



# **NEW CASTLE COUNTY POLICE**

## Interaction with Transgender Individuals Protocol

### **DIRECTIVE 41**

Appendix 41-X

(AUGUST 28, 2017)

# **NEW CASTLE COUNTY DIVISION OF POLICE**

## **INTERACTION WITH TRANSGENDER INDIVIDUALS** **PROTOCOL**

### **PURPOSE**

The purpose of this policy is to establish a protocol when dealing with transgender individuals or detainees and treat them with dignity and respect. New Castle County Division of Police will safeguard the rights of all people, without the consideration to a person's actual or perceived race, color, sex, gender, gender identity/expression, religious creed, sexual orientation, age, national origin, ancestry, handicap or disability.

### **POLICY**

New Castle County Division of Police is committed to working with all of our diverse communities in which we serve. We commit to interacting with all citizens, including the transgender community, with fairness and dignity. All personnel will maintain the highest degree of professionalism and uphold the rights of the United States Constitution and all federal, state and local laws. Officers will not use discourteous or disrespectful remarks regarding another person's actual or perceived ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability. Officers will address the public utilizing pronouns, titles of respect, and preferred name as expressed by the individual. Personnel of this department will not engage in activity that will serve to unduly embarrass, humiliate or otherwise shame transgender individuals.

### **DEFINITIONS**

1. Sex: Refers to a person's biological status and is typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female). There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.
2. Gender: Describes the characteristics that a society or culture delineates as masculine or feminine.
3. Gender Identity: The person's innate sense of his or her own gender. The gender someone identifies with may be different from the gender assigned at birth.

4. Gender Expression: A person's external appearance, including characteristics or behavior typically associated with a specific gender. The gender someone expresses can be different from the gender with which he/she identifies. Cross-dressing (dressing in a manner typically associated with the opposite sex) is a form of gender expression.
5. Transgender: Of, relating to, or being a person who identifies with or expresses a gender identity that differs from the one which corresponds to the person's sex at birth.
6. Transgender Female: A person whose birth sex is male whose gender identity is female. A transgender female is sometimes called a male to female (MTF) individual.
7. Transgender Male: A person whose birth sex is female and whose gender identity is male. A transgender male is sometimes called a female to male (FTM) individual.
8. Gender-nonconforming: A person's physical appearance, characteristics and/or behavior that do not conform to those typically associated with the person's sex at birth or traditional societal gender expression.
9. Preferred Name: A non birth name used by a transgender individual. A preferred name may not be the individual's legal name, and may not be the name provided on the transgender individual's legal documents (*i.e.* driver's license, passport, etc.).

## **PROCEDURE**

- A. Forms of Address
  1. Employees should use the preferred name, even if that name is not legally recognized, in all conversations with the transgender individual or any other person when referring to the transgender individual.
  2. In addition, when addressing or referring to a transgender individual, officers will use pronouns preferred by the individual. If officers are uncertain about which pronouns are appropriate, officers should respectfully ask the individual which pronouns are preferred.

3. Pronouns
    - She, her, hers for an individual who is a transgender woman
    - He, him, his for an individual who is a transgender man
    - They, them, their for an individual who is gender non-conforming and/or prefers gender neutral pronouns. If a person has not clearly stated their gender identity, but the person's intended gender presentation is reasonably clear based on attire and other cues, the individual shall be treated in accordance with their expressed gender.
  4. Officers will not ask questions regarding an individual's anatomy or sexual history.
- B. Calls for Service
1. Calls for service or complaints generated by transgender individuals shall be addressed and investigated in accordance with Department policies. No officer shall fail to respond to a call for service based on the gender identity or expression of the caller.
- C. Stops and Searches
1. The following operating guidelines shall be followed for interactions with a transgender subject while in the field.
  2. Field Stops
    - a. Officers who conduct a stop in the field (i.e. vehicle stop, pedestrian stop) shall ask the subject in question for their government-issued state identification card or state-issued driver's license. If the subject is unable to provide the officer with the card, the officer will ask the subject their pedigree information. The officer will then perform an inquiry through official government databases to determine the subject's information, particularly their name and gender. The government ID or database will serve as the initial proof of gender identity unless and until a different gender identity is expressed or presented by the individual.
    - b. In the event that there is uncertainty regarding the appropriate classification of a subject's gender, a supervisor will be consulted for further guidance on the appropriate classification. In situations where the

subject will not speak or does not have identification, supervisors can attempt to establish a rapport to resolve the situation.

