

Managing Lesbian, Gay, Bisexual, Transgender, and Intersex Inmates: Is Your Jail Ready?

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What unique challenges do lesbian, bisexual, gay, transgender, and intersex (LGBTI) inmates pose for jail operations? What do jail leaders and staff need to know in order to appropriately manage these people with safety and respect?

Accurate language and terminology, physical and gender identity factors, and an understanding of medical facts provide a basis for sound practice. Jails need to be prepared on many dimensions, such as medical care, data systems, security, housing options, and clothing choices.

Many jails have had experience with these decisions, and for others the issue has not yet been encountered. NIC-supported work by the Center for Innovative Public Policy began to delineate the scope of the jail's responsibility and options for appropriate response. In a 2007 meeting, discussion focused on identifying issues associated with managing this group of offenders in the nation's jails, with an emphasis on personal safety. Beyond our profession, awareness has continued to emerge within the LGBTI community about how jails manage, supervise, and house people from these populations. A number of national and regional organizations represent the interests of these individuals in social, legal, and political contexts. Cases being heard in courts all over the country are addressing aspects such as the provision of hormonal medications to transgender offenders, the continuation of transgender-specific medical procedures, and the development of gender awareness in areas such as housing and searches.

All of these issues will continue to be reflected in changing jail operations. My goal here is to discuss some facets in a non-academic manner and also without being too elementary. Forgive me if this article generates more questions than answers, as the subject is an example of currently evolving community standards and the reflection of those standards on jail management.

A Terminology Lesson

Definitions can vary widely for terms we use in this area. Even within the LGBTI community there is some disagreement about appropriate terminology. Different terms are used to refer to a person's sexual orientation, which is a separate issue from his or her gender identity, which may or may not match the evident physical anatomy.

The terms gay, lesbian, and bisexual relate to sexual orientation and denote a person's orientation toward someone else, in terms of sexual desire—whom a person finds sexually and/or romantically attractive.

- Lesbian—Typically a lesbian is someone with a female gender identity and female anatomy who is sexually attracted to other women.
- Gay—Typically a gay person is someone with a male gender identity and male anatomy who is sexually attracted to other men.
- Bisexual—Typically a bisexual person is either someone with a female gender identity and female anatomy who is sexually attracted to both men and women, or someone with a male gender identity and male anatomy who is sexually attracted to both men and women.

Gender identity refers to a person's internally felt sense of his or her own gender (sex), without regard to physical traits present at birth. Gender identity can match, or not match, a person's physical characteristics.

- Transgender—This word describes a person whose internal gender identity it is at odds with his or her anatomy. These people feel as if they were “born in the wrong body.” Transgender persons may seek hormone treatments or sex reassignment surgery to match their internal gender identity. Transgender people may either be a “trans-man” (a person changing from female to male physical characteristics) or a “transwoman” (a person changing from male to female physical characteristics). Transgender people may have a sexual orientation that is straight, bisexual, gay, or lesbian relative to their internal gender identity.

Issues within the *physical anatomy* are reflected in another term that is important for jail managers to understand.

- Intersex—This term describes a person with atypical reproductive or sexual characteristics. A variety of conditions can be involved. Intersex people develop before birth with a genetic disorder of sex representation/differentiation. They are born with indeterminate genital structures that are not entirely male or female, that may show a combination of both male and female features, or that may be differently or under-developed. Effects may be present both externally and internally. The external indicators may not be physically obvious; some individuals outwardly appear male or female but internally have a mixed sexual anatomy. No intersex person has a complete

set of both male and female organs. Intersex persons may have either a male or a female gender identity, and their sexual orientation may be straight, bisexual, gay, or lesbian relative to their gender identity.

The Sexual Being

There seems to be a three-sided matrix for what I am terming the “sexual being”. One side of the “sexual being” is physiognomy (genitalia, or “plumbing,” and secondary sexual characteristics such as breasts and facial and body hair), the second is gender identity, and the last is sexual orientation.

Physiognomy.

Physiognomy, for the vast majority of human beings, is either male or female. Intersex persons are an exception, though the differences may not always be apparent from a simple, external examination. Transgender persons who are in transition to a new physical sexual identity also can present ambiguous physical characteristics. The most common procedure in a jail for determining an offender’s “sex” (here sex equaling physiognomy) is a visual examination by an officer, or if needed, by medical staff. The outcome of this examination is the pronouncement of either “male” or “female.” With this declaration come management, supervision, and housing practices pertinent to that sex. When physical sex is not easily determinable, problems can arise.

