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Supreme Court No. 104436-4
COA Div III No. 40881-7

THE SUPREME COURT OF THE STATE OF
WASHINGTON

Amber Kim,

Petitioner,

v.

State of Washington,

Respondent.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION III

SUPPLEMENTAL BRIEF OF PETITIONER –
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I. INTRODUCTION

For over three years, Amber Kim—a transgender woman—served her sentence at the Washington Corrections Center for Women (“WCCW”). In reaching its decision to place Ms. Kim at WCCW, the Washington State Department of Corrections (“DOC”) recognized that placement at a women’s prison was best for Ms. Kim—both for her physical safety and emotional well-being—and appropriate under DOC’s policies. However, in 2024, after a single, non-violent infraction, DOC transferred Ms. Kim to a men’s prison. This was the first time in Washington’s history that DOC transferred a transgender woman from a women’s prison to a men’s prison. Since then, for more than 660 days, Ms. Kim has remained in solitary confinement, afraid of sexual assault and harassment if she were housed in men’s general population.

DOC’s forced transfer of Ms. Kim to a men’s prison violates the Washington State Constitution’s prohibition on cruel punishment. The Court of Appeals erred in denying Ms. Kim’s personal restraint petition (“PRP”) because it misapplied the

balancing test this Court announced in *Matter of Pers. Restraint of Williams*. 198 Wn.2d 342, 496 P.3d 289 (2021). When correctly applied, the *Williams* test requires courts to weigh the harms experienced by the individual prisoner against the State's purported legitimate penological interest. This Court should grant Ms. Kim's PRP because, on balance, the ongoing harms she is experiencing significantly outweigh any penological interest DOC may have in confining her at a men's prison. Alternatively, the Court can remand to the Superior Court for a reference hearing to resolve material issues of disputed fact.

II. ASSIGNMENTS OF ERROR

1. Whether the Court of Appeals incorrectly applied the balancing test announced by this Court in *Williams*.

2. Whether transferring Ms. Kim—a transgender woman—to a men's prison constitutes cruel punishment in violation of article I, section 14 when DOC previously determined she should be housed in a women's prison.

3. Whether a reference hearing is necessary to determine material issues of disputed fact if this petition cannot

be determined solely on the record before the Court.

III. STATEMENT OF THE CASE

Ms. Kim is a transgender woman currently serving life without the possibility of parole in DOC custody. Attachment A, Kim Decl. ¶¶ 2-3. She has been incarcerated since 2008, when she was 18 years old and a senior in high school. *Id.* at ¶ 12. At that time, Ms. Kim did not openly share her identity as a transgender woman, despite internal knowledge of her gender identity. *Id.* at ¶ 14.

Life in men's prisons was immediately difficult. *See, e.g., id.* at ¶¶ 15, 17, 20, 22-24. Although initially not living openly as a transgender woman, Ms. Kim was small and perceived by others as effeminate. *Id.* at ¶ 14. This quickly made her a target for bullying, harassment, and violence in prison. *See, e.g., id.* at ¶¶ 14-15, 20, 22-24. As she described, "I was routinely called anti-gay slurs, most often 'fag' and 'faggot,' but also 'bitch' and 'punk.' I was called these slurs so regularly that I cannot estimate the total number of times I was subjected to such abuse." *Id.* at ¶ 15.

Verbal harassment continued and escalated into physical violence and attempted sexual assaults. *See, e.g., id.* at ¶¶ 22-23, 25. Ms. Kim was physically attacked while in restraints on a DOC transport bus, assaulted by her roommate, and—on two separate occasions—a male inmate attempted to sexually assault Ms. Kim. *Id.* at ¶ 22-25.

In 2016, Ms. Kim disclosed to DOC that she is a transgender woman. *Id.* at ¶ 29. This triggered DOC’s policies related to transgender inmates. DOC Policy 490.700; *see also* Attachment B, Leavitt Decl. ¶ 3, Ex. A. Ms. Kim legally changed her name to Amber and started hormone replacement therapy (“HRT”)¹. Attachment A at ¶¶ 39-40.

Despite the overwhelming emotional relief of living a life

¹ Since this time, Ms. Kim has received gender-affirming surgeries including: a tracheal shave in August 2024, a bilateral orchiectomy—a surgical procedure that removes both testicles—in March 2025, and a breast augmentation in December 2025. Brief of Respondent, Ex. 3, Webb Decl. ¶ 14; Attachment C, Kim Supp. Decl. (Ms. Kim’s December 2025 surgery occurred after submission of her Petition for Discretionary Review and, as such, is not contained in the record.)

consistent with her identity, life in men's prisons as an openly transgender woman was difficult. *Id.* at ¶ 43. DOC's records reflect Ms. Kim's ongoing struggle in men's prison. In April of 2020, DOC noted that Ms. Kim requested "support from mental health due to stress of being a transwoman in a men's facility." Attachment B, Ex. D at 1. Ms. Kim reported that she "experienced inappropriate sexual comments from both incarcerated people and staff" including "having male [correctional officers] touch [her] breast area during pat [down] searches." *Id.* at 2. Ms. Kim reported that she "do[es] not feel safe" in men's prisons and is "worried about being victimized in the showers." *Id.*

For more than four years, Ms. Kim petitioned DOC to transfer her to a women's prison. Pursuant to DOC policy, Ms. Kim engaged with a multidisciplinary team (MDT) that included prison officials, and both a medical and mental health provider. DOC Policy 490.700(III)(B). DOC's MDT review included Ms. Kim engaging in a psychological assessment, review of Ms. Kim's complete DOC record, and consideration of Ms. Kim's

mental health and safety needs. *Id.* at (III)(B), (VI). In 2021, DOC approved Ms. Kim’s transfer to WCCW. Attachment A, ¶ 49.

For Ms. Kim, “[m]oving to WCCW was a massive improvement in all aspects of my life. At WCCW, I could truly live and be seen as a woman.” *Id.* at ¶ 50. She was not harassed, threatened, or assaulted. *Id.* at ¶ 51. Free of constant harassment and fear of violence, Ms. Kim flourished. *Id.* at ¶ 52. She attended college classes, earning a 3.98 grade point average. *Id.* at ¶ 53. She worked, first in food service and later as a tutor and classroom assistant. *Id.* at ¶ 54-55.

DOC’s own records noted Ms. Kim’s immediate improvement upon transferring to WCCW. Attachment B, Ex. E. Regarding her mental health, it was noted that, although Ms. Kim had considered “just giving up on life” at WCCW, “she no longer feels that way[.]” *Id.*, Ex. F at 2.

On March 14, 2024, Ms. Kim and her cellmate—a

cisgender² woman—were caught having consensual sexual contact in their cell. Attachment A, ¶ 60. As a result, Ms. Kim and her roommate were each found guilty of a “504” infraction³ after a disciplinary hearing. *Id.* at ¶ 61. This was Ms. Kim’s first major infraction at WCCW and first 504 infraction during the entirety of her incarceration—over 17 years. *Id.* at ¶ 60. Both Ms. Kim and her roommate were subsequently transferred to WCCW’s close custody unit, a more restrictive security status that limits the amount of time spent outside of one’s cell. *Id.* at ¶¶ 61-62.

On April 2, 2024, DOC conducted its requisite biannual housing review for Ms. Kim and decided that it was appropriate to maintain Ms. Kim at WCCW. Attachment B, Ex. H; DOC Policy 490.700. However, just five weeks later, with no apparent

² “Cisgender” is defined as a person whose sex assigned at birth aligns with their gender identity.

³ A 504 violation is defined as “[e]ngaging in a sex act with another person(s) that is not otherwise included in these rules, except in an approved extended family visit.” WAC 137-25-030. 504 violations encompass consensual sex as well as other forms of consensual physical intimacy. *Id.* ¶ 60.

explanation, Ms. Kim’s housing status was reviewed again—this review occurred outside of the typical timeframe and process dictated by DOC’s policy. *Id.*; see also DOC Policy 490.700. Despite no new infractions and no change in circumstances, DOC reversed its position and declared that Ms. Kim was a safety concern and required immediate transfer out of WCCW. Attachment B, ¶ 15, Ex. I.

On June 21, 2024, Ms. Kim was forcibly transferred to the Monroe Correctional Center (“MCC”). Attachment A, ¶¶ 66-68. At MCC, Ms. Kim was immediately placed in solitary confinement. *Id.* at ¶ 68-69. By contrast, after two months in close custody, Ms. Kim’s cisgender roommate was transferred back to medium custody at WCCW—the same custody status and location where she was housed before the infraction. *Id.* at ¶ 62.

At MCC, Ms. Kim told DOC that she could not return to men’s general population due to fears for her safety. *Id.* at ¶ 73. Ms. Kim described those fears:

If I am eventually placed in men’s general

population, I will live in constant fear. I am afraid of physical assault, sexual assault, and the constant harassment. I will face the ultimate paradox: my continued physical transition helps address my debilitating gender dysphoria⁴, but the more female-presenting I become in appearance, the more unwanted, nonconsensual attention I will receive from the men in prison. If I do not continue my transition, my gender dysphoria will rear its ugly head, fueling my depression and making my life miserable. But, being victimized by incarcerated men—or spending all of my time hiding from them in IMU—also makes my life as miserable.

Id. at ¶ 74.

Today, Ms. Kim lives in solitary confinement. *Id.* at ¶ 71.

Ms. Kim suffers the harms of long-term solitary confinement to avoid the imminent risk of sexual assault, physical violence, and ongoing harassment. *Id.* at ¶ 73-74. At the date of this filing, Ms. Kim has been in solitary confinement for 661 days.

⁴ “Gender dysphoria” is a serious medical condition included in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition. It is characterized by psychological distress that can result from an incongruence between one’s sex assigned at birth and one’s gender identity.

IV. ARGUMENT

The Washington State Constitution prohibits cruel punishment. Const. art. I, § 14. “Article I, section 14 of the Washington Constitution is more protective than the Eighth Amendment to the United States Constitution regarding conditions of confinement.” *Williams*, 198 Wn.2d at 346.

Under the Washington Constitution, conditions of confinement that “create an objectively significant risk of serious harm or otherwise deprive a person of the basic necessities of human dignity” are unconstitutional unless they are “reasonably necessary to accomplish a legitimate penological goal.” *Id.* at 370. A PRP challenging conditions of confinement is granted when the petitioner demonstrates their restraint is unlawful by a preponderance of evidence. *Id.* at 352.

Here, the Court of Appeals incorrectly applied the *Williams* balancing test because it failed to conduct any proportionality analysis. *Matter of Kim*, 34 Wn. App. 2d 1099, 2025 WL 1874592 (2025) (unpublished) (attached as Attachment D). Instead, the Court of Appeals considered only

DOC's penological interests, without considering whether those interests justified the harms imposed on Ms. Kim. *Id.* When the test is correctly applied, the harms to Ms. Kim in a men's prison vastly outweigh any interest of the State.

Accordingly, Ms. Kim has demonstrated, by at least a preponderance of the evidence, that her ongoing restraint—being confined to a men's prison as punishment—is unlawful. Therefore, this Court must grant her PRP. In the alternative, this Court can remand to the Superior Court to hold a reference hearing to resolve material issues of disputed fact.

A. The Court of Appeals Erred in its Application of the *Williams* Test; it Failed to Weigh the State's Asserted Penological Interest Against the Deprivations to Ms. Kim

In *Williams*, the Court described the relationship between the two prongs of the article I, section 14 inquiry: “the relevant question is whether conditions of confinement are *proportionate* to legitimate penological interests to be achieved.” 198 Wn.2d at 368 (emphasis added). In other words, the article I, section 14 test is a balancing test: the court must weigh the proportionality

of the conditions of confinement against DOC's purported legitimate penological interest. *See id.*; *see also State v. Fain*, 94 Wn.2d 387, 617 P.2d 720 (1980) (treating a proportionality analysis under article I, section 14 as a balancing test).

The Court of Appeals erred because it failed to give any weight to the harms suffered by Ms. Kim. Denying her petition, the Court of Appeals merely reasoned that: "*Regardless of whether Ms. Kim's transfer created an objectively serious risk of harm*, she has failed to demonstrate the second prong of the analysis: the transfer was not reasonably necessary to accomplish a legitimate penological goal." *Kim*, 34 Wn. App. 2d at *4 (emphasis added).

Furthermore, in its misapplication of the *Williams* balancing test, the Court of Appeals erroneously required Ms. Kim to show that her conditions of confinement were both cruel and unusual, despite the fact that the Washington Constitution does not require such a showing. *Id.* at *5 ("Ms. Kim has not met her burden of establishing her transfer back to a men's prison facility constitutes cruel and *unusual* punishment.") (emphasis

added); *but see Williams*, 198 Wn.2d at 354-55 (omission of “unusual” from article I, section 14’s text supports holding that Washington’s prohibition on cruel punishment offers greater protection than the Eighth Amendment). This gross misstatement of the article I, section 14 standard impermissibly heightens the harms that Ms. Kim must show under the first prong of the *Williams* test.

The Court of Appeal’s interpretation of *Williams* would relieve lower courts of ever having to consider the seriousness of harm to an incarcerated person and eviscerate article I, section 14’s heightened protections. This would give DOC nearly total discretion to impose any conditions of confinement, no matter how cruel, if DOC articulates even a minimal penological interest. Reversal is required because the Court of Appeals erred as a matter of law by failing to conduct any balancing analysis.

B. The Court Must Grant Ms. Kim’s PRP Because the Punishment DOC Imposed on Her Is Vastly Disproportionate to Any Legitimate State Interest

When properly applied, the *Williams* test requires granting Ms. Kim’s PRP because the ongoing harms to her in a men’s

prison are serious and well-recognized and, by comparison, the State's purported interests are weak.

1. The Objectively Significant Risk of Serious Harm to Ms. Kim and Deprivation of Her Human Dignity in a Men's Prison Is Entitled to Great Weight

Ms. Kim is at an objectively significant risk of serious harm if placed in general population at a men's prison and is likewise seriously harmed by her ongoing, indefinite solitary confinement. *See Williams*, 198 Wn.2d at 352. Moreover, placement at a men's prison after DOC determined Ms. Kim's placement at a women's prison was appropriate and best for Ms. Kim is a deprivation of Ms. Kim's human dignity. *Id.*

a. DOC's Transfer of Ms. Kim to a Men's Prison Creates an Objectively Significant Risk of Serious Harm

Transferring Ms. Kim to a men's prison creates an objectively significant risk of serious harm to Ms. Kim. For Ms. Kim, the risk of physical violence, sexual assault, and harassment is not merely speculative: she has lived this cruel reality. Prior to her placement to WCCW, Ms. Kim experienced two attempted

sexual assaults, inappropriate touching by DOC employees, and ongoing sexual and verbal harassment by male inmates. Ms. Kim experienced this harassment and violence prior to openly identifying as a transgender woman, and the abuse increased significantly after.

Moreover, five years have passed since Ms. Kim's last placement in the general population of a men's prison. She is further along with her medical transition and—as a result of several gender affirming surgeries and years-long HRT—appears more outwardly feminine than before. This only heightens the risk of violence and harassment that Ms. Kim will certainly endure if she leaves solitary confinement.

Ms. Kim is not required to wait until she is physically harmed to seek intervention; under article I, section 14, the *risk* of harm is sufficient to give rise to cruel conditions of confinement. *Williams*, 198 Wn.2d at 363. Additionally, Ms. Kim's prolonged solitary confinement—which results from her reasonable and well-founded fear for her personal safety—is itself cruel. *See Davis v. Ayala*, 576 U.S. 257, 287 (2015)

(Kennedy, J., concurring) (noting that “solitary confinement bears a further terror and peculiar mark of infamy”).

In addition to Ms. Kim’s declaration, there is ample evidence of harm Ms. Kim suffered in men’s prisons in DOC’s own records. Over the course of years, Ms. Kim repeatedly told DOC about her safety concerns. *See* Brief of Respondent, No. 40881-7-III, Rule Decl., Attachment F (“Kim states that there is a safety issue with the continuation of housing here [Monroe Correctional Complex] but there would be at any male facility.”) (Transgender Housing Review, June 20, 2017); *see also id.*, Rule Decl., Attachment G (“Kim states that the only way to feel safe is to be housed in a women’s facility”) (Transgender Housing Review, October 25, 2017); *see also id.*, Rule Decl., Attachments H, J, K, L, N, T. In 2020, DOC investigated a PREA complaint where Ms. Kim stated she “need[ed] to be in a different unit where staff will actually like, listen to me when I say, ‘Hey, I have a problem. You need to fix i[t].’” *Id.* at 21-22.

Ms. Kim’s experiences of harassment and discrimination are further substantiated by the known risks to transgender

women in men's prisons. Washington's Office of the Corrections Ombuds found that transgender women report "being targeted and harassed after coming out as trans[gender]" and "experiencing anti-trans[gender] discrimination and targeted harassment by DOC staff, as well as lack of assistance when they are targeted and/or harassed by other incarcerated persons." EV Webb & Rebecca Glosser, OFFICE OF THE CORRECTIONS OMBUDS, *Transgender, Intersex, and Gender Non-Confirming Systemic Review*, June 2021, 2, <https://oco.wa.gov/sites/default/files/2021%20OCO%20Trans%20Report%20FINAL%20with%20DOC%20Response.pdf>.

Moreover, just as violence is unreported in the community, violence is even more underreported in jails and prisons. *See id.* at 2 ("Transgender women report being housed at prisons for men and feel they cannot honestly report when they are unsafe in that setting."). The reality of underreporting undercuts any argument that Ms. Kim's claims made now are not credible. Moreover, Ms. Kim made ample contemporaneous reports of harassment and violence that DOC ignored and now attempts to

minimize.

b. *DOC's Transfer of Ms. Kim to a Men's Prison Deprives Her of the Basic Necessities of Human Dignity*

Transferring Ms. Kim to a men's prison deprives her of the basic necessities of human dignity because it has forces her to choose between living consistent with her gender identity and engaging in the most basic human necessities, like continued gender-affirming medical care, showering, or interacting with other people without ongoing sexualization. *See Sterling v. Cupp*, 290 Or. 611, 625 P.2d 123 (1981) (holding that nonemergency pat-down searches of male prisoners by women prison officials violates the "personal dignity" of the male prisoners because it imposed "a needless indignity").

For Ms. Kim, a basic necessity of human dignity is the recognition of her gender identity. But, if placed in men's general population, Ms. Kim will be forced to suppress her outward expression of her gender identity—for example, through her outward appearance like clothing and hairstyle, and even her continued engagement in gender-affirming medical care

including HRT—for her own physical safety. *See* Attachment A, ¶ 74; *see also United States v. Skrametti*, 605 U.S. 495 (2025) (“Left untreated, gender dysphoria may result in severe physical and psychological harms.”); *see also Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 596 (4th Cir. 2020), *as amended* (Aug. 28, 2020) (treatments for persons with gender dysphoria differs for each individual and may include changes in gender expression, medical treatment, and therapy).

Moreover, transferring Ms. Kim to men’s general population will result in her being increasingly sexualized, which will cause her to forgo the most essential functions of daily life such as showers and the company of others—this remains true even if Ms. Kim attempts to adapt her physical presentation. For example, when previously in men’s prison, Ms. Kim became hypervigilant, only showering when she was certain no one else would be around or not showering at all, due to ongoing harassment and threats of violence. *See* Attachment A, ¶¶ 17, 44. The humiliating, dehumanizing, and dangerous experience that awaits Ms. Kim in men’s general population is like the

conditions at issue in *Williams* where the petitioner was forced to endure lengthy wait times to access the bathroom, resulting in “frequently soiling himself”—conditions that were found to be objectively cruel. 198 Wn.2d at 369.

In sum, forcing Ms. Kim to live in solitary confinement at a men’s prison after DOC already determined that it was best for Ms. Kim—both for her physical safety and mental health—to be housed at WCCW, creates an objectively significant risk of harm. Moreover, forcing Ms. Kim to live in men’s housing after DOC placed her at a women’s prison offends her basic human dignity.

2. The State’s Asserted Penological Interests Are Significantly Weakened Following Ms. Kim’s Orchiectomy and, Regardless, Transfer to a Men’s Prison Is Not Proportionate or Necessary to Achieve DOC’s Interests

The Court of Appeals held that “DOC has a legitimate penological interest in preventing Ms. Kim from engaging in sexual contact with other inmates, specifically the prevention of penile-vaginal intercourse that could result in sexually transmitted infections and in an inmate becoming impregnated.”

Kim, 34 Wn. App. 2d at *4. Even assuming these are legitimate penological interests, these interests are entitled to very little weight here due to Ms. Kim’s specific circumstances. Moreover, DOC regularly addresses these concerns for non-transgender prisoners through much less severe sanctions.

First, DOC asserts that it has a strong penological interest preventing sexual contact due to the “[r]isk of pregnancy” in prisons. Respondent’s Answer for Discretionary Review, No. 104436-4, at 22; *see also* Brief of Respondent, No. 40881-7-III, at 57. However, since her transfer, Ms. Kim underwent a bilateral orchiectomy, rendering her unquestionably infertile. *See* Attachment C. Pregnancy is no longer a risk and preventing it simply cannot be a significant interest.

Within the purported penological interest of preventing sexual contact, DOC further asserts that it has an interest in preventing sexually transmitted infections (“STIs”). *See* Brief of Respondent, No. 40881-7-III, at 59. Yet, DOC has access to Ms. Kim’s full medical record—which was considered when DOC approved her transfer to WCCW—and there is no indication that

Ms. Kim has a STI. Moreover, this same risk exists between people of the same natal sex, meaning Ms. Kim's transfer does not prevent this risk.

In other words, Ms. Kim does not implicate the interests articulated by DOC, yet DOC revoked Ms. Kim's placement at WCCW—a placement that DOC previously determined was required for Ms. Kim's physical and mental health after a years-long review process—nonetheless. Given these circumstances, any remaining legitimate penological interests pale in comparison to the serious ongoing risk to Ms. Kim's health and safety.

Second, confining Ms. Kim in a men's prison is not reasonably "necessary" to achieve any of DOC's purported interests. *See Williams*, 198 Wn.2d at 363. Here, DOC has many options to achieve their stated goals of preventing sexual contact, short of holding Ms. Kim in a men's prison; in fact, transfer to a men's prison does not further their interests.

It is undisputed that DOC has capacity to house Ms. Kim in a more restrictive custody status at WCCW. *See* Brief of

Respondent, Wofford Decl. at ¶ 3. For example, DOC can house Ms. Kim in a more restrictive custody status or without a roommate at WCCW. *Id.* DOC could have treated Ms. Kim the same way they treated her cisgender roommate and imposed a 20-day sanction for the 504 infraction. While one incident may trigger heightened concern for DOC about Ms. Kim, DOC has a robust infraction process that it can utilize to sanction Ms. Kim while maintaining her placement at WCCW. Transferring Ms. Kim to a men's prison is simply not reasonably necessary to accomplish this purported goal of preventing sexual activity.

Third, the State has no legitimate interest in the biased administration of punishment. *See State v. Gregory*, 192 Wn.2d 1, 24, 427 P.3d 631 (2018). Therefore, any interest in holding Ms. Kim in a men's prison that is not applied equally to similarly situated people, is entitled to little weight. In *Gregory*, the Court employed the principal of evenhandedness to rule the death penalty violated article I, section 14; punishment imposed in an arbitrary and racially biased manner, "fail[ed] to serve penological goals." *Id.* at 18-19, 24. While the Constitution likely

does not require perfectly evenhanded treatment of all incarcerated people, *Gregory* made clear that differences in punishment cannot, constitutionally, be based on bias based on “suspect classifications” because the State has no legitimate interest in furthering such bias. *Id.* at 10.

Like the defendant in *Gregory*, Ms. Kim is subject to disproportionately harsh punishment based on her membership protected class—sex and transgender status. *See e.g.*, RCW 49.60.040(29). During the three-and-a-half years that Ms. Kim was housed at WCCW, DOC recorded 33 infractions for 504 violations at that facility.⁵ However, DOC did not transfer any of those individuals after their infractions—only Ms. Kim.⁶ It goes without saying that DOC would not transfer a cisgender woman to men’s prison to face unwanted sexual attention as punishment. Ms. Kim is only subjected to this punishment because of her sex

⁵ Vivian McCall, *Trans Woman Launches Hunger Strike After State Moved Her to a Men’s Prison*, THE STRANGER, Jul. 8, 2024, <https://www.thestranger.com/news/2024/07/08/79594138/trans-woman-launches-hunger-strike-after-state-moved-her-to-mens-prison>.

