

CONSENT DECREE

Named Plaintiffs (alternatively, “Plaintiffs”), ~~by and on their own behalf and on behalf of a class of similarly situated persons (“Class Members”),~~ filed a complaint against the Colorado Department of Corrections (referred to herein as “CDOC”) and various other officials in their individual and official capacities in the matter of *Raven, et al. v. Polis, et al.*, 19CV34492 in Denver District Court, State of Colorado. CASE NUMBER: 2019CV34492

The parties agree and consent to the jurisdiction of this Court over any proceedings seeking to enforce or modify the terms of this Consent Decree.

I. POLICY

It is CDOC’s policy to address the needs of transgender women in custody in compliance with the Prison Rape Elimination Act (PREA) standards, the Colorado laws against discrimination based on gender, gender identity, or disability, the Colorado Anti-Discrimination Act (CADA), the Colorado and United States Constitutions, and in accordance with all other applicable state and federal laws. No person who identifies as a transgender woman shall, because of her gender identity or sex assigned at birth, be excluded from participation in or denied the benefits of services, programs, or activities of CDOC or be subjected to discrimination based on her gender identity.

It is CDOC’s policy to provide transition-related medical and mental health care to transgender women by qualified providers and in accordance with generally accepted standards in the medical community for treatment of transgender women. It shall be CDOC’s policy that transgender women diagnosed with gender dysphoria are considered to be qualified individuals with disabilities who shall be provided reasonable accommodations in compliance with federal and state laws.

II. DEFINITIONS

- A. Class Member: Class Member means any individual that falls within the Injunctive Class or Damages Class as defined in Section XII(A) below. A Class Member is any current, former, or future individual that has or will be incarcerated at CDOC and identifies themselves to CDOC as a transgender woman. The Injunctive Class relief herein shall be applicable to those Class Members during the time they are incarcerated in a CDOC facility. It does not apply to individuals who are or have been transferred to an out-of-state prison, community corrections, a jail, or any other non-CDOC facility.

B. Class Counsel: Class Counsel refers to the court-approved counsel for the Settlement Class referred to in Section XII(B) below.

C. Full Implementation: Full Implementation as used in this Consent Decree will be defined as the date when:

- the initial (first fiscal year) fiscal approval to implement this Consent Decree was received as discussed in Section XIII;
- experts referenced in Section III have been retained;
- the first annual training described in Section IX has been completed;
- the special units – Integration Unit (“IU”) and Voluntary Transgender Unit (“VTU”) are open, staffed, and the programs specified in Section IV are available either in person or remotely;
- the Placement Committee has reviewed the initial (first request after CDOC begins placing Class Members in the IU and VTU); placement/housing requests for all Class Members incarcerated at the time of entry of the Consent Decree;
- CDOC has substantially transferred those Class Members, incarcerated at the time CDOC begins placing Class Members in the IU or VTU, to housing assignments in the VTU, IU or general population in women’s facilities, and/or advised Class Members why their requested housing assignment was denied;
- CDOC has reviewed all initial (meaning requests pending or made within 30 days of the entry of the Consent Decree) requests for surgical consultation;
- CDOC has implemented revised clinical standards referenced in Section V below; and
- The IEC determines that the placement decisions are being made consistent with the revised placement criteria pursuant to Section III(A)(2)(b).

The existence of a waitlist for the new units—Integration Unit and Voluntary Transgender Unit—will not delay Full Implementation so long as CDOC has completed the remainder of the foregoing.

The Independent Expert Consultant (IEC) will provide a written opinion on when CDOC has achieved Full Implementation under the Consent Decree. The IEC's opinion is entitled to a presumption of accuracy but may be disputed by either party through the dispute resolution process if clearly erroneous.

- D. Cross-Gender Search: Cross-Gender Search is herein defined as when a male correctional officer performs a strip search on a transgender woman.

III. INDEPENDENT EXPERTS

As part of this settlement and Consent Decree, CDOC shall, at its own cost, retain experts to facilitate the implementation of this Consent Decree.

A. Independent Expert Consultant (IEC):

1. Retention: CDOC shall retain (either itself or through the Colorado Department of Law) an independent expert(s) consultant (IEC) that is mutually agreed upon by counsel. CDOC will retain the IEC by the date the Consent Decree is entered by the Court and continuing for the term of this Consent Decree.
2. Duties: The IEC will consult with CDOC on the following nonexclusive list of CDOC's provision of benefits, programs, and services to Class Members, including but not limited to:
 - a. Participating on the Placement Review Committee;
 - b. Participating in development and implementation of placement criteria. If the IEC determines that placement decisions are not consistent with the revised placement criteria, the IEC shall inform counsel for both sides and either side may implement the dispute resolution process;
 - c. Consultation on the development of clinical standards;
 - d. Developing a training program for CDOC leadership;
 - e. Consultation on the development of programs for the Integration and Voluntary Transgender Units;

- f. Assessing and providing a written opinion on when CDOC has achieved Full Implementation under the Consent Decree; and
- g. Creating and providing annual written reports to Class Counsel and CDOC's counsel regarding CDOC's compliance with the terms of the Consent Decree, the status of Injunctive Class Members placement/housing, and the status of medical and mental healthcare to Class Members. CDOC shall cooperate with the IEC in preparation of this report. The IEC will complete annual reports a year after entry of the Consent Decree and annually thereafter during the term of the Consent Decree.

B. Independent Medical/Mental Health Consultant (IMC):

- 1. Retention: CDOC shall retain (either itself or through the Colorado Department of Law) an independent medical and mental health consultant (IMC) that is mutually agreed upon by counsel. CDOC will retain the IMC by the date the Consent Decree is entered and continuing for the term of this Consent Decree.
- 2. Duties: The IMC will consult with CDOC on the provision of medical and mental healthcare to Class Members:
 - a. Consultation and providing opinions on CDOC clinical standards with respect to the medical and mental healthcare of Class Members.
 - b. Training to CDOC clinical staff described in Section IX(A) below.
 - c. Nothing in this Consent Decree limits CDOC or its Third-Party Administrator from referring any other duties or care for Class Members.

