

Standard in Focus

Screening for Risk of Sexual Victimization and Abusiveness**§115.42, 115.142, 115.242, 115.342 Use of Screening Information**

- a) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.
- b) The agency shall make individualized determinations about how to ensure the safety of each inmate.
- c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.
- d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.
- e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.
- f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
- 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, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

Purpose

To reduce the risk of inmate-on-inmate sexual abuse and sexual harassment (referred to throughout the remainder of this document as “sexual abuse” or “sexual victimization”) by:

- Maintaining separation between inmates at risk of being sexually victimized and inmates at risk of being sexually abusive;
- Using intake screening information from § 115.41 to inform all inmate housing, bed, work, education, and program assignments: and
- Providing additional protections for transgender and intersex inmates, based on the unique risks these populations face while incarcerated.

Implementation

All inmates

- Agencies must use intake screening information (see § 115.41) to make individualized determinations for all inmates regarding housing, bed, work, education, and program assignments. These determinations are intended to maintain separation between inmates at risk of being sexually victimized and inmates likely to commit sexual abuse.
- Each facility's unique circumstances will inform how to most effectively maintain separation in housing between these two categories of inmates. For example:

Implementation Cont'd

All inmates cont'd

- In a facility with a single dormitory housing unit, inmates at risk of being sexually abused and those who are likely to abuse other inmates can be bunked at opposite sides of the dormitory. Potentially vulnerable inmates can also be bunked in areas of the unit that are more likely to receive additional staff supervision.
 - In a facility with a single housing unit, but multi-person cells (i.e., two or more inmates per cell), inmates determined to be vulnerable can be placed in separate cells from those likely to be abusive.
 - In a facility with multiple housing units, there are many more options for keeping potentially vulnerable inmates separated from those determined to be at risk of sexually abusing other inmates. In such a facility, these two groups can be placed in separate housing units. In facilities where there are many housing units (e.g., more than 10), PREA auditors will require compelling justification for any commingling of these two groups in the same housing unit.
- The separation of inmates in ways that prevent sexual abuse and sexual harassment in programming, education, and work areas can be more challenging. In these areas, agencies should, at a minimum, prohibit unsupervised contact between potentially vulnerable inmates and those who are likely to be abusive. Even supervised contact between these two categories of inmates should be accompanied by heightened supervision and safeguards against sexual abuse.

Transgender and intersex inmates

- § 115.42 (c)-(g) require additional protections for transgender and intersex inmates in recognition of the heightened risks this population faces during incarceration. (Allen J. Beck, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12, Supplemental Tables: Prevalence of Sexual Victimizations Among Transgender Adult Inmates (Dec. 2014)).
- Housing and programming decisions for transgender and intersex inmates cannot be based solely on genital status.
- If transgender and/or intersex inmates are placed in involuntary segregated housing to protect them from sexual victimization, the facility must adhere to the safeguards in § 115.43.
- In all individualized housing and programming determinations involving a transgender or intersex inmate, facility staff must give serious consideration to the inmate's own views regarding his or her safety.
- Agencies must make case-by-case decisions regarding whether to assign a transgender or intersex inmate to a facility for male or female inmates. Accordingly, an agency may have some transgender women and transgender men housed in male facilities, and other transgender women and transgender men housed in female facilities.

Implementation Cont'd

Transgender and intersex inmates cont'd

- In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, an agency must also consider whether the placement will present management or security problems.
- Placement and programming assignments for each transgender or intersex inmate must be reassessed at least twice each year to review and address any threats to safety experienced by the inmate.
- Lesbian, gay, bisexual, transgender, and/or intersex (LGBTI) inmates cannot be housed in dedicated facilities, units, or wings solely on the basis of such identification or status, unless the placement is in connection with a consent decree or other legal settlement. This is true even if the placement is “voluntary,” or if the agency does not require all LGBTI inmates to be housed in dedicated housing. If the dedicated housing is available only to LGBTI inmates, and is not connected to a consent decree or other legal settlement, it does not comply with § 115.42(g).

Challenges

- Creating a comprehensive process that fully and continually utilizes the results of inmate screening and, with transgender and intersex inmates, reassessments to make well-reasoned decisions about each inmate’s housing, bed, work, education, and program assignments.
- Ensuring that appropriate staff are trained on established procedures to use screening information and reassessments to make housing, bed, work, education, and program decisions that protect potentially vulnerable inmates.
- Implementing appropriate controls on the dissemination of screening and reassessment information, to guarantee that this information is not used to the inmate’s detriment (see § 115.41(i)).
- Ensuring that facilities do not place potentially vulnerable inmates in involuntary restrictive housing, unless a determination has been made that no alternative means of separation is available (see § 115.43), and even then, only under specified conditions and with periodic reassessment.
- Determining how to make initial housing and programming decisions for transgender and intersex inmates that are not based solely on genital status.
- Ensuring that staff in both male and female facilities are sufficiently trained and prepared to house transgender women and transgender men safely.
- Educating transgender and intersex inmates about the opportunity they have to shower separately from other inmates, and how to access this opportunity.

Best Practices

- While the standards do not specifically require a policy, agencies and facilities are encouraged to develop and implement a clear policy that governs how inmate screening information is used. Such a policy forms the basis for effective staff training, and helps ensure consistency in using screening and, with transgender and intersex inmates, reassessment information to inform housing, bed, work, education, and program assignments.
- Agencies are required to conduct training for all staff who have contact with inmates on a number of issues related to preventing, detecting, and responding to sexual abuse and sexual harassment of inmates. (see § 115.31).
- Beyond the key staffing training topics enumerated in § 115.31, such training should ideally provide a basic understanding of sexual orientation, gender identity, gender expression, and how sex is assigned at birth. Staff training should also identify gaps in knowledge and cultural beliefs, and how these factors may impact the ability of staff to conduct effective inmate interviews, screenings, and reassessments of transgender and intersex inmates, and to use this information to guide individualized placement and programming assignments. Effective training will encourage open dialogue among staff, so that these issues can be addressed in a respectful and nonjudgmental manner, with a focus on encouraging behaviors that support staff members' ability to meet their professional responsibilities under the PREA Standards. Using external subject matter experts who promote the health and safety of LGBTI people to participate in these trainings can be a very effective way to convey the information and promote constructive discussions among staff.
- Educating inmates with about sexual orientation, gender identity, and gender expression, as well as respectful treatment of people who are LGBTI, can significantly alleviate tension when transgender people are placed in housing and programming that align with their gender identities.
- Because making housing and programming assignments for transgender and intersex inmates on an individualized, case-by-case basis can be challenging and complicated, some agencies use multi-disciplinary, collaborative teams when making these determinations. These teams may include agency and/or facility administrators, screening and security staff, medical and mental health professionals, and community advocates. Importantly, the transgender or intersex inmate should also be involved in the decision-making process, and, as emphasized above, the inmate's own views with respect to his or her safety must be given serious consideration. Evaluations may also consider an inmate's security threat level, criminal and disciplinary history, current gender expression, medical and mental health information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. Evaluations will likely consider facility-specific factors as well, including inmate populations, staffing patterns, and physical layouts.
- Housing and programming decisions for transgender and intersex inmates should not be based primarily on the complaints of other inmates or staff when those complaints are based on gender identity
- Facilities should adopt procedures that will afford transgender and intersex inmates the opportunity to disrobe, shower, and dress apart from other inmates. Facility layout will inform these procedures, which may be accomplished either through physical separation (e.g., separate shower stalls) or by time-phasing or scheduling (e.g., allowing an inmate to shower before or after others).

Best Practices Cont'd

- As stated above, agencies cannot house LGBTI inmates in a dedicated facility, housing unit, or wing unless it was established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates. However, some agencies and facilities have had success establishing housing units or wings reserved for inmates who are designated as potentially vulnerable through the screening process. In addition to LGBTI inmates, who are at an increased risk for sexual abuse and sexual harassment, these units or wings may, for example, house male inmates who are small in stature, inmates who have a gender non-conforming appearance, a disability, or a past history of being sexually abused. It is important to ensure that these units or wings for vulnerable inmates do not include individuals who screen positively as likely perpetrators of abuse. For example, a sex offender may be designated as vulnerable because of his charges, convictions, and/or other factors, and may require protective custody, but he would not be an appropriate candidate for a vulnerable persons' unit or wing, if screening information indicates that he may be sexually aggressive towards other inmates. A strong screening process enables these units or wings to provide increased safety for vulnerable inmates without requiring restrictive measures, such as lengthy periods of in-cell confinement that are common in involuntary restrictive housing.

Audit Issues

- Determining if the screening information is effectively and consistently used to make appropriate housing, bed, work, education, and program assignments on an individualized, case-by-case basis.
- Reviewing inmate files to determine if reassessments of transgender and intersex inmates' housing and programming assignments are occurring at least twice each year and being documented appropriately.
- Determining if appropriate controls are present to protect the sensitive information that is collected during inmate screenings and reassessments.
- Examining a facility's actual practices, in addition to reviewing official policy. For example, a PREA audit that reveals that all transgender and/or intersex inmates are, in practice, housed according to their genital status raises the possibility of non-compliance, even if the agency's policies are consistent with all of the requirements in § 115.42. The auditor must conduct a comprehensive review of the agency's screening and reassessment processes, and examine specific inmate records/files to determine if individualized, case-by-case housing and programming assignments of transgender and/or intersex inmates are being made.
- Examining documentation of reassessment of housing and programming assignments for each transgender or intersex inmate.
- Touring living units and observing accommodations made for transgender and intersex inmates to shower separately from other inmates.
- Reviewing the title, status, and findings of any consent decree, legal settlement, or legal judgment requiring a facility to establish a dedicated facility, unit, or wing for LGBTI inmates, and examining documentation of housing assignments of LGBTI inmates pursuant to the consent decree, legal settlement, or legal judgment.

Standard Variations

The following variations in the standard are noted for **Lockups**, **Community Confinement Facilities**, and **Juvenile Facilities**. The variations are discussed in summary fashion below, but readers are encouraged to consult the full text of the specific set of standards to ensure a complete understanding of the differences.

- **Lockups:** The following differences are noted:
 - The Lockup standards do not contain a standard regarding the use of screening information.
- **Community Confinement:** The following differences are noted:
 - No requirement to reassess placement and programming assignments for each transgender or intersex resident at least twice each year to review any threats to safety experienced by the resident.
- **Juvenile:** The following differences are noted:
 - Placement of LGBTI juveniles in dedicated facilities, units, or wings solely on the basis of such identification or status is not allowed at all in juvenile facilities. No exception exists for placements in connection with consent decrees or other legal settlements.

Resources

- **Frequently Asked Questions (FAQs) on the PREA Resource Center (PRC) Website:** <https://www.prearesourcecenter.org/frequently-asked-questions>

The Department of Justice has issued extensive guidance regarding the use of screening information. Visit the PREA Resource Center's FAQ page and search under standard 115.42 for the many related FAQ responses provided by Department of Justice. The FAQs to date are as follows:

- **August 17, 2017.** *Is an agency compliant with Standard 115.42(g) or Standard 115.242(f) if it places Lesbian, Gay, Bisexual, Transgender, or Intersex (LGBTI) inmates or residents in a dedicated facility, housing unit, or wing solely on the basis of such identification or status, absent a consent decree, legal settlement, or legal judgment?* <https://www.prearesourcecenter.org/node/5345>
- **December 2, 2016.** *What does “separate” mean in the context of the screening standards, which require that agencies shall use screening information to inform housing and programming decisions “with the goal of keeping separate those inmate/residents at high risk of being sexually victimized from those at high risk of being sexually abusive”?* <https://www.prearesourcecenter.org/node/5166>
- **September 27, 2016.** *Does the case-by-case determination required by Standard 115.42(c) in making housing and programmatic placements for transgender and intersex inmates need to take place within a particular timeframe?* <https://www.prearesourcecenter.org/node/5013>
- **March 24, 2016.** *Does a policy that houses transgender or intersex inmates based exclusively on external genital anatomy violate Standard 115.42(c) & (e)?* <https://www.prearesourcecenter.org/node/3927>
- **April 23, 2014.** *Standard 115.42, “Use of Screening Information,” requires that transgender inmates be allowed to shower separately. What constitutes “separate” for the purposes of complying with this standard?* <https://www.prearesourcecenter.org/node/3249>

Resources Cont'd

- **February 7, 2013.** *What are appropriate ways to use PREA screening information? Should we base housing decisions on the PREA risk screening information?*
<https://www.prearesourcecenter.org/node/3247>
- **PREA Essentials on the National PREA Resource Center Webpage**
www.prearesourcecenter.org/training-technical-assistance/PREA-essentials
- **Search the PREA Resource Center Online Library to Access These Publications**
 - April 2015. *Keeping Vulnerable Populations Safe under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails*, Hastings et al.
 - January 16, 2015. *Respectful Classification Practices with LGBTI Inmates Training*, New York DOC
- **Archived Webinars on the PRC Website**
 - August 13, 2018. *Understanding Lesbian, Gay, Bisexual, Transgender and Intersex Inmates, Residents, and Detainees* <https://www.prearesourcecenter.org/training-and-technical-assistance/webinars/5804/understanding-lesbian-gay-bisexual-transgender-and>
 - April 21, 2015. *Keeping Vulnerable Populations Safe Under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails* <https://www.prearesourcecenter.org/training-and-technical-assistance/webinars/2907/keeping-vulnerable-populations-safe-under-prea>
 - September 25, 2014. *PREA in Action—Committing to Safety and Respect for LGBTI Youth and Adults in Correctional Settings: Lessons From the Field* <https://www.prearesourcecenter.org/training-and-technical-assistance/webinars/2572/prea-action-committing-safety-and-respect-lgbti>
- **Additional Training Resources:** Always check the following sources for excellent training on PREA.
 - National Institute of Corrections (NIC) - <http://nicic.gov/training/prea>
 - Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings 2nd Edition - <https://nicic.gov/library/031373>
 - End Silence: The Project on Addressing Prison Rape - <https://www.wcl.american.edu/endsilence/>

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