

LGBTQI Inmates

7300.1 GENERAL/DEFINITIONS

OCSD Policy Manual (Lexipol) Section 375 - Transgender Policy prohibits staff from discriminating against individuals on the basis of gender, including one's gender identity, gender expression, and sexual orientation. Staff shall treat individuals in a manner that shows respect for the individual's gender identity and expression.

OCSD Policy Manual (Lexipol) Section 307 - Hate Crimes recognizes and places a high priority on the rights of all individuals guaranteed under the state and federal Constitutions and incorporated in state and federal law.

OCSD Policy Manual (Lexipol) Section 402 - Bias Free Policing requires bias-free policing, which is the provision of law enforcement services, whether in the jails, the courts, or on patrol, that is accomplished without the selective enforcement or non-enforcement of the law, including the selection or rejection of particular policing tactics or strategies, based on the subject's membership in a demographic category. Bias-free policing is policing that is free of discriminatory effect as well as discriminatory intent.

Definitions:

Gender: A socially constructed concept classifying behavior as either "masculine" or "feminine".

Gender Expression: Refers to gender-related traits that may or may not be consistent with those traits typically associated with a person's assigned sex at birth.

Gender Identity: Refers to an individual's internal, personal sense of their own gender, which may or may not be associated with a person's assigned sex at birth.

Gender-Variant: Refers to having gender-related traits that are not typically associated with a person's assigned sex at birth.

Intersex: Refers to people who are born with variations in chromosomes, genitals, or reproductive organs that do not align with typical definitions of female or male.

LGBTQI: Is an abbreviation that refers to lesbian, gay, bisexual, transgender, queer and intersex individuals.

Sex: Can refer to "assigned sex at birth," which refers to the sex recorded on an individual's birth certificate at the time of birth. "Affirmed sex" refers to the self-reported sex-based classification that aligns most closely with an individual's gender identity. "Gender marker" or "legal sex" refers to an individual's gender designation on legal documents. According to the Attorney General, "the word 'sex' is consistently defined throughout the codes to mean 'gender' and 'gender' is consistently defined to mean 'sex' and includes 'gender identity' and 'gender expression.'" (Cal. Attorney General Opinion, No. 17-302.) See also Gov. Code §§11135 and 12926(r)(2).

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Sexual Orientation: An enduring emotional, romantic, sexual, or affectional attraction or non-attraction to other people. Sexual orientation can be fluid and people use a variety of labels to describe their sexual orientation.

Transgender: Is an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth. For example, a person who was assigned male at birth, but is female, may describe herself as a transgender woman, a trans woman, or a woman. This terminology includes individuals who are nonbinary, *genderqueer* or agender, among other identities.

7300.2 STAFF ACCOUNTABILITY

- (a) Under no circumstances shall staff disclose to non-involved persons, an individual's LGBTQI status. As with other policies, a need-to-know basis should guide decisions about disclosure.
- (b) As described in OCSD Policy Manual (Lexipol) Section 328.1 – Prohibition on Harassment and Discrimination, staff, contractors, agents, and incarcerated individuals may submit complaints regarding any failures to comply with LGBTQI non-discrimination policies and procedures or components.
- (c) Staff, contractors, and volunteers shall use an inmate's stated pronoun appropriately and/or the inmate's preferred name if the inmate is addressed by a pronoun or first name; otherwise, the inmate shall be addressed by their legal last name.
- (d) All staff are required to immediately report any knowledge, suspicion, or information regarding an incident of LGBTQI discrimination/harassment that occurred in a facility or program providing services to inmates under the jurisdiction of the Department; instances of retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. Staff shall report all incidents or allegations to their supervisor.

7300.3 VOLUNTARY GENDER IDENTITY DISCLOSURE AND SEARCH PREFERENCE FORM (J-107)

- (a) During intake, each inmate who self-identifies as transgender or intersex shall be given the option to complete the OCSD Voluntary Gender Identity Disclosure and Search Preference Form (J-107).
 - 1. The inmate will not be punished if they choose not to provide such information.
- (b) Inmates are permitted to update the J-107 form at any time by requesting a new form from Custody staff, by submitting a message slip or by submitting a grievance.
- (c) Inmate completed J-107 forms may be accessed by Custody staff only for the purpose of ensuring compliance with jail policies.
- (d) The absence of a completed j-107 form shall not constitute evidence to justify staff not respecting the inmates' known gender identity.

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7300.4 UPDATING JAIL ID NAME AND PHOTOGRAPH

- (a) Staff shall permit transgender and intersex inmates (sentenced or unsentenced) to update their photographs on their Jail ID if their ID photographs and their current gender expression are dissimilar and with Watch Commander approval. The Watch Commander will consider the negative impacts of how such a dissimilar photograph can "out" the inmate or cause psychological distress.
- (b) Staff shall permit all inmates to update their Jail ID names if they have obtained a legal name change and the Criminal Court where the inmate's case(s) is/are pending has made the legal name change in the Court record.
 - 1. Inmates are permitted to seek legal name changes and to take appropriate steps to update legal documents. No notification to the Department is required for an inmate to file a petition to change their name and/or gender marker. Code Civ. Proc. § 1277.5.
 - 2. Staff shall respect an inmate's gender identity, even if the inmate does not have a government-issued identification that reflects their affirmed sex, gender identity or preferred name.

7300.5 LGBTQI HOUSING AND CLASSIFICATION

For details refer to CCOM Section 1200 – Inmate Classification and Population Management.

