

Training Recommendations for Adult Correctional Staff in the Management of Transgender  
Inmates to Reduce Their Vulnerability to Sexual Abuse

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Training Recommendations for Adult Correctional Staff in the Management of Transgender  
Inmates to Reduce Their Vulnerability to Sexual Abuse

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## **ABSTRACT**

The prevalence of sexual abuse and sexual harassment of inmates in confinement has come to the national spotlight in the past 15 years with the passage of the federal Prison Rape Elimination Act (PREA). Through data collection activities, the scope of the problem has been learned and specifically transgender inmates are victims of sexual abuse and sexual harassment at a much higher, disproportionate rate. The PREA standards provide specific protections for transgender inmates to reduce their vulnerability to sexual abuse and sexual harassment. It is essential that correctional create training curricula for their staff on the PREA standards and the management of transgender inmates to assist in keeping transgender inmates safe from sexual abuse and sexual harassment. This research paper will review definitions and statistics, training programs and policies for the management of transgender inmates and provide recommendations for effective training programs to manage transgender inmates to reduce the prevalence of sexual abuse and sexual harassment.

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## INTRODUCTION

### Statement of the Problem

“For too long, incidents of sexual abuse against incarcerated persons have not been taken as seriously as sexual abuse outside prison wall” (National Prison Rape Elimination Commission (NPREC), 2009). It was not until the passage of the Prison Rape Elimination Act (PREA) in 2003 through unanimous support in Congress that correctional facilities were required to address the problem. In 2012, the United States Department of Justice (USDOJ) promulgated the final PREA standards for correctional facilities. Correctional facilities around the country were tasked with implementing these standards, which includes updating policies and providing training to staff.

The PREA standards specifically addressed Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) inmates, as it was known that they are at a higher risk for victimization. Furthermore, there were PREA standards that applied specifically to transgender and intersex inmates as data shows that they are disproportionately at a higher risk for sexual abuse and sexual harassment in confinement (Beck, 2014).

Prior to the passage of PREA, there was no federal legal direction on how to manage transgender inmates. Historically, correctional staff have been trained to treat all inmates the same no matter the inmates’ gender identity. Additionally, housing inmates based on their external genitalia has been the practice in corrections and has been the policy that staff have been trained on. Similarly, strip searches of inmates have historically been conducted by the sex of the staff member that the facility houses (e.g. male staff in a male facility) again, regardless of the gender identity of the inmate (Au, 2016). The PREA standards require correctional facilities to address the vulnerability of transgender inmates by implementing policies, protective measures and training.

This research paper will review the data of sexual abuse and sexual harassment in confinement for inmates and transgender inmates, review gender identity terminology, the PREA standards and specific standards for transgender inmates, the management of transgender inmates and applicable court cases and provide theoretical framework. This research paper will review the policies and training in the management of transgender inmates from four correctional facilities in the United States and offer recommendations for best practices in training correctional staff on transgender inmates to lessen their vulnerability to sexual abuse and sexual harassment.

### **Purpose of the Research**

The purpose of this research is to examine current training programs and policies of adult correctional facilities to determine if they align with the PREA standards that provide protection for transgender inmates to prevent sexual abuse and sexual harassment and to provide training recommendations to manage transgender inmates. For too long, the existence of transgender inmates has been ignored in corrections and until the passage of PREA; there were not specific laws that directed correctional staff to receive training on transgender inmates. The results of this research will advise adult correctional leaders on best practices for training adult correctional staff in the management of transgender inmates to prevent sexual abuse and sexual harassment.

### **Significance and Implications of Research**

As previously mentioned, transgender inmates are among those most at risk to suffer sexual abuse and sexual harassment in confinement. Many correctional facilities employ policies, and training that does not offer the best protective measures for transgender inmates. The significant contribution of this research will be an inclusive analysis of the population of transgender inmates and recommendations for training correctional staff to interact,

communicate, house, search and care for transgender inmates in their care and custody to reduce their vulnerability.

### **Limitations**

One limitation to this research is that the PREA standards have only been promulgated for six years so not all correctional facilities have implemented the standards, thus not having training programs to review. Another limitation is the availability of training materials; as a criminal justice organization tasked with maintaining the safety of inmates, staff and the public, many correctional facilities do not make their training materials for staff publicly available for review. A final and important limitation of this research is that the true data on transgender inmates and the struggles they have while incarcerated is not fully known. Correctional facilities have only recently begun to collect data and much of that data is only known through inmate disclosure. There are multiple safety reasons that will be discussed in this research paper that may prevent many transgender inmates from disclosing their gender identity and / or the struggles they endure in confinement based on their gender identity, including sexual abuse and sexual harassment.

## **LITERATURE REVIEW**

### **Gender Definitions and Statistics**

To improve correctional officer training related to the treatment of transgender inmates there needs to be a shared understanding of definitions for gender identity, gender expression, sexual orientations, transgender and other relevant terms. First, sex is typically thought to be binary, meaning one is traditionally assigned a sex at birth of either male or female. Sex is non-binary as there are more than two sexes and PREA recognizes this and includes intersex inmates as having an increased vulnerability to sexual abuse in confinement. A person with an intersex condition is someone “whose sexual or reproductive anatomy or chromosomal pattern does not

seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development” (United States Department of Justice (USDOJ), 2012). Next, sexual orientation is generally defined as which sex(es) an individual is emotionally, physically and romantically attracted to (GLAAD, 2016). The PREA standards recognize Lesbian, Bisexual, Gay, Transgender, Intersex (LBGTI) inmates as a special population. Lesbian is generally defined as a woman who is emotionally, physically and romantically attracted to other women. Bisexual is generally defined as someone who is physically, emotionally and romantically attracted to more than one gender. Gay is generally defined as a person who is emotionally, physically, and romantically attracted to a person of the same gender. (GLAAD, 2016).

