

Keeping Vulnerable Populations Safe under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails

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Introduction

Introduction

The purpose of this guide is to provide prison and jail administrators and staff with strategies for safely housing inmates at risk of sexual abuse without isolating them. Inmates at risk for sexual victimization—whether identified through screening or victimized in confinement—need protection from abusers, equal access to programming and health and mental health services, and congregate opportunities.

This guide will (a) briefly review the *use* of segregated housing and protective custody in the United States, (b) note potential *outcomes* of isolation that motivated the construction of the PREA standards (“standards”) restricting the use of segregation, and (c) present *promising strategies* for implementing the standards without isolating at-risk populations in prisons and jails. The guide includes discussions of populations at particularly high risk for sexual abuse in confinement: women; youthful inmates in adult facilities; and lesbian, gay, bisexual, transgender, intersex (LGBTI) individuals, and gender nonconforming inmates. Most of the strategies discussed are drawn from practices used by state prison systems. However, these strategies—and the principles behind them—apply to jails. The PREA standards for community confinement facilities and lockups do not address protective custody or other types of segregated housing, since long-term isolating conditions are not considered an issue in those facilities. Community confinement facilities and lockups are not, therefore, discussed here.

Although there is some overlap, the effects of confinement on physical, mental, and social development and considerations for behavior (e.g., emotional outbursts) for young people in juvenile detention facilities distinguish them from adult populations in confinement. The PREA standards for juvenile facilities set specific requirements for limiting the use of isolation for youth in juvenile detention and are not included in this guide.

The **Prison Rape Elimination Act (PREA)**, a federal law enacted in 2003, was created to eliminate sexual abuse in confinement. In addition to providing federal funding for research, programs, training, and technical assistance to address the issue, the legislation mandated the development of national standards. The National Prison Rape Elimination Commission developed recommended national standards for reducing prison rape. The final standards became effective June 20, 2012, when they were published by the U.S. Department of Justice (DOJ) in the Federal Register. The standards were added as part 115 of Title 28 of the Code of Federal Regulations. Accordingly, the standards for adult prisons and jails are numbered 115.11 through 115.93. On May 6, 2014, the U.S. Department of Homeland Security (DHS) released final standards for DHS confinement facilities.

Applicable PREA Standards

The following PREA standards have direct bearing on keeping at-risk inmates safe with the least disruption in services, activities, and normalized interactions.¹

- **Screening for risk of victimization and abusiveness** (115.41)

Under this standard, correctional agencies must assess all inmates in adult facilities for risk of being sexually abused or sexually abusive. Screenings must occur during intake, on transfer to another facility, and when there is new information or a sexually abusive incident. High-quality screenings are key to making sound decisions about housing, programming, and work assignments.

- **Use of screening information** (115.42)

Information gained during screening must then be used to inform housing, bed, work, education, and program assignments, with the goal of keeping inmates at high risk of sexual victimization separate from those at high risk of sexually abusing others. This standard includes sections on housing LGBTI individuals and responses to transgender and intersex inmates.

- **Protective custody** (115.43)

This standard emphasizes that individuals deemed at high risk for sexual abuse should not be placed in “involuntary” segregated housing unless all available alternatives have been assessed and a determination made that there are no

other means of separating them from likely abusers without temporary segregation.

- **Post-allegation protective custody** (115.68)

The requirements outlined in the protective custody standard above also apply for alleged victims of sexual abuse that occurred while in confinement.

- **Youthful inmates** (115.14)

A youthful inmate is a person younger than 18 years of age who is under adult court supervision and incarcerated or detained in an adult prison or jail (115.14). Adult facilities confining youthful inmates must not place these inmates in a housing unit where they will have sight, sound, or physical contact with adult inmates through use of a shared dayroom, other common space, shower area, or sleeping area. Facilities must make every effort to avoid placing youthful inmates in isolation in their attempts to meet this standard. Youthful inmates may participate in congregate and other activities with adult inmates if there is direct supervision at all times.

A Brief Look at the Use of Segregated Housing and Protective Custody in the U.S.

Since the 1980s, U.S. prisons and jails have relied on the use of segregation to manage difficult populations.² Originally intended to handle dangerous inmates and those who had committed very serious infractions, over time, the use of segregated housing expanded to include a high proportion of individuals with violations that are disruptive but not violent. Now inmates may end up in segregated housing for infractions such as talking back, being out of place, failing to report to work or school, refusing to participate in programs, or refusing to change housing units or cells.³

Although it varies by jurisdiction, segregation or solitary confinement is used most commonly to punish individuals in confinement for rule violations (disciplinary or punitive segregation), remove inmates from the general facility population who are thought to *pose a risk* to security or safety (administrative segregation), and protect individuals believed to be *at risk* in the general facility population (protective custody). Other reasons include ensuring the safety of inmates under investigation and holding those awaiting hearings. *Involuntary protective custody* occurs when an individual is placed in segregated housing against his or her will. *Voluntary protective custody* refers to housing requested by an individual. Inmates at risk for sexual victimization or physical violence sometimes request protective custody or put themselves in disciplinary segregation by

committing violations in order to protect themselves from harm in the general population.

Inmates with serious mental illness and those with developmental disabilities are among the populations who are often placed in segregated housing for protection.⁴ Although they may have no violations and may not pose a threat to staff or others, they are typically housed in units with the same intensive security procedures, levels of isolation, restricted human interactions, and reduced access to programs and mental health care.⁵ This restricts congregate and programming options and is an ineffective use of security resources. It also creates barriers to effective service provision due to the high security and restricted movement practices in segregation.

Why Does Use of Segregation Matter?

Conditions of Isolation

Segregated inmates are typically taken out of their cells for one hour out of every 24, for recreation or a shower, five days a week. Before being released from their cells, inmates are cuffed and may be shackled at the waist and placed in leg irons. Recreation (exercise) is typically taken alone in an empty outdoor caged area or indoor room. Except when overcrowding requires double celling, face-to-face human contact with individuals other than corrections officers is virtually eliminated in segregated housing. Officers deliver meal trays through a slot in the door, and counselors and mental health staff conduct visits through the cell door.⁶

Individuals in segregated housing are typically not allowed contact with others in confinement, and visits with family members are curtailed and may be prohibited. Some individuals stay in segregated housing for years, without the opportunity to engage in the types of human interaction, programming, and education that would help them adjust when reentering the general facility population or society.

Impacts of Isolation

Increasing evidence suggests that holding people in isolation with minimal human contact for weeks, months, or years can create or exacerbate serious mental health problems and assaultive or anti-social behavior, and lead to decreases in physical health and functioning.⁷ Incidents of self-harm and suicide also are significantly higher in segregated housing than in general facility housing.⁸ An additional concern is the chilling effect that fear of being placed in involuntary segregated housing—with the severe conditions and lack of family visits—may have on victims' reporting of sexual abuse, especially if such placements are the typical response of a facility to reports of sexual abuse and the need for protection is long term.⁹

If the facility's typical response to a report of sexual abuse is placing the victim in involuntary segregated housing, this may significantly suppress reporting at the facility.

For youthful inmates in segregation, effects of isolation and lack of positive programming and congregate opportunities on cognitive and social

development may be especially damaging.¹⁰ During the formative stage of adolescence, when basic developmental needs for interaction and guidance are not met, youth may be developmentally unable to view the isolation as temporary, to self-soothe, to reason with themselves about delaying relief, or to stabilize themselves without support and training.

Youth are particularly vulnerable to depression and agitation when isolated, which may be expressed by irritability and acting out, leading to additional segregation time and sometimes to self-harm. Research on children who were abused or neglected also provides evidence that past experiences of trauma increase vulnerability, even to mild stressors, and they may respond aggressively to control attempts and perceived threats when memories of past abuse have been triggered.¹¹

Fiscal Costs of Isolation

Holding people in long-term isolation is also expensive. It may cost two-to-three times as much to house an inmate in segregation as in general population units.¹² The majority of the higher costs come from the need for additional staff to monitor segregation units and manage the movement of the inmates held in them. For example, escorting inmates one at a time to and from showers, exercise areas, and needed appointments is usually conducted by two officers for each inmate. Procedures in segregation units may necessitate twice as many security staff as in non-restricted housing.

Segregated housing units also require staff from all disciplines since services must be delivered to

each individual. The intensive security procedures in segregation also make it difficult to provide programming, face-to-face mental health treatment, and reentry services and planning, further inhibiting the preparation of these individuals for successful release back to the general population or from custody. Given the current pressure on states' budgets, many stakeholders are exploring the use of alternatives to segregation. Some of these alternatives, explained in this guide, may reduce financial burdens on taxpayers and jurisdictions, increase the cost-efficiency of facility operations by reducing or eliminating practices such as the use of expensive high-security staff, and enable agencies to focus resources on inmate programs and interventions that are more likely to achieve positive outcomes.¹³

Managing People Who Screen at Risk for Sexual Abuse in General Population

The standards are particularly concerned with protective custody that is isolating and with “involuntary segregated housing”—placement in protective custody or segregation/isolation against the wishes of the inmate or youthful inmate. The standards discussed in this guide mandate that isolation be used *only* when no other alternatives are available and all other options have been explored (115.43).

A range of strategies exists to safely maintain vulnerable people in general population without resorting to segregation. A key element of these strategies is individualized decision making. If someone is flagged as vulnerable to sexual abuse

based on screening, interviews, and other documentation, corrections professionals—including medical and mental health staff—should review that case, talk to the individual, and make informed decisions (in consultation with others) about where that person could be housed, work, and participate in programs within the confinement setting with the least risk and the most constructive activities.

Some jurisdictions have found ways to successfully manage individuals who specifically screen as vulnerable to sexual abuse within general population housing units. Jurisdictions that do this effectively have three major characteristics in common. First, they emphasize the importance of a strong *screening and re-screening* process administered by trained staff and monitored by high-level supervisors. Second, they manage and deploy their existing staff resources to keep vulnerable inmates safe. Third, all decisions are made on a case-by-case basis. This guide offers instructive examples from several jurisdictions whose correctional agencies have found ways to protect the safety of vulnerable inmates in general population settings.

Incorporating PREA Screening Requirements into Internal Classification Systems

In Wyoming, corrections leaders and case managers collaborated with a consultant starting in 1991 to design a valid, reliable classification system. When the PREA standards were issued, the Wyoming Department of Corrections (WYDOC) worked to incorporate the screening requirements into its internal classification process and housing matrices, which were already

designed to help identify and manage potentially violent inmates. All inmates in WYDOC have a two-part classification label—the first part designates their custody level (e.g., maximum, medium, or minimum), and the second part indicates their aggression level (in Wyoming, this is denoted as Altus, Medius, and Brevis).¹⁴

Once they have been classified, inmates are assigned to a housing unit based on matrices the WYDOC developed for each of its prisons. It never houses potentially highly aggressive Altus inmates with its least aggressive Brevis inmates, and it decides how to mix in moderately aggressive Medius inmates on a case-by-case basis. These screening procedures and housing matrices are dynamic; they can and do change as facility or agency needs change. Altus and Brevis inmates are sometimes assigned to the same programs. In those cases, additional staff are deployed to supervise that program. The key to the success of this approach is that executive staff make sure all case managers and classification staff are well trained and understand that the WYDOC screens and houses all inmates in this way to create safe living conditions that do not rely on segregation.

KEY IDEAS

- Establish strong screening and re-screening tools and processes
- Make individualized decisions for vulnerable inmates

Using Case Management Systems to Manage Vulnerable Inmates

Oregon also has worked for years to create safer prisons and implement PREA requirements.¹⁵ The Oregon Department of Corrections' (ODOC's) model for keeping vulnerable inmates safe is based on identifying and tracking indicators of vulnerability and taking a more intensive case management approach to those who screen at highest risk for victimization. In Oregon, those considered at highest risk for victimization are inmates who were previously sexually abused in confinement or who score positive for more than three victimization risk factors. During intake, all inmates are screened for risk of sexual victimization and abusiveness. A sexual abuse liaison (a position that varies from facility to facility) reviews cases where inmates score at risk for victimization or abusiveness. If someone is determined to be at risk for sexual victimization or abusiveness, he or she goes on ODOC's "PREA Watchlist." The PREA Watchlist is a database that ODOC developed to track individuals who are potentially vulnerable or sexually abusive within and across ODOC facilities for the duration of their incarceration.

In ODOC, every facility has an internal Sexual Abuse Response Team (SART), which, at a minimum, consists of three team members who are representatives from medical, mental health, and security disciplines. All SART members volunteer to serve on these teams. The SART is responsible for responding to actual incidents of sexual abuse and does intensive, individualized case management for particularly at-risk inmates. Those inmates who screen at highest risk for

sexual victimization or abusiveness are assigned a SART member, who acts as a case manager. This case manager meets privately with the inmate to check in, ask how things are going, and discuss any safety or behavioral concerns. Each inmate's adjustment, status, and concerns are reviewed at SART meetings.

Over time, check-ins between an individual and the case manager occur less frequently. Eventually the individual may cease to have a PREA designation altogether. Practitioners have found this to be a more effective form of tracking and monitoring than relying solely on a PREA screening checklist for the most at-risk inmates in ODOC.

This type of case management process can be an effective strategy for keeping vulnerable inmates safe in general population.

Open Housing Units in General Population

Some jurisdictions have created general population settings with careful screening for admission (i.e., no inmates at high risk of abusiveness) that mix compatible populations (e.g., people deemed vulnerable to sexual abuse with those who may be vulnerable for other reasons), creating units large enough to merit self-contained programming, work, and other services and activities. This housing approach also can include LGBTI individuals believed to be at risk for sexual abuse without segregating them based on sexual orientation or gender identity. The emphasis is on increased use of alternatives and decreased use of highly restrictive housing, except for individuals at high risk of abusiveness

and those with very serious infractions. Although some individuals may sleep in single cells, congregate activities are available during the day in dayrooms, classrooms, and recreation areas. Interactions with service providers and counselors are face-to-face rather than through a cell door. This strategy meets PREA standards for access to programming and normalized interactions and avoids managing vulnerable and nonviolent individuals with the same high-security restrictive procedures as violent and abusive inmates. Once established, these units are less costly to operate than high-security segregation units. Jurisdictions have demonstrated that this can be done even with a challenging mix of protective custody populations.

KEY IDEAS

- Mix compatible populations
- Provide in-unit congregate opportunities, services, and programming

Although it is not used to house people who screen as sexually vulnerable or abusive, New Mexico's Corrections Department has created a model where male inmates with sex offense convictions, ex-law enforcement officers, and disaffiliated gang members requiring protection are successfully integrated into separate units that operate similarly to general population housing. Inmates eat together, take recreation together, go to school and church together, and participate in a wide range of classroom and group-based programming. Classrooms and dayrooms during congregate activities are quiet,

safe, orderly, and interactive. This model could be adapted to combine people who are vulnerable to sexual abuse with other non-aggressive populations.

Mission-Specific Housing

Mission-specific housing, targeted to special needs populations (e.g., those with mental illness, developmental and intellectual disabilities, or physical disabilities), has also proven successful in some jurisdictions. These housing units have out-of-cell programming and provide daily opportunities for individuals with special needs to interact with other inmates and staff during meals and recreation, dayroom, and work activities.¹⁶ Scheduled activities (e.g., recreation) occur on the unit and disciplinary violations are handled on the unit whenever possible to avoid the circulation of inmates through disciplinary segregation. Housing that meets the needs of these populations reduces the number of vulnerable people held in segregation. For maximum effectiveness, these units should be located where it is easiest to hire and retain mental health and social work staff.

The Washington State Department of Corrections (WADOC) describes its approach to placement of vulnerable and special needs populations as guided by a “mission-based strategy that enhances place safety (the process of understanding risks and needs and matching those with housing and procedures that mitigate the risks).”¹⁷ As in the previous examples, WADOC relies on screening to take into account multiple characteristics and needs of individuals entering the system. First, medical, mental

health, and other aspects (e.g., age, cognitive disabilities) are assessed to identify special needs; a more focused PREA risk assessment follows. Decisions on placement in housing, programs, and work assignments are then made based on the combined findings. Needs for specialized programs and services are also considered. A monitoring plan is established for inmates who score at risk for sexual victimization or abusiveness.

If the risk appears moderate, this is taken into account in placement decisions, and periodic check-ins are conducted. Higher levels of identified risk result in mental health and medical referrals, frequent check-ins, and collaboration with unit staff to closely monitor interactions and well-being. All cases are decided on an individual basis and are re-evaluated each time the individual is transferred, a concern arises, or an incident is suspected or reported. WADOC places a priority on training staff to work with special populations within the general population based on inmate characteristics and needs.

KEY IDEAS

- Housing should be targeted to special needs
- Schedule activities on the unit
- Handle violations on the unit whenever possible

After a WADOC study found that at least 12 percent of the prison population had significant cognitive impairments, WADOC created the Skill Building Unit (unit) to meet the needs of male inmates with developmental disabilities (DD), intellectual disabilities (ID), and traumatic brain injuries (TBI).¹⁸

The unit is located in repurposed space and provides specialized general population housing where inmates can receive treatment, participate in supported work and program activities, and be protected from abuse. This reduces the need for inmates with DD/ID/TBI to be housed in segregation and consolidates service delivery. Unit staff are trained in responding to individuals with special needs and helping them live safe and healthy lives. WADOC reports that staff training has resulted in safer living conditions for inmates and safer working conditions for staff.

Use of alternative strategies to segregation for individuals at high risk of sexual abuse enhances their safety without the debilitation of isolation and the individualized restraints and escort procedures common in segregation units.

Key Considerations for Managing People Who Screen At Risk for Sexual Abuse in General Population

Key components to housing vulnerable inmates safely without relying on segregation include: (a) security presence in congregate areas (not just in bubbles or towers) to assure safety in congregate activities; (b) attention to unmonitored areas and

facility blind spots where abuse might happen; (c) specially trained staff; and (d) interdisciplinary staff decision making, case planning, and interactions with inmates on the units. Safety cannot simply be assumed once individuals are in alternative housing, however. Effective screening and re-screening for risk of abuse or abusiveness and changes in risk (115.41) remain essential in maintaining safety.

In addition to implementing promising practices, agency *policies* also need to be revised to prioritize housing high-risk populations in need of protection in specialized units in general population or mission-specific housing whenever possible, rather than in segregation/isolation. Agency and facility staff members also need to review currently segregated populations and *relocate* vulnerable individuals to appropriate alternative service and program-enriched general population housing, based on risk and needs.

Managing Particularly High-Risk Populations

Some populations are at particularly high risk of sexual and physical abuse during confinement. The following section discusses high-risk groups and presents strategies for housing them while meeting the PREA standards for access to mental health and other services, programming, and congregate opportunities.

Women

Although the PREA standards do not address them specifically, women are more likely to screen as high risk for sexual abuse related to past histories

of child and adult trauma. For example, women in the criminal justice system report more extensive victimization histories—including lifetime histories of sexual and physical abuse—than women who have not been incarcerated or men who have been incarcerated.¹⁹ In one study of women in the general population of a maximum security prison, more than half (59 percent) of women reported childhood sexual molestation and 77 percent reported lifetime physical or sexual assaults by non-intimates.²⁰ When all forms of violence were considered together, only 6 percent did *not* report experiencing at least one physical or sexual attack during their lifetime.

Growing evidence suggests that incarcerated men and boys have been victimized at high rates as well, even though their trauma histories may not be identified.^a

^aLara Stemple and Ilan Meyer, "The Sexual Victimization of Men in America: New Data Challenge Old Assumptions," *American Journal of Public Health*, 104, no. 6: e19-e26.

For women, high scores on risk assessment tools may lead to over-isolation in confinement settings as facilities attempt to protect them from harm. Women with past trauma histories, sexual abuse by others, and abuse in intimate and family relationships may be especially affected by the constant observation and lack of privacy in segregation units, especially when it involves male observers.²¹ These conditions are inappropriate as a correctional response to minor violations and are especially out of scale when the use of segregation is for the *protection* of the woman, rather than for the protection of others.

One complication faced by agencies is protecting women from potential abusers if there is only one prison for women in a state or limited jail beds in a county, a common occurrence in many smaller jurisdictions. In these agencies, there are fewer options for separating women by using different facilities. Another challenge in effective responses to women is the predominance of male-based policies and programming in confinement settings. Screening and programming may not take into account vulnerabilities more common in women and the lowered risk of severe or lethal injury when they are aggressive.

Confined women are *less* likely to be in jail or prison for violent offenses than men and *more* likely to suffer from mental health problems.²² In 2006, a Bureau of Justice Statistics survey indicated that more than half (approximately 54 percent) of men in state prisons were being held for violent offenses, compared with 37 percent of women.²³ Nearly a third of women in the nation's jails (approximately 31 percent) were reported to have a serious psychiatric condition, compared to 16 percent of men. Despite these differences, management strategies, programming, and disciplinary and security procedures for women are typically based on models designed to address male behaviors and the greater ability on the part of most men to inflict serious and lethal harm.

Application of screening practices without regard to gender differences is changing in some jurisdictions. In Wyoming, women are screened and housed according to the "Altus, Medius, Brevis" model noted above and a corresponding housing matrix. However, staff use a screening

tool specifically designed to assess a female population. WYDOC leaders—with the help of an outside consultant—worked with administrators and case managers at the women’s prison to create an instrument responsive to and appropriate for women in confinement.

After implementing this screening tool and process, they found that 90 to 95 percent of the women scored as “minimum custody-Brevis.”²⁴ Based on that information, they redesigned the housing matrix at the women’s prison to create more minimum-custody housing and tailored practices to be appropriate for the predominance of Brevis inmates.

KEY IDEAS

- Women’s crime and relational patterns are different
- Tools and processes should reflect gender differences

Youthful Inmates

Because of the vulnerability of young people and the impacts of sexual abuse on their development and long-term well-being, the PREA standards mandate that youth under the age of 18 confined in adult settings are not to have sight, sound, or physical contact with adult inmates in housing areas (115.14). In places outside of the housing area, sight and sound separation or direct staff supervision is to be maintained at all times.

The challenge for facilities—especially when there are only a few juveniles—is to meet the standard for separation without isolating these youth and

cutting them off from congregate activities and programming.

There are two main strategies to safely house youth who are sentenced to the criminal justice system: house them in juvenile facilities until they are at least 18, or provide specialized housing to keep younger inmates safe in adult facilities. Oregon and Indiana have enacted legislation and agency policies to prohibit youthful inmates from being housed in adult facilities. For example, Multnomah County, Oregon, passed a resolution that requires youth under the age of 18 to be housed in juvenile detention, even if they are tried as adults. In the rare cases where the sheriff and corrections commissioner believe a young person cannot be appropriately cared for in juvenile detention, they are to find an alternative placement in an adult facility. A transfer agreement between the agencies facilitates these moves when necessary.²⁵

At the statewide level in Oregon, legislation passed in 1995 permits youth who are convicted as adults to serve their time in juvenile facilities up to age 25. Indiana passed a bill in 2013 that enables judges to suspend an adult sentence of a youthful inmate and order that the youth serve his or her time in a juvenile facility. When the youth turns 18, the court reviews his or her progress and determines what correctional setting is most appropriate going forward and whether the youth can be discharged. Efforts like these provide different options for moving youth into juvenile settings.

This is a particularly effective strategy for jurisdictions that may only have one or two youthful inmates in the adult system. Moving youth to juvenile settings allows for better use of scarce resources like classrooms, teachers, and security staff. It also meets the PREA standards regarding separation and allows for more normalized congregate activities. While safety concerns may arise for other youth in the facility, Oregon found that the number of fights in their juvenile detention facilities actually *decreased* after youthful inmates moved into those facilities.²⁶

When it is not possible to move youthful inmates into juvenile settings, jurisdictions can create dedicated housing units within adult facilities. At the North Carolina Correctional Institution for Women, youthful inmates are housed in a separate wing of the facility that was formerly a medical unit. This wing has classrooms, a dining area, offices, and recreational space. Young women are chaperoned when they need to travel to other areas of the facility.

This approach is applicable when agencies have an appropriate space to repurpose for youthful inmates and enough youthful inmates so this housing strategy does not itself result in isolation. As with other types of mission-specific housing, units dedicated to youthful inmates can focus on age and developmentally appropriate group programming, including education, leadership training for youth, and other congregate activities.

Importantly, the standards also specify that youthful inmates *may* participate in congregate and other activities with adult inmates if there is direct supervision at all times. Direct supervision is usually understood to mean supervision by corrections officers where staff are in the same room or are in close enough proximity to hear conversations.²⁷ This is an important condition that offers options for youthful inmates to participate in congregate activities if security supervision is provided.

KEY IDEAS

- House youthful inmates in juvenile facilities until age 18
- Create dedicated housing units with age-appropriate programming when youthful inmates are housed in adult facilities
- Provide supervised opportunities for youthful inmates in adult facilities to participate in congregate activities

In addition to the strategies in use in Oregon, Indiana, and North Carolina, there are a number of other approaches that promote the sexual safety of youthful inmates. A facility could meet the standard by housing youthful inmates in single locked cells at night but allowing them opportunities for congregate activities during the day with direct supervision. Alternatively, a group of facilities could form a cooperative agreement to place all youthful inmates at one facility in the region that is best suited to serve this population.

LGBTI Inmates

Research studies document that lesbian, gay, bisexual, and transgender people are significantly more vulnerable to sexual abuse than others in confinement. For example, a Department of Justice survey of sexual victimization in state prisons in the United States found that 3.5 percent of heterosexual male inmates reported being sexually victimized by an inmate.

In contrast, 39 percent of gay men and 34 percent of bisexual men reported being victimized by another inmate.²⁸ Lesbians and bisexual women in prison reported twice the rate of sexual abuse by staff members as did heterosexual women (8 percent for lesbians and 7.5 percent for bisexual women versus 3.7 percent for straight women).²⁹

Transgender people face an especially high risk in confinement. A study of California prisons found that transgender women housed in a men's facility were 13 times more likely to have been sexually abused by other inmates than non-transgender people.³⁰ Comparable research does not exist for intersex people, but the PREA standards include protections for them.

A number of agencies respond to these vulnerabilities by placing people who identify as, or who are perceived to be, lesbian, gay, bisexual, transgender, intersex (LGBTI), or gender nonconforming in segregation. This housing severely limits opportunities for programming, exercise, education, face-to-face mental health interventions, and other activities and services available to individuals in the general population. Policies and practices that routinely

DEFINITIONS AND TERMS^a

Asexual refers to a person who is not sexually attracted to any sex and/or gender.

Bisexual refers to a man or woman who is emotionally, romantically, and sexually attracted to both men and women.

Gay refers to a man who is emotionally, romantically, and sexually attracted to other men.

Gender Expression refers to how people express their gender identity through their manner of dress, speech, behavior, and/or other physical expressions of themselves (masculine, feminine, androgynous, other).

Gender Identity refers to how people understand their own gender (man, woman, other).

Gender Nonconforming means a person whose appearance or manner does not conform to traditional societal gender expectations.

Intersex means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.

Lesbian refers to a woman who is emotionally, romantically, and sexually attracted to other women.

Sexual Orientation refers to how people identify their emotional, sexual, or romantic attraction to, other people and can be described as lesbian, gay, bisexual, straight, asexual, or other.

Straight/Heterosexual refers to a person who is emotionally, romantically, and sexually attracted to another person who is of a different sex and/or gender.

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. Most transgender people will identify as the gender they transitioned to and not use the "trans-" prefix.

^aNational Council on Crime and Delinquency, PREA Auditor Training, September 2014.

place LGBTI people in segregated housing for protection thus penalize these individuals for their vulnerability and significantly worsen their conditions of confinement.

The PREA standards prohibit placing LGBTI inmates in dedicated units or wings based *only* on their sexual orientation or gender identity (115.42(g)), unless such placement is in a dedicated unit or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protection. The standards also specifically require that transgender and intersex inmates be given special protections related to housing (115.42(c)), program placement (115.42(d)), showering (115.42(f)), and pat-down searches (115.15(f)).

Correctional facilities throughout the United States are beginning to implement alternatives to avoid isolating vulnerable LGBTI individuals in segregated housing and revising their policies and procedures.³² The following approaches are applicable to all types of confinement settings and echo strategies discussed earlier in this guide. Given the increased vulnerability of LGBTI and gender nonconforming inmates to sexual victimization, agencies need to make sure their policies and practices are tailored to protect this population.

Targeted Intake and Screening

High-quality screening and classification practices are essential first steps toward keeping those who identify as LGBTI safe without relying on the use of segregation. Strategies for protecting LGBTI

and gender nonconforming individuals who screen at risk for sexual victimization include:

- Prioritizing and streamlining intake processes to ensure they are interviewed and placed in safe housing and safe programming as soon as possible.³³ Staff should be trained to ask all inmates about sexual orientation, gender identity, and gender expression in a respectful manner and to consider transgender and intersex inmates' own views of their safety. They should also review intake materials, including pre-sentence investigation reports or medical records for indicators of LGBTI identity.³⁴
- Fostering an environment that encourages people to feel comfortable discussing sexual orientation, gender identity, and gender expression. In addition to training staff, screenings should be conducted in private or quiet settings. Some jurisdictions have posted information about PREA in spaces where inmates are likely to be detained before the classification processes occur to let them know that everyone's safety, regardless of sexual orientation or gender identity, is taken seriously. Such materials should be posted in the languages most common to the population.
- Re-screening when necessary (115.41). The PREA standards require that, within a time period not to exceed 30 days from an individual's arrival at a facility, the facility will reassess risk of victimization or abusiveness based upon any additional,

relevant information received by the facility since the intake screening.³⁵

KEY IDEAS

- Conduct targeted screening as soon as possible
- Consider transgender and intersex inmates' own views of their safety
- Provide increased monitoring and security as needed
- Re-screen when necessary

Housing and Programming Placement

It is important to remember that many LGBTI and gender nonconforming people function well in the general prison population. Decisions about placement in protective housing should be made based on results of screening and evaluations of promising alternatives by trained multi-disciplinary teams, in combination with conversations and follow-up with individuals who screen high risk for sexual victimization.

Promising practices include:

- Using a case-by-case approach when deciding program and housing placement for LGBTI individuals (115.42).
Transgender and intersex individuals, in particular, have varying needs based on gender identity, including whether they have transitioned from one gender to another with medical and/or surgical assistance.
- Giving the perceptions of individuals about their safety, housing, and facility

placement serious consideration. The PREA standards mandate this for transgender and intersex inmates (115.42). Through facility practices and policies, staff can implement this standard and review the degree to which they act on each inmate's stated preference.³⁶

- Considering transferring an individual to a different facility if this would allow the inmate to be safe without being housed in a segregated unit. This includes housing an inmate in a facility with inmates of a different gender from the one assigned at the inmate's birth. For instance, a transgender woman might be considered most safe in a women's facility.
- Placing an LGBTI inmate in a single cell if possible.³⁷

Of course, placement in special housing does not guarantee safety, and conditions may change over time. Even when all these steps have been taken, housing and programming placements for individuals identified as vulnerable to sexual abuse or abusiveness need to be routinely reviewed. The PREA standards require that transgender and intersex inmates' placements are re-evaluated at least twice a year (115.42).

Use of Transgender Review Committees

Agencies across the United States—including the District of Columbia Department of Corrections, Denver Sheriff Department, and Miami-Dade Corrections and Rehabilitation Department—have established transgender review committees.^a These teams typically consist of administrators; the PREA coordinator; classification, medical, and mental health staff; and often outside advocates or community members. Review committees are charged with making classification, screening, programming, and housing decisions that take into account the unique needs of transgender and intersex individuals. These committees ask transgender and intersex individuals which gender they would prefer to be housed with and what gender staff they would prefer conduct pat-downs and strip-searches. To be effective, committee members should be trained and well-versed in PREA and LGBTI policies.

^aJody Marksamer and Harper Jean Tobin, *Standing with LGBT Prisoners: An Advocate's Guide to Ending Abuse and Combating Imprisonment* (Washington, DC: National Center for Transgender Equality, 2013).

Monitoring and Safety

Although many LGBTI inmates and others who screen at risk for sexual victimization can be safely housed in general population or other congregate housing units, some require additional monitoring and security. Promising practices include:

- Allowing individuals identified at risk for sexual victimization to shower separately. The PREA standards mandate that

transgender and intersex individuals be provided with an opportunity to shower separately (115.42).

- Using corrections officers to accompany especially at-risk inmates when moving through general population and less secured areas of the facility.
- Providing direct supervision to those at risk for sexual victimization and abusiveness when they congregate, such as in education classes or self-help groups.
- Keeping in mind that bullying, teasing, or demeaning someone because of his or her actual or perceived sexual orientation, gender identity, or gender expression is considered sexual harassment and is prohibited by the PREA standards (115.6).

Commitment and Training

Committing to the safety and equitable treatment of LGBTI individuals and instituting practices that promote their safety and treatment, should be an agency-wide effort. Designing, implementing, and reinforcing staff training that helps improve staff understanding of definitions, terms, and risks for LGBTI individuals in confinement settings are key steps to achieving successful outcomes and lasting culture change (115.31). The National Institute of Corrections and the National PREA Resource Center have developed several resources that agencies might find helpful.³⁸

Conclusion

Innovations by an increasing number of jurisdictions now demonstrate that agencies can safely reduce their use of segregation—while meeting the PREA standards, improving

conditions of confinement, and resulting in sometimes dramatic cost reductions—by removing vulnerable, nonviolent individuals from segregation and considering alternative strategies as an initial response for those screened at risk of sexual victimization or abusiveness.³⁹ For this shift to be effective, however, safety for and equality of inmates of all ages, gender identities, and sexual orientations must move beyond policy and become a part of the institutional culture. Key components in culture change include:

- Recognizing that protecting sexually vulnerable inmates has a positive impact on overall facility safety and can be accomplished through the use of alternatives to segregation;
- Creating a zero-tolerance culture that takes all forms of sexual abuse and sexual harassment seriously;
- Providing ongoing staff training on policies and practices, and strategies to communicate effectively and respectfully with a diverse group of inmates; and
- Educating volunteers, contractors, and other individuals who might interact with inmates about agency policies and their responsibilities to uphold them.

For more information on implementing the PREA Standards for vulnerable populations and promising practices for screening, placement, and follow up, see *Screening for Risk of Sexual Victimization and Abusiveness: Guidelines for Administering Screening Instruments and Using the Information to Inform Housing Decisions*.^a

^aAllison Hastings, Peggy McGarry, and Margaret diZerega. *Screening for Risk of Sexual Victimization and for Abusiveness: Guidelines for Administering Screening Instruments and Using the Information to Inform Housing Decisions* (New York: Vera Institute of Justice, 2013).

Endnotes

¹ For the full text of PREA standards, see <http://www.prearesourcecenter.org/training-technical-assistance/prea-101/prisons-and-jail-standards>

² A variety of terms are used to describe restricted housing: segregation, solitary confinement, isolation, intensive management, closed custody, restricted housing, and others. Since the standards discuss “segregated housing,” this guide will use segregation and segregated housing. Regarding the use of segregation, since the early 1980’s, most prison systems in the United States have built specially designed facilities, either stand-alone or connected to larger prisons, that keep selected inmates in lockdown status. See David Lovell, L. Clark Johnson, and Kevin C. Cain, “Recidivism of Supermax Prisoners in Washington State,” *Crime & Delinquency* 53, no. 4 (2007) 633-656, at 633.

³ See Leena Kurki and Norval Morris, “The Purposes, Practices, and Problems of Supermax Prisons,” *Crime and Justice* 28 (2001): 385-424; Jean Casella and James Ridgeway, “New York’s Black Sites,” *The Nation* (July 30-August 6, 2012); Angela Browne, Alissa Cambier, and Suzanne Agha, “Prisons Within Prisons: The Use of Segregation in the United States,” *Federal Sentencing Reporter* 24, no. 1 (2011): 46-49. For a recent example, in South Carolina 16 inmates were sentenced to more than a decade in disciplinary segregation for “social networking” – using Facebook – one inmate was sentenced to more than 37 years in disciplinary segregation. Dave Maas, “Hundreds of South Carolina Inmates Sent to Solitary Confinement Over Facebook,” *Electronic Frontier Foundation*, February 12, 2015.

⁴ David Lovell, “Patterns of Disturbed Behavior in a Supermax Population,” *Criminal Justice and Behavior* 35, no. 8 (2008): 985-1004.

⁵ Craig Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” *Crime & Delinquency* 49, no. 1 (2003): 124-156, at 135.

⁶ See Caroline Isaacs and Matthew Lowen, *Buried Alive: Solitary Confinement in Arizona’s Prisons and Jails* (Arizona: American Friends Service Committee: 2007), 10-11; Craig Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” *Crime & Delinquency* 49, no. 1 (2003): 124-156, at 126; Eric Lanes, “The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners,” *Journal of Offender Rehabilitation* 48 (2009): 529 – 546, at 532; Fred Cohen, “Isolation in Penal Settings: The Isolation-Restraint Paradigm,” *Washington University Journal of Law & Policy*, 22 (2006): 295-324, at 297-299.

⁷ David Lovell, 2008.

⁸ Homer Venters et al., “Solitary Confinement and Risk of Self-Harm Among Jail Inmates,” *American Journal of Public Health* 104, no. 3 (2014) 442-447; Eric Charles Lanes, “Are the ‘Worst of the Worst’ Self-Injurious Prisoners More Likely to End Up in Long-Term Maximum-Security Administrative Segregation?” *International Journal of Offender Therapy and Comparative Criminology* 55, no. 7 (2011): 1034-1050; Kevin Johnson, “Inmate Suicides Linked to Solitary,” *USA Today*, December 27, 2006; American Civil Liberties Union of Texas, Texas Civil Rights Project-Houston, *A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas* (Houston: ACLU, 2015), 10. For an examination of suicides from 1993-2003, see Bruce Way, et al, “Inmate Suicide and Time Spent in Special Disciplinary Housing in New York State Prison,” *Psychiatric Services* 58, no. 4 (2007).

⁹ Kristine Levan Miller, “The Darkest Figure of Crime: Perceptions of Reasons for Male Inmates to Not Report Sexual Assault,” *Justice Quarterly* 27, no. 5 (2010), 692-712.

¹⁰ Jeff Mitchell and Christopher Varley, “Isolation and Restraint in Juvenile Correctional Facilities,” *Journal of the American Academy of Child and Adolescent Psychiatry* 29, no. 2 (1990): 251-255. For additional information on young people in segregated housing see American Civil Liberties Union and Human Rights Watch, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* (New York: ACLU & HRW, 2012)

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<https://www.aclu.org/files/assets/us1012webwcover.pdf>.

¹¹ Caelan Kuban, *Oppositional Defiant Disorder and Trauma* (The National Institute for Trauma and Loss in Children, 2011). Michael D. Cohen, Larry Burd, and Marty Beyer, "Health Services for Youth in Juvenile Justice Programs," *Clinical Practice in Correctional Medicine (Second Edition)*, edited by Michael Puisis (Philadelphia, PA: Elsevier, Inc., 2006).

¹² Daniel P. Mears, "Supermax Prisons: The Policy and the Evidence," *Criminology & Public Policy* 12, no. 4 (2013): 681-719; and Daniel P. Mears and Jamie Watson, "Towards a Fair and Balanced Assessment of Supermax Prisons," *Justice Quarterly* 23, no. 2 (2006): 232-270.

¹³ Angela Browne, Alissa Cambier, and Suzanne Agha, 2011.

¹⁴ To view the tools used in Wyoming and learn more about the WYDOC's screening and housing procedures, see National PREA Resource Center, "Implementing the Screening Standards," <http://www.prearesourcecenter.org/training-and-technical-assistance/webinars/1740/implementing-the-screening-standards-emerging-lesson>.

¹⁵ Ericka Sage, interview by author, November 28, 2014; for more information on Oregon's PREA efforts, see National PREA Resource Center, "PREA Readiness: The Oregon Department of Corrections," <http://www.prearesourcecenter.org/training-technical-assistance/prea-in-action/prea-readiness/odoc-profile-page>.

¹⁶ Washington State Department of Corrections (WADOC), *Skill Building Unit – Cedar Hall, WCC for Offenders with Cognitive Disabilities* (Olympia, WA: WADOC).

¹⁷ Bernie Warner and Dan Pacholke, interview by author, Washington, DC, August 6, 2014.

¹⁸ WADOC, *Skill Building Unit – Cedar Hall, WCC for Offenders with Cognitive Disabilities*.

¹⁹ Barbara Owen et al., *Gendered Violence and Safety: Improving Security in Women's Facilities*

(Washington, DC: U.S. Department of Justice, 2008); and Angela Browne, Brenda Miller, and Eugene Maguin, "Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women," *International Journal of Law and Psychiatry* 22, no. 3-4 (1999) 301-322.

²⁰ Angela Browne, Brenda Miller, and Eugene Maguin, 1999.

²¹ American Civil Liberties Union, *Worse than Second Class: Solitary Confinement of Women in the United States* (New York: ACLU, 2014).

²² In a survey from the mid-2000s, an estimated 73 percent of women compared to 55 percent of men in state prisons were diagnosed with mental health problems. In federal prisons, the rate was 61 percent of women compared to 44 percent of men. See Doris J. James and Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2006); E. Ann Carson and William J. Sabol, *Prisoners in 2011* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2012); and Dora M. Dumont et al., "Public Health and The Epidemic of Incarceration," *Annual Review of Public Health* 33 (2012), 325-339.

²³ Doris J. James and Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates* (U.S. Department of Justice, Bureau of Justice Statistics Special Report, 2006).

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²⁵ For more detail on Oregon's policies including links to the county resolution and transfer agreement, see National PREA Resource Center, "Youthful Inmate Implementation," <http://www.prearesourcecenter.org/training-technical-assistance/prea-in-action/youthful-inmate-implementation>.

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²⁶ For more detail, see the table titled “Fights and Assaults since the 2008 Multnomah County Resolution,” <http://www.prearesourcecenter.org/training-technical-assistance/prea-in-action/youthful-inmate-implementation>.

²⁷ Department of Justice (DOJ), *National Standards to Prevent, Detect, and Respond to Prison Rape; Final Rule* (Washington, DC: DOJ, 2012).

²⁸ Allen J. Beck and Candace Johnson, *Sexual Victimization Reported by Former State Prisoners, 2008* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2012).

²⁹ Allen J. Beck and Candace Johnson, 2012.

³⁰ Valerie Jenness et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault* (Irvine, CA: University of California Irvine, Center for Evidence-Based Corrections, 2007).

³¹ National Council on Crime and Delinquency, PREA Auditor Training, September 2014.

³² For a review of the law, PREA standards, and a guide to policies and procedures that take into account the needs of LGBTI individuals for all types of custodial settings, see Morris Thigpen et al., *Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings* (Washington, DC: National Institute of Corrections, 2013).

³³ National Institute of Corrections (NIC), “LGBTI Populations: Their Safety, Your Responsibility,” <http://nicic.gov/library/026763>; National Institute of Corrections (NIC), “LGBTI Populations: Intake—Creating a Culture of Safety,” <http://nicic.gov/library/027998>; and National PREA Resource Center, “Committing to Safety and Respect for LGBTI Youth and Adults in Correctional Settings: Lessons from the Field,” <http://www.prearesourcecenter.org/training-and-technical-assistance/archived-webinars>.

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³⁵ The PREA standard 115.41 provides the following guidance on re-screening: Within a set time period, not to exceed 30 days from the inmate’s arrival at the facility, the facility will reassess the inmate’s risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening (f). An inmate’s risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate’s risk of sexual victimization or abusiveness (g).

³⁶ For more information on specific resources, see National PREA Resource Center, “Committing to Safety and Respect for LGBTI Youth and Adults in Confinement: Lessons from Two Agencies,” <http://www.prearesourcecenter.org/training-and-technical-assistance/archived-webinars>.

³⁷ Jody Marksamer and Harper Jean Tobin, *Standing with LGBT Prisoners: An Advocate’s Guide to Ending Abuse and Combating Imprisonment* (Washington, DC: National Center for Transgender Equality, 2013).

³⁸ “LGBTI Populations: Their Safety, Your Responsibility”; “LGBTI Populations: Intake—Creating a Culture of Safety”; Communicating Effectively and Professionally with LGBTI Offenders (online course), <http://nic.learn.com/learncenter.asp?id=178409>; and “Committing to Safety and Respect for LGBTI Youth and Adults in Correctional Settings: Lessons from the Field,” <http://www.prearesourcecenter.org/training-and-technical-assistance/archived-webinars>.

³⁹ For more information on cost reductions associated with reducing the use of segregation, see Current Thinking Blog, “Mississippi DOC’s Emmitt Sparkman on Reducing the Use of Segregation in Prisons,” October 31, 2011, <http://www.vera.org/blog/mississippi-docs->

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