

Memo: Fact-checking in response to the March 3, 2022 Joint Public Hearing on the impact of sexual assault in the prison system

We write as a coalition of organizations and individuals who champion the passage of the Gender Identity Respect Dignity and Safety Act (GIRDS Act) (A.7001-B / S.6677).

First, we thank the Senators and all who assisted in putting together the joint public hearing on the impact of sexual assault in the prison system. We wish to clarify and correct the record concerning specific assertions made by the representatives of the Department of Corrections and Community Supervision (DOCCS).

I. The Purpose of PREA

The goal and purpose of the Prison Rape Elimination Act of 2003, codified at 34 U.S.C. § 30301 *et seq.*, is to “provide information, resources, recommendations and funding to protect individuals from prison rape.”¹ In 2012, the Department of Justice promulgated the National Standards for the Detection, Prevention, Reduction, and Punishment of Prison Rape, or the Prison Rape Elimination Act Standards, 28 C.F.R. Part 115, (“PREA Standards”) which apply to both prisons and jails and address both incarcerated person-on-incarcerated person and staff-on-incarcerated person sexual abuse and sexual harassment.² These PREA Standards set the regulatory floor and are responsive to the findings, goal, and purpose of PREA. For our purposes here, unless otherwise noted, we use “PREA” to refer to both the statute and the Standards as the documents speak to each other.

The focus of PREA is on preventing rape and all actions that lead to rape and rape culture and providing better services to survivors to send the clear and definitive message that sexual violence is not acceptable and will not be tolerated. PREA names historically vulnerable groups and the hearing notes, memos of support, and legislative record concerning PREA contain numerous insightful and compelling statements and facts from vulnerable groups. Among these groups are transgender and intersex peoples who of course may also belong to additional vulnerable groups as well. PREA does not name gender non-conforming, non-binary, or other gender expansive people in its rules although members of these communities did submit resources and information in support of PREA. The Office for Victims of Crime, a division of the U.S. Justice Department, has reported that “one in two transgender individuals are sexually abused or assaulted some point in their life.”³ This statistic does not come from a survey of people in custody, but from the total population. In the prison context we see that transgender women housed as men are 13 times more likely than their cisgender counterparts to experience sexual abuse.⁴

¹ Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972 (codified at 42 U.S.C. § 15601 *et seq.*, transferred to 34 U.S.C. § 30301 *et seq.* effective Sept. 1, 2017).

² 28 C.F.R. § 115 (2022).

³ *Responding to Transgender Victims of Sexual Assault: The Numbers*, U.S. DEP’T OF JUST. OFF. FOR VICTIMS OF CRIME (June 2014), ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/forge/sexual_numbers.html.

⁴ See Valerie Jenness et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, BULL. OF THE CTR. FOR EVIDENCE-BASED CORR. (Center for Evidence-Based Corrections, University of California Irvine) Jan. 2007.

Despite this, many jurisdictions have used PREA to promulgate rules that focus on restricting the rights of transgender and intersex people, not on ensuring their safety. Examples from other jurisdictions include limiting access to medical care and gender-affirming clothing, and even breaking up friendships between LGBTI people under the guise that all friendships must be sexual in nature, and more. Any rules that limit the rights, expressions, or actions of incarcerated people must be vigorously examined by independent organizations such as LGBTQI inclusive victim/survivor advocate groups to ensure that the limitation is strictly related to ending sexual violence and is the least restrictive means possible.

a. Under PREA, Gender-Aligned Housing Should be Commonplace

The passage of PREA marked the first-time federal standards for housing transgender and intersex people came into law. This was explicitly needed because the vast majority of transgender people were being housed according to their sex assigned at birth and not their lived gender identity. Moreover, most prison systems had no guidance on how a person who came to their gender identity while in prison should be treated or housed.

PREA contains language that was groundbreaking at the time – although not to anyone transgender or intersex – that transgender and intersex people’s “own views with respect to . . . safety shall be given serious consideration.”⁵ In a corrections context this was a revolutionary statement, that individuals might know their own safety needs, and indeed identity needs. PREA pushed further, stating that housing determinations should be made on a “case-by-case basis” and they *cannot* be made solely on the basis of a person’s anatomy or gender assigned at birth.⁶ But most importantly the qualifying analysis is what housing would “ensure the [individual’s] health and safety.”⁷

Under this rule advocates should have seen a great dismantling of current operations. Facilities claiming compliance should have reached out to every transgender and intersex individual and re-interviewed them for housing placement. We should have seen education drives and efforts to inform people of their specific housing rights. Under PREA, these individuals should be met with twice a year to see if the housing is still ensuring their health and safety. However, advocates repeatedly hear from clients that these reviews either do not happen, are delayed, or are perfunctory.⁸ In a system alleged to have 74 known transgender individuals, advocates have heard of less than ten transgender and intersex people who have been housed in gender alignment.⁹ The *right* to gender-aligned housing is clearly not yet recognized in New York State.

⁵ 28 C.F.R. § 115.42(e).

⁶ 28 C.F.R. § 115.42(c).

⁷ *Id.*

⁸ See *It’s Still War in Here: a Statewide Report on the Trans, Gender Non-Conforming, Intersex (TGNCI) Experience in New York Prisons and the Fight for Trans Liberation, Self-Determination, and Freedom*, SYLVIA RIVERA LAW PROJECT and TAKEROOT JUSTICE., June 30, 2021, <https://takerootjustice.org/wp-content/uploads/2021/06/Its-Still-War-In-Here-1.pdf> at 30 “More than half of respondents did not know who the PREA Manager for their prison (or prison hub) is, and most had never spoken to the PREA Coordinator. 59% said they did not know who the PREA manager for their prison or prison hub is. • 85% of respondents said they had not spoken to the PREA Coordinator.”

⁹ The number 74 was supplied during a meeting between DOCCS officials and advocates in January 2020 and is almost certainly a significant undercount; the number of individuals advocates know of is from our internal organizational record keeping.

b. Voluntary Housing For Vulnerable People is Allowed Under PREA

The floor the PREA Standards creates is the bare minimum required. We believe that an implementation of PREA that is responsive and invested in truly ending sexual violence in prisons and jails considers individual circumstances and comes up with creative solutions. Throughout the testimony, Executive Deputy Commissioner Daniel F. Martuscello III, stated that the Department uses a “case by case” analysis to house transgender individuals. By this he seemed to mean a case by case analysis on whether or not to provide gender aligned housing. But the case by case analysis contemplated in the PREA Standards is not that there are only two housing options: in general population in alignment or in general population out of alignment. There are creative solutions such as specialized housing, program housing, vulnerable population units, and other ways that a person’s sense of safety and gender identity can both be honored. These creative solutions could be either in gender alignment or not. General population in alignment should, we feel, be the norm, but if that is not possible or does not meet the individual’s own view of their safety needs, then many other creative solutions can be found. We are discussing ending sexual violence against New Yorkers in the State’s care and custody; this is worth expanding some creativity.

Mr. Martuscello, speaking on behalf of DOCCS, stated that while there are certain individuals who would like to live among “other trans individuals,” PREA “prohibits [the Department] from having any specialized unit.”¹⁰ Mr. Martuscello’s statement represents an oversimplification and misunderstanding of the PREA Standards. At the core, PREA is meant to be responsive to the needs of vulnerable individuals in custody, and actions that keep people safe are to be championed. The PREA Standards are the floor, but facilities may always do more and must rise to meet the needs of their served populations.

PREA states that “the agency shall not place lesbian, gay, bisexual, 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.” (emphasis added)¹¹ PREA Standards clearly contemplate a unit based solely on identification or status as “lesbian, gay, bisexual transgender or intersex” and prohibits this specific unit outside of the named carveouts.