Gender identity is generally defined as one’s internal feeling or naming of their gender. Someone who identifies as cisgender is a person who identifies with the gender that corresponds with the sex they were assigned at birth (e.g. a person born with female genitalia who identifies their gender as female). It is important to note that gender identity is fluid and can change, as it is one’s own internal sense of who they are (GLAAD, 2016). Transgender is an umbrella term for persons whose gender identity does not match their assigned sex at birth (USDOJ, 2012). A transgender female is generally defined as a person born male but identifies as a female. Similarly, a transgender male is generally defined as a person born female but identifies as a male (GLAAD, 2016).

Another dimension of gender is gender expression, which is the way that one presents their gender to the world. Presenting one’s gender is typically done through one’s clothing, hairstyle, mannerisms and makeup (GLAAD, 2016). There are many articles of clothing or grooming products that are separated into societal accepted “man” or “woman” categories and a

person should have the ability to present or express their gender how they choose. Furthermore, PREA defines a person whose appearance or manner that does not conform to traditional societal gender expectations as gender nonconforming (USDOJ, 2012). It is also necessary to understand that a person who is gender nonconforming may or may not be transgender because, as noted before, gender identity is an internal sense of self.

Now that it is understood that transgender is an internal sense, what is the rate persons who identify as transgender in the United States? Using data from the Center for Disease Control (CDC) Behavioral Risk Factor Surveillance System, an estimation using multilevel regression and post-stratification was made that 1.4 million adults living in the United States identify a transgender (Flores, Herman, Gates, & Brown, 2016). This estimation of persons in the United States that identify as transgender is much higher than the estimation of 700,000 made in 2011. This sharp increase is explained, in part, because of the larger sample of state data used in the new estimate and the ever-evolving societal acceptance and comfortableness of persons who identify as transgender disclosing their gender identity (Flores et al., 2016). Finally, approximately 16 percent of people who identify as transgender have been incarcerated during their life, which is much higher than the rates of individuals in the public (National Center for Transgender Equality, 2016).

### **Prison Rape Elimination Act (PREA) and Standards that Offer Protection for Transgender Inmates**

The Prison Rape Elimination Act (PREA) was passed unanimously in Congress in 2003 and was the result of collaboration from prison survivors of sexual abuse, advocates for survivors, human rights organizations, legislators and faith-based organizations. These groups understood incidents of sexual abuse in confinement were an epidemic. These groups also believed that incidents of sexual abuse involving prisoners had been long ignored or the incidents

were not considered sexual abuse by correctional authorities and/or other criminal justice agencies (NPREC, 2009).

PREA was passed to address the problem of sexual abuse and sexual harassment in confinement by creating a “zero tolerance” environment. The Act created the National Prison Rape Elimination Commission (NPREC), a bipartisan panel tasked with studying sexual assaults in confinement; they created a report in 2009 and draft national standards. The United States Attorney General at the time, Eric Holder, was responsible for promulgating the PREA standards, which were released in May 2012 and went into effect in August 2012. There are four sets of PREA standards: Prisons and Jail Standards, Lockup Standards, Juvenile Standards and Community Confinement Standards (United States Department of Justice (USDOJ), 2012). For this research paper, only the Prison and Jail Standards will be reviewed. The Prison and Jail standards have 13 components in which facilities need to comply. These components are:

- 1) Prevention Planning,
- 2) Responsive Planning,
- 3) Training and Education,
- 4) Screening for Risk of Sexual Victimization and Abusiveness,
- 5) Reporting,
- 6) Official Response Following an Inmate Report,
- 7) Investigations,
- 8) Discipline,
- 9) Medical and Mental Care,
- 10) Data Collection and Review,
- 11) Audits, and

12) Auditing and Corrective Action and State Compliance (USDOJ, 2012).

Some highlights of requirements under Prevention Planning include employing a zero tolerance for sexual abuse and sexual harassment, limiting cross-gender strip searches and viewing of genitalia and requiring the same access to information on reporting and education for inmates with disabilities or those that have limited English proficiency. Under the Training and Education component, facilities are required to train all inmates, employees, volunteers and contractors and provide specialized training to medical and mental health care staff and those that investigate allegations of sexual abuse. In the Reporting component, some highlights include requiring facilities to offer inmates multiple ways to report sexual abuse and sexual harassment and providing inmate victims of sexual abuse access to outside confidential support services. Under the Responsive Planning and investigations components, the standards also require an evidence protocol and thorough investigation for allegations of sexual abuse or sexual harassment. Under the Official Response Following an Inmate Report component highlights include requiring staff to report allegations, first responder requirements, and protecting inmates from contact with their abuser and from retaliation following a report. The Medical and Mental Care component requires access to emergency medical and mental health care and ongoing care for sexual abuse victims and abusers.

The standards require that all inmates are screened for risk of victimization and abusiveness and housed appropriately based on the results under the Screening for Risk of Sexual Victimization and Abusiveness component. Staff are required to be screened prior to hiring or promoting and are required to be trained in the prevention, detection and response to sexual abuse and sexual harassment in confinement under the Hiring and Promoting component.

Under the Discipline component, the standards also require facilities to have disciplinary sanctions for staff and inmates (USDOJ, 2012).

Additionally, facilities are required to collect data on allegations and incidents of sexual abuse and harassment including completing sexual abuse incident reviews. Each agency is responsible for collecting incident-based sexual abuse data on an annual basis and must include, at minimum, all the information required in the Bureau of Justice Statistics Survey of Sexual Victimization reporting form. Sexual abuse incident reviews are required to be completed on every sexual abuse allegation, unless it was unfounded, and the review needs to be conducted by a team of agency staff to examine where the incident occurred, staffing levels at the time, technology available (i.e. surveillance cameras), and any motivations behind the assault. The review team prepares a report and submits to agency leaders to implement any needed changes to prevent similar incidents in the future. The PREA standards also require agencies to collect and make publicly available a report including corrective action for each facility, comparison of current data to previous years and a finding of the effectiveness of the agency's policies and training on preventing, detecting and responding to sexual abuse (USDOJ, 2012).

