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REFERENCE: P.R.E.A. (Prison Rape and Elimination Act)	SUBJECT: Law Enforcement Interactions with Transgender Individuals	
ISSUED BY: Chief Frank J. Apisa	APPROVED BY: Warden Paul Kaminsky	

Purpose: A recent study estimated that over 1.4 million adults and over 150,000 juveniles across the United States identify as transgender. Unfortunately, transgender individuals regularly report that they are somewhat or very uncomfortable asking the police for help when they need it. New Jersey's law enforcement community, which proudly includes LGBTQ+ officers among our ranks, is deeply committed to changing that. After all, it is our shared responsibility as law enforcement officers to ensure the safety of all our residents. That is a difficult task that requires, among other things, building trust with marginalized communities so that everyone in New Jersey will feel comfortable approaching law enforcement, whether as a victim, a witness, or a member of the public, including in moments of crisis.

In recent years, many law enforcement agencies across this country have issued new rules to ensure that we are treating all transgender individuals (*This Directive specifically addresses law enforcement interactions with transgender, non-binary, and gender non-conforming individuals. However, where applicable, the directives below also govern interactions with other members of the LGBTQ+ community, and specifically prohibit discrimination on the basis of sexual orientation*) with respect, and with full recognition of their legal rights.

Recognizing the need for statewide uniformity on this issue, this Directive seeks to ensure that all transgender, non-binary, and gender non-conforming people, like all other people, are treated with dignity and respect and enjoy the full protections to which they are entitled under the New Jersey Law Against Discrimination, which prohibits discrimination or harassment based on gender identity or expression. See N.J.S.A. 10:5-12. Law enforcement's overriding goal therefore must be to treat individuals in a manner that is appropriate to their gender identity or expression, which may be different from the gender they were assigned at birth or the gender that is listed on their official identification. To that end, this Directive—and an Appendix included at the end—will help officers better understand the right language to use, the appropriate searches to conduct, and more, whether we are interacting with victims, witnesses, suspects, arrestees, or members of the public. For those unfamiliar with this area, the definitions laid out in Appendix A offer a useful place to start.

To be clear, nothing in this Directive is meant to displace generally applicable policies that already protect transgender people. In law enforcement interactions with transgender individuals, as for interactions with anyone else, officers must continue to

comply with a range of requirements, including Attorney General Directive 2018-5 (Directive Implementing Procedures and Protocols for Sexual Assault Response and Referrals) and Directive 2018-6 (the Immigrant Trust Directive). This Directive focuses specifically on rules to ensure that individuals are not discriminated against on the basis of gender identity or expression and that they are guaranteed safety and dignity in all encounters with law enforcement and with the criminal justice system.

Policy: The Somerset County Sheriff's Office - Corrections Division will implement and comply with the New Jersey Attorney General's Law Enforcement Directive Number 2019-03

Procedure:

I. General Requirements and Respectful Communication

Law enforcement officers across the state understand that we may never violate the rights of the individuals we interact with, including the rights of LGBTQ+ people, and we take those obligations seriously. So as other law enforcement agency policies have done, this Directive begins by clarifying a series of protocols that officers must follow in order to avoid engaging in such impermissible harassment or discrimination, as well as to ensure that we treat all individuals with respect and in accordance with their legal rights.

A. General Requirements

1. Law enforcement officers shall not harass or discriminate against individuals based on their actual or perceived gender identity or expression and/or sexual orientation, including by using offensive or derogatory words to describe LGBTQ+ individuals. To avoid engaging in such discrimination, law enforcement officers shall not:
 - a. Fail to respond to, delay responding to, or treat as less important, any call or request for service or assistance because of the individual's actual or perceived gender identity or expression and/or sexual orientation;
 - b. Consider a person's actual or perceived gender identity or expression and/or sexual orientation as a basis for reasonable suspicion, or as prima facie evidence that the individual is, has, or is about to engage in a crime; or
 - c. Stop, question, search, arrest, or detain any individual, or subject any individual to more invasive search procedures:
 - i. Because of that individual's actual or perceived gender identity or expression and/or sexual orientation;

- ii. Because that individual used a restroom that the officer knows was consistent with that individual's gender identity or expression (*Under the New Jersey Law Against Discrimination, individuals may use a restroom or changing room that is consistent with their gender identity or expression, regardless of the gender they were assigned at birth and/or their anatomical characteristics*); or
- iii. In order to determine that individual's genitals or anatomy, or to assign gender.