3. Field Searches

- a. When conducting field searches, officers should continue the use of standard practices and procedures as outlined in Directive 1.
- b. A search or frisk shall not be performed for the sole purpose of determining an individual's anatomical gender, and transgender individuals shall not be subject to more invasive searches than other individuals.

D. Reporting

1. For purposes of listing gender on reports, summonses, arrest warrants, and other official documentation, officers shall use the designation listed in the most recent records in official databases. (CJIS, DELJIS Rapsheet, NCIC). Officers will record a transgender individual's gender information and all other demographic information as it appears on their government-issued identification card.
2. Any other name provided by the subject other than what is listed on their government-issued identification shall be recorded as an "alias." The individual's preferred name shall be listed as an alias. Thereafter, the appropriate gender pronouns shall be used in the narrative.

E. Processing

1. Booking

- a. The booking officer will process transgender detainees, including persons held in protective custody and juveniles pursuant to Department policies.
- b. A transgender detainee will be booked under the name appearing on the individual's government issued identification card. Any other name provided by the subject other than what is listed on their government-issued identification shall be recorded as an "alias." If no identification is available, the booking officer will use the individual's preferred name for booking purposes.

2. Turnkey

- a. Upon entering the Holding Facility inside New Castle County Division of Police Headquarters, the Turnkey Officer will conduct an inventory of the detainee's property.
  - i. Requests to remove identity-related items such as prosthetics, clothing, and wigs will be consistent with the requirements for the removal of similar items for non-transgender arrestees, as outlined in the Turnkey Internal Operating Procedures. All requests shall be in a manner as to not cause humiliation or embarrassment. Identity related items are not to be removed prior to booking unless they represent a danger to the detainee or others.
  - ii. The detainee will be asked to complete a pedigree sheet for processing and arraignment. For purposes of listing the name of the detainee, he or she will write the name as it appears on the individual's driver's license or government-issued identification card. If the detainee identifies himself/herself using a different name, that name will be listed as an alias on the arrest paperwork and updated in the Criminal Justice Information System.
  - iii. If the detainee is unable to provide identification at the time of arrest, the Turnkey Officer shall utilize the most recent records in official databases.
  - iv. If there is any uncertainty regarding the appropriate classification of a detainee's gender, a supervisor will be contacted immediately to provide assistance by speaking with the detainee to successfully determine their gender. Detainees shall not be frisked or searched for the purpose of determining genital status, presence or absence of breast, or for any demeaning purpose. Officers shall not strip search a transgender detainee at any time solely to determine their gender.

3. Custodial Searches
  - a. A custodial search will be performed by the Turnkey Officer per Divisional protocol as they enter the Holding Facility as per Directive 71.
  - b. If a Strip Search is warranted and permission is granted by the Patrol Squad Commander, all provisions pertaining to Appendix 1-E, Strip and Body Cavity Searches will be followed. In addition, if the transgender detainee requests an officer of that individual's gender identity or expression, this request shall be granted. When practical, a supervisor of that same sex as the officer should be present for the search. The strip search and all pertinent information will be documented on a LEISS report as well as the Detainee Log.
4. Housing
  - a. Unless space is unavailable (i.e., occupied or contaminated), transgender arrestees shall be housed in a cell by themselves, even when more than one transgender person is in custody at the same NCCPD facility at the same time. The cell shall be located in the cellblock area designated for prisoners with the same gender identity as the transgender prisoner.
  - b. New Castle County Division of Police recognizes the importance of **Prison Rape Elimination Act (PREA)** that requires determination of appropriate housing for transgender detainees on a **CASE-BY-CASE** basis, taking into account factors like personal preference and safety needs, not based solely on genitals. These regulations also limit the use of "protective custody" which results in isolation and stigmatizing the detainee. In accordance with Directive 71 and the Turnkey IOP, Turnkey officers shall make every effort to house prisoners individually until the numbers of detainees exceed the available number of cells. This practice is exercised for the safety of all detainees as well as officers.
5. Transport
  - a. Upon commitment to the Department of Corrections, if uncertainty exists regarding the detainee's biological gender identification, the Patrol Squad Commander and/or their designee shall contact the appropriate

Department of Corrections Shift Commander to discuss the circumstances and to make a determination as to the appropriate facility for transport.

- b. These actions shall be documented on a LEISS supplement report. The name of Department of Corrections' employee will be documented.