

DC Corrections Information Council

BRIEF REPORT: LGBT+ Persons in Prison

June 30, 2016



In observance of LGBT+ Pride Month, the D.C. Corrections Information Council (CIC) has prepared this issue brief that provides an overview of issues that affect incarcerated LGBT+ individuals. According to a Gallup poll¹ conducted in 2013, D.C. has the highest percentage of residents identifying as LGBT (Lesbian, Gay, Bisexual, and Transgender) at 10%. Furthermore, a recent report² by the Center for American Progress (CAP) and the Movement Advancement Project (MAP) shows that 3.8% of the US adult population identifies as LGBT, yet individuals identifying as lesbian, gay, or bisexual represent 7.9%, of US state and federal prison populations. The LGBT+ community faces many struggles, from discrimination and heightened risk of victimization. Within the prison system, these struggles are amplified. The objective of this brief report is to bring a greater awareness of these issues and to promote the safety, well-being, and humane treatment of our incarcerated LGBT+ community.

NOTE ABOUT LGBT+ ACRONYM

The LGBT+ community is inclusive in the common pursuit of equality and acceptance and endeavors to incorporate many sexual orientations and gender identities. The terms and definitions used in speeches, reports, and other verbal and written statements reflect these advances. As one example, the term “LGBT” (“Lesbian, Gay, Bisexual, and Transgender”) has many variants: LGBTQ (“Q” representing “Queer” or “Questioning”), LGBTQI (“I” representing “Intersex”), LGBTQIA (“A” representing asexual orientation), and so on. The plus sign (“+”) is often added to the shorter LGBT term in lieu of additional letters to keep the wording concise while respecting the diversity of the community. Therefore, we use the term “LGBT+” as an expression that is easily recognized and understood to include less commonly recognized sexual orientations and gender identities.

DEFINITIONS

Following the definitions used by the Prison Rape Elimination Act³ (PREA), the National Commission on Correctional Health Care (NCCCHC)⁴, and the Human Rights Campaign (HRC)⁵, the CIC has included an overview of essential terms. For a more comprehensive guide regarding terminology, please refer to GLAAD’s An Ally’s Guide To Terminology: Talking About LGBT People & Equality.⁶

- **Asexual** refers to the lack of a sexual attraction or desire for other people.
- **Gender** refers to the socially constructed roles, behavior, activities, and attributes that a given society considers appropriate for men and women.

¹ Gallup, “LGBT Percentage Highest in D.C., Lowest in North Dakota” (Feb. 15, 2013) at

<http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>

² Center for American Progress & Movement Advancement Project, “Unjust: How the Broken Criminal Justice System Fails LGBT People” (February 2016) at <http://www.lgbtmap.org/file/lgbt-criminal-justice.pdf>

³ PREA, passed unanimously in 2003, resulted in Department of Justice adopting standards to be implemented in corrections to ensure the sexual safety of all inmates. U.S. Dep. of Justice, Prison Rape Elimination Act (2012), 28 C.F.R. Part 115 at <http://www.prearesourcecenter.org/sites/default/files/library/prisonsandjailsfinalstandards.pdf>

⁴ <http://www.nccchc.org/transgender-transsexual-and-gender-nonconforming-health-care>

⁵ Human Rights Campaign, “Sexual Orientation and Gender Identity Definitions” at <http://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions>

⁶ GLAAD, “An Ally’s Guide To Terminology: Talking About LGBT People & Equality” at http://www.glaad.org/sites/default/files/allys-guide-to-terminology_1.pdf