The Department of Justice has made clear the scope of this prohibition, however, stating:

“Some agencies and facilities have had success establishing housing units or wings reserved for inmates or residents who are designated as potentially vulnerable through the screening process. In addition to LGBTI inmates, who are at an increased risk for sexual

¹⁰ From a review of the recording we quote Mr. Martuscello as saying “A lot of the requests are that they want to be in facilities that don’t necessarily align with their gender identity, but they want to be with other trans individuals. The Federal PREA Regulation prohibits us from having any specialized unit.” This is in response to Senator Salazar’s question specifically stating that she wanted to ask about transgender individuals and who sits on the Central Office Transgender Placement Review Committee to determine housing placement. NYSenate, *The Impact of Sexual Assault in the Prison System*, YOUTUBE (Mar. 4, 2022) <https://www.youtube.com/watch?v=rQ0SJT98sv8&t=14793s> (Timemark at 4:08:37).

¹¹ 28 C.F.R. § 115.42(g).

abuse and sexual harassment, these units or wings may, for example, house male inmates who are small in stature, **inmates who have a gender non-conforming appearance**, a disability, and a past history of being sexually abused.” (emphasis added)¹²

If, as DOCCS indicated, there are “a lot” of individuals who state that they would be safer in a unit specific to transgender people, then there is no reason why DOCCS cannot create units similar to the housing wings or units described by the DOJ: specialized, application-only units that house individuals who “have a gender non-conforming appearance” or are otherwise gender-expansive, in addition to individuals who identify as transgender and/or intersex. This more inclusive housing unit would not violate PREA, as PREA prohibits only those units that house “LGBTI” individuals specifically and to the exclusion of all others.

Finally, as Deborah Lolai of Bronx Defenders testified, DOCCS’s statement that many people seek housing in a transgender-specific unit rather than gender-aligned housing fails to acknowledge that the current operating Directive for gender-aligned housing is not well-known and is hard to find. We doubt that all impacted individuals know they have a right to gender-aligned housing, and as a result, they may feel that their only option are transgender specific units.

II. DOCCS’ Current Directive for Gender Aligned Housing Fails to Meaningfully Implement PREA Standards

Attached to this memo is Directive 4401 *Guidance & Counseling Services*, which is the prevailing document on how an individual can move from a DOCCS facility that does not align with their gender to a facility that does. There are a number of alarming issues with this Directive.

a. Unclear and Hard to Find

First, this Directive’s self-described purpose is to “describe the mission and functions of the Office of Guidance and Counseling” and it is titled *Guidance & Counseling Services*. This is not an obvious, helpful, or logical place within which transgender, non-binary, intersex, and other gender expansive people would expect to find information on how they can move away from the abuse and terror of a gender mis-aligned facility. Further, the relevant section doesn’t begin until page ten and then only transgender and intersex people are directly named.

In addition, while this Directive is available in the Law Libraries of all facilities, there is no signage within facilities, no mention of it within the Inmate Handbook, and no reference to it in orientation. It is the work of many of our organizations – Sylvia Rivera Law Project, The Legal Aid Society, New York Civil Liberties Union, Bronx Defenders, among others – to write and inform our clients of where they can find this directive, and often it is our work to send a copy to them. Clients held in anything other than General Population have limited access to the

¹² U.S. Dep’t of Just., *Frequently Asked Questions*, NAT’L PREA RES. CTR. (Aug. 17, 2017), - <https://www.prearesourcecenter.org/frequently-asked-questions>. (Under “Keyword Search” enter “115.42” and click “Apply”. Then scroll down the page to the August 17, 2017 Question and click the addition sign to view the answer). The PREA Resource Center, an independent agency partially funded by the U.S. Department of Justice’s Bureau of Justice Assistance provides guidance on this and all other PREA questions.

Law Libraries which often require that individuals in punitive segregation know in advance the name and number of the directive they are requesting – i.e. they cannot browse to find the necessary papers.¹³

b. The Directive Presumes Misalignment as the Norm

The relevant section VI(B)(3) states twice that “housing by gender identity will be made when appropriate” – in other words, gender-aligned housing is not the norm, but the exception. This is backed up by our organizations’ internal record keeping which suggests that of all the known transgender women in DOCCS custody, only four are currently housed in women’s prisons.¹⁴ We have also only ever heard of one intersex man and one transgender man housed according to gender identity, and all transgender men at the time of this writing appear to be housed as women.

This is one of many reasons why we believe passage of the Gender Identity Respect Dignity and Safety Act is so vital. GIRDS assumes an alignment between gender identity and housing. An individual may always share that gender-aligned housing would not be safe for them and request housing out of alignment. But by housing in alignment, we would not only prevent dozens of sexual assaults every year, but we would affirm people in their identities at a time when they are particularly vulnerable. Not only are transgender, gender non-conforming, nonbinary, and intersex communities especially vulnerable while inside, almost everyone in our prison and jail system comes home. They come home to be our neighbors, our co-workers, our family members. All of us strongly believe that it is in the interest of every single New Yorker that our community members come home knowing that they are inherently deserving of dignity and respect.

c. The Purpose Behind the “Review” is Unclear

An analysis of the process itself shows that it appears to rely on outdated ideas and stereotypes and lacks any involvement from transgender and intersex rights groups. To begin the process, an incarcerated transgender person, housed out of alignment with their gender, would need to meet with their ORC (Offender Rehabilitation Counselor) to complete Form 115.41GI (“Gender Identity Interview form”). The Gender Identity Interview form, which we have also attached here, does not say that the individual has an affirmative *right* to be housed in alignment with their gender. It does not say that DOCCS will give serious consideration to one’s own view of safety – except within a parenthetical.

The majority of the questions have nothing to do with housing and safety. One question is “do you dress as a man, a woman, or gender-neutral outside of prison?” While there are clearly divisions within gendered dressing stereotypes in U.S. cultures, it is unclear what “dressing like a woman” might mean and how it might be helpful in this context. Considering that restaurants in

¹³ NYS Dep’t of Corr. and Cmty. Supervision Directive 4933, *Special Housing Units* § 304.8, 1, 14-15 (April 2017) <https://doccs.ny.gov/system/files/documents/2021/09/4933.pdf>. This section states that a person in the Special Housing Unit will be provided with “a list of books, journals, and papers available” and that the individual must make the request in writing for a maximum of two items at a time to be kept for no more than 24 hours. The items are delivered to the individual.

¹⁴ Based upon a recent client survey and interview conducted by The Legal Aid Society.

New York City cannot have differently gendered uniforms¹⁵ and barbers cannot charge different prices for “women’s” or “men’s” haircuts,¹⁶ this questionnaire is not only highly un-useful for housing, it moves us back several decades legally and culturally.

In addition, as was shared in the testimony provided by DOCCS, the review committee – known as the Central Office Transgender Placement Review Committee – is made up of only internal DOCCS individuals. We were informed that the committee consists of Executive Deputy Commissioner, the Associate PREA Commissioner, Chief Medical Officer, Deputy Commissioner for Population Management, Associate Commissioner for Mental Health, Deputy Commissioners at the various facility levels, Strategic Planning, Counsel’s Office, and Program Services. That is at least nine individuals reviewing a housing application, none of whom have specialty knowledge in transgender and intersex identity needs, safety concerns, or ties to local communities.

In *Standing with LGBT Prisoners: An Advocate’s Guide to Ending Abuse and Combating Imprisonment*, the National Center for Transgender Equality writes that successful review committees contain “outside advocates or community members.”¹⁷ There are no outside advocates or community members reviewing these determinations. Without such knowledge committee members may, as we see in the Gender Identity Interview form, revert to transphobic and sexist stereotypes and assumptions about identity. In 2019 a transgender woman going from the women’s jail on Riker’s Island in New York City to a women’s jail within NYS DOCCS reported to a member of this coalition that she was asked questions such as “how would you define your sexuality” and “do you still get erections?” These questions are completely inappropriate and have no correlation with safe housing.

