elimination Act of 2003, P.L. 108-79, codified as 34 U.S.C. § 30301, et seq.
61. Regulation 28 C.F.R. § 115.42 does not mention, much less make provisions for, the protection, safety, and privacy of the biological female inmates with whom M/FG Inmates are being housed.
62. The 2017 *Transgender Offender Manual* did not mention, much less make provisions for, the protection, safety, and privacy of the biological female inmates with whom M/FG Inmates are being housed. For instance, 2017 *Transgender Offender Manual* cites to 28 C.F.R. § 115.42(c):

In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates...the agency shall consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems.

Nothing was said about the privacy, religious beliefs, health, or safety of other inmates who do not suffer from sexually-based psychological conditions.

63. The 2017 *Transgender Offender Manual* elevated the concerns of M/FG Inmates, many of whom suffer multiple serious psychological disorders in addition to gender dysphoria, over and above the concerns and protection of the entire population of female inmates, thus shifting the burden to protect the privacy and safety of the female inmates from the prison and onto the inmates themselves.
64. There is no penological interest being served by placing male inmates within the general populations of federal women's prisons.
65. On September 25, 2017, the Court ordered that this case be abated pending the resolution of ongoing settlement negotiations. Order, ECF No. 111.
66. On May 11, 2018 the Bureau of Prisons issued a revised *Transgender Offender Manual*, No. 5200.04 CN-1 ("2018 *Transgender Offender Manual*"), attached as ***Exhibit 1***.

67. On May 25, 2018, Ms. Rhames advised the Court through counsel that a satisfactory settlement had not been reached, and requested that the case be returned to active status. Plaintiff Brenda Rhames' Notice Regarding Abatement Period and Settlement Negotiations 1, ECF No. 180.
68. On May 31, the Court returned the case to active status. Order Setting Status Conference, ECF No. 183.
69. Under the 2018 *Transgender Offender Manual*, Defendants retain the authority to house an M/FG Inmate in federal women's prisons.
70. Nothing within the 2018 *Transgender Offender Manual* prohibits the Defendants from placing an M/FG Inmate within a federal women's prison.
71. Nothing within the 2018 *Transgender Offender Manual* prohibits the Defendants from housing an M/FG Inmate within a SHU administrative segregation cell where one or more female inmates are housed.
72. Nothing within the 2018 *Transgender Offender Manual* prohibits the Defendants from housing an M/FG Inmate within a dormitory

cubicle at FPC Alderson.

73. Nothing within the 2018 *Transgender Offender Manual* prohibits the Defendants from housing an M/FG Inmate at any of BOP's women's prisons.
74. Contemporaneously with the publication of the 2018 *Transgender Offender Manual*, M/FG Inmate Thompson was transferred from FMC Carswell to another federal women's prison, FCI Aliceville.
75. Non-federal prisons having similar inmate populations and inmate demographics—such as the State of Texas system—currently manage the needs of professed transgender prisoners without intermingling the sexes in the general prison population, just as the Federal system did prior to the adoption of gender identity theory in its regulations.
76. M/FG Inmates still possess the innate physical characteristics of male human beings (even if they have had surgical removal of some or all male sexual organs), including greater average height, weight, and muscle mass than females.
77. These characteristics make M/FG Inmates substantially larger and stronger than the average female, thus rendering them a

physical as well as sexual danger to female inmates and prison officials.

***C. The Conditions That Support This Lawsuit.***

78. As would be expected from the federal prison regulations requiring this, Ms. Rhames has been housed with M/FG Inmates.

79. M/FG Inmates have been known to display their male genitalia to Ms. Rhames, either aggressively and intentionally as a means of intimidation or harassment, or inadvertently in the course of prison life.

80. Whether such exposure is intentional or inadvertent, or motivated by animus or not, it is damaging to Ms. Rhames and such exposure arises solely because of the Defendants' policies and practices challenged herein.

81. Ms. Rhames' exposure, either intentionally or inadvertently, to these displays of male genitalia has caused her to suffer embarrassment, mental anguish, suspicion, fear of sexual assault, and other unnecessary and readily preventable mental distress.

82. Further, Ms. Rhames is an evangelical Christian. Consistent with the tenets of her faith, she observes certain conventions of

modesty in dress and demeanor, which include not viewing nude males unnecessarily and similarly avoiding exposure of her own nudity to men. These religious tenets and the free exercise thereof are being violated by the imposition of the subject regulations and the housing of M/FG Inmates in federal women's prisons.

83. Christian teachings about modesty and privacy between the sexes are among the most fundamental of Christian teachings, being evident in Genesis, the very first book of the Bible.

84. On May 4, 2017, President Donald Trump issued an Executive Order Promoting Free Speech and Religious Liberty to the agencies under his authority—including the Bureau of Prisons—to establish the following policy, which in relevant part states:

Section 1. Policy. It shall be the policy of the executive branch to vigorously enforce Federal law's robust protections for religious freedom. The Founders envisioned a Nation in which religious voices and views were integral to a vibrant public square, and in which religious people and institutions were free to practice their faith without fear of discrimination or retaliation by the Federal Government. For that reason, the United States Constitution enshrines and protects the fundamental right to religious liberty as Americans' first freedom. Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.

*Presidential Executive Order Promoting Free Speech and Religious Liberty*, <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-promoting-free-speech-religious-liberty/>.

Defendants' policies and practices as applied to Ms. Rhames' religious tenets regarding personal privacy are inconsistent with the President's May 4, 2017 Executive Order Promoting Free Speech and Religious Liberty.

85. Despite being on notice through this lawsuit that their policies were violating Ms. Rhames' religious freedom, Defendants took no action pursuant to the Presidential Order to amend their problematic policies.
86. While at FMC Carswell, Ms. Rhames' only potential alternative to avoid exposure to M/FG Inmates would be to volunteer for protective custody. This amounts to solitary confinement in the SHU, which results in loss of paid prison work assignments, contact with other inmate friends and associates, access to recreational facilities, and other deprivations.
87. This is backwards: it is not Ms. Rhames who is intruding on the constitutional rights of other inmates in the prison, but rather it

is the M/FG Inmates who necessarily violate privacy and pose other threats to legal rights and even others' safety. It is unjust and unreasonable for Ms. Rhames to be asked to "volunteer" for more-punitive confinement conditions in the SHU in order to avoid the harms and threats being inflicted on her by the Defendants' policies.