⁶ *Id.*

and transgender status. Therefore, when DOC has approved a transgender prisoner's transfer to a prison consistent with their gender identity, that protection cannot be withdrawn as punishment without offending article 1, section 14.

In sum, applying the *Williams* test, the risk of serious harms to Ms. Kim and the ongoing deprivation of her human dignity in a men's prison vastly outweighs any purported penological interests of DOC. That is especially true here where the State seeks to withdraw protections—the same protections DOC itself deemed were necessary—for Ms. Kim as punishment even though DOC has demonstrated it has other means to achieve its purported interests.

C. This Court May Order a Reference Hearing to Resolve Material Issues of Disputed Fact

Although Ms. Kim has shown by a preponderance of the evidence that her restraint is unlawful, if the Court disagrees, and if the “parties’ materials establish the existence of material disputed issues of fact,” then the Court must remand to the Superior Court to hold a reference hearing to resolve the factual

questions. *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886–87, 828 P.2d 1086 (1992); RAP 16.11(b); RAP 16.12. Ms. Kim has established ample undisputed facts that support granting this PRP. However, if this Court is unable to sufficiently balance the harms to Ms. Kim against DOC’s purported legitimate penological interests, there a number of reasons that a reference hearing may be called for here.

First, DOC submitted an incomplete set of Ms. Kim’s records. Because a PRP does not permit discovery without a reference hearing, Ms. Kim is without access to her own records and is unable to present a complete evidentiary record to this Court. This alone necessitates a reference hearing if the Court believes there are material issues of disputed fact, particularly when DOC relies on claims that Ms. Kim did not report instances of harassment and violence to impeach her claims here.

Second, at the Court of Appeals, DOC misrepresented Ms. Kim’s infraction history, falsely suggesting that Ms. Kim has a pattern of sexual infractions and that she targets vulnerable inmates. *See e.g.* Brief of Respondent, No. 40881-7-III, Ex. 1,

Rule Decl. DOC based its argument on unfounded allegations against Ms. Kim and ignored the extremely low evidentiary standard applied in disciplinary proceedings.⁷ *See, e.g., id.* at 26 (2022 infraction for alleged threat, later dismissed—meaning that there was not even “some evidence” that the incident occurred); *see also id.* at 26-27 (2022 PREA investigation alleging that Ms. Kim engaged in a coercive sexual relationship, determined to be “unfounded”—meaning “the allegation was determined not to have occurred”); *see also id.* at 26 (allegation that Ms. Kim was having sexual contact with another inmate, infraction dismissed).

Finally, DOC’s original pleadings relied heavily on the non-expert declarations to provide opinion testimony. For

⁷ To find an incarcerated person guilty of an infraction, DOC must only offer “some evidence” to support its allegation. *See* Washington State DOC Statewide Orientation Handbook, <https://www.doc.wa.gov/docs/publications/400-HA002.pdf>. This standard permits “a fact finder to find an individual guilty with any amount of evidence, even when overwhelming evidence indicates [the person is] innocent.” Emily Parker, *Due Process in Prison Disciplinary Hearings: How the “Some Evidence” Standard of Proof Violates the Constitution*, 96 Wash. L. Rev. 1613 (2021).

example, DOC relied on a declaration of Deborah Wofford, Deputy Assistant Secretary with DOC, to support its claim that Ms. Kim's 504 infraction was more serious than the exact same infraction issued to her roommate because Ms. Kim's roommate "had significant mental health needs," "a history of being exploited," and "had been [Ms.] Kim's cellmate for less than a day." Brief of Respondent, No. 40881-7-III, at 28. But, Ms. Wofford is not an expert in mental health—her declaration is devoid of any education credentials, background knowledge, or relevant work experience concerning mental health or sexual exploitation. As a result, her declaration lacks foundation sufficient to establish her expertise or the factual basis for her opinion. *See* ER 702.

For these reasons, if the Court determines that Ms. Kim has not met her burden of demonstrating her restraint is unlawful by a preponderance of the evidence, the Court should remand for a reference hearing to resolve material issues of disputed fact.

V. CONCLUSION

For the foregoing reasons, Ms. Kim respectfully requests that the Court grant her PRP and order her returned to WCCW. Alternatively, if there are material issues of disputed fact, Ms. Kim requests this Court to remand for a reference hearing.

RAP 18.17 Certification

Undersigned counsel certifies that, pursuant to RAP 18.17, this brief contains 4,996 words, including footnotes, but not including those portions exempted from the word count by RAP 18.17(c), as counted by word processing software in compliance with RAP 18.17(c)(12).

DATED this 13th day of April, 2026.

Respectfully submitted,

/s/ Adrien Leavitt

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CERTIFICATE OF SERVICE

I certify that on the 13th day of April, 2026, I caused a true and correct copy of this document to be served on all parties by e-filing this document through the Washington State Appellate Courts Secure Portal.

Signed this 13th day of April, 2026 at Seattle, WA.

/s/ Tracie Wells _____
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Supreme Court No. 104436-4
COA Div III No. 40881-7

THE SUPREME COURT OF THE STATE OF
WASHINGTON

Amber Kim,

Petitioner,

v.

State of Washington,

Respondent.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION III

ATTACHMENTS TO
SUPPLEMENTAL BRIEF OF PETITIONER –
AMBER KIM

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ATTACHMENT A

No. _____

**COURT OF APPEALS FOR THE STATE OF
WASHINGTON DIVISION I**

IN RE THE PERSONAL RESTRAINT OF

Amber F. Kim,

Petitioner.

DECLARATION OF AMBER F. KIM

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I, Amber Fayefox Kim, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct to the best of my knowledge and belief.

1. I am 36 years old and competent to testify to the contents of this declaration.

2. I have been incarcerated since I was 18 years old. I am serving a life without the possibility of parole sentence at the Washington State Department of Corrections (“DOC”).

3. I am a transgender woman.

4. I am currently incarcerated at the Monroe Correctional Complex (“Monroe”), a men’s prison facility.

5. At Monroe, I am housed in solitary confinement in the Intensive Management Unit (“IMU”).

A. Gender Identity

6. As a child, I understood myself to be different from the other kids around me. However, I grew up in a household and community that would not have been supportive of a child

questioning their gender identity or otherwise expressing difference.

7. I was a very nerdy child—I still am. I loved reading. Even though most of the books that I had access to were curated by the white Christian conservative church my family was involved with, reading still helped me understand the world beyond my small community.

8. Around second grade, I started to read the encyclopedia—to my surprise, none of the pages were removed by the church.

9. I read the encyclopedia off and on for years. When I reached the letter “T,” I found a word for the secret of me, “transsexual.” I was in middle school.

10. From then on, I understood myself to be something like the concept of “transsexual” that I read about in the encyclopedia. However, I still harbored a lot of confusion, in large part because the only transgender people I knew about were on daytime television shows like Jerry Springer and I did not feel

like they represented how I felt. In hindsight, I see how problematic the mainstream representation of transgender people was then and how much it negatively impacted my sense of self.

11. Throughout middle and high school, I went by the name “Kim.” Although my friends and peers thought they were just calling me “Kim” because it was my last name, I loved being called a female name and it helped me emotionally as I struggled with gender dysphoria.

B. Early Years of Incarceration

12. I was arrested when I was 18 years old and senior in high school.

13. After my initial detainment at the Spokane County Jail, I was transferred to the Washington Corrections Center in Shelton (“Shelton”). At the time, I was 19 years old.

14. Although at that time I was not “out” as a transgender woman, others perceived me as very effeminate. I was also small in stature—I am 5 foot 9 inches tall, and, at the time, weighed approximately 100 pounds. Being young, small,

effeminate, and nerdy made me an easy target of bullying both before and during my incarceration.

15. Once I arrived in prison, I immediately faced verbal harassment from other inmates and corrections officers. I was routinely called anti-gay slurs, most often “fag” and “faggot,” but also “bitch” and “punk.” I was called these slurs so regularly that I cannot estimate the total number of times I was subjected to such abuse. In addition to verbal abuse, I was regularly subjected to physical violence.

16. I stayed at Shelton for one week.

17. At Shelton, the showers are setup for two people using a single shower bay at the same time while a corrections officer watched. I desperately did not want to shower in this environment. During this week, I only showered one time because I was deeply embarrassed to shower in front of others and fearful of what could happen to me in a group shower.

18. From Shelton, I was transferred to the Washington State Reformatory Unit (“WSR”) at Monroe. Then, WSR was

designated for vulnerable inmates. I was assigned to WSR because DOC determined that I was at risk of victimization.

19. I stayed at WSR in close custody for ten months.

20. At WSR, I worked in the kitchen. There, another incarcerated person working in the kitchen propositioned me for sex. I said no, but he continued to pressure me while we worked together, causing me stress and anxiety. This was my first experience of the constant sexual harassment that would become my everyday life in men's prison.

21. After ten months, I was transferred from WSR to the Washington State Penitentiary in Walla Walla ("Walla Walla"). I was transferred to Walla Walla after DOC changed WSR from a close custody facility to a medium custody facility. At the time I was still serving my mandatory four years in close custody following my conviction. I remained at Walla Walla in close custody for eight years.

22. The first time I was physically attacked by another inmate was on the chain bus from WSR to Walla Walla. On the

bus, every incarcerated person is shackled via waist and ankle restraints. We sit on bus benches in these restrains as we are taken between the prison facilities. On the bus, I was talking to a friend from WSR—he was also a nerd, and we enjoyed hanging out together and discussing common interests. Out of nowhere, another inmate attacked me. He punched me over and over again, twisted my neck, and grabbed my hair. Although he was restrained via waist restrains, he could still hit me. My restraints prevented me from fully blocking his attack. After about a minute, his friends pulled him off of me and I moved to a different seat for the rest of the ride. I was bruised from the attack. This attack occurred while the bus was stopped because officers were changing drivers. Throughout the attack, the corrections officers did not notice what was going on around them because they were focused on changing bus drivers. No corrections officers intervened in the attack.

23. At Walla Walla, I was assigned to a shared cell. My first roommate wanted to fight me—he told me that he fights all

of his new cellmates. Eventually, he forced me to fight him. I did not leave my cell for two days after because I did not want the corrections officers or other inmates to see my bruised face. Thankfully, I changed cells shortly thereafter.

24. At Walla Walla, I was the target of constant bullying due to being effeminate and people perceiving me as gay. I would be called slurs and names. I was threatened with and subjected to violence.

25. I survived two attempted sexual assaults at Walla Walla. Each time, I was able to physically defend myself and ward off the attacks. I know that, had I not fought back, I would have been raped. I feel that I was targeted for these attempted sexual assaults because of my effeminate appearance.

C. Disclosure—“Coming Out” as a Transgender Woman to DOC

26. Despite my internal knowledge of my gender identity, I presented as male for the first ten years of my incarceration because of the level of danger I faced daily.

27. I knew it would not be safe for me to present as a woman at Walla Walla. I was a quiet nerd who struggled to hide my fear when I left my cell. Presenting as a woman, or even just as more feminine, would have placed me in even greater danger.

28. During my time at Walla Walla, there were no out transgender women incarcerated there.

29. For the last four years of my placement at Walla Walla, I petitioned DOC annually for a transfer to a medium custody facility. After DOC rejected my request for a transfer for the fourth year in a row, I wrote a letter to DOC begging to be let out of close custody. This letter contained my first disclosure to DOC that I am a transgender woman.

30. I was terrified that DOC would again reject my request to transfer to medium custody and, at the same time, it would become public that I am a transgender woman.

31. While I waited for DOC's decision, a corrections officer leaked my status as a transgender woman to other inmates. Immediately, other inmates began to threaten me even

more than before. At the time, I worked in the library. The lieutenant overseeing inmate library workers learned that others knew about my disclosure to DOC and I was unassigned from my job at the library for my own safety. At one point, another inmate approached as we walked on the breezeway and asked me if I was transgender. I denied it out of fear for my safety.

32. DOC eventually approved my transfer back to WSR before the leak of my status as a transgender woman reached a crisis level or any threats were carried out.

33. I knew that there would be other transgender women at WSR. During my first placement at WSR, I met a transgender woman for the first time in my life—in hindsight, I must have met other transgender women throughout my life, but this was the first time that I knowingly interacted with a transgender woman. This connection was always important to me and knowing that there were other transgender women at WSR brought me much relief.

34. On my way from Walla Walla to WSR, DOC sent

me to Shelton for a one-week layover. At Shelton, I was supposed to be housed in a medical unit for my own safety because DOC now categorized me as a transgender woman. However, instead of being placed in medical housing, I was placed in general population with communal showers. Out of fear for my safety, I did not shower for five days.

35. Finally, the bus arrived for my transfer from Shelton to WSR.

36. I got on the bus at Shelton as “Twig,” the nickname given to me at Walla Walla because I was so skinny. I got off the bus at WSR as “Amber,” the female name that I chose for myself.

37. I chose the name Amber because it is one of few precious stones that was once part of a living being; it preserves the past within it and yet is electrically alive. I was also drawn to the name Amber because, in Greek mythology, the name Amber is equivalent to the name of the Greek goddess Electra, for which the electron is named. The name Amber reflects my true identity.

D. Return to WSR

38. I was relieved to return to WSR. I felt that at WSR I could more fully be myself as a transgender woman, despite the fact that WSR is still a men's prison.

39. Shortly after arriving at WSR, I started hormone replacement therapy (HRT). Starting HRT was a monumental moment in my life, where I started the physical process of living in a body more aligned with my internal knowledge of myself. About six months after starting HRT, I started the process to request transfer to Washington Corrections Center for Women ("WCCW"), the only women's prison in Washington State.

40. Around this same time, I legally changed my name to Amber Fayefox Kim.

41. I also became involved in a coalition supporting transgender prisoners—the coalition included incarcerated transgender women and advocates on the outside. My name change was used as a template for other incarcerated transgender people who wanted to change their names. This work also helped

push forward legislation to aid incarcerated people obtain legal name changes.

42. The other important result of my transfer to WSR is that I was able to engage in University Behind Bars, a college program that allows incarcerated people to get a college degree. This program was not available at Walla Walla or any other prison. University Behind Bars was also one of the few education programs that allowed lifers to participate—at Walla Walla, I could not participate in higher education programs, or other self-improvement programs, because of my status as a lifer. I relished the opportunity to engage in higher education and work towards my college diploma.

43. However, life as a transgender woman at WSR was still difficult. I was heckled, cat-called, hit-on, objectified, sexualized, and stalked by men there. The barrage was daily and felt endless.

44. I received a nearly constant stream of notes from other inmates propositioning me for anonymous sex in the

showers. The notes would often end with the author stating that he would be waiting for me in the showers at a specified time. I did not want to engage in this sexual contact. I feared that if I went to the showers, I would be sexually assaulted by an inmate who was there “waiting for me.” I became hyper-vigilant about showering—I would be sure to only shower when no one was else was in the shower area because I was so fearful. I kept track of the times stated in the letters to be sure to avoid the showers at those times. I also became hypervigilant about who I was around. If someone showed any interest in me, I took that to be a threat and avoided them.

45. I tried to tell the corrections staff about the constant onslaught of proposition notes and the distress it was causing me, but DOC did not take any action. At one point, I collected the notes I had received and put them in a brown lunch bag. The notes filled up the entire bag. I took the bag to the Custody Unit Supervisor (“CUS”) to show him the barrage of harassment I experienced. The CUS took no action to help me and the

harassment continued.

46. At WSR, I was assigned a job in the kitchen. I worked in an area with no cameras and no corrections officers. The only other person in the area was an inmate convicted of a sex offense. He kept pressuring me to engage in sexual acts with him. I always said no. He became increasingly insistent, and at times I felt like he was stalking me. Eventually, I went to our supervisor, explained the problem, and asked to be moved to a job in a more visible area of the kitchen. I was ultimately fired from the kitchen for demanding safety.

E. Transfer to TRU

47. After about three and a half years at WSR, I was transferred to Monroe's Twin Rivers Unit ("TRU") after receiving an infraction. I believe that was my first major infraction at WSR. I received the infraction after being caught "out of bounds" in the shower area.

48. When I arrived at TRU, I was placed in a cell with a man who made me feel unsafe. He would stare at me whenever

I used the bathroom or changed my clothes. I complained to the unit staff and shift lieutenant, explaining that his behavior made me feel unsafe and uncomfortable. I was told that they would not do anything to help me. I was falling apart over this situation, afraid of what he might do to me. Desperate, I went to mental health for help. I explained that I was scared—instead of being helped, I received an infraction for “threatening” my roommate. In reality, I simply explained to mental health that I was terrified he was going to sexually assault me.

E. Transfer to Washington Corrections Center for Women

49. In 2021, after approximately one year at TRU and three years after initiating the transfer request, DOC approved my move to the women’s prison.

50. Moving to WCCW was a massive improvement in all aspects of my life. At WCCW, I could truly live and be seen as a woman. When I arrived, there were approximately ten other transgender women there. The overwhelming majority of women

at WCCW were accepting of the transgender women there and simply treated me like any other woman.

51. During my time at WCCW, I was not harassed, threatened, assaulted, or propositioned for sex.

52. Without the emotional burden of facing constant harassment and spending my time avoiding physical violence, I was able to focus on my mental health, plan for the future, and engage with positive programming.

53. Through Freedom Education Project Puget Sound (“FEPPS”)—a higher education program available to incarcerated people at WCCW—I took college-level classes. I am 10 credits away from obtaining my Associate’s degree and hold a 3.98 GPA. I was provisionally accepted into the Bachelor’s degree program, pending my completion of my Associate’s degree. In October, I was scheduled to start classes to obtain my Bachelor’s degree—but this was interrupted by my forced transfer back to the men’s prison.

54. When I first arrived at WCCW, I got a job in the

kitchen. I was the main cook for a year and a half. I cooked two meals a day for over 500 people.

55. After completing two years in the kitchen, I got a job as a tutor and a classroom assistant for computer programming classes. I worked four days a week, assisting students learning computer programming.

56. I volunteered with the Women's Village, a program at WCCW focused on creating supportive community for incarcerated people. I was part of the education subcommittee, which focused on helping incarcerated women obtain their GED.

57. I also volunteered as a tutor—this work included helping other inmates working to obtain their GED and those taking college-level classes. I specialized in helping with math, while also tutoring many other subjects.

58. At WCCW, I became eligible for gender affirming medical care beyond HRT. I started receiving electrolysis to remove my facial hair. I also received electrolysis treatment in preparation for bottom surgery—electrolysis is a prerequisite for

undergoing certain types of bottom surgery. After approximately one year of this treatment, DOC generally suspended electrolysis treatment. At WCCW, I was also on the waitlist for a facial feminization surgery. That surgery was completed shortly after my transfer back to the men's prison.

59. Before March of 2024, I had no major infractions during the three years I was incarcerated at WCCW.

F. 504 Infraction & Transfer out of WCCW

60. In March of 2024, I received a "504" infraction after being caught having consensual sexual contact with my cisgender roommate. This was my first "major" infraction while at WCCW and first 504 infraction since my incarceration.

61. As a result of the infraction, I was immediately moved from medium custody to close custody. I remained in close custody for three months. As punishment, I also received five days cell confinement and approximately ten days loss of yard.

62. My then-roommate received the same 504

infraction as same cell confinement and loss of yard as the result of the infraction. However, she remained in close custody for only two months and then returned to medium custody—her same security status as prior to the 504 infractions. This was her complete sanction for the infraction.

63. For the months I was in close custody after the infraction, I was kept in the dark about what would happen to me next.

64. My counselor eventually told me that DOC's recommendation was to transfer me from WCCW to a men's prison. Friends and allies—inside and outside of the prison—rallied around me. I wrote letters to DOC clearly stating my fears of being sent back to a men's prison.

65. On June 21, 2024, officers came to my cell and told me that they needed to take me to segregation. I didn't think much of this, so I grabbed my glasses and agreed to be handcuffed—standard protocol—to leave my cell. After being walked to another building, I asked to review the paperwork

placing me in segregation. I was told that they did not have any paperwork. They started putting me in waist restraints. At this point, I started to become alarmed—being placed in waist restraints was not typical for transfers within WCCW. They took me to the intake hallway at WCCW, which I suddenly realized was the outtake hallway for me. I stopped walking and demanded to see the paperwork. I was again told that they did not have any paperwork. I asked to speak to my lawyer. I was told no. I became completely panicked. I begged them not to transfer me outside of WCCW. I stopped walking, but I did not physically resist. The officers slammed me onto the ground. I screamed for help. Multiple officers piled on top of me. I felt like my body was being crushed into the floor. I was placed in some kind of strange restraint device, kind of like a seatbelt, which prevented me from moving at all. I was forced into the backseat of an SUV still wearing this device. I wondered if I was being kidnapped.

66. After a long ride, we arrived at Monroe.

67. When I arrived, I was extremely hot and fatigued.

The restraint device was very warm. My body hurt from being beaten and then forced into one position for the entire ride. At first, I couldn't even stand.

68. I learned that DOC originally planned to place me back at TRU, a unit where DOC primarily holds sex offenders, former gang members, and a small group of transgender women. But, because I "refused" transfer, DOC decided to first house me at the Intensive Management Unit ("IMU").

69. Although IMU is solitary confinement, I was relieved to be placed there instead of at TRU. I knew I would not be safe at TRU.

70. I immediately went on a hunger strike. I was terrified of being placed in men's general population. No matter what I said, DOC would not listen to me. I felt like I had no other option.

71. I did not eat for 17 days. On July 8, 2024, I was informed that if I did not end my hunger strike, I would be denied access to my upcoming gender affirming surgery. I had been

fighting for this surgery for years. So, I suspended my hunger strike. I felt that DOC was trying to force me to choose between safe housing or a gender affirming surgery that would allow me to live my life more fully.

72. A few weeks later, I was taken on the chain bus to Airway Heights for the surgery. During the bus ride, I was placed in an isolation cage in the front section of the bus while incarcerated men were seated on benches behind me. I was heckled by the men on the bus the entire ride. For 10 hours, I heard them yelling sexually suggestive comments and anti-gay slurs at me, and even debating the very existence of transgender people. I felt emotionally exhausted and traumatized. It reinforced my fear of what would happen if I was in prison with men. I was relieved that I received direct medical transport back to Monroe after my surgery, rather than suffering through the chain bus ride back.

73. Once back at Monroe, I repeatedly told staff that I did not feel safe going to men's general population. I was placed

back at IMU. However, DOC added a stipulation that I would only be permitted to be at “level one” status at IMU. This means that I cannot gain any privileges for good behavior while I’m at IMU, such as access to television and radio, as well as the ability to purchase snacks from the commissary. At IMU, no matter my “level,” I do not have access to any of my personal items, including religious items that I use to practice my Pagan and Buddhist religions and the many books I have collected over the years of my incarceration.


74. If I am eventually placed in men’s general population, I will live in constant fear. I am afraid of physical assault, sexual assault, and the constant harassment. I will face the ultimate paradox: my continued physical transition helps address my debilitating gender dysphoria, but the more female-presenting I become in appearance, the more unwanted, nonconsensual attention I will receive from the men in prison. If I do not continue my transition, my gender dysphoria will rear its ugly head, fueling my depression and making my life miserable.

But, being victimized by incarcerated men—or spending all of my time hiding from them in IMU—also makes my life as miserable.

75. If I am sent back to WCCW, I will continue my trajectory toward rehabilitation. I will be able to continue to encourage the people around me to be their best possible selves and be encouraged in turn. I will stay in school, get my Bachelor's degree, continue to tutor people in math, computer programming, English, and history. I will live a life true to myself and congruent with who I know myself to be.

76. As a lifer, I know I will spend multiple decades in prison and die here. If I am forced to spend the rest of my life at the men's prison, my life will be devoid of hope. At the women's prison, I will have hope for myself, my future, and those around me. Prison is supposed to be limited to a loss of liberty. But, prison is not supposed to include the loss of the pursuit of happiness.

DATED this 16th day of December, 2024.

By: 
Amber F. Kim

AMERICAN CIVIL LIBERTIES UNION OF WASHIN

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SEATTLE, WA, 98111-2728

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ATTACHMENT B

No. _____

**COURT OF APPEALS FOR THE STATE OF
WASHINGTON DIVISION I**

IN RE THE PERSONAL RESTRAINT OF

Amber F. Kim,

Petitioner.

DECLARATION OF ADRIEN G. LEAVITT

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Attorneys for Petitioner

I, Adrien G. Leavitt, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct to the best of my knowledge and belief.