In his testimony, Mr. Martuscello alluded to this. He stated that part of the review was “psychosocial and looking at the individual’s background” yet no one of the nine committee members appears to be a specialist in mental health care needs of transgender, intersex, and gender expansive people. Moreover, psychosocial evaluations, requiring medical records and other background investigations to “confirm” or “verify” someone’s gender identity, is discrimination under New York State’s Human Rights Law (HRL).¹⁸

¹⁵ See N.Y.C. Admin. Code § 8-102(III)(4) available at <https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/2019.2.15%20Gender%20Guidance-February%202019%20FINAL.pdf>. “Under the NYCHRL, employers and covered entities may not require dress codes or uniforms, or apply grooming or appearance standards, that impose different requirements for people based on gender. The fact that the grooming standard or dress code differentiates based on gender is sufficient for it to be considered discriminatory, even if perceived by some as harmless. Holding people to different grooming or uniform standards based on gender serves no legitimate non-discriminatory purpose and reinforces a culture of gender stereotypes and cultural norms based on gender expression and identity.”

¹⁶ See NYS Dep’t of State, *Important Guidance Regarding Gender Neutral Pricing and Services*, available at https://dos.ny.gov/system/files/documents/2021/04/gbl_-_pink-tax-notice-100520.pdf. “A male and female customer come to a salon and each requests a similar haircut. Since both customers have requested the substantially same service, each should be charged the same fee, so long as there is no substantial difference in the amount of time, tools, materials or skill required to provide the two similar services.”

¹⁷ Jody Marksamer and Harper Jean Tobin, *Standing with LGBT Prisoners: An Advocate’s Guide to Ending Abuse and Combating Imprisonment*, NAT’L CTR. FOR TRANSGENDER EQUAL., 2013, https://transequality.org/sites/default/files/docs/resources/JailPrisons_Resource_FINAL.pdf.

¹⁸ NY Exec. Law § 296.

These processes rely on transphobic and misogynistic stereotypes as to what “male” and “female” bodies should look like. It creates standards of norms in hairstyle, use of makeup, dress, sexuality, speaking tone, and more. This not only harms many cisgender people, it directly correlates to many transgender and intersex peoples accessing services, housing, or employment based upon how well a reviewer believes the applicant corresponds to preconceived ideas about who is male and who is female. Individuals who transition later in life and cannot access puberty blockers, individuals who do not wish to have medical assistance, individuals who cannot afford to medically transition, and transgender women who are tall or transgender men with higher pitched voices will never meet these fabricated ideas about what “proves” someone’s gender and have no desire to do so.

Compare the Central Office Transgender Placement Review Committee to the process for updating a birth certificate to reflect the correct sex. Both New York State and New York City Vital Records allow individuals to *self-attest* their gender identity.¹⁹ Once that has been corrected, New York State Department of Motor Vehicles and the federal Social Security Agency will correct a person’s gender marker within their records without the need for any additional documents.²⁰ There is no eight-person panel asking about how one dresses, who they are sexually attracted to, or invasive questions regarding genitalia.

The GIRDS Act would clarify what is *not* appropriate for a review committee to base a determination on so that interviews such as occurred in 2019 do not happen to anyone else and outdated and problematic assumptions about proper gender expression are not used to discriminate in New York State.

d. Ambiguous Timeline Leads to Long Delays

The DOCCS representatives could not provide a clear timeline for when decisions by the review committee are made because there is no timeline. The Directive is quiet as to that issue which means that individuals can languish in incorrect, hostile, and even assaultive housing while they wait a determination.

Coalition representatives from The Legal Aid Society state that they have had clients waiting for responses for two to seven months when going from the city jails to the state prisons. Clients already held in gender mis-aligned facilities and seeking to transfer have waited years for determinations, some never receiving the courtesy of an answer.

¹⁹ Gender Recognition Act § 67 (2021). The passage of the Gender Recognition Act implemented this change throughout New York State. A similar law passed in New York City in 2018: New York City, Int. 954-A, Amending sex designation on birth records and the issuance of birth records (Oct. 9, 2018). In passing GENDA, New York joined thirteen other states and D.C. in stating that all people, including transgender people, know their own gender and can self-report accurately. See *How Trans-Friendly Is the Driver’s License Gender Change Policy in Your State?*, NAT’L CTR. FOR TRANSGENDER EQUAL., <https://transequality.org/sites/default/files/docs/resources/Drivers%20License%20Grades%20Jan%202020.pdf> (last visited Mar. 22, 2022).

²⁰ Social Security Administration, *Program Operations Manual Systems: RM 10212.200 Changing Numident Data for Reasons other than Name*, SSA, (June 13, 2013), <https://secure.ssa.gov/poms.nsf/lnx/0110212200> (Showing “full-validity, 10-year U.S. passport with the new sex” and “State-issued amended BC with the new sex” as acceptable supporting documents for an update in the sex field on the numident).

e. Restrictions on Updating Gender Marker

In a rather confusing move, the only known place where an individual can correct or update their gender identity marker to M, F, or X, is at the bottom of the Review Process Form. Even then, gender identity cannot be updated “while a disciplinary hearing is pending, or when confined to a cell, room, or Special Housing Unit.” Why one’s gender identity cannot be updated while in any housing other than general population is unclear both administratively and legally.

f. No Process to Stop Mis-Aligned Housing at/before Intake

Finally, as mentioned at the beginning, this Directive only provides information as to how a person who has gone through initial intake and been housed can seek to alter their housing. There is no information here, or anywhere that we know of, as to how a person currently incarcerated in a local jail or reporting to DOCCS to serve a sentence can request and advocate to be housed in accordance with their gender identity.

Even a short period in gender mis-aligned housing can have traumatic effects which a person lives with for the rest of their life. In 2021 a transgender woman was moved from gender aligned housing within the NYC jails to a men’s facility. She sat there only 96 hours before being transferred back to the women’s jail. Nevertheless, in those 96 hours she was sexually assaulted. Her story is sadly not unique. Transitory areas – intake, elevators, transport – are often sites of sexual violence because a person either has no community around them or has not yet established sufficient community to intervene. When a transgender woman is placed in men’s housing against her own assessment of her safety it sends a clear message that her sense of self, her body, her dignity as a person does not matter in prison. In 2018 and again in 2020 advocates worked with two different transgender women housed against their wishes as men in the New York City jails who, upon reporting rape, were placed right back into the exact same men’s housing units following the PREA interview. In both instances the women were raped again in under 96 hours. This sent an undeniably clear message that their reports of sexual violence were not taken seriously and that what happened to them did not matter. Again, GIRDS addresses this by requiring that safe housing begin at the county level.

We hope that you find this memo and the attachments useful. We want to acknowledge that there were many things said that could be corrected or clarified but wished to focus on the most salient points for transgender, intersex, and gender expansive people in New York State. If having a further conversation would be helpful, we would welcome that and hope to be useful in any efforts made to stop sexual assaults in New York State prisons.

Sincerely,

BKForge

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Decriminalize Sex Work

Juli Grey-Owens, Executive Director, Gender Equality New York

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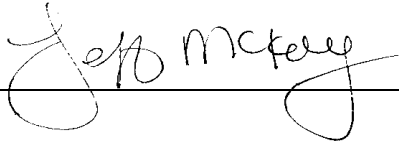
New Hour for Women and Children Long Island

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 Corrections and Community Supervision DIRECTIVE	TITLE Guidance & Counseling Services		NO. 4401
			DATE 08/21/2020
SUPERSEDES DIR# 4401 Dtd. 12/05/19	DISTRIBUTION A B	PAGES PAGE 1 OF 15	DATE LAST REVISED
REFERENCES (Include but are not limited to) See Section III	APPROVING AUTHORITY 		

I. **PURPOSE:** This directive describes the mission and functions of the Office of Guidance and Counseling and establishes standards and procedures for the operation of facility Guidance and Counseling Units. It is designed to assure that case management, purposeful counseling, and monitoring are performed in a consistent and systematic manner.

