

A version of this letter was sent to all Sheriffs in New York State



October 23, 2023

Re: Recent Settlement Regarding the Treatment of Transgender People in Custody

Dear Sheriff,

We write on behalf of the New York Civil Liberties Union (“NYCLU”) and the Transgender Legal Defense and Education Fund (“TLDEF”) to bring your attention to a recent \$160,000 settlement in our lawsuit against the Broome County Jail that also established a policy clarifying the proper treatment of transgender people relating to housing placement, safety, access to medical care, name and pronouns use, search procedures, and grooming standards. Coming on the heels of a \$60,000 settlement in a similar case in Steuben County—resulting in a similar policy change—this policy establishes clear guidelines for how jails can comply with the law, maintain the safety of people in their custody, particularly transgender, gender nonconforming, nonbinary, and intersex people, and avoid costly litigation and settlements arising from inadequate or nonexistent policies.

The sheriffs of Broome County and Steuben County have each stated publicly that their new policies provide clarity and necessary guidance to ensure the lawful treatment of transgender people in custody.¹ We urge you to consider adopting a similar policy in your County.

¹ The Broome County Sheriff was “pleased. . . to amicably reach a resolution that establishes clear LGBTI Guidelines, which were previously nonexistent, to address the rights of LGBTI inmates while maintaining the safety and security of individuals both housed and working at the [Jail]” and views the policy as “another important step forward in pragmatically and safely modernizing policies to meet the needs of those we serve and protect as we work to build a better, safer community for everyone.” *See In settlement with transgender woman, New York jail to implement LGBTQ prison reform*, ABC NEWS, Aug. 25, 2023, <https://abcnews.go.com/US/settlement-transgender-woman-new-york-jail-implement-lgbtq/story?id=102529277>.

Steuben County described its policy as necessary “to ensure that all citizen rights are met” and “to ensure compliance with federal and state regulations.” *See Steuben Sheriff responds to transgender lawsuit and settlement*, WESTVILLE REGIONAL NEWS, Aug. 7, 2020, <https://wellsvilleregionalnews.blogspot.com/2020/08/steuben-sheriff-responds-to-transgender.html?m=1>.

Strong Policies are Essential to Avoid Unlawful Discrimination Against Transgender People in Custody and to Promote Safety

Makyyla Holland, a transgender woman, sued Broome County after she was beaten, subjected to illegal strip searches by male officers, housed with men and in isolation, denied access to prescribed medications—including antidepressants and hormone treatments—triggering severe withdrawal symptoms, and persistently harassed and misgendered by corrections officers and other people in custody. Ms. Holland's experience is unfortunately all too common. Across New York State, transgender people are often held unlawfully in facilities that are not consistent with their gender identity, denied access to health care, misgendered, and subjected to discriminatory commissary and grooming policies.² These types of mistreatment lead to lasting physical and emotional harm.

Prior to Ms. Holland's lawsuit, Broome County had no policy in place to clarify the proper treatment of transgender people in custody. Now, as a result of Ms. Holland's settlement, Broome County has adopted policies that comply with the basic requirements of federal and state laws. *See* Exhibit A ("Broome County Policy"). Specifically, Broome County will:

- House people consistent with their gender identity or within the unit consistent with the sex designation the person in custody believes is safest for them, with limited exceptions.
- Conduct searches consistent with the person in custody's own view of what gender officer would be safest to perform the search, with limited exceptions.
- Ensure that staff at the jail respect a person's gender identity in all other contexts, including name and pronoun use.
- Ensure access to clothing and toiletry items consistent with a person's gender identity, and facilitate access to gender-affirming items such as binders, wigs, and gaffs.
- Ensure access to medical care free from discrimination on the basis of sex, gender identity, gender expression, or sexual orientation, including access to medical care for treatment of gender dysphoria.
- Limit involuntary protective custody and prohibit it based on gender identity.

This settlement mirrors another in Steuben County reached on behalf of Jena Faith, who was also unlawfully housed in the men's facility, denied prescribed hormone treatment, and subjected to harassment and discrimination. Steuben County adopted a policy, *see* Exhibit B ("Steuben County Policy"), that is virtually identical to the Broome County Policy on the substantive issues listed above. The Steuben County Policy was negotiated with the involvement of the New York State Sheriffs' Association and—taken together—these policies can and should serve as a model for jails across New York state.

² *See* Sylvia Rivera L. Project & Takeroot Just., *It's Still War in Here: A Statewide Report on the Trans, Gender Non-Conforming, Intersex Experience in New York Prisons and the Fight for Trans Liberation, Self-Determination, And Freedom* 25 (2021), <https://takerootjustice.org/wp-content/uploads/2021/06/Its-Still-War-In-Here-1.pdf>.

These Policies Address Common Forms of Mistreatment That Violate the Law

There is a growing legal consensus that forcing transgender, nonbinary, or intersex people into a housing unit inconsistent with their gender identity over their objection, misgendering them, refusing to provide them with access to personal and commissary items provided to other people of the same gender identity, placing them in segregation because they are transgender, and providing them with inadequate health care violates state and federal law and the U.S. Constitution. Several courts have recently found that prisons violate the U.S. Constitution when they engage in such practices.³ And the same challenged practices discriminate against transgender people in violation of the Prison Rape Elimination Act, 34 U.S.C. § 30301 *et seq.* and its implementing regulations, 28 C.F.R. Part 115 (2012), as well as the Americans with Disabilities Act, 42 U.S.C. § 12132, the Rehabilitation Act, 29 U.S.C. § 794, the New York State Human Rights Law, N.Y. Exec. Law §§ 292 *et seq.*, and the New York Civil Rights Law, N.Y. CRL §§ 40-c, 79-n.

