

June 8, 2020

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Bureau of Justice Statistics

RE: Public Comment for National Inmate Survey in Jails (NIS-4J), Document Citation: 85 FR 19957; Agency/Docket Number: OMB Number 1121-NEW Document Number: 2020-07475

We at the Fenway Institute – an interdisciplinary center for research, education, training and policy development with the mission to optimize health and well-being for sexual and gender minorities (SGM) and those affected by HIV – are glad to see that the National Inmate Survey in Jails (NIS-4J) will be collecting information on sexuality and gender identity in its latest proposed survey instrument. Collecting this information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, and such data will improve the safety and wellbeing of particularly vulnerable incarcerated individuals.

Sexual and gender minorities are disproportionately likely to be incarcerated in the United States (U.S.).<sup>1</sup> Once in corrections settings, lesbian, gay, bisexual, and transgender (LGBT) individuals are disproportionately likely to experience physical and sexual victimization—including harassment, assault, and rape—from other incarcerated individuals as well as from corrections officials.<sup>2,3</sup>

In the spirit of improving the quality of this important data collection effort and minimizing the burden on respondents, we offer the following two suggestions:

1. In the initial categorization of type of interview (A1), it is unclear how the interviewer is designating gender – is this by appearance, by asking the interviewee, or by the designated gender of the facility (e.g. “men’s prison”)?
  - Appearance, as subject to the interviewer’s perception, may result in misclassification bias and potential humiliation of the respondent and should be discouraged.
  - Asking the interviewee is a lesser threat to validity than interviewer determination, but it may also lead to misclassification bias since the interviewer and interviewee may have different interpretations of the question. It is not clear in the current document how this information is asked for.
  - ***Clarification of this process is important since the variable “GENDER” is derived from this question (A1) and used elsewhere in the survey.***
2. You might assess transgender status (D3a and D3b) more effectively by asking current gender identity (with response options beyond the binary of male or female) and then sex at birth. Following is an adaptation of a two-step question that was found acceptable among a diverse group of patients that the Fenway Institute has recommended several times over the years.<sup>4</sup>

*What is your current gender identity?*

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*(Check all that apply)*

- Male*
- Female*
- Female-to-Male (FTM)/Transgender Male/Trans Man*
- Male-to-Female (MTF)/Transgender Female/Trans Woman*
- Gender nonbinary, neither exclusively male nor female*
- Additional Gender Category/(or Other), please specify \_\_\_\_\_*
- Decline to Answer, please explain why \_\_\_\_\_*

*What sex were you assigned at birth on your original birth certificate?*

*(Check one)*

- Male*
- Female*
- Decline to Answer, please explain why \_\_\_\_\_*

Again, we greatly appreciate that the National Inmate Survey in Jails (NIS-4J) will be collecting information on sexuality and gender identity in its latest proposed survey instrument. We hope our comments serve to improve the quality of the data collected and to minimize the burden of the data collection process on respondents. We thank you for your consideration.

Sincerely,

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4. Cahill S, Singal R, Grasso C, et al. Do Ask, Do Tell: High Levels of Acceptability by Patients of Routine Collection of Sexual Orientation and Gender Identity Data in Four Diverse American Community Health Centers. *PLOS ONE* 2014;9:e107104.