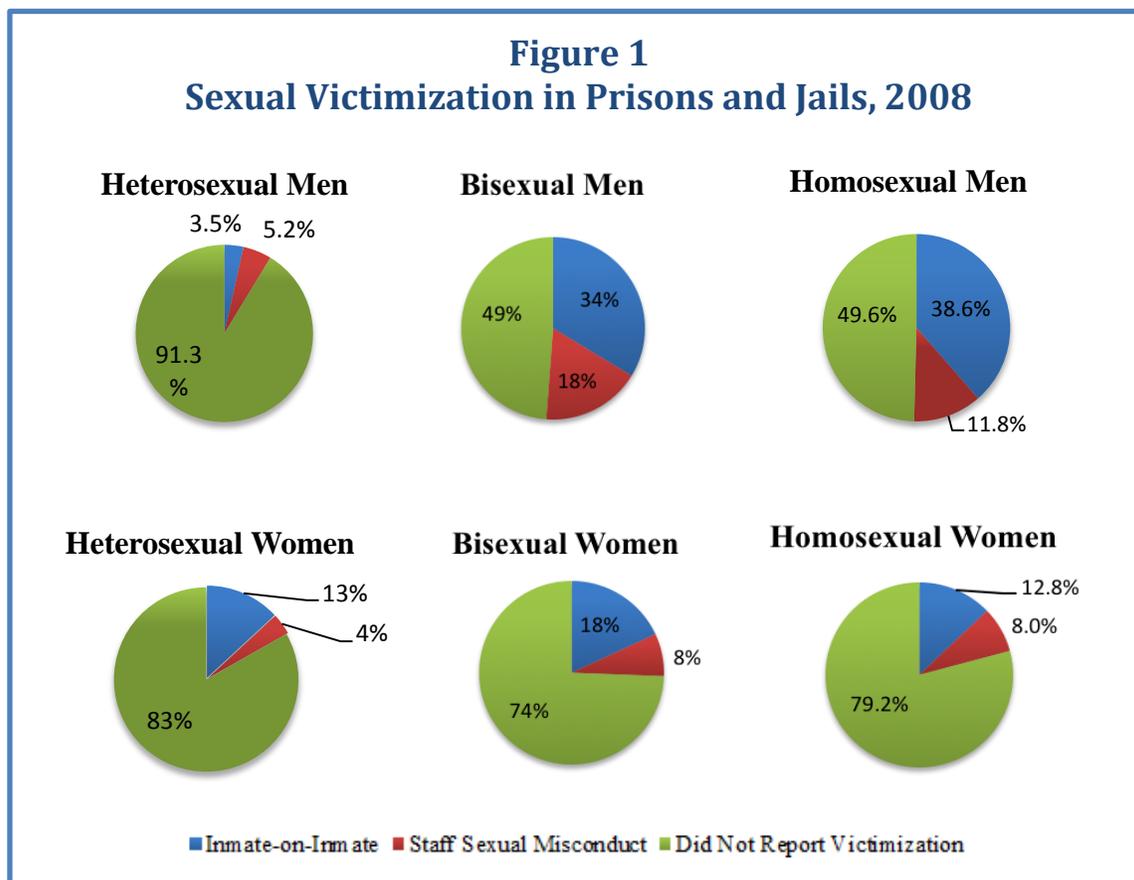
- **Gender dysphoria (GD)** is clinically significant distress caused when a person's assigned birth gender is not the same as the one with which they identify.
- **Gender identity** is the internal sense of feeling male or female.
- **Gender non-conforming** refers to a person whose appearance or manner does not conform to traditional societal gender expectations.
- **Intersex** means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.
- **Queer** is a term people often use to express fluid identities and orientations.
- **Questioning** is a term used to describe people who are in the process of exploring their sexual orientation or gender identity.
- **Sex** refers to the biological and physiological characteristics that define males and females.
- **Sexual orientation** is an inherent or immutable enduring emotional, romantic or sexual attraction to other people.
- **Transgender** refers to a person whose gender identity is different from the person's assigned sex at birth.

In this brief report, we have identified major concerns relating to sexual orientation as well as gender identity to avoid conflating these two spectrums of human expression. Although there are many issues that affect the LGBT+ community as a whole, there are differences in the way these problems affect lesbian and gay individuals as opposed to transgender individuals. Therefore, advocates and decision-makers must sometimes take different paths to reach the same goal: justice. This is not an impossible task, but it does require a careful and thorough understanding of the differences between sexual orientation and gender identity.

