

January 31, 2020

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

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 Prisons (NIS-4P). 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 prisoners in that it collects anonymous information directly from incarcerated persons using appropriate data collection methods (A-CASI). Without these data to shed light on inmates' experiences, researchers and policymakers have little knowledge about sexual victimization or the abuse of sexual minority (e.g., lesbian, gay, bisexual) and transgender inmates in jails and prisons which is needed to mount appropriate interventions. As scholars who have extensive experience studying vulnerable populations, it is our opinion that the demand of the NIS-4P 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-4P data, we recommend adding questions about pregnancy or getting someone pregnant, as well as STI/HIV infection, as health consequences of voluntary and involuntary sexual experiences to all NIS-4P questionnaires.

Sexual minority and transgender 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 these vulnerable and over-represented populations is critical in order to address differential rates of incarceration and victimization of sexual minority and transgender inmates. It will therefore be important for BJS to **continue** its groundbreaking efforts to identify sexual minority inmates and the vulnerabilities they face. Based on our research with NIS-3 **we strongly recommend that NIS-4P 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-4P as it relates to transgender inmates:

- 1) Collect information about sex assigned at birth and gender identity using separate measures in order to correctly classify transgender and cisgender prisoners and to correctly triage inmates to survey items that include questions about male and female anatomy.**

On the NIS-3, gender was assessed with the following question:

D2 – Gender

Are you male, female, or transgender?

- 1 Male
- 2 Female
- 3 Transgender

In order to correctly identify cisgender as well as transgender inmates, two possible items for consideration on the NIS-4P are:

What sex were you assigned at birth, on your original birth certificate? (The GenIUSS Group, 2014)

- Male
- Female

How do you currently describe yourself? (Check the one best-fitting answer)

- Male
- Female
- Transgender
- None of these

If “None of these”: What is your current gender identity? _____

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). It is this latter group that we understand may have been misclassified in the NIS-3 as cisgender. Thus, to identify transgender inmates, the two items above would be cross tabulated to identify those whose current gender identity differs from their sex assigned at birth as transgender.

2) Examine how transgender inmates are assigned to complete the existing “male” and “female” questionnaires and ensure that anatomically appropriate data are collected.

More specifically, adding a question about assigned sex at birth to NIS-4P would enable transgender men to receive a questionnaire that includes questions about vaginal sex and tears.

Alternatively, given that inmates may have sexual experiences (voluntary and involuntary) with same- and different-sex inmates and facility staff, asking about a range of experiences (touching, hand jobs, blow jobs, oral sex, vaginal sex, and anal sex) on one questionnaire completed by all inmates could improve the quality of data collected by the NIS-4P.

Surveys conducted by the Department of Justice Bureau of Statistics are vital to monitor and enforce prisoner 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-4P in order to enhance the quality and utility of data collection through this critical survey activity.

Sincerely,

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