In short, counties that fail to adopt policies clarifying the proper treatment of transgender, nonbinary, and intersex people in their custody face potential legal liability under both state and federal law.

Your County Should Adopt a Version of the Attached Policies If It Has Not Already

Your County has the opportunity to ensure that no transgender person in its custody will experience the discrimination Ms. Holland and Ms. Faith faced while incarcerated. We trust that you also recognize the importance of ensuring that your office does not engage unlawful discrimination against transgender individuals in custody, and the possible consequences of doing so, including costly litigation and settlements. Clear policies also benefit staff who may be uncertain how to appropriately respond to a transgender person, and they can promote safe, secure, and smooth facility operations, with reduced risk of emergency situations such as violence against transgender people or suicide attempts. Consistent with the law and the settlements in Broome County and Steuben County, we urge you to consider implementing (or updating) written policies that clarify the proper

³ See, e.g., *JJS v. Pliler*, No. 19-CV-02020, 2022 WL 16578124 (S.D.N.Y. Aug. 3, 2022), report and recommendation adopted sub nom. *Shelby v. Petrucci*, No. 19-CV-02020, 2022 WL 16575766 (S.D.N.Y. Nov. 1, 2022) (finding Federal Bureau of Prisons (“BOP”) was deliberately indifferent to serious medical needs of a transgender woman by housing her with men in violation of the Eighth Amendment); *Monroe v. Meeks*, 584 F. Supp. 3d 643 (S.D. Ill. 2022) (holding that the Illinois Department of Corrections (“IDOC”) was deliberately indifferent to the serious medical needs of class of incarcerated transgender women and extending preliminary injunction ordering IDOC to provide class members with medically necessary hormone treatment, access to clinicians qualified to treat gender dysphoria, and the ability to socially transition, including to be housed in a facility matching their gender identity and have access to gender-affirming clothing); *Iglesias v. Bureau of Prisons*, No. 19-CV-415-NJR, 2021 WL 6112790, at *22 (S.D. Ill. Dec. 27, 2021), *modified*, 598 F. Supp. 3d 689 (S.D. Ill. 2022) (finding transgender woman established likelihood of success on claim that Federal BOP was deliberately indifferent to serious medical needs for failing to provide adequate treatment for gender dysphoria).

treatment of transgender people with respect to housing placement, access to medical care, searches, and freedom from harassment and discrimination. We also ask that you consider how such updated policies could be most meaningfully communicated to all county jail staff as well as people in custody—for example, through bulletins, memoranda, oral messages, and training.

We plan to follow up with you after you have had some time to review this letter to discuss the issues we've raised here, your County's existing policies, and any questions or concerns you might have. Please do not hesitate to reach out to us at your convenience at glarios@nyclu.org or 212-607-3354.

Sincerely,



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Staff Attorney
New York Civil Liberties Union



Bobby Hodgson
Director of LGBTQ Rights Litigation
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Shayna Medley
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EXHIBIT A

Broome County Policy

LGBTI (Lesbian, Gay, Bisexual, Transgender, Intersex) Guidelines for Safe Confinement

I. PURPOSE

To provide guidelines for safe confinement of lesbian, gay, bisexual, transgender, gender nonbinary, gender nonconforming, and intersex (LGBTI) inmates and to comply with State and Federal legal/accrediting standards related to this population, including:

- A. Elimination/reduction of discrimination and other stigmatization.
- B. Appropriate classification and safe, secure housing; and
- C. Ensuring personal safety and appropriate access to programs and care, while
- D. Maintaining facility safety and the safety of all persons therein.

II. POLICY

It shall be the policy of the Broome County Sheriff's Correctional Facility (BCSCF) to receive, evaluate, house and provide secure, safe and humane custody of all persons, including transgender, gender nonbinary, gender nonconforming, and intersex inmates, who are committed to its custody. The BCSCF shall treat all people in its custody in a professional, respectful, and courteous manner that is consistent with all of their rights under state and federal law. Any alleged violation of this policy as it relates to the treatment of any person housed in the BCSCF will be fully investigated and appropriate action taken to remedy a confirmed violation. A summary of this policy (Addendum 2) will be inserted in the inmate handbook, uploaded to each inmate tablet, and the policy will be inserted in the service provider's manual. A full copy of the policy will be available to people in custody upon request.

III. DEFINITIONS

Bisexual: A person who is romantically or sexually attracted to more than one gender or sexual category.

Gay: Commonly refers to men typically attracted to other men.

Gender identity: Distinct from sexual orientation and refers to a person’s internal, deeply felt sense of being male or female or something else.

Intersex: A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.

Lesbian: Commonly refers to women typically attracted to other women.

LGBTI: Acronym including lesbian, gay, bisexual, transgender, gender nonbinary, gender nonconforming, questioning, and intersex individuals.

Gender nonbinary: An adjective describing a person whose gender identity does not conform to the binary (“one or the other”) categories of male or female. This person may self-identify as “nonbinary.”

Gender nonconforming: An adjective describing a person whose gender expression is outside of sex-based societal assumptions about how they should look or behave. For example, a woman who dresses and cuts her hair in a manner that is stereotypically associated with men.

Sexual orientation: Romantic, physical, and/or emotional attraction to another person.

Transgender (or Trans): An adjective describing a person whose gender identity (i.e., internal sense of feeling male or female) is different from their assigned sex assigned at birth. For example, including a

Transgender woman: A person whose sex-assigned-at-birth was male but is female may describe herself as a “transgender woman,” “trans woman,” or “woman.”

Transgender man: A person whose sex-assigned-at-birth was female but is male may describe himself as a “transgender man,” “trans man,” or “man.”