In other words, an officer may not consider a person's gender identity or expression and/or sexual orientation as a factor in deciding whether that person may be involved in criminal activity, or in deciding how to treat that person, except when an officer is pursuing specific leads in an ongoing criminal investigation or is trying to determine whether an individual matches the description in a B.O.L.O. ("Be On the Lookout"). What this provision does is expand the same non-discrimination rule that exists for race and ethnicity to gender identity or expression and/or sexual orientation.

- 2. Law enforcement officers shall not inquire about details of a person's sexual practices, genitalia, or anatomy, unless:
 - a. Doing so is necessary to the ongoing criminal investigation; or
 - b. The individual raises the issue without prompting by the officer, and the officer's inquiries are tailored to ensure the individual's safety and dignity during a law enforcement interaction.
- 3. Law enforcement officers shall not disclose an individual's LGBTQ+ status or gender assigned at birth to members of the public, unless:
 - a. A proper law enforcement purpose requires such disclosure, and the officer documents that purpose in writing; or
 - b. The individual agrees to such disclosure.

Nothing in this provision prevents an officer from respectfully asking someone, "What pronouns do you use?," to ascertain their gender identity in an effort to ensure that an individual's rights and dignity are protected, as laid out in Appendix A to this Directive.

B. Respectful Communication

Transgender individuals' chosen names and pronouns are critical to their dignity and identity. Law enforcement officers therefore shall:

1. Address individuals using their chosen names that reflect their gender identity—even if the name is not the one that is recognized on official legal records and even if that name changes over time—as well as their chosen pronouns;
2. Include chosen names and chosen pronouns in all relevant documentation, as discussed further in Appendix A to this Directive; and
3. Use chosen names and pronouns in any communications about that individual with members of the public, including with the press, except where doing so would disclose an individual’s LGBTQ+ status in violation of Part I.A.3, and except where necessary in legal filings and in communications about those filings.

Law enforcement officers should also be aware that the proper language and terms have evolved over time—and may continue to evolve in the future. To help guide officers regarding the proper language to use, Appendix A includes a list of defined terms, which will be updated as necessary, as well as terms to avoid. Officers should familiarize themselves with the Appendix.

II. Interactions Based on Gender

In the vast majority of interactions between law enforcement and the general public, gender is irrelevant: a law enforcement officer will have no occasion to treat men or women any differently whether they are a suspect, victim, or witness. But some interactions do turn on an individual’s gender. Such interactions can include certain non-exigent custodial strip searches (in which cross- gender searches are prohibited), as well as gender-segregated detention in police stations.

The general rule under this Directive is simple: whenever the action that an officer takes depends at least in part on an individual’s gender, then that action shall be performed in accordance with the individual’s gender identity, regardless of the gender that individual was assigned at birth and/or their anatomical characteristics, including but not limited to the examples outlined below. In other words, officers must treat a transgender woman as they would treat any other woman, and they must treat a transgender man as they would treat any other man.

A. Conducting Searches

1. For the purpose of conducting a search, officers shall treat a transgender woman as they would treat any other woman, and officers shall treat a transgender man as they would treat any other man, regardless of the gender that individual was assigned at birth and/or their anatomical characteristics.