88. Ms. Rhames has suffered, and continues to suffer, severe mental anguish in the form of extreme embarrassment, fear for her physical safety, anxiety, and sleeplessness based on her being subjected to conditions where her bodily privacy is continually at risk and frequently violated, and mental and physical safety is constantly endangered by being housed with professed transgender inmates, all under the Defendants' policies.

**V.  
Statement of Applicable Law**

89. At all relevant times, each and all of the acts alleged herein were attributed to the Defendants who acted under color of a statute, regulation, or other laws of the United States.
90. Nothing within the text of the PREA authorizes Defendants to place males into federal women's prisons.

91. Nothing within the text of the PREA authorizes Defendants to place male inmates into federal women's prisons so as to affirm a male inmate's claimed feminine gender.
92. Nothing within the text of the PREA authorizes the Defendants to redefine "sex" in federal law or regulation as meaning or including "gender identity."
93. Nothing within the text of the PREA authorizes the Defendants to redefine "sex" in federal law or regulation to be established by a person's claimed gender.
94. The right to bodily privacy is protected by the Fourth, Fifth, and Eighth Amendments to the U.S. Constitution and various federal laws and regulations.
95. Even within prison, women retain constitutional bodily privacy rights sufficient to foreclose routine surveillance by males.
96. The right to be free from a sexually hostile environment and from sexual harassment while incarcerated in a government prison is well established under federal law.

97. The right to be free to express and enjoy religious liberty without improper governmental interference is well established in federal law, including RFRA.
98. The rules and regulations under review in this case infringe on and disparage the federally protected rights of Ms. Rhames as set forth herein.
99. Defendants knew or should have known that the subject rules and regulations infringed on Ms. Rhames' constitutional and statutory rights, but enforced and implemented those rules and regulations anyway, and continue to do so, all to the harm of Ms. Rhames.
100. The continued enforcement of the subject rules and regulations by Defendants will continue to infringe and violate Ms. Rhames' constitutional and statutory rights unless this Court enjoins such action.
101. Defendants are and have been deliberately indifferent to the constitutional and statutory violations visited upon Ms. Rhames by the Defendants' policies and practices.

102. Preserving bodily privacy—particularly in conducting personal hygiene and not suffering unconsented viewing of one’s nude body—is one necessary measure of civilized life.
103. Defendants have no legitimate penological interest in forcing female inmates to share their cells, locker areas, showers, and toilets—areas where even inmates retain a degree of constitutional protection for their bodily privacy—with male inmates.

**VI.**  
**Causes of Action**

All facts set forth above are incorporated into each of the causes of action below as if fully set forth therein.

***First Cause of Action: Violation of Bodily Privacy***

104. While inmates have a lessened expectation of privacy while incarcerated, all inmates, including Ms. Rhames, retain a degree of constitutional protection for their bodily privacy, particularly in respect to exposure of their nude or partially unclothed bodies to the opposite sex within their cells, sleeping quarters, and in shower and restroom facilities.

105. Ms. Rhames retains constitutional bodily privacy protection rights from unconsented exposure to male nudity and/or a sexually harassing environment.
106. By intentionally placing M/FG inmates within federal women's prisons, including FMC Carswell while Ms. Rhames was incarcerated therein, Defendants have violated Ms. Rhames' constitutional right to bodily privacy.

***Second Cause of Action: Cruel and Unusual Punishment***

107. Ms. Rhames has the Constitutional right under the Fourth, Fifth, and Eighth Amendments, even while in prison, to be free from physical and mental harm and threats of harm imposed on her by prison officials, directly or indirectly, whether that harm is caused by implementation of rules and regulations or otherwise. Such physical and mental harm and threats of harm imposed by prison officials constitute cruel and unusual punishment under the Eighth Amendment.
108. Ms. Rhames was sentenced to serve her time in a federal women's prison.

109. Defendants' creation and enforcement of 28 C.F.R. § 115.42 and the 2017 and 2018 *Transgender Offender Manuals* subjected her to cruel and unusual punishment by housing her in a facility where male inmates were intermingled in the female inmate general population with consequent violations of her bodily privacy and religious exercise.
110. Defendants' creation and enforcement of 28 C.F.R. § 115.42 and the 2017 and 2018 *Transgender Offender Manuals* subjected Ms. Rhames to an ongoing risk of being housed with a male inmate within the general population of any BOP women's prison to which she may be assigned.
111. Defendants therefore have subjected, and continue to subject, Ms. Rhames to cruel and unusual punishment prohibited by the Eight Amendment.

***Third Cause of Action: Violation of the RFRA***

112. RFRA requires, among other things, that a federal statute or regulation, even if facially neutral and generally applicable, that imposes a substantial burden upon an individual's religious

exercise must be narrowly tailored to serve a compelling government interest by the least restrictive means.

113. There is no compelling government interest in housing male inmates in federal women's prisons as a method of eliminating prison rape.

114. There is no compelling government interest in housing male inmates in federal women's prisons so as to affirm a male inmate's self-reported feminine gender.

115. There is no compelling government interest in housing male inmates in federal women's prisons as a method of treatment or diagnosis for gender dysphoria.

116. Defendants did not use the least restrictive means to attain any government interest that they may posture as "compelling."

117. Defendants have therefore violated Ms. Rhames' free exercise of religion under the RFRA.

***Fourth Cause of Action: Violation of the APA***

118. Under the APA, a reviewing Court must "hold unlawful and set aside agency action" in four instances that apply to this case:

- a. if the agency action is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A);
- b. if the agency action is “contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B);
- c. if the agency action is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C); and
- d. if the agency action is “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

119. The Defendants’ creation and enforcement of 28 C.F.R. § 115.42 and the 2017 and 2018 *Transgender Offender Manuals* violates Ms. Rhames’ statutory right to the free exercise of religion pursuant to RFRA.