The only way a facility can show that they are compliant with PREA is through a successful passage of an audit conducted by a certified United States Department of Justice PREA auditor. A facility may pass the audit but still may need to complete corrective actions to be in full compliance. There is a penalty to states who do not comply with PREA, if a state chooses not to comply or is found to not be in compliance through an audit, they are at risk of losing federal funding. While this penalty only applies to state correctional facilities, jails are still required to follow the law (USDOJ, 2012).

## Definitions of Sexual Abuse

To better comprehend the PREA standards, it is important to know PREA's definitions of sexual abuse. PREA offers two different definitions for sexual abuse, one for inmate-on-inmate and one for staff-on-inmate. According to the USDOJ (2012), PREA defines the sexual abuse of an inmate by another inmate as:

Any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation (p. 8).

Moreover, according to the USDOJ (2012), PREA defines the sexual abuse of an inmate by a staff member, contractor or volunteer as:

Any of the following acts, with or without consent of the inmate, detainee, or resident:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

- (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;
- (7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
- (8) Voyeurism by a staff member, contractor, or volunteer. (p. 9)

It is important to distinguish between two definitions of sexual abuse based on who is the perpetrator because staff have power and control over inmates in confinement. Furthermore, in the inmate on inmate definition there is an element of consent.

Although many correctional facilities have policies against any sexual activity between inmates, it is typically not against any law, unless there is an inmate not at the age of consent or the inmate is unable to consent due to mental ability, being under the influence, incapacitated, etc. For staff on inmate, most states have specific statutes criminalizing sexual contact between correctional staff and inmates where consent is not an element as in the PREA standards because it is recognized the power and control that staff have over inmates in a correctional setting.

## **Definitions of sexual harassment**

Similarly, there also two definitions for sexual harassment. The inmate-on-inmate sexual harassment is defined by PREA as “repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another.” The definition of staff-on-inmate sexual harassment, according to the USDOJ (2012), is defined by PREA as:

repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures. (p. 9)

One notable difference in the definitions for sexual harassment is the inclusion of “demeaning references to gender” in the staff-on-inmate definition.

As mentioned earlier and will be discussed in more detail in the next subsection, data shows that transgender inmates face a disproportionately high rate of victimization of sexual abuse in confinement. The PREA standards recognized the vulnerability of transgender inmates and promulgated specific provisions in the standards relating to transgender inmates. First, all inmates are screened upon admission or transfer to a facility and part of the screening includes a requirement for facilities to assess whether the inmate is or is perceived to be gay, lesbian bisexual, transgender, intersex or gender nonconforming (USDOJ, 2012). This is significant as it is the first legal requirement to assess for gender identity and most likely, the first time an inmate is ever asked about their gender identity. Furthermore, the screening is used to determine whether how to ensure safety of inmates and requires agencies to make individual assessments on a case-by-case basis as to where transgender or intersex inmates are to be housed and that

their own views for their safety shall be given “serious consideration” (USDOJ, 2012).

Additionally, facilities are prohibited from placing LGBTI inmates in separate facilities, housing units or areas of units for the sole reason that they are LGBTI. Transgender and intersex inmates must have their placement and programming reassessed every six months consider changed circumstances such as incidents of abuse or changes in an individual's appearance or medical treatment. (USDOJ, 2012).

The PREA standards also prohibit staff from searching or examining an inmate's body to solely determine their genital status. Although the standards do not specifically address how to search transgender inmates for general security strip searches, the standards do prohibit all cross-gender strip searches and cavity searches except in emergencies. Additionally, any pat-down searches are required to be conducted in the least intrusive manner possible (USDOJ, 2012).

The standards also allow transgender and intersex inmates the ability to shower separately (USDOJ, 2012). This is important as in many correctional settings there is a large showering area where numerous inmates can be found showering at the same time. In a men's prison, for example, the partitions may only be from the waist to the knees to cover genitalia. For some transgender or intersex inmates, they may have breast development that, if prohibited from showering separately, would be on display in the general inmate shower area.

Staff are required, per PREA standards, to be trained in how to communicate effectively and professionally with LGBTI inmates; however, there are no guidelines in the PREA standards as to how to communicate professionally and effectively. Staff also must be trained on how to search transgender or intersex inmates in a respectful, professional and least intrusive way (USDOJ, 2012). However, the standards do not specify how extensive or comprehensive this training should be.

Finally, the PREA standards require all allegations to be investigated thoroughly and assessed a disposition of either substantiated, unsubstantiated or unfounded. Substantiated allegations are those that were determined to have occurred, unsubstantiated allegations were not able to be determined if they occurred or not and unfounded allegations are ones that were determined not to have occurred (USDOJ, 2012). The PREA standards require every substantiated and unsubstantiated allegation of sexual abuse to have a sexual abuse incident review. As previously discussed, the review considers factors to determine possible motivations and determine if there needs to be a change to practice or policy to prevent incidents in the future. One of the factors that must be examined in sexual abuse incident review is whether the incident was motivated by gender identity or perceived identity (USDOJ, 2012). This is significant as it forces facilities to dive deeper into the motivations behind each incident and make any needed adjustments to housing, management or overall correctional practices to better protect transgender inmates.

### **Prevalence of Sexual Abuse and Sexual Harassment in Confinement for Inmates and Transgender Inmates**

In 2004, the Bureau of Justice Statistics (BJS) started data collection activities for PREA as required by law. The BJS collects data and reports on sexual victimization reported by adult correction authorities, reported by inmates, and reported by former state prisoners. The first report is the Sexual Victimization Reported by Adult Correctional Authorities. The data for this report is collected from the administrators of adult federal, state, U.S. Military private and public prisons and jail correctional facilities. Correctional administrators are required to report all allegations of sexual abuse and sexual harassment and provide incident specific data for each substantiated sexual abuse and sexual harassment allegation. In their 2014 report, Beck, Rantala, and Rextroat found that that there were 8,763 allegations of sexual victimization in adult

correctional facilities in 2011. Moreover, in 2015, there were 24,661 allegations of sexual victimization in adult correctional facilities (Rantala, 2018). The main increase in the number of these allegations was because of the number of unfounded allegations, while the rates of substantiated and unsubstantiated allegations remained relatively the same. In 2015, 58 percent of substantiated allegations of sexual victimization were perpetrated by inmates and the remaining 42 percent were perpetrated by staff (Rantala, 2018).