- a. For most searches, the gender of the person being searched will not be relevant because the search may be conducted by officers of any gender. That includes, but is not limited to, searches conducted under exigent circumstances—such as an immediate search in the field for weapons, when officer and public safety are paramount—and searches incident to arrest. Under this Provision, nothing will change for these kinds of searches: as before, a male officer can search a man or a woman (transgender or cisgender), and a female officer can search a man or a woman (transgender or cisgender).
 - b. But certain searches exist for which cross-gender searches are prohibited (e.g., non-exigent custodial strip searches) and where the gender of the person being searched thus matters. In those cases, where only a female officer can search a cisgender woman and only a male officer can search a cisgender man, then it is also the case that only a female officer can search a transgender woman and only a male officer can search a transgender man.
2. Nothing in this Directive, including in Part II.A.1, prevents a law enforcement officer from respectfully asking a transgender individual as to their preference with respect to the gender of the searching officer, documenting that preference, and performing searches in accordance with that preference, if authorized by the relevant state, county, or local law enforcement agency.
 3. Law enforcement officers shall never require transgender, non-binary, and gender non-conforming individuals to remove appearance-related items (such as prosthetics, bras, clothes, undergarments, wigs, chest binders, or cosmetic items) during a search unless all individuals, regardless of gender, would be required to remove such items during that search. As for any individual, officers may require the removal of such items when necessary to ensure the safety and security of any person, but should take care when practicable to remove the items in a respectful, non-invasive, and private manner.

B. Transportation

In most cases, law enforcement officers either transport one arrestee at a time or transport multiple arrestees together without regard to gender. However, where law enforcement officers are segregating individuals by gender when transporting them, law enforcement shall:

1. Transport individuals according to their gender identity or expression, regardless of the gender that individual was assigned at birth and/or their anatomical characteristics, unless they request otherwise as laid out in Part II.B.2.

In other words, where individuals are being transported together regardless of gender, this concern does not come into play. But in any case in which transportation is based on gender, such that women are transported with women and men are transported with men, a transgender woman shall be transported with other women, unless she requests otherwise (see Part II.B.2), and a transgender man shall be transported with other men, unless he requests otherwise (see Part II.B.2).

2. Transport a transgender person alone, when requested and when doing so is practicable and ensures that individual's safety. The denial of such request must, where practicable, be reviewed and approved by a supervisor. The denial shall be documented in writing.

C. Detention in Police Stations

Law enforcement officers already take on the obligation of ensuring the safety and care of individuals in their custody, regardless of their gender identity or expression—a requirement that includes detained transgender individuals. The following section will further help law enforcement officers protect the safety of transgender arrestees.

(Federal law already establishes different rules for the housing of transgender individuals in adult correctional facilities, juvenile facilities, and lockups—which refers to facilities that have holding cells, cell blocks, or other secure enclosures that are primarily used for the temporary confinement of individuals who have recently been arrested or detained, or who are being transferred to or from a court, jail, prison, or other agency. Because the rules governing housing of LGBTQ+ inmates in correctional facilities falls within the purview of the Department of Corrections (DOC), and the rules governing housing of LGBTQ+ residents in juvenile facilities falls within the purview of the Juvenile Justice Commission (JJC), this Directive addresses lockups in police stations.)

1. If detained individuals are held in areas that are segregated on the basis of gender, law enforcement shall:
 - a. House, place, or otherwise detain individuals in line with their gender identity or expression, regardless of the gender that individual was assigned at birth and/or their anatomical characteristics unless they request otherwise as laid out in Part II.C.2.

In other words, a transgender woman shall be housed with other women, unless she requests otherwise (see Part II.C.2), and a transgender man shall be housed with other men, unless he requests otherwise (see Part II.C.2).

- b. Permit individuals to use restrooms consistent with their gender identity or expression, regardless of the gender that individual was assigned at birth and/or their anatomical characteristics.
 2. If a facility has available private cells and/or restrooms, law enforcement shall not:
 - a. Refuse to accommodate a request by transgender, non-binary, or gender non-conforming individuals to have a private cell or to use a private restroom, where doing so is practicable and ensures that individual's safety. *(Studies show that transgender, non-binary, and gender non-conforming individuals face higher risks of abuse and violence when held in detention than other individuals, and are therefore more likely than other individuals to warrant such accommodations. When a law enforcement officer is made aware of such risks to a person's safety or well-being, the officer should be particularly sensitive to these concerns).* The denial of such request must, where practicable, be reviewed and approved by a supervisor. The denial shall be documented in writing.
 - b. Require someone to be housed, placed, or otherwise detained in a private cell or to use a private restroom on the basis of that person's actual or perceived gender identity or expression and/or sexual orientation, absent such a request.
 3. Law enforcement officers shall never deny transgender individuals access to any items (including clothing, personal property, and appearance-related items, like prosthetics, bras, wigs, undergarments, chest binders, and cosmetic items) and/or any programming (including educational programming) that they would allow a cisgender individual of the same gender identity to have, regardless of the gender that individual was assigned at birth and/or their anatomical characteristics.