1. I am over 18 years of age. I am one of the attorneys of record for Amber Kim in this case. I have personal knowledge of the facts contained in this Declaration, and I am competent to testify regarding its contents, unless stated otherwise

A. DOC Policies & PREA Standards

2. I have reviewed a subset of the Washington State Department of Corrections' ("DOC") policies related to incarcerated transgender people. I have also reviewed the relevant Prison Rape Elimination Act ("PREA") Standards that apply to incarcerated transgender people.

3. DOC Policy 490.700, titled "Transgender, Intersex, And/Or Non-Binary Individuals," broadly outlines DOC's policies related to incarcerated transgender people. DOC's policy requires it to convene a Facility Multidisciplinary Team

(“MDT”) within 15 days of an incarcerated person disclosing their transgender identity. Among the MDT’s duties is conducting a housing review. The MDT is required to reassess housing assignments at least every six months. A MDT is assigned to each transgender person at the prison where they reside. DOC headquarters has another MDT that reviews all prison-based MDT recommendations and issues a final decision. The DOC headquarters’ MDT team is often referred to as “HQ MDT” throughout Ms. Kim’s documentation.

A true and accurate copy of DOC Policy 490.700 is attached as **Exhibit A**.

4. Related to DOC’s “Transgender, Intersex, And/Or Non-Binary Individuals,” is PREA Standard 115.42, which dictates the use of screening information to “inform housing, bed, work, education, and program assignments” for incarcerated people at high risk of being sexually victimized. 28 C.F.R. § 115.42. PREA Standard 115.42(e) requires that “[a] transgender or intersex inmate's own views with respect to his or her own

safety shall be given serious consideration” when prison officials determine, among other things, housing placement. A true and accurate copy of PREA Standard 115.42 is attached as **Exhibit B.**

5. The Department of Justice (“DOJ”) issued a memo, dated March 24, 2016, to provide guidance on the following question: “Does a policy that houses transgender or intersex inmates based exclusively on external genital anatomy violate Standard 115.42(c) & (e)?” DOJ answered the question: “Yes.” DOJ explained that, “[b]eing transgender is a known risk factor for being sexually victimized in confinement settings.” DOJ further states that “[a] PREA-compliant policy must require an individualized assessment. A policy must give ‘serious consideration’ to transgender or intersex inmates’ own views with respect to safety.”

A true and accurate copy of this DOJ memo is attached as **Exhibit C.**

B. Ms. Kim's DOC Records

6. I have received and reviewed a subset of Ms. Kim's DOC records.

7. I have reviewed several of Ms. Kim's MDT housing review forms that are produced according to DOC Policy 490.700. These forms are titled "Housing Review for Transgender, Intersex, and Gender Non-Conforming Individuals." It appears that, prior to April of 2022, the form was titled "Protocol for Housing Review for Transgender and Intersex Offenders." Regarding Ms. Kim, these forms were completed approximately every six months since the policy was adopted.

8. In the MDT housing review form dated April 16, 2020, which was completed while Ms. Kim was housed at the Monroe Correctional Facility's ("Monroe") Twin Rivers Unit ("TRU"), included the following notes:

- a. Regarding Ms. Kim's mental health needs, the MDT wrote: "Kim reported starting hormone

replacement therapy (HRT) on 06/14/2017. Kim states that needs some support from mental health due to stress of being a transwoman incarcerated in men's facility.” [sic]

b. Regarding Ms. Kim's history of victimization, the MDT wrote: “Kim states that they have experienced inappropriate sexual comments from both incarcerated people and staff. Kim states having male C/O's touch the breast area during pat searches and reported some of those incidents to PREA.” [sic]

A true and accurate copy of the April 16, 2020, MDT housing review form is attached as **Exhibit D**.

9. In the MDT housing review form dated January 19, 2021, a mental health provider working with Ms. Kim wrote, “Ms. Kim's mental health needs have not changed and can be addressed in any facility. She has shared that she would feel much safer in a women's facility and this writer believes that being in a women's facility would be a better fit for Ms. Kim, as

this would be a gender-affirming housing assignment.” The DOC headquarters MDT recommended Ms. Kim’s “transfer to WCCW GP [general population] based on the MH [mental health] recommendation, Kim’s request, and suitable/favorable adjustment while housed in GP at MCC TRU.”

A true and accurate copy of the July 12, 2021, MDT housing review form is attached as **Exhibit E**.

10. Ms. Kim was transferred to WCCW on February 3, 2021.

11. In the MDT housing review form dated July 12, 2021, completed after Ms. Kim was transferred from the men’s prison to Washington Corrections Center for Women (“WCCW”), the MDT made the following notes:

a. Regarding Ms. Kim’s work assignments, the MDT wrote: “Ms. Kim works in Food Service. Per Ms. Kim she is not having any issues or concerns and is being treated like one of the other girls which is all she has been asking for. AC Cook Dale stated Ms. Kim is reliable and

dependable. Works well in any area she is assigned in the kitchen.” [sic]

b. Regarding Ms. Kim’s adjustment to her current housing, the MDT wrote: “Ms. Kim stated she was getting use to the idea of never getting out of prison and just giving up on life. But she no longer feels that way since she has been at WCCW. Ms. Kim stated she now look forward to the future and working on AA Degree as well as being a tutor for General Equivalence Diploma (GED) in the future.” [sic]

c. Regarding Ms. Kim’s “own view with respect to their safety”, the MDT wrote: “Ms. Kim stated she is good. Ms. Kim stated she became use to the men saying unwanted/negative comments but since she has been here at WCCW it has only happen once. Ms. Kim stated she feel much safer at WCCW.” [sic]

d. Also regarding safety, the MDT wrote: “Ms. Kim stated this is the safest she has felt in a long time.

Recommend maintaining in MSU [Medium Security Unit].”

A true and accurate copy of the July 12, 2021, MDT housing review form is attached as **Exhibit F**.

12. In the MDT housing review form dated March 28, 2023, completed while Ms. Kim was still placed at WCCW in the MSU, the MDT made the following notes:

a. Regarding Ms. Kim’s adjustment to her current housing, the MDT wrote: “Kim stated feel like things is finally happening for me now. I have no concerns at this time. As the assigned Counselor Kim has been working very well with me and keeps me informed when there is something Kim would like to discuss.” [sic]

A true and accurate copy of the March 28, 2023, MDT housing review form is attached as **Exhibit G**.

13. On March 13, 2024, Ms. Kim was caught having consensual sexual contact with her cisgender roommate in their cell. Ms. Kim was issued a 504 infraction.

14. On April 2, 2024, MDT conducted another review housing. This MDT review form notes that Ms. Kim was transferred from MSU to close custody (“CCU”) after the infraction. In this review, the MDT recommendation is as follows: “WCCW MDT recommends retaining at WCCW.” WCCW’s Superintendent, Charlotte Headly, signed this MDT review on April 2, 2024. Two days later, DOC’s Deputy Assistant Security, Deborah Wofford, signed this review form approving Ms. Kim’s continued placement at WCCW.

A true and accurate copy of the April 2, 2024, MDT housing review form is attached as **Exhibit H**.

15. On May 10, 2024, Ms. Kim was interviewed by Medical and Mental Health as a part of an updated MDT review. She was not re-interviewed by her case manager, but rather this review relied on the March 28, 2024, case manage interview. It is unclear what triggered this additional review only about six weeks after the March 28, 2024, MDT review. The pagination noted on the bottom of each page of this review form is incorrect.

The form is a total eight pages.

This MDT review form details Ms. Kim's 504 infraction, including a detailed description of the incident as well as statements made by Ms. Kim during the infraction hearing. In this review, WCCW MDT recommends transfer to a men's prison, either Coyote Ridge Correctional Facility ("CRCF") or Stafford Creek Correctional Facility ("SCCF"). Superintendent Headly signed this review on May 14, 2024. On June 12, 2024, DOC headquarters' MDT approved Ms. Kim's transfer out of WCCW. On June 21, 2024, DOC Deputy Secretary Sean Murphy approved Ms. Kim's transfer to MCC.

A true and accurate copy of the June 21, 2024, MDT housing review form is attached as **Exhibit I**.

C. DOC's Use of Force Report

16. I have received and reviewed the Use of Force report regarding Ms. Kim's forceable transfer from WCCW to the Monroe Correctional Facility ("Monroe"), as well as related communications and an updated report.

17. On June 21, 2024, DOC completed a Use of Force report regarding an incident that occurred that same day. During the incident, DOC staff used force to physically immobilize Ms. Kim in a restraint device and transport her to Monroe. In the original June 21, 2024, report, DOC included the following statement: “I/I Kim attempted to bite staff during the placement of the WRAP system.”

A true and accurate copy of the June 21, 2024, Use of Force report is attached as **Exhibit J**.

18. On July 8, 2024, The Stranger published a news article regarding Ms. Kim’s transfer from WCCW to Monroe. Regarding Ms. Kim’s transport to Monroe, DOC Communications Director Chris Wright is quoted as stating that “as in the case of Kim, they attempt to assault staff.” *Trans Woman Launches Hunger Strike After State Moved Her to a Men’s Prison*, THE STRANGER, Jul. 8, 2024, <https://www.thestranger.com/news/2024/07/08/79594138/trans-woman-launches-hunger-strike-after-state-moved-her-to-mens->

prison.

19. On July 25, 2024, Rachael Seevers, AVID Program Attorney with Disability Rights Washington (“DRW”), emailed DOC regarding the assault allegations made against Ms. Kim. In the email, Ms. Seevers explained that she reviewed video footage—including surveillance video and handheld video—of the incident. She wrote, “[c]ontrary to DOC’s statement to the press, DRW found no reliable evidence that Ms. Kim attempted to assault staff during her transfer[.]” Ms. Seevers also wrote:

Based on our review of records produced by DOC, it appears that on June 21, 2024 six WCCW staff members were involved in a use of force incident in which Ms. Kim was placed in a WRAP restraint prior to her transfer to MCC. Each of those six officers completed written statements for their Use of Force Reports; none alleged any attempt by Ms. Kim to assault staff. DOC staff also participated in a video recorded debrief immediately after the use of force; again, no staff alleged any attempted assault by Ms. Kim.

Ms. Seevers requested that DOC “[r]efrain from providing any further comments to media that allege Ms. Kim assaulted staff” and remove all statements that Ms. Kim

attempted to bite or assault staff from the Use of Force report and any other DOC documentation.

A true and accurate copy of Ms. Seevers July 25, 2024, email to DOC is attached as **Exhibit K**.

20. On August 14, 2024, Assistant Attorney General Candie Dibble replied to Ms. Seevers' email. Ms. Dibble's email acknowledged the error: "The IMRS and Use of Force report were based on the Lieutenant's mistaken observation of the video." DOC updated the Use of Force Report, which was attached to the email. Ms. Dibble stated that, "DOC also agrees that any further comments will be reflective of the corrected report information."

A true and accurate copy of Ms. Dibble's August 14, 2024, email is attached as **Exhibit K**. A true and correct copy of DOC's Use of Force Report regarding the June 21, 2024 incident is attached as **Exhibit L**.

DATED this 17th day of December, 2024.

By: /s/ Adrien Leavitt
Adrien Leavitt, WSBA #44451

EXHIBIT A



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DOC 490.700

POLICY

TITLE
**TRANSGENDER, INTERSEX, AND/OR NON-BINARY
INDIVIDUALS**

REVIEW/REVISION HISTORY:

Effective: 2/13/20
Revised: 3/9/22
Revised: 7/17/23
Revised: 8/17/23

SUMMARY OF REVISION/REVIEW:

Policy statement IV., Directive I.C., and I.D. - Adjusted language for clarification
II.A. - Added clarifying language

APPROVED:

Signature on file

CHERYL STRANGE, Secretary
Department of Corrections

8/16/23

Date Signed



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REFERENCES:

DOC 100.100 is hereby incorporated into this policy; [RCW 9A.44.160-170](#); [RCW 42.56](#); [RCW 72.09.225](#); DOC 100.500 Non-Discrimination for Individuals; DOC 320.255 Restrictive Housing; DOC 420.140 Housing and Cell/Room Assignment; DOC 420.310 Searches of Incarcerated Individuals; DOC 420.380 Drug/Alcohol Testing; DOC 420.390 Arrest and Search; DOC 440.050 State-Issued Items; DOC 880.100 Corrections Training and Development; [42 U.S.C. 1997](#); [Guidelines for Healthcare of Transgender Individuals](#); [Employee Manual for the Identification, Treatment, and Correctional Management of Transgender, Intersex, and Non-binary Individuals](#); [Washington DOC Health Plan](#)

POLICY:

- I. The Department has established procedures to ensure equitable treatment of transgender, intersex, and/or non-binary individuals when determining housing, classification, programming, and supervision.
- II. Drug testing will be completed per DOC 420.380 Drug/Alcohol Testing.
- III. Searches will be conducted per DOC 420.310 Searches of Incarcerated Individuals. Individuals under community supervision will be searched per DOC 420.390 Arrest and Search.
- IV. Gender-affirming basic state-issued items will be issued per DOC 440.050 State-Issued Items.

DIRECTIVE:

- I. Responsibilities
 - A. Appointing Authorities will ensure processes are in place for the management of transgender, intersex, and/or non-binary individuals.
 - B. All employees/contract staff/volunteers will address individuals by their preferred pronoun or their last name per DOC 100.500 Non-Discrimination for Individuals.
 - C. Incarcerated transgender, intersex, and/or non-binary individuals will receive medical/mental health care per the Washington DOC Health Plan and Guidelines for Healthcare of Transgender Individuals.
 - D. The Director of Prison Rape Elimination Act (PREA) Services will maintain a record in a secure imaging system of incarcerated individuals under the



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Department's jurisdiction who identify as transgender and/or non-binary or are intersex.

- E. Employees/contract staff will refer to the Employee Manual for the Identification, Treatment, and Correctional Management of Transgender, Intersex, and Non-binary Individuals for detailed guidance for transgender, intersex, and/or non-binary individuals.

II. Disclosure of Information

- A. An individual's sexual orientation, gender expression/transition status, intersex status, or gender identity will be maintained as confidential and will only be disclosed within the Department on a need-to-know basis and/or as voluntarily requested by the individual on DOC 02-420 Preferences Request.
- B. Employees/contract staff/volunteers that become aware of a new disclosure that an individual identifies as transgender and/or non-binary or is intersex will report the information to the Superintendent/Reentry Center Manager (RCM)/designee.
 - 1. If an individual discloses to a medical, mental health, and/or substance use disorder practitioner, consent will be obtained on DOC 14-172 Substance Abuse Recovery Unit Compound Release of Confidential Information before disclosure.
 - 2. The PREA Specialist will be notified of any new disclosures and will ensure DOC 02-420 Preferences Request is completed by the individual within 72 hours.
 - 3. Individuals will not be searched or physically examined for the sole purpose of determining the individual's genital status.
 - a. If the individual's genital status is unknown, it will be determined by health care providers during conversations with the individual and by reviewing medical records.
 - 1) If necessary, a health care provider will conduct a broader medical examination in private with the individual's consent.
 - 4. The Superintendent/RCM may submit a gender-affirming housing request if there are any documented safety or security concerns with an individual's current housing.



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- C. A confidential PREA hold will be entered in the individual's electronic file as soon as an individual identifies as transgender, intersex, or non-binary. This hold will remain in effect until the individual's release or their status as transgender, intersex, or non-binary has been revised.

III. Facility Multidisciplinary Team (MDT)

- A. Each Prison and Reentry Center will establish and maintain an MDT Review Committee. The committee will:

1. Ensure all individuals under Department jurisdiction have equal access to programs and services.
2. Convene within 15 days if an individual discloses transgender, intersex, and/or non-binary identity at any time during incarceration and it has not been previously documented.
3. Gather all associated documentation and review housing and programming assignments to make recommendations based on objective safety protocols and consideration of the individual's desired housing assignment.
4. Ensure local management recommendations are submitted to Headquarters MDT within 15 business days.

- B. In Prisons:

1. The MDT will be chaired by the Associate Superintendent of Programs in a Level 3 or higher facility or the Correctional Program Manager in a Level 2 facility. The MDT will include, but not be limited to:
 - a. The Correctional Program Manager
 - b. The Captain
 - c. A medical practitioner/provider
 - d. A mental health practitioner/provider
 - e. PREA Specialist
 - f. The assigned case manager or, if unavailable, the applicable Correctional Unit Supervisor (CUS)
2. Before the MDT meets, the following will meet with the individual in a location where confidentiality can be maintained to discuss the housing review and protocols and determine a recommendation based on the individual's needs (e.g., medical and mental health, programming):



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- a. The assigned case manager
- b. A medical provider
- c. A mental health provider

C. In Reentry Centers, the MDT will consist of the:

- 1. Assigned case manager
- 2. RCM
- 3. Reentry Center Administrator

D. The MDT will meet in person or virtually to discuss the case and determine its recommendation. The MDT's notes and decision will be documented on DOC 02-422 Transgender, Intersex, and Non-binary Housing Multi-Disciplinary Team.

E. The individual's own views about personal safety will be considered when making recommendations.

IV. Headquarters MDT

A. The Headquarters MDT will be chaired by a designated Deputy Assistant Secretary for Prisons and consist of the:

- 1. Appointing Authority/designee from the proposed receiving facility
- 2. Chief Medical Officer/designee
- 3. Director of Mental Health
- 4. Chief of Psychiatry
- 5. Senior Director of Comprehensive Case Management/designee
- 6. Director of Security and Emergency Management
- 7. Director of PREA Services
- 8. Others as identified on a case-by-case basis

B. The Headquarters MDT will:

- 1. Review and develop best practices for the care, custody, programing needs, and supervision of transgender, intersex, and non-binary individuals.
- 2. Meet as scheduled and deemed necessary by the MDT chair to review, determine, and approve housing placement, community supervision, and programming assignment recommendations. Prior to the meeting:
 - a. Each member will be prepared to discuss the best housing for the individual according to each member's findings.



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- b. The Transgender Settlement Administrator will gather all relevant information (e.g., forms, individual’s and/or third-party written statements) from the facility MDT for the Headquarters MDT to review and consider during the meeting.
- 3. Document decisions on DOC 02-422 Transgender, Intersex, and Non-binary Housing Multi-Disciplinary Team.
- C. The designated Deputy Assistant Secretary for Prisons will forward all related documentation to the Deputy Secretary/designee for final decision within 15 business days, unless additional information is necessary.
 - 1. Employees will attempt to arrange an out-of-state placement at a female facility when the determining reason for the denial of a gender-affirming housing request is due to a keep separate at the female facility.

V. Housing and Programming Reviews

- A. Initial housing reviews will be completed, approved, and submitted within 15 business days of disclosure of the individual as transgender, intersex, or non-binary.
 - 1. The facility MDT will document housing reviews and make a recommendation on DOC 02-384 Housing Protocol for Transgender, Intersex, and Non-binary Individuals, which will be forwarded with the signed DOC 02-420 Preferences Request and all related documentation to the Director of PREA Services and designated Deputy Assistant Secretary for Prisons.
 - a. For community violators who disclose, the receiving facility will conduct the review.
 - 2. Local Facility Risk Management Team (FRMT) processes will be suspended until the housing review has been approved.
- B. The designated Deputy Assistant Secretary for Prisons will review housing protocol recommendations with the Headquarters MDT to determine final recommendations and forward all related documentation to the Deputy Secretary/designee for review and approval.
 - 1. If DOC 02-384 Housing Protocol for Transgender, Intersex, and Non-binary Individuals is approved by the Deputy Secretary/designee



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indicating transfer to another Prison/Reentry Center, the receiving facility will complete Part II of the form.

2. If placement within the facility has not been approved by the Deputy Secretary/designee before the individual arrives at the facility, the individual will be placed in optional housing (e.g., restrictive housing, inpatient unit) until the Deputy Secretary/designee makes a final housing decision.

- a. Placement in restrictive housing will be used as care and separation and not as a punitive measure. Placement will adhere to expectations in DOC 320.255 Restrictive Housing and be reviewed every 30 days by the PREA Compliance Manager.

- 1) Any exceptions will be evaluated on a case-by-case basis by the Mission Housing Administrator and the Gender Affirming Program Administrator, Gender Affirming Medical Specialist, and mental health team.

- C. The facility MDT will reassess housing and programming assignments at least every 6 months or as needed using DOC 02-385 Housing Review for Transgender, Intersex, and Non-binary Individuals for each individual who identifies as transgender and/or non-binary or is intersex.

1. Community Corrections employees will provide input regarding this information for community supervision violators.
2. Classification recommendations will be updated during the review.

3. Reviews will include an assessment to ensure there are no threats to the individual's safety.

VI. Preferences and Housing Placement Requests

- A. At any time, an individual may voluntarily submit DOC 02-420 Preferences Request to their case manager designating their preferred name, pronoun(s), gender to conduct searches/urinalysis, and gender identity, and to request gender-affirming state-issued garments and/or placement in gender-affirming housing.
- B. If an individual requests to be transferred to a gender-affirming facility, the case manager will make a referral for the facility cultural awareness course facilitated by a Gender Affirming Mental Health Specialist (GAMHS) and/or Gender



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Affirming Program Administrator (GAPA) and will include meetings with a mental health employee and an employee from the gender-affirming facility.

1. An employee will meet with the individual within 5 business days to review their request and enroll the individual in the next available course.
 2. The individual may directly kite the GAPA to request placement in the course.
- C. After successful completion of the course, the individual will complete the Gender-Affirming Housing Request section on DOC 02-420 Preferences Request.
- D. The Associate Superintendent/Correctional Program Manager will complete a review of risk factors on DOC 02-423 Gender-Affirming Housing Review and email to the Psychologist 4 or Psychology Associate in stand-alone Level 2 facility to initiate the Health Services review.
1. The completed form will be returned to the case manager within 14 days unless additional time is needed to complete necessary assessments (i.e., Static 99, PCL-R, HCR-20, or forensic assessment).
 2. The case manager will forward the form to the facility MDT within 5 days of receipt.
- E. The facility MDT will make a recommendation on DOC 02-384 Housing Protocol for Transgender, Intersex, and Non-binary Individuals, which will be forwarded with the completed DOC 02-420 Preferences Request and DOC 02-423 Gender-Affirming Housing Review to the designated Deputy Assistant Secretary for Prisons within 5 business days.
1. The Headquarters MDT will review all documentation and make a recommendation within 15 days to the Deputy Secretary who will make the final determination.
- F. If an individual's request for gender-affirming housing is denied, the individual may submit a subsequent request at the next classification review.
- G. Individuals placed in a gender-affirming facility may be transferred to another facility or returned to the originally assigned facility due to documented, objective safety and security concerns.

VII. Housing Appeals



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- A. Individuals may appeal housing decisions in writing to the following.
 - 1. Appropriate Deputy Assistant Secretary/designee for decisions made based on facility recommendations, or
 - 2. Secretary/designee for decisions made by the Headquarters MDT.
- B. Responses to appeals will be made within 15 business days.

VIII. Training

- A. Appointing Authorities or their designees will manage resources to ensure employees, contract staff, and volunteers receive all required training per DOC 880.100 Corrections Training and Development.
- B. The Training and Development Unit will consult with the Deputy Assistant Secretary for Women’s Prisons to develop or update annual training material regarding transgender, intersex, and/or non-binary individuals for all employees, contract staff, and volunteers. Additional training will be provided as appropriate.

DEFINITIONS:

The following words/terms are important to this policy and are defined in the glossary section of the Policy Manual: Gender, Gender Expression, Gender Identity, Gender-Affirming, Intersex, Non-binary, Transgender. Other words/terms appearing in this policy may also be defined in the glossary.

ATTACHMENTS:

None

DOC FORMS:

- DOC 02-384 Housing Protocol for Transgender, Intersex, and Non-binary Individuals
- DOC 02-385 Housing Review for Transgender, Intersex, and Non-binary Individuals
- DOC 02-420 Preferences Request
- DOC 02-422 Transgender, Intersex, and Non-binary Housing Multi-Disciplinary Team
- DOC 02-423 Gender-Affirming Housing Review
- DOC 14-172 Substance Abuse Recovery Unit Compound Release of Confidential Information

EXHIBIT B

Code of Federal Regulations
Title 28. Judicial Administration
Chapter I. Department of Justice
Part 115. Prison Rape Elimination Act National Standards (Refs & Annos)
Subpart A. Standards for Adult Prisons and Jails
Screening for Risk of Sexual Victimization and Abusiveness

28 C.F.R. § 115.42

§ 115.42 Use of screening information.

Effective: August 20, 2012

Currentness

- (a) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.
- (b) The agency shall make individualized determinations about how to ensure the safety of each inmate.
- (c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.
- (d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.
- (e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.
- (f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
- (g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

SOURCE: 77 FR 37197, June 20, 2012, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 15601–15609.