120. The Defendants housed male inmates in women’s prisons, purportedly as a method of eliminating prison rape pursuant to their creation and enforcement of 28 C.F.R. § 115.42 and the 2017 and 2018 *Transgender Offender Manuals*.

121. Therefore, the Defendants acted arbitrarily, capriciously, and abused their discretion in creating and enforcing 28 C.F.R. § 115.42 and the 2017 and 2018 *Transgender Offender Manuals* in violation of 5 U.S.C. § 706(2)(A);
122. The Defendants' creation and enforcement of 28 C.F.R. § 115.42 and the 2017 and 2018 *Transgender Offender Manuals* violated Ms. Rhames' constitutional right to bodily privacy.
123. The Defendants' creation and enforcement of 28 C.F.R. § 115.42 and the 2017 and 2018 *Transgender Offender Manuals* imposed unconstitutionally cruel and unusual punishment upon Ms. Rhames.
124. Therefore, 28 C.F.R. § 115.42 and the 2017 and 2018 *Transgender Offender Manuals* are contrary to constitutional right and violate 5 U.S.C. § 706(2)(B).
125. Nothing within PREA authorized Defendants to redefine sex to mean, or at least include, gender identity.
126. Nothing within PREA authorized Defendants to house male inmates in women's prisons for the purpose of establishing zero tolerance for rape.

127. Nothing within PREA authorized Defendants to house male inmates in women's prisons for the purpose of preventing rape.
128. Nothing within PREA authorized Defendants to house male inmates in women's prisons for the purpose of affirming an inmate's claimed gender.
129. PREA expressly requires Defendants to protect the Eighth Amendment rights of federal prisoners, a duty in which Defendants failed with respect to Ms. Rhames.
130. Therefore, 28 C.F.R. § 115.42 and the 2017 and 2018 *Transgender Offender Manuals* are in excess of statutory jurisdiction, authority, or limitations, or short of statutory right and violate 5 U.S.C. § 706(2)(C).
131. The 2017 and 2018 *Transgender Offender Manuals* are legislative rules that create new law, rights, or duties for inmates based upon their claimed gender.
132. The 2017 and 2018 *Transgender Offender Manuals* impose a new duty upon Ms. Rhames to treat an M/FG inmate in all respects as if the inmate were female.

133. The 2017 and 2018 *Transgender Offender Manuals* create a new right for M/FG inmates to be housed in the general population of BOP women's prisons.
134. The 2017 and 2018 *Transgender Offender Manuals* were not created via notice-and-comment rulemaking.
135. Therefore, the 2017 and 2018 *Transgender Offender Manuals* were without observance of procedure required by law and violate 5 U.S.C. § 706(2)(D).

**VI.**  
**Relief Requested**

Ms. Rhames does *not* seek to prevent medically necessary treatment prescribed for any inmate. Instead, to protect her legal rights to privacy, safety, and the free exercise of her faith, she does seek the following relief:

136. Declaratory Judgment that 28 C.F.R. § 115.42 and the 2017 and 2018 *Transgender Offender Manuals* as applied to Ms. Rhames violate the U.S. Constitution because they infringe on her right to bodily privacy and subject her to cruel and unusual punishment;

137. Declaratory Judgment that 28 C.F.R. § 115.42 and the 2017 and 2018 *Transgender Offender Manuals* as applied to Ms. Rhames violate her right to freely exercise her religion under RFRA;
138. Declaratory Judgment that 28 C.F.R. § 115.42 and the 2017 and 2018 *Transgender Offender Manuals* violate the APA as set forth in the Fourth Cause of Action;
139. Permanent Injunction enjoining the Defendants from housing any male inmates, including those self-reporting to be M/FG inmates, within the general population of a federal women's prison or granting a male inmate access to any female-only privacy area such as restrooms, locker areas, or showers;
140. Preliminary Injunction pending the resolution of this litigation, enjoining Defendants from housing any male inmates, including those self-reporting to be M/FG Inmates, within the general population of any facility in which Ms. Rhames is or may be incarcerated; or granting a male inmate access to any female-only privacy area such as restrooms, locker areas, or showers to which Ms. Rhames would have access;

141. Enjoin the Defendants to promptly relocate any male inmates, including those self-reporting to be M/FG inmates, who are currently housed in the general population of federal women's prisons to either a federal men's prison or, in the alternative, order Defendants to craft a remedy that protects the constitutional rights and safety of Ms. Rhames without imposing punitive or restrictive conditions on her and, upon notice and hearing, adopt said alternative remedies if and as the Court deems it appropriate.
142. Nominal damages of \$100.00 to memorialize the legal injuries suffered by Ms. Rhames;
143. Reasonable and necessary attorneys' fees in accordance with 28 U.S.C. § 2412, 42 U.S.C. § 1988, the Equal Access to Justice Act, and in equity; and
144. Such other and further relief as is just.

Respectfully submitted this 11th day of July, 2018, by:

/s/ James Pikel

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*ATTORNEYS FOR PLAINTIFF BRENDA RHAMES*

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**CERTIFICATE OF SERVICE**

In accordance with Local Rule 5.1(d), the foregoing pleading was served in accordance with the CM/ECF filing system and FRCP 4.

/s/ James A. Pikel

**VERIFICATION**

My name is Brenda Rhames. I am the Plaintiff in this lawsuit. I have personal knowledge of the facts I stated in the pleading above, and all such facts are true and correct. I hereby verify under penalty of perjury that the foregoing answers are true and correct. (28 U.S.C. § 1746).

  
Brenda Rhames, Plaintiff

# **EXHIBIT 1**



U.S. Department of Justice  
Federal Bureau of Prisons

## CHANGE NOTICE

OPI: RSD/WSP  
NUMBER: 5200.04 CN-1  
DATE: May 11, 2018

# Transgender Offender Manual

A handwritten signature in black ink, appearing to read "Mark S. Inch".