7300.6 INMATE PROGRAMS AND SERVICES

- (a) LGBTQI inmates shall have equal access to programs, services, and activities available to similarly situated individuals, consistent with their health and security needs and classification level. Such programs, services and activities include, but are not limited to:
 - 1. Dayroom and out-of-cell time
 - 2. Outdoor recreation
 - 3. Showers
 - i. Transgender and intersex inmates shall be given an opportunity to shower separately from others, I.e., at separate times and/or with appropriate physical separation.
 - ii. Transgender and intersex inmates shall be permitted to use showers with privacy screens or modifications made for privacy. These screens or modifications shall be sufficiently tall in order to prohibit cross-gender viewing by other inmates and staff.
 - 4. Telephones
 - 5. Tablets
 - 6. Television
 - 7. Reading materials

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- i. Inmate Services Division shall identify, procure, and make accessible LGBTQI reading materials to LGBTQI inmates.
8. Educational, vocational, re-entry and substance abuse programs
 - i. Inmate Services Division shall identify and collaborate with the LGBTQI community groups to deliver programming serving the needs of LGBTQI inmates.
9. Religious programs
 - i. OCSD shall provide religious garments or items in accord with the inmate's gender identity.
10. Work assignments, including the Community Work Program
11. Self-help groups and similar programs
12. Medical, mental health, and dental services and treatment
13. Public visiting
14. Attorney visiting
15. Commissary
 - i. LGBTQI inmates shall have access to gender-affirming personal hygiene products, and beauty products (if at any time beauty products are offered through Commissary).
 - ii. Staff shall provide transgender and intersex individuals additional allowances of razors, to be exchanged two for two, upon reasonable request, consistent with jail safety and security.
- (b) OCSD will provide gender-affirming clothing, to include:
 1. Footwear in all sizes.
 2. Undergarments, including bras, underwear, and boxer shorts depending on the individual's stated preference.
 3. Binders for chest compression.

For additional information on inmate programs refer to CCOM Section 2000 – Inmate Services and Programs.

7300.7 SEARCHES OF TRANSGENDER OR INTERSEX INMATES

- (a) Staff will conduct searches of inmates who self-identify as transgender or intersex in accord with the stated preference on the Voluntary Gender Identity Disclosure and Search Preference Form (J-107) for each body search, including reviewing results from body scan images, except in exigent circumstances or when performed by medical practitioners in a hospital setting.
 1. Exigent circumstances are temporary and unforeseen circumstances that require immediate action in order to address a threat to safety or institutional

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security. Temporary staffing issues (e.g., not enough staff on the unit of a specific gender) shall not meet the criteria for exigent circumstances.

- (b) If an individual's search preference cannot be determined, the search shall be conducted in a manner consistent with their gender identity or expression.
- (c) Staff shall ensure that strip searches of transgender and intersex individuals occur with enhanced and appropriate privacy (e.g., outside the view of others not participating in the search).
- (d) Staff shall not conduct genital inspections (visual or pat) to determine a transgender or intersex person's anatomy, to otherwise harass or embarrass the individual, or for any other improper purpose.
- (e) Staff shall not conduct searches to punish or retaliate against inmates, including those who identify as LGBTQI.
- (f) For further information regarding search of inmates, refer to CCOM Section 1710.2 – Search Process.

7300.8 TRACKING COMPLAINTS

- (a) Staff shall track complaints involving LGBTQI-involved discrimination, including as to housing placement, property, privileges, or health/mental health care.
 - 1. The grievance system shall be utilized to document these complaints.
 - 2. When entering the grievance, select LGBTQI under "Grievance Type" if the complaint is regarding an LGBTQI issue.
 - 3. LGBTQI Grievance Type shall not be selected merely because it was submitted by an LGBTQI inmate.
 - 4. For more information, refer to CCOM Section 1600.5 – Inmate Grievances.
- (b) If the grievance involves allegations that staff have violated the LGBTQI Non-Discrimination Policies or committed other misconduct, the process in CCOM Policy 1600.5(f)-Grievances Requiring Special Handling, will be followed. For grievances or complaints that fall under PREA, CCOM Section 2900 - PREA will be followed.

7300.9 TRAINING OF EMPLOYEES, VOLUNTEERS AND CONTRACTORS

- (a) All employees, volunteers and contractors who may have contact with inmates will be trained on the Department's policy regarding LGBTQI Non-Discrimination. All sheriff's employees, volunteers and contractors who may have contact with inmates will receive live/real-time LGBTQI training, upon new hire/contract, and refresher training every two years.
- (b) Staff training shall consist of and include the following:
 - 1. Non-Discrimination Policy.
 - 2. The Remedial Plan requirements for LGBTQI inmates.

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3. Complaint and grievance process for reporting alleged incidents of abuse and harassment.
 4. The Prison Rape Elimination Act.
 5. The right of inmates and employees to be free from retaliation for reporting discrimination and harassment.
 6. How to communicate effectively and professionally with inmates, including LGBTQI, or gender non-conforming inmates.
 7. The impact of discrimination against LGBTQI inmates.
 8. Classification, housing, programming education, work opportunities, and integration of LGBTQI inmates in the jails.
 9. Basic information about gender identity, sexual orientation, gender expression and privacy rights.
- (c) Training shall be documented through employee signature that they understand the training they received.
- (d) Volunteers and contractors who have contact with inmates will be trained on their responsibilities under the Department's LGBTQI Non-Discrimination, Detection, and Response Policies and Procedures. The level and type of training provided to volunteers and contractors will be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates will be notified of the Department's Non-Discrimination Policy and informed how to report such incidents. Training shall be documented through volunteer and contractor signatures so that they understand the training they have received.