Current through November 27, 2024, 89 FR 94594. Some sections may be more current. See credits for details.

End of Document

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EXHIBIT C

Frequently asked questions

FAQ | Does a policy that houses transgender or intersex inmates based exclusively on...

March 24, 2016

Q.

Does a policy that houses transgender or intersex inmates based exclusively on external genital anatomy violate Standard 115.42(c) & (e)?

A.

Yes. Standard 115.42(c) states:

In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

In addition, Standard 115.42(e) states:

A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.

Being transgender is a known risk factor for being sexually victimized in confinement settings. The standard, therefore, requires that facility, housing, and programming assignments be made “on a case-by-case basis.” Any written policy or actual practice that assigns transgender or intersex inmates to gender-specific facilities, housing units, or programs based solely on their external genital anatomy violates the standard. A PREA-compliant policy must require an individualized assessment. A policy must give “serious consideration” to transgender or intersex inmates’ own views with respect to safety. The assessment, therefore, must consider the transgender or intersex inmate’s gender identity – that is, if the inmate self-identifies as either male or female. A policy may also consider an inmate’s security threat level, criminal and disciplinary history, current gender expression, medical and mental health information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. The policy will likely consider facility-specific factors as well, including inmate populations, staffing patterns, and physical layouts. The policy must allow for housing by gender identity when appropriate.

A PREA auditor must examine a facility or agency’s actual practices in addition to reviewing official policy. A PREA audit that reveals that all transgender or intersex inmates in a facility are, in practice, housed according to their external genital status raises the possibility of non-compliance. The auditor should then closely examine the facility’s actual assessments to determine whether the facility is conducting truly individualized, case-by-case assessments for each transgender or intersex inmate. The auditor will likely need to conduct a comprehensive review of the facility’s risk screening and classification processes, specific inmate records, and documentation regarding placement decisions.

The Department recognizes that the decision as to the most appropriate housing determination for a transgender or intersex inmate is complicated. Facilities may consider several methods to make these assessments. Best practices include informing decisions on appropriate

housing through consultation by facility administration, classification and security staff, and medical and mental health professionals. However, a facility should not make a determination about housing for a transgender or intersex inmate based primarily on the complaints of other inmates or staff when those complaints are based on gender identity.

Importantly, the facility shall not place transgender inmates in involuntary segregated housing without adhering to the safeguards in Standard 115.43.

STANDARD: [115.42](#)
[115.43](#)

CATEGORIES: Compliance, LGBTI Inmates/Residents/Detainees/Staff, Screening

[DOJ FAQ](#)

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EXHIBIT D



**PROTOCOL FOR THE HOUSING OF
TRANSGENDER AND INTERSEX OFFENDERS**

Offender Name: KIM, Bryan P

DOC Number: 315649

Sending Facility / Date: MCC - Twin Rivers Unit
 Is offender currently housed in Infirmery or Extended Observation Area? Yes No

If no, why? Approved for MCC/TRU General Population

Verified that current PREA Risk Assessment accurately reflects LGBTI status? Yes No

**This form is subject to public disclosure per RCW 42.56.
Do not include confidential information regarding
medical or mental health treatment.**

Review Team Members (name and title):	
Classification Counselor Cardenas	Captain Frantz
Correctional Unit Supervisor Burns	PREA Compliance Specialist Henderling
Registered Nurse 3 Gingeresky	TRU Superintendent Eric Jackson
Correctional Program Manager Hathaway	

Housing Assignment Review Factors	Comments		
Are there any medical or mental health issues to consider in making the best housing assignment? (Note that an official diagnosis of Gender Dysphoria (GD)/Gender Identify Disorder is required for consideration of opposite gender housing options) <input type="checkbox"/> Yes <input type="checkbox"/> No			
How do identified medical and mental health needs affect housing assignment considerations? Include in considerations the ability of health services to deliver any needed medication as well as provide identified mental health support services.	<table border="0"> <tr> <td style="vertical-align: top;"> Men's Facility Kim is on 4 KOP medications, to include hormone therapy. Has HSR for Ensure/Boost daily at breakfast. Medical needs can be met at current TRU facility. DGingeresky RN3 Kim reported starting hormone replacement therapy (HRT) on 06/14/17. Kim states that needs some support from mental health due to stress of being a transwoman incarcerated in men's facility. Kim was reminded of the process to been seen by a mental health provider. CC2 Cardenas Kim is being seen by mental health for outpatient services and will need be at a location that has </td> <td style="vertical-align: top;"> Women's Facility Kim is on 4 KOP medications, to include hormone therapy. Has HSR for Ensure/Boost daily at breakfast. Needs housed at a facility where medication management is available. DGingeresky RN3 Kim is being seen by mental health for outpatient services and will need be at a location that has mental health available. -J. Watanabe, Psychology Associate </td> </tr> </table>	Men's Facility Kim is on 4 KOP medications, to include hormone therapy. Has HSR for Ensure/Boost daily at breakfast. Medical needs can be met at current TRU facility. DGingeresky RN3 Kim reported starting hormone replacement therapy (HRT) on 06/14/17. Kim states that needs some support from mental health due to stress of being a transwoman incarcerated in men's facility. Kim was reminded of the process to been seen by a mental health provider. CC2 Cardenas Kim is being seen by mental health for outpatient services and will need be at a location that has	Women's Facility Kim is on 4 KOP medications, to include hormone therapy. Has HSR for Ensure/Boost daily at breakfast. Needs housed at a facility where medication management is available. DGingeresky RN3 Kim is being seen by mental health for outpatient services and will need be at a location that has mental health available. -J. Watanabe, Psychology Associate
Men's Facility Kim is on 4 KOP medications, to include hormone therapy. Has HSR for Ensure/Boost daily at breakfast. Medical needs can be met at current TRU facility. DGingeresky RN3 Kim reported starting hormone replacement therapy (HRT) on 06/14/17. Kim states that needs some support from mental health due to stress of being a transwoman incarcerated in men's facility. Kim was reminded of the process to been seen by a mental health provider. CC2 Cardenas Kim is being seen by mental health for outpatient services and will need be at a location that has	Women's Facility Kim is on 4 KOP medications, to include hormone therapy. Has HSR for Ensure/Boost daily at breakfast. Needs housed at a facility where medication management is available. DGingeresky RN3 Kim is being seen by mental health for outpatient services and will need be at a location that has mental health available. -J. Watanabe, Psychology Associate		

Housing Assignment Review Factors	Comments	
	mental health available. -J. Watanabe, Psychology Associate	
What is the length of the offender's incarceration?	ERD: Life W/O Release/Parole for Aggravated Murder 1 (2 Counts)	
Does the offender have a history of victimization and/or predation?	Kim currently scores PV for PREA. [REDACTED] Kim states that they have experienced inappropriate sexual comments from both incarcerated people and staff. Kim states having male C/O's touch the breast area during pat searches and reported some of those incidents to PREA. CC2 Cardenas	
What is the likelihood of the offender being taken advantage of in each housing option?	Men's Facility Kim states that her small stature and feminine gender expression increases the likelihood of being taken advantage of in a male facility. I was unable to find documentation showing that Kim has been taken advantage of in a male facility. Kim stated that they have to be vigilant in men's facilities to keep from being victimized by men. Kim stated that they are not interested in being sexually active in prison. CC2 Cardenas	Women's Facility Kim does not believe that safety would be jeopardy, regardless of the custody level. CC2 Cardenas
Does the offender demonstrate the ability to stand up for him/herself without resorting to violence or aggression?	Kim stated "Yes" they are able to stand up for self. Kim further stated that they are committed to non-violent restorative practices for solving conflict and has shown a commitment to these values over time. Kim has two WAC 505 fighting in 2009 and 2014. CC2 Cardenas Kim stated the following, "Yes. I have actually been doing restorative justice work and anti-violence work for the past three years." -J. Watanabe, Psychology Associate	
To what extent does the offender physically resemble offenders of the opposite gender?	Kim is 5'7 120 lbs. with some features and mannerisms that could be socially associated as being female. Kim is thin and has longer hair that is sometimes put up in a low ponytail or greased back. Kim states wearing size 8 men's shoes and size 10 woman's which is small for a man and large for a woman. Kim states their feminine features are long hair, breast and very slender. Kim states that height and weight are well within the normal female range. Kim masculine features are a visible Adams apple and facial hair. CC2 Cardenas Kim has some feminine physical characteristics to include long hair, a rounded face, and no observable facial/body hair. -J. Watanabe, Psychology Associate	
Has the offender been issued any required / requested undergarments?	Men's Facility Kim has been approved and issued alternative clothing. CC2 Cardenas	Women's Facility Kim is currently housed in a male facility. CC2 Cardenas

Housing Assignment Review Factors	Comments	
	Kim reported having been issued alternate clothing. -J. Watanabe, Psychology Associate	
As applicable based on offense history, is there appropriate sex offender treatment programming available?	Men's Facility Kim has no convictions for sex offenses. CC2 Cardenas SOTAP is available at TRU and AHCC.	Women's Facility Kim has no convictions for sex offenses. SOTAP is available at WCCW. CC2 Cardenas
Detail the management and/or security concerns for each housing option:	Men's Facility Kim states that they have specific fears of being house at WSP, CBCC and CRCC because of a belief that they will be assaulted by the White Supremacist. Kim states that Kim deals with constant transphobia and sexism in men's facilities and has generalized concerns for safety in any men's facility. Kim has received eight serious infractions during 13 years of incarceration. Kim states that they do not pose a management or security. CC2 Cardenas	Women's Facility Unknown at this time, Kim has never been housed in a female facility.
How has the offender been housed during prior incarcerations, including jails?	Men's Facility Kim has only been housed in male facilities. CC2 Cardenas	Women's Facility Kim has only been housed in male facilities. CC2 Cardenas
Is there a history of security or management issues regarding this offender in prior incarcerations, including jails?	Men's Facility This is Kim's first prison incarceration. During this incarceration Kim has been found guilty of WAC's 600 (505(2)) 658, 555,556,709 and 725. CC2 Cardenas	Women's Facility NA
What are potential concerns/identified risks with regard to cellmates of the offender for each housing option (e.g., housing a female offender that strongly physically resembles a male with a female cellmate who has prior domestic violence issues; housing a male offender with very effeminate features or mannerisms with a male cellmate with a history of sexual predation, etc.)?	Men's Facility Kim should only be housed in a single cell or with others scoring No Risk on their PREA Assessment. Kim states that their mental health suffers when housed with a male cellmate. According to Kim, this increases the potential for being victimized or causing problems. CC2 Cardenas Kim's primary complaints have been in regards to having a cellmate. Kim reported "I am not comfortable living with a cis male, socialized cis	Women's Facility Kim should only be housed in a single cell or with others scoring No Risk on their PREA Assessment.

Housing Assignment Review Factors	Comments	
	<p>male [sic] because of their toxic masculinity. I want to live with someone who is gender queer or trans." –J. Watanabe, Psychology Associate</p> <p>Cis means any male who is not transgendered, but most often times it means straight males</p>	
<p>What shower arrangements are in place for the offender in the housing area recommended?</p>	<p>Men's Facility No special arrangements are needed and/or have been made at TRU. All showers are single occupancy, have a door and are separated by a partition. In addition, showering on the upper tiers add to privacy.</p>	<p>Women's Facility Unknown at this time, but if housed in a female facility special arrangements would likely be required due to the unique needs of people in transition.</p>
<p>What is the offender's own view with respect to showering arrangements? Detail any issues expressed by the offender.</p>	<p>Kim stated that they are worried about being victimized in the showers in all men's facilities. Kim states that at TRU Kim could be subject to other men peering over the shower divider from the adjacent shower stalls. Kim states that they often do not shower for multiple days, due to Kim's fear of being ogled in the shower. Kim states that has requested to move to A-Unit where there are shower arrangements in place already for other transwomen. CC2 Cardenas</p> <p>Kim reported being uncomfortable with the current showering arrangements and believes other offenders try to catch glimpses of her while showering although she acknowledged showering on the upper tier. Kim stated "I am trying to go to A-Unit because they have showering accommodations already established over there." –J. Watanabe, Psychology Associate</p>	
<p>What is the offender's own view with respect to his/her own safety for each housing option?</p>	<p>Men's Facility Kim states that they do not feel safe in a male facility. Kim states that WSP, CBCC and CRCC all come with a virtual guarantee of Kim being physically assaulted. Kim states that all men's facilities come with the distinct and real risk of sexual victimization. Kim states that all men's facilities have staff and inmates who are extremely transphobic. Kim states that they do everything that they can do to create safety for self, but staff often sabotage the efforts by forcing Kim into no win scenarios and refusing to approve in housing or employment which would help keep Kim's safe. Kim states that they would be safer in female</p>	<p>Women's Facility Unknown for sure, but Kim stated that they would feel safer at female facility regardless of the custody level. CC2 Cardenas</p>

Housing Assignment Review Factors	Comments	
	<p>facility like WCCW at any custody level. CC2 Cardenas</p> <p>Kim stated "I have not felt safe since I was six years old." She cited a history of abuse and perceives prison to be an unsafe environment for her. After some questioning, there were no reports of imminent safety concern or risk but more of an acknowledgement that prison can be unpredictable. -J. Watanabe, Psychology Associate</p>	
<p>Is a mental health/custody override appropriate to maintain the offender in a facility of the same gender but with a lower custody level (e.g., AHCC vs. WSP; MCCCW vs. WCCW, etc.)?</p>	<p>Men's Facility No. Kim is currently housed at TRU and is in an Medium unit. -J. Watanabe, Psychology Associate</p>	<p>Women's Facility Based on Kim's current needs there would be no reason for a custody override.</p>
<p>What housing options have been considered (e.g., men's facility, women's facility, special needs unit, mental health unit, single cell, etc.)?</p>	<p>All custody appropriate male and female facilities have been considered, with special consideration for Kim's needs described above, to include single and multiple person cells.</p> <p>Kim has expressed a strong desire to be transferred to a women's prison. She reported "I have been fighting for that. They tell me no and I want to know the reason. I have asked every six months for three years." -J. Watanabe, Psychology Associate</p>	
<p>Sending Facility Review Team Recommendations, including specific facility placement:</p>		
<p>Kim is requesting that they be allowed to transfer to a female facility consistent with current custody level. Kim has be incarcerated with DOC since 3/27/2008 for 2 counts of Aggravated Murder 1 and was sentenced to Life without Release or Parole. To the Sending Review Committee's knowledge, Kim has not lived in the community as a female, but has made significant changes toward living as a female while incarcerated. Kim would be able to receive any necessary and required programing in both a male or female facility. Although it does not appear that there is a significant safety concern regarding Kim being housed at TRU, Kim has indicated that they would feel better being housed with other females. If approved to be housed in a female facility, the receiving facility would need a comprehensive showering plan as well as an area that Kim would be able to disrobe with a reasonable amount of privacy.</p> <p>The review team members are split on this recommendation because there is no criteria to base a decision. Part of the team recommends that Kim remain in a male facility based on Kim having an ERD of LWOP and the like hood that Kim will never be able to live in the community as a trans women. Kim was convicted of the current crime at the age of 18 and never lived in the community as a female. Because of being in prison at such an early age, Kim was socialized by adult male prisoners and may have difficulty socializing as female in a correctional facility and if ever released to the community. Kim has expressed that she has both trans women and trans male roles models in the community that she has and is learning from. The other part of the team supports Kim being transferred to a women's facility because Kim has progressed in the process of being a transwomen as far as she can go given the current rules in a male facility. Transferring would allow Kim to progress further in being socialized as female.</p>		

Offender Name: KIM, Bryan P

DOC Number: 315649

1/31/2020

CPT Michael Halthaway
Superintendent / CCS

Date

Deputy Director Prisons Command B Housing Determination:

<input type="checkbox"/> Housing review complete with local facility review committee. The following housing is approved:	OR	<input checked="" type="checkbox"/> Housing will be reviewed by the HQ Multi-Disciplinary Team. Offender to be housed as follows pending review at this level: SEE ATTACHED, FORWARDED TO WICW FOR REVIEW. Final Housing Determination Following HQ MDT Review. (Please include members of HQ MDT participating in review.) DR. RADNER, DR. LOGAN, DR. GAGE, SCOTT ROSSER
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Deputy Director Signature

3/13/20
Date

ON APPROVAL OF FACILITY PLACEMENT, THE RECEIVING FACILITY WILL BE NOTIFIED BY THE HQ PREA UNIT AND PROVIDED WITH A COPY OF THIS APPROVED FORM. A REVIEW WILL BE CONDUCTED BY THE RECEIVING FACILITY REGARDING THE HOUSING OF THIS OFFENDER WITHIN THE APPROVED FACILITY.

Receiving Facility: Washington Corrections Center for Women

Review Team Members (name and title):	
Deborah Wofford, Superintendent	Lauren Brodie, Psychologist 4
William Swain, Associate Superintendent of Programs	Paul Clark, Health Services Manager 3
Paula Chandler, Associate Superintendent of Operations	Andrea Baccetti, Correctional Unit Supervisor
Vaia Gaines, Correctional Program Manager	Gwendolyn Dyea, Classification Counselor
Rodney Nordbye Captain	Ufiufi White PREA Specialist 3

Offender Name: KIM, Bryan P

DOC Number: 315649

Housing Assignment Review Factors	Comments
What is the offender's own view with respect to his/her own safety at the receiving facility? NOTE: a telephone meeting with the offender may be arranged PRIOR to the offender's transfer. If this does not occur, the offender should be placed in temporary housing per DOC 490.820 until Housing recommendations have been approved by the Deputy Director.	Did not telephone meet with incarcerated individual Kim, Bryan DOC#315649. Washington Corrections Center for Women (WCCW) reviewed classification, custody level, behavior, medical and mental health. After reviewing classification, custody level, behavior, medical and mental health. MDT agreed that this transfer is not suitable at this time. Kim is life without parole and this would allow WCCW to revisit this transfer request at a later date.
What shower arrangements are in place for the offender in the housing area recommended?	Shower arrangements are in place for all incarcerated individuals.
What is the offender's own view with respect to showering arrangements? Detail any issues expressed by the offender.	Did not telephone met with incarcerated individual Kim, Bryan DOC#315649.

Receiving Facility Review Team Recommendations:	
<input type="checkbox"/> Offender can be housed in any general population housing unit within the facility. NOTE: Recommendations for transfer of the offender to another facility will require completion of a new DOC 02-384 Protocol for the Housing of Transgender and Intersex Offenders with Deputy Director approval PRIOR to transfer.	<input checked="" type="checkbox"/> Offender should be housed in a specified area within the facility based on the following information: Housing unit <u>Recommend to remain at Monroe Corrections Center - Twin Rivers Unit</u> Basis for recommendation Any additional housing restrictions (e.g., single cell, etc.) NOTE: any movement from this housing assignment will require completion of a DOC 02-385 Protocol for Housing Review of Transgender and Intersex Offenders with Deputy Director approval PRIOR to movement unless exigent circumstances exist. The review must then be completed and submitted as soon as possible following the movement.

Deborah Wofford, Superintendent

Superintendent / CCS

April 16, 2020

Date

Offender Name: KIM, Bryan P

DOC Number: 315649

Deputy Director Prisons Command B Housing Placement Approval:
WCAW REVIEW REQUEST ~~CONSIDERATION~~. DETERMINED NOT APPROPRIATE AT THIS TIME.
MAINTAIN CURRENT HOUSING MCC TRU

Deputy Director Signature: *Scott Russell* Date: 4/16/10

EXHIBIT E



HOUSING REVIEW FOR TRANSGENDER, INTERSEX, AND GENDER NON-CONFORMING INDIVIDUALS

This form is subject to public disclosure per RCW 42.56. **Do not include** confidential information regarding medical or mental health treatment.

Name: Kim, Amber (Brian)

DOC number: 315649

Facility: MCC-TRU

Date assigned to facility: 10/1/19 Last review date: 7/15/20 by HQ

MDT review date: 12/24/20

Gender Identity: Transgender Intersex Gender Non-Conforming

Prisons Only – Date of interview with Classification Counselor: 12/24/20

CURRENT HOUSING	
<input checked="" type="checkbox"/> Any general population housing unit within the facility.	<div style="text-align: center; font-weight: bold;">OR</div> <input type="checkbox"/> A specified area within the facility based on the following information: Housing unit: _____ Basis for recommendation: _____ Any additional housing restrictions (e.g., single cell): _____

MULTIDISCIPLINARY TEAM MEMBERS	
Name/Title	Name/Title
Adalid Cardenas, Classification Counselor 2	Terry Cohn, CPM
Christine Gomes, Psy.D., Psychologist 4	Bill Frantz, Capt.
Mark Miller, CPM	Debbie Gingeresky RN3
Michelle Henderling, PCS	

Housing Assignment Review Factors	Comments
What has the adjustment been with regard to work and programming assignments? Detail any specific issues and include input from work supervisors/program facilitators.	Kim is currently working as a Classroom Assistant in Education Building. Kim help others students to make sure they are ready to take their GED test as well as making sure students have resources to understand work assignments. Kim is also participating in Defy Ventures program, but due to COVID19 the volunteer program is currently on hold. No other issues or concerns with programing. Kim likes to stay busy. CC2 Cardenas.

Housing Assignment Review Factors	Comments
What has the adjustment been with regard to housing assignments? Detail any specific issues and include input from housing officers and Unit Sergeant.	Kim has been adjusting well on the Unit. No issues or concerns have been reported regarding housing. Kim and her cell mate have been cell mates for some time now. Kim spends the majority of time out of the Unit at work, and as a whole staff have minimum interaction with Kim. Kim stated that she would like to get a single cell in the future. Sgt. Cullum, CC2 Cardenas

<p>What has the adjustment been overall, including programming, social skills, interactions with other individuals, community support, etc.? Detail any specific issues and include input from the assigned Counselor.</p>	<p>Kim seems to be doing well on the Unit and is not considered a management problem. Kim social skills and interactions with other individuals on the Unit has been respectful with no issues or concerns. Kim stated that she has strong community support through the LGBTQ in Seattle area. CC2 Cardenas</p>
<p>Have there been any security and/or management issues since the last review?</p>	<p>Not known security concerns or management issues. CC2 Cardenas.</p>
<p>Are there any changes in medical and/or mental health needs? If yes, can they be met by the services available at the current facility?</p>	<p>Ms. Kim's mental health needs have not changed and can be addressed in any facility. She has shared that she would feel much safer in a women's facility and this writer believes that being in a women's facility would be a better fit for Ms. Kim, as this would be a gender-affirming housing assignment. – C. Gomes, Psy.D.</p> <p>Kim has 3 KOP meds; medical status is stable; needs can be met at current TRU facility. DGingeresky RN3</p> <p>Kim stated that she is taking Hormones Replacement Therapy (HRT). Kim stated that she is working with medical to get the gender reassignment surgery but has not been approved yet. I agree with MH about being in a women's facility would be a better fit for Ms. Kim. CC2 Cardenas</p>
<p>Are there any changes to the individual's physical appearance since the last review?</p>	<p>There has not been much of physical changes. Kim weighs around 125lbs, has longer hair. CC2 Cardenas</p>
<p>Have there been any reported instances of abuse in which the individual was the victim?</p>	<p>None, M. Henderling, PCS</p>
<p>Have there been any instances of abuse in which the individual was the suspect?</p>	<p>None, M. Henderling, PCS</p>
<p>What is the individual's own view with respect to their safety with the continuation of the current housing assignment?</p>	<p>Kim stated not have any issues at her current housing, but Kim would prefer living in a single house when is available. Kim stated that having someone that accept transgender and does not want have physical relationship makes her feels much safer. CC2 Cardenas</p>

What shower arrangements are currently in place?	No special arrangements have been made at TRU. All showers are single occupancy, have a door and are separated by a partition. In addition, showering on the upper tiers add to privacy. CC2 Cardenas
What is the individual's own view with respect to showering arrangements currently in place? Detail any issues expressed.	Kim stated that the showers are good and there is no issues. Kim stated that she build her own safety by making sure other individuals are not showering next to her. CC2 Cardenas
Evaluate the appropriateness of continuation of the current housing assignment.	Kim seems to be doing well on the Unit and has not reported any concerns regarding housing. Kim stated that she would like to be transfer to WCCW near future. CC2 Cardenas
Additional information/comments:	Kim reported that she previously had an issue with another individual who engaged in stalking behavior. That individual was removed from the Unit and is no longer at this facility. She has shared that she would feel much safer in a women's facility and this writer believes that being in a women's facility would be a better fit for Ms. Kim, as this would be a gender-affirming housing assignment. – C. Gomes, Psy.D. I agree with MH about being in a women's facility would be a better fit for Ms. Kim. CC2 Cardenas CPM/PCM is aware of recommendation regarding WCCW.