Approved: Mark S. Inch  
Director, Federal Bureau of Prisons

This Change Notice (CN) implements the following change to Program Statement 5200.04, **Transgender Offender Manual**, dated January 18, 2017. The purpose of the Change Notice is to ensure that the Transgender Executive Council (TEC) considers issues related to prison management and security in determining appropriate housing of transgender inmates, including risks posed to staff, other inmates, and members of the public. The clarifications to policy will establish appropriate expectations for the inmate population concerning designations.

The changes are marked with a **highlight** and inserted into the policy. Deleted text is struck through. In addition, the branch name has been changed from Female Offender Branch to Women and Special Populations Branch.

### 1. PURPOSE AND SCOPE

To ensure the Bureau of Prisons (Bureau) properly identifies, tracks, and provides services to the transgender population, **consistent with maintaining security and good order in Federal prisons.**

### 4. STAFF TRAINING

The **Women and Special Populations Branch** will be responsible for developing training materials and current information on the management of transgender inmates. **Training will include information concerning best practices for maintaining the safety of transgender inmates, while also ensuring security and good order in Federal prisons and the safety of staff, inmates, and the public.** This information will be made available to staff on the **Women and Special Populations Branch** Sallyport page.

## 5. INITIAL DESIGNATIONS

The TEC will consider factors including, but not limited to, an inmate's security level, criminal and disciplinary history, current gender expression, medical and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. The TEC may also consider facility-specific factors, including inmate populations, staffing patterns, and physical layouts (e.g., types of showers available). ~~The TEC will recommend housing by gender identity when appropriate.~~

In deciding the facility assignment for a transgender or intersex inmate, the TEC should make the following assessments on a case-by-case basis:

- The TEC will use biological sex as the initial determination for designation;
- The TEC will consider the health and safety of the transgender inmate, exploring appropriate options available to assist with mitigating risk to the transgender offender, to include but not limited to cell and/or unit assignments, application of management variables, programming missions of the facility, etc.;
- The TEC will consider factors specific to the transgender inmate, such as behavioral history, overall demeanor, and likely interactions with other inmates; and
- The TEC will consider whether placement would threaten the management and security of the institution and/or pose a risk to other inmates in the institution (e.g., considering inmates with histories of trauma, privacy concerns, etc.).

The designation to a facility of the inmate's identified gender would be appropriate only in rare cases after consideration of all of the above factors and where there has been significant progress towards transition as demonstrated by medical and mental health history.

It will be noted in SENTRY designation notes that the TEC reviewed the inmate for appropriate institution designation.

## 7. HOUSING AND PROGRAMMING ASSIGNMENTS

In order for an inmate to be considered for transfer to another institution of the same sex as the inmate's current facility location, ~~including a facility housing individuals of the inmate's identified gender,~~ the Warden should consult with the TEC prior to submitting a designation request to the DSCC, but this is not required.

In addition, the Warden may make a recommendation to the TEC to transfer a transgender or intersex inmate based on an inmate's identified gender.

In considering such recommendations, the TEC will apply all criteria of Section 5, above, and make the following assessments concerning the recommendation:

- The TEC will use biological sex as the initial determination for designation;
- The TEC will consider the health and safety of the transgender inmate, exploring appropriate options available to assist with mitigating risk to the transgender offender, to include but not limited to cell and/or unit assignments, application of management variables, programming missions of the facility, re-designation to another facility of the same sex, etc.;
- The TEC will also consider factors specific to the transgender inmate, such as behavioral history, overall demeanor, program participation, and likely interactions with other inmates; and
- The TEC will consider whether placement would threaten the management and security of the institution and/or pose a risk to other inmates in the institution (e.g., considering inmates with histories of trauma, privacy concerns, etc.).

The designation to a facility of the inmate's identified gender would be appropriate only in rare cases after consideration of all of the above factors and where there has been significant progress towards transition as demonstrated by medical and mental health history, as well as positive institution adjustments.

It will be noted in SENTRY designation notes that the TEC reviewed the inmate for appropriate institution designation.

## 9. HORMONE AND NECESSARY MEDICAL TREATMENT

Hormone or other necessary medical treatment may be provided after an individualized assessment of the requested inmate by institution medical staff. Medical staff should request consultation from Psychology Services regarding the mental health benefits of hormone or other necessary medical treatment. If appropriate for the inmate, hormone treatment will be provided in accordance with the Program Statement **Patient Care** and relevant clinical guidance. Questions concerning hormone treatment may be referred to the TCCT.



**U.S. Department of Justice**  
Federal Bureau of Prisons

## PROGRAM STATEMENT

OPI: RSD/FOB  
NUMBER: 5200.04  
DATE: January 18, 2017

# Transgender Offender Manual

/s/

*Approved:* Thomas R. Kane  
Acting Director, Federal Bureau of Prisons

## 1. PURPOSE AND SCOPE

To ensure the Bureau of Prisons (Bureau) properly identifies, tracks, and provides services to the transgender population, **consistent with maintaining security and good order in Federal prisons.**

a. **Program Objectives.** Expected results of this program are:

- This policy is meant to provide guidance to staff in dealing with the unique issues that arise when working with transgender inmates.
- Institutions ensure transgender inmates can access programs and services that meet their needs as appropriate, and prepare them to return to the community.
- Sufficient resources will be allocated to deliver appropriate services to transgender inmates.
- Staff will be offered training, enabling them to work effectively with transgender inmates.
- To support staff's understanding of the increased risk of suicide, mental health issues and victimization of transgender inmates.

b. **Institution Supplement.** None required. Should local facilities make any changes outside changes required in national policy or establish any additional local procedures to implement national policy, the local Union may invoke to negotiate procedures or appropriate arrangements.

## 2. DEFINITIONS

*Gender* – a construct used to classify a person as male, female, both, or neither. Gender encompasses aspects of social identity, psychological identity, and human behavior.

*Gender identity* – a person’s sense of their own gender, which is communicated to others by their gender expression.

*Gender expression* – includes mannerisms, clothing, hair style, and choice of activities.

*Gender nonconforming* – a person whose appearance or manner does not conform to traditional societal gender expectations.