IV. **PROCEDURE**

A. **EMPLOYEE CONDUCT**

1. The Broome County Sheriff's Office maintains a zero-tolerance policy for any staff sexual misconduct (which includes sexual contact and/or sexual harassment) directed towards any inmate, including inmates that identify as LGBTI.
2. Any substantiated claim of sexual misconduct by a staff member towards an inmate may result in discipline up to and including termination of the staff member's employment and/or referral for criminal charges.
3. The Broome County Sheriff's Office maintains a zero-tolerance policy for the use of derogatory terms towards any members of the LGBTI community. Use of such terms directly violates Broome County Sheriff's Office code of conduct.
4. Staff shall not engage in any harassment or discrimination based on actual or perceived sex, sexual orientation, gender identity, or gender expression. A person's access to any rights, privileges, or opportunities available to other people in custody, including the right to seek protection or report instances of harassment or intimidation, shall not be denied or restricted due to that person's actual or perceived sex, sexual orientation, gender identity, or gender expression. A person who makes a complaint or seeks staff assistance about harassment, intimidation, threats, or violence shall not be denied such assistance or disbelieved due to that person's actual or perceived sex, sexual orientation, gender identity, or gender expression.
5. Within the reasonable bounds of safety for all inmates and staff, LGBTI inmates shall be able to express themselves through clothing or grooming choices.
6. Staff shall adhere to all confidentiality and privacy protections under applicable laws, including HIPAA. To the extent the person wishes to speak openly about such information, though, they may not be prohibited from doing so.
7. Staff shall report any complaint of harassment, discrimination, and/or abuse as received from an LGBTI inmate. Harassment, discrimination, and abuse due to a person's sex, sexual orientation, or gender identity or expression are not a normal or acceptable part of their incarceration and will not be tolerated. The facility will address and resolve any complaint of sexual assault, sexual harassment, or other threats to safety directed at any person in custody by any member of the staff or other person in custody.

B. COMMUNICATION

All communication with LGBTI inmates shall be professional and without comments that could be deemed by a reasonable person to be harassing or demeaning.

1. Inmates are to be addressed by last name or by using the gender-specific identifier appropriate to the inmate's gender identity. For example, a transgender man who uses male pronouns will be addressed using expressions such as "mister" and "he/him," and a transgender woman who uses female pronouns will be addressed using expressions such as "miss" and "she/her."
2. If a transgender inmate provides Booking with a "preferred name," meaning a first name that they use in order to affirm their gender identity, staff shall not use their former name (also known as a "deadname") in communications with or about them. Staff may use their preferred name or last name, consistent with how they refer to other inmates. This paragraph will not prohibit the staff from using the inmate's former name where it appears in paperwork from the courts or other outside agencies. This section will not require the staff to modify records from a prior incarceration.
3. Questions relating to an inmate's gender identity or gender expression shall only be asked when necessary and related to a staff member's performing of official duties. (For example, in the context of intake, as described in Section E of this Policy.)

C. IDENTIFYING TRANSGENDER AND GENDER NONCONFORMING INMATES

1. A person's self-identification as transgender, gender nonbinary, gender nonconforming, or intersex, at any point before or during their time in custody, is sufficient to trigger the protections and procedures described in this policy. Documentation of a medical diagnosis or legal documentation concerning a person's self-identification is not required for staff to respect or confirm a person's gender identity, absent specific evidence that a person has asserted a gender identity falsely. The fact that a person has not obtained a legal name change or has not obtained government-issued identification that reflects their affirmed sex and gender identity does *not* constitute such specific evidence.
 2. In the event that staff believe they have identified specific evidence that a person has asserted a gender identity falsely, before acting on such evidence, they should consider all sources of countervailing evidence that would support an inmate's asserted gender identity, including: records from the arresting agency or court staff confirming a person's gender identity as asserted; records from past custodial history confirming a person's gender identity as asserted; medical records confirming a person's treatment for gender dysphoria; and/or a gender expression/outward appearance that does not align with societal expectations about their assigned sex.
 3. Any questioning performed by staff shall be conducted in a respectful manner and, to the greatest extent possible, be conducted in a private setting.
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D. PHYSICAL SEARCHES AND HANDLING

1. All searches shall be conducted in accordance with BCSCF Policy III-2-D (Strip Searches) and BCSCF Policy II-3-C (Processing of Inmates).
2. A transgender, gender nonbinary, gender nonconforming, or intersex person shall have the right to request that they be searched by staff of a particular sex based on their own view of what would be best for their safety and privacy. The person making the request will be searched consistently with their chosen sex designation, except in circumstances where the search must occur and no officers of the designated sex can perform the search.
 - a. If such a request is not honored, the reasons for its denial shall be documented and made available to the person who made the request.
 - b. Nothing above restricts supervisors or administrators from handling valid staff requests for accommodations regarding search-related duties, in the same manner as for searches of people who are not transgender.

E. INTAKE SCREENING AND PROCESSING

1. Screening assessments of all inmates, including LGBTI inmates, shall be respectfully conducted using BCSCF-approved screening instruments in accordance with BCSCF Policy II-6-C (Classification of Inmates).
 2. During the intake screening process, if a person being admitted has not made clear what their gender identity is, the staff member conducting the intake screening will respectfully ask the person if they would like to self-identify their gender identity. In so asking, the staff member will make clear that this information will be kept confidential from others, except for members of the staff on a need-to-know basis.
 3. Staff may seek advice from their supervisors and medical staff, as soon as practicable, during the intake process.
 4. Upon completion of initial screening, all LGBTI inmates who indicate that they take medication or have other medical or mental health needs must be referred to medical and mental health and provided an assessment and all appropriate care.
 5. Staff shall ask transgender, gender nonbinary, gender nonconforming, or intersex inmates if they have a name other than the one presented on the commitment document that they would prefer to be called. If so, the preferred name shall be documented in the corrections management software as an "alias" and understood as a "preferred name".-Because the "alias" designation could be misunderstood, staff shall be made aware that the name a person uses in order to be consistent with their gender identity is not false in any way and is the proper name by which to refer to that person.
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F. HOUSING OF TRANSGENDER OR INTERSEX INMATES

