

Ministry of the Interior

Subject: Penitentiary Integration of Transsexual Persons

Area of Application: Penitentiary Centers

Descriptors: Transsexuals

The Administration of Penitentiaries, under the Directive of February 12, 2001, established the criteria to arrange the admission of transsexual detainees within the frame of internal separation based on sex, established by article 16 of the Organic Law of Sep 26, 1979, General Penitentiary. By this means it was established as criteria that the 'apparent sexual identity' of these persons is taken into consideration, such as their physical characteristics and their external appearance.

The inclusion of other criteria, such as psycho-social gender identity could continue to open spaces of exclusion for those transsexual persons whose gender identity is discordant with their legal one, their physiology and their external appearance.

To address this situation, a procedure is established to make the criteria for positive action effective for these persons as an instrument to advance their standardized social integration, both inside and outside the jail precincts : With the mandatory information from medical and psychological evaluation and the recognition of the individual's psycho-social gender identity, in regard to prisons housing trans people, they must make accommodations so that transsexual persons without a legal gender that agrees with their identity, will be able to have access to modules and conditions for reclusion that are adequate to their condition.

FIRST. General Criteria. Application

1. Transsexual persons, who have legal sex not in accordance with their psycho-social gender identity, can request from the Administration of Penitentiaries for the recognition of their gender identity and thus be housed accordingly as suggested in article 16 of The General Penitentiary Organic Law of Sep. 16, 1979. The recognition, in this case, will adjust to the terms and conditions established in the present directive.

2. The recognition of the gender identity applied for does not imply a new legal gender identity either within or outside of the penitentiary enclosures.

SECOND. Rights and Responsibilities.

1. In the application of gender identity, recognized as it pertains to penitentiaries these persons will have the right to:

The personal dignity and the respect corresponding to the recognized identity, including incarceration in the gender corresponding centers or modules

The practice of frisking by electronic methods and, in every case, by a person of the same gender, in accordance with the recognized gender identity.

Access to collective facilities within the penitentiary and the right to protection from intimidation and rights infringement from the rest of the persons utilizing said facilities.

Access to specialized health services for the process of gender transition within the established conditions of citizenship for public welfare to corresponding health services.

Along these same lines, the guarantee to prescription hormone treatment along with health services with periodic medical supervision.

To equality and freedom from discrimination from the rest of the incarcerated population in accessing penitentiary services, professional development or penitentiary work.

To suitable incarceration treatment in accordance to their criminal and penitentiary records, with total acceptance of their psycho-social gender identity.

2. At the same time, they will have to adjust their behavior to the fulfillment of the duties/responsibilities established in article 5 of the Penitentiary Regulations, approved by Real Decree 190 of Feb 9, 1996.
3. The Administration will insist the use of the name appropriate to their gender identity, group dynamics and interpersonal relations, with the exclusion of official communications, including those that document, where the official accredited name will continue to be used.

THIRD. Request for recognition of psycho-social gender identity.

Provisional Measures.

1. In the event of an application request during admission at a center, the personnel of the Penitentiary Administration will give them the corresponding form (APPENDIX

1). This form will have to be accepted in a sign of conformity, having previous information of the procedure, provisional effects and conditions of the incarceration, until its definitive resolution.

Transsexual persons entering facilities can make the request at the moment they consider opportune.

2. The Center's Direction will adopt the necessary provisional measures for their incarceration guaranteeing the maximum protection of the personal right to gender identity self-determination, until the definitive resolution of the expedient.

Also, in the case of an absence of sufficient base for an accredited claim of the person applying with a penitentiary history, the Direction will have the motivation to refuse the previous provisional measures.

3. In the event that a person, upon entering, did not make such a request and has a contradiction between their physiological sex and/or their officially assigned gender identity, the Administration will inform them of the content of the present disposition.

In the case of no formal request being made on this matter, the person should be placed in accordance with their external appearance and physiological sex, noted in their enclosed medical report.

FOURTH. Evaluation. Resolution.

1. The Center's Direction, upon viewing the request, will order the transaction of the corresponding file. The request might have to be accompanied by informational elements and proof deemed necessary, within a term of 30 days from its delivery.

In a period of no more than 30 days from receipt of all the documentation, the corresponding penitentiary services will produce a medical and psycho-social report, along with vital and social trajectory of the person and their psychological, medical, and physiological situation.

The previous term might be able to be extended by express agreement of the Center's Direction, exclusively, for the same period and with a motive.