The next report released in the PREA series by BJS is the Sexual Victimization in Prison and Jails Reported by Inmates. The data for this report is collected through the National Inmate Survey, which is conducted in over 600 adult correctional facilities, and 106,532 inmates participated through randomly selected surveys and /or interviews (Beck, Berzofsky, Casper, & Krebs, 2013). In the most recent publication of this report, published in 2013, 4 percent of prison inmates and 3.2 percent of jail inmates reported experiencing one or more incidents of sexual victimization during their confinement (Beck et al., 2013). In 2014, a supplement to this report was released entitled Prevalence of Sexual Victimization Among Transgender Adult Inmates. The report showed alarming rates of sexual victimization amongst transgender inmates, 35 percent of transgender inmates in prison and 34 percent of jail inmates reported being sexually victimized in confinement (Beck, 2014).

The last report in the PREA data series is the Sexual Victimization Reported by Former State Prisoners. In 2008, 18,526 former inmates participated in the survey. The former inmates were selected at random and were all on supervision (i.e. probation or parole). The results revealed that 9.6 percent of respondents, around 1,800 former inmates, reported one or more incidents of sexual victimization during their most recent incarceration. The rates of incidents reported which had inmate perpetrators were about the same for staff perpetrators (Beck &

Johnson, 2012). There was not specific data obtained regarding transgender inmates for this survey.

### **Limitations of the data**

*Bureau of Justice Statistics.* There are many limitations to the BJS data. First, the data reported by correctional authorities shows the lowest prevalence of sexual victimization. In the community, there are many reasons why victims do not report sexual abuse; for example, they may fear being blamed, not believed or being retaliated against. In confinement, those same reasons exist and there are additional barriers for inmate victims. Victims may: 1) fear their place in the prison hierarchy will be threatened if they disclose abuse, 2) fear being “outed” as a victim, 3) fear losing privileges, programming, or housing, and 4) fear disclosing to staff if their perpetrator is a staff member (California Coalition Against Sexual Assault (CALCASA), 2010).

Additionally, the data available on incidents involving transgender inmates is not available except for when they are substantiated incidents; therefore, this data does not give an accurate portrait of the allegations of sexual abuse or harassment in incidents involving transgender inmates. Because of this data limitation, it is expected that the reported allegations of sexual abuse or harassment in incidents involving transgender inmates are lower than the other reports.

The dramatic increase in allegations of sexual abuse by inmates was an expectation of experts as they predicted a rise in allegations after the release of the PREA standards and facility implementation. This increase was predicted because 1) inmates have multiple ways to report and are educated on their rights, 2) there is increased staff training and recognition, and 3) improved screening of inmates and response protocols following an allegation (Rantala, 2018).

*National Inmate Survey.* The National Inmate Survey has limitations as well. The survey is conducted with current inmates who may be experiencing the same barriers to disclosures that were previously discussed. The difference for this survey, which may account for the increase compared to the first report, is that the inmates do not need to report to correctional staff. Instead, inmates are disclosing their victimization to the persons administering the survey. Some inmates may not still feel comfortable that their responses will not be shared with correctional staff. According to Beck (2014), until 2012 there was not enough data on transgender inmates to measure sexual victimizations and even in 2012 the sample was still very small. Finally, the former inmate survey has its limitations as well as the inmates are not far removed from confinement as they were all on supervisor and, again, may not feel comfortable disclosing.

Furthermore, the data on transgender inmates is scarce. Because gender identity is an internal sense of self, unless the inmates disclose their transgender identity may never be known. There are additional fears for safety in disclosing one's gender identity in confinement and certainly, the data shows that transgender inmates are at greater risk for sexual victimization. Some inmates may have never disclosed because they were not asked anything about gender identity. Although there are limitations to the data, it is the best source of information available to determine the prevalence of sexual victimization in adult correctional facilities for inmates and transgender inmates.

### **Management of Transgender Inmates**

Correctional facilities are tasked with managing all inmates in their care and custody with the goal of safety for all inmates, staff and the public. Part of maintaining safety in a correctional facility is the assessment and proper housing of inmates. The PREA standards have specific assessment and housing standards related to transgender inmates as previously discussed. The

standards may interfere with long standing correctional practices, and facilities are tasked with shifting away from those non-PREA compliant practices.

**Segregated housing.** Many correctional facilities chose to segregate known transgender inmates, meaning they would place them in a housing wing or cell away from the general inmate population. This often means that the inmate has limited interaction with other inmates and limited access to programming and other privileges that an inmate in the general inmate population may have (Routh et al., 2015). Additionally, transgender inmates who may not be housed in segregated housing and report sexual abuse may be moved to segregated housing in an effort to protect them, however this also eliminates or limits the inmate's access to programming or services (CALCASA, 2010).

**Access to gendered property.** In addition, correctional facilities have historically rejected requests of transgender inmates to have equipment available for inmates of their gender identity when that identity is different from the general population at their assigned facility. For example, a transgender female may want to be able to purchase undergarments, makeup and have hair removal devices that are available to inmates at a female facility, but they are often denied (Sexton, Jenness, & Sumner, 2010).

**Assessment and housing.** The PREA Resource Center released additional guidance in March 2016 regarding the housing of transgender inmates. Specifically, the guidance clarified that facilities that house transgender or intersex inmates based solely on external genital status are in violation of the PREA standards. This clarification was eye opening to many correctional facilities, as it did not align with their practices (NPREC, 2016). To maintain compliance with this standard, the individual, case-by-case assessment is paramount to properly housing

transgender inmates, which can reduce their vulnerability to sexual abuse and sexual harassment and make them feel safer.