1. Housing determinations shall be individually tailored and based upon classification factors and an evaluation of the inmate's emotional and physical well-being.
 2. Housing decisions must focus on minimizing the risk of sexual victimization.
 3. At no time shall a transgender, gender nonbinary, gender nonconforming or intersex inmate be placed in a dormitory housing area.
 4. A transgender, gender nonconforming, gender nonbinary, or intersex person taken into custody shall have the right to request placement in a sex-segregated unit (i.e., a men's or women's unit) that is based on their own view of what would be best for their safety, including placement that is consistent with that person's gender identity.
 5. Where a request is made pursuant to paragraph (4) above, the person making the request will be housed in a unit consistent with the sex designation the person in custody indicated is safest for them, unless safety and security concerns prevent such placement. In assessing whether safety and security concerns prevent the requested placement:
 - a. The requesting person's own view, with respect to his or her safety, is to be afforded serious consideration in a determination of housing.
 - b. Reasonable protective measures should be considered and implemented to facilitate the requested placement.
 - c. If the Sheriff, Jail Administrator, Supervisor, medical staff, or mental health staff, after an individualized determination, have safety, security, or health concerns related to a person's stated housing preference that cannot be reasonably addressed through reasonable protective measures, the Sheriff or designee may, on a case-by-case basis, deny that person's housing placement request. Any such denial will be made as soon as practicable and:
 - i. Be documented in the jail record management system, including the bases on which such denial was made and any alternative protective measures considered;
 - ii. Be based on a specific and articulable safety, security, or health concern;
 - iii. Not be based on any discriminatory reason, including but not limited to: (i) the anatomy or genitalia of the person whose housing
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placement is at issue, (ii) the sexual orientation of the person whose housing placement is at issue, or (iii) a factor that does not bar other people in the requested housing unit.

- d. In determining whether a safety, security, or health concern related to a person's stated housing preference pursuant to paragraph (4) above exists, the complaints of cisgender people who would be housed with such person may be considered only to the extent such complaints state reasonable and articulable safety or security concerns that cannot be addressed through reasonable protective measures, which, if required, shall be applied. A cisgender person's general desire not to be housed with someone because they are transgender, nonbinary, gender nonconforming, or intersex is not a reasonable and articulable safety or security concern.
 - e. Nothing above restricts staff from handling housing-related requests from people in custody that may involve moving someone within or between units of the same designated sex based on valid medical, religious, or safety concerns, in the same manner as for people who are not transgender.
6. Any denial made pursuant to paragraph (5) above shall be made as soon as possible, and no later than 5 days after the request, and shall be available to the person whose housing request has been denied. While housing decisions are final and not grievable, a person in custody may make a subsequent request based on changed circumstances or information not previously considered, and any such request shall be assessed at that time pursuant to the procedure outlined in paragraphs (3-5) above.
 7. Should a transgender, intersex, gender nonbinary, or gender nonconforming person report a concern for their safety, the housing unit officer shall immediately notify their supervisor, who will in turn notify the Jail Administrator via the chain of command. A representative of administration shall meet with the concerned inmate to formulate a mutually agreed upon safety plan. LGBTI inmates may not be placed on facility-directed protective custody or otherwise administratively segregated based solely upon their gender identity or sexual orientation or in violation of any state or federal law.
 8. If a transgender, gender nonconforming, gender nonbinary, or intersex person must be placed on facility-directed protective custody or otherwise administratively segregated, reviews shall be conducted pursuant to Section 7075.4 of the Minimum Standards and Regulations for Management of County Jails and Penitentiaries, N.Y. Comp. Codes R. & Regs. tit. 9, § 7075.4.
 9. In addition to requests made pursuant to paragraph (6) above—which will be considered as they are received—housing decisions shall be reviewed at least in accordance with minimum standards to consider changed circumstances such as allegations or substantiated incidents of sexual misconduct (by staff or other inmates), changes in appearance, upon request of the inmate or as the result of any other relevant information as may be received.
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G. MEDICAL AND MENTAL HEALTH CARE

1. All LGBTI inmates shall be seen by medical staff for intake medical assessment to determine appropriate medical care.
2. Transgender, gender nonconforming, gender nonbinary, and intersex inmates shall also be assessed as part of the intake process for an appropriate treatment plan to include the need for continuation of community-initiated hormonal treatment and/or associated mental health services if indicated.
3. LGBTI inmates that report past sexual victimization to any staff members shall be offered appropriate medical and mental health services.
4. All transgender, gender nonconforming, gender nonbinary, and intersex inmates, even those that do not have a mental health diagnosis, shall be added to the Mental Health caseload as necessary and shall be seen at least monthly to assess well-being.
5. Any present or future medical care or mental health care provider shall be required to comply with this Policy and to confirm that the medical and/or mental health professionals it employs are able to provide appropriate care for transgender patients. Any future provider of health care in the BCSCF shall have internal policies in place for addressing treatment of patients with gender dysphoria so as to be consistent with the Policy before commencing service.
6. No person shall be denied medical or mental health care or have their access to such care restricted in any way because of their actual or perceived sex, gender identity, gender expression, or sexual orientation. For example, when a transgender person expresses a need for medical attention, staff shall handle the situation with the same urgency and respect they would offer to any other individual who sought assistance with a medical need.
7. Healthcare services, medical devices, and medications for the treatment of gender dysphoria, including prescription hormones and dilation devices for care after certain forms of gender-affirming surgery, shall be treated like any other healthcare services, medical devices, and/or medications necessary for a person in custody's health and well-being. Such services or treatments shall be provided as prescribed by medical staff.
8. Likewise, actual or perceived sex or gender identity shall not be used to justify the denial of otherwise appropriate medical care when such care is stereotypically associated with a particular assigned sex. For example, a transgender woman may need both gynecological care and treatment for a prostate condition, and her transgender status shall not be used to justify the denial of such medically necessary care.