Gender identity.

Gender identity is trickier. There is wide variation on the definition of “gender identity,” and the meaning continues to change as societal norms, mores, and values evolve. Definitions also can be particular to individual cultures. Generally, gender identity is what a person feels him- or herself to be internally—either male or female. It is the sum of the clothing, behaviors, roles, etc., that a person demonstrates or identifies with on a continuous and on-going basis. As such, gender identity can be subject to change. It is difficult for me not to over-simplify the concept of gender identity; it is complex and difficult to grasp.

In most people the gender identity and physiognomy are in line (male body with male identity, female body with female identity). But this is not always the case. There is growing acknowledgment in the medical and mental health fields of a condition termed “gender identity disorder.” According to the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition (DSM-IV, published by the American Psychiatric Association), gender identity disorder is the presence of a persistent and strong cross-gender identification. These persons do not merely want to be a member of the other gender, but they also experience discomfort with their own physiognomy as well as clinically significant distress or impairment in social, occupational, or other important areas of functioning. Persons with gender identity disorder often report feeling out of place in their body. As adults many of these persons express a strong desire to live as a member of the opposite sex. Increasingly there is recognition of gender identity disorder emerging during childhood. In April 2007, for example, Barbara Walters hosted a

“20/20” television program segment titled, “Born With the Wrong Body,” that focused on the issue of juvenile transgenderism.

Sexual orientation.

Add the last element, sexual orientation, and you have the total sexual being. Sexual orientation refers to the erotic and romantic attraction a person feels toward men and/or women. In the majority of people, their sexual orientation is an attraction for a member of the opposite sex, a condition referred to as heterosexuality. The most complicating element in the matrix, for purposes of jail management, is sexual orientation.

Things can get tricky in mixing and matching the three elements. In the majority of people the breakdown is simple: most men have male anatomy, a male gender identity, and an attraction to women; most women have female anatomy, a female gender identity, and an attraction to men. This is considered the “norm” (not to be confused with “normal”) or the typical human sexual being.

But other combinations are being encountered or acknowledged in our society with greater frequency, such as in gay and lesbian populations whose attractions are to the same sex. Transgender persons can present even greater diversity.

For example, one transgender person can have male genitalia, a female gender identity, and an attraction to women or men or both. Another may have female anatomy, a male gender identity, and an attraction to women or men or both. When non-“norm” people are detained and placed in jail, it becomes our issue to sort out for safety and management purposes.

Responses in the Jail

The government’s obligation upon incarcerating a citizen is to provide for a reasonable protection of that person, as derived from the 8th and 14th Amendments to the U.S. Constitution. Jails have a duty to take reasonable measures to guarantee the safety of inmates from assault, suicide, fires and other facility dangers, and preventable illness. We are charged with preventing assault and excessive use of force as well as suicide and self harm; we must respond to serious medical and mental health needs; and we must avoid unconstitutional conditions of confinement. The fundamental question is, “How do we uphold our obligations in managing GLBTI offenders?” This question gives rise to a host of other questions—some not easily answered.

I would venture to say that most jails have adopted the position that any sexual behavior in the facility is a rule violation. Sex between any persons in a correctional setting is forbidden, period. Whether that behavior is homosexual, heterosexual, or bisexual is of no consequence. Our focus is on the potential for victimization, regardless of sexual orientation. Most jails have clearly defined policies on the housing, supervision, and management of heterosexual, gay, and lesbian offenders, but what about transgender and intersex offenders?

Housing heterosexual inmates is straightforward, all other classification factors being equal. For gay and lesbian inmates, many jails—my own included—do not have a blanket policy of segregation. A decision to segregate gay or lesbian inmates is usually based upon an articulated risk, derived from current or previous institutional behavior where the need for segregation has been identified, or a request for protective custody. Protective custody may be offered with a waiver option, which the majority of our gay and lesbian offenders prefer to do. Inmates who can function in the general population are permitted to remain there, unless a situation arises requiring a change in status (victimizing or being victimized, consensual sexual activity, behavioral problems, etc.). Similarly, with bisexual inmates, protective custody housing typically is offered, with the inmate having the opportunity to waive out to the general population.

Transgender people typically are placed directly into protective custody with little opportunity to waive out. Some transgender persons are in the process of changing their physiognomy via sexual re-assignment when they reach our jails. The process involves counseling, lifestyle changes, hormone replacement therapy, and ultimately surgical procedures to either implant or remove breasts and to reconstruct the genitalia.

During the process of sexual re-assignment, many live as a member of the sex they plan to be. This raises questions for jail managers in several spheres of our operations.