**Gendered pronouns.** Similarly, it can be hurtful to a transgender inmate to refer to them with improper pronouns. For example, a male transgender inmate assigned to a female prison may be referred to with female pronouns such as “she” or “her”. The male transgender inmate, although living in a female prison, may feel uncomfortable or disrespected by the female pronoun choice of staff at the facility because they identify as male and could make them more vulnerable to sexual harassment or sexual assault (Routh et al., 2015). The PREA requirement of staff to receive training to communicate effectively and professionally with LGBTI inmates may assist staff in addressing transgender inmates appropriately to avoid disrespect or vulnerability.

**Searches of inmates.** The searching of inmates, whether a pat-search (i.e., a search over clothing) or a strip search (i.e., a search without clothing) is a typical function in a correctional facility. For transgender inmates this can be a much more uncomfortable experience than for other inmates. For example, a female transgender inmate assigned to a male facility may feel uncomfortable being searched by a male staff member. However, general correctional practice has historically been that the gender of the staff member that conducts the strip searches of inmates is the same as the gender of the inmates in the facility (e.g., male staff for male facility) (Routh et al., 2015). Although the PREA standards give guidance on searching transgender inmates and require facilities to train staff, facilities are still struggling with implementation.

**Access to medical treatments.** Finally, access to some medical treatments specific to transgender inmates (e.g., hormone therapy to treat gender dysphoria) has been denied because many times it was deemed not to be medically necessary. Gender dysphoria, formerly known as gender identity disorder, is a medical condition in which a person suffers significant distress over

their gender identity and their assigned sex at birth (Osborne & Lawrence, 2016). Transgender inmates who suffer from gender dysphoria and are not treated can suffer psychologically. These inmates may experience depression, exhibit self-harm and have suicidal thoughts. Recognized treatments for gender dysphoria can include counseling, living as the gender the person identifies as, receiving hormone therapy to feminize or masculinize one's body, and/or receive sex reassignment surgery (i.e., surgery to change sex characteristics or genitalia) (Osborne & Lawrence, 2016). According to the 2015 United States Transgender Survey, the largest survey that has focused on the experiences of people who identify as transgender, 37 percent of respondents who were taking hormones to treat gender dysphoria before their incarceration were denied from taking their hormones while incarcerated (James et al., 2016).

### **Policy and Court Cases**

Many correctional facilities have existing policies that violate the PREA standards. Some inmates have contested these policies, and in certain cases, have taken their issues to court. For example, in Missouri, a transgender female inmate Jessica Hicklin filed a lawsuit against member of the Missouri Department of Corrections alleging violations of the Eight Amendment. Specifically, in *Hicklin v. Precythe* (2016), Jessica stated she was refused hormone therapy because of what was coined a "freeze-frame policy." The policy of the Missouri Department of Corrections stated that any inmate who was not receiving hormone therapy upon admission would be denied. As part of the court order issued in May 2018, the Missouri Department of Corrections was ordered to provide Jessica with all medical care deemed necessary, and they were to change their policies and practices regarding their treatment of transgender inmates in general (Salter, 2018).

In *Brown v. Patuxent Institution* (2016), a female transgender inmate named Neon Brown filed a lawsuit in 2014 against an institution of the Maryland Department of Corrections alleging

that she was sent to segregated housing based on her transgender identity notwithstanding orders barring her placement in segregation. Further allegations include that staff harassed her. These incidents included staff members calling her “it” and being watched and laughed at when she showered. The court ruled in favor of Neon Brown and emphasized that staff for the institution were not trained on how to effectively communicate with transgender inmates despite a PREA requirement and that there were not proper policies in place that aligned with the PREA standards (Burton, 2017).

These court cases demonstrate that some state prison systems have failed to implement the PREA standards relating to the care and management of transgender inmates. Many of these prison systems have failed to train staff members on proper, professional management and communication with transgender inmates.

### **Theoretical Framework**

**Social Learning Theory.** Social learning theory branches off Sunderland’s theory of differential association, which states that crime is learned through social interaction. Akers’ social learning theory expands on differential association and states that behavior can be modeled by observing others, through either observation or instruction (Pratt et al., 2010). In social learning theory, learning also occurs through the observation of rewards and punishments. When a behavior is rewarded regularly, one is more likely to continue the behavior and similarly, when a behavior is punished one is more likely to stop the behavior (Pratt et al., 2010).

**Applicability of Social Learning Theory.** Social learning theory is applicable in this research on the management of transgender inmates. Data has shown that transgender inmates are disproportionately victimized at a higher rate in confinement. The lack of training and understanding of terminology regarding gender identity, the gender spectrum and transgender

inmates can create a culture of myths and inappropriate treatment. As seen in court cases reviewed, staff or inmates can be observed treating a transgender inmate inappropriately and other staff or inmates model that behavior due to a lack of understanding or training regarding transgender inmates.

To promote the social learning of proper and professional management and communication of transgender inmates, training must be provided to correctional department staff. In the next section, selected correctional departments training practices are examined. This examination will show how staff training can improve the proper management of transgender inmates and achieve compliance with applicable PREA standards.

## **METHODS**

The methodology of this paper will consist of secondary research, statistics, scholarly articles, court rulings, and critical analyses of theoretical and framework for policy makers. The scholarly articles were accessed through publicly available internet library sources. Court rulings were located via a publicly available search after referenced in scholarly articles. The training materials and policies were accessed via public searches on correctional agency websites, the PREA Resource Center or other training websites. There is data on the prevalence of sexual abuse and sexual harassment from the Bureau of Justice Statistics and limited data on the prevalence of sexual abuse and sexual harassment perpetrated against transgender inmates.

### **REVIEW OF TRAINING FOR CORRECTIONAL STAFF**

This section will review training policies and / or training materials for four different correctional agencies in the United States. Each year states and territories must submit documentation to the federal government reporting their state of PREA compliance; states have a choice of reported that they are certified, meaning they have met all requirements of PREA, demonstrated through the passage of audits for all their facilities. The next option is to submit an

assurance, which states that the states have yet to meet all the requirements of PREA but that they can demonstrate that they are actively working on compliance either through corrective action deemed necessary by an auditor or some other demonstration. The final option is that the state or territory has decided not to comply with PREA.