SEXUAL VICTIMIZATION

The Bureau of Justice Statistics' 2008 National Former Prisoner's Survey⁷ found that lesbian, gay, and bisexual former prisoners reported significantly higher rates of sexual victimization than those who were heterosexual. Some of the most alarming numbers refer to the gay and bisexual male respondents, who reported rates of inmate-on-inmate victimization nine to eleven times higher than heterosexual males. This kind of victimization was prevalent for female respondents as well, and LGB males and females also reported significant rates of sexual victimization from prison staff (See *Figure 1*).

Additional information from the Bureau of Justice Statistics shows that in 2011-2012, the percentage of transgender inmates who reported sexual victimization⁸ from other inmates was 33.2%, over fifteen times higher than the rate of victimization within the general inmate population⁹ in state and federal prisons. Victimization from prison staff was over six times higher for transgender inmates than the general prison population (See *Figure 2*).



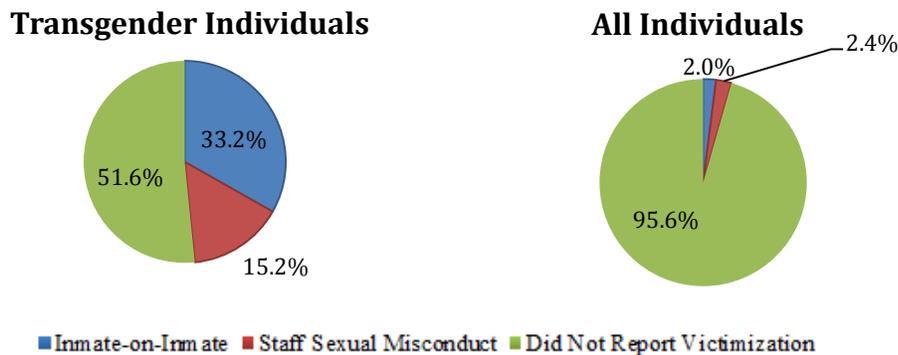
Source: Bureau of Justice Statistics, "Sexual Victimization Reported by Former State Prisoners, 2008" (May 2012)

⁷ Bureau of Justice Statistics, "Sexual Victimization Reported by Former State Prisoners, 2008" (May 2012) at <http://www.bjs.gov/content/pub/pdf/svrfsp08.pdf>

⁸ Bureau of Justice Statistics, "Sexual Victimization in Prisons and Jails, 2011-2012" (May, 2013) at http://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf

⁹ Id. at <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>

Figure 2
Sexual Victimization in Federal and State Prisons, 2011-2012



Source: Bureau of Justice Statistics, "Sexual Victimization in Prisons and Jails, 2011-2012" (May 2013)

These statistics show that incarcerated LGBT+ individuals are a target for sexual abuse and misconduct, even from the people who are supposed to provide them with reasonable protection during their time in custody. While some gaps in the data remain, such as the lack of research on intersex inmates, the existing data shows that more protection is needed for the LGBT+ community.

RESTRICTIVE HOUSING

Correctional facilities often rely on restrictive housing to protect incarcerated LGBT+ individuals from other inmates. Restrictive housing, also called "segregated housing" or "solitary confinement," is characterized by small cells in which inmates spend 23 hours a day with minimal phone and visitation privileges, limited access to programming, and little to no human interaction. It has many punitive aspects and is generally intended for disciplinary purposes. However, many prisons also use restrictive housing for "protection" when an individual in custody is at high risk for victimization. The reasoning behind this practice is that isolation from others will decrease the risk of the individual being harmed. However, research shows extended stays in restrictive housing have been shown to have a severe negative effect on one's mental health¹⁰. Therefore, even if LGBT+ individuals are protected from other inmates, individuals who are put in restrictive housing for extended periods may experience rapid mental health deterioration, including depression, thoughts of self-harm, or suicidal ideation.

A 2011 report by Hearts on a Wire¹¹ that surveyed transgender and gender non-conforming individuals who were in or recently released from Pennsylvania prisons stated that 66% of

¹⁰ WETA, "What Does Solitary Confinement Do To Your Mind?" (Apr. 22, 2014) at <http://www.pbs.org/wgbh/frontline/article/what-does-solitary-confinement-do-to-your-mind/>. This report lists many effects of solitary, including "hallucinations; panic attacks; overt paranoia; diminished impulse control; hypersensitivity to external stimuli; and difficulties with thinking, concentration and memory."

