U.S. Department of Justice
National Institute of Corrections

A Quick Guide for LGBTI Policy Development for **Adult Prisons and Jails**

Message from the Director

Sound correctional policies serve as the foundation for the work we do at the National Institute of Corrections. Policies provide guidance, clarity, and instruction at all levels—whether at a specific correctional facility or part of a larger system. Effective policies, when adhered to, can help protect agencies from litigation. Developing policies can be complicated, requiring a deliberate and thoughtful approach.

To guide agencies in this process, NIC is offering *A Policy Quick Guide for Adult Prisons and Jails*. This resource helps agencies examine their current policies concerning lesbian, gay, bisexual, transgender, and intersex (LGBTI) adult inmates. It is a tool to aid you in beginning to think about and address issues particular to the LGBTI population. However, it is not intended to answer every question you may have. The Quick Guide will help you identify areas of existing policy in your agency that could be revised to address the LGBTI population and aid in the writing of new policy that is consistent with changes in federal law and compliance with Prison Rape Elimination Act standards.

Additional resources, including examples of policies from other jurisdictions, are available at www.nicic.gov/LGBTI.

Morris Thigpen, Director

This Quick Guide will help agencies and facilities develop a comprehensive response to working with lesbian, gay, bisexual, transgender and intersex (LGBTI) inmates. It is not meant to provide an answer to every question or an in-depth discussion of all issues that agencies face or that the LGBTI population faces while in custody. It provides an overview of the important issues that agencies should consider when working to house and treat LGBTI inmates in a way that is safe and consistent with an agency's mission, values, and security guidelines.

Agencies wishing to examine and improve their response to the management of LGBTI inmates may apply for limited, short-term technical assistance from the National Institute of Corrections to aid their efforts. Please visit www.nicic.gov/TA for more information.

This Quick Guide is organized chronologically according to the decisions an agency will have to make before and at the point when an LGBTI individual enters the system. These areas of focus include:

- Assessment of Agency Culture (as relates to LGBTI individuals)
- Assessment of Agency Staff and Administration Knowledge and Attitudes
- Examination of Current Relevant Agency Norms
- Development and Implementation Mechanisms
- Development of Awareness of Current Legal Responsibilities
- Foundational Issues
- Intake Screening/Risk Assessment
- Classification and Housing Placement
- Medical and Mental Health Care
- Information Management
- Group Inmate Management
- Specific Safety and Privacy Concerns for Transgender and Intersex Inmates
- Staff, Volunteer, and Contractor Training Requirements

Before continuing, please review the National Institute of Corrections LGBTI Glossary of Terms for a list of the relevant terminology and definitions used in this Quick Guide. Additionally, please note that this guide references Prison Rape Elimination Act (PREA) standards for prisons and jails throughout.

National Institute of Corrections

Assess Agency/Facility Culture

Before developing policy and training for LGBTI populations, it is important first to assess the agency or facility culture. The following three general areas of assessment will be very helpful in both the development and implementation of new or expanded policies governing the treatment of LGBTI inmates:

- Analyze the experiences, needs, and risks that LGBTI inmates face in their day-to-day lives within the agency. Where do they face challenges? What practices do they cite as particularly beneficial or harmful?
- Assess staff and administration attitudes and knowledge about LGBTI issues. Is this a topic that staff and administration discuss freely in the agency's facilities? Do staff and administration see a need to address this topic at the agency or facility level?
- Explore what informal or formal practices staff engage in when working with LGBTI populations and what (if any) policies or staff training the agency has on this topic.

Once armed with this information, the agency will have a clearer picture of the problems and practices that need to be addressed in policy and training development. The sections that follow will explore each of these areas in more detail.

Experiences, Needs, and Risks of LGBTI Inmates and Agency Staff

A lack of knowledge about LGBTI individuals coupled with little agency guidance about how to work with this population has caused significant problems for LGBTI people in confinement settings. In fact, LGBTI individuals who have contact with the criminal justice system often experience a number of serious problems starting at arrest and continuing through release. Recent studies show that these problems include violent and demeaning contact with police and other correctional officials, inappropriate classification and housing, unnecessary and punitive isolation, lack of access to necessary medical and mental health care, pervasive harassment, and physical and sexual assault from other inmates and staff. A more detailed discussion of these and other studies documenting the treatment of LGBTI people in confinement is available on the National Institute of Corrections website at www.nicic.gov/LGBTI.

It is important to be aware of the common problems and risks that LGBTI inmates face generally in criminal justice. It will be even more helpful to know about the experiences, risks, and needs of LGBTI individuals in the facility. This will help in developing policy that is specifically applicable to individual agencies. Although many agencies do not collect information on an inmate's sexual orientation or gender identity at intake, which makes it difficult to do the same type of data analysis that an agency may be able to do for other inmate populations, there are other ways to collect information, including:

- Reviewing grievances filed by inmates.
- Reviewing any complaints made to an ombudsman office.
- Reaching out to local LGBTI service providers working with individuals who were recently released from the facility. Discussions with the service providers may provide insight into the experiences of the individuals in the agency, and released offenders may complete short, anonymous post-release surveys.
- Surveying a random small group of inmates and asking them for their observations on the treatment of LGBTI inmates in the agency. Larger facilities may even be able to conduct anonymous surveys through medical staff treating current inmates who have identified themselves as LGBTI.
- Conducting focus groups of randomly selected line staff and inmates on their observations of the experiences of LGBTI inmates in their facility.
- Holding facility roundtables to request staff contributions to the agency's development of policy and practice. This will also increase staff buy-in for any policies developed or changes made to agency- or facility-level practice.