IV. PLACEMENT/HOUSING

A. Creation of New Units:

1. Units: Unless the person declines such placement, CDOC policy shall be to house transgender women, whenever possible, in any of the following units or facilities: (1) the “Integration Unit” (“IU”) at Denver Women’s Correctional Facility (“DWCF”); (2) the general population at women’s facilities; or (3) the Voluntary Transgender Unit (“VTU”) at Sterling Correctional Facility (“SCF”).
2. Placement Review Committee: The “Placement Review Committee” shall decide whether Class Members qualify for placement in the IU, VTU, or women’s facilities.
 - a. Membership: The Placement Review Committee shall be composed of: the Chair of the Gender Dysphoria Committee and/or Chief of Psychiatry, the Chief Medical Officer, the Chief of Behavioral Health, the Chief of Security (or the Chief’s Designee), the Wardens of women’s facilities and SCF (or their Designees), the Inspector General in Charge of PREA investigations, the Gender Care Specialist described in Section V(A)(5), and the IEC.
 - b. Initial Placement Decisions: Within 30 days of entry of this Consent Decree, CDOC will make the housing informational packet available to every Class Member and ask each Class Member to specify in writing her preferred housing placement.
 - i. After Entry of the Consent Decree: The initial placement review for all Class Members at the time of the entry of the Consent Decree and who request placement at a women’s facility, the IU, or VTU shall be completed within 180 days from date of entry of the Consent Decree.
 - ii. Post-Decree Initial Placement Requests: For Class Members incarcerated after the entry of the Consent Decree and who request placement at a women’s

facility, the IU, or VTU the Placement Review Committee shall review the placement request within 180 days from the date CDOC receives her request.

- c. Placement Decision Review: Any Class Member who is not placed in the VTU, IU, or general population in women's facilities shall have their placement decisions reviewed every six months.
 - d. Written Explanation: When an initial or subsequent placement request is not approved by the Placement Review Committee, CDOC shall inform the Class Member of the reason(s) for the denial in writing within fourteen (14) days of the decision. That explanation shall include recommendations for what, if anything, the Class Member can do to improve her chances of being approved for her desired housing in the future.
 - e. Placement Factors: Placement decisions will be made in a nondiscriminatory manner and will include consideration of the following nonexclusive list of factors:
 - i. The Class Member's mental health needs and the Class Member's safety, vulnerability concerns, and disabilities;
 - ii. The Class Member's risk profile including past criminal history in and outside of custody, the length of time that has elapsed since the criminal history, the victims of Class Member's past criminal history, any personality profile concerns, and any other pertinent information;
 - iii. The Class Member's recent behavior while in custody; and
 - iv. Any relevant mitigating and aggravating factors.
3. Changes to Current Placement/Housing: CDOC acknowledges and agrees that at the time of the entry of this Consent Decree, there are and have been Class Members assigned to housing at women's facilities. Those Class Members shall retain their

current housing assignments unless other factors not related to this Consent Decree occur. If a Class Member has had vaginoplasty surgery, she will be housed at the Integration Unit or in general population at women's facilities. Such Class Members shall not be housed in prison facilities that house men.

4. No Retaliation: Any Class Member who does not elect to be housed at the IU, with the general population at women's facilities, or the VTU shall not be punished, formally or informally, by CDOC or its staff solely as a result of this decision.

B. Integration Unit

1. Definition: CDOC shall establish a housing "Integration Unit" at DWCF for the housing of certain Class Members to allow them to integrate into all aspects of the general population in the CDOC women's facilities.
2. Number of Beds: The Integration Unit will maintain no fewer than 44 beds available for Class Members approved for such housing by the Placement Committee. DOC agrees to place women in this Unit consistent with the revised placement criteria in paragraph 4 and to make a good faith attempt to house a sufficient number of Class Members in the IU to keep it operational so long as such class members qualify for such placement.
3. Transfer to Women's Facilities: At any time, CDOC may determine that a Class Member may be immediately housed in a women's facility without prior placement in the Integration Unit.
4. Placement Criteria: The minimum non-exclusive list of criteria for placement in the Integration Unit is that the Class Member:
 - a. has identified as a transgender woman (inside or outside of CDOC custody) for at least six months;
 - b. does not require Residential Treatment level of care;

- c. has not committed any acts of violence against a member of a vulnerable population in the preceding year;
 - d. has been on hormone therapy for at least six months, or, on a case-by-case analysis, the Class Member is not on hormone therapy for specific, verified medical or mental health reasons but still qualifies for such placement; and
 - e. has had a gender dysphoria diagnosis for at least six months, or, on a case-by-case analysis, the Class Member has specific, verified medical or mental health reasons that qualifies her for such placement, but has not received a gender dysphoria diagnosis.
5. Equal Treatment: Transgender women in women's facilities, including the Integration Unit, shall not be subjected to punishment inconsistent with that of the cisgender female population.
6. Programming: The Integration Unit shall provide programming commensurate with what is provided at DWCF, including programming required for parole consideration. If any Class Member transferred to the IU has begun a program necessary for parole or release from custody, they shall not lose progress in such program by reason of being transferred. Programming and support groups may be provided remotely to Class Members in the IU, as needed and permitted.
- a. Integration Program: CDOC, in consultation with the IEC, shall develop a program in the Integration Unit specifically designed to facilitate Class Members' progression to the general population at women's facilities. At a minimum, Class Members are required to complete this integration program before being considered for placement in the general population, unless CDOC in its sole discretion determines that such placement is warranted without program completion. Completion of this program, however, does not guarantee any specific placement.
 - b. Support Group: CDOC shall create at least one transgender support group in the Integration Unit organized and led by qualified mental health providers regarding the support,

care, and treatment of transgender women. When appropriate, CDOC may provide this support group leader via remote personnel.