¹¹ Hearts On A Wire Collective, "Experiences of Trans and Gender Variant People In Pennsylvania's Prison Systems" (2011) at <http://socialproblems.voices.wooster.edu/files/2011/08/heartsonawire.pdf>. Note: the phrase "solitary confinement" is used here due to the wording used in the cited report.

respondents had been put in solitary confinement at some point during their incarceration. The reasoning behind their time in solitary included not only “protection,” but also punishment for expressing their gender identity.

Furthermore, a survey by Black & Pink¹² found similarly high rates of restrictive housing for LGBT+ inmates across the country. Black & Pink reported that half of the respondents who had spent time in solitary were sent there “for their own protection but against their will.” For a population that already experiences an increased rate of mental health conditions¹³, exposure to the harmful effects of restrictive housing is more likely to lead to devastating consequences such as self-harm or suicide.

The CIC had the opportunity to interview George R. Brown, MD,¹⁴ Associate Chair of Psychiatry at East Tennessee State University. For over 20 years, Dr. Brown has been researching transgender health, including healthcare for incarcerated transgender individuals. When asked about these issues, Dr. Brown affirmed that one of the areas in most need of reform for transgender inmates is “far less reliance on 23-hour a day segregation to ‘protect’ transgender inmates.” PREA Standard 115.43(a) begins to address this issue, requiring that correctional facilities not use involuntary segregated housing for protective custody until and unless an assessment of all available alternatives has been made and that there is no alternative way to separate an inmate from their likely abuser.

HOUSING ASSIGNMENTS

One matter that specifically affects transgender individuals is housing assignments. Historically, these individuals have almost always been housed in correctional facilities inconsistent with their gender identity. This practice contributes not only to the sexual, physical, and verbal abuse aimed at this population, but also the invalidation many transgender people feel when they are treated according to their biological sex assigned at birth rather than their true gender identity. PREA Standards 155.42 (c) and (e) state that an inmate’s “health and safety,” as well as their gender identity, should be given “serious consideration” when deciding housing arrangements¹⁵. The Department of Justice recently issued a clarification on the guidelines protecting transgender prisoners¹⁶ explicitly stating that housing assignments for transgender inmates based solely on anatomy violates PREA standards.

Additionally, PREA disavows designated housing units based on sexual orientation or gender identity unless ordered by law¹⁷. Safety and security of all inmates are the responsibility of the correctional facility in which they are housed. Therefore, each correctional facility is required to develop practices and policies to ensure the safety of the general population of inmates so that all inmates can receive the same level of access to programming, resources, and facility operations.

¹² Black & Pink, “Coming Out of Concrete Closets: A Report on Black & Pink’s National LGBTQ Prisoner Survey” (Oct. 2015) at <http://www.blackandpink.org/survey/>. Note: the phrase “solitary confinement” is used here due to the wording used in the cited report.

¹³ National Alliance on Mental Illness, “LGBTQ” at <https://www.nami.org/Find-Support/LGBTQ>. This report states that “LGBTQ individuals are almost 3 times more likely than others to experience a mental health condition such as major depression or generalized anxiety disorder.”

¹⁴ George R. Brown, MD, Associate Chair of ETSU Psychiatry at <http://www.etsu.edu/com/psychiatry/department/>

¹⁵ U.S. Dep. of Justice, Prison Rape Elimination Act (2012), 28 C.F.R. Part 115 at <http://www.prearesourcecenter.org/sites/default/files/library/prisonsandjailsfinalstandards.pdf>

¹⁶ Human Rights Campaign, “Department of Justice Updates Guidelines Protecting Transgender Prisoners” (March 28, 2016) at <http://www.hrc.org/blog/department-of-justice-updates-guidelines-protecting-transgender-prisoners>

¹⁷ PREA Standard 115.42(g).

HEALTH CARE

A survey by the National Center for Transgender Equality and National Gay and Lesbian Task Force¹⁸ found that 12% of incarcerated transgender respondents had been denied routine health care, while 17% were denied hormone therapy. The rates of hormone therapy denial were highest for black and American Indian respondents, revealing a combined effect of racial and gender expression discrimination. Although laws are changing in some states, such as in Delaware¹⁹, and Texas²⁰, prejudice still exists on a large scale.