Name: Kim, Amber (Brian)

DOC Number: 315649

FACILITY REVIEW TEAM RECOMMENDATIONS

Housed in any general population housing unit within the facility.

NOTE: Recommendations for transfer of the individual to another facility will require completion of a new DOC 02-384 Housing Protocol for Transgender, Intersex, and Gender Non-Conforming Individuals with Deputy Director approval PRIOR to transfer.

OR

Housed in a specified area within the facility based on the following information:

Housing unit: _____
Basis for recommendation: _____
Any additional housing restrictions (e.g., single cell): _____

NOTE: Any movement from this housing assignment will require completion of a DOC 02-385 Housing Review for Transgender, Intersex, and Gender Non-Conforming individuals with Deputy Director approval PRIOR to movement unless exigent circumstances exist. The review must then be completed and submitted as soon as possible following the movement.

Comments: *Kim appears to be doing fine with current housing situation. No significant concerns noted. Recommend she remain at MCC-TRU at this time.*

Eric Jackson, Superintendent
Superintendent/CCS

Eric Jackson
Signature

1/18/21
Date

Determination:

HQ MDT recommends transfer to WCCW GP based on MH recommendation, Kim's request, and suitable/favorable adjustment while housed in GP at MCC TRU.

Jeneva Cotton, Deputy Director Command B
Deputy Director

Jeneva Cotton /for/ Jeneva Cotton
Signature

1/19/2021
Date

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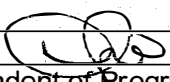
Distribution: ORIGINAL - Imaging system COPY - Classification and Case Management Administrator

Name: KIM, Bryan P (Amber)

DOC Number: 315649

Upon approval, the receiving facility will be notified by the Headquarters' PREA unit and provided a copy of this form. A review will be conducted by the receiving facility regarding the housing of the individual.

Receiving facility: Washington Corrections Center for Women (WCCW)

RECEIVING FACILITY MDT MEMBERS	
Name/Title	Name/Title
Deborah J. Wofford, Superintendent 	Paul B. Clark, Health Services Manager 3
William J. Swain, Associate Superintendent of Programs	Kate M. Morisset, Health Services Manager 1
Paula E. Chandler, Associate Superintendent of Operations	Mary L. Colter, Medical Director
Vaia S. Gaines, Correctional Program Manager	Lauren A. Brodie, Psychologist 4
Jeffery P. Rio, Captain	Andrea A. Baccetti, Correctional Unit Supervisor
	Ufiufi M. White, PREA Specialist

Housing Assignment Review Factors	Comments
What is the individual's own view with respect to their safety for each housing option? NOTE: A telephone meeting with the incarcerated individual must occur prior to the transfer. If circumstances exist and this does not occur, the individual will be temporarily assigned to the least restrictive housing pending final outcome of the MDT and a housing recommendation has been approved by the Deputy Director.	KIM, Bryan P (Amber) 315649, own view with respect to her safety for WCCW housing is no concern at this time. She feels safer at WCCW. WCCW MDT met with KIM, Bryan P (Amber) 315649 through TEAMS on January 26, 2021.
What shower arrangements are in place in the recommended housing area?	Shower arrangement are in place for all incarcerated individuals to allow privacy. WCCW only has single stall showers.
What is the individual's own view with respect to showering arrangements? Detail any issues expressed.	KIM, Bryan P (Amber) 315649 did not express any issues at this time.

Name: KIM, Bryan P (Amber)

DOC Number: 315649

RECEIVING FACILITY REVIEW TEAM RECOMMENDATIONS	
<input checked="" type="checkbox"/> May be housed in any general population housing unit within the facility. NOTE: Recommendations for transfer of the individual to another facility will require completion of a new DOC 02-384 Housing Protocol for Transgender, Intersex, and Gender Non-Conforming Individuals with Deputy Director approval PRIOR to transfer.	OR <input type="checkbox"/> House in a specified area within the facility based on the following information: Housing unit: _____ Basis for recommendation: _____ Any additional housing restrictions (e.g., single cell): _____ NOTE: Any movement from this housing assignment will require completion of a DOC 02-385 Housing Review for Transgender, Intersex, and Gender Non-Conforming Individuals with Deputy Director approval PRIOR to movement unless exigent circumstances exist. The review must then be completed and submitted as soon as possible following the movement.

Comments:
 WCCW MDT is recommending KIM, Bryan P (Amber) 315649 request for transfer from Monroe Correctional Complex-Twin River Unit to Washington Corrections Center for Women.

Deborah J. Wofford
 Superintendent/CCS


 Signature

1/26/2021
 Date

Approval: concur with Facility Review Team recommendation to transfer to WCCW GP

Daniel W. White
 Deputy Director


 Signature

01/27/2021
 Date

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 16-01, RCW 42.56, and RCW 40.14. Upon completion, the data classification category may change.

Distribution: **ORIGINAL** - Imaging system **COPY** - Classification and Case Management Administrator

EXHIBIT F



HOUSING REVIEW FOR TRANSGENDER, INTERSEX, AND GENDER NON-CONFORMING INDIVIDUALS

This form is subject to public disclosure per RCW 42.56. **Do not include** confidential information regarding medical or mental health treatment.

Name: KIM, Bryan P (Amber)

DOC number: 315649

Facility: Washington Corrections Center for Women (WCCW)/Medium Security Unit (MSU) MA207U

Date assigned to facility: 2/3/2021

Last review date: 1/27/2021

MDT review date: 07/12/21

Gender Identity: Transgender Intersex Gender Non-Conforming

Prisons Only – Date of interview with Classification Counselor: 6/30/2021

CURRENT HOUSING	
<input checked="" type="checkbox"/> Any general population housing unit within the facility.	<div style="text-align: center; font-weight: bold;">OR</div> <input type="checkbox"/> A specified area within the facility based on the following information: Housing unit: _____ Basis for recommendation: _____ Any additional housing restrictions (e.g., single cell): _____

MULTIDISCIPLINARY TEAM MEMBERS	
Name/Title	Name/Title
Deborah Wofford, Superintendent	Paul Clark, Health Service Manager/Mary Colter, Medical Director
William Swain, Associate Superintendent of Programs	Lauren Brodie, Psychologist 4
Paula Chandler, Associate Superintendent of Operations	Rodney Nordbye, Correctional Unit Supervisor
Vaaia Gaines, Correctional Program Manager	Amber Harrison, Classification Counselor
Jeffery Rio, Captain	Ufiufi White, PREA Specialist

Housing Assignment Review Factors	Comments
What has the adjustment been with regard to work and programming assignments? Detail any specific issues and include input from work supervisors/program facilitators.	Ms. Kim works in Food Service. Per Ms. Kim she is not having any issues or concerns and is being treated like one of the other girls which is all she has been asking for. AC Cook Dale stated Ms. Kim is reliable and dependable. Works well in any area she is assigned in the kitchen.

Housing Assignment Review Factors	Comments
What has the adjustment been with regard to housing assignments? Detail any specific issues and include input from housing officers and Unit Sergeant.	Ms. Kim stated she is getting along with roommate. Ms. Kim said she wish she could pick her own roommate when the current roommate moves out of the room since she is serving Life Without Parole (LWOP). Per Sergeant (Sgt.) Roberson, Correctional Officer (C/O) Begeman and C/O Moi, Ms. Kim is very respectful and follow the rules. Is not a problem in the unit at all.
What has the adjustment been overall, including programming, social skills, interactions with other individuals, community support, etc.? Detail any specific issues and include input from the assigned Counselor.	Ms. Kim stated she was getting use to the idea of never getting out of prison and just giving up on life. But she no longer feels that way since she has been at WCCW. Ms. Kim stated she now look forward to the future and working on AA Degree as well as being a tutor for General Equivalence Diploma (GED) in the future.
Have there been any security and/or management issues since the last review?	There have been no issues since the last review.
Are there any changes in medical and/or mental health needs? If yes, can they be met by the services available at the current facility?	<p>Ms. Kim shared that the pharmacy is terrible and have not been re-filling her medications (i.e., estrogen) and have denied specific medications that she has been approved for, which have caused her increased symptoms. She also shared that she has not been able to get access to the intense pulse light hair removal device, which she has kited her medical providers to access. Mental health will follow-up with this. Ms. Kim shared feelings of being upset at the services she received during her transfer and adjustment, but feels that she has successfully adjusted to being at WCCW. "I'm pretty well settled in at this point."</p> <p>Medical has placed Ms. Kim on a callout to use the hair removal tool on Tuesday, Friday or Sunday. Medical stated if patient is not getting her medication, she needs to kite her medical provider.</p>

	Ms. Kim also shared that she feels she is need of surgery (in process). She is also interested in getting access to GAFFs, which she described as a specific undergarment to help “keep things tucked in place.”
Are there any changes to the individual’s physical appearance since the last review?	Mental health note: This question has implicit binary bias. The goal is not to identify how people resemble a gender; it is to focus on safety. Ms. Kim’s physical appearance does not put her at risk. Discussed with Ms. Kim the impact of this question and agreed on above wording.
Have there been any reported instances of abuse in which the individual was the victim?	No reported instances of abuse in which KIM was the victim.
Have there been any instances of abuse in which the individual was the suspect?	No reported instance of abuse in which KIM was the suspect.
What is the individual’s own view with respect to their safety with the continuation of the current housing assignment?	Ms. Kim stated she is good. Ms. Kim stated she became use to the men saying unwanted/negative comments but since she has been here at WCCW it has only happen once. Ms. Kim stated she feel much safer at WCCW.
What shower arrangements are currently in place?	Single stall showers only.
What is the individual’s own view with respect to showering arrangements currently in place? Detail any issues expressed.	Ms. Kim stated she was impressed with how the showers are set up. Also, how the other ladies don’t bother her when she is in the shower. Ms. Kim stated she feel safe when taking a shower.
Evaluate the appropriateness of continuation of the current housing assignment.	Ms. Kim stated this is the safest she has felt in a long time. Recommend maintaining in MSU.
Additional information/comments:	Ms. Kim is to LWOP and is stating she does not want to promote to a lower level of custody. She would like to stay in MSU where she can become settle.

Name: KIM, Bryan P (Amber)

DOC Number: 315649

FACILITY REVIEW TEAM RECOMMENDATIONS

Housed in any general population housing unit within the facility.

NOTE: Recommendations for transfer of the individual to another facility will require completion of a new DOC 02-384 Housing Protocol for Transgender, Intersex, and Gender Non-Conforming Individuals with Deputy Director approval PRIOR to transfer.

OR

Housed in a specified area within the facility based on the following information:

Housing unit: _____
Basis for recommendation: _____
Any additional housing restrictions (e.g., single cell): _____

NOTE: Any movement from this housing assignment will require completion of a DOC 02-385 Housing Review for Transgender, Intersex, and Gender Non-Conforming Individuals with Deputy Director approval PRIOR to movement unless exigent circumstances exist. The review must then be completed and submitted as soon as possible following the movement.

Comments: WCCW MDT recommendation for KIM, Bryan P (Amber) 315649 is retain at WCCW and housed in any general population housing unit.

Deborah Wofford
Superintendent/CCS


Signature

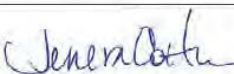
7/12/2021
Date

Determination:

Maintain current placement at WCCW

Jeneva M. Cotton

Deputy Director


Signature

07/13/2021
Date

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 16-01, RCW 42.56, and RCW 40.14. Upon completion, the data classification category may change.

Distribution: ORIGINAL - Imaging system COPY - Classification and Case Management Administrator

EXHIBIT G



HOUSING REVIEW FOR TRANSGENDER, INTERSEX, AND NON-BINARY INDIVIDUALS

This form is subject to public disclosure per RCW 42.56. **Do not include** confidential information regarding medical or mental health treatment.

Name: KIM, Amber Faye DOC number: 315649 Facility: WCCW
 Date assigned to facility: 2/3/2021 Last review date: 9/1/2022 MDT review date: 03/28/2023
 Gender identity: Transgender Intersex Non-binary
Prisons Only – Date of interview with case manager: 03/21/2023

CURRENT HOUSING	
<input checked="" type="checkbox"/> Any general population housing unit within the facility.	<input type="checkbox"/> A specified area within the facility based on the following information: Housing unit: _____ Basis for recommendation: _____ Any additional housing restrictions (e.g., single cell): _____

MULTIDISCIPLINARY TEAM MEMBERS	
Name/Title	Name/Title
Charlotte Headley, Superintendent	Julie Lee, Health Services Manager
Figueira, Kari J, Associate Superintendent of Programs	Lauren Brodie, Psychologist 4
Sonja Alley, Correctional Program Manager	Wooten, Dairyene, Classification Counselor III
Jeffery Rio, Captain	Joshua Benson, PREA Compliance Specialist

Housing Assignment Review Factors	Comments
What has the adjustment been with regard to work and programming assignments? Detail any specific issues and include input from work supervisors/program facilitators.	Kim has been at WCCW since 03/27/08. Kim works as a Laundry Worker in MSU. Per Kim supervisor Kim complete all work as require even though Kim does not want to be assigned to work in Laundry. Kim is eligible for a Job Change. Kim has submitted a request to work as a Teacher Aide. Kim will be starting Computer Programming on 04/05/2023.
What has the adjustment been with regard to housing assignments? Detail any specific issues and include input from housing officers and Unit Sergeant.	Kim is currently being housed in MSU A Pod. Kim has been approved for a courtesy room move to MSU B Pod. Per MUS staff Kim has not been a behavior problem and they have no issues or concerns currently.

Name: KIM, Amber Fayefox

DOC number: 315649

Housing Assignment Review Factors	Comments
What has the adjustment been overall, including programming, social skills, interactions with other individuals, community support, etc.? Detail any specific issues and include input from the assigned Counselor.	Kim stated feel like things is finally happening for me now. I have no concerns at this time. As the assigned Counselor Kim has been working very well with me and keeps me informed when there is something Kim would like to discuss.
Have there been any security and/or management issues since the last review?	No concerns during this review period. Last infraction dated 7/17/2020 and was a general infraction.
Are there any changes in medical and/or mental health needs? If yes, can they be met by the services available at the current facility?	No Medical or MH concerns. Kim has been doing well acclimating to WCCW.
Have there been any reported instances of abuse in which the individual was the victim?	There are no known instances of abuse in which the individual was a victim during this review.
Have there been any instances of abuse in which the individual was the suspect?	There are no known instances of abuse in which the individual was a suspect during this review.
What is the individual's own view with respect to their safety with the continuation of the current housing assignment?	Kim is housed in MSU A Pod. Kim stated feel safe in MSU but would like to move to MSU B Pod.
What shower arrangements are currently in place?	All showers in MSU are individual stalls with a door.
What is the individual's own view with respect to showering arrangements currently in place? Detail any issues expressed.	Kim stated everything has been going fine and Kim has no concerns with showering arrangements.
Evaluate the appropriateness of continuation of the current housing assignment.	Current housing assignment appears to be appropriate.
Additional information/comments:	

FACILITY REVIEW TEAM RECOMMENDATIONS

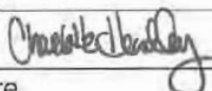
<input checked="" type="checkbox"/> Housed in any general population housing unit within the facility. NOTE: Recommendations for transfer of the individual to another facility will require completion of a new DOC 02-384 Housing Protocol for Transgender, Intersex, and Non-binary Individuals with Gender Responsive Administrator approval PRIOR to transfer.	OR	<input type="checkbox"/> Housed in a specified area within the facility based on the following information: Housing unit: _____ Basis for recommendation: _____ Any additional housing restrictions (e.g., single cell): _____ NOTE: Any movement from this housing assignment will require completion of a DOC 02-385 Housing Review for Transgender, Intersex, and Non-binary Individuals with Gender Responsive Administrator approval PRIOR to movement unless exigent circumstances exist. The review must then be completed and submitted as soon as possible following the movement.
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Comments: MDT recommendation to maintain/retain at WCCW in general population.

Name: KIM, Amber Fayefox

DOC number: 315649

Superintendent Charlotte Headley
Superintendent/CCS

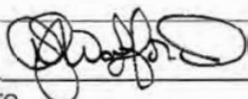

Signature

4/7/2023
Date

Determination:

Approved to remain in general population at WCCW.

Deborah J. Wofford, Deputy Asst. Sec.


Signature

4.11.2023
Date

Gender Responsive Administrator

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EXHIBIT H



HOUSING REVIEW FOR TRANSGENDER, INTERSEX, AND NON-BINARY INDIVIDUALS

This form is subject to public disclosure per RCW 42.56. **Do not include** confidential information regarding medical or mental health treatment.

Name: KIM, Amber Fayefox DOC number: 315649

Facility: WCCW Date assigned to facility: 02/03/2021

Last review date: 10/13/2023 MDT review date: 04/02/2024

Gender identity: Transgender man Transgender woman Non-binary

Sex at birth: Male Female Intersex

Requesting a gender affirming facility? Yes No

Prisons Only – Date of interview with case manager: 03/28/24

CURRENT HOUSING	
<input checked="" type="checkbox"/> Any general population housing unit within the facility.	<input type="checkbox"/> A specified area within the facility based on the following information: Housing unit: _____ Basis for recommendation: _____ Any additional housing restrictions (e.g., single cell): _____
OR	

MULTIDISCIPLINARY TEAM MEMBERS	
Name/Title	Name/Title
Charlotte Headley, Superintendent	Paul Clark, Health Services Manager 3
Kari Figuiera, Associate Superintendent of Programs	Maria Hall, Associate Superintendent of Operations
Sonja Alley, Correctional Program Manager	Jeffery Rio, Captain
Juana Randall, Patient Care Navigator	Lauren Brodie, Psychologist 4
Brittanee Haynes, Classification Counselor 2	Joshua Benson, PREA Compliance Specialist

Housing Assignment Review Factors	Comments
What has the adjustment been with regard to work and programming assignments? Detail any specific issues and include input from work supervisors/ program facilitators.	Kim arrived to WCCW on 02/03/2021, previously housed at MCC. Kim is currently not working while being housed in CCU. Was working as a Teachers Aide until moved to CCU on 03/14/24.
What has the adjustment been with regard to housing assignments? Detail any specific issues and include input from housing officers and Unit Sergeant.	Kim is currently assigned a single cell in CCU. Kim states they prefer it that way while being housed in CCU. Kim stated she doesn't think she could handle being locked in with a roommate for 21 hours a day.
What has the adjustment been overall, including programming, social skills, interactions with other individuals, community support, etc.? Detail any specific issues and include input from the assigned Counselor.	Kim stated they are frustrated with not having any information as to how long they will have to be in CCU.
Have there been any security and/or management issues since the last review?	Kim received Major infraction IGN# 30 WAC 504-Engaging in a sex act on 03/14/24. Appeal is pending. Since then has been residing in CCU.
Are there any changes in medical and/or mental health needs? If yes, can they be met by the services available at the current facility?	We can continue to meet Ms. Kim's needs at WCCW as she continues to engage in mental health services.
Have there been any reported instances of abuse in which the individual was the victim?	No known instances of abuse in which Kim was the victim
Have there been any instances of abuse in which the individual was the suspect?	No known instances of abuse in which Kim was the suspect.

Name: KIM, Amber Fayefox

DOC number: 315649

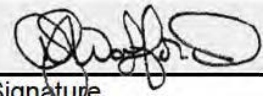
Housing Assignment Review Factors	Comments
What is the individual's own view with respect to their safety with the continuation of the current housing assignment?	Kim stated she feels safe in current housing assignment.
What shower arrangements are currently in place?	CCU has individual showers with locking doors.
What is the individual's own view with respect to showering arrangements currently in place? Detail any issues expressed.	Kim stated she is comfortable with shower arrangements in CCU.
Evaluate the appropriateness of continuation of the current housing assignment.	Continuation of housing seems appropriate
Additional information/comments:	

FACILITY REVIEW TEAM RECOMMENDATIONS	
<input checked="" type="checkbox"/> Housed in any general population housing unit within the facility. NOTE: Recommendations for transfer of the individual to another facility will require completion of a new DOC 02-384 Housing Protocol for Transgender, Intersex, and Non-binary Individuals with Deputy Assistant Secretary for Prisons approval PRIOR to transfer.	OR
	<input type="checkbox"/> Housed in a specified area within the facility based on the following information: Housing unit: _____ Basis for recommendation: _____ Any additional housing restrictions (e.g., single cell): _____ NOTE: Any movement from this housing assignment will require completion of a DOC 02-385 Housing Review for Transgender, Intersex, and Non-binary Individuals with Deputy Assistant Secretary for Prisons approval PRIOR to movement unless exigent circumstances exist. The review must then be completed and submitted as soon as possible following the movement.

Comments:
WCCW MDT recommends retaining at WCCW

Charlotte Headley  04.02.2024
 Superintendent/Reentry Center Manager Signature Date

Determination:
Approved to maintain housing at WCCW in general population

Deborah J. Wofford, WPD  4.4.2024
 Deputy Assistant Secretary Signature Date

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EXHIBIT I



HOUSING PROTOCOL FOR TRANSGENDER, INTERSEX, AND NON-BINARY INDIVIDUALS

This form is subject to public disclosure per RCW 42.56. **Do not include** confidential information regarding medical or mental health treatment.

Name: Kim, Amber Fayfox DOC number: 315649

Sending facility: WCCW Date: 02/03/2021

Currently housed in the Infirmary or Extended Observation Area? Yes No If no, why?

Kim is currently housed in the WCCW Close Custody Unit in a single cell and reports they feel safe.

Gender identity: Transgender man Transgender woman Non-binary

Sex at birth: Male Female Intersex

PREA Hold in OMNI? Yes No End date of PREA Hold: 01/01/2099

Verified current PREA Risk Assessment accurately reflects LGBTI status? Yes No

Requesting a gender affirming facility? Yes No

Prisons Only – Dates of interview with:

Case manager 03/28/2024 Medical 5/10/2024 Mental Health 05/10/2024

MULTIDISCIPLINARY TEAM (MDT) MEMBERS	
Name/Title	Name/Title
Charlotte Headley, Superintendent	Paul Clark, Health Services Manager 3
Kari Figueira, Associate Superintendent of Programs	Maria Hall, Associate Superintendent of Operations
Sonja Alley, Correctional Program Manager	Lauren Brodie, Psychologist 4
Juana Randall, Patient Care Navigator	Joshua Benson, PREA Compliance Specialist
Mary Colter, Director - Medical Facility	Brittane Haynes, Classification Counselor 2

Housing Assignment Review Factors	
<p>How do identified medical and mental health needs affect housing assignment considerations? Include in the considerations the ability of health services to deliver any needed medication and/or health care needs, as well as provide identified mental health support services. List facilities that would not be appropriate for their care due to lack of ability to provide care.</p>	<p>No changes to Kim's mental health needs. Dr. Brodie reports "we can continue to meet Ms. Kim's needs as she continues to engage in mental health services." Health Services Manager Paul Clark states "Kim's needs can be met at any facility offering gender affirming care."</p> <p>Gender affirming care can be provided an any DOC facility. All facilities coordinate with providers to provide medical care to include Hormone Replacement Therapy (HRT), Testosterone, and/or gender affirming surgeries and other procedures.</p> <p>Kim has decided against gender affirming surgery at this time with the exception of a trachea surgery. This has not yet been scheduled. Any DOC facility can facilitate transport for surgeries and other gender affirming care.</p>
<p>What is the length of incarceration?</p>	<p>Life W/O Release/Parole</p>
<p>Is there a history of victimization and/or predation?</p>	<p>1 unfounded PREA case against a staff member where Kim claimed to be the victim inappropriate pat search.</p> <p>1 unfounded case where she was the accused, and the alleged victim was reported to have been coerced into sexual activity by Kim. The case could not be proven as both incarcerates denied any coercion. The alleged victim is a mental health case with an S3 code.</p>

Does the individual demonstrate the ability to stand up for themselves without resorting to violence or aggression?	Yes
Is the individual requesting to receive or have they been issued alternative undergarments?	Yes, Kim has received all requested items.
As applicable based on offense history, is there appropriate sex offender treatment programming available at recommended facility?	This individual is in prison for the murder of both of her parents.

Detail the management and/or security concerns.