II. **POLICY:** The Department’s philosophy embodies a commitment to the development of the whole person. This commitment is demonstrated by the establishment and maintenance of a professional relationship between the Offender Rehabilitation Coordinator (ORC) and the incarcerated individual. The professional demeanor and appearance of the Guidance and Counseling staff will serve as a positive role model.

The Department’s policy is to provide comprehensive counseling to incarcerated individuals so that they may become aware that there are alternatives they may choose in order to take responsibility for their lives. Through the use of Motivational Interviewing techniques, ORCs increase incarcerated individuals’ intrinsic motivation to make positive changes in their lives. The ORC has the obligation to advise and prescribe program activities based on an assessment of the incarcerated individual’s strengths, needs, interests, and available facility resources. For counseling related matters, the ORC is the primary person through whom contacts with other Departmental Units, outside agencies, and other individuals are best channeled.

III. **REFERENCES:** The following sources contain additional information relative to this directive:

- ACA Expected Practice 4-4126
- ACA Expected Practice 4-4127
- ACA Expected Practice 4-4281-4
- ACA Expected Practice 4-4286
- ACA Expected Practice 4-4290
- ACA Expected Practice 4-4297
- ACA Expected Practice 4-4299
- ACA Expected Practice 4-4302
- ACA Expected Practice 4-4303
- ACA Expected Practice 4-4371
- ACA Expected Practice 4-4428
- ACA Expected Practice 4-4430
- ACA Expected Practice 4-4432
- ACA Expected Practice 4-4433
- ACA Expected Practice 4-4434
- ACA Expected Practice 4-4435
- ACA Expected Practice 2-CO-1E-02
- ACA Expected Practice 2-CO-1E-09
- ACA Expected Practice 2-CO-3C-01
- ACA Expected Practice 2-CO-4B-03
- ACA Expected Practice 2-CO-4B-04
- ACA Expected Practice 2-CO-4F-01
- ACA Expected Practice 1-ABC-1E-03
- ACA Expected Practice 1-ABC-3D-06-4
- ACA Expected Practice 1-ABC-4A-03
- ACA Expected Practice 1-ABC-4B-03
- ACA Expected Practice 1-ABC-4B-06
- ACA Expected Practice 1-ABC-4F-01
- ACA Expected Practice 1-ABC-4F-02
- ACA Expected Practice 1-ABC-4F-04
- ACA Expected Practice 1-ABC-4F-05
- ACA Expected Practice 1-ABC-4F-06

- ACA Expected Practice 1-ABC-4F-07
- ACA Expected Practice 5-ACI-2B-02
- ACA Expected Practice 5-ACI-2B-03
- ACA Expected Practice 5-ACI-3D-12
- ACA Expected Practice 5-ACI-5A-02
- ACA Expected Practice 5-ACI-5A-05
- ACA Expected Practice 5-ACI-5B-03
- ACA Expected Practice 5-ACI-5B-05
- ACA Expected Practice 5-ACI-5B-08
- ACA Expected Practice 5-ACI-5B-09
- ACA Expected Practice 5-ACI-6A-32
- ACA Expected Practice 5-ACI-5E-01
- ACA Expected Practice 5-ACI-5E-04
- ACA Expected Practice 5-ACI-5E-06
- ACA Expected Practice 5-ACI-5E-07
- ACA Expected Practice 5-ACI-5E-08
- ACA Expected Practice 5-ACI-5E-09
- ACA Expected Practice 5-ACI-4B-29
- ACA Expected Practice 5-ACI-6A-34
- Correction Law Sections 803, 805, 806
- 115 C.F.R. §§115.41, 115.42
- Temporary Release Manual
- CASAT Manual
- Guidance & Counseling Manual
- Shock Suitability Screening Manual
- Sex Offender Management & Treatment Act
- Standards of Incarcerated Individual Behavior
- Manual of Policy, Procedures and Standards for Programming Incarcerated Individuals
- Directive #2010 – Departmental Records
- Directive #4790 – Merit Time
- Directive #4791 – Presumptive Release
- Directive #4792 – Limited Credit Time Allowance
- Directive #4803 – Incarcerated individual Program Placement
- Directive #8500 – COMPAS Assessments/Case Plan
- Directive #4027A – Sexual Abuse Prevention & Intervention – Incarcerated individual-on-Incarcerated individual
- Directive #4027B – Sexual Abuse Reporting & Investigation – Incarcerated individual-on-Incarcerated individual
- Directive #4028A – Sexual Abuse Prevention & Intervention – Staff-on-Incarcerated individual/Staff-on-Parolee
- Directive #4028B – Sexual Abuse Reporting & Investigation – Staff-on-Incarcerated individual/Staff-on-Parolee

IV. COMPONENTS: Guidance and Counseling services are comprised of three major functions: Case Management, Counseling Services, and Program Committee.

A. Case Management: This function consists of gathering information about, and from incarcerated individuals, preparing thorough assessments, identifying strengths and needs, setting goals through collaboration with incarcerated individuals, evaluating progress, documenting information, screening incarcerated individuals for specific programs, making referrals, performing classification/reclassification procedures, and preparing and submitting the appropriate forms and reports. Programs and screening procedures that fall within the case management function are listed below.

1. *Earned Eligibility Program:* Pursuant to Correction Law, Section 805, the Earned Eligibility Program provides eligible incarcerated individuals with an incentive for addressing the reasons for their incarceration by assigning recommended programs as soon as practicable. Upon transferring to the first general population facility, a Program/Earned Eligibility Plan is developed for each eligible incarcerated individual and reviewed on a quarterly basis.

Prior to their Parole Board Interview, incarcerated individuals are assessed for compliance with the plan. Based on the assessment's outcome, incarcerated individuals are issued certificates, denied certificates, or assigned non-certifiable status. A copy of the determination is provided to the incarcerated individual and placed in the incarcerated individual's Guidance and Parole folders.

