



June 10, 2020

The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

ICR Reference No: 202005-1121-001

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

On behalf of the Human Rights Campaign's nearly 3 million members and supporters nationwide, we submit this comment in response to a request for public comment on the necessity of the National Inmate Survey in Prisons for the proper performance of the functions of the Bureau of Justice Statistics ("Bureau"). By inspiring and engaging all Americans, HRC strives to end discrimination against LGBTQ people and realize a nation that achieves fundamental fairness and equality for all.

I. The Proposed Collection of Information is Necessary for the Proper Performance of the Functions of the BJS.

Under the Prison Rape Elimination Act of 2003 (PREA), the Bureau of Justice Statistics is required to annually review and analyze data concerning sexual victimization in correctional facilities. It does so in part with the use of the National Inmate Survey (NIS), a data collection effort under the umbrella of its National Prison Rape Statistics Program (NPRS). The NIS is the primary source of federal information on sexual victimizations in prisons and jails, and prior iterations have demonstrated disturbing trends of sexual abuse among the incarcerated population.

Despite PREA's requirement that the Bureau perform a yearly comprehensive review of sexual victimization in prisons and jails, the NIS has been conducted only three times. The most recent survey was conducted in 2012, eight years ago.

A. The function of the Bureau is to collect and disseminate information.

The Bureau of Justice Statistics is the country's foremost source for criminal justice statistics, whose principal function is "the compilation and analysis of data and the dissemination of information for statistical purposes".¹ If data is not being collected, the ability for the Bureau to analyze or disseminate the information is severely limited. Additionally, PREA specifically charges the Bureau with carrying out an annual review of the incidences and effects of prison rape. This charge details explicit guidance on considerations for the Bureau's statistical review, including guidance on survey participation and sampling techniques to be used.

Given the presence of an extensive list of instructions for how the data should be collected and the presence of a statutory mandate, it is concerning that the Bureau is only on its fourth iteration of the National Inmate Survey. The information collected therein is critically important to understanding sexual violence in jails and prisons and in recognizing patterns and systems of abuse. For those who are members of vulnerable groups, like the LGBTQ community, the data provides a clearer picture of the unique challenges faced by those populations.

II. The Information Collected by the Survey has Practical Utility

A. Informs Nation about critical information on sexual assault and victimization

The NIS, in all of its iterations, has provided the public with valuable information concerning sexual violence behind bars. Importantly, it has confirmed the findings of separate surveys and polls conducted by non-governmental entities, such as the 2015 U.S. Transgender Survey, illustrating that LGBTQ people are at an increased risk of harassment, assault, and violence while incarcerated.² These surveys continuously demonstrate that increased oversight of correctional facilities is necessary to safeguard the physical and mental health of LGBTQ people who are incarcerated. In particular, aggregated sexual assault statistics show alarming discrepancies between the treatment of LGBTQ and non-LGBTQ inmates.

i. Incarceration of LGBTQ People

LGBTQ people are disproportionately represented in prisons for a variety of reasons, including pervasive societal stigma, overcriminalization, and discriminatory policing tactics that lead to increased contact with the criminal justice system. A recent study analyzing data collected from the 2011-2012 National Inmate Survey indicated that sexual minorities were more than three times more likely to be imprisoned or jailed than heterosexual people.³ Despite accounting for less than 5% of the U.S. population, 9.3% of men in jail and 42.1% of women in prison identified as sexual minorities.⁴

¹ Bureau of Justice Statistics, BJS.gov (June 8 2020), <https://www.bjs.gov/index.cfm?ty=pri>

² James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S.. Transgender Survey.

³ Williams Institute. Ilan H. Meyer et al., Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011–2012, 107 Am. J. Pub. Health 267, 267 (2017).

⁴ *Id.*

LGBTQ people, especially those of color, are additionally subjected to courtroom biases that result in harsher penalties and longer sentences. The Williams Institute found that in both prisons and jails, women identifying as lesbian or bisexual routinely received longer sentences than straight women.⁵ In fact, women who identified as lesbian or bisexual were 4.6 times more likely than heterosexual women to receive prison sentences in excess of 20 years. Men who identified as gay or bisexual were 2.7 times more likely than heterosexual men to receive prison terms in excess of 20 years.

Studies have also demonstrated the existence of anti-LGBTQ bias in jury pools. In one such study, one out of every six jurors surveyed admitted that they would be unable to exercise impartiality against a party who was LGBTQ.⁶

Once incarcerated, LGBTQ people are more likely to experience sexual abuse, harassment, and are also more likely to be placed in solitary confinement. This is especially true for incarcerated transgender and gender non-conforming people, whose reports of sexual assault by correctional facility staff are up to five times higher than the rest of the incarcerated population.⁷

Presently, the most up-to-date information from the NIS reports that around 40% of imprisoned transgender adults have experienced some instance of sexual victimization.⁸ This number reflects an epidemic of sexual violence in prison and is supported by more recent surveys. The 2015 U.S. Transgender Survey estimated that one-third of respondents who had been incarcerated in either jail or prison were sexually assaulted by staff or other inmates. The high numbers of reporting in each account underscores the importance of an annual review of prisons by the Bureau in order to maintain accurate records on sexual victimization and support those who are incarcerated.

This is particularly true when analyzing the use of restrictive housing. Prior NIS data suggests that correctional facility officials consistently use segregated housing for a variety of reasons, including alleged inmate misconduct and to house those they have deemed “at-risk” away from the general population. Between 2011-2012, approximately 18% of the jail population had been placed in restrictive housing,⁹ including time spent in solitary confinement and disciplinary or administrative segregation. The numbers were higher for people identifying as lesbian, gay, or bisexual. According to the NIS, 22% of LGB inmates had spent time in restrictive housing.

The effects of forced isolation have been well-documented. Incarcerated people placed in isolation may develop a wide range of physical and mental health issues, including insomnia,

⁵ *Id.*

⁶ Aaron M. Clemens, *Executing Homosexuality: Removing Anti-Gay Bias from Capital Trials*, 6 GEO. J. GENDER & L. 71, 83 (2005)

⁷ James, *supra* note 2, at 184.

⁸ Bureau of Justice Statistics, NCJ 241399, *Sexual Victimization in Prisons and Jails Reported by Inmates*, 2011–12 (2014).

⁹ *Id.*

anxiety, oversensitivity to stimuli, and depression.¹⁰ There is also a notable lack of surveillance, which places inmates at risk of additional harm from facility staff, and especially those who are already vulnerable to sexual abuse and harassment.

III. Conclusion

The lack of comprehensive data from the Bureau in the last eight years has undoubtedly permitted a considerable number of abuses to go undetected. Available data shows a general lack of respect and commitment by jail officials to safeguard the rights and health of LGBTQ people under their care.

The National Inmate Survey explores subject matters of grave importance to the health and safety of all incarcerated people and the importance of the data collected within cannot be understated. As a result, each data collection effort by the Bureau going forward must be timely and consistently disseminated so that appropriate measures can be taken to protect those who have been incarcerated in prisons. We thank the Bureau of Justice Statistics for their consideration of these comments.

¹⁰ *Craig Haney, Mental Health Issues in Long-Term Solitary and Supermax Confinement*, 49 CRIME AND DELINQUENCY 130 (2003), <https://www.gwern.net/docs/psychology/2003-haney.pdf>