



**Department of Justice and Public Safety**  
**Adult Custody Services**

Policy: **Transgender and Gender Variant Clients D13**  
Effective: February 2018  
Revised: December 2022

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**MISSION STATEMENT**

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Adult Custody Services is committed to providing professional practices that respect human rights and ensure safety for all. To be successful, we will deliver fair practices, incorporate transparent policies and procedures, ensure independent quality assurance processes, and provide program access that allows for educational, cultural, traditional, and faith-based services as well as mental wellness and community re-entry assistance.

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**PURPOSE**

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Adult Custody Services actively works to develop and maintain Adult Custody facilities and community corrections offices that are safe, respectful, and free of discrimination and harassment, which affirm a client's gender identity and expression, and which provide accommodation that respects the dignity and individual needs of the client, allowing them to maximize their participation in services.

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**LEGISLATIVE AUTHORITY**

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[Section 2.1 Human Rights Act](#)

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**SCOPE**

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This policy applies to all employees of the Adult Custody Services division of the Department of Justice and Public Safety.

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**DEFINITIONS**

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While some of the following terms may not appear in the procedure, the following definitions may clarify terminology an employee may come across in dealing with questions they may have related to gender identity. It is important to note that language evolves and that terms considered acceptable now may change over time.

**Sex:** A set of biological attributes. Sex is primarily associated with physical and physiological features including chromosomes, gene expression, hormone levels and function, and reproductive / sexual anatomy. Sex is usually categorized as female or male but there is variation in the biological attributes that comprise sex and how those attributes are expressed.<sup>1</sup>

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<sup>1</sup> "Definitions of Sex and Gender" Government of Canada, Canadian Institutes of Health Research, <https://cihr-irsc.gc.ca/e/47830.html>, Accessed February 27, 2020.

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**Gender:** The socially constructed roles, behaviours, expressions and identities of girls, women, boys, men, and gender diverse people. It influences how people perceive themselves and each other, how they act and interact, and

the distribution of power and resources in society. Gender is usually conceptualized as a binary (girl / woman and boy / man) yet there is considerable diversity in how individuals and groups understand, experience, and express it.<sup>2</sup>

**Gender Identity:** A person's internal and individual experience of gender. It is their sense of being a woman, man, both, neither, or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth-assigned sex.

**Gender Expression:** This is how a person publicly expresses or presents their gender. This can include behaviour and outward appearance such as dress, hair, makeup, body language, and voice. A person's chosen name and pronoun are also common ways of expressing gender. Others perceive a person's gender through these attributes.

**Gender Variant:** The term is used to describe individuals whose gender expressions differ from what is considered conventional for their perceived gender and / or their assigned sex in a given culture. Persons who express gender variance may also be referred to as gender non-conforming. It is important to note that not all gender non-conforming people identify as transgender; nor are all transgender people gender non-conforming.

**Cisgender:** A term used to describe a person whose gender identity aligns with those typically associated with the sex assigned to them at birth.

**Transgender** (sometimes shortened to **Trans**): A person whose gender identity and / or expression is different than their sex assigned at birth. They may or may not choose to undergo medically supportive treatments to align their bodies with their gender identity, such as hormone therapy, sex reassignment surgery or other procedures. They may also undertake other changes to align their external attributes and appearance with their gender identity.

A person whose sex assigned at birth is "female" and identifies as a man may also identify as a transgender man (female-to-male or FTM). A person whose sex assigned at birth is "male" and identifies as a woman may also identify as a transgender woman (male-to-female MTF).

**Non-binary:** A term describing a person who does not identify exclusively as a man nor a woman. Non-binary persons may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many non-binary persons many also identify as transgender, not all non-binary people do.

**Genderqueer:** An umbrella term with a similar meaning to non-binary. People who identify as genderqueer may see themselves as both male and female, neither male nor female, or falling completely outside the gender binary. They may embrace a fluidity or gender identity and often, though not always, sexual orientation. It is important to note that not all persons are comfortable with using this term, and therefore no one should be called "genderqueer" without their consent.

**Gender-fluid:** This term describes or relates to a person who does not identify with a single fixed gender.

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<sup>2</sup> ibid

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**Two Spirit:** Two Spirit is a term used by some Indigenous people who may be gay, lesbian, bisexual, transgender, queer or other gendered. Not every Indigenous person who identifies as LGBTQ will describe themselves as Two Spirit, and not every Indigenous person who uses the term Two Spirit identifies as LGBTQ. The term provides an Indigenous person the space to describe their identity within the context of their cultural and spiritual identity without being bound by colonial definitions of gender and sexuality.

**Intersex:** A general term used to describe a variety of conditions in which a person is born with a reproductive or sexual anatomy that is not easily characterized as male or female. This might include a woman with XY chromosomes or a man with ovaries instead of testes. Some intersex clients identify with their assigned sex; others do not. Some choose to identify as intersex. Some intersex people are transgender; however, intersex does not necessarily mean transgender.