PREA requires agencies to train employees on the following topics (USDOJ, 2012):

- 1) Its zero-tolerance policy for sexual abuse and sexual harassment;
- 2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
- 3) Inmates' right to be free from sexual abuse and sexual harassment;
- 4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
- 5) The dynamics of sexual abuse and sexual harassment in confinement;
- 6) The common reaction of sexual abuse and sexual harassment victims;
- 7) How to detect and respond to signs of threatened and actual sexual abuse;
- 8) How to avoid inappropriate relationships with victims;
- 9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and
- 10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities. (p. 16-17)

In addition, the PREA standards require that the agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs (USDOJ, 2012).

For the purposes of this analysis, the focus will be on the training requirements and PREA standards pertaining directly to transgender inmates. As a review, PREA standards that specifically highlight transgender inmates include screening for risk of abusiveness or victimization, determining housing, housing and programming assessments, searching transgender inmates, the ability to shower separately and staff communicating with transgender inmates.

### **Arizona Department of Corrections**

The Arizona Department of Corrections (AZ DOC) houses approximately 42,000 inmates in their adult facilities (AZ DOC, 2018). For fiscal year 2017 (FY 17), the AZ DOC reported that they are certified, meaning they comply with all the PREA standards. For a review of Arizona's training as it relates to the management of transgender inmates, their correctional officer academy curricula and policies related to transgender inmates were reviewed (AZ DOC, 2018).

First, AZ DOC officers are trained at the Correctional Officer Training Academy (COTA). The basic training at COTA consists of a seven-week, 280-hour training program. In a review of the detailed COTA curricula, there is no specific training that is dedicated solely to the management of transgender inmates. Some topics that may include training on the management of transgender inmates are: 1) Inmate Supervision, a seven hour training, 2) Gender Specific Intervention, a four hour training that is described as "problems that staff may encounter supervising opposite sex inmates and times when they are most vulnerable to pressure from inmates," 3) Prison Rape Elimination Act, a three hour training, 4) Preventing Employment Discrimination and Harassment, a three hour training, and 5) Cultural Awareness – Inmate Culture, a two hour training (COTA, 2018).

Next, the AZ DOC has a Department Order titled Management of LGBTI Inmates. Within the policy, here are several references to the management of transgender inmates. First,

the policy specifically outlines the creation and operation of a Transgender and Intersex Committee that includes medical, mental health, and legal representatives. The committee is responsible for conducting a thorough review of a transgender inmate's status in the facility, including interviewing each inmate and making housing determinations for all transgender or intersex inmates. Second, the policy also states that transgender and intersex inmates are authorized to wear undergarments and receive grooming tools and services that align with their gender identity. Finally, staff are trained on the Management of LGBTI Inmates policy at COTA and at annual required training (AZ DOC, 2015).

Based on the information available, the policy of the Arizona Department of Corrections appears to have the minimum provisions for transgender inmates as required in the PREA standards as the policy includes information on screening and housing transgender inmates, reassessments, searching of transgender inmates, communicating with transgender inmates and allowing transgender inmates to shower separately. Furthermore, its policies include provisions for transgender and intersex inmates to present their gender and for the creation of the Transgender and Intersex committee. The exact training content that staff receive at COTA or the annual training is not known. However, it is likely that training on managing transgender inmates must be inserted into one of the training categories previously listed. Overall, there is no stand-alone training on transgender inmates in the AZ DOC (COTA, 2018).

### **Alabama Department of Corrections**

The Alabama Department of Corrections (AL DOC) houses approximately 27,000 inmates in their adult facilities (AL DOC, 2018b). For FY 17, the Alabama Department of Corrections submitted a PREA assurance. A review of Alabama's training for correctional officers consisted of a policy review of three policies: Inmate Sexual Abuse and Harassment, Gender Dysphoria and Training (AL DOC, 2018b).

First, the Inmate Sexual Abuse and Harassment policy does not include training on how to communicate effectively with LGBTI inmates and gender nonconforming inmates as PREA requires. In addition, a review of the Gender Dysphoria and Training policies also do not include this requirement. It was observed that the definition for transgender is different in the Gender Dysphoria policy from the definition of transgender in the Inmate Sexual Abuse and Harassment policy. The Inmate Sexual Abuse and Sexual Harassment policy is Alabama's overarching policy that covers most of the PREA standards (AL DOC, 2016).

The Gender Dysphoria policy states that there is a Gender Dysphoria committee comprised of medical, mental health and other representatives. Inmates are referred to the committee who are exhibiting symptoms of gender dysphoria and the committee meets promptly to make treatment recommendations. Additionally, inmates who were receiving hormone therapy prior to admission can continue receiving hormone therapy as long as medically necessary (AL DOC, 2018a).

Based on the information available that was reviewed, Alabama Department of Corrections does not have policies that comply with the PREA standards regarding training of staff in communicating effectively and professionally with transgender inmates. Furthermore, by having differing definitions of transgender in policies it could lead to confusion for staff in the understanding. The policies did have provisions aligning with the PREA standards, including screening for the risk of abusiveness or victimization, housing and assessments of transgender inmates, searching transgender inmates and allowing inmates to shower separately (AL DOC, 2018b).

## **Federal Bureau of Prisons**

The Federal Bureau of Prisons (FBOP) houses approximately 185,000 inmates in their adult correctional facilities or contracted facilities. The FBOP was not included in the state and territory FY 17 PREA certification because it does not include federal facilities, only state correctional agencies. A review of the FBOP's training for transgender inmates consisted of a review of the Transgender Offender Manual dated January 18, 2017 and the revised Transgender Offender Manual dated May 11, 2018. There were changes to the manual that seem to scale back the protections originally offered to transgender inmates. One major change is that in the original manual states that gender identity will determine housing when appropriate (Federal Bureau of Prisons (FBOP, 2017, p. 2). The new manual, however, removes that provision and replaces it with the practice of housing being determined on a case-by-case basis but that biological sex is the initial determination. Furthermore, housing a transgender inmate in a facility that aligns with their gender identity would be rare and only if the inmate has made "significant progress towards transition" (FBOP, 2018, p. 2).

