

LGBTI Populations: Intake – Creating a Culture of Safety Participant Pre-Reading for 4/9 & 10/2014 Broadcast

Adults:

PREA Standards:

Screening for Risk of Sexual Victimization and Abusiveness

§ 115.41 Screening for risk of victimization and abusiveness.

- (a) All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.
- (b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.
- (c) Such assessments shall be conducted using an objective screening instrument.
- (d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:
 - (1) Whether the inmate has a mental, physical, or developmental disability;
 - (2) The age of the inmate;
 - (3) The physical build of the inmate;
 - (4) Whether the inmate has previously been incarcerated;
 - (5) Whether the inmate's criminal history is exclusively nonviolent;
 - (6) Whether the inmate has prior convictions for sex offenses against an adult or child;
 - (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
 - (8) Whether the inmate has previously experienced sexual victimization;
 - (9) The inmate's own perception of vulnerability; and
 - (10) Whether the inmate is detained solely for civil immigration purposes.
- (e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive.
- (f) 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.
- (g) 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.
- (h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section.
- (i) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

§ 115.42 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.

§ 115.43 Protective custody.

(a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.

(b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:

- (1) The opportunities that have been limited;
- (2) The duration of the limitation; and
- (3) The reasons for such limitations.

(c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.

(d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:

- (1) The basis for the facility's concern for the inmate's safety; and
- (2) The reason why no alternative means of separation can be arranged.

(e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.

Check List – From NIC Policy Review Guide (8/2013)

Intake and Risk Assessment Policy Checklist	YES	NO
During intake and initial classification, does the agency ascertain information about the inmate's or resident's sexual orientation and/or gender identity?		

Intake and Risk Assessment Policy Checklist	YES	NO
During the course of the inmate's or resident's incarceration, does the agency periodically update information regarding his/her sexual orientation and gender identity?		
Do the agency employees who conduct initial screening and classification receive training regarding sensitivity in conducting interviews with LGBTI inmates or residents?		
Does the agency policy require that an inmate's or resident's sexual orientation and/or gender identity be verified by multiple sources prior to classification?		
Are medical practitioners the only staff permitted to physically examine inmates or residents to gather information about gender identity?		
Does the agency policy have a process to document and accommodate the concerns of LGBTI inmates or residents in terms of safety, name, pronoun, shower preference, and searches?		
Do the agency medical and mental health staff use screening tools that are developed specifically for LGBTI inmates or residents?		
Does the agency policy require diversity training for employees that includes the impact of name-calling and harassment?		

Policy Language Examples:

Harris County Texas – LGBTI Policy (11/2013)

C. Identification

1. The following shall be used as identifiers:
 - a. Prisoner's appearance or behavior – it shall be an identification indicator if a prisoner's appearance or behavior does not match the name or gender marker on the prisoner's arresting/transportation paperwork or identification.
 - b. Prisoner self-reporting.
 - c. Prior booking records.
 - d. Any questioning done by personnel shall be conducted in a private and respectful manner.
2. Due to their vulnerability, prisoners identified as transgender shall be expedited from time of arrest to classification.

E. Intake Screening

1. Supervisors assigned to the Inmate Processing Center will be certified as Gender Classification Specialists. They shall supervise and manage the intake screening process so that it complies with this policy.