C. Voluntary Transgender Unit (VTU)

1. Definition: A housing Voluntary Transgender Unit or “VTU” shall be established at Sterling Correctional Facility for the housing of Class Members.
2. Number of Beds: The VTU shall have no less than 100 beds available for use by Class Members approved for such housing by the Placement Committee.
3. Wait List: Should bed space become filled, Class Counsel shall be notified within 30 days and CDOC and Class Counsel shall meet and confer regarding available options for placement of Class Members.
4. Custody Level: A Class Member’s custody level will not prohibit qualification for housing within the VTU. To the extent the VTU is located in the Sterling East facility, which houses custody levels ranging from Minimum to Minimum Restricted (“Minimum R”), CDOC may override such qualifying Class Members’ higher custody level to Minimum/Minimum R, in order for them to be housed in the VTU. Such custody level override will only be effective while the Class Member is housed in the VTU.
5. Placement Criteria: Unless CDOC determines that immediate placement in the VTU is appropriate, Class Members will be placed in the VTU according to the following non-exhaustive criteria:
 - a. have identified as a transgender woman (in or outside of CDOC custody) for at least the preceding six consecutive months;
 - b. must not require Residential Treatment level of care;

- c. other factors used for placement decisions may also be considered by the Placement Review Committee as outlined in Section IV(A)(2)(e).
6. Programming and Services: Class Members housed in the VTU will have access to comparable services, benefits and programs as other inmates at that custody classification at the female correctional facilities.
- a. Generally: CDOC shall make available to Class Members all programs necessary for a Class Member to complete conditions necessary for release/parole. Programs and support groups may be conducted by remote staffing when needed and permitted. If any Class Member transferred to the VTU has begun a program necessary for parole or release from custody, they shall not lose progress in such program by reason of being transferred.
 - b. Integration Program: CDOC, in consultation with the IEC, shall develop a program in the VTU designed to facilitate progression to the Integration Unit or general population at a women's facility for those Class Members who desire such placement. At a minimum, Class Members are required to complete this integration program before being considered for placement at a women's facility (in either the Integration Unit or general population), unless CDOC determines that immediate placement in the Integration Unit or a women's facility is warranted. Completion of this program, however, does not guarantee any specific placement at the Integration Unit or a women's facility.
 - c. Support group: CDOC shall create at least one transgender support group in the VTU organized and led by qualified mental health provider(s) regarding the support, care, and treatment of transgender women. When appropriate, CDOC may provide this support group leader via remote personnel.
7. Voluntary: All participation and placement in the VTU is voluntary. Placement at a women's facility or the IU shall not be contingent on prior placement in the VTU.

D. Implementation Miscellaneous

1. Same Cell Requests: Pending Full Implementation of the Consent Decree or if there is a waitlist for the IU or VTU, CDOC will honor requests by two Class Members in the same facility to be housed in the same cell unless there are custody, classification, or safety issues that would preclude such housing arrangement.
2. Other Cell Requests: A request by a Class Member to transfer out of a specific cell or unit because of safety concerns, where such safety concern has been reported by that Class Member to CDOC, shall be honored whenever possible. If CDOC determines that the Class Member's transfer request lacks a verified or legitimate safety justification, then CDOC may, in its sole discretion, deny the transfer. CDOC retains the right to temporarily move an individual out of the specific unit in order to investigate their safety concern.

E. Occupancy/Units Not Achieving Purpose: CDOC and Class Counsel acknowledge that the IU and VTU are novel and untested innovations to address the unique challenges facing Class Members. If, after a finding that there has been Full Implementation, the Units fail to have an occupancy adequate for CDOC to operationally maintain them despite continued best efforts by CDOC to place class members in these units, or if the IU and VTU fail to achieve their desired purpose—including increasing the safety and well-being of Class Members—CDOC will work with the IEC and Class Counsel in an attempt to remedy the problem or reach agreement on mutually acceptable alternatives. If the IU and VTU remain at an inadequate occupancy or fail to achieve their purpose, then CDOC may invoke the dispute resolution process and request the Court to modify the Consent Decree.

F. Exigent Circumstances: In the event that unique and/or exigent circumstances necessitate closure of the units described in this Section IV, CDOC will provide notice to Class Counsel as soon as practicable. In such an event, Class Counsel may pursue the resolution process outlined in Section XIII(D).

V. MEDICAL AND MENTAL HEALTH TREATMENT

A. Medical Treatment

1. Generally Accepted Standards in the Medical Community for Transgender Women: CDOC will provide medical care to Class Members in accordance with generally accepted standards in the medical community for transgender women, including but not to exceed the medical care covered by Colorado Medicaid.
2. Independent Medical Consultant: CDOC will contract with a mutually agreed independent qualified transgender health care provider (IMC) to consult and provide guidance on CDOC's clinical guidelines and provide training to CDOC's clinical staff.
3. Clinical Standards: As part of this Consent Decree, CDOC shall revise its transgender women healthcare clinical standards, including clinical standards regarding surgical consult referrals, in consultation with the IMC and IEC. Upon Court approval of this Consent Decree, CDOC shall begin revisions of the clinical standards.
 - a. If the IEC or IMC believe that the clinical standards adopted by CDOC do not comport with generally accepted standards in the medical community for transgender women, they shall inform CDOC and Class Counsel of the matter in dispute. Neither the IMC nor the IEC's conclusion is entitled to any presumption by the Court.
 - b. Within six months of implementing the revised clinical standards for transgender female healthcare, CDOC will review all Class Members' treatment plans for hormone therapy and ensure they are consistent with revised clinical standards and generally accepted standards in the medical community for transgender women.
4. Qualified Transgender Healthcare Provider: CDOC, through its Third-Party Healthcare Administrator, will refer Class Members for medical care as listed herein to medical providers qualified to provide transgender healthcare, in order to provide certain gender affirming care that cannot be provided by CDOC.