There was also a change to the staff training section. Staff are still required to receive specialized training in the management of transgender inmates annually. The original manual stated that the training would focus on best practices for the safety of transgender inmates, while the revised manual builds on that statement to add ensuring facility, staff, inmate and public safety and to maintain order. This addition of language changes the focus solely on the safety of transgender inmates and includes order and facility safety but does not indicate how safety will be evaluated and at what weight the safety of transgender inmates will have (FBOP, 2018).

A final change to highlight is that in the original manual, hormone and medical treatment may be provided to inmates after an assessment. The revised manual states "hormone or other

necessary medical treatment may be provided after an individualized assessment of the requested inmate by institution medical staff' (FBOP, 2018, p. 9). However slight, this change could have implications for inmates suffering from Gender Dysphoria, as the policy now states that even necessary medical treatment *may* be provided, instead of shall if the treatment had already been determined to be necessary (FBOP, 2018).

Although actual training materials were not available to be reviewed, a review of the 2017 manual and its 2018 revision gives rise to concerns over compliance with the PREA standards, specifically related to housing of transgender inmates. In addition, there are concerns regarding medical treatment of inmates diagnosed with gender dysphoria, as they may not be receiving medically necessary treatment based on the new policy. The staff, although they are receiving training annually; the training is based on the revised manual, which has scaled back protections for transgender inmates that were put in place to best protect them from sexual abuse and sexual harassment.

### **Harris County Sheriff's Office – Texas**

The Harris County Sheriff's Office (HCSO) is in Houston, Texas. In April 2017, the HCSO underwent a PREA Audit and a final audit report was issued on November 1, 2017. The final audit report showed that one PREA standard was exceeded, 41 PREA standards were met and one PREA standard was not met; thus, the agency did not pass the PREA audit. It should be noted that the only PREA standard that was not met was the youthful inmate standard, which requires facilities to house inmates under the age of 18 in sight and sound separation from inmates age 18 or older (Rachal, 2017). It is important to note that several facilities struggle to meet this standard as either the facility makeup prevents the separation or laws in the state make

persons under 18 considered an adult for some crimes (i.e., and they are therefore housed in adult facilities), or due to some other circumstances that prevent compliance.

A review of HCSO's training on transgender inmates consisted of the academy course curriculum for L.G.B.T. Awareness including a course lesson plan. The lesson plan includes 114 PowerPoint slides, a pre-test, post-test and the agency's Lesbian, Gay, Bisexual, Transgender and Intersex (L.G.B.T.I.) policy (Harris County Sheriff's Office (HCSO), 2012). The training covers a wide range of information including the history of LGBTI struggles and activism for equal rights and treatment. Included in the training is a review of 63 definitions related to LGBTI population. Aligning with the training requirement under PREA, the training contains information on communicating with transgender inmates, housing and searching transgender inmates (HCSO, 2012). All staff are required to take the course, and through the pre-test and post-test are required to show comprehension by scoring a minimum of 70 percent on the post-test (HCSO, 2012).

The L.G.B.T.I. policy is extensive and appears to be consistent with PREA standards. There is a Gender Classification Committee that after receiving specialized training certifies a Gender Classification Specialist to conduct interviews with inmates about gender. Additionally, the policy always requires staff to address LGBTI inmates by their chosen pronouns (HCSO, 2017). Inmates may specify whether they are more comfortable with pat down searches to be conducted by a male or female staff member. Transgender inmates are expedited through booking to ensure they are safe from sexual abuse and sexual harassment by being able to properly assess transgender inmates. Transgender inmates meet with the Gender Classification Specialist as soon as practically possible. The Department also appoints LGBTI liaisons who are

identified to the community as the contact person on the HCSO for any LGBTI issues that arise (HCSO, 2017).

HCSO staff are trained in the academy and are given refresher training every two years. The HCSO staff are also provided with local and national resources for additional information on LGBTI organizations and information. In an analysis of the training for HCSO, they offer extensive training on the LGBTI populations and the management of transgender inmates. Some of the terms they use are outdated (e.g., transsexual, homosexual). Also, the policy seems motivated by protection from being sued as opposed to best practices for management of transgender inmates. This seems to be the motivation because the training references how to best protect staff from legal trouble (HCSO, 2012). Finally, the lesson plan indicates that the training is one hour and includes a large amount of content; the training should be longer to make sure staff understand these concepts. Overall, with some minor tweaks, the HCSO training could be a best practice model for agencies (HCSO, 2012). A significant minor tweak would be an update to the training to include more current terms so that staff can effectively and professionally communicate with transgender inmates as PREA has identified that training staff in communication with transgender inmates is a component to preventing sexual abuse and sexual harassment (HCSO, 2012).

### **RECOMMENDATIONS FOR TRAINING ADULT CORRECTIONAL STAFF ON THE MANAGEMENT OF TRANSGENDER INMATES**

There are a multitude of topics in which correctional officer must be trained on to ensure the safety of inmates, staff and the public. To best protect and manage transgender inmates, staff must be trained. Prior to training, it is important to have a policy that specifically addresses the management of transgender inmates. Prior to offering recommendations on specific topics

related to the management of transgender inmates, some general training recommendations will be made for best practices.

### **LGBTI Input**

First, training should be created in conjunction with correctional staff and members of the LGBTI community to offer the most comprehensive information. Facilities should collaborate with the local advocacy organization to not only assist in training but also assist in being a resource for inmates and staff. Training should be delivered in person, facilitated by staff who have received specialized training and with members of the LGBTI community. It is best to deliver the training in a way to elicit interaction, engagement and discussion (Northwest Center for Public Health Practice, 2018).