2. The receiving deputy will notify the Gender Classification Specialist sergeant on duty in the Inmate Processing Center when an LGBTI inmate is received. The sergeant will be responsible for the initial determination of vulnerability of the prisoner and shall notify a Gender Classification Specialist in Classification of the prisoner's status.
3. LGBTI prisoners may not be placed in segregated housing against their will due to the sole purpose of their sexual orientation. (See Classification Manual for procedures on reassessment periods)
4. Specially trained Gender Classification Specialists shall assist in the process upon which the Classification Division will base their housing decisions. The mere identification of an inmate as LGBTI is insufficient to warrant an assumption of enhanced risk that the inmate will be sexually abusive.
5. Due to their vulnerability, transgender prisoners shall be expedited through the entire booking process until classification has determined housing, in accordance with PREA standards. The sergeant on duty in the Inmate Processing Center will be responsible for expediting the LGBTI prisoner to Classification.
6. All inmates, within 72 hours of arrival at a HCSO detention facility, shall be assessed for their risk of being sexually abused by or sexually abusive towards other inmates in compliance with PREA standards.
7. If an indication of need arises, a Gender Classification Specialist shall conduct a screening interview in a private and respectful manner. The Gender Classification Specialist will only ask questions related to sexual orientation, gender identity or gender expression for the purpose of making intake, housing and classification assignments. If necessary the inmate will be referred to HCSO Medical for screening. An inmate/detainee shall be referred to a Gender Classification Specialist, at any time during his/her custody in a Harris County detention facility when any of the following occurs:
 - a. Self-Reporting - An inmate indicates that they are LGBTI upon arrest, at the Inmate Processing Center (IPC), or anytime during their custody
 - b. Observation - An inmate's gender identity, appearance, overt expression, or behavior differs from their apparent birth sex or genitalia.
 - c. Complaint - An issue has been raised that focuses on an enhanced risk of an inmate being sexually abused or sexually abusive during their custody in a Harris County detention facility based on LGBTI identity.
 - d. Error - It is discovered that a gender designation made by the HCSO differs from a gender designation that has previously been made by any public entity, government agency or law enforcement agency.
8. Screening assessments of all inmates, including LGBTI inmates, shall be respectfully conducted using department approved screening instruments.
9. Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to screening questions.

F. Gender Classification Committee

The Gender Classification Committee has the final authority in all matters related to the classification of LGBTI inmates.

1. Additional Responsibilities
 - a. Gender Classification Specialist certification and assistance
 - b. Housing assignment arbitration
 - c. Required reporting

2. Mandatory Review Meetings
 - a. Placement of transgender inmates
 - b. Gender Classification Specialist Weekly

Documentation Review

- c. Inmate Housing Appeals
 - d. 30 day Reviews
3. Monitoring and Reassessment - the housing and well-being of LGBTI inmates shall be monitored and reassessed when needed by the Gender Classification Committee. The Committee will document and maintain records of all such monitoring and any reassessment deemed necessary.

J. Use of Screening Information / Confidentiality

1. A person's LGBTI status is considered confidential information. This information, including electronic records, shall have strict dissemination controls. HCSO shall keep LGBTI screening information confidential except as necessary to conform to required protocols.
2. The HCSO shall implement appropriate controls on the dissemination within the facility and to the media in response to questions asked in order to ensure that sensitive information is not exploited to the inmate's detriment by staff, other inmates or the media. Any media request and/or media notification must first be screened and approved for dissemination by HCSO-PIO or HCSO media department prior to any release.
3. Classification shall use the information from the risk screening to determine housing, bed, work, education, and program assignments with the goal of keeping separate LGBTI inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.
4. Classification shall make individualized determinations on how to ensure the safety of each inmate.
5. In deciding whether to assign a transgender inmate to a facility for male or female inmates, and in making other housing and programming assignments, Classification 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.
6. The policy and procedure for and record of placements for transgender inmates shall be reassessed at least twice each year to review any threats to safety experienced by the inmate(s). Classification will record and keep these findings for permanent review and referrals for future training.
7. An LGBTI inmate's own views with respect to his or her own safety shall be given significant consideration and recorded on their inmate record.
8. Classification shall strive not to place LGBTI inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is necessary for their safety, or 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.

K. LGBTI Liaison(s)

1. The Sheriff will appoint a LGBTI Advisory Committee and LGBTI Liaison(s). Liaison(s) shall be visible to the public and the point people for all complaints from the community and external agencies. Contact information will be available publicly via the Internet.
 2. Each division in the HCSO shall have a designated LGBTI Liaison.
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Juveniles:

PREA Standards:

Screening for Risk of Sexual Victimization and Abusiveness

§ 115.341 Obtaining information from residents.

- (a) Within 72 hours of the resident's arrival at the facility and periodically throughout a resident's confinement, the agency shall obtain and use information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident.
- (b) Such assessments shall be conducted using an objective screening instrument.
- (c) At a minimum, the agency shall attempt to ascertain information about:
 - (1) Prior sexual victimization or abusiveness;
 - (2) Any gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the resident may therefore be vulnerable to sexual abuse;
 - (3) Current charges and offense history;
 - (4) Age;
 - (5) Level of emotional and cognitive development;
 - (6) Physical size and stature;
 - (7) Mental illness or mental disabilities;
 - (8) Intellectual or developmental disabilities;
 - (9) Physical disabilities;
 - (10) The resident's own perception of vulnerability; and
 - (11) Any other specific information about individual residents that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other residents.
- (d) This information shall be ascertained through conversations with the resident during the intake process and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, facility behavioral records, and other relevant documentation from the resident's files.
- (e) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents.