- a. CDOC will make referrals and recommendations to its Third-Party Healthcare Administrator for certain gender affirming medical care consistent with generally accepted standards in the medical community for transgender women and its revised clinical standards, including, but not to exceed, the medical care covered by Colorado Medicaid. Upon approval by the Third-Party Healthcare Administrator, a Class Member will be referred to the qualified medical provider for surgical evaluation and surgical treatment, if appropriate.
5. Gender Care Specialist: CDOC will post and work in good faith to hire a Nurse Practitioner or Physician's Assistant with expertise in gender affirming care (Gender Care Specialist or "GCS"). Until the GCS is hired, CDOC's medical staff/provider(s) will make an initial decision regarding whether to refer a Class Member for gender affirming surgical consult to CDOC's Third-Party Healthcare Administrator, and if approved by CDOC's Third-Party Healthcare Administrator, to the qualified transgender healthcare provider for a surgical evaluation/treatment, if deemed appropriate.
- a. Upon hiring the GCS, CDOC shall inform the IEC.
 - b. When hired, the GCS shall review a denial by CDOC medical staff/providers of a Class Member's request for surgical consultation and apply his/her independent medical judgment, consistent with generally accepted standards in the medical community for transgender women, whether the Class Member should have the consult.
 - c. If, during the first calendar year after hiring the GCS, a Class Member's request for a surgical consult is denied, the denial shall be provided to the IEC along with the reason for the denial. If the IEC determines that the denial of a request for a surgical consult is not consistent with generally accepted medical standards for transgender women, the IEC shall first notify the GCS or CDOC medical staff concerning a review of the denial. If at that time, the consult is not granted, the IEC shall notify counsel for the Parties of the

issue, who will comply with the dispute resolution process outlined below in Section XIII.

- i. If the IEC's review of surgical consult denials limits the IEC's ability to perform the other duties herein, then the IEC will advise CDOC and Class Counsel shall confer and revise or reduce the IEC's duties in regard to reviewing the denial of a surgical consult.
 - d. Any class member denied a surgical consult request may submit a new request no more than once every 12-month period.
 - e. If a Class Member is approved for surgery by the qualified transgender healthcare provider, CDOC will take all necessary steps to schedule and effectuate surgical treatment and post-surgical care, including enabling Class Members to follow doctors' orders for pre-surgical preparation and post-surgical recovery.
 - f. If a Class Member is released from CDOC custody prior to receipt of medical care described herein, then the terms of this Consent Decree do not apply and CDOC will not pay for or facilitate such medical procedure(s).
6. Denial of Surgical Consult Prior to GSC Review: If CDOC or the Third-Party Healthcare Administrator denies a Class Member's request for a surgical consult prior to the time the GCS starts their employment at CDOC, the denial shall be provided to the IEC. Any such denials shall include an explanation of the denial of a gender affirming care surgical consultation. If the IEC determines that the denial of surgical consults is not consistent with generally accepted standards in the medical community for transgender women, then the IEC shall notify CDOC and Class Counsel of the issue, who will comply with the dispute resolution process outlined below in Section XIII.
7. Care Not Dependent on Placement/Housing: The provision of any medically necessary treatment shall not be conditioned upon any housing or unit assignment, except as provided herein in Section IV(B)(4)(d) and (e).

8. Tele-health: CDOC may provide Class Members access to a medical provider either in-person, when feasible, or via tele-health services.

B. Mental Health Treatment

1. Generally Accepted Standards in the Community for Transgender Women: CDOC will provide mental health care to Class Members in accordance with generally accepted standards in the medical/mental health community for transgender women, in consultation with the IEC and IMC, including but not to exceed the care covered by Colorado Medicaid.
2. Independent Medical Consultant: CDOC will contract with a mutually agreed independent qualified transgender health care provider (IMC) to consult and provide guidance on CDOC's clinical guidelines and to provide training on transgender women mental healthcare issues.
3. Tele-health: CDOC may provide Class Members access to a mental health provider either in-person, when feasible, or via tele-health services.

VI. SEARCHES

- A. AR 300-06: Unless specified otherwise herein, searches of transgender women will be consistent with AR 300-06, currently or as amended.
 1. Volunteer Pool of Female Correctional Officers: CDOC will create a facility-based volunteer pool of female correctional officers willing to perform strip searches of Class Members in all facilities in which Class Members are housed. CDOC shall also use best efforts to staff the VTU and IU with female correctional officers and female staff who have agreed to perform strip searches of Class Members where possible.

- B. Body Scanner: When possible, practicable, and consistent with AR 300-06 CDOC shall use a body scanner if a female correctional officer is unavailable to complete a strip search on Class Members.
- C. Documentation: Consistent with AR 300-06, if male correctional staff or non-medical staff performs a Cross-Gender Strip Search of a Class Member, the search will be documented in an incident report (115.15(c)). These incident reports will be provided to the IEC upon request.
- D. Six-Month Review: If, at any time after 6 months from entry of the Consent Decree, Class Counsel believes the above approach violates applicable law on a class-wide basis, Class Counsel may invoke the dispute resolution clause pursuant to Section XIII of this Consent Decree, and request that the Court modify the Decree.
- E. Preservation of Arguments: Nothing herein should be construed as Plaintiffs or CDOC agreeing that Cross Gender Strip Searches are or are not constitutional.

VII. PRIVACY

CDOC will provide Class Members private areas to bathe and dress; designated times to bathe separately; appropriate full-length screens to shield themselves from view from other inmates and male staff while using the restroom, bathing, or changing clothes.

VIII. PREA

CDOC shall comply with security and care requirements of the Prison Rape Elimination Act (“PREA”) and any applicable laws. CDOC will not treat transgender women who file PREA complaints less favorably than cisgender women who file similar PREA complaints.

IX. TRAINING

CDOC shall provide the following training regarding the care and treatment of transgender women:

- A. Medical: CDOC will consult with the IMC to develop and implement a training program for CDOC medical staff. Upon entry of the Consent Decree, CDOC and the IMC will begin developing the training curriculum. Upon completion of the training curriculum,

CDOC will implement the training program. Medical providers shall annually receive training on any updates to the relevant clinical standards, and the training will be included in orientation materials for all new medical staff. The Revised Clinical standards developed under this Consent Decree will be available for all medical staff and Class Members.