The information collected in the staff knowledge and attitude assessment discussed in the section titled Current Knowledge and Attitudes of Staff and Administration Relating to Sexual Orientation and Gender Identity and Expression may also contain information on the experiences of both LGBTI inmates and agency staff.

Current Knowledge and Attitudes of Staff and Administration Relating to Sexual Orientation and Gender Identity and Expression

Assessing an agency's culture and experience requires an understanding of the skills, knowledge, and comfort of agency staff and administration about working with LGBTI inmates. For smaller agencies, administrators may already have a good sense of agency culture based on conversations at staff meetings or discussions with management. For larger agencies, getting this information will require a larger and more deliberate effort. There are a variety of methods available. The focus groups and roundtables mentioned under the section titled Experiences, Needs, and Risks of LGBTI Inmates and Agency Staff could easily be expanded to include a discussion of staff attitudes as well as inmate experiences. Additionally, an anonymous, online ten-minute survey is an effective way to reach a high number of staff. Once more than half of the agency surveys are complete, begin to analyze staff feedback to determine where the agency may need to provide training or how current attitudes may affect implementation efforts.

The general areas to consider in these feedback mechanisms fall under the following areas:

- Knowledge
  - Familiarity with LGBTI terms
  - Awareness of agency policies and trainings on LGBTI inmates
  - Awareness off federal, state, and local nondiscrimination laws
- Attitudes and beliefs

    - Attitudes and beliefs related to sexual orientation and gender identity
    - Attitudes and beliefs concerning LGBTI people in general
- Comfort
    - Ease with working with LGBTI people
    - Ease with interacting with LGBTI people outside of the workplace
- Experiences
    - Personal interactions with LGBTI inmates
    - Observations of other's interactions with LGBTI inmates
- Workplace
    - Overall culture
    - Availability of supervision
    - Training

Current Agency/Facility Norms, Informal Procedures, Written Policies, and Training Relating to LGBTI Inmates

By examining written policies, informal procedures, facility norms, and training opportunities related to LGBTI inmates, administrators can establish how the agency currently serves LGBTI inmates daily. Below are some examples of the types of policies and areas of practice to examine:

- Nondiscrimination policy
- Intake and risk assessment
- Classification
- Operational Issues Specific to transgender and intersex inmates
- Communication
- Medical and mental health care
- Privacy and safety

The agency may also want to consider evaluating any existing training relevant to these areas, reviewing individual LGBTI inmate files and records, observing staff interactions with LGBTI inmates, and making informal inquiries to staff. The findings from the survey on staff knowledge and attitudes may also be informative when attempting to establish current practice in this area.

Establish Development and Implementation Mechanisms

Once an agency decides to develop formal policy and procedures related to LGBTI inmates, there will be two decisions to make.

1. Who will be involved in the policy development? The agency may want to consider engaging representatives from a variety of areas in the agency, including administration, medical, mental health, programming/treatment and line staff. The agency

should also consider engaging the LGBTI community in the initiative. Finding appropriate individuals to engage can be as easy as doing a quick online search of organizations in the local area. LGBTI community representatives will be useful sources of knowledge on the LGBTI population, and they may have important insights into policy considerations.

2. Will the agency develop one policy for LGBTI-specific values and operations, or will the agency embed LGBTI-issues into multiple policies? As with many other topics addressed in policy, there is no right answer here. The agency should make this decision based on what will be most operationally effective for the organization. Policy should provide clear guidance to staff and administration. Those developing policy should consider how the agency will train staff on the policy, and how the agency will evaluate the implementation of policy.

Develop Awareness of Current Legal Responsibilities to LGBTI Inmates

LGBTI individuals in jails, prisons, and juvenile facilities, like all other incarcerated people, have specific civil rights under the U. S. Constitution, state and federal statutes, and Prison Rape Elimination Act (PREA) standards. By understanding how these rights apply to LGBTI people, criminal justice professionals can gain a greater understanding of how to develop policies and procedures that provide for the safety of LGBTI individuals without violating their civil rights. In addition, having sound LGBTI policies and practices may help mitigate the risk of liability to an agency and its staff.

A range of federal constitutional provisions require facilities to ensure all individuals in their custody, including LGBTI individuals, are free from cruel and unusual punishment (or for juveniles and pre-trial detainees, free from unreasonable conditions of confinement), have equal access to programs and facilities, and have access to necessary medical care to treat serious medical conditions. One of the most important duties of correctional facilities is to take reasonable measures to guarantee the safety of inmates from assault at the hands of other inmates and staff. In addition, the Constitution guarantees individuals the right to privacy and freedom of religion and expression. Although the Constitution limits these rights for those who are incarcerated, none are entirely extinguished and many have important and particular relevance for LGBTI people.

In addition, agencies also have the responsibility to manage and ensure the security of LGBTI populations under PREA standards. These standards include several specific protections for LGBTI individuals, such as consideration of LGBTI status

in determining risk for sexual victimization, limitations on cross-gender searches, and special considerations for transgender and intersex inmates. Agencies should pay close attention to these standards when developing policies for LGBTI inmates to ensure compliance with PREA. Further discussion of the law in this area and an agency's corresponding legal responsibilities are available on the National Institute of Corrections website at www.nicic.gov/LGBTI.

