

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT:	PAGE <u>1</u> OF <u>4</u>
Legal Issues in Correctional Health Care	NUMBER: 69-OCH-05
RULE/CODE REFERENCE:	SUPERSEDES: New
RELATED ACA STANDARDS: 2-CO-4E-01	EFFECTIVE DATE: December 1, 2014
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish standard procedural guidelines for the delivery of health care services under the jurisdiction of the Ohio Department of Rehabilitation and Correction when a legal issue is involved.

III. APPLICABILITY

This policy shall be applicable to all persons employed by or under contract with the Ohio Department of Rehabilitation and Correction and all offenders incarcerated in institutions operated by the Department. This policy is not applicable to the Division of Parole and Community Services.

IV. DEFINITIONS

Advanced Level Provider (ALP) - A medical professional who is approved to practice as a Physician, an Advanced Practice Nurse under Ohio Revised Code section 4723.43, or a Physician's Assistant under Ohio Revised Code section 4730.

V. POLICY

It shall be the policy of the Ohio Department of Rehabilitation and Correction (DRC) to provide procedural guidelines which clarify staff responsibilities when legal issues intersect with the health care of inmates.

VI. PROCEDURES**A. Sterilization of Inmates and Sexual Gender Change**

1. Sterilization procedures for the primary purpose of preventing conception shall not be performed on any DRC inmate.
2. This policy does not prohibit treatment of a medical condition that may result in sterilization if such treatment has been recommended by the consulting surgeon and approved by the parent institution's Chief Medical Officer and by the State Medical Director.
3. Treatment with hormones for the purpose of gender modification shall be reviewed on a case-by-case basis and requires joint consultation between the institutional Chief Medical Officer, the highest level mental health prescriber at the institution, the State Medical Director, and the Bureau of Behavioral Health Chief Psychiatrist.
4. The institutional Chief Medical Officer, in consultation with the highest level mental health prescriber at the institution, the State Medical Director, and the Bureau of Mental Health Services Director of Clinical Services shall evaluate any individual with definitive sexual gender surgery done prior to incarceration to determine the need for continuation of treatment with hormones on a case-by-case basis. Factors that shall be considered in determining the need of such- treatment may include:
 - a. Length of sentence;
 - b. Psychiatric profile; and
 - c. Associated medical conditions.
5. Sexual gender change operations shall not be permitted while the inmate is incarcerated.
6. Inmates with gender confusion shall have access to mental health services and should be encouraged to seek such counseling.

B. Collection of Forensic Information

1. The institution ALP shall not order drug screening or any body x-ray solely at the request of custody personnel. The institution ALP may request urine and/or blood screening for suspected drug use or an x-ray pursuant to suspected ingestion or insertion of a foreign object if:
 - a. Such information is needed to complete a medical diagnosis;
 - b. The information will affect the type and extent of medical care to be given.
2. Health care personnel shall not participate in random drug testing of inmates.
 - a. Random drug screening is solely the responsibility of the security staff, which shall ensure proper collection and processing of such specimens.

- b. Results from such testing shall be transmitted confidentially to the Managing Officer/designee.
 - c. The drug testing coordinator shall also forward a copy of all positive drug test detail results to the institutional medical department to be processed in accordance with Medical Protocol B-3, Processing of Laboratory and Diagnostic Tests.
3. Institution medical staff shall provide standard medical judgment and medical care in cases of alleged physical or sexual abuse (see Medical Protocol B-11, Guidelines for Alleged Sexual Assault), or ingestion of foreign material that represents a medical risk to the inmate.
4. Health care personnel shall not participate in collection of forensic information or forensic searches. Forensic searches may include, but are not limited to, body cavity searches and feces searches for contraband.
 - a. If there is suspicion that an inmate has ingested a foreign body or inserted a foreign body into a body cavity, the institution medical staff shall evaluate the patient and provide appropriate medical care if indicated by their clinical assessment or ordered by an advanced level provider.
 - b. Institution health care staff shall not perform body cavity searches at the request of custody staff where no health risk is determined to exist for the inmate. Health risk shall be determined by the registered nurse conducting the assessment with feedback from an advanced level provider if indicated.
 - c. Health care personnel shall not participate in forensic searches or collection of body fluids for diagnostic testing ordered for forensic purposes, such as court-ordered DNA testing.

C. Request for Blood Tests from Outside Agencies

1. All requests from governmental agencies or the private sector for laboratory testing (i.e. HIV or other STD testing, paternity testing) on DRC inmates must be submitted in writing and be accompanied by a court or administrative order unless the inmate consents to the testing and signs a medical release.
2. Requests for blood tests from an Ohio Common Pleas Court shall be forwarded to the Office of Correctional Health Care and evaluated by DRC Legal Services on a case-by-case basis. Further instructions will be given to the institution regarding appropriate action.
3. The requesting agency shall coordinate with the Managing Officer or their designee to schedule a date and time for an independent laboratory to obtain the specimen.
 - a. The procurement, labeling, and identification of the specimen shall be the sole responsibility of the independent laboratory.
 - b. Any expenses associated with the testing are the sole responsibility of the agency requesting the test.

4. If an inmate refuses to cooperate with the court/agency ordered tests, he/she shall be allowed 48 hours to reconsider the decision and/or contact his/her attorney. If the order for the test has not been repealed and the inmate still refuses to cooperate with the testing procedure, then the matter shall be referred to the court or agency that issued the order to determine what action to take in support of its order.

D. Competency Restoration Services

1. In the event an institution or division of the agency receives a court order directing that an inmate in the custody of the Department be restored to competency for purposes of conducting a criminal trial, that court order shall be sent to the Chief of the Bureau of Behavioral Health Services or designee.
2. The Chief of the Bureau of Behavioral Health Services/Designee shall take the following steps to coordinate a competency restoration process:
 - a. Consult with the Division of Legal Services to establish the maximum timeframe in which competency restoration services can be performed by statute for the crime charged to the inmate who is the subject of the order.
 - b. Once the timeframe has been established, coordinate with the Bureau of Classification and Reception to have the inmate immediately transferred to an institution where mental health clinical staff has completed competency restoration training approved by the Chief of the Bureau of Behavioral Health Services, which shall be, at a minimum, one male and one female institution.
 - c. Coordinate with the Ohio Department of Mental Health to establish the intervals at which the forensic expert who will be conducting the final review desires to have status reports on the competency restoration services being performed.
 - d. Communicate the expectations of interval reporting to clinical staff at the institution.
 - e. Thirty calendar days prior to any mid- term or final report required to the court by the forensic expert, coordinate access for the forensic expert to review the mental health record, meet with clinical staff and interview the inmate.
3. For purposes of record keeping, competency restoration services shall be considered mental health treatment.
 - a. A copy of the competency restoration order shall be placed in the inmate's mental health file.
 - b. Additionally, detailed mental health treatment notes shall be kept on the competency restoration services provided in order to allow a review by the forensic expert.