- B. Mental Health: CDOC will consult with the IMC and the IEC to develop and implement a training program for CDOC mental health staff. Upon entry of the Consent Decree, CDOC, the IMC, and the IEC will begin developing the training curriculum. Upon completion of the training curriculum, CDOC will implement the training program. Mental health providers shall annually receive training on any updates to the relevant clinical standards, and the training will be included in orientation materials for all new mental health staff. Clinical standards will be available for all mental health staff.
- C. Leadership Training and Placement Committee Training: The IEC will develop and provide training to CDOC executive leadership team members regarding the care and treatment of Class Members. Any person that joins the leadership team within the two years of the date of entry of this Consent Decree shall be required to attend the training developed by the IEC.
- D. Staff Training: CDOC shall retain, through an open competitive procurement process, an independent outside specialist who has expertise in addressing the medical/mental health needs of transgender women in a correctional setting, to consult with CDOC on the staff training curriculum. Upon entry of the Consent Decree, CDOC will begin the process to select the independent specialist. Upon completion of the training curriculum, CDOC will implement the training program. This training is mandatory for all CDOC staff, including the Office of the Inspector General, and verification of attendance at such training will be maintained by CDOC. An annual refresher class will also be developed by this independent expert(s) and provided to all staff on an annual basis. The curriculum will also become part of the basic training program for all new employees.
 - 1. IEC's role: If the IEC determines that the consultant or curriculum is not in accordance with acceptable standards of

care of transgender women in correctional settings, the IEC shall notify CDOC and Class Counsel and the dispute resolution process may be invoked.

- E. PREA Training: CDOC shall provide all staff with PREA training on an annual basis consistent with departmental requirements outlined in Administrative Regulation 1500-01.
- F. Costs: CDOC shall pay all costs related to retaining the independent experts under this Consent Decree, including the IEC.

X. CANTEEN:

All transgender women regardless of housing or placement shall be given access to the same canteen items as permitted to cisgender women at the same level of custody.

XI. IDENTIFICATION:

- A. Policy: It shall be CDOC policy that all CDOC personnel shall refer to Class Members with the pronouns and/or honorific that corresponds with their gender identity. Any CDOC personnel that repeatedly or purposefully misgenders a transgender woman may be subject to appropriate corrective and/or disciplinary action.
- B. Name Changes: Legal name changes ordered by a court for a Class Member will be recorded in their official records as their legal name in accordance with CDOC policies. Copies of CDOC policies governing name changes will be available in all facility general libraries.
 - 1. Name Change Information/Fees: CDOC will also endeavor to make copies of the required forms for filing a Petition for Change of Name (Felon) created by the Colorado judiciary, available in facility general libraries. The Class Member will be responsible for all fees incurred for a name change through the courts, including fingerprinting and court fees. The Class Member is also responsible for obtaining the necessary fingerprinting associated with a legal name change.

XII. CERTIFICATION OF CLASS AND NOTICE

A. Class Definitions: Upon entry of this Consent Decree, the class identified in the First Amended Class Action Complaint is hereby certified as:

1. Under C.R.C.P. 23(b)(2): as the persons who have been, are, or will be incarcerated in the CDOC and who have, at any time, identified themselves to CDOC during their incarceration as transgender women. This specifically does not include any individual incarcerated in Youth Offender Services prisons.
2. Under C.R.C.P. 23(b)(3): as all persons who have been or are in CDOC's custody, who currently identify to CDOC as transgender women as of September 1, 2023 and who Class Counsel have determined have alleged a qualifying injury up until September 1, 2023. This specifically does not include any individual incarcerated in Youth Offender Services prisons. ("The Damages Class.")

B. Upon entry of this Consent Decree, the Court hereby approves the appointment of Class Counsel as follows:

Paula Greisen and Scott Medlock of Greisen Medlock, LLC

Lynly Egyes, Shawn Meerkamper, and Dale Melchert of Transgender Law Center

Suneeta Hazra, Arnold & Porter, LLP

C. Motion for Preliminary and Final Approval of Consent Decree and Class Settlement: The parties will work cooperatively to file a joint or unopposed motion requesting that the Court preliminarily approve the Consent Decree, and further requesting that upon such preliminary approval the Court will schedule a hearing pursuant to C.R.C.P. Rule 23(e) (hereinafter referred to as the "Fairness Hearing"), after which the Court will determine whether to grant its final approval of the Consent Decree and certification of the Settlement Class pursuant to C.R.C.P. 23(b)(2) and (3).

D. Damages:

1. Mutually Agreed Mediator: CDOC will retain a mutually agreed mediator (Mediator) to assist and make a final determination on: (a) certain Class Members' damage allocation as defined below; (b) Class Counsel's award of attorneys' fees; and, (c) if agreed to by the parties, resolution of disputes arising regarding this Consent Decree. If the parties do not agree to submit an issue to the Mediator pursuant to Section XIII(D), then the complaining party may submit the issue to the Court as specified in Section XIII(D).
2. Damages: CDOC will pay the amount of \$2,150,000 in monetary damages to the "Damages Class" defined in Section XII(A)(2).
3. Tiers: Damages Class Members will be assigned to one of the three "tiers" of damages as follows:
 - a. Tier 1 – Damage Class Member who has suffered a non-nominal injury as a result of being a transgender woman during her incarceration in CDOC prisons. The sole fact an individual identifies as a transgender woman or the sole fact that CDOC has made transgender related policy changes is insufficient alone to state a qualifying injury for this tier. Class Counsel will alone make the determination as to which individuals will be assigned to this tier based primarily on written documentation, including but not limited to: grievance/kite/letter, etc., or other complaints and other factors. Each "Tier 1" Class Member shall receive the same amount of compensation which shall not be less than \$1,000, but may be more depending on how many total class members are in this tier.
 - b. Tier 2 – Damage Class Member who has suffered an injury of a sexual nature or a serious bodily injury. Class Counsel alone will make the determination of which individuals will be assigned to this tier based primarily on written documentation including but not limited to: grievance/kite/PREA complaint/letter, etc., other complaints and other factors. Each "Tier 2" Class Member shall receive the same amount of compensation which shall not be less than \$5,000, but may be more depending on how many total class members are in this tier.