2. The medical report will detail the physiological-sexual reality of the interested person and, in case of having the information about the followed processes or initiatives for transexualization/transitioning and the current state of such processes/initiatives, as well as any available relevant information in the clinical history with regards to previous gender conformity.
3. The psychological report, taking into consideration the medical report, will also have to report on:
 - a) The dissonance between physical gender of origin and the psychological feeling, as well as the coincidence and stability of this dissonance with a psycho-social trajectory of a period at least twelve months.
 - b) Absence of personality disorders that could influence in a determinate way their election of gender identity.
 - c) Evaluation of the presence of gender dysphoria in sexual identity.
4. Upon viewing the aforementioned documentation, The Center's Direction will resolve during a period of no longer than 15 days, addressing this issue with motivation, especially in the case of a negative resolution.
5. In the event of placement of persons in a preventive situation and whose positive resolution implies the transfer of locality or Center because of insufficient of accommodations in the present location, the decision will be adopted in a provisional manner and it will be brought to the attention of competent Judicial authority, so that it may be resolved.

In case of denied admission to the corresponding transfer, the Center's Direction will adopt the necessary measures to guarantee suitable penitentiary reclusion adequate to their gender identity.
6. The resolution regarding the request raised will have firm character at the effected of penitentiaries, with the exception of the modification of official gender, or the arranged in the following section.

FIFTH. Execution.

1. A positive resolution will be shared individually, indicating the new destination. The Penitentiary Administration will establish whether or not the individual is maintained at the same center, prioritizing staying in the current space and taking into consideration the zone of social and/or vital status, the procedural situation of the person, their classification, their needs of penitentiary treatment, and the availability of accommodations in the penitentiary.

Administration will execute this procedure in as shortest time possible.

2. In the event of a positive resolution of the pretension and there is a lack of resources at the center for which the order is given, the Center's Direction will have to adopt the provisional measures that it deems convenient, until the corresponding transfer happens, which should occur as quickly as possible.
3. Within ten days following a negative notification, the interested person can re-petition the Penitentiary Center for a new psychological report specially when the ones emitted previously were a determining factor in the adopted resolution. This report will be required of the corresponding territorial public services.

Upon reviewing the new report, the Center's Direction will confirm or revise its previous resolution. The confirmation of the previous negative resolution will have to be pronounced within the content of the newly released report, incorporated into the file.

4. A negative resolution will result in the placement location of the person in accordance with the criteria established in the THIRD clause. 3, of the present Directive. However, for reasons of security and upon the request of the person, the Direction of the Center can adopt the necessary measures, in agreement with art. 75 of the 190 RD Feb 9, 1996, by which the Penitentiary Regulations are approved.

SIXTH. Resource. Revision.

1. In fighting against a negative resolution of request, the interested person can raise the issue before the General Director of Penitentiary Institutions, without

prejudice, exercise other actions anticipated in the penitentiary ordering.

1. The revision of gender identity resolutions will be able to, at the request of the part, in the appearance of new relevant circumstances of psycho-social gender identity and the following established procedures in the present Instruction.

DEPOSITION REAPEAL

ONLY ONE. Be repealed the Circulation of 1/2001, Feb 12, of The General Direction of Penitentiary Institutions, by which criteria are approved regarding imprisonment of transsexual inmates.

FINAL DISPOSITION.

FIRST. In the term of a year, from when this takes effect, the Penitentiary Administration will evaluate the application and effectiveness of the present Directive, adopting, in any case, the necessary measures to guarantee the pursued purpose.

Madrid, March 9, 2006

THE GENERAL DIRECTOR OF PENITENTIARY INSTITUTIONS

Mercedes Gallizo Llamas

APPENDIX 1

DIRECTIVE 7/06, de la DGIP
REGARDING PENITENTIARY INTEGRATION
OF TRANSSEXUAL PERSONS

APPLICATION FOR GENDER IDENTITY RECOGNITION TO THE EFFECT OF
ARTICLE 16 OF THE ORGANIC LAW SEP 26, 1979, OF THE GENERAL
PENITENTIARY

GENERAL DIRECTION OF PENITENTIARY INSTITUTIONS

Mr/Ms. _____ (indicate legal name) _____, with ID num. _____,
admitted to the Central Penitentiary _____, addresses by this
means the Direction and knowing the content, effects and application of the Directive
_____ of the DGIP, regarding integration of transsexual persons.

REQUEST

The recognition, to the effect of penitentiaries, of my gender identity as
_____ (indicate man/woman)

In support of this demand,

RELEASE

1. (To report on their physiological situation, clinical data and medical references that support this request)
2. (To report on their psychological and social experiences)
3. (To reveal biographical data that accompanies the request)

Which we request in _____, of _____ of _____ (date)

(Signature)

Name and Surname