**Undue Hardship:** When providing accommodation is not possible due to serious health and / or safety risks.

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#### POLICY GUIDELINES

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Adult Custody Services is committed to supporting the rights and needs of transgender and gender variant persons. In carrying out the process identified as it relates to transgender or gender variant clients, the following must be considered:

- Staff must be open, respectful, and professional when dealing with clients. They will be treated with dignity and respect and offered opportunities and benefits regardless of the gender that they identify with.
- The case management process must begin as soon as possible upon the client's admission.
- Clients may not always identify as man or woman. Gender identity is a spectrum.
- Clients may self-identify differently from each incarceration. Therefore, assumptions about gender identity or placement should not be made based on previous admissions.
- Steps must be taken to maximize privacy and confidentiality of any information related to the transgender client's gender identity and history. Any conversations and consultations amongst staff must occur out of hearing range of other clients and anyone else that does not need to know.
- A client must be placed in an institution appropriate to their self-identified gender or housing preference unless there are health and / or safety risks for the client or other clients. Not all transgender or gender variant clients will want to be housed according to their self-identified gender. Clients may wish to be housed according to their birth assigned sex. As such, it is important to consider the client's housing preference in addition to their self-identified gender.
- When accommodations are provided to a transgender or gender variant client, they will be advised of their options and informed of the benefits and risks associated with these options.
- Assessment, placement, and other services will be managed on a case-by-case basis.
- When admitting, classifying, and placing a transgender or gender variant client their needs – including those related to religion and language - must be accommodated short of undue hardship.
- If the most appropriate accommodations provided would cause undue hardship or require time to accomplish, interim or next best solutions must be considered and implemented short of undue hardship. If there is an inability to provide appropriate accommodation, the interim measures taken must be documented on the intake assessment and case plan notes for transgender or gender variant clients.

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**PROCEDURE**

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**Admissions**

Where Sherriff Services or another escorting justice agency, e.g., Correctional Services Canada, Canada Border Services, etc., contacts a facility in advance to inform they have a transgender or gender variant client in their custody, the facility will direct them to a facility that corresponds with the client's self-identified gender,

**Searches**

The admitting officer will explain the frisk, pat and strip search process, including any search of prosthetics. Search techniques are to be carried out in accordance with Policy and Procedures

Designated Adult Custody Services staff are authorized to conduct searches. Prior to all searches, trans and gender variant clients will be asked to identify if they would prefer the search completed by either a male or female correctional officer. Where a client chooses to have a "split search" (both male and female officers involved) the officer will confirm with the client which body parts are searched by which gender staff, e.g., male search bottom, female search top.

If the client's gender preference for the search is unavailable, the admission officer will secure the client pending a resolution and advise the Sergeant on duty or their designate.

The Sergeant on duty or their designate will take steps to resolve the situation by

- reassigning a same gender officer from another operational area.
- in the absence of a same gender officer, direct a same gender manager to conduct the search.
- in the absence of both, call in an off-duty same gender officer to attend the facility to conduct the search

Transgender and gender variant clients may request or require prosthetic devices to express their gender and reduce distress, anxiety and / or depression, e.g., binders, gaffs, penile or breast prostheses, or other approved devices. Upon completion of a search, clients will be permitted to retain these items unless there are safety / security reasons, as determined by the superintendent or designate, that cannot be resolved. The superintendent or deputy superintendent will provide the client the reasons in writing for a decision to remove personal items.

**Clothing**

Underwear and supplemental clothing needs will be provided in accordance with gender identity and not be restricted based on unit placement:

- Transgender and gender variant clients will be asked what type of underwear they require.
- If the client's required underwear is not able to be accommodated immediately, the reasons, interim / next best solutions implemented and expected timeframe for resolution will be documented on the Client Information System and explained to the client.

**Unit Placement**



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Transgender and gender variant clients will be assigned a unit placement according to their gender identity, unless they otherwise request to be housed in a facility that does not correspond to their self-identified gender; or privacy concerns and / or health and safety risks are identified.

Any information regarding a placement decision that is not consistent with the client's gender identity will be documented.

### **Placement Change Re-evaluation**

The superintendent or designate will be advised of the transgender or gender variant client's placement in the facility. When it is requested that a transgender or gender variant client be held on administrative conditions of confinement (Modified Format) for their own protection, the superintendent or designate in consultation with classification committee will review the request and consider access to programming and socialization with other clients.

### **Alternate Accommodations**

If a client disagrees with their placement, they will be provided with information about the complaint / appeal process in accordance with Policy and Procedure.

### **Unit Placement Review**

When a transgender or gender variant client is assigned a unit placement other than general population, the classification committee will review the placement within 72 hours.

The classification committee will review the placement as needed at the weekly classification meeting.

A client's gender may be fluid and may change during an incarceration. In such cases, requests by the client to be relocated within an Adult Custody facility will be referred to the classification committee for further assessment. Decisions to relocate a client based on fluidity will be determined in accordance with the guiding principles within policy.

Any change to unit placement or cell assignment requires approval by the Superintendent or Deputy Superintendent, except for placement due to a disciplinary requirement

### **Client Information System (CIS)**

In cases where the clients identified name or gender designation varies from what appears on legal or identity documentation, facility staff will ensure this information is reflected in CIS as follows

- the clients identified name will be recorded as a new alias.
- the clients gender identity will be selected in the gender (M, F) field of the new alias.
- an alert will be recorded in CIS, as follows:
  - under the "Trans Person" alert type.
  - the clients gender identity (male, female, transgender male, transgender female, non-binary, Two-Spirit, etc.) will be typed into the alert comment field.



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**Transfer**

If the current facility cannot accommodate the client's identified gender or unit placement preference the superintendent or designate will:

- ensure that a transgender or gender variant client is transferred as soon as reasonably possible.
- where legitimate extenuating circumstances prevent transfer from occurring (e.g., court appearance), ensure the client is transferred as soon as reasonably possible after those circumstances have been resolved.
- implement, in consultation with the client, interim or next-best solutions regarding placement until the client can be transferred; and
- clearly document the situation in CIS.

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**RELATED POLICY**

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Section D15 Searches

Section D16 Request for Canine Services

Section D17 Seizures

Section D33 Video Recording

Section D49 Ion Mobility Spectrometry Device – Ion scan

Section D51 Whole Body Transmission X-Ray Scanning System (Body Scanner)

Appendix D13– NB -Self Identification Admissions Questionnaire

Adult Institutional Policy Manual NB