

POLICY AND PROCEDURE

SUBJECT: Transgender Youth in Juvenile Hall

REFERENCE: Prison Rape Elimination Act 28 C.F. R. Part 115

POLICY: This Policy establishes operational practices that reinforce the Probation Department's commitment to respect the dignity of all residents including transgender and gender non-conforming youth, creates a safe environment for all youth, and ensures that all youth have equal access to all available services, care and treatment.

PROCEDURES:

I. DEFINITIONS AND ABBREVIATIONS

- A. LGBT- Common acronym for Lesbian, Gay, Bisexual, and Transgender. This term is often used to refer to individuals whose sexual orientation is not heterosexual or whose gender identity is non-conforming.
- B. Lesbian- A woman whose emotional, romantic, and sexual attractions are primarily for other women.
- C. Gay- A person whose emotional, romantic, and sexual attractions are primarily for individuals of the same sex, typically in reference to men.
- D. Bisexual- A person who is emotionally, romantically, and sexually attracted to both men and women.
- E. Transgender- An umbrella term that can be used to describe people whose gender expression is non-conforming and/or whose gender identity is different from their assigned sex at birth. This term can include transsexuals, gender queers, cross-dressers, and other whose gender expression varies from general norms.
- F. Queer- Historically used as a derogatory term, *queer* has been widely reclaimed, especially by younger LGBT people, as a positive social and political identity. It is sometimes used as an umbrella term for all LGTB people.
- G. Questioning- Refers to the active process in which a person explores her/his own sexual orientation, and/or gender identity, and questions the cultural assumptions that they are heterosexual and/or gender conforming.

- H. Intersex- A person who's sexual or reproductive anatomy, or chromosomal pattern, does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as a disorder of sex development.
- I. Gender Non-Conforming- A person whose appearance or manner does not conform to traditional societal gender expectations.
- J. Single Room Only (SRO)- SRO status is housing classification for juveniles signifying they are not to be housed in the same sleeping room with other juveniles. Separation reasons may include vulnerability to victimization; sexually aggressive behaviors; other specific information about individual residents that may indicate heightened needs for supervision/safety precautions; or to ensure privacy for transgender youth to dress and perform bodily functions without residents of the opposite gender viewing them.

II. HOUSING

- A. Youth shall not be separated from the general population or assigned a single occupancy room based solely on the youth's actual or perceived gender, sexual orientation, gender identity, or gender expression.
- B. Probation staff shall make an individualized assessment of each transgender youth when considering housing unit placement.
- C. The safety and well-being of the transgender youth should be the primary concern when deciding where to place him/her within the housing facility.
- D. Staff should consider youth's background, age, developmental status, sophistication, social skills, charges, behavioral history and the factors that might influence his/her adjustment and contribute to an overall safe and successful experience for the youth as well as all other residents in the unit.
- E. Housing decisions for transgender youth shall be based on the youth's individualized needs and should prioritize the youth's emotional and physical safety while taking into account the youth's perception of where he/she will be most secure.
- F. Placement and programming assignment of transgender or intersex residents will be periodically assessed by the Unit Supervisor to review any threats to safety, but no less than every three months.
- G. A resident's sexual orientation and/or gender identity is not an indicator of the likelihood of the youth being sexually abusive towards others. Staff shall not consider a resident's LGBT status as a reason to isolate or withhold programming options.

- H. Housing and room assignments for transgender youth will be made after considering all pertinent factors, including the youth's specific request. Additional factors to consider:
 - 1. A single room will allow the youth the ability to dress and perform bodily functions without residents of the opposite gender viewing them.
 - 2. Single accommodations may reduce a transgender youth's vulnerability to violence and harassment, avoid some other difficulties associated with sharing a bedroom/bathroom facility, and decrease the transgender youth's privacy concerns.
- I. All transgender youth will be provided access to private showers.
- J. Privacy accommodations should not prevent transgender residents from full integration into Juvenile Hall's daily programming.
- K. Housing determination for transgender or intersex residents shall consider whether the placement would ensure the resident's health and safety, and whether the placement would present management or security problems.
- L. Residents will only be separated from others as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until alternative means of keeping all residents safe can be arranged. See Bulletin No. 405 *Resident Room Confinement* regarding Protective Custody.

II. SEARCHES

- A. All searches will be conducted in a professional and respectful manner by staff. Searches shall, to the extent possible, be performed in a way that preserves the privacy and dignity of the person being searched.
 - 1. Transgender youth shall not be physically searched in a manner that is humiliating or degrading, or for the purpose of determining the youth's physical anatomy.
 - 2. In situations where the genital status of a resident is unknown, staff will attempt to determine the genital status through conversations with the resident or through a review conducted by medical personnel of medical records.
 - 3. If attempts to determine the resident's genital status are unsuccessful, Juvenile Hall Administration or their designee may obtain the needed information via a broader medical examination conducted in private by a medical practitioner.

- B. It is Juvenile Hall's general policy that staff of the same sex as the youth are to conduct searches except under exigent circumstances, or when performed by a medical professional. See Juvenile Hall Bulletin No. 508, *Strip Search* policy.
 - 1. Should a transgender youth request that either a male or female staff conduct a search (pat and/or strip search), the request shall be forwarded to the Building Supervisor to consider alternate arrangements in conducting the search. The request, resolution with rationalization for said decision, and outcome including who ultimately conducted the search, will be documented in the resident's adjustment record and/or incident report as determined by the Building Supervisor.

III. EQUAL ACCESS TO ALL AVAILABLE SERVICES, CARE AND TREATMENT

- A. In accordance with State and Federal Law, every youth has the right to live in an environment free of harassment and discrimination. The 14th amendment to the U.S. Constitution provides for equal protection of the law; in essence prohibits prejudice. The amendment also introduced the legal instrument of Due Process; the right of all persons to receive the guarantees and safeguards of the law/judicial process.
- B. Treating transgender youth in an unequal manner could be a violation of their Constitutional Rights. For instance, just because a youth is transgender he/she should not be separated for his/her own protection, nor should verbal, physical, or sexual abuse of a transgender youth be ignored.
- C. The Probation department has a responsibility to ensure that all youth are treated with respect and that the rights of transgender youth are upheld particularly with respect to their safety, mental health, and privacy. Staff should be professional in conducting their duties, and strive to ensure that all youth have equal access to all services, care, and treatment.
- D. Juvenile Hall has a zero tolerance for sexual abuse, and sexual harassment. See Bulletin No. 418, *Non-Discrimination and Sexual Harassment*.
 - 1. If staff act in a discriminatory manner toward any youth, their actions could subject the County and themselves to claims of discrimination, as well as intentional or negligent infliction of emotional distress. Such conduct is a violation of Contra Costa County's non-discrimination and anti-harassment or intimidation policies based on sex or gender, and the Contra Costa County Probation Department Policy Manual.
 - 2. Staff shall report incidents of sexual abuse, sexual harassment or discrimination. See Bulletin No. 418, *Non-Discrimination and Sexual Harassment*, for reporting procedures.

3. Staff shall be subject to disciplinary sanctions, up to and including termination, for violations of agency sexual abuse or sexual harassment policies. Termination is the presumptive disciplinary sanction for staff who has engaged in sexual abuse.