While there are some highly-publicized cases of transgender inmates who won their right to sex reassignment surgery (SRS)²¹, this outcome is very rare. Although many transgender individuals have

Manning v. Carter: Providing Hormone Therapy & “Real Life Experience” for Transgender Prisoners with Gender Dysphoria.

After being convicted in 2013 of espionage and releasing classified military documents to WikiLeaks, Chelsea Manning was incarcerated at the U.S. Disciplinary Barracks (USDB) in Fort Leavenworth, Kansas. Before trial, Ms. Manning was diagnosed with gender dysphoria, or clinically significant distress caused by a discrepancy between her gender identity and her sex assigned at birth. According to the **WPATH Standards of Care**, treatments for gender dysphoria include hormone therapy and treatments through changes in gender expression and role (“Real Life Experience”) which includes grooming through hair length and style. After receiving a sentence of 35 years, Ms. Manning released a statement to the public: “I am Chelsea Manning. I am a female. Given the way that I feel, and have felt since childhood, I want to begin hormone therapy as soon as possible.” After being denied hormone therapy and permission to follow female hair and grooming standards, Ms. Manning filed a lawsuit in 2014 to receive medically necessary treatment for her gender dysphoria under the prohibition against cruel and unusual punishment of the Eighth Amendment. In February 2015, the USDB approved hormone therapy for Ms. Manning, but she was not permitted to follow female hair and grooming standards. In October 2015, Ms. Manning amended her original complaint to include a claim under the equal protection clause of the Fifth Amendment to be permitted to follow the same female hair and grooming standards granted to other female inmates. The status of this amended complaint is pending. For more information: *See* Jordan Rogers, Note, *Being Transgender Behind Bars in the Era of Chelsea Manning: How Transgender Prisoners’ Rights are Changing*, 6 ALA. C.R. & C.L. L. REV. 189, 192 (2015).

¹⁸ Grant, J. et al, “Injustice At Every Turn: A Report of the National Transgender Discrimination Survey” (2011) at <http://www.transequality.org/issues/resources/national-transgender-discrimination-survey-full-report>

¹⁹ Delaware Online, “Trans Inmate First to Begin Hormones in Prison” (May 28, 2016) at <http://www.delawareonline.com/story/life/2016/05/27/transgender-inmate-first-begin-hormones-delaware-prison/83831252/>. The state recently allowed transgender inmate Kai Short to begin hormone treatment while incarcerated, which had not been allowed in Delaware until this year.

²⁰ ThinkProgress, “Texas Prisons Expand Hormone Therapy Treatment To More Transgender Inmates” (Feb. 8, 2016) at <http://thinkprogress.org/justice/2016/02/08/3747106/texas-prisons-hormone-therapy/>. Texas recently “loosened its strict guidelines for who could receive the [hormone] treatment” for gender dysphoria.

²¹ Transgender Law Center, “Victory! Court Orders California Prison to Provide Treatment for Transgender Prisoner” (April 2, 2015) at <http://transgenderlawcenter.org/archives/11514>; Transgender Law Center, “Quine v. Beard” at <http://transgenderlawcenter.org/quine-v-beard>

no need or desire to pursue SRS, there are some who suffer from extreme cases of gender dysphoria that make surgery a life-saving necessity. In our interview, Dr. Brown stated, “SRS needs to be available as a case-by-case determination for those inmates with severe GD who have been treated according the WPATH Standards of Care.” (For more information on the WPATH Standards of Care, see *Manning v. Carter* box above.) Nonetheless, most transgender inmates who request SRS are outright denied while they are incarcerated because many states view it as a purely “cosmetic” procedure. This misunderstanding of the seriousness of gender dysphoria is very harmful to the transgender community.