- Incarcerated individuals can initiate a review of the accuracy of their program needs/program status by contacting the Supervising Offender Rehabilitation Coordinator (SORC). If the issue regarding the accuracy of the record is not resolved at the SORC level, the incarcerated individual can request a final determination from the Deputy Superintendent for Program Services (DSP).
2. *Merit Time/Supplemental Merit Time:* Pursuant to Correction Law, Section 803(1)(d), eligible incarcerated individuals are evaluated for Merit Time if they satisfy certain programmatic criteria and have maintained an overall acceptable level of attendance, participation, and progress in the programs identified in his or her Program/Earned Eligibility Plan. Any incarcerated individual who is granted Merit Time will appear before a Merit Parole Board (reference Directive #4790).
 3. Eligible incarcerated individuals are evaluated for Supplemental Merit Time similar to Merit Time eligible incarcerated individuals if they satisfy certain programmatic criteria and have maintained an overall acceptable level of attendance, participation, and progress in the programs identified in his or her Program/Earned Eligibility Plan. Any incarcerated individual who is granted Supplemental Merit Time will appear before a Supplemental Merit Parole Board.
 4. *Presumptive Release:* Pursuant to Correction Law, Section 806, eligible incarcerated individuals are evaluated for Presumptive Release if they satisfy certain programmatic criteria, and are eligible for an Earned Eligibility certificate, following a criminal history evaluation (reference Directive #4791), they may be granted Presumptive Release Certificates. Any incarcerated individual who is granted a Presumptive Merit Allowance may be released to Community Supervision at a date computed by subtracting the Merit Allowance from his or her parole eligibility date. An incarcerated individual eligible for Presumptive Release may be released to Community Supervision at the expiration of the minimum sentence, or at the expiration of 5/6^{ths} of the minimum sentence if the incarcerated individual also qualifies for Merit Time.
 5. *Temporary Release/CASAT Screening:* The Facility Temporary Release Program consists of screening incarcerated individuals for Work Release and CASAT when they become time eligible. When appropriate, incarcerated individuals are also assessed for Furloughs, Leaves of Absence, Community Services and Industrial Training Leaves, and Educational Release. Screening procedures are described in the "Temporary Release Manual" and the "CASAT Manual."
 6. *Shock Incarceration Screening:* Incarcerated individuals who have been deemed statutorily eligible and have also been deemed suitable through the automated screening process, will be manually screened for the Shock Incarceration Program by ORCs. Screening procedures are described in the "Shock Suitability Screening Manual."
 7. *Limited Credit Time Allowance Screening:* Pursuant to Correction Law, Section 803-b, incarcerated individuals who are eligible for the Limited Credit Time Allowance (LCTA) are screened by ORCs in accordance with established policy. Eligible incarcerated individuals must meet the program and disciplinary criteria to be granted LCTA (reference Directive #4792).

- B. Counseling Services: This aspect entails both individual and group sessions. Counseling is defined as an interpersonal process that uses evidence-based practices to assist individuals to understand themselves and their interactions with their environment, to address their identified needs, to set personal goals, and to develop skills to achieve these goals.

The aims of counseling are to assist individuals with making a positive adjustment to incarceration, preparing themselves for a successful reintegration into the community, and to prevent them from reoffending. ORCs may be assigned to facilitate and supervise group sessions as designated by the Deputy Superintendent for Program Services (DSP).

1. *Sex Offender Treatment Services*: The Sex Offender Counseling and Treatment Program (SOCTP) is a comprehensive program of counseling and treatment for convicted sex offenders and other offenders whom the Department identifies as likely to benefit from sex offender counseling and treatment based upon a review of their background. The SOCTP is offered to offenders who have been identified as low, moderate, and high risk to reoffend. Offenders are assigned a risk level for treatment using a comprehensive process that utilizes both actuarial tools and clinical assessment.

In accordance with established best practice standards and in compliance with the Sex Offender Management & Treatment Act (SOMTA), offenders will have the opportunity to participate in the program as time permits and according to their assessed risk level. Once an offender is placed in the program, an individualized treatment plan will be created based on the participant's static and dynamic risk factors that will guide the offender's treatment. Within the moderate and high-risk programs, the duration of services delivered will vary based upon the assessed risk factors of the individual participant.

- a. Length of Services
 - (1) Low Risk: 6 months
 - (2) Moderate Risk: 9-12 months
 - (3) High Risk: 15-18 months
 - b. Admission Requirements
 - (1) Incarceration for a sex offense or any crime where the description of the incident contains sexual offending behavior.
 - (2) Guilty findings at a tier hearing per Incarcerated Individual Standards of Behavior for any sexually abusive and/or assaultive act.
 - (3) Parole violation for sexual offending behavior, or offender returned to custody who was originally assessed prior to release as needing to participate in the SOCTP and did not complete the program, or whose violation characteristics meet the Department's standard for required re-admittance to the program.
2. *Case Plan*: Upon transfer to a general confinement facility, the assigned ORC will review the Reception COMPAS Assessment, Bar Chart, and Narrative during the Initial Interview within five business days of arrival. The ORC, in conjunction with the incarcerated individual, will create a Case Plan based on the incarcerated individual's needs at their first scheduled quarterly review.

Case Plans are developed through a collaborative approach with the incarcerated individual (reference Directive #8500).

3. *Veteran's Services*: Each facility will assign a Facility Veterans Liaison, who will interact with the Central Office Veterans Guidance Specialist to address the readjustment, and reentry needs of veterans within the facility. The Facility Veterans Liaison may be any staff member; however, if this is not a Guidance staff member, then someone in Guidance will be assigned to ensure the veterans documentation is updated on a monthly basis. The designated staff member will participate in training with the Veterans Guidance Specialist on an annual basis.

The facility list of veterans shall be sent by Central Office to the DSP each month, who will then distribute this to designated facility staff members. The required video of basic veteran's information and benefits is to be shown during Facility Orientation. The importance of incarcerated veterans obtaining a copy of US Department of Defense Form DD214, "Certificate of Release or Discharge from Active Duty," is discussed. When received, the DD214 is to be entered in F451 and in KGNC.

The Veteran's Liaison will assist eligible and interested veterans with applying for the Residential Veterans Therapeutic Program. They will also facilitate access between the Veterans Administration Reentry Specialist and the veterans who will be reentering the community within one year, as specified in our Memorandum of Understanding with the Veterans Administration.

C. Program Committee

1. The purpose of the Program Committee is to provide general population incarcerated individuals with program assignments designed to address their needs and the vital operational needs of the facility.
2. The Program Committee is responsible for all program placement and program removals per the Manual of Policy, Procedures and Standards for Programming Incarcerated Individuals. The Program Committee works with an incarcerated Individual's Program/Earned Eligibility Plan to help him or her address priority program needs within the context of the safety and security needs of incarcerated individuals and staff. The Program Committee makes every reasonable effort to help each incarcerated individual satisfy program needs.
3. All program and work assignments shall be made without regard to an incarcerated individual's age, race, religion, national origin, sex, sexual orientation, or non-violent political views. The Program Chairman will ensure that work assignments reflect, to the extent possible, the demographic composition of the facility's incarcerated individual population.
4. An incarcerated individual with disabilities shall not be disqualified from participation in a program if the individual is otherwise qualified and meets the criteria set forth in Directive #4803.
5. The Program Committee shall place an incarcerated individual in an assignment deemed most appropriate for the incarcerated individual and the facility. Programs may include counseling and treatment, academic study, vocational training, transitional services, industrial training, and maintenance work assignments. An incarcerated individual can be assigned to any combination of programs and to any available program module to meet the needs of the facility.

6. Whenever possible, an incarcerated individual will be seen by the Program Committee within five working days of arrival at a new facility. The incarcerated individual's needs and eligibility for outside clearance will be assessed by an ORC. Based on this information, and the needs of the facility, the incarcerated individual will be assigned to an appropriate program. Upon completion of or removal from an assigned program, the incarcerated individual will be referred to the Program Committee for reassignment.
7. If an incarcerated individual refuses to accept assignment to a recommended program, he or she should be advised that failure to do so may result in a loss of good behavior allowance as authorized by Correction Law, Section 803, and [Form #3617](#), "Program Refusal," should be completed.

Incarcerated individuals who refuse program assignments may be subject to administrative action. Incarcerated individuals refusing educational, vocational, and/or therapeutic programs will not be placed in work assignments earning more than Grade 1, Step 1, non-industry pay. Incarcerated individuals refusing educational therapeutic programming may also be subject to pay grade and/or rate decreases in their assigned work program.

In addition, in accordance with Directive #4803, the Program Committee Chairperson may place an incarcerated individual who refuses all assignments in limited privilege program status without a hearing.

V. SUPERVISING OFFENDER REHABILITATION COORDINATOR'S RESPONSIBILITIES:

A SORC shall be in charge of the Guidance and Counseling Unit under the direction of the Deputy Superintendent or Assistant Deputy Superintendent for Program Services.

