

January 15, 2009

Dear Mr Nickles,

Thank you for meeting with us on January 5 regarding the treatment of transgendered individuals in the DC jail and Correctional Treatment Facility (CTF). We were surprised but pleased to receive the new proposed policy from Director Brown, and to have the opportunity to clarify the language of the policy in our conference call on January 9. After those two discussions, we feel there has been substantial progress on creating a policy for the DC Department of Corrections that adheres to the law, ensures the safety and security of the Department's facilities, and respects the human rights and dignity of members of the transgender community who come into custody of DOC.

A good policy is important in setting a clear standard for ensuring that transgendered individuals in DOC custody are treated with respect and humanity, and are not subject to discrimination or mistreatment. The proposal of a "Transgender Committee" to recommend housing assignments for transgendered inmates is a good one and an improvement over past suggestions. Community members and advocates note that it is crucial that an individual inmate's opinion of her or his safety will be considered by the Committee, and that the Committee may place inmates in a housing unit consistent with the inmate's gender identity. Community members have also expressed positive opinions about transgender individuals access to hormone therapy, including the ability to initiate it while in DOC custody.

As discussed during the conference call, we have incorporated our suggestions into a revised version of the proposed policy. Please find attached a copy of the proposed policy with our suggested edits. As you will see, most of these edits are minor changes for clarification or additions to reflect what was agreed upon during the conference call.

While there appears to be much common ground, we have some concerns about the draft policy. To better elaborate on these concerns, below is an explanation of our more substantive revisions (organized by section within the draft policy), as well as concerns that are not addressed by the policy as drafted.

2. Policy

While transgender community members will be encouraged to identify at intake, the policy should explicitly state that transgender inmates may be identified at any time and will be referred to the Transgender Committee at that point, even after intake. In addition, as this policy reflects the DOC's compliance with DCMR Title 4 Chapter 8, "gender identity" should explicitly be added to the factors upon which a housing determination shall be made.

3. Definitions

As noted above, we are pleased with the creation of a Transgender Committee. Although not all details about the Committee makeup need to be included in the policy, we believe it is appropriate to specify how the DOC will ensure that the relevant expertise is involved in every Committee decision, even when specific members are unavailable. We believe that adding the language that "a DOC approved volunteer who is a member of the transgender community or an acknowledged advocate" will further clarify the credentials for that particular position.

9. Initial intake

In subsection (e), the relevant paperwork compiled by R&D staff should document an inmate's gender identity.

Although it is DOC policy to directly refer to inmates by their last name and not use gender specific terms, in normal conversation it is almost impossible to avoid any use of third person pronouns such as "she" and "his." As a result, subsection (g) should specify that when necessary to use gender specific pronouns, pronouns consistent with the inmate's gender identity will be used, as per DCMR Title 4 Chapter 8.

10. Housing

Subsection (a) refers to "transgender and transsexual inmates." However, in the definitions section of the policy, the term transgender includes transsexual but does not include intersex. As a result, when transgender is mentioned, transsexual is not needed but intersex is. In addition, as noted in section 2 (Policy), above, since this policy reflects the DOC's compliance with *DCMR Chapter 4 Title 8*, the policy should clearly state that housing decisions will be based in part on an inmate's gender identity.

Subsection (a) states that intake housing will be based on genitalia. However, inmates should initially be housed in protective custody based on their gender at time of booking, and remain there until the Transgender Committee makes its determination. In particular, if an inmate is booked as a female and a medical exam at intake determines that she has genitalia associated with male sex, she should not be reassigned until the Transgender Committee makes its determination.

Subsection (b) lays out the important work of the Transgender Committee. However, further clarification was needed to specify how the Committee will make and document its decisions. The language added in this regard we believe reflects what Director Brown had explained during the conference call. Clarification was also needed to specify that the inmate's assessment of his or her opinion regarding safety was both with respect to general population versus protective custody and male versus female units.

The policy did not include the protocol for cases in which the recommendation of the Transgender Committee is not followed, so we added Director Brown's explanation of this process to subsection (c). This subsection should also explicitly state that the Transgender Committee's recommendation can be appealed.

When an inmate is recommended for and placed in the housing unit consistent with his or her gender identity, corrections staff will need to ensure that this change is documented and amended in relevant paperwork, in accordance with *PS 1280.2 Reporting and Notification Procedures*. We created subsection (d) to specify this requirement.