Kim has demonstrated at least one other suspected instance of inappropriate sexual relationships with another incarcerated individual as well as a disregard for the facility rules; 2022 through a PREA investigation Kim's roommate admitted to being in a romantic, intimate relationship with Kim. Bite marks on Kim's shoulder and neck area were discovered during a routine search, Kim refused to disclose how she received the marks.

Incarcerated witnesses reported the alleged victim was being pressured to have sex with Kim and was doing so under duress within the assigned cell. Through review of the investigative findings the allegations were substantiated by the Appointing Authority, the decision was overturned due to no witnesses and the alleged victim denying any coercion, at the Headquarters level and finalized as unfounded.

WAC 504 - sexual acts in 3/14/24 in which Kim was observed by a Correctional Officer engaged in openly having sexual intercourse with another individual on the cell floor.

During the infraction hearing Kim provided a statement (comments in part) "it is cruel and unusual beyond all belief to tell someone...that I am never allowed to have love. I will never be allowed to have love? The statute that the 504 infraction was based off of, consensual gay sex was repealed in 1976. It is cruel and unusual beyond all belief to tell someone like myself who has life without parole and came to prison at 18 that I am never allowed to have love and anytime someone is interested in me I have to say no every time forever."

The Correctional Officer incident narrative included the observation of " (I/I) Kim Amber (DOC)# 315649 laying on the floor completely nude from the waist down with their cellmate on top of them also nude from the waist down actively having sex. I/I Kim's hands were on cellmate's buttock in a spread open position while I/I Kim's erect penis was penetrating cellmate's Vagina." Kim and cellmate were both infraacted and moved. Kim was placed in a single cell in the Closed Custody unit to reduce risk of continued risky behavior. While this housing reduces risk it does not eliminate risk because individuals must shower in groups of shower stalls on each tier in the unit. This individual has clearly stated that she does not believe the rules are fitting or fair. The lower the custody level the higher the risk of this behavior.

	<p>Kim submitted an appeal to the 504 infraction; Associate Superintendent Maria Hall upheld the findings of the 504 infraction.</p> <p>Serious infraction IGN #31 WAC 658 4/03/24, failing to comply with cell confinement sanctions she received for engaging in sexual acts, WAC 504.</p> <p>On 4/12/2024, Kim conducted a conversation on a on a recorded phone line discussing the incident. This, and the fact that Kim and cellmate were caught in the act of intercourse on the same day the cellmate moved into the cell led to a 504, "Engaging in a sex act with another person within the facility." infraction. During the phone call Kim described the incident as consensual sex with her cell mate.</p> <p>Also, of note that Kim's cellmate is a patient diagnosed with mental health concerns who is coded S3 and has spent a lot of time in the Close Observation Area and TEC unit. She had just moved into the cell with Kim, from the cell she was living in the Medium Security Unit (MSU) A pod to MSU B pod, on the day of the incident.</p> <p>This is the 2nd known instance of involvement with someone who meets the criteria for being classified as a vulnerable adult.</p> <p>There is a risk with this individual continuing to engage in sexual activity, including sex with women and other individuals who are vulnerable.</p> <p>Based on research conducted in a prison environment, there are a number of reasons that individuals engage in sex. This includes but is not limited to, sex for pleasure, sex for trade, sex to generate department liability, sex for freedom, sex for transgression, sex for procreation, sex for safety, and sex for love. Due to the nature of the culture inside American prisons, where incarcerated individuals are not able to come forward with information that may lead to others getting into trouble without fear of reprisal, there is no sound practices for determining actual consensual sex. This creates significant safety concerns to all who are engaged or participate in sexual activity inside of prison walls and fences.</p>
--	--

Name: Kim, Amber Fayfox

DOC number: 315649

How has the individual been housed during prior incarcerations, including jails?	Kim was housed in male facilities until 2021 when Kim was moved to Washington Corrections Center for Women.
Is there a history of security or management issues regarding prior incarcerations, including jails?	No records located. Kim has been incarcerated on this conviction since 2008.
List crime history:	12/6/2006 - Theft 2, Possession of Stolen Property 2 12/5/2006- Aggravated Murder 1 (x2)
List programs completed to address history:	None while at WCCW.
What shower arrangements are in place in the recommended housing area?	Individual single stall showers in the closed custody unit. However, they are still connected to other showers. There was a previous instance where Kim was discovered in the shower stall of another individual.
What is the individual's own view with respect to showering arrangements? Detail any issues or preferences expressed.	Kim has expressed no concerns with single stall showering arrangements at male or female facilities.
What is the individual's own view with respect to their safety for each housing option?	Kim requests to stay at WCCW. There are no recent (within 6+ years of being housed in a male facility) safety concerns listed in the electronic file during the time of her incarceration within male facilities.
Is a mental health/custody override appropriate to maintain the individual in a facility of the same gender but with a lower custody level (e.g., AHCC vs. WSP; MCCCW vs. WCCW)?	N/A
What housing options have been considered? (e.g., men's facility, women's facility, special needs unit, mental health unit, single cell)	Men's facilities, Women's facilities, single cell.

MULTI-DISCIPLINARY TEAM (MDT) RECOMMENDATIONS

Keep separates: Piapot, Tiana 363937, Tier, Stranz, Joshua 818407 Facility; Hovey, John 878017 Unit; Kamara, Nichole 63330 Facility; Neri, Marissa 424991 Cell; Duval, Joshua 411868 Unit; Ellis, Jerome 128395 Unit

Prohibited placements: None

Facility placement options per HQ Classification (include staff name): CRCC or SCCC per S. Albrecht due to facility separations at MCC and AHCC.

Sending facility recommendation:

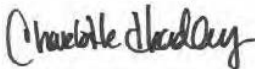
Retain at current facility Transfer to (be specific): CRCC or SCCC

Can the incarcerated individual be temporarily housed in general population at a reception center while in-transit: Yes No

(Attach current DOC 02-420 Preferences Request form)

Additional comments: WCCW MDT recommends transfer to CRCC or SCCC. Kim has documented facility separations at MCC and AHCC.

Charlotte Headley
Superintendent/designee


Signature

5.14.2024
Date

HOUSING DETERMINATION

Name: Kim, Amber Favfox

DOC number: 315649

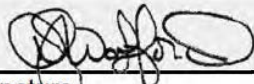
<input type="checkbox"/> Housing review was completed with local facility review committee. The following housing is approved:	OR	<input checked="" type="checkbox"/> Housing will be reviewed by the Headquarters' MDT. The individual will be housed as follows pending review: HQ MDT is scheduled for June 11
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Name: Kim, Amber Fayfox

DOC number: 315649

		Final housing determination following Headquarters' MDT review. Include members participating in review. HQ MDT recommends moving Kim from WCCW to either SCCC or CRCC.
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Deborah J. Wofford, WPD
Deputy Assistant Secretary


Signature

5.24.2024
Date

RECEIVING FACILITY MDT MEMBERS	
Name/Title	Name/Title
ASP Karin Arnold	Captain Eric Mainio
CPM Stefanie Baltzell/Robert Schreiber	Psych Assoc Christian Velez
PCN Franklin Holder	IIU Chief Michael Gleason
HSM Theresa Johnson/Blaine MacDowell	PCS Misty Michalak

Review above housing protocol for information	Comments/Answers
Ensure medical and mental health are advised of upcoming transfer. Mental health provider's name?	Psych Assoc Christian Velez
What shower arrangements are in place in the recommended housing area?	Single stalls with accommodations requested through unit staff for showering during 2nd & 3rd Shift Count.
Make notification to unit team of any accommodations before arrival.	All living units are capable and prepared to house transgender, intersex, and non-binary individuals.

RECEIVING FACILITY REVIEW TEAM RECOMMENDATIONS	
<input type="checkbox"/> May be housed in any general population housing unit within the facility. NOTE: Recommendations for transfer of the individual to another facility will require completion of a new DOC 02-384 Housing Protocol for Transgender, Intersex, and Non-binary Individuals with Deputy Assistant Secretary for Prisons approval PRIOR to transfer.	<input type="checkbox"/> Housing in a specified area within the facility based on the following information: Housing unit: _____ Basis for recommendation: _____ Any additional housing restrictions (e.g., single cell): _____ NOTE: Any movement from this housing assignment will require completion of a DOC 02-385 Housing Review for Transgender, Intersex, and Gender Non-binary Individuals with Deputy Assistant Secretary for Prisons approval PRIOR to movement unless exigent circumstances exist. The review must then be completed and submitted as soon as possible following the movement.

Comments: R.C. may be a more appropriate housing unit. There is no room or a cell available in Kim's current housing unit. Kim is currently housed in our Medium unit. Kim's current custody level is medium per HCSC 6/7/24. SCCC does not currently have an electrolysis and has patients are behind in their care. SCCC MH does not currently have a group for transgender women. MDT recommends not transferring Kim to SCCC but to consider transferring to CRCC, where a group is available and there are no current keep separates.

Superintendent Jason Bennett
Superintendent/Reentry Center Manager


Signature

06/11/2024
Date

Final approval before moving:

Recommendations for SCCC or CRCC by HQ Classification. SCCC request we consider CRCC due to keep separate in medium custody there.

Name: Kim, Amber Fayfox

DOC number: 315649


Deborah J. Wofford, WPD
Deputy Assistant Secretary


Signature

6.12.2024
Date

*** After review it was determined that due to a keep separate at SCCC, and best placement for care, she is approved to move to MCC, at the appropriate custody level. HQ Classification reviewed and approved.

Sean Murphy
Deputy Secretary


Signature

6.21.2024
Date

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EXHIBIT J



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
WASHINGTON CORRECTIONS CENTER FOR WOMEN

Use of Force

Submitted by:

W. P. Burks

- Date: 6-21-24
- IMRS #: 24120182
- Name DOC #: Kim 315649

Printed by: Phillip Burks

Incident Information

Incident Number: 24-120182
 Facility : WCCW
 Location : Prison
 Place : Prison
 Confidential ? : No
 Facility Lockdown ? : No
 Restricted Movement ? : No
 STG Incident ? : No
 Property Damage ? : No
 Date and Time of Incident : 06/21/2024 15:40
 Reporting Staff : Burks, Phillip P
 Date and Time Submitted : 06/21/2024 18:04
 Creating Staff: Burks, Phillip P

Primary Incident Type

Primary Incident Category : Offender
 Primary Incident Type : Use of Force
 Physical Yes
 OC No
 Modifiers : EID/Taser No
 Specialty Impact No
 Unholstered Firearm No
 Mandarory Confidential : N

Involved Offenders

Doc Nb : 315649 Name : KIM, Amber Fayefox Gender : Female Race : White STG Group:
 Community Concerns: No Active Warrant: No Injured ? : No Hospitalized ? : No

Involved Staff

Name : Hinz, Anthony G Sr. Position Description : Corrections/Custody Officer 3 Injured ? : No Hospitalized ? : No
 Name : Medina, Carlos R Position Description : Corrections/Custody Officer 2 Injured ? : No Hospitalized ? : No
 Name : Hultberg, Lola A Position Description : Corrections/Custody Officer 1 Injured ? : No Hospitalized ? : No
 Name : Doelman, Melanie A Position Description : Corrections/Custody Officer 2 Injured ? : No Hospitalized ? : No
 Name : Marcano-Ruiz, Christian F Position Description : Corrections/Custody Officer 2 Injured ? : No Hospitalized ? : No
 Name : Stratton, Scott J Position Description : Corrections/Custody Officer 2 Injured ? : No Hospitalized ? : No

Other Participants

Type : Gender: Last name : First name : Comment : Injured ? : No Hospitalized ? : No

Other Agencies Contacted

Agency Type	Agency Name	Date Contacted	Time Contacted	Comments
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Narrative

Date	Narrative
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06/21/2024

On 6-21-24 at approximately 1340 hours I/I Kim #315346 was being escorted down the intake hallway in preparation for transport by C/O Medina and C/O Marciano and C?. I/I Kim became active resistant by pulling away and presenting isometric muscle tension. Sgt Hinz gave the directive to place I/I Kim on the ground to be placed in the WRAP soft restraint. C/O Marciano and C/O Medina attempted to place I/I Kim on the ground. Resulting in C/O Marciano and C/O Medina picking I/I Kim up off the ground and guiding her down on the floor. C/O Marciano took control of her upper body by placing downward pressure on her shoulders and biceps. C/O Medina took control of her right arm and leg, lifting I/I Kim off the floor, with the assistance of C/O Marciano they guided I/I Kim to the floor. I/I Kim attempted to bite staff during the placement of the WRAP system. They placed her in position to have the soft restraint WRAP applied. C/O Medina put downward pressure on the lower back and legs to prevent I/I Kim from being able to resist the WRAP Placement. C/O Doelman applied pressure to the ankle area of I/I Kim for application of the lower portion of the WRAP restraint system. C/O Hultberg applied pressure to the legs and ankles for the application of the WRAP restraint system. I/I Kim was then placed in the transport vehicle and escorted to determined location. C/O Medina and C/O Hultberg Assigned as escort officers. Duty officer Notified.

06/21/2024

ADDITIONAL INFORMATION On 6-21-24 at approximately 1340 hours I/I Kim #315346 was being escorted down the intake hallway in preparation for transport by C/O Medina and C/O Marciano. I/I Kim became active resistant by pulling away and presenting isometric muscle tension. Sgt Hinz gave the directive to place I/I Kim on the ground to be placed in the WRAP soft restraint. C/O Marciano and C/O Medina attempted to place I/I Kim on the ground. Resulting in C/O Marciano and C/O Medina picking I/I Kim up off the ground and guiding her down on the floor. C/O Marciano took control of her upper body by placing downward pressure on her shoulders and biceps. C/O Medina took control of her right arm and leg, lifting I/I Kim off the floor, with the assistance of C/O Marciano they guided I/I Kim to the floor. I/I Kim attempted to bite staff during the placement of the WRAP system. They placed her in position to have the soft restraint WRAP applied. C/O Medina put downward pressure on the lower back and legs to prevent I/I Kim from being able to resist the WRAP Placement. C/O Doelman applied pressure to the ankle area of I/I Kim for application of the lower portion of the WRAP restraint system. C/O Hultberg applied pressure to the legs and ankles for the application of the WRAP restraint system. I/I Kim was then placed in the transport vehicle and escorted to determined location. C/O Medina and C/O Hultberg Assigned as escort officers. Duty officer Notified.



SHIFT COMMANDER/UNIT SUPERVISOR USE OF FORCE REPORT

Name: KIM, AMBER		DOC number: 315649	Date: 6/21/2024
Facility/location: WCCW INTAKE HALLWAY	Living unit/cell: CCU 313		Time: 1540 hours
Incident Management Reporting System (IMRS) number: 24-120182	Emergent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Oleoresin Capsicum (OC) used? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

DETAILED DESCRIPTION OF INCIDENT

(include actions occurring before, during, and after force was used)

On 6-21-24 at approximately 1340 hours I/I Kim #315346 was being escorted down the intake hallway in preparation for transport by C/O Medina and C/O Marciano. I/I Kim became active resistant by pulling away and presenting isometric muscle tension. Sgt Hinz gave the directive to place I/I Kim on the ground to be placed in the WRAP soft restraint. C/O Marciano and C/O Medina attempted to place I/I Kim on the ground. Resulting in C/O Marciano and C/O Medina picking I/I Kim up off the ground and guiding her down on the floor. C/O Marciano took control of her upper body by placing downward pressure on her shoulders and biceps. C/O Medina took control of her right arm and leg, lifting I/I Kim off the floor, with the assistance of C/O Marciano they guided I/I Kim to the floor. I/I Kim attempted to bite staff during the placement of the WRAP system. They placed her in position to have the soft restraint WRAP applied. C/O Medina put downward pressure on the lower back and legs to prevent I/I Kim from being able to resist the WRAP Placement. C/O Doelman applied pressure to the ankle area of I/I Kim for application of the lower portion of the WRAP restraint system. C/O Hultberg applied pressure to the legs and ankles for the application of the WRAP restraint system. I/I Kim was then placed in the transport vehicle and escorted to determined location. C/O Medina and C/O Hultberg Assigned as escort officers. Duty officer Notified.

DESCRIPTION OF TYPE OF FORCE USED

(include the level of resistance, exact force options used/considered)

While moving down the intake hallway towards the Z building Sallyport and waiting transport vehicle, Incarcerated Individual Kim began to physically resist the escort by refusing to walk. I/I Kim made statements that she was not going to move giving verbal indication that she did not intend to comply with the transport. Sergeant Hinz, Anthony gave multiple directives to Kim to comply with the escort to which Kim refused. Sergeant Hinz then informed Kim that her continued refusal to comply would result in the use of the WRAP restraint system in order to move her. Kim continued to verbally express her unwillingness to comply. It was at this time Sergeant Hinz gave the order to have Incarcerated Individual Kim placed in the WRAP restraint. Kim immediately began to resist physically by pulling away from the escort team and attempting to drop to her knees to resist being placed in the WRAP. At this time escort Officer Medina, Carlos, grabbed the pant leg of Kim and while maintain control of her elbow, lifted Kim off the ground and placed her on the WRAP restraint. Once on the ground Kim continued to resist by thrashing her body back and forth. Officer Marciano-Ruiz, Christian used physical force to maintain control of Kim while restraints were placed. This was in the form of downward pressure of her right shoulder and using physical force to stop the movement of her right arm. Officer Doelman, Melanie used physical force to gain and then maintain control of Kim's ankles and to keep Kim from kicking her legs back and forth while restraints were placed. Once Officer Medina had placed Kim onto the WRAP restraint he maintained control Of Kim's left upper body by using downward pressure against her left shoulder and controlling her left arm.

INJURIES

No injuries to I/I Kim were visible on camera nor were there any statements made during the incident by Kim stating she was injured,
No injuries were reported by the staff involved.

INCARCERATED INDIVIDUAL'S COMMENTS

No comments were acquired due to the immediate transport after being placed in the WRAP.

Restraints used? Yes No If yes, what type? Waist and ankle mechanical restraints along with the WRAP.
 Incarcerated individual checked by Health Services? Yes No Time: N/A
 Health Services employee/contract staff name(s): WCCW Health service staff did not check Kim before departing on the transport. It was reported that she was assessed upon arrival to MCC.

EMPLOYEES/CONTRACT STAFF DIRECTLY INVOLVED		
(use an additional sheet to report names as needed)		
Name	Title/position	Involvement
Hinz, Anthony Sr.	Sergeant	on site supervisor
Medina, Carlos	CO2	Escort Officer/used force
Marcano-Ruiz, Christian	CO2	Escort Officer/used force
Doelman, Melanie	CO2	Escort team/used force
Hultberg, Lola	CO2	Restraint Officer
Stratton, Scott	CO1	Camera Operator

MISCELLANEOUS

Approval for force option(s) obtained? Yes No N/A Date: _____ Time: _____ hours
Approval received from (name/title): N/A force was emergent

Reported to:

Superintendent/Facility Duty Officer Yes No N/A Date: 6/21/24 Time: 1400 hours
Assistant Secretary for Prisons/HQ Duty Officer Yes No N/A Date: _____ Time: _____ hours
Law Enforcement Yes No N/A Date: _____ Time: _____ hours

Photographs taken? Yes No Photographer's name: Photos not taken due to the immediate transport

Video recorded? Yes No Camera operator's name: Officer Scott Stratton

If no, reason: _____

Property damage Yes No Description: _____

PREVENTATIVE AND/OR CORRECTIVE ACTIONS SUGGESTED

SHIFT COMMANDER / UNIT SUPERVISOR

- I have reviewed the actions of the employees involved and find that they have acted in accordance with all Department policies
- I do not concur with actions of the employees involved and I recommend that an investigation of the incident be initiated

Comments: I concur that the amount of force used was reasonable and necessary to complete the transport.

Lt. Burks, Phillip
Shift Commander/CUS


Signature

6/25/24
Date

CAPTAIN

- I have reviewed the actions of the employees involved and find that they have acted in accordance with all Department policies
- I do not concur with actions of the employees involved and I recommend that an investigation of the incident be initiated

Comments: I have reviewed all available documentation of the incident involving Incarcerated Individual Kim, Amber DOC#315649. I, Captain Rio, Jeffery, believe the force that was used in response to I/I Kim's physical resistance to the escort and transport of Kim to the Monroe Correctional Facility was reasonable and within DOC policy 410.200 use of force guidelines. I/I Kim began to actively resist a restrained escort to a transport vehicle. This was obvious given her static tension in her muscles and her verbal notification of refusal to comply. During this escort Kim was given multiple opportunities to comply with directives given by Sergeant Hinz, Anthony. Sergeant informed Kim that her failure to comply would result in the use of the WRAP restraints to complete the transport. In order to facilitate the transport, the WRAP restraint system was utilized, and the minimal amount of force needed to place Kim in that restraint system was used. Force was necessary in order to facilitate the ordered transport of Kim and no other reasonable alternative besides the use of physical force to place Kim in the restraint was available for the escort team. The force used to place Kim on the ground in the restraint and the force used to control her during the application of the restraint was due to Kim's continued physical resistance. Once the restraint was applied no other force was used. I believe the Officer involved in this incident acted in good faith to complete the ordered transport of Incarcerated Individual Kim, Amber. CORRECTIVE ACTION: Although the force used was minimal and no apparent injuries occurred to Kim during the incident, Lieutenant Burk, Phillip and Sergeant Hinz, Anthony were counselled that a medical assessment should have occurred prior to placing Incarcerated Individual Kim, Amber into the transport vehicle and departing.

incident, Lieutenant Burk, Phillip and Sergeant Hinz. Anthony were counselled that a medical assessment should have occurred prior to placing Incarcerated Individual Kim, Amber into the transport vehicle and departing.



Captain Jeffery Rio
Captain

Signature

6-25-24
Date

ASSOCIATE SUPERINTENDENT

- I have reviewed the actions of the employees involved and find that they have acted in accordance with all Department policies
- I do not concur with actions of the employees involved and I recommend that an investigation of the incident be initiated

Comments: I have reviewed all documentation and video recordings and find that all involved staff used force that relates to the resistance level presented by the incarcerated individual. Incarcerated individual refused multiple directives to move during escort. Incarcerated individual was given multiple opportunities to comply but continued to verbally and physically refused directives to move therefore force used to place her in the WRAP. I believe that staff used force in good faith effort and in accordance with DOC Use of Force Policy 410.200.

Maria Hail
Associate Superintendent

Signature

6.26.24
Date

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 16-01, RCW 42.56, and RCW 40.14. Upon completion, the data classification category may change.

Distribution: **ORIGINAL** - Superintendent **COPY** - Shift Commander/Unit Supervisor



**SUPERINTENDENT
USE OF FORCE ASSESSMENT**

Offender(s) Name KIM, AMBER		DOC Number(s) 315649
Facility/Location WCCW INTAKE HALLWAY	Date of Incident 6/21/2024	Time of Incident 1540 Hours
IMRS Number 24-120182		

NAME(S) OF EMPLOYEES DIRECTLY INVOLVED		
NAME	TITLE	INVOLVEMENT
HINZ, ANTHONY Sr.	SERGANT	ON-SITE SUPERVISOR
MEDINA, CARLOS	CO2	ESCORT OFFICER/USED FORCE
MARCANO-RUIZ, CHRISTIAN	CO2	ESCORT OFFICER/USED FORCE
DOELMAN, MELANIE	CO2	ESCORT TEAM/USED FORCE
HULTBERG, LOLA	CO2	RESTRAINT OFFICER
STRATTON, SCOTT	CO1	CAMERA OPERATOR

DOCUMENTATION	
DOC 21-425 Shift Commander/Unit Supervisor Use of Force Report	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
DOC 21-424 Use of Force Report (from all employees involved)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
IMRS Incident Report	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Video and/or Pictures	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Infraction Reports	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Medical Reports	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A
Use of Force Checklist (preplanned)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A
Additional Documentation	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A
Comments: No medical assessment took place while at WCCW after the use of force therefore no medical reports included in this packet. This packet does reflect the incarcerated individual receiving medical assessment at MCC.	

USE OF FORCE REPORTS	
Complete and accurate	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Provide a description of the incident leading up to the use of force	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Provide a description of actions taken to mitigate the need to use force	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Provide a description of offender resistance and force options used	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Written individually by each involved employee	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Accurately reflect what is seen in the video	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Employee(s) trained/qualified for the force option	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Do the reports support one another	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Comments:	

NOTIFICATIONS / APPROVALS	
Emergent Situation	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Approval for force option(s) obtained	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Was Health Services consulted	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Reported to the Superintendent/Facility Duty Officer	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Reported to the Assistant Secretary for Prisons/Headquarters Duty Officer	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Law Enforcement Notified	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Comments: This incident is an emergent use of force. Notification to the Duty Officer and Acting Superintendent did took place after the use of force.	