*Transgender* – the state of one’s gender identity not matching one’s biological sex. For the purposes of this policy, a transgender inmate is one who has met with a Bureau of Prisons psychologist and signed the form indicating consent to be identified within the agency as transgender. This step allows for accommodations to be considered.

*Cisgender* – the state of one’s gender identity matching one’s biological sex.

*Sexual orientation* – the direction of one’s sexual interest towards members of the same, opposite, or both genders (e.g., heterosexual, homosexual, bisexual, asexual). Sexual orientation and gender identity are not related.

*Gender Dysphoria (GD)* – a mental health diagnosis currently defined by DSM-5 as, “A strong and persistent cross-gender identification. It is manifested by a stated desire to be the opposite sex and persistent discomfort with his or her biologically assigned sex.” Not all transgender inmates will have a diagnosis of GD, and a diagnosis of GD is not required for an individual to be provided services.

*Intersex* – a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical biological definitions of male or female. Not all intersex people identify as transgender; unless otherwise specified, this policy does not apply to intersex people who do not identify as transgender.

*Transition* – measures that change one’s gender expression or body to better reflect a person’s gender identity.

### **3. STAFF RESPONSIBILITIES**

The following Bureau components are responsible for ensuring consistent establishment of the programs, services, and resource allocations necessary for transgender offenders.

a. **Central Office**

(1) The **Women and Special Populations Branch** is the agency's primary source and point of contact on classification, management, and intervention programs and practices for transgender inmates in Bureau custody. The Branch is responsible for the following functions as they relate to transgender inmates:

- Engaging stakeholders, including serving as the primary point of contact on issues affecting transgender inmates with judges, political figures, and advocacy groups.
- Ensuring the Bureau offers appropriate services to transgender inmates.
- Preparing budgetary requests to deliver national and pilot programs or services affecting transgender inmates.
- Providing guidance and direction to Regional staff and institution leadership on transgender issues.
- Developing and implementing staff training on transgender issues.
- Building a research-based foundation for the Bureau's work with transgender inmates.
- Presenting at internal and external conferences/events regarding the agency's transgender inmates' practices.
- Developing and monitoring monthly reports on the transgender population and institutional programs.
- Issuing an annual report on the state of transgender offenders in the Bureau that will be made available to all staff and stakeholders.
- Advising agency leadership on transgender inmate needs.
- Conducting an annual survey of transgender inmates in the Bureau and sharing results with internal and external stakeholders.
- Providing national oversight of pilot programs and initiatives serving transgender offenders.

(2) The **Health Services Division** oversees all medical and psychiatric activity as it applies to transgender inmates. Guidance on the most current research-driven clinical medical and psychiatric care of transgender inmates will be provided by the Medical Director.

The Health Services Division also has oversight of a Transgender Clinical Care Team (TCCT). This team will be comprised of Physicians, Pharmacists, and Psychiatrists. Social Workers, Psychologists, and other clinical providers can also be included when appropriate. The TCCT will offer advice and guidance to health services staff on the medical treatment of transgender inmates and/or inmates with GD. Medical staff can raise issues to the TCCT through the Health Services Division.

(3) The **Psychology Services Branch** oversees all psychological mental health programs and services as they apply to transgender inmates, to include providing advice and guidance on

identification and evaluation of transgender inmates, and making recommendations for treatment needs of transgender inmates and/or inmates with GD.

(4) **Central Office Branches/Divisions** of Correctional Services, Psychology Services, Education, Correctional Programs, Reentry Affairs, Residential Reentry Management, Health Services, Health Programs, Social Work, Office of General Counsel, and Trust Fund meet annually with the **Women and Special Populations Branch** to discuss transgender population needs and evaluate current gender-responsive services. The National Union and the Central Office LGBT Special Emphasis Program Manager will be invited to attend these meetings.

(5) The **Transgender Executive Council (TEC)** will consist of staff members from the Health Services Division, the **Women and Special Populations Branch**, Psychology Services, the Correctional Programs Division, the Designation and Sentence Computation Center (DSCC), and the Office of General Counsel. The TEC will meet a minimum of quarterly to offer advice and guidance on unique measures related to treatment and management needs of transgender inmates and/or inmates with GD, including designation issues. Institution staff and DSCC staff may raise issues on specific inmates to the TEC through the **Women and Special Populations Branch**. The National PREA Coordinator is consulted as needed.

#### b. **Regional Offices**

- Provide oversight to institutions regarding services and other relevant trends managing transgender inmates.
- Assign transgender responsibilities to the Regional Female Offender/Transgender Coordinator Collateral Duty Assignment. This individual meets quarterly with the **Women and Special Populations Branch** to discuss staffing and programming needs.

#### c. **Institutions**

The institution CEO will establish a multi-disciplinary approach to the management of transgender inmates; specifically:

- Ensure transgender inmates have access to services.
- Enter tracking information for self-identified transgender inmates by updating SENTRY and other databases (e.g., PDS), as appropriate.
- Provide appropriate reentry resources that may be specific to the population.
- Advise the Local Union of transgender inmate management issues, as appropriate.

#### 4. STAFF TRAINING

Staff will be provided specialized training in working with unique issues when managing transgender inmates, with refresher training at annual training. Institutions housing known transgender inmates should provide additional training, if needed.

The **Women and Special Populations Branch** will be responsible for developing training materials and current information on the management of transgender inmates. **Training will include information concerning best practices for maintaining the safety of transgender inmates, while also ensuring security and good order in Federal prisons and the safety of staff, inmates, and the public.** This information will be made available to staff on the **Women and Special Populations Branch** Sallyport page.

In addition, the Prison Rape Elimination Act (PREA) regulations incorporated into the BOP Program Statement **Sexually Abusive Behavior Prevention and Intervention Program** have training requirements concerning pat searches and communication skills for transgender inmates. See 28 C.F.R. § 115.15(f) and 115.31 (a) (9). Please refer to this Program Statement regarding implementation of those training requirements.

Staff will be provided adequate time to complete these trainings during duty hours.

