

Policy Considerations: Transgender Searches

The intent of this policy consideration is to evoke discussion within your jurisdiction regarding best practices and key elements to include in policies and procedures. Jurisdictions should consider these policies in the context of their unique juvenile justice system structure; state and local mandates; risk tolerance level; and other individual needs.

Throughout the policy considerations the acronym “PP” is used. This stands for “policy and/or procedure.”

General

- The PP has a clear statement that describes the importance and intent of the policy and/or procedure and/or how it relates/ties to the agency’s mission.
- The PP includes clear definitions of key concepts in the policy and/or procedure (i.e. can be understood, differences between related words/concepts are clear, etc.) – transgender, contraband, exigent circumstances, etc.
- The PP mentions how staff will be trained on relevant topic areas – new employee and ongoing training.
- The PP clearly describes an effective quality assurance process such as include quarterly case file reviews, annual onsite audits, regular performance evaluations from supervisors, staff skills assessments and training, etc.
- The PP includes a description of how the agency will use data to ensure it is meeting targets required by the policy and/or procedure area (i.e. indicators of success, how often these data will be reviewed, how the data will be used and by whom, etc.).
- The PP will be available to staff for review.
- The PP reviewed for revision/modifications at least annually.

Transgender Pat and Strip Searches

- The PP permits searches to be conducted in a professional respectful manner of all youth to control contraband within a facility and ensure youth and staff safety.
- The PP allows frequent unannounced searches of a youth’s living area but prohibits random strip searches of youth (i.e. must have a “reasonable suspicion” or higher standard (probable cause) to conduct personal physical searches).
- The PP requires all searches to have two staff present during the search – i.e. one staff member who observes and instructs the youth and a second staff member who observes the staff but who is not able to see youth.
- The PP clearly explains in which circumstances pat searches and strip searches will be conducted on youth (i.e. at intake; reasonable suspicion youth is in possession of a weapon, illegal substances or contraband; etc.).
- The PP prohibits transgender and intersex youth from being searched or physically examined for the sole purpose of determining the youth’s anatomical sex.
- The PP allows transgender and intersex youth the option to request either a male or female staff member conduct a pat-down or strip search at intake and during routine searches.

- The PP requires intake staff to document the transgender or intersex youth's search preference and directs staff where to document this information.
- The PP directs staff how to communicate this sensitive information to protect youth while also sharing this information with staff for the purpose of ensuring youth safety and accommodating youth's search preference.
- The PP allows transgender and intersex youth change their search preference throughout their stay.
- The PP directs staff to document and communicate with staff any changes to youth's search preference within 24 hours of the change.
- The PP permits searches of transgender and intersex youth by a staff member not of the youth's search preference only in exigent circumstances.
- The PP provides specific guidance/examples of what is considered "exigent circumstances."
- The PP instructs staff where to document any deviations from the youth's preferred staff (gender) when undergoing a pat search, strip search, and/or a drug test (i.e. incident report; searches logbook; etc.).
- The PP instructs staff how and when to communicate to designated staff any deviations from the youth's search preference.
- The PP provides specific instructions on how to conduct transgender and intersex searches properly.

Training and Quality Assurance

- The PP requires staff be formally trained on how to conduct proper searches of transgender and intersex youth.
- The PP requires mandatory *annual* training on conducting searches of transgender and intersex youth.
- The PP requires training to include a skills proficiency component in which staff must demonstrate how to properly search transgender and intersex youth.
- The PP requires upper level managers and/or quality assurance staff to review reports detailing the number of cross-gender pat searches and strip searches that were conducted and the justifications for such searches a minimum of monthly.
- The PP requires that immediate action be taken to address any violations of agency policy related to physical searches of transgender and intersex youth (i.e. staff discipline; retraining staff; developing a facility improvement plan; etc.)