Foundational Issues

Before an agency makes operational decisions concerning the supervision and treatment of the LGBTI population, the agency must make two basic policy decisions concerning its approach:

1. Respect. The LGBTI population is one that often encounters biases and negativity when they are honest about their self-identification or status as LGBTI or when they present themselves in a gender non-conforming manner. Although most agencies have staff codes of conduct requiring staff to treat facility populations with respect, the agency should consider re-emphasizing this policy with regard to the LGBTI population or developing more specific guidance for staff regarding their interactions with LGBTI inmates that specify the use of respectful language and avoidance of demeaning language, including common slurs.
2. Pronoun Usage. The agency should also consider making a decision concerning whether to respect the gender identification of transgender individuals with regard to how they are addressed. For example, will the agency instruct staff to address a transgender woman (an anatomical male who self-identifies as female) as Ms., or will the agency instruct staff to address the individual as Mr.? Will the agency instruct staff to use the pronoun associated with the individual's anatomical sex (him) or gender identity (her)? Will the agency instruct staff to use the name listed on the individual's records (likely to be consistent with the anatomical sex) or the name the individual requests (likely to be consistent with the gender identity)? Agency guidance on this topic can resolve confusion and alleviate discomfort among staff. Note that best practice in this area supports the agency respecting the gender identity of transgender individuals to the extent possible, while taking appropriate security concerns into consideration.

Intake Screening/ Risk Assessment

This guide begins with intake and assessment not only because it is likely the first place at which a facility will interact with an LGBTI offender (or any offender), but also because it is often the first place where an agency can begin to identify those

offenders who may be unusually vulnerable and take steps to collect information and start the process to make appropriate use of that information to ensure offender safety. At intake, the objective is to mitigate the safety concerns and risks of the LGBTI and gender non-conforming population. Questions that an agency should consider include the following.

Sexual Orientation and Gender Identity

Should the agency ask inmates directly about their sexual orientation or gender identity? The PREA standards require that an agency attempt to collect information on a number of issues, including sexual orientation and gender identity,[1] because data shows that inmates with a sexual orientation other than heterosexual are more likely to be sexually abused while in confinement.[2] Research also shows that transgender individuals suffer much higher rates of sexual abuse in confinement than other populations.[3] If the agency decides to ask inmates directly about their sexual orientation or gender identity, the agency must also determine:

- Who will ask? How will the identity or position of the individual asking impact the inmate's likelihood of answering the question(s) honestly?
- When should the question(s) be asked? How can it best be integrated into intake? How will the identity of the person asking the question(s) impact when the question(s) is asked? Agencies should recognize that these questions could lead to emotionally difficult disclosures and should therefore consider conducting this portion of the process at a time when some privacy is possible, both to encourage honesty and to ensure confidentiality.
- How should the question(s) be asked? What terminology should be used? Should context or justification be provided?
- If an inmate does not self-identify as LGBTI, but is presenting himself or herself in a gender non-conforming manner (e.g., a male inmate wearing conventionally women's clothing or make-up), should the agency collect this information for future use in classification and housing placement?
- Where and how should information collected be recorded?

Once an individual expresses an identification as lesbian, gay, bisexual, transgender, or intersex (or is otherwise identified as gender non-conforming), the agency should consider whether there should be any follow-up questions asked. The PREA Standards require agencies to gather information on past sexual victimization and abusive behavior.[4] Data show that LGBTI individuals may be more likely to be abused

1 PREA Standard 115.41 requires that intake screening consider, at a minimum, a number of criteria, including "Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender non-conforming"

2 BJS Special Report: Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09

3 V. Jenness et al., Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault, Center for Evidence-Based Corrections, 2009.

4 PREA Standard 115.41 requires that intake screening consider, at a minimum, a number of criteria, including "Whether the inmate has prior convictions for sex offenses against an adult or child" and "Whether the inmate has previously experienced sexual victimization"

physically and sexually throughout their lifetimes.[5] Consider these questions:

- Should the agency consider following up inmates' expressed self-identification as LGBTI with further questions about their possible history of abuse or questions about the inmates' own feelings of vulnerability (which is also required by PREA standards[6])?
- For transgender or intersex individuals, should there be follow-up questions about the medical treatments they have received or are receiving?

Medical and Mental Health Assessment

Once an individual expresses a self-identification as LGBTI, an agency must determine in what instances an inmate should be referred to medical or mental health care. Intersex and transgender inmates each have their own special needs.

Intersex individuals will probably be listed as such in their medical files. Agencies should refer them to medical staff to ensure they receive appropriate treatment.

Transgender individuals may fall into a number of different categories with regard to their medical status. They may have been diagnosed with gender identity disorder (GID) previously and may have received hormonal or other treatments related to that diagnosis through a medical practitioner. In these instances, the agency will want to contact the inmate's doctor and determine the most appropriate medical options, if possible. Transgender individuals may not have been diagnosed with GID by a medical practitioner, but they may have self-administered hormonal treatments acquired through non-medical channels. These individuals should be referred to medical staff to be evaluated by a practitioner and to develop an appropriate treatment plan.

Finally, there may be transgender individuals who have not been diagnosed with GID and who have not received medical treatment, through a practitioner or otherwise. These individuals should be referred to medical staff for evaluation and, if appropriate, the development of a treatment plan. See the section titled Medical and Mental Health Care for greater exploration of medical and mental health issues.

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5 Rothman, Emily F. et al. "The Prevalence of Sexual Assault Against People Who Identify as Gay, Lesbian, or Bisexual in the United States: A Systematic Review." Trauma Violence Abuse, April 2011; vol. 12, 2: pp. 55-66., first published on January 19, 2011; Substance Abuse and Mental Health Services Administration. Top Health Issues for LGBT Populations Information & Resource Kit. HHS Publication No.(SMA) 12-4684. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2012.