D. Non-Binary and Gender Non-Conforming Individuals

New Jersey law recognizes that some individuals do not identify or express themselves as strictly male or female. Again, this is irrelevant to the overwhelming majority of law enforcement interactions that do not turn on gender (such as, among other things, an exigent search for weapons to protect officer and public safety). But because some law enforcement interactions do turn on gender, as explained above, the following rules apply in such interactions to ensure the safety of non-binary and gender non-conforming individuals:

1. Conducting Searches: Officers shall respectfully inquire of non-binary or gender non-conforming individuals as to their preference with respect to the gender of the searching officer and perform searches in accordance with that preference where possible. Any search that is not conducted in accordance with the individual's stated preference must, where practicable, be reviewed and approved by a supervisor. The denial shall be documented in writing.
2. Transportation: Officers shall transport such individuals with arrestees of the gender that is safest for them, taking into account which gender that individual expresses to be safest for them. Any transportation that is not done in accordance with the individual's stated preference must, where practicable, be reviewed and approved by a supervisor. The denial shall be documented in writing.
3. Detention in Police Stations: Officers shall house, place, or otherwise detain such individuals with individuals of the gender that is safest for them, and allow them to use the restrooms of the gender that is safest for them, taking into account which gender they express to be safest for them. Any placement that is not done in accordance with the individual's stated preference must, where practicable, be reviewed and approved by a supervisor. The denial shall be documented in writing.

III. Access to Medication

- A. Law enforcement officers shall never handle an individual's request for medical attention with any less urgency or respect because of that individual's actual or perceived gender identity or expression and/or sexual orientation.
- B. Law enforcement officers shall treat prescription hormones like any other prescription medication necessary for an individual's health and wellbeing. *Officers should also be aware that transgender individuals may possess needles related to their prescribed hormone treatment and/or therapy and that such possession is not necessarily indicative of illegal possession of drugs or drug paraphernalia.*
- C. Law enforcement officers shall document the circumstances of any medical treatment pursuant to applicable policies and procedures.

IV. Training and Community Engagement

To ensure that law enforcement fully understands the rights of LGBTQ+ individuals and continues to build relationships with the LGBTQ+ community, the following training and community engagement steps shall be taken:

- A. The Division of Criminal Justice shall, by March 1, 2020, develop a training program to explain the requirements of the Directive. This program shall be available through the NJ Learn System or by other electronic means. All state, county, and local law enforcement agencies shall provide training to all officers regarding the provisions of this Directive before June 1, 2020.
- B. Further, the Division of Criminal Justice shall, by June 1, 2020, and in consultation with groups representing the LGBTQ+ community, create a broader training on LGBTQ+ rights that shall be available through the NJ CLEAR System. That training shall include information about the basics of gender identity, gender expression, sexual orientation, and intersex status; issues affecting the transgender community; and issues relating to implicit bias and cultural humility.
- C. Each County Prosecutor shall, in collaboration with the Division of Criminal Justice, undertake efforts to educate the public about the provisions of this Directive, with a specific focus on strengthening trust between law enforcement and LGBTQ+ individuals. By December 31, 2020, each County Prosecutor shall report to the Attorney General on those public education efforts.
- D. All law enforcement agencies shall seek to establish relationships with organizations focused on LGBTQ+ issues, and other community leaders, to maintain a dialogue about issues affecting LGBTQ+ individuals.

V. Other Provisions

- A. **Establishment of policy:** All state, county, and local law enforcement agencies shall, before June 1, 2020, adopt and/or revise their existing policies and practices, consistent with this Directive, either by rule, regulation, or standard operating procedure.
- B. **Non-enforceability by third parties:** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the state. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- C. **Severability:** The provisions of this Directive shall be severable. If any phrase, clause, sentence, or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- D. **Questions:** Any questions concerning this Directive or its implementation shall be addressed to the Director of the Division of Criminal Justice, or his or her designee.