H. COMPLAINTS AND GRIEVANCES

1. Any staff member notified of a complaint regarding sexual misconduct involving an LGBTI inmate shall treat it with high priority and immediately notify a supervisor.
2. Any sexual misconduct-related complaint or grievance involving an LGBTI inmate shall be handled in accordance with the grievance procedures set forth in the Inmate Handbook.
3. The shift supervisor should be immediately notified if a grievance is reported by a transgender, gender nonconforming, gender nonbinary, or intersex inmate.

I. INMATE SERVICES (INCLUDING TOILETRY ITEMS, CLOTHING, AND PROGRAMMING)

1. LGBTI inmates shall have equal access to all available services.
 2. Toiletry items and clothing shall be available to people in custody in a manner that does not discriminate based on sex, gender identity, or gender expression. For example, a transgender woman shall have access to the same toiletry, clothing, and commissary items (e.g., women's undergarments, hair products, etc.) as a cisgender woman.
 3. Grooming standards shall not be applied differently based on sex, gender identity, or gender expression. For example, if cisgender women are permitted to wear their hair at a certain length or in a certain style (e.g., in a ponytail), people who are not cisgender women shall be permitted to do the same.
 4. Permission to access specific items, including prosthetics, wigs, hair extensions, chest binders, tucking undergarments or gaffs, or similar items that are used by individuals to have an appearance consistent with their gender identity, may be requested during the person's initial medical assessment performed during the booking process. A person shall be given the opportunity to request that certain items that would otherwise be prohibited—including wigs and hair extensions—be used as medically-prescribed treatment for gender dysphoria, and these requests will be evaluated in a way that is consistent with other requests for accommodations pursuant to medical need and safety and security concerns.
 5. Programs, educational materials, and recreation activities shall not be denied due to actual or perceived sex or gender identity. For example, group activities, resources, or classes made available to cisgender people
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in a particular housing unit shall also be available to transgender, gender nonconforming, gender nonbinary, or intersex people in that housing unit.

6. LGBTI people shall be permitted to shower at separate, reasonable, times from other people in the unit if they so desire in order to address safety concerns. However, a person who does not wish to do so shall not be forced to shower separately based solely on their actual or perceived sex, gender identity, or gender expression.

J. STAFF TRAINING

Staff shall receive initial academy and yearly refresher training on this Policy, in addition to training on sexual misconduct and protection of inmates, appropriate interaction with LGBTI inmates, and associated search procedures.

Addendum 1

Policy of the Broome County Sheriff's Office

Regarding interactions with transgender, intersex, gender nonbinary, or gender nonconforming individuals:

The following actions will not be tolerated by any persons entering the Broome County Sheriff's Correctional Facility, for any reason:

- **DISCRIMINATION:** You will not discriminate against, harass, or bully any person based on who they are, including their gender identity.
- **NAMES/PRONOUNS:** People should not use the wrong name or pronouns when talking to an inmate, even if the inmate hasn't gotten a legal name change or gender marker change on their ID.

Any complaint of any such action by a visitor will be promptly investigated and confirmed violations could result in the removal of visitation rights, or in a criminal investigation.

Addendum 2

Plain Language Policy Statement regarding interactions with transgender, intersex, gender nonbinary, or gender nonconforming individuals:

This policy means that:

- **DISCRIMINATION:** You should not be harassed or bullied based on who you are, including your gender identity.
- **NAMES/PRONOUNS:** People should not use the wrong name or pronouns when talking to you, even if you haven't gotten a legal name change or gender marker change on your ID.
- **SEARCHES:** You can request to be searched by a woman if you're a trans woman, or a man if you're a trans man, or by an officer of the gender you believe would be safest for you.
- **HOUSING:** You can request to be housed in the unit that is consistent with your gender identity.
- **CLOTHES/APPEARANCE:** You can dress consistent with your gender identity, and you can request commissary items and other things that affect the way you look and your gender expression.
- **MEDICAL CARE:** You can request medical and mental health care related to your gender identity, including hormones, no matter whether you had access to that same health care outside the jail.

If you think that you're being denied any of the things listed above, you can file a COMPLAINT with the housing unit officer, on duty supervisor, or the Jail Administrator.

Addendum 3

The following Broome County Sheriff's Correctional Facility policies will be updated to cross-reference the relevant sections of the LGBTI Policy as follows:

- **Policy Statement # III-2-D – Strip Searches**
 - Cross-reference LGBTI Policy IV(D) (Physical Searches and Handling)
- **Policy Statement # II-6-C – Classification of Inmates**
 - Cross-reference LGBTI Policy IV(E) (Intake Screening and Processing) and IV(F) (Housing of Transgender or Intersex Inmates)
- **Policy Statement # II-3-C – Processing of Inmates**
 - Cross-reference LGBTI Policy IV(D) (Physical Searches and Handling), IV(E) (Intake Screening and Processing), and IV(F) (Housing of Transgender or Intersex Inmates)
- **Inmate Handbook**
 - **Visitation Rules** (p. 16-17)
 - Cross-reference LGBTI Policy IV(D) (Physical Searches and Handling)
 - **Administrative Segregation/Protective Custody** (p. 26)
 - Cross-reference LGBTI Policy IV(F) (Housing of Transgender or Intersex Inmates)

The following Broome County Sheriff's Correctional Facility policies will be updated to be gender neutral by removing the word "female" or "woman" consistent with the LGBTI Policy as follows:

- **Policy Statement # II-16-A – Personal Hygiene Supplies**
 - **Policy Statement # II-21-A – Clothing and Bedding Issuance**
 - **Inmate Handbook**
 - **Personal Hygiene** (p. 2)
 - **Clothing** (p. 3-4)
 - **Medical Services** (p. 10-11)
 - **Restraints of Pregnant Inmates** (p. 34-35)
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EXHIBIT B

Steuben County Policy



Steuben County Sheriff's Office

General Order: GO – 16 Transgender, Intersex, Gender Non-Binary, and Gender, Nonconforming People in Custody

Effective Date: June 1st, 2020 **Standard Number: .**

Amended:

Sheriff: James L. Allard

Reviewed:

I. Purpose

The purpose of this policy is to establish procedures for interactions with members of the transgender, intersex, gender non-binary, and gender nonconforming communities.

II. Policy

It shall be the policy of the Steuben County Sheriff's Office to receive, evaluate, house and provide secure, safe and humane custody of all persons, including transgender, intersex, gender non-binary, or gender nonconforming inmates, who are lawfully committed to its custody. The Steuben County Sheriff's Office shall treat all inmates in a professional, respectful, and courteous manner that is consistent with all of their rights under state and federal law. Any reported violation of this policy as it relates to the treatment of any person housed in the Steuben County Jail will be fully investigated and appropriate action taken to remedy such violation. A summary of this policy will be posted at the A100 and A119 Doors as a statement of expected behavior by all visitors to the Steuben County Jail (see Addendum 1) and the policy will be distributed to all contractors prior to entering the facility whenever practical.

III. Definitions and Terms

1. "Assigned sex": The sex-based classification of an infant, usually based solely on external genitalia, that occurs when they are born. This is generally the sex that is originally recorded on an infant's birth certificate.
2. "Affirmed sex": The self-reported sex-based classification of an individual that aligns most closely with their gender identity.
3. "Gender identity": A person's internal knowledge of being male, female, or something else.
4. "Transgender" or "Trans": An adjective describing a person whose sex assigned at birth does not match their affirmed sex. For example, a person who was assigned male at birth but is female. She may describe herself as a "transgender woman," "trans woman," or "woman."

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5. "Cisgender" or "Cis": An adjective describing a person whose sex was accurately assigned at birth, that is, their sex assigned at birth matches their affirmed sex. For example, a person who was assigned male at birth and who identifies as male. He may describe himself as a "cisgender man," "cis man," or "man."
6. "Gender non-binary" (GNB): An adjective describing a person whose gender identity does not conform to the binary ("one or the other") categories of male or female. This person may self-identify as "non-binary."
7. "Gender nonconforming" (GNC): An adjective describing a person whose gender expression is outside of sex-based societal assumptions about how they should look or behave. For example, a woman who dresses and cuts her hair in a manner that is stereotypically associated with men.
8. "Intersex": A general term used to describe people who are born with variations in chromosomes, genitals, or reproductive organs that do not align with typical definitions of male or female.
9. "Gender expression": A person's outward manifestation of their sex or gender, often through behavior, clothing, hairstyles, name, or pronouns.

IV. Procedures

A. Employee Conduct:

1. All employees of the Steuben County Sheriff's Office shall comply with the provisions of this policy.
2. Any substantiated claim of misconduct by a staff member towards an inmate may result in discipline up to and including termination of the staff member's employment, and/or referral for criminal charges.
3. All members of the Steuben County Sheriff's Office shall attend training concerning the implementation and enforcement of the provisions of this policy, including yearly refresher training.
4. Staff interactions with transgender, intersex, gender non-binary, and gender nonconforming people shall be conducted in a professional and respectful manner. Staff shall not make derogatory or disrespectful remarks related to a person's actual or perceived sex, gender identity or gender expression.
5. Staff shall not engage in any harassment or discrimination based on actual or perceived sex, gender identity, or gender expression. A person's access to any rights, privileges, or opportunities available to other people in custody,

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including the right to seek protection or report instances of harassment or intimidation, shall not be denied or restricted due to that person's actual or perceived sex, gender identity, or gender expression. A person who makes a complaint or seeks staff assistance about harassment, intimidation, threats, or violence shall not be denied such assistance and any such complaint shall not be deemed unfounded due to that person's actual or perceived sex, gender identity, or gender expression.

6. A person's self-identification as transgender, gender non-binary, gender non-conforming, or intersex, at any point before or during their time in custody, is sufficient to trigger the protections and procedures described in this policy. Documentation of a medical diagnosis or legal documentation concerning a person's self-identification is not required for staff to respect or confirm a person's gender identity, absent specific evidence that a person has asserted a gender identity falsely. The fact that a person has not obtained a legal name change or has not obtained government-issued identification that reflects their affirmed sex and gender identity does *not* constitute such specific evidence. The inmate shall upon admission or upon any change in self-identification complete and sign an inmate preference form, a copy of which is attached to this policy.
7. During the admissions process, if a person being admitted has not made clear what their gender identity is, the Booking Officer will respectfully ask the person if they would like to self-identify their gender identity. In so asking, the Booking Officer will make clear that this information will be kept confidential from others, except for members of the staff on a need-to-know basis.
8. If a person indicates that they are transgender, gender non-binary, gender nonconforming, or intersex, they will be provided a medical assessment pursuant to the facility's medical provider regarding appropriate medical care to which they may be entitled. The individual in custody will also be provided a copy of the Policy, along with a plain-language summary of its protections (see Addendum 2). If the person does not understand English, these materials will be provided in a language that the person does understand.
9. Safety risks due to a person's sex, sexual orientation, or gender identity or expression are not a normal or acceptable part of their time in custody and will not be tolerated. This facility will immediately address and investigate any complaint of sexual assault, sexual harassment, or other threats to safety directed at any person in custody by any member of the staff or other person in custody and will take appropriate action to ensure the safety of the person making the complaint.