6 PREA Standard 115.41 requires that intake screening consider, at a minimum, a number of criteria, including "The inmate's own perception of vulnerability,"

According to the Substance Abuse and Mental Health Services Administration,[7] LGBT individuals may be more vulnerable to certain types of health concerns than other populations. The agency may want to consider referring LGBT inmates to medical staff to ensure the medical and mental health needs of each individual inmate are appropriately addressed.

Agencies should consider offering mental health screening to all inmates entering into the system if this is not part of current practice. Agencies already offering mental health screening should consider reviewing screening processes to ensure that they identify inmates who have suffered past trauma or are questioning their sexual orientation or gender identity, which will be particularly relevant to the LGBTI population.

Searches

The agency should consider developing guidelines for staff to follow in these two situations: when an inmate self-identifies as transgender and when an inmate's genital status is ambiguous.

In the event that there is an individual going through intake who self-identifies as transgender or self-identifies with a gender that seems not to match their anatomical sex, the agency may want to consider allowing the individual to state his or her preference for the gender of the staff to conduct any searches, or state explicitly in policy that searches are to be conducted by staff of the same anatomical sex or the same gender as the inmate to be searched. See the section titled Specific Safety and Privacy Concerns for Transgender and Intersex Inmates, subsection Searches, for PREA standards requirements for cross-gender searches.
In the event that an individual's genital status is ambiguous, the agency should consider providing clear guidelines to staff regarding the procedures to follow. PREA standards prohibit searching or physically examining a transgender or intersex inmate for the sole purpose of determining the inmate's genital status, and encourage agencies to determine genital status (if unknown) through conversations with the inmate, a review of medical records or, if necessary, through a broader medical examination conducted in private by a medical practitioner.[8] The agency may want to specify the records staff should check, as well as the questions staff should ask of inmates in these situations.

If staff are unable to determine the genital status through medical records or conversations with the inmate, the agency should provide guidelines to staff around how to refer the inmate to medical care, and provide medical practitioners instructions on

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7 Substance Abuse and Mental Health Services Administration. Top Health Issues for LGBT Populations Information & Resource Kit. HHS Publication No.(SMA) 12-4684. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2012.

8 PREA Standard 115.15 (e)

how to provide the inmate a "broader medical exam" that also establishes the genital status of the inmate. Once the information is collected, the agency should determine how best to use it to guide decision-making in areas such as classification and housing placement (See the section titled Housing and Classification Placement.) and medical and mental health care (See the section titled Medical and Mental Health Care.) As the agency makes these decisions, clear guidelines should be set regarding the dissemination of information. Many inmates will consider their sexual orientation and gender identity to be private information, and the widespread knowledge of this information could impact the safety and well-being of LGBTI inmates. Providing guidance around who should receive the information and how the information should be communicated will prevent confusion or frustration among staff while protecting the rights and safety of inmates.

Some agencies may be concerned about inmates manipulating the system if agency policy is to provide for certain operational accommodations in instances where an inmate expresses a self-identification as transgender. Specifically, there is a concern about heterosexual and gender-conforming inmates expressing a self-identification as transgender for a temporary period of time for the purpose of acquiring clothing of the opposite sex, or accessing programmatic accommodations only for the purposes of interacting with inmates of the opposite sex. While this concern is understandable, it should not be addressed in such a way that subjects transgender inmates to discrimination or mental and emotional hardship. The agency should consider ways to determine appropriate controls on transgender accommodations so as to minimize the opportunities for manipulation while respecting, to the extent possible, the status of transgender inmates.

Classification and Housing Placement

Once the agency collects the appropriate information from individuals during intake, the agency must determine how that information will affect classification and housing placement decisions.

The PREA Standards require individual placement decisions that prioritize the physical safety and emotional well-being of the inmates.[9] This practice applies to LGBTI inmates, specifically by:

1. Not automatically placing LGBTI inmates in isolation or segregation
2. Not placing LGBTI inmates in LGBTI-specific units or assigning them special classifications that are used only for the LGBTI population. Please note that The PREA Standards prohibit placing 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

9 PREA Standard 115.42 (b)

facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates."[10]

Consider the host of issues specific to LGBTI inmates when making housing placement decisions.

Isolating to Protect

Just as agencies are discouraged from isolating LGBTI inmates automatically from the general population, agencies are also discouraged from isolating vulnerable inmates (which includes many LGBTI inmates) as a means of providing protection, except in extreme circumstances. The PREA Standards require the following with regard to protective custody in standard 115.43:

> (a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.
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> (b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:
>
> (1) The opportunities that have been limited;
>
> (2) The duration of the limitation; and
>
> (3) The reasons for such limitations.
>
> (c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.
>
> (d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:
>
> (1) The basis for the facility's concern for the inmate's safety; and
>
> (2) The reason why no alternative means of separation can be arranged.
>
> (e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.

Housing Options

When deciding where to house LGBTI inmates, there are a number of factors to

10 PREA Standard 115.42 (g)

consider, including the appropriate facility, the appropriate unit within that facility, the appropriate room (e.g., single vs. double) and, if applicable, the appropriate cellmate within that facility. Agencies should also consider in advance what to do in the event that a facility is beyond capacity, which might necessitate unusual group housing arrangements.

Placement of Transgender and Intersex Inmates

The placement of transgender and intersex inmates is complex. The PREA Standards require that "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 inmates' health and safety, and whether the placement would present management or security problems."[11] The standards also require agencies to consider a transgender or intersex inmate's own views with respect to his or her safety."[12]

Intersex individuals may or may not self-identify with the gender associated with their genitalia. Because intersex individuals are born with characteristics of both sexes (either chromosomally or anatomically), their gender identities may or may not match their anatomical genitalia. Some intersex individuals may not identify with either gender. As such, the presentation of intersex individuals can range from what many would term "gender-conforming" (i.e., their gender-identity appears to match their anatomy) to gender non-conforming or genderless. Therefore, intersex inmates may present varying challenges to the system with regard to housing placement and classification.