Responsibilities include:

A. Staff Supervision

1. Ensure that ORCs and support staff are aware of and have access to all written policies, procedures, and guidelines pertaining to their job functions and responsibilities, including case management and counseling activities.
2. Ensure newly hired ORCs and support staff are provided with on the job training and development.
3. Ensure that Guidance staff adheres to the programs and policies of the Department consistent with ethical standards that are appropriate in a professional relationship between an incarcerated individual and an ORC.
4. Ensure that all incarcerated individuals have a Program/Earned Eligibility Plan that identifies their program needs.
5. Ensure that all incarcerated individuals eligible for Earned Eligibility, Merit Time, Supplemental Merit Time, Presumptive Release, LCTA, or scheduled for Temporary Release, CASAT, Case Plans, and Scheduled Transfer Reviews are processed within the required time frames.
6. Reinforce the Department's mission and goals within all aspects of guidance and to staff.

B. Assignments

1. Ensure that incarcerated individual caseloads are equitably distributed and accurately assigned among ORCs. All ORCs will carry caseloads.

2. Ensure that each incarcerated individual is assigned an ORC upon admission to the facility by using Function 30 of the Guidance Information Management System (GIMS).
 3. Counseling is provided to all incarcerated individuals without regard to an incarcerated individual's age, race, religion, national origin, sex, sexual orientation, non-violent political views, or health status.
 4. Conduct incarcerated individual disciplinary hearings when assigned.
- C. Parole Board/Community Preparation: Supervise staff in the preparation of the comprehensive release reports, risk and needs assessments, community preparation investigation materials, and related reports for Parole Board appearances and case reviews.
1. Coordinates and supervises the monthly Parole Board interview and case review.
 2. Ensure that incarcerated individuals/residents receive a copy of the final Parole Board Report and corresponding Parole Board packet prior to the scheduled Parole Board.
 3. Coordinate the delivery of Parole Board decision notices to ensure that incarcerated individuals/residents are the first to be notified of the decision.
 4. Plan, coordinate, and implement supervision plans for incarcerated individuals who meet the criteria of having disabilities and/or special needs.
 5. Perform pre-Board, Parole Board, and discharge planning services for clients in the custody of the Office of Children and Family Services (OCFS) and Office of Mental Health (OMH).
 6. Arrange for multi-disciplinary case conferences as required, in order to develop and coordinate implementation of discharge plans. Maintains a liaison role with various agencies including OCFS and OMH.
 7. Provide notification and service documents to the Field Supervision Team, and where appropriate, utilize the Field Supervision Team for incarcerated individuals who require additional services or specialized treatment.
 8. Write and submit timely report and documents related to discharge planning.
 9. Attend Parole Board Interviews and oversee operation of hearings.
 10. Complete post-Board activities; supervise preparation of disposition reports; distribute disposition reports to OCFS and OMH; and ensure appropriate notification is provided to incarcerated individuals.
- D. Liaison with Office of Guidance and Counseling: One SORC at each facility will be designated to serve as the liaison with the Office of Guidance and Counseling. This SORC liaison will submit monthly reports via email to the Office of Guidance and Counseling, and other reports as requested.
- E. Access to Counseling: Counseling is provided to all incarcerated individuals without regard to an incarcerated individual's age, race, religion, national origin, sex, sexual orientation, non-violent political views, or health status.
- F. Records Management
1. Ensure that a Guidance and Parole folder is created and properly maintained for each incarcerated individual in accordance with established procedures.
 2. Ensure that all counseling, contacts, and other pertinent activities are documented in the incarcerated individual's case folder as a chronological entry.

3. Ensure that information is released in accordance with established standards of confidentiality (reference Directive #2010).
- G. **Professional Development:** Ensure that all ORCs participate in a minimum of 40 hours of training each calendar year, January 1 to December 31. Of those hours, 30 must be in areas directly related to activities in the Guidance and Counseling Unit such as; individual/group counseling (Motivational Interviewing, Thinking for a Change, Moving On), special needs incarcerated individuals, cultural awareness and diversity, communication skills, ethics, or other appropriate topics. Staff training activities will be reported to the Hub Training Office.

VI. FUNCTIONS: Under the direction of the SORC, the Guidance and Counseling Unit at each facility provides counseling and caseload management.

A. **Counseling Activities**

1. *Incarcerated Individual Assessment:* Each incarcerated individual is interviewed and assessed by the assigned ORC within five business days of arrival at a new facility. This assessment should include the following components:
 - a. Incarcerated Individual Overview;
 - b. Incarcerated Individual Program Overview;
 - c. Security and Current Classifications;
 - d. Education Summary/Employment History;
 - e. Family;
 - f. Emergency Contact and Information;
 - g. Mental Health;
 - h. Family History/Social Dynamics;
 - i. Program/Earned Eligibility Plan;
 - j. Personal Concerns;
 - k. Strengths and Needs;
 - l. Security Alerts; and
 - m. Personal Documentation.
2. *Individual and Group Counseling:* Each incarcerated individual has access to appropriate individual and/or group counseling in consultation with the designated ORC.
3. *Identification of Needs and Concerns:* When the need for specialized counseling programs or a security concern is identified, the following steps shall be taken:
 - a. In keeping with the Department's "Policy on the Prevention of Sexual Abuse of Incarcerated Individuals" (Directives #4027A, 4027B, 4028A, and 4028B), at each Initial and Case Plan Review an ORC will inquire whether or not an incarcerated individual has any issues, concerns or questions related to sexual abuse document the response as part of the respective review and initiate any required action, including referrals. Placement and programming assignments for each transgender or intersex incarcerated individual shall be reassessed during each Case Plan Review to review any threats to safety experienced by the incarcerated individual. [Form #115.41GI](#) will be reviewed, verified as current and accurate, or updated at the Case Plan Review, or, as necessary, at any time there is a change in circumstances.

Upon review, if the information contained in [Form #115.41G](#) remains current and accurate, the ORC shall note the same in the chronological entry of the Guidance File.

A transgender or intersex incarcerated individual's own view with respect to their own safety shall be given serious consideration.

- b. ORCs will direct incarcerated individuals to participate in specialized counseling/treatment programs which best meet their needs. Necessary referrals will be made by the assigned ORC and documented in the incarcerated individual's case folder.
- c. For incarcerated individuals with special needs who require contact with outside resources or agencies, the ORC shall discuss the case with the SORC. The SORC will relay the information to the appropriate person(s) prior to referral. The contact or referral will be documented in the incarcerated individual's case folder.
- d. The ORC will provide any information regarding security concerns, incarcerated individual enemies, or danger to self or others to the SORC, who will immediately forward the information to the Security Supervisor.