PROMISING PRACTICES

Enact government-level strategies to strike down discriminatory policies and instate more inclusive ones. In 2013, Harris County Jail in Texas adopted one of the most extensive non-discrimination policies at the time²², which included a “zero tolerance” attitude towards any mistreatment of LGBT+ inmates and even addressed the issue of proper name and pronoun usage during interactions with transgender inmates. On a broader scale, the Department of Justice has been reversing “freeze frame” policies²³ for transgender inmates in states such as Wisconsin, New York, and Georgia. Following these examples can result in noteworthy changes.

Turn policy into practice by prioritizing education and training for staff. Recently, transgender individuals in New York City jails reported high rates of mistreatment and insensitivity from the medical staff. After the faculty at these jails received LGBT+ training and began practicing under a new health care policy, complaints decreased dramatically and virtually disappeared after six months²⁴. By instituting a new policy and supplementing it with necessary education and training, New York City jails succeeded in producing positive outcomes for LGBT+ inmates. This promising practice should be implemented across facilities to ensure that policy reforms turn into lasting improvements in practice.

Commit staff to a culture of acceptance. The Moss Group, Inc., an organization that provides LGBT+ training to correctional facilities, works directly with staff to promote fair and equal treatment of LGBT+ individuals in custody. One promising practice the organization has implemented is a volunteer breakfast meeting in which a chaplain uses a faith-based perspective to explain the importance of LGBT+ acceptance. According to Andie Moss, the president of The Moss Group, working from the ground up ensures that staff not only complies with PREA requirements and policy changes but also commits to a culture of acceptance. The work of The Moss Group demonstrates that, in addition to training and education, culture change should be a priority across correctional facilities to ensure staff understands and are equipped to address the unique needs of LGBT+ individuals.

²² Texas Jail Project, “Equality for LGBT Inmates at Harris County Jail” (Nov. 16, 2013) at <http://www.texasjailproject.org/2013/11/equality-for-lgbt-inmates-at-harris-county-jail/>

²³ Mother Jones, “Feds Say Georgia’s Treatment of Transgender Prisoners is Unconstitutional” (Apr. 3, 2015) at <http://www.motherjones.com/mojo/2015/04/doj-georgia-policy-trans-inmates-unconstitutional>. A “freeze frame” policy is one that states that a transgender individual who is incarcerated will only be given access to the type and level of treatment (for example, hormones) that they were exposed to before their incarceration. This can be harmful to individuals who were not on any treatments before their incarceration but experience gender dysphoria while in custody, since it effectively bars them from accessing treatment for their GD.

²⁴ EurekAlert!, “Dramatic Decline In Complaints By Imprisoned Transgender Patients After Staff LGBT Training” (Jan. 21, 2016) at http://www.eurekalert.org/pub_releases/2016-01/mali-ddi012116.php

RESOURCES

[Black & Pink](#)²⁵, a network of advocates for LGBTQ prisoners, has compiled an extensive list of organizations that provide resources to people in prison. They also host their own programs and advocacy projects for LGBT+ inmates and their loved ones.

[The American Civil Liberties Union](#)²⁶ has created a “Know Your Rights” document for transgender prisoners, including no-nonsense summaries of PREA’s Standards for prisons and jails.

[The National Center for Transgender Equality](#)²⁷ has published a list of legal contacts for LGBT+ inmates, as well as instructions on how to report abuse and a comprehensive guide to the protection that the Prison Rape Elimination Act offers.

[The National PREA Resource Center](#)²⁸ provides assistance to those responsible for state and local adult prisons and jails, juvenile facilities, community corrections, lockups, tribal organizations, and inmates and their families in their efforts to eliminate sexual abuse in confinement.

²⁵ Black and Pink, “Prison Resource Lists” at <http://www.blackandpink.org/resources-2/national-prisoner-resource-list/>

²⁶ American Civil Liberties Union, “Know Your Rights: Laws, Court Decisions, and Advocacy Tips to Protect Transgender Prisoners” (Dec. 1, 2014) at https://www.aclu.org/sites/default/files/assets/121414-aclu-prea-kyrs-1_copy.pdf

²⁷ National Center for Transgender Equality, “LGBT People and the Prison Rape Elimination Act” at <http://www.transequality.org/issues/resources/lgbt-people-and-prison-rape-elimination-act>

²⁸ National PREA Resource Center at <http://www.prearesourcecenter.org/>