Transgender individuals do not self-identify with the gender associated with their genitalia, and as such they may present themselves (through other physical characteristics, clothing, or mannerisms) as the gender with which they identify. For example, a transgender woman (an individual who is anatomically male but self-identifies as female) may have breasts, more feminine features or feminine body-fat distribution due to hormone therapy or plastic surgery. As a result, many transgender women will be more physically and sexually vulnerable if placed in a male facility. However, if the transgender woman has not undergone sex reassignment surgery (as most transgendered individuals have not, either due to a lack of desire or an inability due to the expensive nature of the surgery), she will probably have fully functioning male genitalia. Placing her in a female facility could therefore be a liability on a number of levels. This issue also applies to transgender males (individuals who are anatomically female but self-identify as male). Best practice with this population encourages agencies to respect the gender identity of individuals to the extent possible within security guidelines and to make decisions based on the individual in question rather than based on blanket policies. Regardless of the agency's choice, enhanced supervision will be required. Current policies in the field take the following approaches:

11 PREA standard 115.42 (c)

12 PREA standard 115.42 (d)

i. Identifying when and how questions concerning sexual or gender identity shall be asked (i.e., only for the purpose of making intake or housing assignments, in a respectful manner, with the intent of preserving confidentiality).
ii. Specifying how to house inmates who are intersex, self-identify as transgender, or who present themselves as gender non-conforming during the intake process (i.e., in a single cell in protective custody, etc.).
iii. Specifying how to address inmates who are intersex or who identify as transgender (i.e., respecting their gender identity in the pronoun and other forms of address, calling them by their last names with the addition of "Inmate," avoiding gender-specific identifiers like miss or mister, etc.).
iv. Specifying what should be recorded and where.
v. Defining the existence and purpose of a housing committee designed specifically to assess, classify, and determine housing for intersex or transgender individuals. Policy may address the following:

a. Participation by specified individuals in the committee, including medical and mental health practitioners and representatives from the transgender community.
b. The committee's responsibility to take certain actions, including a review of the inmate's records and an interview with the inmate to determine his or her own preferences and perceptions of vulnerability.
c. Whether the committee has the authority to make decisions regarding housing placement according to gender or by genitalia.
d. Processes through which a decision is reached by the committee, and how (or whether) that decision requires approval by some external authority.
e. Defined timelines allowed for the decision-making process.

Once an intersex or transgender individual has been classified and placed in housing, the agency may want to consider having some process by which that classification and housing placement will be re-assessed. Some potential processes are:

- Automatic re-assessment after the first 6 months. (See the PREA standards[13] for requirements around re-assessment.)
- Re-assessment by request of the inmate.
- Re-assessment following a report or incident of sexual or physical abuse.

Medical and Mental Health Care

The issue of medical and mental health care for the LGBTI population is both extremely important and controversial, especially for the transgender population. This section covers issues to consider across the various populations.

13 PREA Standard 115.41 (f); 115.42 (d)

Intersex Individuals

Intersex individuals are likely to have been diagnosed as such prior to their incarceration, and will probably have medical records reflecting any necessary treatment, ongoing or otherwise. Agencies should be aware that medical treatment of this condition has shifted. In the past, parents were encouraged to select a gender for intersex children as early as possible and move forward with any necessary surgery to provide them with clarity as they mature to adulthood. Many experts now encourage parents to delay any definitive surgery, if possible, until the children are old enough to contribute to the conversation.[14] This shift is due to past circumstances in which children upon reaching maturity felt that their parents had not made the appropriate decision on their behalf.

Transgender Individuals

Transgender individuals have a unique set of issues that must be addressed.

Gender IdentityDisorder

Some individuals who self-identify as transgender fit the current recognized diagnosis for gender identity disorder (GID). GID is classified as a medical disorder by the American Psychiatric Association in the Diagnostic and Statistical Manual of Medical Disorders IV (DSM IV), published in 1994 and revised in 2000.[15] As such, courts have determined in a number of lawsuits[16] that state correctional agencies have an obligation to provide the medical treatment deemed appropriate by qualified medical professionals for this medical disorder, as they would for any other.

To fit the diagnosis of GID, a transgender individual must experience "intense, persistent gender dysphoria," or find their transgender feelings to be so "incongruent with their birth sex or with the gender role associated with that sex"[17] that it is distressing or disabling. Agencies should ensure that all individuals self-identifying as transgender or who experience intense, gender-related distress see an appropriately qualified medical practitioner to establish a treatment plan. It is important to note, however, that many transgender individuals do not fit this diagnosis due to a lack of distress, and therefore an agency must make a decision about the role that a GID

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14 Allen L. Disorders of sexual development. Obstet Gynecol Clin North Am. 2009;36:25-45. ;
Donohoue PA. Disorders of sex development (intersex). In: Kliegman RM, Behrman RE, Jenson HB, Stanton BF, eds. Nelson Textbook of Pediatrics. 19th ed. Philadelphia, Pa: Saunders Elsevier; 2011:chap 582. [Retrieved from http://health.nytimes.com/health/guides/disease/intersex/overview.html]

15 The next edition is due for publication in May, 2013.

16 See www.nicic.gov/LGBTI for further discussion of case law in this area.

17 American Psychological Association. (2011). Answers to Your Questions about Transgender People, Gender Identity, and Gender Expression. Washington, DC: Author, [Retrieved from http://www.apa.org/topics/sexuality/transgender.pdf]

diagnosis should play in both the medical treatment of a transgender individual and in the operational choices of the agency. Consider the following:

- What medical treatments will the agency make available following intake of an inmate previously diagnosed with GID?
- What medical treatments will the agency make available following the diagnosis of an inmate already in custody?
- Will the agency's policy distinguish between those inmates receiving treatment prior to incarceration and those who would be initiating treatment in custody? Agencies should thoroughly familiarize themselves with case law in this area before making policy decisions that may create a liability for the agency.
- Will the agency require a diagnosis of GID for any special operational considerations determined to be appropriate for transgender inmates, including issues related to clothing, grooming, supervision, or housing placement?