§ 115.342 Placement of residents in housing, bed, program, education, and work assignments.

- (a) The agency shall use all information obtained pursuant to § 115.341 and subsequently to make housing, bed, program, education, and work assignments for residents with the goal of keeping all residents safe and free from sexual abuse.
- (b) Residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping all residents safe can be arranged. During any period of isolation, agencies shall not deny residents daily large-muscle exercise and any legally required educational programming or special education services. Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible.

(c) Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed in particular housing, bed, or other assignments solely on the basis of such identification or status, nor shall agencies consider lesbian, gay, bisexual, transgender, or intersex identification or status as an indicator of likelihood of being sexually abusive.

(d) In deciding whether to assign a transgender or intersex resident to a facility for male or female residents, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the resident’s health and safety, and whether the placement would present management or security problems.

(e) Placement and programming assignments for each transgender or intersex resident shall be reassessed at least twice each year to review any threats to safety experienced by the resident.

(f) A transgender or intersex resident’s own views with respect to his or her own safety shall be given serious consideration.

(g) Transgender and intersex residents shall be given the opportunity to shower separately from other residents.

(h) If a resident is isolated pursuant to paragraph (b) of this section, the facility shall clearly document:

(1) The basis for the facility’s concern for the resident’s safety; and

(2) The reason why no alternative means of separation can be arranged.

(i) Every 30 days, the facility shall afford each resident described in paragraph (h) of this section a review to determine whether there is a continuing need for separation from the general population.

Check List – From NIC Policy Review Guide (8/2013)

Intake and Risk Assessment Policy Checklist	YES	NO
During intake and initial classification, does the agency ascertain information about the youth’s sexual orientation and/or gender identity?		
During the course of the youth’s confinement, does the agency periodically update information regarding the youth’s sexual orientation and gender identity?		
Do the agency employees who conduct initial screening and classification receive training regarding sensitivity in conducting interviews with LGBTQI youth?		
Does the agency policy require that a youth’s sexual orientation and/or gender identity be verified by multiple sources prior to classification?		
Are medical health practitioners the only staff permitted to physically examine youth to gather information about gender identity?*		
Does the agency policy have a process to document and accommodate the concerns of LGBTQI youth in terms of safety, name, pronoun, showering, and searches?		

Intake and Risk Assessment Policy Checklist	YES	NO
Do the agency medical and mental health staff use screening tools that are developed specifically for LGBTQI youth?		
Does the agency provide youth orientation that discusses diversity and describes the harms that result from name-calling, bullying, and harassment?		

Policy Language Examples:

New York State Office of Children and Family Services (3/17/2008)

SECTION II: DISCLOSURE

A. The only way that anyone knows someone's sexual orientation or gender identity is if they tell you. There are no tools or instruments to assess a person's sexual orientation or gender identity.

B. Youth will disclose their sexual orientation and/or gender identity to staff when, and if, they feel ready and when, and if, a safe environment and trusting relationship has been created for such disclosure. Staff should not directly ask youth if they are LGBTQ. Direct questioning can make it more difficult for a youth to disclose. Most youth who are directly asked will deny that they are, mostly for reasons related to safety or perceived differential negative treatment. If youth disclose that they are lesbian, gay, bisexual, transgender, or questioning, it is important to talk with them about it in an open and understanding fashion. Staff should never just move on; talk about what it means for this youth to be lesbian, gay, bisexual, transgender, or questioning.

C. It is important to respect a youth's interest in confidentiality. Consistent with general practice, information must be reported to a supervisor if it involves a danger to self and others. If you are not in a position to keep information that a youth discloses private, you should tell the youth that such information may have to be shared with your supervisor or fellow staff. Also, youth should be informed that under certain circumstances, such as in connection with a preferred name request or placement/transfer request, parents may become aware that a youth has disclosed that he or she is LGBTQ or has raised issues relating to gender identity, gender expression, or sexual orientation.