- E. **Effective date:** This Directive shall take effect on June 1, 2020, to provide an opportunity for law enforcement to be trained on this Directive. Once effective, this Directive shall remain in force unless it is repealed, amended, or superseded by Order of the Attorney General.

Appendix A: Additional Guidance

This Appendix seeks to help state and local law enforcement officers operationalize the requirements in the Directive, and to follow best practices in all their interactions with transgender, non-binary, and gender non-confirming individuals. As a result, the Appendix both offers greater information about appropriate language to use (along with definitions) and lays out ways to respectfully ask someone about their gender identity and to record that information. Because the appropriateness of certain terms and language changes over time, this Appendix will be updated in line with those developments in the future.

I. Definitions and Language

As the Directive explains, the language we use is often especially important for respecting the dignity of transgender, non-binary, and gender non-confirming individuals. That means it is important for law enforcement officers to gain an appropriate understanding both of the terms and proper language to use, as well as the language to avoid.

Law enforcement should be familiar with the following terms:

- A. **Chosen Name:** A name selected by a person for themselves that is different from the name the person was given at birth. An individual may have chosen a new name for themselves that more accurately reflects their gender identity or expression.
- B. **Chosen Pronouns:** The pronouns that a person chooses to use for themselves in line with their gender identity. For example, “she/her” for an individual who requests she/her pronouns; “he/his” for an individual who requests he/his pronouns; and “they/them” for an individual who requests they/them pronouns.
- C. **Cisgender:** A person whose gender assigned at birth (sometimes referred to as sex assigned at birth) matches their gender identity. For instance, if a person was assigned female at birth, and self-identifies as a woman or girl, that person is cisgender.
- D. **Gender Assigned at Birth:** The gender that someone was thought to be at birth, typically recorded on the original birth certificate. The gender someone was assigned at birth may or may not match their gender identity.
- E. **Gender Binary:** A societal construction of gender that accords two discrete and opposing categories – male or female.
- F. **Gender Expression:** A person’s gender-related appearance and behavior, whether or not stereotypically associated with the person’s gender assigned at birth. It is the manner in which a person represents or expresses their gender to others, such as through their behavior, clothing, hairstyles, activities, voice, or mannerisms.

- G. Gender Identity:** A person’s internal, deeply held knowledge of their own gender, regardless of the gender they were assigned at birth. All people have a gender identity, not just transgender people.
- H. Gender Non-Conforming:** A person whose gender expression does not conform to traditional gender expectations. Not all gender non-conforming people identify as transgender.
- I. Gender Transition:** A process during which a person begins to live according to their gender identity, rather than the gender they were assigned at birth. Gender transition looks different for every person. Possible steps in a gender transition may or may not include changing one’s clothing, appearance, and name, and in some cases, changing identification documents or undergoing medical treatments. The steps each person takes depend on their individual needs and access to resources.
- J. Intersex:** A person whose biological sex characteristics may not fit medical definitions of male and female. These characteristics may include, but are not necessarily limited to, internal reproductive organs, external genitalia, and sex chromosomes.
- K. LGBTQ+:** An acronym that represents lesbian, gay, bisexual, transgender, and questioning individuals. The Q may also stand for queer. As the plus sign shows, this list is not meant to be exhaustive, and as used in this Directive, the umbrella term also includes non-binary, gender non-conforming, and intersex individuals.
- L. Non-Binary:** A term often used by people whose gender is not exclusively male or female. The term also captures those with more than one gender or with no gender at all. Individuals whose gender is neither male nor female may use other terms to describe themselves, such as gender fluid, agender, bigender, or gender expansive.
- M. Queer:** A term that, although pejorative when used with intent to insult (historically and at present), is increasingly used by members of the LGBTQ+ community as a broad umbrella under which sexual and gender minorities may identify.
- N. Questioning:** A term some people use when they are in the process of exploring their sexual orientation or gender identity.
- O. Sexual Orientation:** A person’s romantic, emotional, or sexual attraction to members of the same or different gender. Common terms used to describe sexual orientation include, but are not limited to, straight, lesbian, gay, bisexual, and asexual. Sexual orientation and gender identity are different: gender identity refers to one’s internal knowledge of their gender, while sexual orientation refers to whom one is attracted.
- P. Transgender:** Refers to any person whose gender identity or gender expression differs from societal expectations associated with the gender they were assigned at birth. Being

transgender does not imply any specific sexual orientation. This term is an adjective (“transgender person,” not “transgenders” or “transgendered”).