- c. Tier 3 – Damage Class Member who has suffered multiple injuries of a sexual nature or multiple serious bodily injuries. Class Counsel will alone determine which individuals will be assigned to this tier based primarily on written documentation including but not limited to: grievance/kite/PREA complaint/letter, etc., other complaints and other factors. Class Counsel and counsel for CDOC will submit information to the Mediator based on any specifications the Mediator determines. The Mediator will make the decision about how much each class member in this tier shall be awarded, but it shall be no less than \$10,000. The Mediator’s decision on the award is final and cannot be appealed.
4. Damages Allocation and Incentive Payments:
 - a. Class Counsel shall determine the amount of damages allocated to each Tier (in consultation with the Mediator). Class counsel will determine the Tier to which each Damages class member will be assigned. Class Members will be placed in the highest eligible Tier. Class Members will only receive the amount allocated to the allocated Tier, or, for Tier 3, the amount specified by the Mediator. Payments under Tiers will not cumulative.
 - b. Incentive Payments: The Named Plaintiffs in this lawsuit will receive a \$4,000 payment to compensate them for their time and work in bringing the case and responding to discovery. This payment is in addition to any payment the Named Plaintiffs may receive under a Tier.
 5. Release and Obligations of the Named Plaintiffs:
 - a. Release for Injunctive 23(b)(2) Class: Named Plaintiffs will execute a release on behalf of themselves and all Injunctive (b)(2) Class Members for all claims related to CDOC transgender policies and practices.
 - b. Release for Damages 23(b)(3) Class: Prior to the receipt of any settlement payments, Named Plaintiffs and members of the Damages Class must execute a mutual general release of all claims that were raised or could have been raised in this lawsuit related to their transgender status while in prison

up until September 1, 2023, as well as execute W-9 forms as required by CDOC or the Claims Administrator.

6. Disputing Damage Class Members: CDOC will provide a list to Class Counsel of up to 15 members that it disputes should be in the Damages Class on or before September 29, 2023. Should Class Counsel disagree with CDOC's objections to these Class Members, the final resolution of whether a disputed Class Member will be in the Damages Class will be decided by the Mediator prior to the issuance of the approved Notice to Class Members.
7. Restitution and Other State Debt Checks: Restitution and other state debt checks will be deducted from any payment to Class Members. Specifically, Pursuant to § 24-30-202.4, C.R.S. (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for:
 - a. unpaid child support or child support arrearages;
 - b. unpaid balance of tax, accrued interest and other charges specified in Article 21, Title 39, C.R.S.;
 - c. unpaid loans due to the Student Loan Division of the Department of Higher Education;
 - d. owed amounts required to be paid to the Unemployment Compensation Fund;
 - e. medical bills incurred by plaintiffs paid in part or in full by Medicare or Medicaid; and
 - f. other unpaid debts owing to Colorado or any State Agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the Controller.
8. Time Period for Payment of Damages to Class Members: For Class Members in Tiers I and II, payments will be made no later than 90 days after the entry of the Consent Decree. Payments to Class Members in Tier III shall be made no later than 60 days after the date of the Mediator decision regarding damages for that person.

9. State Claims Board Approval: The parties understand that the amount paid to the Damages Class is contingent on approval by the State Claims Board and the Court after a fairness hearing. Counsel for CDOC will seek State Claims Board approval at either at an emergency hearing or the next State Claims Board meeting on September 20, 2023, whichever occurs earlier, on all issues (at the same time) in the parties proposed Consent Decree that require approval by the State Claims Board.
10. Withdrawal/Revival of Claims:
 - a. By Class Counsel: If CDOC does not obtain the adequate funding or if Full Implementation is not completed by January 2025, then Plaintiffs may request the Court void the injunctive (b)(2) portions of the Consent Decree.
 - i. If Class Members/Class Counsel request the Court void the injunctive portions of this Consent Decree and the Court does void the injunctive portions, all injunctive claims are revived, including claims against dismissed Defendants, and any other claims allowed by law. Class Counsel and Class Members agree that the revival of claims will not revive damages claims released herein.
 - b. By CDOC: If 50% or more of Tier 3 Class Members opt out of the Damages Class, CDOC may elect to withdraw the joint submission of the Motion for Preliminary Approval and proposed settlement and draft Consent Decree.
 - i. In the event that CDOC elects to withdraw from this Consent Decree, all claims, parties, defenses, and remedies available by law are revived.
11. Class Administrator: CDOC will retain a mutually agreed Claims Administrator. The Claims Administrator will provide notice to Class Members as well as other administration through a mutually agreed notice plan, approved by the court, that ensures notice complies with Rule 23.

E. Class Notice:

The parties shall draft a mutually agreed notice to all putative Class Members regarding the proposed Consent Decree. In the event the Parties cannot agree on the language of the Notice, they shall submit the issue to the Court for resolution.

1. Content of Notice: Notice will be court approved and comply with the requirements of C.R.C.P. 23. Class Notice will be disseminated in English and in Spanish.

Based on the list of all Class Members identified by CDOC at the time of the entry of the Consent Decree, Class Counsel shall direct the Claims Administrator to send the applicable Notice to each Class Member. The Notice shall include the notice of the proposed consent decree, the damage tier to which the Class Member is assigned, the objection process, timing and date of fairness hearing, and an opportunity for each Class Member to discuss this information with Class Counsel. The Class Administrator shall provide notice using standard class action notice processes.

2. Class Counsel Meeting with Class Members: CDOC shall coordinate with Class Counsel to provide access to meet and confer with all Class Members in order to discuss this proposed Consent Decree. Upon the request of Class Counsel, such meetings shall be provided by remote access to Class Members.
3. Costs: CDOC will bear the Costs of Class Notice and Administration.