Subection (e) (which was subsection (f) prior to the above addition), delineates general population and protective custody, without recognizing the possibility of collective protective custody. In some cases, placing a transgender inmate in collective protective custody with other transgender inmates may be the least restrictive option for maintaining the inmate's safety, and therefore should be included as a possibility.

In order to maintain the safety and security of DOC facilities and to ensure the dignity and well being of transgender and intersex inmates, any searches that require a transgender or intersex inmate to disrobe partially or fully should be conducted in private. We added subsection (f) to make this expectation explicit.

Subsection (j) discusses clothing attire, but should also reflect DOC's compliance with *DCMR Chapter 4 Title 8*, by allowing inmates to maintain a personal appearance consistent with gender identity. We have added a sentence to reflect this commitment.

Policy Implementation

The original draft policy specified that staff would receive training about the policy and that current transgender, transsexual, intersex, and gender variant inmates would be reclassified in accordance with the policy. We believe that these are important provisions to retain.

Additional Recommendations

After careful consideration of the policy and consultation with community members, we have a few additional recommendations that would improve the policy significantly, as well as issues that we believe should be further explored and may warrant inclusion in this policy or in another document.

Based on community feedback, we strongly urge Director Brown to reconsider whether a determination regarding jail attire can be made by the Transgender Committee. Recognizing attire as an aspect of gender expression, and allowing it to be considered within the framework of classification and housing rather than through medical, better conforms with the expectations of *DCMR Chapter 4 Title 8*. In addition, the determination of whether attire consistent with gender identity is appropriate requires consideration of the same factors used by the Transgender Committee to assess housing. Several other jurisdictions, including Seattle, Washington and Portland, Oregon, have adopted such a policy, confirming that allowing the specialized committee to make this determination does not pose a security threat.

The policy still allows for transgender women, who may have significant body modifications, to be placed in the men's unit. Although this should only be for those who feel it is their least vulnerable option, DC DOC still needs to take measures to ensure their safety and the overall order of the facility. As well as ensuring privacy in strip searches, DOC should also consider other moments of nudity in front of others or in close proximity, and how to limit this for transgender inmates. For example, transgender inmates should shower privately to the greatest extent possible.

While the policy adequately addresses access to hormone therapy, other health care needs should also be considered. In particular, mental health counseling and monitoring blood work should be provided.

Finally, as noted on the conference call, this policy implicates several other DOC policies. The policies that we have identified as requiring some modification, or are otherwise referenced in this one, are:

- PS 1280.2 Reporting and Notification Procedures for Significant Incidents and Extraordinary Occurrences
- PS 3350.2E Elimination of Sexual Abuse, Assault and Misconduct
- PS 4010.2D Inmate Personal Grooming
- PS 4090.3C Classification and Reclassification
- PS 4353.1B Inmate Admission, Transfer and Release
- PS 6000.1C Medical Management

Policy Evaluation

As noted by Director Brown, DOC regularly reviews its policies and revises them as necessary to maintain continued effective functioning of the Department and its facilities. To that end we believe it would serve the interests of DOC and the community to revisit this policy in three months and six months to assess its efficacy and potential adjustments that may need to be made. At these intervals, we would like to meet with you and Director Brown again to review decisions made by the Transgender Committee and discuss any unforeseen challenges or issues. We are confident you will agree that this is an important aspect of this process.

Thank you again for speaking with us regarding compliance with *DCMR Chapter 4 Title 8* and the DOC's gender classification and housing policy. We look forward to continuing this process with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa Rothstein". The signature is fluid and cursive, with a large, stylized "M" and "R".

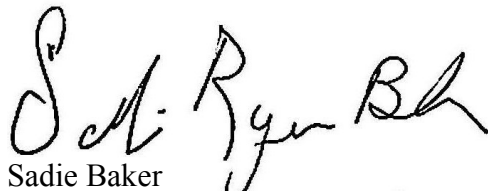
Melissa Rothstein
Just Detention International

A handwritten signature in black ink, appearing to read "Darby Hickey". The signature is cursive and somewhat stylized, with a large "D" and "H".

Darby Hickey
Just Detention International

A handwritten signature in black ink, appearing to read "Deb Golden". The signature is cursive and stylized, with a large "D" and "G".

Deb Golden
Washington Lawyers' Committee
for Civil Rights and Urban Affairs

A handwritten signature in black ink, appearing to read "Sadie Baker". The signature is cursive and stylized, with a large "S" and "B".

Sadie Baker
DC Trans Coalition