Medical care:

- What different medical and mental health services must we provide to transgender offenders?
- Is there a need for a greater level of service and support for the sexual reassignment process than the jail now provides?
- What is the potential psychological impact of impeding the sexual reassignment process while the person is in jail?
- Does this impact rise to the level of a “serious medical need”?
- Who is qualified to make the determination of “serious medical need”—a general practitioner, or a specialist in sexual reassignment surgery?

There is some caselaw that recognizes that a person undergoing sex reassignment process has a “serious medical need” for continuation of hormone treatments. For example, see *Wolfe v. Horn*, 130 F.Supp.2d 648 (E.D.Pa. 2001), which states that “...transsexualism [transgenderism] has been characterized as a “serious medical need...” and *Kosilek v. Maloney*, 221 F.Supp.2d 156 (D. Mass. 2002). But little has been said thus far concerning the continuation of the surgical procedures. Advocates of the LGBTI community would argue for continuation based upon the negative psychological and physical impact of stopping the process. For those jails holding inmates for periods of a year or less, this may be considered to have minimal impact. But some jails can house inmates for 5 years or more. What, then, are their responsibilities?

Data systems:

- Do we book transgendered or mid-change persons into our management information system (MIS) as a male or a female?
- Is the official sex of the offender going to be based on the offender's perception of their sex rather than their current physical characteristics?
- Do we begin to ask offenders to state their gender identity?
- Will gender identity have as big an impact on offender management as the inmate's sex?
- What is the basis for determining designation of sex in the MIS? Do we get this information from the detainee? the arresting officer? the booking officer? medical staff? Do we rely on DNA and XY/XX chromosomes?
- Should we create an officer position with special training in the new process of "SID—sexual identification"? (This is a hypothetical post involving an officer assigned to identify the sex of individuals based on their physiognomy.)
- Do we change sex information in our data systems once the surgical procedures are completed? If the offender is now a "trans-man," do we change our records to reflect that transformation? Or might we simply place this information into the file as another form of alias?

Typically jails base the determination of an inmate's sex on the physiognomy of the offender. Line officers make this determination by asking the detainee or by looking at the detainee unclothed. In situations where there may be some ambiguity (such as with transgender persons in the middle of surgical reassignment or those in the intersex population), officers will resort to medical staff for a recommendation. This has worked well for the most part, until now. Now consideration may have to be made for gender identity.

Security:

- Do we conduct searches differently with transgender inmates based on their gender identity?
- Do we match the sex of the officer conducting the search to the gender identity of the offender?
- Is it intrusive if a search of a transgender offender is conducted by a member of the opposite sex?
- Is there a perception of being violated similar to that which could be experienced by a person with female anatomy and female gender identity if searched by a male officer?

- Is there an issue of intrusiveness when a male with a female gender identity is searched by only a male officer?
- If an inmate with a female gender identity is more comfortable being pat searched by a female officer, do we comply?
- On a strip search, should there be a policy that searches of transgender inmates are conducted by a “mixed” team of one male and one female officer?
- How should we approach searches of intersex inmates?

We all acknowledge the legal requirement that strip searches are conducted by a member of the same sex (except in exigent circumstances), and we accept the legal implications of violating this caveat.

Housing:

- Do we house inmates differently based on transgender status and gender identity?
- Do we disregard physiognomy in making housing decisions?
- Do we place a trans-woman in a female housing unit even though she still possesses male genitalia?
- And what about housing a person with a female physiognomy but a male gender identity with males?

Attorneys for the GLBTI community would make a case for these placements based upon the psychological impact of housing an inmate with persons of the opposite gender identity.

Clothing:

- If we provide women with bras, do we provide trans-women with bras as well?
- Female inmates often have access to the same clothing as males, but in a jail where women wear different clothing than men, what accommodations will be made for transgender persons or those with a different gender identity?
- If we are now more accepting of females walking around in men’s clothing than of men wearing panties and bras, might this need to change?
- And what about curlers and other accoutrements associated with female behavior and dress—should we allow trans-women with male “plumbing” to have them also?

My intent with this article is to open a discussion about our changing understanding of the nature of the human, “sexual being” and its impact on jails. Society is changing, and in jails we will have to alter the way we do business to reflect these changes. Consider how the civil rights movement brought about significant changes in corrections practice. LGBTI groups are pushing an agenda that could have a similar impact.

As always, jails will be better prepared to navigate these changes if they proactively address them rather than waiting until external forces bring the issue to the forefront.

Sources

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