#### 5. INITIAL DESIGNATIONS

The PREA regulations, incorporated into the Program Statement **Sexually Abusive Behavior Prevention and Intervention Program**, state in section 28 C.F.R. § 115.42 (c):

**“In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates...the agency shall consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems.”**

Upon receipt of information from a Pre-Sentence Report, court order, U.S. Attorney’s Office, defense counsel, the offender, or other source that an individual entering BOP custody is transgender, designations staff will refer the matter to the TEC for advice and guidance on designation.

Institution staff managing pretrial or holdover offenders may also refer cases to the TEC for review. Any TEC recommendations concerning pretrial inmates will be coordinated with the appropriate United States Marshal’s Office.

The TEC will consider factors including, but not limited to, an inmate's security level, criminal and disciplinary history, current gender expression, medical and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. The TEC may also consider facility-specific factors, including inmate populations, staffing patterns, and physical layouts (e.g., types of showers available). ~~The TEC will recommend housing by gender identity when appropriate.~~

In deciding the facility assignment for a transgender or intersex inmate, the TEC should make the following assessments on a case-by-case basis:

- The TEC will use biological sex as the initial determination for designation;
- The TEC will consider the health and safety of the transgender inmate, exploring appropriate options available to assist with mitigating risk to the transgender offender, to include but not limited to cell and/or unit assignments, application of management variables, programming missions of the facility, etc.;
- The TEC will consider factors specific to the transgender inmate, such as behavioral history, overall demeanor, and likely interactions with other inmates; and
- The TEC will consider whether placement would threaten the management and security of the institution and/or pose a risk to other inmates in the institution (e.g., considering inmates with histories of trauma, privacy concerns, etc.).

The designation to a facility of the inmate's identified gender would be appropriate only in rare cases after consideration of all of the above factors and where there has been significant progress towards transition as demonstrated by medical and mental health history.

It will be noted in SENTRY designation notes that the TEC reviewed the inmate for appropriate institution designation.

## 6. INTAKE SCREENING

The PREA regulations in 28 C.F.R. part 115, Subpart A, incorporated into the Program Statement **Sexually Abusive Behavior Prevention and Intervention Program** and the Program Statement **Intake Screening**, address intake screening. Screening of transgender inmates will be conducted in accordance with these policies and all other applicable policies and procedures.

## 7. HOUSING AND PROGRAMMING ASSIGNMENTS

During Initial classification and Program Reviews, Unit Management staff will twice-yearly review the inmate(s) current housing unit status and programming available for transgender inmates; this review will be documented by Unit Management.

The reviews will consider on a case-by-case basis that the inmate placement does not jeopardize the inmate's health and safety and does not present management or security concerns.

In making housing unit and programming assignments, a transgender or intersex inmate's own views with respect to his/her own safety must be given serious consideration.

Transgender inmates shall be given the opportunity to shower separate from other inmates.

The agency shall not place transgender or intersex inmates in dedicated facilities, units, or wings solely on the basis of such 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.

In order for an inmate to be considered for transfer to another institution of the same sex as the inmate's current facility location, including a facility housing individuals of the inmate's identified gender, the Warden should consult with the TEC prior to submitting a designation request to the DSCC, but this is not required.

In addition, the Warden may make a recommendation to the TEC to transfer a transgender or intersex inmate based on an inmate's identified gender.

In considering such recommendations, the TEC will apply all criteria of Section 5, above, and make the following assessments concerning the recommendation:

- The TEC will use biological sex as the initial determination for designation;
- The TEC will consider the health and safety of the transgender inmate, exploring appropriate options available to assist with mitigating risk to the transgender offender, to include but not limited to cell and/or unit assignments, application of management variables, programming missions of the facility, re-designation to another facility of the same sex, etc.;
- The TEC will also consider factors specific to the transgender inmate, such as behavioral history, overall demeanor, program participation, and likely interactions with other inmates; and
- The TEC will consider whether placement would threaten the management and security of the institution and/or pose a risk to other inmates in the institution (e.g., considering inmates with histories of trauma, privacy concerns, etc.).

The designation to a facility of the inmate's identified gender would be appropriate only in rare cases after consideration of all of the above factors and where there has been significant progress

towards transition as demonstrated by medical and mental health history, as well as positive institution adjustments.

It will be noted in SENTRY designation notes that the TEC reviewed the inmate for appropriate institution designation.

## 8. DOCUMENTATION AND SENTRY ASSIGNMENTS

a. **Medical and Mental Health Information.** Medical and mental health information for transgender inmates will be maintained in the current electronic recordkeeping system in accordance with the Program Statement **Health Information Management**. Medical and mental health information is considered confidential, and may only be released in accordance with appropriate laws, rules, and regulations.

b. **Initial Screening.** For initial designations, designations staff will assign Case Management Activity (CMA) SENTRY assignments if information in the PSR or other documentation indicates a likely transgender identity. The screening codes will be:

SCRN M2F – inmate should be screened for male to female.

SCRN F2M – inmate should be screened for female to male.

Any inmate arriving at the designated institution with a screening code is to be referred to the Chief Psychologist or designee for review within 14 days. If the code was assigned in error, the screening code will be removed by the psychologist. If the inmate identifies as transgender, the psychologist will replace the screening code with an identifying code, as indicated below. Holdover facilities will be exempt from this initial screening requirement, as limited available records and brevity of stay do not allow for a comprehensive screening.

Any inmate who arrives without a screening code but identifies as transgender during intake, or at any time during the incarceration period, is referred to the Chief Psychologist or designee and interviewed within 14 days of the inmate notification. Inmates in pretrial status at Bureau facilities may also receive a SENTRY code.

c. **Notification to Staff and Tracking.** After consultation with Psychology Services, and if the inmate affirms his/her transgender identity, the screening code will be updated to a permanent assignment by a psychologist:

TRN M2F – inmate is male to female transgender (transgender female).

TRN F2M – inmate is a female to male transgender (transgender male).