Experience and Qualifications of Medical Practitioners Who Treat Transgender Inmates

If an individual going through the intake process self-identifies as transgender, it is important for the agency to provide him or her with a medical practitioner who is qualified to examine, diagnose, and prescribe appropriate treatments. With regard to mental health, the World Professional Association for Transgender Health (WPATH) recommends the following minimum credentials for mental health professionals who assess, refer, and offer therapy to adults with gender dysphoria[18]:

i. A master's degree or its equivalent in a clinical behavioral science field. This degree, or a more advanced one, should be granted by an institution accredited by the appropriate national or regional accrediting board. The mental health professional should have documented credentials from a relevant licensing board or equivalent for that country.

ii. Competence in using the Diagnostic Statistical Manual of Mental Disorders and/or the International Classification of Diseases for diagnostic purposes.

iii. Ability to recognize and diagnose co-existing mental health concerns and to distinguish these from gender dysphoria.

iv. Documented supervised training and competence in psychotherapy or counseling.

v. Knowledge about gender non-conforming identities expressions, and the assessment and treatment of gender dysphoria.

vi. Continuing education in the assessment and treatment of gender dysphoria. This may include attending relevant professional meetings, workshops, or seminars; obtaining supervision from a mental health professional with relevant experience; or participating in research related to gender nonconformity and gender dysphoria.

It is also important that an agency not substantially delay treatment or operational steps following intake until an appropriately qualified medical practitioner is found. If easy access to a practitioner with experience in this area is not available, the agency should

18 World Professional Association for Transgender Health. Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, Seventh Version, 2001. pg. 22

consider identifying a practitioner or arranging for a practitioner internal to the agency to be educated appropriately. The WPATH Standards of Care goes on to recommend that "mental health professionals who are new to the field (irrespective of their level of training and other experience) should work under the supervision of a mental health professional with established competence in the assessment and treatment of gender dysphoria."[19]

Medical Treatment

According to WPATH, there are four medically-accepted treatment options for Gender Identity Disorder:

1. Gender expression: Use of clothing, grooming, or living full- or part-time in the gender identity with which the individual identifies.
2. Hormone therapy: Use of hormones to create or enhance feminine or masculine physical characteristics.
   a. Hormone therapy requires "(1)persistent, well-documented gender dysphoria; (2) capacity to make a fully informed decision and to consent to treatment; (3) age of majority in a given country…; [and] (4) If significant medical or mental health concerns or present, they must be reasonably well-controlled."[20]
   b. Hormone therapy in female-to-male patients will result in physical changes to the individual, including "deepened voice, clitoral enlargement (variable), growth in facial and body hair, cessation of menses, atrophy of breast tissue, and decreased percentage of body fat compared to muscle mass."[21] In male-to-female patents, the changes include "breast growth (variable), decreased erectile function, decreased testicular size, and increased percentage of body fat compared to muscle mass."[22]
   c. Hormone therapy is accepted in the medical community as a medically necessary intervention for many transgender individuals who have been diagnosed with GID, and as such courts have mandated the provision of hormone therapy by state corrections agencies[23] in a number of cases.
3. Surgical procedures: Surgery to modify primary or secondary sex characteristics.
   a. Surgery to change secondary sex characteristics may include breast implantation or removal and other procedures designed to enhance or create the secondary sex characteristics of the individual's gender identity.
   b. Sex reassignment surgery to alter the genitalia.
   c. For a certain sub-section of individuals diagnosed with GID, "relief from gender dysphoria cannot be achieved without modification of their primary and/or secondary sex characteristics to establish greater congruence with

19 WPATH Standards of Care pg. 23
20 WPATH Standards of Care pg. 34
21 WPATH Standards of Care pg. 36
22 WPATH Standards of Care pg. 36
23 See www.nicic.gov/LGBTI for further discussion of case law in this area.

their gender identity."[24]

4. Psychotherapy to provide support to the transgender individual before, during, and after other treatments. *Mental Health Treatment and Counseling*

Transgender individuals may suffer from a range of mental health concerns, including anxiety, depression, self-harm, a history of abuse and neglect, compulsivity, substance abuse, sexual concerns, personality disorders, eating disorders, psychotic disorders, and autistic spectrum disorders.[25] LGBTI individuals in general may be more likely to suffer from major depression, anxiety, phobia, post-traumatic stress disorder, and have higher rates of suicidal attempts.[26] The agency will want to consider what type of mental health treatment and counseling would be best for the LGBTI inmates in custody, and what would be the most effective way to address them.