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B. Names, Pronouns, and Identifying Records

1. Staff shall address people in custody as "Inmate [Last Name]."
2. Whenever pronouns or titles of respect are also used, staff shall address and refer to people in a manner that is appropriate to the person's self-identified gender identity. For example, if a person states that she uses "she/her" pronouns, staff shall refer to her as "her" or "Ms.," not "him" or "Mr." If a person states that they use "they/them" pronouns, staff shall refer to them as "them," not "him" or "her."
3. If a person states that, in order to be consistent with their gender identity, they use a name that is different from the name listed on their government-issued identification, staff shall address and refer to that person by their requested name. Nevertheless, jail staff shall use the inmate's name on a government issued identification or other formal document when communicating with courts or other public agencies.
 - a. The person's requested name shall be entered into the person's booking form in the box marked "alias." Because this designation could be misunderstood, staff shall be made aware that the name a person uses in order to be consistent with their gender identity is not in fact an "alias," is not false in any way, and is not anything other than the proper name by which to refer to that person.
 - b. After the person's name is entered in the "alias" box, staff will type, handwrite, or memorialize in another manner the following: "(CHOSEN NAME, TO BE USED BY STAFF)".
 - c. If a person states that they are neither a man nor a woman—i.e., that they are non-binary or otherwise do not identify as male or female—but a required form limits the options for designating that person's sex to MALE or FEMALE, then staff shall enter the sex designation that the person indicates. Unless a form is limited by the State to the options MALE or FEMALE, the person may request an "X" or "NONBINARY" sex designation.
 - d. Pertinent information regarding a person's gender identity or transgender, intersex, or nonbinary status shall be shared only with appropriate staff on a need-to-know basis, and not at all with other people in custody. To the extent a person wishes to speak openly about such information, though, they may not be prohibited from doing so.

C. Toiletry Items, Clothing, and Programming

1. Toiletry items and clothing shall be available to people in custody in a manner that does not discriminate based on sex, gender identity, or gender expression. For example, a transgender woman shall have access to the same toiletry, clothing, and commissary items (e.g., women's undergarments, hair products, etc.) as a cisgender woman consistent with **Admissions and Discharges Policy (Section 08, Subject 01) Procedures E3-E5.**

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2. Grooming standards shall not be applied differently based on sex, gender identity, or gender expression. For example, if cisgender women are permitted to wear their hair at a certain length or in a certain style (e.g., in a ponytail), people who are not cisgender women shall be permitted to do the same.

3. Permission to access specific items, including prosthetics, wigs, hair extensions, chest binders, or similar items that are used by individuals to have an appearance consistent with their gender identity, may be requested during the person's initial medical assessment performed during the booking process. A person shall be given the opportunity to request that certain items that would otherwise be prohibited—including wigs and hair extensions—be used as medically-prescribed treatment for gender dysphoria, and these requests will be evaluated in a way that is consistent with other requests for accommodations pursuant to medical need.

4. Programs, educational materials, and recreation activities shall not be denied due to actual or perceived sex or gender identity. For example, group activities, resources, or classes made available to cisgender people in a particular housing unit shall also be available to transgender, gender non-binary, or intersex people in that housing unit.

5. Transgender people shall be permitted to shower separately or at separate times from other people in the unit if they so desire in order to address safety concerns. However, a person who does not wish to do so shall not be forced to shower separately based solely on their actual or perceived sex, gender identity, or gender expression.

D. Searches

1. Whenever practical, all searches (including strip and pat searches) of transgender, gender non-binary, or intersex people shall be performed by staff of the gender requested by the person being searched. For example, except in exigent circumstances, a transgender woman shall have the right to request to be searched by a female staff member consistent with **Admissions and Discharges Policy (Section 08, Subject 01) Procedure A9**. If a search is conducted that deviates from this procedure, the reasons for that deviation shall be documented.

2. If a person's search preference cannot be determined, the search shall be conducted in a manner consistent with a person's gender identity.

3. No search shall be conducted for the sole purpose of observing or determining a transgender, gender non-binary, or intersex person's genital characteristics.

4. Searches shall be conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

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E. Housing

1. Housing determinations shall be individually tailored and based upon classification factors and an evaluation of the inmate's emotional and physical well-being and in compliance with NYS Commission of Correction regulations.
2. A person taken into custody shall, if that person so desires, have the right to request placement in a sex-segregated unit (i.e., a men's or women's unit) that is consistent with that person's gender identity and affirmed sex. The Sheriff and jail staff shall make a reasonable effort to grant such a request if in accordance with the security requirements of the facility, as set forth in paragraph (3) of this section.
3. If the Sheriff, Jail Superintendent, medical staff, or mental health staff have significant safety, security or health concerns related to a person's stated housing preference pursuant to paragraph (1) above, the Sheriff or designee may, on a case-by-case basis, deny that person's housing placement request. However, any such denial shall be made as soon as possible and:
 - a. Shall be documented in the jail record management system;
 - b. Shall be based on a specific and articulable safety, security or health concern;
 - c. Shall not be based on any discriminatory reason, including but not limited to
 - (i) the anatomy or genitalia of the person whose housing placement is at issue,
 - (ii) the sexual orientation of the person whose housing placement is at issue,
 - (iii) the complaints of cisgender people who do not wish to be housed with a non-cisgender person due to that person's gender identity, or
 - (iv) a factor present among other people in the requested housing unit.
4. Any denial made pursuant to paragraph (2) above shall be made available to the person whose housing request has been denied. Any inmate may grieve such denial.
5. Any request for a housing unit change during an inmate's incarceration due to concerns related to their housing placement and their health and safety shall be assessed at that time. Any subsequent denial shall be able to be grieved by the inmate.
6. Should a transgender, intersex, gender non-binary, or gender nonconforming inmate report a concern for their safety, the housing unit officer shall immediately notify their supervisor, who will in turn notify the Sheriff via the chain of command. A representative of administration

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shall meet with the concerned inmate to formulate a mutually agreed upon safety plan. As stated in Jail Policy and Procedure 6.01, "Code of Conduct and Disciplinary Procedures," Procedure F, segregation shall only be used in response to behavior which threatens the safety, security and good order of the facility.