The inmate must request to Psychology Services staff that the CMA assignment be entered, and the inmate consents that all staff will therefore be notified that the individual is transgender. The inmate's request will be documented on BP-A1110, Case Management Activity (CMA) SENTRY Assignment Consent Form for Transgender Inmates (included as Attachment A to this policy). Psychology Services will maintain the form in the electronic mental health record and forward a copy of the form to the Unit Team. The Unit Team will maintain the form in the FOI Exempt section of the Central File.

Staff should consult the CMA assignment when interacting with the inmate; e.g., use of pronouns, searches, commissary items, etc., as indicated below.

If there are questions about the need to continue a CMA assignment, the Warden should contact the **Women and Special Populations Branch**. Should the CMA assignment change, staff members will not be disciplined for the continued provision of accommodations or use of pronouns.

## 9. HORMONE AND **NECESSARY** MEDICAL TREATMENT

Hormone or other **necessary** medical treatment may be provided after an individualized assessment of the requested inmate by institution medical staff. Medical staff should request consultation from Psychology Services regarding the mental health benefits of hormone or other **necessary** medical treatment. If appropriate for the inmate, hormone treatment will be provided in accordance with the Program Statement **Patient Care** and relevant clinical guidance. Questions concerning hormone treatment may be referred to the TCCT.

In the event this treatment changes the inmate's appearance to the extent a new identification card is needed, the inmate will not be charged for the identification card.

## 10. INSTITUTION PSYCHOLOGY SERVICES

Bureau psychologists are available to provide assessment and treatment services for transgender inmates, if appropriate. Guidance on assessment procedures will be provided by the Psychology Services Branch.

If an inmate identifies as transgender, the psychologist will provide the inmate with information regarding the range of treatment options available in the Bureau and their implications. In addition, based upon the psychologist's preliminary assessment and the inmate's expressed interest, a referral to the Clinical Director and/or Chief Psychiatrist may be generated. While the initial interview must be scheduled within 14 days, an assessment may take longer in some instances.

In addition to a referral to medical services, a transgender inmate may be offered individual psychotherapy. Individual psychotherapy goals might include: (1) helping the inmate to live more comfortably within a gender identity and deal effectively with non-gender issues; (2) emphasizing the need to set realistic life goals related to daily living, work, and relationships, including family of origin; (3) seeking to define and address issues that may have undermined a stable lifestyle, such as substance abuse and/or criminality; and (4) addressing any co-occurring mental health issues. Mood disorders, anxiety disorders, substance use disorders, and personality disorders, etc., may also be present; any effective treatment plan will fully address these symptoms.

If an institution has multiple transgender inmates, a support group facilitated by a mental health provider may also be a component of the treatment plan. Common concerns of transgender inmates, which may be addressed effectively in a group setting, include self-esteem issues and relationship issues.

Psychologists who provide mental health treatment for transgender inmates address all mental health needs, including suicide risk, if present.

Psychologists working with transgender inmates are encouraged to consult the Reentry Services Division in Central Office for additional resources.

## 11. PRONOUNS AND NAMES

Staff interacting with inmates who have a CMA assignment of transgender can use the authorized gender-neutral communication with inmates (e.g., by the legal last name or “Inmate” last name). Transgender inmates often prefer to be called by pronouns of their identified gender identity. Staff may choose to use these gender-specific pronouns or salutations per the inmate’s request, and will not be disciplined for doing so.

An official committed name change while in BOP custody must be done consistent with the Program Statement **Correctional Systems Manual**, Chapter 4. The name entered on the inmate’s Judgement and Commitment Order will remain the official committed name for all Bureau records (incident reports, progress reviews, sentence calculations, etc.). However, any additional names or aliases can be entered into SENTRY as appropriate.

## 12. PAT SEARCHES

Pat searches of transgender inmates will be conducted in accordance with the Program Statement **Searches of Housing Units, Inmates, and Inmate Work Areas**. The policy language, included here as a reference, states:

“Transgender Inmates – For purposes of pat searching, inmates will be pat-searched in accordance with the gender of the institution, or housing assignment, in which they are assigned. Transgender inmates may request an exception. The exception must be pre-authorized by the Warden, after consultation with staff from Health Services, Psychology Services, Unit Management, and Correctional Services. Exceptions must be specifically described (e.g., “pat search only by female staff”), clearly communicated to relevant staff through a memorandum, and reflected in SENTRY (or other Bureau database; e.g., posted picture file). Inmates should be provided a personal identifier (e.g., notation on commissary card, etc.) that indicates their individual exception, to be carried at all times and presented to staff prior to pat searches.”

It is recommended the inmate request the exception by submitting an Inmate Request to Staff (BP-A0148) to the Warden. The Warden will consult with the departments listed above, and the memo approving or denying the request will be generated by the Warden’s Office.

Inmates who are granted this exception under policy may have it reversed by the Warden if found to have violated institution rules concerning contraband.

In exigent circumstances, any staff member may conduct a pat search of any inmate consistent with the Program Statement **Searches of Housing Units, Inmates, and Inmate Work Areas**.

## 13. VISUAL SEARCHES

For purposes of a visual search, inmates will be searched in accordance with the gender of the institution, or housing assignment, to which they are assigned. The visual search shall be made in a manner designed to ensure as much privacy to the inmate as practicable. Staff should consider the physical layout of the institution, and the characteristics of an inmate with a transgender CMA assignment, to adjust conditions of the visual search as needed for the inmate’s privacy.

Transgender inmates may also request an exception to be visually searched by a staff member of the inmate’s identified gender. The exception must be pre-authorized by the Warden, after consultation with staff from Health Services, Psychology Services, Unit Management, and Correctional Services. Exceptions must be specifically described (e.g., “visual search only by female staff”), clearly communicated to relevant staff through a memorandum, and reflected in SENTRY (or other Bureau database; e.g., posted picture file). Inmates should be provided a

personal identifier (e.g., notation on commissary card, etc.) that indicates their individual exception, to be carried at all times and presented to staff prior to visual searches.

It is recommended the inmate request the exception by submitting an Inmate Request to Staff (BP-A0148) to the Warden. The Warden will consult with the departments listed above, and the memo approving or denying the request will be generated by the Warden's Office.