B. Caseload Reviews

1. *Case Plan Reviews*: ORCs review incarcerated individuals on their caseloads on a quarterly basis, using Function 40 of the GIMS and COMPAS 8.0 on the E-Justice Portal. ORCs are not required to have a face-to-face interview with incarcerated individuals on their caseload who are four or more years from their Earliest Release Date every quarter; these incarcerated individuals are to be seen every other quarter. The reviews shall include:
 - a. Assessment of incarcerated individual's attendance, participation and progress in programs, counseling, and institutional adjustment;
 - b. Assessment of personal goal achievement and program participation;
 - c. Establishment of incarcerated individual's goals for the next quarter (the goals will be written and signed by the incarcerated individual and the ORC); and
 - d. Case management activities including referral services, verification of emergency contact, potential for outside clearance, etc. This also includes review of personal documentation section, and making changes to the Incarcerated Individual Telephone and Incarcerated Individual-to-Incarcerated Individual Correspondence lists.
2. *Other Reviews*: On an as needed basis, the following reviews will be conducted:
 - a. Scheduled Transfer Reviews (Function 40) - incarcerated individuals will be screened semi-annually for possible reclassification and eligibility for area of preference transfers. ORCs will provide incarcerated individuals with 48-hour notice prior to the Scheduled Transfer Review interview;
 - b. Unscheduled Transfer Reviews (Function 40);
 - c. Unscheduled Incarcerated Individual Reviews (Function 40);
 - d. Transfer Summary (Function 40);
 - e. Temporary Release/Work Release (Function 50);
 - f. Earned Eligibility/Merit Time/Supplemental Merit Time/Presumptive Release Reviews (Function 61), LCTA;

- g. CASAT (Function 70); and
 - h. Shock (KPSM Function 90).
3. *Transgender/Intersex Incarcerated individual Placement*: Upon request from an incarcerated individual who identifies as transgender or intersex for a transfer from a male classified facility to a female classified facility, or vice versa:
- a. The assigned ORC shall complete an updated [Form #115.41GI](#), documenting the incarcerated individual's responses to questions regarding their gender identification, expression, and preferences, as well as their statement regarding their safety in connection with their housing and placement. The ORC shall notify the SORC upon completion of the updated "Gender Identity Interview," [Form #115.41GI](#).
 - b. The SORC shall notify the Deputy Superintendent for Program Services and the facility's designated Assistant Deputy Superintendent PREA Compliance Manager. The Deputy Superintendent for Program Services shall notify the Director of Classification and Movement of the incarcerated individual's request via electronic mail, including the completed [Form #115.41GI](#) and the most recently completed gender-appropriate PREA Risk Screening [Form #115.41M](#) or [Form #115.41E](#), which shall be used to assist the Department in making an individualized assessment of the incarcerated individual's placement and program assignments, in order to maximize the incarcerated individual's safety. The request will be forwarded to the Central Office Transgender Placement Review Committee for a case-by-case assessment. Housing assignment by gender identity will be made when appropriate.
 - c. An incarcerated individual who identifies as transgender or intersex will not be placed in a gender-specific facility, housing unit, or program based solely on their external genital anatomy.
 - d. A transgender or intersex incarcerated individual's own view with respect to his or her own safety shall be given serious consideration. Housing assignment by gender identity will be made when appropriate.
- C. Earned Eligibility/Merit Time/Presumptive Release Program and Parole Board/Community Preparation: The specifics about the procedures are provided in the Earned Eligibility Manual and Function 61 of the GIMS. Incarcerated individuals are assessed and a Program/Earned Eligibility Plan is developed based on their identified needs. The plan must be signed by the incarcerated individual and approved by the SORC. The ORC will assist all incarcerated individuals with preparation for release.
- 1. *Satellite Facilities*: Incarcerated individuals without Program/Earned Eligibility Plans must have one developed and signed at the Initial Interview or the first Case Plan Review. At each Case Plan Review, the ORC reviews with the incarcerated individual the progress made toward his/her Program/Earned Eligibility Plan and has the incarcerated individual sign the Case Plan.
 - 2. *Earned Eligibility/Merit Time/Supplemental Merit Time/Presumptive Release Evaluations for Earned Eligibility Purposes*
 - a. For Earned Eligibility purposes, the record of each incarcerated individual who has an indeterminate sentence with a minimum term of eight years or less shall be evaluated by his or her ORC two months prior to the incarcerated individual's scheduled Parole Board Interview.

The ORC shall consider the incarcerated individual's overall attendance, participation, and progress in the programs identified in his or her Program/Earned Eligibility Plan. Each evaluation will then be reviewed by a SORC and the DSP and a recommendation forwarded to the Central Office Earned Eligibility staff, who will make the final determination as the Commissioner's designee.

Thereafter, the incarcerated individual will either be issued a certificate of Earned Eligibility for successful participation in appropriate programs, denied a certificate because of unsatisfactory participation in appropriate programs or unsatisfactory behavior, or assigned to non-certifiable status because the incarcerated individual has not been able to participate in programs, through no fault of his or her own, for a significant period of time.

- b. For Merit Time purposes, the record of each Merit Time eligible incarcerated individual (reference Directive #4790 for eligibility criteria) shall be evaluated by his or her ORC three months prior to the incarcerated individual's scheduled Merit Parole Interview. Each evaluation will then be reviewed by a SORC and the DSP and a recommendation forwarded to the Central Office Earned Eligibility staff, who will make the final determination as the Commissioner's designee. If the incarcerated individual has satisfied Merit Time requirements, he or she will be issued a Merit Time Certificate.
- c. For Supplemental Merit Time purposes, the record of each Supplemental Merit Time eligible incarcerated individual shall be evaluated by his or her ORC three months prior to the incarcerated individual's scheduled Supplemental Merit Parole Interview. Each evaluation will then be reviewed by a SORC and the DSP and a recommendation forwarded to the Central Office Earned Eligibility staff, who will make the final determination as the Commissioner's designee. If the incarcerated individual has satisfied Supplemental Merit Time requirements, he or she will be issued a Supplemental Merit Time Certificate.
- d. For Presumptive Release purposes, the record of each Presumptive Release eligible incarcerated individual (see Directive #4791, for eligibility criteria) shall be evaluated by his or her ORC three months prior to the incarcerated individual's scheduled merit or initial Parole Interview. The ORC shall consider the incarcerated individual's overall attendance, participation and progress in the programs identified in his or her Program/Earned Eligibility Plan. Each evaluation will then be reviewed by an SORC and the DSP and a recommendation forwarded to Central Office Earned Eligibility staff, who will make the final determination as the Commissioner's designee.

The Commissioner's designee shall consider the incarcerated individual's entire criminal arrest record, any recommendations from the sentencing court and the District Attorney's office, any statements made by crime victims, whether the incarcerated individual has been designated a Central Monitoring Case, and any active Orders of Protection.

Thereafter, the incarcerated individual will either be issued a certificate of Presumptive Release for successful participation in appropriate programs, denied a certificate because of unsatisfactory participation in appropriate programs or unsatisfactory behavior, assigned to non-certifiable status because the incarcerated individual has not been able to participate in programs, through no fault of his or her own, for most or all of the period of incarceration, or the determination is made that the release decision can best be made following the incarcerated individual's appearance before the Board of Parole.

3. *Protection of Incarcerated Individual Rights:* In lieu of an appeal mechanism, the Earned Eligibility/Merit Time/Supplemental Merit Time/Presumptive Release Program provides ongoing opportunities for the incarcerated individuals to review and sign off on their Program/Earned Eligibility Plan and quarterly progress reviews.
4. *Distribution:* Prior to the Parole Board Interview, copies of the final Earned Eligibility/Merit Time/Supplemental Merit Time/Presumptive Release determinations are to be given to Community Supervision and each incarcerated individual and placed in the incarcerated individual's Guidance and Parole folders.
5. *Preparation for Release*
 - a. Implement discharge planning activities in order to prepare incarcerated individuals for release and reintegration into the community.
 - b. Prepare comprehensive evaluative summary reports for Board of Parole consideration and review including, but not limited to, the Parole Board Report.
 - c. Attend Board of Parole Interviews and, when necessary, provide panel members with additional case specific information and documentation needed to complete the interview.
 - d. May serve the incarcerated individual with the Board of Parole decision notice and advise the incarcerated individual regarding further release opportunity and the administrative appeal process.
 - (1) At Adolescent Offender Residential Facilities, the SORC/ORC will hand deliver the Parole Board decision(s) to the resident(s) and explain the following:
 - (a) The Parole Board Decision;
 - (b) Procedures for release or, in the case of a denial notice, review the length of the Parole Board hold; and
 - (c) Preparation for the next scheduled appearance (if applicable) and earliest release date.
 - e. Participate in rescission and preliminary violation hearings.
 - f. Coordinate with field parole staff in the development of the final discharge and supervision plan.
 - g. Update the Guidelines Entry System and Case Management System and review PARMIS and Violators systems as needed.

