



U.S. Department of Justice  
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*Presented by*

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# Implementing the Prison Rape Elimination Act:

**BJS's Experience of Collecting the  
Sexual Orientation and Gender Identity  
of Prison and Jail Inmates**



BUREAU OF JUSTICE STATISTICS

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# Prison Rape Elimination Act of 2003

- Requires the Bureau of Justice Statistics (BJS) to
  - “carry out, for each calendar year, a comprehensive statistical report and analysis of the incidence and effects of prison rape”
  - sample “not less than 10 percent of all federal, State, and county prisons, a representative sample of municipal prisons”
  - “use surveys and other statistical studies of current and former inmates”
  - “Not later than June 30 of each year, ...submit a report ... with respect to prison rape, for the preceding calendar year”
  - “The report shall include ... a listing of those institutions ... ranked according to the incidence of prison rape in each institution... and a listing of any prisons ... that did not cooperate with the survey”

## Reports based on victim self-reports and administrative data on allegations and substantiated incidents

- BJS has completed more than 250,000 interviews of current and former inmates held in prisons and jails (in 2007, 2008-09, and 2011-12) and 17,900 youth in state-operated juvenile facilities (in 2008-09 and 2012)
- Surveys utilized ACASI, using a touch-screen and synchronized audio instructions delivered through headphones
- Samples employed a multi-stage sampling design, with PPS for selecting facilities and SRS for selecting inmates/youth; oversampling for special populations at each stage
- Overall rates of sexual victimization (within past 12 months or since admission, if shorter) found to be 4.0% in prisons; 3.2% in jails; and 9.5% in state operated juvenile facilities in 2011-12

# Large differences in sexual victimization found among inmates based on their sexual orientation

Prevalence of sexual victimization, by sexual orientation of inmate/youth, NIS and NSYC

| Sexual orientation                      | NIS, 2011-12    |               | NSYC, 2012                  |
|---|-----------------|---------------|-----------------------------|
|   | Prisons<br>Rate | Jails<br>Rate | Juvenile facilities<br>Rate |
| <b>Victimized by other inmate/youth</b> |                 |               |                             |
| Heterosexual*                           | 1.2%            | 1.2%          | 1.5%                        |
| Lesbian, gay, bisexual, and other       | 12.2 **         | 8.5 **        | 10.3 **                     |
| <b>Victimized by staff</b>              |                 |               |                             |
| Heterosexual*                           | 2.1%            | 1.7           | 7.8                         |
| Lesbian, gay, bisexual, and other       | 5.4 **          | 4.3 **        | 7.5                         |

\*Comparison group

\*\*Difference with comparison group significant at the 95% confidence-level.

# Rates of sexual victimization highest among transgender inmates

## Prevalence of sexual victimization among transgender adult inmates, National Inmate Surveys

|                                 | NIS-1<br>(2007) | NIS-2<br>(2008-09) | NIS-3<br>(2011-12) | NIS<br>(combined) <sup>a</sup> |
|---------------------------------|-----------------|--------------------|--------------------|--------------------------------|
| <b>State and federal prison</b> |                 |                    |                    |                                |
| Number of inmates               |                 |                    |                    |                                |
| Unweighted <sup>b</sup>         | 52              | 73                 | 101                | --                             |
| Weighted <sup>c</sup>           | 2,987           | 4,111              | 3,209              | --                             |
| Sexual victimization            |                 |                    |                    |                                |
| Percent <sup>d</sup>            | 33.1%           | 31.6%              | 39.9%              | 34.6%                          |
| Standard error                  | 8.0             | 6.8                | 7.3                | 4.2                            |
| <b>Local jail</b>               |                 |                    |                    |                                |
| Number of inmates               |                 |                    |                    |                                |
| Unweighted                      | 97              | 113                | 129                | --                             |
| Weighted                        | 1,827           | 1,974              | 1,709              | --                             |
| Sexual victimization            |                 |                    |                    |                                |
| Percent                         | 34.4%           | 39.8%              | 26.8%              | 34.0%                          |
| Standard error                  | 5.6             | 5.3                | 6.4                | 3.3                            |

# Rates differ by type of sexual victimization

## Prevalence of sexual victimization among transgender adult inmates, by type of victimization

| Type of victimization                 | NIS-1<br>(2007) | NIS-2<br>(2008-09) | NIS-3<br>(2011-12) | NIS<br>(combined) <sup>a</sup> |
|---------------------------------------|-----------------|--------------------|--------------------|--------------------------------|
| <b>State and federal prison</b>       |                 |                    |                    |                                |
| Inmate-on-inmate sexual victimization |                 |                    |                    |                                |
| Percent <sup>b</sup>                  | 15.5 %          | 23.2 %             | 33.2 %             | 24.1 %                         |
| Standard error                        | 5.0             | 5.9                | 5.2                | 3.2                            |
| Staff sexual misconduct               |                 |                    |                    |                                |
| Percent <sup>c</sup>                  | 23.8 %          | 12.6 %             | 15.2 %             | 16.7 %                         |
| Standard error                        | 7.8             | 4.4                | 5.2                | 3.3                            |
| <b>Local jail</b>                     |                 |                    |                    |                                |
| Inmate-on-inmate sexual victimization |                 |                    |                    |                                |
| Percent                               | 23.7 %          | 28.0 %             | 15.8 %             | 22.8 %                         |
| Standard error                        | 4.8             | 4.3                | 4.4                | 2.6                            |
| Staff sexual misconduct               |                 |                    |                    |                                |
| Percent                               | 23.2 %          | 26.5 %             | 18.3 %             | 22.9 %                         |
| Standard error                        | 5.8             | 5.5                | 5.1                | 3.2                            |