Inmates who are granted this exception under policy may have it reversed by the Warden if found to have violated institution rules concerning contraband.

Transgender inmates placed at an institution or in a housing unit that does not correspond with their identified gender, and who are granted an exemption as indicated above, will be searched by: bargaining unit staff of the inmate's identified gender who consent to participate in the search; management staff of the inmate's identified gender who consent to participate in the search; or available Health Services clinical staff.

Transgender inmates placed at an institution or in a housing unit of their identified gender will be searched by bargaining unit staff of the inmate's identified gender who consent to participate in the search; management staff of the inmate's identified gender; or available medical staff.

Institutions should consider using available body scanning technology in lieu of visual searches of transgender inmates.

In exigent circumstances, any staff member may conduct a visual search of any inmate consistent with the Program Statement **Searches of Housing Units, Inmates, and Inmate Work Areas**.

#### 14. CLOTHING AND COMMISSARY ITEMS

Consistent with safety and security concerns, inmates with the CMA assignment of transgender will have the opportunity to have undergarments of their identified gender even if they are not housed with inmates of the identified gender. Institutional laundry will have available institutional undergarments that fulfill the needs of transgender inmates. Undergarments will not have metal components.

Standardized lists of Commissary items for transgender inmates are available in accordance with the Program Statement **Trust Fund/Deposit Manual**.

Additional items based on an individualized assessment of the transgender inmate may be approved by the Warden. Additional items may be provided by the institution or purchased by the inmate, as appropriate.

Inmates who purchase and/or are provided items under this section will be subject to disciplinary sanctions, including the removal of these items, if they are found to have violated institution rules relating to the possession of these items.

## 15. REENTRY NEEDS

In accordance with the Program Statement **Release Preparation Program**, institution staff should assist transgender inmates in addressing these issues prior to release or placement in a Residential Reentry Center/Home Confinement.

During initial classifications and Program Reviews, Unit Management will formulate a pre-release plan that will assist transgender inmates in obtaining appropriate identification, finding housing and employment, and providing community resources to reintegrate into the community.

The Reentry Affairs Coordinator may assist staff with identifying these resources. Institution and/or Regional Social Workers should be contacted concerning the continuity of medical care.

The **Women and Special Populations Branch** and/or Social Workers can be contacted to provide guidance and resources for reentry needs of transgender inmates.

## 16. ADMINISTRATIVE REMEDIES

Inmates may use the procedures of the Program Statement **Administrative Remedy Program** concerning any issues relating to this policy.

## REFERENCES

### *Program Statements*

- P1330.18 Administrative Remedy Program (1/6/14)
- P4500.11 Trust Fund/Deposit Fund Manual (4/9/15)
- P5100.08 Security Designation and Custody Classification Manual (9/12/06)
- P5290.15 Intake Screening (3/30/09)
- P5310.12 Psychology Services Manual (03/07/95)
- P5310.16 Treatment and Care of Inmates with Mental Illness (5/1/14)
- P5322.13 Inmate Classification and Program Review (5/16/14)
- P5324.08 Suicide Prevention (4/5/07)
- P5324.12 Sexually Abusive Behavior Prevention and Intervention Program (6/4/15)
- P5325.07 Release Preparation Program (12/31/07)
- P5521.06 Searches of Housing Units, Inmates, and Inmate Work Areas (6/4/15)
- P5800.15 Correctional Systems Manual (9/23/16)

P6031.04 Patient Care (6/3/14)  
P6090.04 Health Information Management (3/2/15)

*Federal Regulations*

28 CFR part 115

*Additional Resources For Clinicians*

Diagnostic and Statistical Manual of Mental Disorders (DSM), most current version.  
World Professional Association for Transgender Health (WPATH) standards.

*BOP Forms*

BP-A0148 Inmate Request to Staff  
BP-A1110 Case Management Activity (CMA) SENTRY Assignment Consent Form for Transgender Inmates

*ACA Standards (see Program Statement, **Directives Management Manual**, sections 2.5 and 10.3)*

- American Correctional Association Standards for Adult Correctional Institutions, 4th Edition: 4-4056M, 4-4084M, 4-4084.1M, 4-4133M, 4-4180M, 4-4194M, 4-4278M, 4-4281.1M, 4-4281.2M, 4-4281.3M, 4-4281.4M, 4-4281.5M, 4-4281.6M, 4-4281.7M, 4-4281.8M, 4-4362M, 4-4371M, 4-4406M.
- American Correctional Association Performance Based Standards for Adult Local Detention Facilities, 4th Edition: 4-ALDF-2A-29, 4-ALDF-2A-32, 4-ALDF-2A-34, 4-ALDF-6B-03, 4-ALDF-2C-03, 4-ALDF-4C-22M, 4-ALDF-4C-30M, 4-ALDF-4D-22, 4-ALDF-4D-22-1, 4-ALDF-4D-22-2, 4-ALDF-4D-22-3, 4-ALDF-4D-22-4, 4-ALDF-4D-22-5, 4-ALDF-4D-22-6M, 4-ALDF-4D-22-7, 4-ALDF-4D-22-8, 4-ALDF-7B-08, 4-ALDF-7B-10, 4-ALDF-7B-10-1.
- American Correctional Association Standards for Administration of Correctional Agencies, 2<sup>nd</sup> Edition: None.
- American Correctional Association Standards for Correctional Training Academies: None.

*Records Retention*

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on Sallyport.

**Attachment A. Case Management Activity (CMA) SENTRY Assignment  
Consent Form for Transgender Inmates (BP-A1110)**

I agree that Bureau of Prisons staff may enter a CMA assignment on SENTRY concerning my gender identity.

I understand that this CMA assignment will identify me as transgender to all staff members.

I understand that the purpose of the CMA assignment is to assist staff members in providing programs and taking measures as described in the Program Statement **Transgender Offender Manual**.

I understand that specific medical and mental health information will not be disclosed to all staff using the CMA assignment; specific medical and mental health information is maintained separately.

Inmate Name:

Register Number:

Signature:

Date: