

June 3, 2020

Amy Lauger  
Supervisory Statistician  
Institutional Research and Special Projects Unit  
Bureau of Justice Statistics  
810 Seventh Street NW  
Washington, DC 20531

RE: Agency Information Collection Activities; Proposed eCollection eComments Requested;  
Reinstatement, With Change, of Previously Approved Collection: National Inmate Survey in Jails  
(NIS-4J)

Submitted via email to Amy Lauger, [Amy.Lauger@ojp.usdoj.gov](mailto:Amy.Lauger@ojp.usdoj.gov)

To Whom It May Concern,

Thank you for the opportunity to comment on the Reinstatement, With Change, of Previously Approved Collection: National Inmate Survey in Jails (NIS-4J). As scholars dedicated to conducting research on sexual orientation and gender identity, we are writing to communicate the importance of sustained attention to incarcerated populations by the Department of Justice, Bureau of Justice Statistics (BJS). Incarcerated populations are, as highlighted through the passage of the Prison Rape Elimination Act (PREA), highly vulnerable to sexual victimization and other forms of abuse and exploitation.

The National Inmate Survey (NIS) is the only comprehensive vehicle to monitor the safety of inmates in that it collects anonymous information directly from incarcerated persons using appropriate data collection methods. Without these data to shed light on inmates' experiences, researchers and policymakers would have little knowledge about sexual victimization of sexual minority (e.g., lesbian, gay, bisexual) and gender minority (e.g., transgender) inmates in jails. This information is needed if appropriate public policy and regulatory interventions are to be developed. As scholars who have extensive experience studying sexual and gender minority (SGM) populations, it is our opinion that the demand of the NIS-4J data collection is reasonable and that this burden is offset by the benefits of knowledge gained about the safety and health of incarcerated populations. In order to enhance the public health value of the NIS-4J data, we recommend adding questions about mental and physical health consequences of sexual victimizations to NIS-4J survey. We also recommend studying the characteristics and mental health consequences of consensual sexual behavior in jails and studying the impact of protective and punitive solitary segregation. Our research using the NIS has found that all of these are more prevalent among SGM inmates.

SGM people have higher levels of interaction with law enforcement and the juvenile justice system in adolescence (Irvine & Canfield, 2017; Stoudt et al., 2011; Wilson et al., 2017) and adulthood (James et al., 2016). Findings from our analyses of NIS-3 data show that sexual minority adults are over-represented among incarcerated persons (Meyer et al., 2017). In addition to BJS' own findings, other data about both sexual minority and transgender inmates have shown that these populations experience higher levels of sexual victimization while incarcerated than their heterosexual and/or cisgender counterparts (Beck, 2014; Meyer et al., 2017; Herman et al., 2016).

Accurately identifying SGM inmates is critical in order to address differential rates of incarceration and victimization of SGM inmates. It will therefore be important for BJS to **continue** its groundbreaking efforts to identify SGM inmates and study the vulnerabilities they face while incarcerated. Based on our research with NIS-3 **we strongly recommend that NIS-4J retain the current questions identifying sexual minority inmates (NIS-3 items D4 and D5).** Here, we focus our comments on needed **improvements for transgender inmates.**

Our analysis has shown that the current NIS data collection instruments and processes are inadequate for accurately capturing the transgender population among inmates (Herman et al., 2016). Our analyses suggest that some transgender inmates may have been misclassified as cisgender due to the lack of adequate questions to identify them, coupled with a reliance on the sex of inmates housed at each facility to determine the sex of the respondent. We therefore make two recommendations aimed at enhancing the quality and utility of the information to be collected in NIS-4J as it relates to transgender inmates. In the NIS-3, survey respondents were asked the question *Are you male, female, or transgender?*

Our research using the NIS-3 has shown that this question misidentifies people who do not identify as transgender even though their sex assigned at birth was different than their current gender identity. For example, a person who was assigned male at birth and currently is a woman. This question also makes it difficult to check for misclassification due to clerical or other data entry errors. In NIS-3 people who identified as female but were in a male facility were reclassified as male but among them are some people who should have been correctly classified as transgender and therefore they answered that their gender was "female," and others who were in fact men but answered "female" in error. Our proposed question addresses both these problems.

**We therefore recommend that NIS-4J adopt a method for identifying gender minorities. Using this method, researchers collect information about sex assigned at birth and gender identity using separate questions in order to correctly classify transgender and cisgender survey respondents.** The two questions we recommend for consideration are preferable to the one item on the NIS-3 because they capture not only transgender individuals who identify as transgender but also transgender individuals who identify as male or female (Herman et al., 2017).

These items are recommended by the Williams Institute research team<sup>1</sup> for inclusion on the NIS-4J:

Q1. What sex were you assigned at birth, on your original birth certificate?

- Male
- Female

Q2. How do you currently describe yourself?

- Male
- Female
- Transgender
- None of these

Q3. Confirmation question [ONLY ASK IF SEX AT BIRTH AND CURRENT GENDER NOT THE SAME]:

Just to confirm, you were assigned [Q1 Response] at birth and currently describe yourself as [Q2 Response]. Is that correct?

- Yes, that is correct
- No [Ask Q1 and Q2 again to correct]

In addition, we learned that one of the challenges of the NIS-3, as it applied to transgender respondents, was that interviewers were required to choose a gendered survey version, that is, male or female form version. This is because of the survey items required the respondent to identify which body parts were involved in a sexual victimization episode, if it were present. Thus, for example, transgender women were given male survey formats if they were in a male facility. **We recommend that BJS would design questionnaires for NIS-4J that are appropriate for transgender men and transgender women respondents and that transgender inmates be assigned the questionnaire that correctly and sensitively applies to them.**

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<sup>1</sup> The Williams Institute Scholars, Sexual Orientation and Gender Identity (SOGI) Adult Measures Recommendations FAQs, Los Angeles, CA: The Williams Institute at UCLA School of Law. Accessed online 5/26/2020: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/SOGI-Measures-FAQ-Mar-2020.pdf>

Surveys conducted by the Department of Justice Bureau of Statistics are vital to monitor and enforce inmate safety under PREA. We greatly appreciate the work of the Bureau and the inclusion of measures to identify sexual minority and transgender inmates. We appreciate the opportunity to comment on the NIS-4J in order to enhance the quality and utility of data collection through this critical survey activity.

Sincerely,

Ilan H. Meyer, Ph.D., Williams Distinguished Senior Scholar of Public Policy

Kerith Jane Conron, Sc.D., M.P.H, Blachford-Cooper Research Director and Distinguished Scholar

M. V. Lee Badgett, Ph.D., Williams Distinguished Scholar

Andrew Flores, Assistant Professor of Government, American University and Visiting Scholar, Williams Institute, UCLA School of Law

Brad Sears, J.D., Associate Dean of Public Interest Law & David S Sanders Distinguished Scholar of Law and Policy

Lara Stemple, Assistant Dean for Graduate Studies and International Student Programs

Jody L. Herman, Ph.D., Senior Scholar of Public Policy

Luis A. Vasquez, J.D., Daniel H. Renberg Law Fellow

Kathryn O'Neill, M.P.P., Peter J. Cooper Public Policy Fellow

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