Agencies should note that it is generally agreed among the mental health community that attempts to change an individual's sexual orientation or gender identity are unethical and ineffective, and potentially damaging.[27]

Treatment Considerations

Agencies must determine the various treatments that can and should be made available to transgender individuals when they are in the custody of the agency. Questions to answer include the following:

- Will the agency allow inmates to express their gender through clothing, grooming, etc. (See the section titled Group Inmate Management, subsection Clothing and Grooming)?
- Will the agency provide hormone therapy (if recommended by a qualified medical practitioner)? Will the provision of hormone therapy be affected by whether the inmate was receiving hormone therapy before incarceration?
- Will the agency provide any recommended surgeries?
- Will the agency provide psychotherapy?

Information Management

24 WPATH Standards of Care pg. 55

25 WPATH Standards of Care pg. 24

26 Substance Abuse and Mental Health Services Administration. Top Health Issues for LGBT Populations Information & Resource Kit. HHS Publication No.(SMA) 12-4684. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2012.

27 See the American Psychological Association Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts [Retrieved from http://www.apa.org/about/policy/sexual-orientation.aspx]

Agencies actively working to house, manage, and treat their LGBTI populations effectively will want to provide staff with policy and training about who they should be sharing various forms of information with.

Privacy and Confidentiality Rights and Responsibilities

When asking inmates to share their sexual orientation or gender identity for the purpose of making placement and other decisions, the agency must recognize the sensitive nature of the topic and the possible direct repercussions for the inmates should the information shared become general knowledge among staff and the inmate population. Consider sharing information based on the following two conditions:

1. Staff Need-to-Know
   The "need to know" clause is common in policy. It is recommended that agency policy specify who staff should report information to and, to avoid accidental disclosures, outline who else will be informed.
2. Staff Responses to Disclosure
   If an inmate discloses his or her sexual orientation or gender identity to staff without prompting during their stay at a facility, staff should have guidance around how to handle that information: who to report the information to, who they should discuss it with, how to respond to the inmate appropriately, and whether staff should offer the inmate a referral for counseling or other services.

Group Inmate Management

The agency may want to consider providing guidance to staff around certain issues that may arise related to LGBTI inmates.

Clothing and Grooming

As mentioned in the section titled Medical and Mental Health Care, a medical treatment for gender identity disorder is gender expression, or "the use of clothing, grooming, or living full- or part-time in the gender-identity with which the individual identifies." Additionally, many transgender individuals who do not fit the diagnosis of GID may express their gender identity through the means of clothing and grooming as well. The agency will want to make a decision on the following issues:

- Will transgender individuals be given the option of wearing the outer clothing of their self-identified gender? This may partially depend on whether the agency provides gender-appropriate outer clothing to inmates.
- Will transgender individuals be given the option of wearing the under cloth-

ing of their self-identified gender? Consider whether this option could be provided without the knowledge of other inmates. Additionally, consider that some transgender females (biological males) may have breasts due to hormone therapy or surgery.

- Will transgender individuals be given the option of grooming themselves according to their gender identity, i.e., will the agency allow a transgender female (anatomical male) to shave her legs, if requested? Or, in the event that a transgender male (anatomical female) has facial hair due to hormone therapy, will the agency make accommodations to provide the individual with an appropriate razor?
- If inmates of one gender have access to items that are not offered to inmates of the other gender (i.e., if women offenders are offered access to commissary items like hair care products, etc.), will transgender inmates receive access to gender-appropriate items regardless of their housing placement?

Communication Between Inmates

If an inmate is commonly known to be gay or lesbian, corrections officers may find themselves interpreting the actions of that inmate differently than they might a heterosexual inmate. For example, a rule violation involving a gay or lesbian inmate (e.g., a hug between inmates) may be viewed as sexual where a similar rule violation involving a heterosexual inmate would not. The agency may want to provide guidance to agency staff to ensure that LGBTI inmates do not face inconsistent consequences for rule violations due to their sexuality/gender identity.

Visitation Rules

Agencies may unintentionally have rules in place around visitation that negatively impact LGBTI inmates. For example, many agencies have rules around touching during visitation that may apply to members of the same sex but not members of the opposite sex. Agencies may also have rules regarding conjugal visits that allow only heterosexual individuals to visit their spouses. Agencies may want to reexamine these and similar policies to ensure the agency is not discriminating against LGBTI individuals unintentionally.

Appropriate Social and Recreational Outlets

Some programs make assumptions concerning the inmates' sexual orientation. For example, programs designed for women may discuss healthy relationships only in the context of men. Life skills classes may make hetero-normative assumptions regarding relationships. Although the majority of inmates will likely be heterosexual, the agency may want to consider having some programs adjust their language to avoid creating unnecessary feelings of exclusion or tension among inmates in the event that an LGBTI individual is participating.

Specific Safety and Privacy Concerns for Transgender and Intersex Inmates

Transgender and intersex inmates present a number of operational considerations for agencies.

Showering, Restroom Practices

The PREA Standards require agencies to "implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit."[28] Agencies will want to consider how to interpret "staff of the opposite gender" in cases involving transgender or, in cases in which intersex individuals do not self-identify with the gender associated with their dominant external genitalia, intersex individuals.

Due to the vulnerable nature of the transgender and intersex population, the agency may want to consider implementing policies and procedures that give transgender and intersex inmates the opportunity to shower separately from other inmates, as is required in PREA standards.[29] Any additional policies or practices currently in effect in the agency requiring partial or full nudity of inmates, or the supervision of inmates during periods of partial or full nudity, including drug testing practices, should be examined.