MEDICAL REPORTS	
Report for each offender	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A
Accurately reflect what is written in the Use of Force Reports	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Accurately reflect what is seen in the video	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Were Health Services employees on scene (preplanned)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Are injuries consistent with application of force and force options	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Comments: No medical reports submitted due to no medical assessment were completed at WCCW.	

RECORDING / PHOTOGRAPHS	
Clear Introduction (who, what, where, when)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Statement on why force is necessary	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Description of events leading up to authorizing force	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Name of all employees involved	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Name of the person authorizing force option	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Statement from Health Services concerning force option	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Direct order issued to offender to comply	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Was offender provided an opportunity to comply	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Force used was necessary and reasonable	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Can each employee be clearly identified	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Was appropriate personal protective equipment used	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Was the camera focused on the offender throughout	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Record the complete incident, including: introduction, force application, medical examinations, decontamination process, final placement of the offender, and removal of restraints	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
At the conclusion of the incident, is there a clear summary, including: time/date/location, offenders involved, employees involved, description of offender resistance and force options used, all injuries noted, offenders current location and behavior	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Comments: This incident was an emergent use of force. Video recording did not reflect why the use of force was necessary during debrief but was captured in the Incident Commander Use of Force Report. No photographs were taken at WCCW.	

OFFENDER Demeanor
Comments: Incarcerated individual continued to resist verbally and physically during escort.

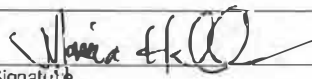
APPROPRIATENESS OF FORCE APPLIED
Comments: The force used by involved staff was reasonable and necessary and in accordance to the DOC Policy Use of Force 410.200

OVERALL IMPRESSIONS OF INCIDENT
Comments: During the escort, incarcerated individual became actively resisting. She was given multiple directives and opportunities to comply and to stop resisting from moving. Staff used force related to the resistance level presented by the incarcerated individual. No injuries to staff reported. The incarcerated individual did not get medical assessment after the use of force but it was documented that she received assessment at MCC. No further incident reported took place while out on transport.

ADDITIONAL REVIEWERS	
NAME	TITLE
Maria Hall	Associate Superintendent of Operations
Comments:	

REVIEWER RECOMMENDATION	
I concur with the actions of all employees involved.	<input checked="" type="checkbox"/>
I DO NOT concur with the actions of all employees involved.	<input type="checkbox"/>
Comments:	

Maria Hall
Reviewer Completing Assessment (Print Name / Title)


Signature

6.26.2024
Date

SUPERINTENDENT APPROVAL	
I have reviewed all the documentation provided.	<input checked="" type="checkbox"/>
I have reviewed the actions of all employees involved.	<input checked="" type="checkbox"/>
I concur with the actions of all employees involved.	<input checked="" type="checkbox"/>
I DO NOT concur with the actions of all employees involved.	<input type="checkbox"/>
I recommend the following actions:	<input type="checkbox"/>
<input type="checkbox"/> Internal Fact Finding	<input type="checkbox"/> External Critical Incident Review (CIR)
<input type="checkbox"/> Headquarters Review	<input type="checkbox"/> Just Cause Investigation
The following actions (policy, procedures, revision, modifications, etc.) shall be taken:	
Comments:	

ASPIK Figueroa, For Supt Heradley
Superintendent/designee (Print Name)


Superintendent/designee Signature

6/26/2024
Date

The contents of this document may be eligible for public disclosure. This form is governed by executive Order 0-03, RCW 42.56, and RCW 40.

Distribution: ORIGINAL - Superintendent COPY - Deputy Director



USE OF FORCE REPORT

Date/Time of incident: 6/20/2024 1540 hours

Facility/location: WCCW Living Unit/cell: N/A

Incarcerated individuals involved: Kim, Amber

DOC number(s): 315649

Employees involved: Sgt. Hinz, C/O Marcano, C/O Hultberg

Other witnesses: _____

Oleoresin Capsicum (OC) used?: Yes No Were you injured?: Yes No

DETAILED DESCRIPTION OF INCIDENT

Include a summary of the situation leading up to the Use of Force and your actions to mitigate the need to use force.

I C/O Medina was pulled from my post in TEC to assist moving Kim, Amber #315649 from CCU to Monroe Correctional Complex (IMU). While conducting a restrained escort from SEG to the transport vehicle (through Intake) with C/O Marcano, Kim stopped during escort (in the Intake hallway) and said she was not going. When the decision to place Kim in the WRAP was made, Kim began tensing her muscles, yelling and leaning away from the WRAP which had been placed on the ground. I took control of Kim's left arm and left pant leg (near the ankle) and helped lift her up so she could be placed in the correct area of the WRAP restraint (labeled "knees"). After I assisted C/O Marcano in guiding Kim face down to the correct area of the WRAP restraint, I moved to Kim's right side and put downward pressure on Kim's right calf and lower back so the rest of the WRAP restraint could be applied and secured. I helped move Kim into a sitting position so the "back" portion of the WRAP restraint could be applied correctly and tightened. I then took control of the strap of the WRAP restraint near the ankles and the left arm to assist Kim into the WRAP restraint cart. When we arrived to the transport vehicle, I took control of Kim's left arm to assist her into the vehicle.

DETAILED DESCRIPTION OF RESISTANCE AND FORCE OPTION USED

Include the level of resistance displayed by the incarcerated individual(s) and the exact force option(s) you used to overcome the resistance.

Active resistance by Kim. Lifted her to place her in the WRAP restraint.

C/O Medina
Name/Title

Signature

6/20/2024
Date



USE OF FORCE REPORT

Date/Time of incident: 06/21/2024 1540 hours

Facility/location: WCCW/Intake Hallway Living Unit/cell: CCU 313A

Incarcerated individuals involved: Kim, Amber

DOC number(s): 315649

Employees involved: C/O Hultberg, C/O Marcano and C/O Medina

Other witnesses: _____

Oleoresin Capsicum (OC) used?: Yes No Were you injured?: Yes No

DETAILED DESCRIPTION OF INCIDENT

Include a summary of the situation leading up to the Use of Force and your actions to mitigate the need to use force.

On 06/21/2024 at approximately 1540 hours I, Correctional Officer Doelman, Melanie, was in the intake hallway when incarcerated individual Kim, Amber DOC 315649 stopped walking during an escort. This individual refused to continue with the escort and voiced this over and over again saying "I'm not going on a transport" and "I'm not going anywhere. We were given the directive to place I/I Kim in the WRAP. She started yelling "No!" and screaming while resisting by tensing her body up and bringing her arms close to her chest area, turning her body from side to side and moving her legs around to avoid being placed in the proper position for the WRAP to be applied.

DETAILED DESCRIPTION OF RESISTANCE AND FORCE OPTION USED

Include the level of resistance displayed by the incarcerated individual(s) and the exact force option(s) you used to overcome the resistance.

Incarcerated individual Kim, Amber DOC 315649 became statically resistant by tensing up her body(keeping hands/arms close to and under their body) then became actively resistant by moving her body from side to side and bending and moving their legs after being placed on the floor. To assist with the placement of the WRAP I, Correctional Officer Doelman, Melanie, applied pressure the the back of I/I Kim to help keep her still. As she continued to actively resist by moving her legs and feet around I assisted C/O Hultberg with gaining control of one ankle and placing it over the other. I maintained control of her ankles and held it in place until the the ankle restraint portion of the wrap was on and secured. I then moved up to assist with placing I/I Kim into a sitting position. She starting pushing against us the try to lay down and avoid being in the sitting position. I then applied forward pressure to the upper right part of her back/shoulder area to keep her in the sitting position so the Wrap could be tightened and secured properly.

Ch Doelman, Melanie CO2
Name/Title

M. Doelman
Signature

06/21/24
Date



USE OF FORCE REPORT

Date/Time of Incident: 1540 hours

Facility/Location: WCCW Intake hallway Living Unit/Cell: _____

Incarcerated individuals involved: Kim, Amber 315649

DOC number(s): 315649

Employees involved: c/o Marcano, c/o Medina, c/o Hultberg, c/o Doelman, SGT Hinz

Other witnesses: _____

Oleoresin Capsicum (OC) used?: Yes No Were you injured?: Yes No

DETAILED DESCRIPTION OF INCIDENT

Include a summary of the situation leading up to the Use of Force and your actions to mitigate the need to use force.

On 06/21/2024 at approximately 1540 I c/o Marcano-Ruiz, Christian was directed by Sergeant Hinz to escort I/I Kim, Amber #315649 from the segregation holding cell to the intake sally port in waist and ankle restraints. During the escort I was escorting I/I Kim on the right side of her body with C/O Medina on the left. I/I Kim stopped in the Intake hallway and refused to keep walking as she was screaming at SGT Hinz that she was not going anywhere. After various attempts from SGT Hinz to talk to I/I Kim he directed us to put her in the WRAP Restraint Device to which I/I Kim showed active egressive resistance to which C/O Medina and I responded by picking her off the ground and placing her on her stomach on top off the WRAP that C/O Hultberg had placed behind us. I/I Kim started showing static resistance by tensing up her muscles, so I gave her multiple directives to stop resisting and placed my knee on her rear right shoulder while I held her biceps down impeding her from swinging and turning on her side. Once the WRAP was placed on her I told I/I Kim that I was going to sit her up to buckle the upper part of the wrap. Once I assisted her to sit up I maintained control of her head in the sitting position to allow other officers to help buckle and tighten the straps. I kept giving I/I Kim directives to stop resisting as she continue to scream while trying to defeat the wrap placement. Once I/I Kim was on the WRAP, I helped C/O Medina pick her up by the WRAP transport handles and place her on the WRAP Carry Cart.

DETAILED DESCRIPTION OF RESISTANCE AND FORCE OPTION USED

Include the level of resistance displayed by the incarcerated individual(s) and the exact force option(s) you used to overcome the resistance.

During the placement of the WRAP I/I Kim showed active egressive resistance by pulling away so I (C/O Marcano) responded by picking up I/I Kim off the ground by maintaining control of her right arm and her rear back shoulder guiding her to the ground. I/I Kim showed isometric tensing of the muscles while on her stomach to which I assumed position 2, by placing my knee on her rear right shoulder while I maintained control of her arms holding them towards her body. I/I Kim kept trying to kick and pull away during the WRAP placement so I gave her directives to stop resisting and maintained control of her arms and upper body. While in the sitting position I/I Kim kept showing resistance by trying to lay her back on the ground so I maintained control of her back with my knee and also maintained control of her head while the upper part of the WRAP was being buckled. I lifted I/I Kim off the ground by the WRAP device handles and placed her on the Wrap Restraint Carry Cart.

Marcano-Ruiz, Christian C/O

Name/Title

Signature

06/21/2024

Date

TO BE COMPLETED BY SHIFT COMMANDER/UNIT SUPERVISOR

IMRS number: 24-120182 Date/Time received: 6-21-24

Comments:

IT Burks

Name/Title



Signature

6-21-24

Date

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 16-01, RCW 42.56, and RCW 40.14.

Distribution: **ORIGINAL** – Superintendent

COPY – Shift Commander/Unit Supervisor, Employee



INCIDENT REPORT

Confidential

Name Kim, Amber	DOC number 315346	Time 1410	Date 6/21/24
Incident description Use of Force / Transport			Use of force incident? <input type="checkbox"/> Yes <input type="checkbox"/> No
Witnesses involved			
Employees/contract staff/volunteers involved C/O Medina, C/O Marcano, Sgt. Hinz, C/O Doelman			

DETAILED DESCRIPTION OF INCIDENT

Who was involved, what took place, how did it happen, description of any injuries, damage, use of force, etc. Attach additional sheet, if necessary.

On 6/21/24 at 1410 I, C/O Hultberg, was told to respond to the shift LT Burks office. He then told me I was being pulled from my RM spot to be a transport officer for a transport. I was then directed to report to CCU to escort I/I Kim DOC# 315346 to SEG and then put her in waist and ankle restraints for a transport to the Monroe Correctional Facility. Once she was ready for transport, while walking to the car, in the intake hallway, she refused transport and was taken to the ground, I then assisted in applying the wrap. After she was placed in the wrap, I assisted in getting her in the vehicle and then delivered her to the Monroe Correctional Complex.

IMMEDIATE ACTION TAKEN

Responded to the LT's office

Hultberg _____ 2141 _____ 6/21/24
 Name Signature Time Date

wccw _____
 Facility Unit Tier

APPOINTING AUTHORITY/DESIGNEE COMPLETES

Date received	Time	Incident number
Assigned to	By	Date

Comments:

Name

Signature

Date

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Distribution: **ORIGINAL** - Appointing Authority/designee



INCIDENT REPORT

Confidential

Name Kim, Amber	DOC number 315649	Time 1540	Date 06-21-2024
Incident description Escort from Segregation to Intake			Use of force incident? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Witnesses involved			
Employees/contract staff/volunteers involved SGT.Hinz , Officer Hultburg, Officer Doleman, Officer Medina, Officer Marcano, Officer Stratton			

DETAILED DESCRIPTION OF INCIDENT

Who was involved, what took place, how did it happen, description of any injuries, damage, use of force, etc. Attach additional sheet, if necessary.

On 06-21-2024 at approximately 1540, I Correctional Officer Stratton, Scott was involved in the escort of Incarcerated Individual Kim, Amber Doc# 315649 to Intake from Segregation as the camera operator.

IMMEDIATE ACTION TAKEN

Camera operation

Officer Stratton, Scott		1540	06-21-2024
Name	Signature	Time	Date
WCCW	Z Building		
Facility	Unit	Tier	

APPOINTING AUTHORITY/DESIGNEE COMPLETES

Date received	Time	Incident number
Assigned to	By	Date

Comments:

Name Signature Date

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 16-01, RCW 42.56, and RCW 40.14.

Distribution: **ORIGINAL** - Appointing Authority/designee



INCIDENT REPORT

Confidential

Name Kim, Amber	DOC number 315649	Time 1530	Date 06/21/24
Incident description Spontaneous Use of Force			Use of force incident? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Witnesses involved			
Employees/contract staff/volunteers involved C/O Marcano, C/O Medina, C/O Hultberg, C/O Stratton, C/O Doelman			

DETAILED DESCRIPTION OF INCIDENT

Who was involved, what took place, how did it happen, description of any injuries, damage, use of force, etc. Attach additional sheet, if necessary.

On 06/21/24 I was directed by Lt. Burks to get I/I Kim, Amber #315649 prepared for external transport. At 1532 I/I Kim was placed in wrist restraints in the Seg holding cell by C/O Hultberg. The holding cell was opened and C/O's Medina and Marcano were the escorting officers. I/I Kim was escorted to the Seg foyer to transition to waist restraints and leg irons. C/O Hultberg remained the restraint officer. Once I/I Kim was secured in restraints at 1537 hours, the escort team began the escort to the I/I to the intake hallway. In the intake hallway I/I Kim demanded to see paperwork to where she was going. At 1540 I/I Kim stopped walking and said she was refusing transport. She was screaming out of control. I gave her directives to complete the escort to the vehicle. I informed her that she had to go on the transport. I ensured I/I Kim that everything was going to be ok. I/I Kim was static and trying to pull away from the escorting officers. At 1540 hours I directed the escorting officers to place her on the ground to utilize the wrap restraint to complete the escort. I then made notification via radio that we had a spontaneous use of force in progress in the intake hallway, and I requested the wrap restraint cart be taken to intake. At 1545 I/I Kim was secured in the wrap restraint and escorted to the intake sallyport and was placed and secured in the transport vehicle. The vehicle left the intake sallyport at approximately 1548 hours.

IMMEDIATE ACTION TAKEN

Directed the escort team to place I/I Kim, Amber #315649 on the ground and to utilize the wrap restraint to complete the escort to the vehicle. Supervised the use of force until I/I Kim was secured in the vehicle.

Sgt A Hinz Sr.		1703	06/21/24
Name	Signature	Time	Date
WCCW	SEG	N/A	
Facility	Unit	Tier	

APPOINTING AUTHORITY/DESIGNEE COMPLETES

Date received	Time	Incident number
Assigned to	By	Date

Comments:

Name

Signature

Date

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 16-01, RCW 42.56, and RCW 40.14.

Distribution: **ORIGINAL** - Appointing Authority/designee



INFRACTION REVIEW CHECKLIST

IMRS number: _____

Kim, Amber _____ 315649 _____ 717 _____ 06/21/24 _____
Name DOC number WAC number(s) Incident date

INFRACTION AUTHOR COMPLETES

- | Yes | No | N/A | | Reviewer |
|---|--------------------------|-------------------------------------|---|--------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Examine the infraction to ensure that each field is filled in properly and written legibly. | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Ensure the individual's name and DOC number are recorded correctly. | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Read the infraction report narrative and ensure the following elements are included:
<i>Who? What? Where? When? Why? How?</i> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Ensure the infraction violation(s) at the top of the report correspond with the written information <i>and</i> are appropriate for the incident. | <input type="checkbox"/> |
| <i>NOTE: The reviewer may 1) require that the report be revised, re-written, or re-investigated by the reporting person to ensure the alleged facts support the charges, or 2) add, dismiss, delete, or reduce the indicated WAC violations, as appropriate, based upon the information and/or evidence provided by the reporting person and any mitigating factors.</i> | | | | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Ensure the report is detailed and factual, without assumptions or what the reporting person "thinks" may have happened. | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Ensure alleged victims, if any, of the incident are recorded and accurately documented. | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Other supplemental information. | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Ensure the report includes supporting documentation if the incident included:
<input type="checkbox"/> Injuries <input type="checkbox"/> Medical response <input type="checkbox"/> Property damage
<input checked="" type="checkbox"/> DOC 21-917 Incident Report(s) | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Ensure all evidence has been collected, secured, and logged properly per policy and facility procedures. Did you document:
<input checked="" type="checkbox"/> Photos/videos (do not provide to individuals)
<input type="checkbox"/> Evidence taken: Case # assigned _____ Locker# <u>37</u> or disposition if no locker: _____ | <input type="checkbox"/> |

Marcano-Ruiz, Christian _____ 06/25/24 _____
Infraction author Signature Date

INFRACTION REVIEW OFFICER COMPLETES

- Placed on Administrative Segregation? Yes, Date: _____
- Confidential information reviewed per facility procedures and DOC 470.150 Confidential Offender Information. **Confidential information does not go in the review packet.**
 - Infraction narrative contains a summary of confidential information.
 - Infraction narrative indicates the infraction is based on an investigation (e.g., upon conclusion of investigation), if applicable.
 - This infraction report has been reviewed and is being returned for the following reason(s):

 - Infraction author must promptly resubmit the infraction report with the corrected/appropriate information, including this Infraction Review Checklist.
 - DOC 17-076 Initial Serious Infraction Report, including any attachments, is complete.
 - Send the infraction report and any supporting documents (and e-mail the electronic copy of the infraction) to the Hearing Clerk or designated facility employee.

Infraction Review Officer Signature Date


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Distribution: ORIGINAL - Hearing Officer

Name(s): _____

Employee/contract staff Volunteer/visitor/other Individual DOC # _____

APPROVALS

Marcano-Ruiz, Christian  2nd, S/S/M
Reporting employee/contract staff Signature Shift/days off

Infraction Reviewer Signature Date

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Distribution: **ORIGINAL** - Imaging or Central file
COPY - Hearing Officer, Individual, Board

EXHIBIT K

From: [Dibble, Candie M \(ATG\)](#)
To: [Rachael Seevers](#)
Cc: [Murphy, Sean M. \(DOC\)](#); [Wofford, Deborah J. \(DOC\)](#); [Wright, Christopher D. "Chris" \(DOC\)](#); [Hall, Maria R. \(DOC\)](#); [Figueira, Kari J. \(DOC\)](#); [Rio, Jeffery P. \(DOC\)](#)
Subject: RE: Assault allegations against Amber Kim
Date: Wednesday, August 14, 2024 4:20:10 PM
Attachments: [image001.png](#)
[UOF.pdf](#)
[24-120182QMNI_IMRS - Search Incident Report.pdf](#)

Rachel:

Apologize for the delayed response as certain individuals were on leave, and it was necessary to wait for their return before DOC could complete a final review.

The IMRS and Use of Force report were based on the Lieutenant's mistaken observation of the video. DOC does not believe this was done to disparage Kim. The Superintendent is conducting a review and assuring her team triangulates information before providing final reports, to ensure that the information reported is fully accurate.

Consistent with your request, I am attaching the corrected IMRS report and the Use of Force report. DOC also agrees that any further comments will be reflective of the corrected report information.

Candie M. Dibble
Assistant Attorney General
Corrections Division
1116 West Riverside Avenue, Suite 100
Spokane, WA 99201-1106
(509) 456-3123

From: Rachael Seevers <Rachael@dr-wa.org>
Sent: Thursday, July 25, 2024 11:16 AM
To: Wright, Christopher D. 'Chris' (DOC) <christopher.wright@doc1.wa.gov>; Hall, Maria R. (DOC) <mrhall1@DOC1.WA.GOV>; Figueira, Kari J. (DOC) <kjfigueira@DOC1.WA.GOV>; Rio, Jeffery P. (DOC) <jprio@DOC1.WA.GOV>
Cc: Dibble, Candie M (ATG) <candie.dibble@atg.wa.gov>; Murphy, Sean M. (DOC) <sean.murphy@doc1.wa.gov>; Wofford, Deborah J. (DOC) <djwofford@DOC1.WA.GOV>; Dibble, Candie M (ATG) <candie.dibble@atg.wa.gov>
Subject: Assault allegations against Amber Kim

[EXTERNAL]

On July 8, 2024, the Seattle Stranger [published a news article](#) in which DOC Communications Director Chris Wright was quoted as stating that incarcerated individual Amber Kim had attempted to assault staff during her transfer from one prison

to another.

As you know, Disability Rights Washington (DRW) has serious concerns about Ms. Kim's transfer and we have been conducting an investigation into that move. As part of our investigation, we have reviewed all surveillance and video footage and relevant records related to the transfer of Ms. Kim from WCCW to MCC. Contrary to DOC's statement to the press, DRW found no reliable evidence that Ms. Kim attempted to assault staff during her transferring. We are reaching out today because DOC's false statements will likely cause harm to Ms. Kim if unaddressed.

Based on our review of records produced by DOC, it appears that on June 21, 2024 six WCCW staff members were involved in a use of force incident in which Ms. Kim was placed in a WRAP restraint prior to her transfer to MCC. Each of those six officers completed written statements for their Use of Force Reports; none alleged any attempt by Ms. Kim to assault staff. DOC staff also participated in a video recorded debrief immediately after the use of force; again, no staff alleged any attempted assault by Ms. Kim.

Indeed, the only suggestion that Ms. Kim attempted to assault staff during the incident appears to have originated from either the unnamed author of an IMRS note or the Shift Commander/Unit Supervisor Use of Force Report authored by Lieutenant Phillips Burks, who was not directly involved in the incident. The text of the IMRS and Lt. Burk's description are identical, but it is unclear which was written first or who authored the IMRS. Both summaries of the incident state, "I/ I Kim attempted to bite staff during the placement of the WRAP system" without further detail or attribution. This allegation that Ms. Kim attempted to bite staff during the incident is unexplained and never addressed or referenced elsewhere in the use of force report or in the statements by any of the six staff actually involved in the incident. DRW also closely reviewed the surveillance video and handheld video recording of the incident and did not observe any assaultive behavior.

Despite the absence of this allegation in any of the other staff reports, or evidence of assault in the video footage, *three* WCCW leadership staff members reviewed Lt. Burk's allegation that Ms. Kim attempted to bite staff and did not appear to seek further information from involved staff or correct the error. Instead, staff attested that the Use of Force Reports were "Complete and accurate" and "Accurately reflect what is seen in the video," despite the lack of any evidence supporting this allegation in the records provided to us by DOC.

This kind of claim can create enormous collateral consequences. Ms. Kim's housing placements will continue to be reviewed by DOC staff as she seeks a gender-affirming placement, and we are concerned that if DOC does not take action now to correct her records, future reviews will wrongly take into account this unfounded assault allegation. We are also concerned that continued misrepresentation by DOC regarding Ms. Kim will only further inflame the media attention around this transfer and gender-affirming care within DOC more generally.

To remedy this situation, DRW therefore requests that DOC do the following:

1. Refrain from providing any further comments to media that allege Ms. Kim assaulted staff;
2. Edit the text of any IMRS in OMNI or other electronically stored documentation to remove the statement that Ms. Kim attempted to bite or assault staff; and

3. Edit page 1 the Use of Force Report so that Lt. Burks's unsupported allegation that Ms. Kim attempted to bite staff is stricken or corrected.