F. Informational Packet:

1. Creation: As part of the Court approved Notice described in Section XII, the parties will draft mutually agreed informational packet about the terms of this Consent Decree.
2. Case Manager or Library: The informational packet will be available for Class Members through their case manager or in the general library. Any transgender woman who enters the custody of the CDOC after the entry of this Consent Decree shall also be given the same access to this informational packet regarding placement and placement criteria, and asked to specify in writing placement preference.

G. CLASS COUNSEL ATTORNEY FEES AND COSTS

1. Mediator Will Decide Fees: After the entry of a Consent Decree, Class Counsel shall submit their request for attorneys' fees and costs for determination to the Mediator, in a manner determined by the Mediator. The Mediator will have sole discretion to determine all fees and costs in this matter, and no party shall have any right of review by any Court of the decision by the Mediator on any grounds. Class Counsel shall be paid fees and costs within 30 days of the decision on this matter by the Mediator.
2. W-9: Class Counsel will submit any appropriate W-9 forms required for any payments to be received by Class Counsel. Payments are subject to the same set-off pursuant to § 24-30-202.4, stated above.

XIII. MISCELLANEOUS PROVISIONS:

A. CDOC Discretion:

Nothing in this Consent Decree precludes the CDOC from removing an individual from one of the designated locations outlined within this Consent Decree due to safety or security needs, for movement necessitated by court or medical transports, or other exigent circumstances.

Nothing in this proposed Consent Decree/agreement precludes the CDOC from transferring inmates pursuant to interstate compact agreements, detainers, or treaty transfers.

The terms of this Consent Decree/agreement do not apply to individuals in the physical custody of jurisdictions other than the CDOC.

After Full Implementation, in the event that there are an inadequate number of inmate class members to populate the minimum number of beds for the designated units or in the event that exigent circumstances necessitate closure of the units, the CDOC will provide notice to Class Counsel as soon as is practicable. In such an event, Class Counsel may pursue the resolution process outlined in Section XIII(D).

B. Staffing or Budget Shortfalls:

1. Contingent on Funding: With the exception of provisions regarding the appointment of the IEC, IMC, Mediator, Class Action Administrator, Class Counsel, damages, attorneys' fees and costs, and class certification, all provisions related to

prospective injunctive relief are contingent on annual legislative budgetary approval of the funds necessary for CDOC to implement the injunctive relief in the Consent Decree and good faith efforts by CDOC to comply within the confines of the specific budget approved by the General Assembly.

2. Budget Requests: CDOC will make appropriate legislative funding requests for the injunctive relief annually, beginning with the 2024-25 budget submission, and every year thereafter during the term of the Consent Decree CDOC will include in its annual legislative funding requests CDOC's estimate of sufficient annual funding for the injunctive relief related to the medical-transgender care specified herein. With the exception of the medical-transgender care, CDOC's annual requests for funding to implement this Consent Decree shall be included as part of the current lines of funding, consistent with CDOC's standard budgeting process. CDOC will work in good faith to obtain annual legislative approval of budget items necessary to fund this Consent Decree.
 - a. If an annual budget request is not approved or is reduced by the General Assembly that will materially impact CDOC's ability to implement or maintain all or any part of the injunctive relief terms specified herein, CDOC will make good faith efforts to comply with the terms of the Consent Decree to the extent it is able to do so within the confines of the reduced funding.
 - b. CDOC will notify Plaintiffs' counsel if any budget request is denied or reduced that will impact CDOC's ability to implement or maintain any part of any injunctive relief specified herein. The parties will work cooperatively in an attempt to create a mutually agreed resolution. In the event that CDOC has any budget requests to the General Assembly that are not approved or reduced and that non-approval or reduction materially impacts its ability to maintain any part of the injunctive relief herein, CDOC will make good faith efforts to continue to implement those parts of the injunctive relief that have received the requested funding.

3. Court Termination: In the event that CDOC contends that it cannot fulfill any part of the any injunctive relief herein as a result of the General Assembly's failure to approve a budget request or reduction in funding, and the parties cannot agree to an appropriate resolution in light of the General Assembly denying or reducing a CDOC budget request, CDOC may petition the court to terminate or modify the injunctive terms of the Consent Decree. The parties agree that the certification of the CRCP Rule 23(b)(2) class and the appointment of Class Counsel shall survive any such modification and shall not be subject to modification.
 4. Modification of Consent Decree Upon Motion: In the event any of the injunctive terms of this Consent Decree are modified or terminated due to budget nonapproval or shortfalls, or due to other legislative requirements imposed on CDOC that prevent CDOC from satisfying its obligations under the Consent Decree, any claim related to the modified injunctive issue may be revived by Plaintiffs and may be brought against any party, including any party that was dismissed as a result of the Consent Decree. CDOC and all parties (including those previously dismissed) will retain any defenses that they would have had at the time of the original filing of this case or that have arisen during its pendency.
 5. Budget Shortfall Is Not Evidence of Bad Faith: The parties expressly recognize that CDOC's inability to achieve Full Implementation of the terms of this Consent Decree by January 2025 or to comply with its terms during the pendency of the Consent Decree, is not by itself evidence of bad faith conduct by CDOC, if CDOC is experiencing a staffing shortage or budgetary issues and is working in good faith to remedy the same.
 6. Delay of Full Implementation: At any time after January 2025, if Full Implementation of the Consent Decree is not achieved as determined by the IEC, Class Counsel may invoke the dispute resolution process and or reinstatement of injunctive claims as specified in Section XIII.
- C. Dismissal of Individually Named Defendants: The parties agree that upon the Court's preliminary approval of the Consent Decree

and settlement classes, Plaintiffs will dismiss individually named defendants without prejudice.

D. Enforcement and Resolution of Disputes:

The parties agree and consent to the jurisdiction of Denver District Court over any proceedings seeking to enforce or modify the terms of this Consent Decree.

The parties further agree that the purpose of this Consent Decree is to provide classwide benefits and that the dispute resolution process should only be invoked if the IEC determines there is a pattern of a failure to implement the terms of this Consent Decree or urgent circumstances require the invocation of the dispute resolution process by CDOC or Class Counsel.