F. Access to Medical and Mental Health Care

1. Medical care is presently provided to the Jail by contracted entity PrimeCare Medical of New York, Inc., which maintains its own policy entitled "Patients with Gender Dysphoria."
2. Mental health care is provided to the Jail by Steuben County Mental Health.
3. PrimeCare, Steuben County Mental Health, and/or any present or future medical care or mental health care provider shall be required to comply with the Policy. Any future provider of health care in the Jail shall have internal policies in place for addressing treatment of patients with gender dysphoria so as to be consistent with the Policy before commencing service.
4. No person shall be denied medical or mental health care or have their access to such care restricted in any way because of their actual or perceived sex, gender identity, gender expression, or sexual orientation. For example, when a transgender person expresses a need for medical attention, staff shall handle the situation with the same urgency and respect they would offer to any other individual who sought assistance with a medical need.
5. Healthcare services, medical devices, and medications for the treatment of gender dysphoria, including prescription hormones and dilation devices for care after certain forms of gender-affirming surgery, shall be treated like any other healthcare services, medical devices, and/or medications necessary for a person in custody's health and wellbeing. Such services or treatments shall be provided as prescribed by medical staff and as deemed medically necessary.
6. Likewise, actual or perceived sex or gender identity shall not be used to justify the denial of otherwise appropriate medical care when such care is stereotypically associated with a particular assigned sex. For example, a transgender woman may need both gynecological care and treatment for a prostate condition, and her transgender status shall not be used to justify the denial of such medically necessary care.
7. PrimeCare's current policy indicates that it will provide "appropriate care for transgender patients" and that the medical professionals it employs will be fully qualified and able to provide the types of medically-necessary care listed in its "Patients With Gender Dysphoria."

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G. Compliance with NYS Commission of Corrections Regulations:

Nothing contained in this policy shall require the Sheriff or jail staff to be in non-compliance with any New York State Law or regulation made by the New York State Commission of Correction, including any changes to state law or regulations which may be made in the future.

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Addendum 1

Policy of the Steuben County Sheriff's Office regarding transgender, intersex, gender non-binary, or gender nonconforming inmate interactions:

The following actions will not be tolerated by any persons entering the Steuben County Jail, for any reason:

- **DISCRIMINATION:** You will not discriminate against, harass or bully any person based on who they are, including their gender identity.
- **NAMES/PRONOUNS:** People should not use the wrong name or pronouns when talking to an inmate, even if the inmate hasn't gotten a legal name change or gender marker change on their ID.

Any complaint of any such action by a visitor will be promptly investigated and confirmed violations could result in the removal of visitation rights, or in a criminal investigation.

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Addendum 2

Plain Language Policy Statement regarding transgender, intersex, gender non-binary, or gender nonconforming inmate interactions

This policy means that:

- **DISCRIMINATION:** You should not be harassed or bullied based on who you are, including your gender identity.
- **NAMES/PRONOUNS:** People should not use the wrong name or pronouns when talking to you, even if you haven't gotten a legal name change or gender marker change on your ID.
- **SEARCHES:** You can request to be searched by a woman if you're a trans woman, or a man if you're a trans man.
- **HOUSING:** You can request to be housed in the unit that is consistent with your gender identity.
- **CLOTHES/APPEARANCE:** You can dress consistent with your gender identity, and you can request commissary items and other things that affect the way you look and your gender expression.
- **MEDICAL CARE:** You can request medical and mental health care related to your gender identity, including hormones, no matter whether you had access to that same health care outside the jail.

If you think that you're being denied any of the things listed above, you can file a GRIEVANCE with the housing unit officer, on duty supervisor or the Jail Superintendent.

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Addendum 3

STEBEN COUNTY JAIL INMATE PREFERENCE FORM

PART I (to be completed by Booking staff):

The below inmate has self-identified as being transgender, intersex, gender non-binary, or gender nonconforming

Inmate's legal name: _____
 SCSO JID #: _____

PART II (to be completed by the inmate):

1. I identify myself as a transgender, intersex, gender non-binary, or gender nonconforming individual in the community.
2. My preferred pronoun is [CHECK ONE]: male (mister/he/him/his) female (Miss/ she/her/hers) nonbinary (thy/them/theirs) other (please fill in): _____
3. I normally use my legal name in the community; or I *do not* normally use my legal name in the community and, for purposes of gender identity, wish to be called the following while in custody: PREFERRED NAME: _____
4. Whenever reasonably possible, I would prefer to be searched by an officer of the below indicated sex.
 I understand that the SCSO will make reasonable attempts to respect my preference while also understanding that the safety and security of staff and others takes precedent.
 Male: _____ Female: _____ No Preference: _____
5. I would prefer to be housed with Male: _____ Female: _____ inmates.
 I understand that my housing preference will be taken into consideration, but is only part of the overall assessment on where I shall be housed.

PART III (to be completed as noted):

Inmate Signature: _____ Date: _____

Booking Officer: _____ Shield # _____

Supervisor Signature: _____ Shield # _____

Entered in Sallyport : Yes____ No____
 Copy e-mailed to Jail Supt.: Yes____ No____
 Copy e-mailed to Sheriff Yes____ No____

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