Searches

The PREA Standards have strict requirements around cross-gender searches, including a prohibition on cross-gender strip searches or cross-gender visual body cavity searches except in exigent circumstances or when performed by medical practitioners.[30] The standards additionally prohibit the cross-gender pat-down of female inmates.[31] Again, agencies will need to consider how to interpret "cross-gender" in

28 PREA Standard 115.15 (d)
29 PREA Standard 115.42 (f)
30 PREA Standard 115.15 (a)
31 PREA Standard 115.15 (b)

cases involving transgender inmates, and how to maintain consistency across policies with regard to a transgender or intersex inmate's self-identified gender.

Cross-Gender Supervision

Agencies with policies and procedures governing cross-gender supervision may want to review them to determine the approved interpretation of "cross-gender supervision" in these cases.

Transportation

Many agencies have policies in place requiring inmates being transported to be accompanied by at least one staff person with the same gender as the inmate. Agencies will want to determine how (or whether) to modify these sorts of policies for transgender and intersex inmates. Some agencies may determine that these inmates should be accompanied by one staff of each gender. Agencies should specify, however, in the event that only one staff person can be made available, whether that staff person should be of the same sex as the inmate or of the same gender. To the extent possible, agencies should consider taking the inmate's own preferences into consideration.

Use of Segregation

The PREA Standards hold agencies to the same standards in use of segregation for the purpose of protection during the inmate's time in a facility as they do for protective isolation during the initial housing placement process (See the section titled Classification and Housing Placement, subsection Isolating to Protect.).

Staff, Volunteer and Contractor Training Requirements

Training staff, volunteers, and contractors to ensure that they fully understand both the agency's expectations of them and the reasoning behind the policy is vital in making sure policies are ingrained in the agency's day-to-day operations. In addition to training on the mission and values of the agency as they relate to this population, agencies should also consider providing training to staff, volunteers and contractors on the following topic areas:

- All LGBTI-related policies
    - How to identify violations of policy

    - How to respond to violations of policy
    - How policies are enforced
- Professional boundaries
- Professional communication. Note that The PREA Standards require all staff (including medical and mental health staff and investigators) to be trained in communicating "effectively and professionally with inmates/residents, including lesbian, gay, bisexual, transgender, intersex, or gender non-conforming inmates."[32]
- How to work with LGBTI inmates in a respectful and non-discriminatory manner
- Confidentiality responsibilities
- Legal responsibilities
- How to prevent harassment and victimization of LGBTI inmates by other inmates
- Resources available to LGBTI inmates

Inmate Education

Agencies should also consider educating inmates on the topic of sexual orientation and gender identity to encourage respect between inmates and to ensure that LGBTI inmates understand their rights and the resources available to them. Areas of education could include:

- Policies on agency non-discrimination
- Rights of the inmate to report discrimination, bullying, violence or threat of violence
- Policies regarding housing, clothing, and grooming accommodations
- Available medical and mental health services
- Counseling services

Agencies may also want to provide easily accessible informational material on the topics of sexual orientation and gender identity for inmates who wish to learn more about this topic.

32 PREA Standard 115.31 (a, 9)

GLOSSARY

Asexual: A person who is not romantically or sexually attracted to any gender

Bisexual: A person who is romantically or sexually attracted to more than one gender or sexual category

Gay: Commonly refers to men typically attracted to other men

Gender: A socially constructed concept classifying behavior as either "masculine" or "feminine," unrelated to one's external genitalia

Gender expression: A person's expression of their gender identity, including appearance, dress, mannerisms, speech, and social interactions

Gender identity: Distinct from sexual orientation and refers to a person's internal, deeply felt sense of being male or female

Gender non-conforming: Gender characteristics and/or behaviors that do not conform to those typically associated with a person's biological sex

Gender "norms": The expectations associated with "masculine" or "feminine" conduct, based on how society commonly believes males and females should behave

Gender variant behavior: Conduct that is not normatively associated with an individual's biological sex

Heterosexual: Sexual or romantic attraction to a sex differing from one's own.

Homosexual: Sexual, emotional, and/or romantic attraction to persons of the same sex

Intersex: A condition in which a person is born with external genitalia, internal reproductive organs, chromosome patterns, and/or an endocrine system that does not fit typical definitions of male or female

LGBTI: Acronym for a group of sexual minorities including lesbian, gay, bisexual, transgender, questioning and intersex individuals

Lesbian: Commonly refers to women typically attracted to other women

Questioning: Active process in which a person explores her or his own sexual orientation and/or gender identity and questions the cultural assumptions that they are heterosexual and/or gender conforming

Sex: One's anatomical make-up, including external genitalia, chromosomes, and reproductive system

Sexual identity: The sex that a person sees themselves as. This can include refusing to label oneself with a sex

Sexual orientation: Romantic and/or physical attraction to members of the same or different sex

Transgender: A person whose gender identity differs from their birth sex

Transgender girl: A person whose birth sex was male but who understands herself to be, and desires to live her life as, a female
Transgender boy: a person whose birth sex was female but who understands himself to be, and desires to live his life as, a male

Transsexual: A person whose physical anatomy does not match his or her gender identity, and seeks medical treatment (sex reassignment surgery or hormones)

Transvestite: A person who engages in gender non-conforming behavior, such as adopting the gender expression of the opposite sex for purposes of sexual or emotional gratification, but does not necessarily consider their gender identity to be different from their sex

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The National Institute of Corrections has developed a webpage that provides current and useful information to correctional agencies regarding the safe and respectful management of lesbian, gay, bisexual, transgender, and intersex (LGBTI) offenders at http://nicic.gov/LGBTI. The Moss Group, Inc. has also developed a webpage of resources, accessible at http://www.mossgroup.us/LGBTI.html. Please access these pages for further resources on this topic, and feel free to contact staff at the National Institute of Corrections with any questions.