Alternatively, the dispute resolution process may be invoked by Class Counsel when it determines, in good faith, there is a material failure to implement a provision of this Consent Decree on a classwide basis, or as expressly allowed herein. CDOC or Class Counsel agree that the dispute resolution process is not intended as a process to address individual, non-urgent circumstances of individual Class Members. In addition, at any time during the pendency of this Consent Decree that the annual requests to the General Assembly by CDOC for the medical and mental health related transgender care is not approved in full and such funding deficit impacts the medical and mental health related transgender care provided, then Section XIII (B)(4) provisions on budget shortfalls shall apply. Should Plaintiffs' claim on medical and mental healthcare be revived, Class Counsel may file a forthwith motion for judgement as a matter of law that CDOC's non approval of transgender medical and mental healthcare is a violation of law. CDOC retains all defenses available by law.

Nothing herein excepts any Class Member from using or exhausting their administrative grievances. Class Members must follow CDOC grievance procedures to address individual concerns. Class Members grieving their placement/housing must mark the grievance as an ADA issue and use the ADA Grievance process to address individual concerns.

1. Annual Report:

Annually, after entry of this Consent Decree, the IEC shall conduct a review regarding CDOC's implementation of this Consent Decree. That report shall cover the terms of this Consent Decree and include a recommendation regarding whether Full Implementation has been accomplished, or recommendations to achieve such implementation. If either party disagrees with any recommendation, the parties shall engage in the dispute resolution process outlined below, with the participation of the IEC. If the parties cannot reach a resolution, the parties may petition the court for a determination, but the recommendation by the IEC must be followed unless it is deemed clearly erroneous by the Court.

After the IEC determines that Full Implementation of this Consent Decree has been achieved, the IEC shall thereafter conduct a review of the status of continued compliance for a four-year period. On an annual basis, the IEC shall prepare a report regarding the status of ongoing compliance and make any recommendations the IEC determines are appropriate. Those recommendations shall be followed unless they are determined by a Court to be clearly erroneous. Nothing herein provides the IEC the authority to order CDOC to undertake measure not expressly agreed to herein.

Alternatively, if the IEC has not found the CDOC failed to implement any portion of this Consent Decree, either expressly or by omission in their annual report, such finding is entitled to presumption of accuracy by the Court.

2. Informal Dispute Resolution:

If any dispute exists relating to the performance or interpretation of this Consent Decree, the party initiating the dispute shall notify the other party in writing, describing the dispute and clearly identifying that they are invoking the dispute resolution process.

The other party shall respond in writing to such notice within thirty (30) days of receipt of the notice.

Within fourteen (14) days of receipt of the response described in the previous paragraph, counsel for both parties shall meet and confer by telephone or in person and attempt to resolve the issue informally.

In the event that Class Counsel provides notice to defense counsel of an issue posing an immediate serious risk to health and/or safety that requires resolution in a shorter timeframe, Class Counsel shall give written notification to CDOC as soon as possible explaining the urgency of the situation and engage in good-faith efforts to resolve the matter prior to seeking court intervention.

3. Failure of Informal Resolution:

Only if the parties are unable to resolve the dispute through the informal process described herein may the dispute be submitted for judicial resolution. Alternatively, the complaining party may submit the issue to the Mediator for their determination only if the parties agree to resolution of the issue by the Mediator. If submitted by mutual agreement to the Mediator, any decision made by the Mediator will be final, and not subject to appeal, by any party.

In the event that the Mediator or the Court finds that a party has not complied with a material provision of the Consent Decree, the Mediator and/or the Court shall have the power to order specific performance of the provision and/or any other relief the Court deems necessary to ensure compliance.

- E. Implementation: It is the goal of the parties that CDOC will fully implement the terms of this agreement by January 2025. The parties expressly recognize that CDOC's inability to fully implement the terms of this agreement by January 2025, is not by itself evidence of bad faith conduct by CDOC if CDOC is experiencing a significant staffing shortage, or budgetary issues, and is working in good faith to remedy that staffing shortage or working in good faith to remedy any budgeting issues.
- F. Changes to the Consent Decree: The parties recognize that circumstances could arise requiring a change or cessation in some of the terms of this Consent Decree. The parties may mutually agree to changes to this Consent Decree at any time. If the parties are able to agree on a necessary change to these protocols, they shall present any such changes to the Court for approval by joint motion. Should the parties be unable to agree, they may seek resolution from the Court in accordance with Section XIII(D).
- G. Termination: This Consent Decree will remain in full force and effect until the earliest of the following occur: (1) the parties mutually agree and stipulate to the termination of the Order; (2) the Court issues an order to revise the terms herein or terminates this Decree; or (3) four years after Full Implementation. If the Court revises only certain terms for any reason, the remaining terms of this Consent Decree shall remain in effect.
- H. Open Records Act and Other Releases Provided By Law: Named Plaintiffs on behalf of themselves and the Class Members understand and agree that, upon a valid request made pursuant to

DATE

Lavenya Karpierz, individually and on behalf of all
Class Members

DATE

Cupcake Rivers, individually and on behalf of all
Class Members

FOR THE COLORADO DEPARTMENT OF CORRECTIONS

DATE

Andre Stancil (or his designee),
Executive Director

FOR THE COLORADO DEPARTMENT OF PERSONNEL & ADMINISTRATION:

DATE

Anthony Gherardini (or designee)
Executive Director

FOR THE STATE OF COLORADO

DATE

ROBERT JAROS, CPA, MBA, JD (or designee)
State Controller

ALL CONTRACTS REQUIRE APPROVAL BY THE COLORADO STATE CONTROLLER:

C.R.S. § 24-30-202 require the Colorado State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate.

[SIGNATURES CONTINUED ON NEXT PAGE]

APPROVED AS TO FORM AND AS TO OBLIGATIONS OF COUNSEL

PHILIP J. WEISER
Attorney General

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Scott Medlock
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Randolph Maul, M.D. and Sarah Butler, M.D.*

*Counsel of Record

Entered this 26th day of March 2024.

BY THE COURT:



Jill D. Dorancy
Denver District Court Judge