- Q. Transgender Man:** A term for a transgender person who was assigned female at birth but identifies as a man.
- R. Transgender Woman:** A term for a transgender person who was assigned male at birth but identifies as a woman.

Of course, law enforcement officers must also avoid using terms that are designed to harm or offend individuals based on their gender identity or expression. To that end, law enforcement officers should avoid using:

- A. The term “hermaphrodite.” The preferred term is “intersex person.”
- B. The phrases “sex change,” “pre-operative,” or “post-operative.” The preferred terms are “transition” or “transitioning.”
- C. The word “transgender” as a noun (“transgenders” or “a transgender”) or as a verb (“transgendered”). Instead, the word is an adjective, as in “transgender person.”
- D. Any slurs that demean LGBTQ+ individuals. The following offers a list of illustrative terms never to be used: “she-male,” “he-she,” “it,” “transvestite,” “trannie/tranny,” “d*ke,” “f*ggot,” and “gender-bender.”

II. Asking About and Recording Gender Identity Information

As this Directive lays out, certain law enforcement policies and practices turn on the gender of an individual. Such interactions shall be performed in accordance with the individual’s gender identity, regardless of the gender that individual was assigned at birth and/or their anatomical characteristics. That requires officers to properly recognize an individual’s gender identity and record that information.

In many cases, an individual’s gender will be properly reflected on their driver’s license or other official documentation, and a law enforcement officer will be able to rely on that information alone. But there are circumstances in which an officer will need more information. Officers should recognize that some transgender, non-binary, or gender non-conforming individuals’ government- issued identification may reflect their gender assigned at birth rather than their gender identity. Moreover, an individual may have an “X” marker for gender on their official documentation, which indicates that the individual has an “undesignated/non-binary” identification. So where an individual does not have any form of official identification with them, where an individual has an identification with an “X” marking, where an individual indicates to the officer that their gender identity does not match the gender on their documentation, or where the officer does not know the individual’s gender identity, law

enforcement officers may ask for additional information to ensure the dignity, safety, and legal rights of the individual, in accordance with Part I.B.

In such a scenario, law enforcement officers should respectfully ask the individual, “What pronouns do you use?,” in order to address individuals using their chosen pronouns and titles of respect. As laid out in the Directive, however, law enforcement officers should not ask to see any physical or anatomical “proof” of gender.

Any individual’s chosen name and chosen pronouns should be noted appropriately in all relevant documentation as “chosen name” and “chosen pronouns” (in addition to separate spaces already included for an “alias” or “nickname”). Officers should record an individual’s legal name as stated on a government-issued identification document or other legal paperwork under “Legal name” in all Departmental forms and records. At the same time, when it is possible to do so, official forms must be updated to include designations for “male,” “female,” “non-binary” (which can consist of the word “non-binary” or the abbreviation “X”), and “Unknown” (where the person’s gender has not been disclosed and is otherwise unknown).

Such recordkeeping is important not only in initial interactions with arrestees, but also in their transportation and detention. For transportation, while officers will continue to follow the standard operating procedures for communicating with dispatch over the radio when transporting transgender, non-binary, and gender non-conforming individuals, officers should also be mindful of the arrestee’s chosen name and pronouns, and should communicate such information to the temporary holding facility or detention facility. When appropriate to ensure an arrestee’s safety, a transporting officer may communicate the individual’s gender identity to the temporary holding facility or detention facility. For detention, prisoner logs and other documents used to keep track of prisoners while they are in custody should also include an individual’s chosen name and pronouns so subsequent shifts of officers may address the prisoner respectfully.