### **Testing Comprehension and Compliance**

Next, the training should go above what is required in the PREA standards. The PREA standards are the minimum requirements for compliance in preventing, detecting and responding to sexual abuse and sexual harassment. Agencies can offer much more comprehensive training and strengthen policies to further prevent, detect and respond to sexual abuse and sexual harassment in confinement. As in the Harris County Sheriff's Office (2012), training should require participants to show comprehension through a demonstration of scenario-based training or a test.

### **Dispelling Myths**

It is important to dispel myths surrounding gender, sexual orientation, gender identity, gender expression and gender nonconforming. An extensive amount of time should be dedicated to terminology and definitions and definitions should not differ amongst various policies as was indicted in Alabama (AL DOC, 2016; AL DOC, 2018). Moreover, there should be time

dedicated to the statistics on the prevalence of sexual victimization of transgender inmates. This may help dispel the myth that transgender inmates perpetrate sexual abuse at a high rate, when in fact, transgender inmates experience a disproportionately high rate of victimization. Training should also include barriers that transgender inmates may have in disclosing their gender identity or reporting sexual victimizations. Finally, incorporating a case study or a testimonial from a transgender survivor of sexual victimization in confinement into the training will strengthen the understanding of struggles that transgender inmates can face (Just Detention International (JDI), 2014).

### **Communication**

In training staff on how to communicate effectively, professionally, and respectfully with transgender inmates, it is pertinent to express that staff are always accountable for their actions. For example, because gender identity is an internal sense of self, the true prevalence of transgender inmates in confinement is not known because some inmates choose to not disclose their gender identity. It is crucial to expect staff to always have respectful communication. A review of respectful versus disrespectful terms would be helpful to assist staff in learning and avoiding disrespectful terms. Best practice allows for inmates to choose their preferred pronouns and for staff to honor and respect their preference and be required to refer to inmates based on their preference (JDI, 2014).

### **Housing**

Training on the housing of transgender inmates should be required for all staff; however, extensive, specialized training should be conducted with staff who are responsible for making housing decisions like those staff in the Harris County Sheriff's Office. Unlike the Federal Bureau of Prisons (FBOP, 2018), training should align with PREA standards and not assign

transgender inmates to facilities based on their external genitalia. Best practice is to evaluate each individual and assess where their vulnerability to sexual victimization will be the lowest while taking the transgender inmates wishes very seriously regarding housing. To assist with making the best decision, training could include mock studies to best make housing decisions.

### **Treatment**

Several tools can be used to train staff on how to treat and offer treatment to transgender inmates. For example, the PREA Resource Center has released a training video that can be utilized by agencies to explain how to conduct respectful searches of transgender inmates (NPREC, 2015). Furthermore, staff should demonstrate their understanding of the training by role-playing with classmates on how to communicate with, be respectful of and be as least intrusive as possible when conducting searches of transgender inmates. Best practice is to train staff how to have inmates choose the gender of the staff person in which they wish to have search them (NPREC, 2015).

### **CONCLUSION**

In conclusion, the PREA standards were created to assist correctional facilities in preventing, detecting and responding to sexual abuse and sexual harassment in confinement. The PREA standards required facilities to create implementation strategies, update policies and practices and receive audits to gauge compliance with all the standards. The PREA standards are the floor and not the ceiling for effectively preventing sexual abuse in confinement. Even with a passing audit, facilities are only assured that they have met the minimum standards.

An important component of the PREA standards is training. An agency can have a policy that aligns with the PREA standards on paper but without proper staff training the policies will not translate into practice. While the PREA standards require topics that staff need to be trained

on, many of the topics are broad and there is no direction on how to train staff, absent staff need to be trained every other year. The PREA standards also do not specify how much time or what method of training should be used, facilities and agencies are left to devise their own training curriculums.

The National Prison Rape Elimination Commission learned in their research on the problem of sexual abuse and sexual harassment in confinement that transgender inmates are particularly vulnerable to sexual abuse in confinement and thus, standards were created to help protect transgender inmates. The lack of knowledge and experience on the management of transgender inmates also posed a risk to the safety of transgender inmates. The standards highlight that knowledge and training in the areas of management, communication, searching, screening and housing of transgender inmates will assist in reducing the vulnerability to sexual abuse for transgender inmates.

The four correctional agencies that were reviewed for this paper all have positive aspects, and all met some or all the PREA requirements regarding transgender inmates. The policy of the AZ DOC (AZ DOC, 2015) promoted respectful treatment and acknowledgement of transgender inmates by allowing transgender inmates to present as their gender identity. The downfall to AZ DOC analysis is that there was no specific training module dedicated to transgender inmates (COTA, 2018). For AL DOC (AL DOC 2008; AL DOC, 2016; AL DOC, 2018), their policies did not even meet the minimum PREA requirements, as staff were not required to receive training in how to effectively communicate with transgender inmates. This standard could arguably be one of the most important in the management of transgender inmates as proper communication and understanding of respectful terms can set the tone in a facility.

Next, the FBOP's (2018) scaled back transgender manual is of concern for the safety of transgender inmates. The new policy does not align with the housing or medical care requirements of the PREA standards, which could increase the risk of sexual abuse of transgender inmates in the FBOP. The policy seems to go backwards and dismantle the intent of the PREA standards and staff are now being trained to offer fewer protections to transgender inmates than previously trained to offer.

Finally, the curriculum of the HCSO (2012) in the management of transgender inmates offers a comprehensive foundation for training staff, focusing on terminology and understanding of history. The curriculum and policies teach staff how to communicate with transgender inmates and meet all the other relevant PREA standards. It is unknown how in practice the HCSO can cover the vast amount of content in the one hour reserved for this training.

For correctional administrators to make a greater impact in keeping transgender inmates safe from sexual abuse and sexual harassment, the recommendations in this paper should be enacted. Agencies should make this training a stand-alone topic with time allocated to effectively train staff so that there is a comprehension of the material. Engaging transgender activists and experts in the training development, providing scenario-based or case study style training on dispelling myths, communication, housing, management and treatment is best practice to ensure staff have the best resources to manage transgender inmates and to be able to prevent, detect and respond to sexual abuse and sexual harassment of transgender inmates.

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