# Measures of sexual orientation and gender identity (National Inmate Survey)

**D2** Are you male, female, or transgender?

- 1 Male
- 2 Female
- 3 Transgender
- DK/REF

**D5** Do you consider yourself to be heterosexual or 'straight', bisexual, or homosexual or gay?

- 1 'Straight,' which is also called Heterosexual
- 2 Bi-sexual
- 3 [D2 = 1] Homosexual or Gay  
[D2 = 2 OR 3 OR DK OR REF] Homosexual, Gay, or Lesbian
- 4. Other  
DK/REF

# Alternative measure of transgender status recommended by Williams Institute

**D2a** What sex were you assigned at birth, on your original birth certificate?

- 1 Male
- 2 Female
- DK/REF

**D2b** How do you describe yourself? (check one)

- 1 Male
- 2 Female
- 3 Transgender
- 4 Do not identify as male, female or transgender
- DK/REF

# Selected measurement properties in NIS-3

- **Placement in ACASI instrument** – early in survey, but after CAPI demographics and instrument-control items, ACASI tutorial, ACASI demographics, Veteran/military status, criminal justice status
- **Low item non-response on sex/gender identity** – 0.1% in prisons and 0.1% in jails (25 refusals and 15 skips out of 37,518 interviews in prisons; 40 refusals and 15 skips out of 52,671 interviews in jails)
  - ✓ Non-respondents also refused/skipped other items (e.g., 18 of the 40 DK/REF on sexual orientation in prison; 16 on marital status, race/Hispanic origin)
- **Item nonresponse on sexual orientation higher** – overall, 1.9% in prisons and 0.7% in jails
- **No evidence of false negatives or false positives** – prevalence of transgender identity .23%
  - ✓ **Lack baseline prevalence measure** - unknown prevalence in comparable general population (age, race/Hispanic); however, unknown criminal justice involvement
  - ✓ **Efficacy of two-step measurement is unknown** – sex assigned by birth followed by current gender-identity thought to provide better measure of transgender prevalence; needs to be cognitively tested prior to NIS-4

# PREA standards related to gender status and sexual orientation promulgated in June 2012

- **115.5 – General definitions.**
  - *Transgender* means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.
  - *Intersex* means a person 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.
  - *Gender nonconforming* means a person whose appearance or manner does not conform to traditional societal expectations.
- **115.15(e)** – The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status...
- **115.15(f)** – 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.....
- **115.41(d)** – The inmate screening shall consider, at minimum, the following criteria to assess for risk of sexual victimization: (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;

# PREA standards (continued)

- **115.42 (c)** – In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems.
- **115.42 (e)** – A transgender or intersex inmate’s own views with respect to his or her own safety shall be given serious consideration.
- **115.42 (f)** – Transgender and intersex inmates shall be given opportunity to shower separately from other inmates.
- **115.42(g)** – The agency shall not place lesbian, gay, bisexual, transgender or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status...

# Standards have led to inclusion of gender identity items in administrative data collections (SSV, 2013)

The Survey of Sexual Victimization (SSV) is an administrative data collection based on allegations of sexual victimization by other inmates or staff that are reported to correctional authorities. The collection includes an enumeration of incidents reported to state prison systems, state juvenile correctional systems, the federal prison system, the Bureau of Immigration and Customs Enforcement (ICE), the U.S. military, and a sample of jail jurisdictions, privately operated adult prisons and jails, and facilities in Indian country. Additional information is collected on **substantiated incidents** on the victim (s), perpetrator(s), characteristics of the incident, and outcomes.

Items added to the incident form in 2013:

**Victim #1:** What was the victim's gender?

**Victim #2:** What was the victim's gender?

1. Male
2. Female
3. Transgender
4. Intersex

# Conclusions from BJS's experience

- Legal policy and federal standards developing rapidly to address the needs of LGBTI community – federal statistical agencies must be responsive to information needs
- Prevalence of LGBTI orientation and gender identity requires large sample sizes to provide accurate estimates and meaningful descriptive data in household surveys; administrative data not likely source unless mandated by law/regulation
- Fine-tuning of measurement is advised:
  - Continued separation of sexual orientation from gender identity is wise
  - Recommended two-step measurement approach requires testing – assignment at birth vs. current gender identity (BJS focused on current sex/gender identity)
  - Measurement strategies may differ depending on mode of collection (agencies need to explore mode effects - self-administered vs in person vs CATI modes may require different approaches)
  - Development of measurement strategy for gender identity for youth needed

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