6. *Restitution*

- a. The ORC will review the case folder/record with particular reference to the Sentencing Minutes, Order of Sentencing and Commitment, letters from the Judge and District Attorney, or an Undischarged Restitution Order to determine if there is a Restitution Order against an incarcerated individual.
- b. If there is a Restitution Order, the ORC will indicate so on the case folder/records and in the Parole Board Report under the restitution section.
- c. The ORC will include a special condition mandating payment of restitution on the Parole Board Report.
- d. The ORC will discuss restitution with the incarcerated individual before release to the community and stress the importance of compliance with respect to payment of restitution and mandatory surcharges.

D. Receipt of Work and Program Progress Reports and Treatment Evaluations:

Information about incarcerated individuals is collected from other units. The units shall submit evaluations and progress reports to the Guidance and Counseling Unit (or SORC) according to the designations indicated below:

1. *Quarterly Basis:* Incarcerated Individual Progress Reviews will be forwarded to the Guidance and Counseling Unit on a quarterly basis if the information is not obtainable from the mainframe computer. Progress reviews should be sent from the following areas when the incarcerated individual wage time sheet identifies a due progress review with two asterisks:
 - a. Sex Offender Counseling and Treatment Program: The ORC assigned to the Sex Offender and Counseling Treatment Program shall provide information pertinent to progress made in the program.
 - b. Transitional Services Program: The ORC assigned to Transitional Services shall provide information pertinent to progress made in the program.
 - c. Substance Abuse Programs ASAT, RSAT, CASAT: The ASAT ORCs shall provide information pertinent to progress made in the program.
 - d. Education and Vocational Programs: The Education Supervisor shall be responsible for the submission of progress reports in accordance with established procedures. These reports shall consist of an evaluation of the incarcerated individual's progress, skills developed, information acquired, attitudes demonstrated, and grade level achieved.

In vocational areas, the content of these reports should contain information regarding tasks the incarcerated individual is capable of performing and machines he or she can operate.
 - e. Work Assignment Program: The Work Assignment Supervisor shall submit progress reports on the incarcerated individual's skill development, attitude, and work habits in the work assignment.
2. *As Warranted*
 - a. Chaplains: The Chaplains shall submit relevant information that does not violate religious confidentiality.
 - b. Security Personnel: Security personnel shall promptly inform the SORC of any change in incarcerated individual behavior that requires counseling intervention. Security Personnel should also inform the SORC about improvements in the incarcerated individual's attitude and behavior.

- c. Health Services: Nurse Administrators shall forward to the Guidance and Counseling Unit a report of significant medical and dental issues, when dissemination of such information does not violate the patient's right of confidentiality. The record of hospitalization should indicate the following for each admission:
 - (1) Date of admittance and discharge;
 - (2) Diagnosis, when confidentiality is not breached;
 - (3) Restrictions and recommendations; and
 - (4) Provision of dentures, eyeglasses, or any prosthetic devices.
- d. Office of Mental Health: The Office of Mental Health shall provide the Guidance and Counseling Unit with a list of incarcerated individuals being seen or status changes.
- e. Incarcerated Individual Records Office: The Inmate Records Coordinators shall forward to the Guidance and Counseling Units information about personal documents contained in the incarcerated individual's personal property such as: social security card, DD214, marriage license, driver's license, or birth certificate.

VII. WORK RELEASE FACILITIES - SPECIAL FUNCTIONS: The Guidance and Counseling Unit will focus on work release activities and developing resources and release plans for incarcerated individuals.

- A. Incarcerated Individual Assessment: The Guidance staff will interview all new incarcerated individuals upon arrival at Work Release Facilities within five days. In addition to establishing a relationship with the incarcerated individual, the following should be discussed:
 - 1. Expectations of Work Release;
 - 2. Needs of incarcerated individuals and resources available;
 - 3. Personal document needs;
 - 4. Housing arrangements;
 - 5. Job possibilities;
 - 6. Development of a time schedule; and
 - 7. Budgeting of finances.
- B. Counseling: The Guidance staff will discuss counseling or other resources in the community.
- C. Reviews: The Guidance staff will review incarcerated individuals on their caseloads frequently. Additionally, Guidance staff are to maintain on-going chronological entries throughout an incarcerated individual's temporary release status. Matters that require review are to be submitted to the facility's Temporary Release Committee.
- D. Release Planning: ORCs will assist incarcerated individuals in developing a release profile prior to their release. The release profile consists of a checklist of their personal documents, a draft/completed resume, and tentative release plans. The incarcerated individuals should be encouraged to discuss their release profile with their assigned ORC.

VIII. GUIDANCE AND COUNSELING MANUAL: By authority of the Director of Guidance and Counseling, the Guidance and Counseling Manual sets forth policies and procedure concerning Guidance and Counseling case management, case recording, counseling, and related activities for all correctional facilities.

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Gender Identity Interview

_____ Correctional Facility

Incarcerated Individual Name: _____ DIN: _____ DATE: _____

Completed by: _____ ORC KGNC Code: _____

This interview guide is to help correctly classify incarcerated individuals who identify as transgender (Other Security Characteristic is 38 or 39) or gender nonconforming/gender nonbinary (Other Security Characteristic is 40) during PREA Risk Screening (Form 115.41M/F), or who have been diagnosed with Gender Dysphoria (Other Security Characteristic 41) or with an Intersex medical condition (Other Security Characteristic 42).

Record answers to the following questions during reception/initial interview/quarterly case plan review and update Security Classification Guidelines as needed (**interview must be conducted in a private setting**):

What is your Gender Identity? (select all that apply):

- Male Female
- Transgender Female (assigned male at birth but identifies as a female) (Other Security Characteristic 38)
- Transgender Male (assigned female at birth but identifies as a male) (Other Security Characteristic 39)
- Gender Nonconforming/Gender Nonbinary Other/none Declined to Answer

Do you go by a name other than the name on your birth certificate (for informational purposes - DOCCS uses the legal or commitment name for official records)? _____

What pronouns do you use? Circle: [he/him/his] [she/her/hers] [they/them/theirs] Other _____

Do you dress as a man, a woman or gender-neutral outside of prison (Circle)?

How long have you been living as [a man/a woman/gender neutral]? _____

If the individual is transgender, has Gender Dysphoria, or is Intersex, ask: Do you want the opportunity to shower separately from other incarcerated individuals per Dir. #4009? Circle: Yes No

Is there anything else you would like DOCCS to consider with respect to your safety in connection with decisions regarding your housing and placement? [DOCCS shall give serious consideration to a transgender or intersex incarcerated individual's own view with respect to safety. The PREA Standards require that individualized housing and placement decisions must be made based on consideration of all information available. It may not always be possible to honor each individual's wishes about where they would like to be housed. However, staff will record this information and then convey to the individual that they recorded it but are unable to guarantee where they will be housed. Classification & Movement shall be notified if the incarcerated individual seeks a placement in a different gender facility than where the person is currently assigned.] _____

Gender Identity: (This information is entered by the ORC into F451.)

How would you like your gender identity to be reflected in the DOCCS system (circle one): M F X

I acknowledge that a request to change my gender identity is permitted only at 12-month intervals. The request is not permitted while a disciplinary hearing is pending, or when confined to a cell, room, or Special Housing Unit. However, if the confinement is (12) twelve months or longer, I may change my gender identity after the (12) months.

SIGNATURE OF INCARCERATED INDIVIDUAL

DATE

Information contained on this form shall not be disclosed to anyone other than to the extent necessary to make security classification, housing/placement, programming, treatment, investigation, and other security and management decisions.