Please let us know when this has been accomplished or if any conversation with DRW is needed in order to address our concerns.

Thank you,

Rachael SeEVERS

AVID Program Attorney

Amplifying Voices of Incarcerated Individuals with Disabilities

Pronouns: she/her/hers



Disability Rights Washington

315 5th Avenue S, Suite 850 | Seattle, WA 98104

voice: 206.324.1521 or 800.562.2702 | fax: 206.957.0729

www.disabilityrightswa.org | www.rootedinrights.org | www.donatetodrw.org



Disability Rights Washington (DRW) is a private non-profit organization that protects the rights of people with disabilities statewide. Our mission is to advance the dignity, equality, and self-determination of people with disabilities. We work to pursue justice on matters related to human and legal rights.

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Additionally, people sending email to DRW have a reasonable expectation of privacy. However, DRW does not use encryption, and all email coming to DRW is routed through a third party internet service provider (ISP) before it reaches DRW. Although it is unlikely that an ISP will intercept and review a message, it is a possibility, especially if a message is incorrectly addressed and "bounced back" to the sender.

EXHIBIT L

On 6-21-24 at approximately 1340 hours I/I Kim #315346 was being escorted down the intake hallway in preparation for transport by C/O Medina and C/O Marcano and C?. I/I Kim became active resistant by pulling away and presenting isometric muscle tension. Sgt Hinz gave the directive to place I/I Kim on the ground to be placed in the WRAP soft restraint. C/O Marcano and C/O Medina attempted to place I/I Kim on the ground. Resulting in C/O Marcano and C/O Medina picking I/I Kim up off the ground and guiding her down on the floor. C/O Marcano took control of her upper body by placing downward pressure on her shoulders and biceps. C/O

06/21/2024 Medina took control of her right arm and leg, lifting I/I Kim off the floor, with the assistance of C/O Marcano they guided I/I Kim to the floor. They placed her in position to have the soft restraint WRAP applied. C/O Medina put downward pressure on the lower back and legs to prevent I/I Kim from being able to resist the WRAP Placement. C/O Doelman applied pressure to the ankle area of I/I Kim for application of the lower portion of the WRAP restraint system. C/O Hultberg applied pressure to the legs and ankles for the application of the WRAP restraint system. I/I Kim was then placed in the transport vehicle and escorted to determined location. C/O Medina and C/O Hultberg Assigned as escort officers. Duty officer Notified.

ADDITIONAL INFORMATION On 6-21-24 at approximately 1340 hours I/I Kim #315346 was being escorted down the intake hallway in preparation for transport by C/O Medina and C/O Marcano. I/I Kim became active resistant by pulling away and presenting isometric muscle tension. Sgt Hinz gave the directive to place I/I Kim on the ground to be placed in the WRAP soft restraint. C/O Marcano and C/O Medina attempted to place I/I Kim on the ground. Resulting in C/O Marcano and C/O Medina picking I/I Kim up off the ground and guiding her down on the floor. C/O Marcano took control of her upper body by placing downward pressure on her shoulders and biceps. C/O Medina took control of her right arm and leg, lifting I/I Kim off the floor, with the assistance of C/O Marcano they guided I/I Kim to the floor. They placed her in position to have the soft restraint WRAP applied. C/O Medina put downward pressure on the lower back and legs to prevent I/I Kim from being able to resist the WRAP Placement. C/O Doelman applied pressure to the ankle area of I/I Kim for application of the lower portion of the WRAP restraint system. C/O Hultberg applied pressure to the legs and ankles for the application of the WRAP restraint system. I/I Kim was then placed in the transport vehicle and escorted to determined location. C/O Medina and C/O Hultberg Assigned as escort officers. Duty officer Notified.

08/13/2024 08/14/2024 - Removed unnecessary language

08/14/2024 08/14/2024 - Updated narrative. - BCM

08/14/2024 08/14/2024 - Updated narrative. - BCM

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December 17, 2024 - 1:23 PM

Filing Personal Restraint Petition

Transmittal Information

Filed with Court: Court of Appeals Division I

Appellate Court Case Number: Case Initiation

The following documents have been uploaded:

- PRP_Affidavit_Declaration_20241217130710D1482093_9699.pdf
This File Contains:
Affidavit/Declaration - Other
The Original File Name was 2024-12-15 -- Amber Kim PRP - Amber Kim Declaration - Signed Final.pdf
- PRP_Motion_20241217130710D1482093_0039.pdf
This File Contains:
Motion 1 - Accelerated Review
The Original File Name was 2024-12-17 -- Amber Kim PRP - Motion for Expedited Review - Final.pdf
- PRP_Other_20241217130710D1482093_4266.pdf
This File Contains:
Other - Declaration of Adrien Leavitt
The Original File Name was 2024-12-17 -- Amber Kim PRP - Adrien Leavitt Declaration - Exhibits Final - Redacted.pdf
- PRP_Personal_Restraint_Petition_20241217130710D1482093_1893.pdf
This File Contains:
Personal Restraint Petition
The Original File Name was 2024-12-17 -- Amber Kim PRP - PRP - FINAL.pdf

A copy of the uploaded files will be sent to:

- baker@aclu-wa.org
- serviceATG@atg.wa.gov
- twells@aclu-wa.org

Comments:

Sender Name: Adrien Leavitt - Email: aleavitt@aclu-wa.org

Address:

PO BOX 2728

SEATTLE, WA, 98111-2728

Phone: 206-595-5215

Note: The Filing Id is 20241217130710D1482093

ATTACHMENT C

FILED
Court of Appeals
Division III
State of Washington
5/8/2025 11:17 AM

No. 408817

**COURT OF APPEALS FOR THE STATE OF
WASHINGTON DIVISION III**

IN RE THE PERSONAL RESTRAINT OF

Amber F. Kim,

Petitioner.

SUPPLEMENTAL DECLARATION OF AMBER F. KIM

ACLU OF WASHINGTON
FOUNDATION

Adrien Leavitt, WSBA #44451
La Rond Baker, WSBA #43610
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(tel) (206) 624-2184
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aleavitt@aclu-wa.org
baker@aclu-wa.org

Attorneys for Petitioner

Petitioner Amber Kim respectfully submits this supplemental declaration due to a change in material fact.

RESPECTFULLY SUBMITTED May 8, 2025.

ACLU OF WASHINGTON FOUNDATION

By: /s/ Adrien Leavitt

Adrien Leavitt, WSBA #44451
La Rond Baker, WSBA #43610
PO Box 2728
Seattle, WA 98111
aleavitt@aclu-wa.org
baker@aclu-wa.org

Attorneys for Petitioner

I, Amber Fayefox Kim, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct to the best of my knowledge and belief.

1. I am 36 years old and competent to testify to the contents of this declaration.

2. I am still incarcerated at the Monroe Correctional Complex (“Monroe”) in the Intensive Management Unit (“IMU”).

3. I have been in solitary confinement for 320 days.

4. On March 26, 2025, I was transported outside of MCC IMU for a gender affirming surgical procedure, specifically a bilateral orchiectomy¹.

5. Immediately after the surgery, I was transported back to MCC. I was placed in the Hospital Unit for two nights. After that, I returned to MCC IMU.

¹ A bilateral orchiectomy is the surgical removal of both testicles.

DATED this 8th day of May, 2025.

By: /s Amber Kim
Amber F. Kim

CERTIFICATE OF SERVICE

I certify that on this 8th day of May, 2025, I caused a true and correct copy of this document to be served on all parties by electronically filing this document through the Washington State Appellate Courts Secure Portal.

Signed this 8th day of May, 2025 at Seattle, WA.

/s/ Tracie Wells
Tracie Wells, Paralegal
ACLU OF WASHINGTON
FOUNDATION
P.O. Box 2728
Seattle, WA 98111
(206) 624-2184

AMERICAN CIVIL LIBERTIES UNION OF WASHIN

May 08, 2025 - 11:17 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 40881-7
Appellate Court Case Title: Personal Restraint Petition of Amber F. Kim
Superior Court Case Number: 07-1-00091-8

The following documents have been uploaded:

- 408817_Briefs_20250508111207D3237690_4523.pdf
This File Contains:
Briefs - Petitioners - Modifier: Supplemental
The Original File Name was 2025-05-08 -- PRP of Amber Kim - Supplemental Declaration.pdf

A copy of the uploaded files will be sent to:

- John.Samson@atg.wa.gov
- Katrina.Manis@atg.wa.gov
- baker@aclu-wa.org
- correader@atg.wa.gov
- laurwilson@kingcounty.gov
- twells@aclu-wa.org

Comments:

Sender Name: Adrien Leavitt - Email: aleavitt@aclu-wa.org
Address:
PO BOX 2728
SEATTLE, WA, 98111-2728
Phone: 206-595-5215

Note: The Filing Id is 20250508111207D3237690

ATTACHMENT D

No. 40881-7-III
In re Pers. Restraint of Kim

possibility of parole. Ms. Kim appealed her convictions, and this court affirmed. *Kim*, slip op. at 2.

In 2008, Ms. Kim was transferred to the custody of the DOC to serve her sentence and was housed in a men's facility.

In January 2016, Ms. Kim disclosed to the DOC that she is a transgender woman. Based on Ms. Kim's disclosure, the DOC assessed her housing placement using the "Protocol for the Housing of Transgender and Intersex Offenders." Br. of Resp't's App'x, Ex. 1, Attach. C. The DOC's records indicated that Ms. Kim had not been involved in any "Prison Rape Elimination Act" related incidents as of that time while also noting Ms. Kim had a potential for victimization due to her small stature and age. Br. of Resp't's App'x, Ex. 1, Attach. C. Ms. Kim reported feeling safe to the DOC and requested to be housed in a two-person cell.

From January 2016 to April 2020, the DOC conducted semi-annual housing assessments of Ms. Kim as required by the DOC's "Transgender Individuals Policy." Br. of Resp't's App'x, Ex. 1, Attach. C-N. During that time, Ms. Kim began to state that, from her subjective view, there were safety issues with continuing housing in a men's facility. Ms. Kim claimed transferring her to a women's facility would be the only means of making her feel safe. However, the DOC's records indicated Ms. Kim reported no incidents of abuse, and the DOC continued to determine the men's facility was an appropriate housing situation for her. In the assessments, Ms. Kim also claimed instances

of corrections officers touching her breasts during searches, but the DOC determined there was no support for these claims.

In February 2020, Ms. Kim requested gender reassignment surgery and began the approval process for the procedure.² She was approved for the surgery in March 2021. In May 2023, Ms. Kim decided against moving forward with the surgery and instead wanted to reassess her gender dysphoria after trying less invasive procedures to her face and neck.

During her housing assessment in March 2020, Ms. Kim expressed concern with having a cisgender male cellmate “because of their toxic masculinity.” Br. of Resp’t’s App’x, Ex. 1, Attach. N at 4. She requested to be housed “with someone who is gender queer or trans.” *Id.* Ms. Kim also stated she did not feel safe in a men’s facility due to the “distinct and real risk of sexual victimization.” *Id.* Ms. Kim was questioned further on this statement and did not report imminent safety concerns or risks but said she was more so referring to the unpredictability of prison. Ms. Kim again repeated her request to be transferred to a women’s facility during this assessment.

The housing assessment determined there did not appear to be any significant safety concerns with Ms. Kim being housed in a men’s prison, but Ms. Kim had stated she would prefer to be housed with other women. In the end, the team was divided on their recommendation as to whether to transfer Ms. Kim to a women’s facility. The

² Ms. Kim had begun hormone replacement therapy in June 2017.

No. 40881-7-III

In re Pers. Restraint of Kim

assessment was sent to the multidisciplinary team at the Washington Corrections Center for Women (WCCW) who determined the “transfer [was] not suitable at this time.”

Br. of Resp’t’s App’x, Ex. 1, Attach. N at 7.

In January 2021, Ms. Kim again expressed a desire to be transferred to the women’s facility. The multidisciplinary team assessed the women’s facility would be a better fit because it “would be a gender-affirming housing assignment” and recommended Ms. Kim’s transfer. Leavitt Decl., Ex. E at 3. Ms. Kim’s request to transfer to a women’s facility was subsequently granted based on the “recommendation [from mental health], Kim’s request, and suitable/favorable adjustment” during her time in the general population at the men’s facility. *Id.* at 5. Ms. Kim was transferred to the WCCW in February 2021.

While housed at the WCCW on March 13, 2024, Ms. Kim was issued a 504 infraction for engaging in a sexual act with another individual. The infraction was based on a corrections officer’s direct observation of Ms. Kim engaging in sexual intercourse with her cellmate. At the hearing on the infraction, in addition to maintaining she did not commit the infraction, Ms. Kim argued against the existence of the infraction:

I would also like to argue that the 504 infraction should not exist in the 1st place. All the other serious category [B level 1] infractions are based on an actual crime a person can commit in Washington state. . . . However, the statute that the 504 infraction was based off of, consensual gay sex was repealed in 1976. It is cruel and unusual beyond all belief to tell someone like myself who has life without parole and came to prison at 18 that I am never allowed to have love and anytime someone is interested in me I have to say no every time forever and then even while I’m being a good little inmate give me a major infraction driving the

No. 40881-7-III

In re Pers. Restraint of Kim

point home that I will never be allowed to have love ruining my life the life of the person I'm accused of being with in the process both of us are not guilty and the rule itself is unjust.

Br. of Resp't's App'x, Ex. 1, Attach. V. Ms. Kim also maintained consensual sex was permitted in prison.

Ms. Kim's first housing review following her 504 infraction occurred on April 2, 2024. The review mentioned Ms. Kim's 504 infraction but noted an appeal of the infraction was pending. It recommended Ms. Kim continue to be housed in the WCCW.

Ms. Kim's appeal of her infraction was denied on April 9, 2024. On May 10, 2024, a new housing assessment for Ms. Kim was conducted. The updated assessment described Ms. Kim's 504 infraction and portions of the above statement she made during the hearing. It noted that while Ms. Kim had been placed in a single cell in the closed custody unit to reduce the risk of her behavior continuing, the housing change did not eliminate the risk because individuals must shower in groups, and the single stalls are connected to each other. The increased risk of Ms. Kim repeating her behavior was demonstrated by her expressed belief that the rules were not fair and her reference to the incident as "consensual sex with her cell mate" in a phone call. Leavitt. Decl., Ex. I at 3. Moreover, due to differences in the way the women's prison is run, "[e]ven in close custody and a single cell, Ms. Kim would be allowed to mix with other custody levels at various activities . . . which would allow her to continue to pursue sexual relationships."

Br. of Resp't's App'x, Ex. 4 at 5-6.

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Determining there was a risk that Ms. Kim would continue to engage in sexual activity, the assessment recommended her transfer to a men's facility. However, the DOC stated it would continue to review Ms. Kim's housing situation every six months and reassess whether a return to the women's facility would be appropriate. The DOC subsequently transferred Ms. Kim to a men's facility.

Ms. Kim brings this PRP, alleging that her transfer back to a men's facility constituted cruel and unusual punishment in violation of article I, section IV of the Washington State Constitution. We disagree and deny Ms. Kim's petition.

ANALYSIS

To obtain relief through a PRP challenging conditions of confinement, a petitioner must show unlawful restraint pursuant to RAP 16.4. *In re Pers. Restraint of Williams*, 198 Wn.2d 342, 352, 496 P.3d 289 (2021). There is no dispute that Ms. Kim is currently being restrained by the DOC. The question presented is whether her restraint is unlawful.

It is the petitioner's burden to demonstrate error by a preponderance of the evidence. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 814, 792 P.2d 506 (1990). The petitioner must support claims with facts and not merely bald or conclusory allegations. *Id.* The supporting evidence must be based on "more than speculation, conjecture, or inadmissible hearsay," and failure to meet this standard demands dismissal of the petition. *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992).

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Article I, section 14 of the Washington State Constitution prohibits the State from imposing cruel conditions of confinement. *Williams*, 198 Wn.2d at 368. Whether conditions of confinement are cruel is not dependent on the subjective intent of individual actors within the prison system. *Id.* Rather, an objective test is employed that calls for consideration of “the proportionality of those conditions to legitimate penological justifications.” *Id.* A challenge to conditions of confinement requires a showing that “(1) those conditions create an objectively significant risk of serious harm or otherwise deprive them of the basic necessities of human dignity and (2) those conditions are not reasonably necessary to accomplish any legitimate penological goal.” *Id.*

In considering challenges to conditions of confinement, “we recognize the practical challenges facing prison administrators and acknowledge that some harsh conditions of confinement that might otherwise be cruel may sometimes be justified by legitimate penological interests, including the health and safety of the prison population as a whole.” *Id.* at 367. In reviewing DOC actions, we recognize “the unique means and objectives of penal institutions together with the limited scope of due process rights to which a prisoner is entitled.” *In re Pers. Restraint of Reismiller*, 101 Wn.2d 291, 293, 678 P.2d 323 (1984). ““A prison is “a tightly controlled environment populated by persons who have chosen to violate the criminal law, many of whom have employed violence to achieve their ends.””” *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 215, 227 P.3d 285 (2010) (quoting *Reismiller*, 101 Wn.2d at 294).

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Courts are ill-situated to involve themselves in the day-to-day management of prisons and doing so often results in a waste of judicial resources, with little to no actual benefit. *In re Pers. Restraint of Dyer*, 143 Wn.2d 384, 393, 20 P.3d 907 (2001).

Accordingly, “[c]ourts ought to afford appropriate deference and flexibility to state officials trying to manage a volatile environment.” *Id.* (quoting *Sandin v. Conner*, 515 U.S. 472, 482, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995)); *In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 405, 978 P.2d 1083 (1999) (stating that day-to-day operations of prisons are “peculiarly within the province and professional expertise of corrections officials”); *Sappenfield v. Dep’t of Corrections*, 127 Wn. App. 83, 88, 110 P.3d 808 (2005) (“Matters affecting a prison’s internal security are generally the province of prison administrators, not the courts.”); *In re Pers. Restraint of Goulsby*, 120 Wn. App. 223, 231, 84 P.3d 922 (2004) (“The courts recognize that the prison system should not be micromanaged by the courts, particularly as to issues relating to prison security.”).

As a matter of prefatory importance, Ms. Kim is not claiming the DOC’s “Transgender Individuals Policy” or its “Protocol for the Housing of Transgender and Intersex Offenders” are unconstitutional. Nor does Ms. Kim argue that housing a transgender female in a male facility amounts to cruel punishment in violation of article I, section 14 of the Washington Constitution. Rather, Ms. Kim maintains *her* transfer from WCCW violated article I, section 14 of the Washington Constitution because it created an objectively serious risk of harm, and the transfer was not required to accomplish any

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legitimate penological goal. Regardless of whether Ms. Kim's transfer created an objectively serious risk of harm, she has failed to demonstrate the second prong of the analysis: the transfer was not reasonably necessary to accomplish a legitimate penological goal.

Ms. Kim maintains her transfer was not reasonably necessary to accomplish any legitimate penological goal and was not associated with any valid safety concerns, pointing out that her 504 infraction was non-violent because the sexual contact was consensual, and consensual sexual encounters are simply a part of life in prison. She asserts there is no legitimate safety concern necessitating her transfer to a men's prison and any concerns could be adequately addressed in the women's prison as the facility has both close custody and solitary confinement units.

The DOC is charged with maintaining the safety and order of its prisons. RCW 72.09.010(1) (the purpose of the DOC is "to provide the maximum feasible safety for the persons and property of the general public, the staff, and the inmates."). Accordingly, the DOC has a legitimate penological interest in the health and safety of the prison population as a whole. *Williams*, 198 Wn.2d at 367. Sexual activity among inmates is a major security concern as it "has a history of being extremely dangerous and volatile." *Fields v. Smith*, 712 F. Supp. 2d 830, 868 (E.D. Wisconsin, 2010). As noted by the DOC, and referenced in the article cited by Ms. Kim in her petition, the power dynamics between prisoners make it impossible to determine whether sex within the context of a

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prison is consensual. Charles Herbert Lea III, et al., *An examination of consensual sex in a men's jail*, 14 Int'l LJ. Prison Health 56 (2018) ("It is also just as hard to determine if a sexual relationship between people in jail and prison settings is coerced or consensual, because relations in these settings are often based on complicated, protective, and exploitative allegiances formed in an oppressive, confined culture."). Additionally, the article relied on by Ms. Kim refers to unprotected sex as a "common experience," highlighting the health risks associated with inmates engaging in sexual contact in the prison context. *Id.*

Here, the DOC has a legitimate penological interest in preventing Ms. Kim from engaging in sexual contact with other inmates, specifically the prevention of penile-vaginal intercourse that could result in sexually transmitted infections and in an inmate becoming impregnated. The DOC is in the best position to decide how to handle this unique and somewhat complex situation. DOC officials are familiar with Ms. Kim's history, behavior, and situation in both the men's and the women's facilities and are better suited to determine which facility is most suitable for Ms. Kim as well as the other inmates given the totality of the circumstances.³ From the record, it appears that the DOC put significant effort into determining whether to initially transfer Ms. Kim to a women's facility and then similarly took a caution approach to its decision to return her

³ The record indicates there are a number of other transgender inmates housed in the men's facility.

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to the men's facility. If circumstances change, the DOC continues to reassess Ms. Kim's housing situation every six months, and Ms. Kim can bring any new circumstances or concerns to the DOC's attention during those assessments.⁴

Ms. Kim maintains that the DOC's transfer of her back to the men's prison lacked a legitimate penological purpose because it was not based on any new circumstances. Ms. Kim asserts that the DOC initially determined, following her 504 infraction, that she should remain at the women's facility and then, for no apparent reason, determined she should be transferred out of the women's facility five weeks later. Ms. Kim also asserts the DOC's transfer ignored the initial reasons for her transfer to a women's facility were her safety and well-being.

We agree the initial housing assessment after Ms. Kim's 504 infraction recommended she continue to be housed at the WCCW. However, nothing about this assessment precluded the DOC from further considering the situation and making a different recommendation a few weeks later. If anything, the time between Ms. Kim being issued the infraction and the DOC's decision to transfer her back to a men's facility indicates the DOC carefully considered the situation and weighed available options

⁴ Ms. Kim objects to the DOC's argument that there is a safety risk in housing her in a women's facility because she could impregnate another inmate as she retained male genitalia. She asserts that she is impotent and maintains the DOC has not demonstrated otherwise. However, as the petitioner, it is her burden to set forth competent and admissible evidence supporting her position. *Cook*, 114 Wn.2d at 813-14.

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before recommending the transfer. Moreover, an appeal of Ms. Kim's infraction was still pending when the DOC issued its first housing recommendation. It is reasonable to infer that the DOC was awaiting the outcome of that appeal before making any major changes to Ms. Kim's housing situation.

Moreover, Ms. Kim's statement that the DOC's transfer of her to the women's facility was based on safety concerns appears to be unsupported by the record. Rather, in considering Ms. Kim's request to transfer in March 2020, the DOC determined there were no safety concerns with her being housed in a men's prison. When Ms. Kim's transfer request was finally granted in 2021, the stated reason was that a women's facility would provide gender-affirming housing. There was no mention of concerns for Ms. Kim's safety with regard to being housed in a men's facility.

Ms. Kim further argues her transfer was overwhelmingly disproportionate to her behavior underlying the single infraction. She maintains the DOC's treatment of her contrasts with its treatment of her cisgender cellmate, illustrating the DOC's cruel treatment of her. Ms. Kim claims she received further punishment for the infraction by being transferred to a men's facility while her cellmate's custody situation remain unchanged. This argument assumes Ms. Kim's transfer to the men's prison was a punishment for her 504 infraction, but she fails to provide any support for this assertion. Although the 504 infraction precipitated her transfer, her transfer was not a punishment for the infraction. Rather, the infraction and Ms. Kim's statements during the hearing

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revealed underlying safety concerns that the women's facility determined it was not equipped to address, and it therefore recommended her transfer.


Based on the record before us, Ms. Kim has not met her burden of establishing her transfer back to a men's prison facility constitutes cruel and unusual punishment. Specifically, Ms. Kim has failed to demonstrate the transfer was not reasonably necessary to accomplish a legitimate penological goal.⁵ Accordingly, we deny Ms. Kim's petition.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.




Cooney, J.

WE CONCUR:



Murphy, M.



Staab, A.C.J.

⁵ Ms. Kim also requests this court grant her immediate release as a remedy but raises no argument explaining why such action is necessary. Accordingly, we decline to address this request.

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