Inmate Management, Services, Cross-Gender Searches, Transgender Inmates

Youthful Inmates

Standard 115.14 addresses how **jails** should house and provide services for **youthful inmates**. The standard requires that **youthful inmates** be placed in housing units that have sight, sound, and physical contact separation from adult **inmates**. In areas other than housing units, sight and sound separation must be maintained between **youthful inmates** and adult **inmates** unless the facility can provide **direct staff supervision** over **inmates** in the area. Finally, the standard directs that **agencies** should not use isolation or denial of exercise, education, or other program/ work opportunities in order to comply with the requirements.

The DOJ recommends that **agencies** utilize alternatives for housing of youth rather than relying on isolation (pp. 48-49). Alternatives include:

- using dedicated units, wings, or tiers;
- entering into agreements with other entities to hold **youthful inmates**; or
- exploring non-secure alternatives

Limits to Cross-Gender Viewing and Searches

Standard 115.15 provides extensive guidance regarding the conduct of searches. Cross-gender **strip** and visual body cavity searches are prohibited except in **exigent circumstances** or when performed by **medical practitioners**.

The standard also places a prohibition on cross-gender **pat-down searches** of female **inmates** (absent **exigent circumstances**). This prohibition does not take effect until August 20, 2015, for **jails** with a rated capacity of more than 50 **inmates** or until August 20, 2017, for **jails** with a rated capacity of 50 or fewer **inmates**.

In addition, **facilities** cannot search or physically examine a **transgender** or **intersex inmate** solely to determine the **inmate's** genital status. The **agency** must also train **staff** to conduct **pat-down searches** of cross-gender, **transgender**, and **intersex inmates** in a professional and respectful manner.

The standard also requires **jails** to implement policies and procedures that allow **inmates** to shower, change clothes, and perform bodily functions without **staff** members of the opposite gender viewing them, absent **exigent circumstances** or instances when the viewing is incidental to routine cell checks. These policies and procedures also require **staff** members of the opposite gender to announce their presence when entering an **inmate** housing unit.

DOJ provides further guidance for this standard by noting that the prohibition against **staff** viewing **inmates** of the opposite sex includes **staff** members that monitor cameras (p. 40). The DOJ also notes that the ban on cross-gender searches does not, in and of itself, create or establish a bona fide occupational qualification (BFOQ) that could result in employment discrimination on the basis of sex (pp. 54-55). The DOJ addresses many concerns related to the housing and treatment of **transgender** and **intersex inmates** (pp. 55-59).

Evidence Protocol and Forensic Medical Examinations

Standard 115.21 requires **agencies** that are responsible for investigating allegations of **sexual abuse** to follow uniform evidence protocols that maximize the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. The **agency** must offer all **inmates** who experience **sexual abuse** access to forensic medical examinations (whether on-site or at an outside facility) without cost to the inmate. Examinations are to be performed by Sexual Assault Nurse Examiners (SANEs) if possible, or by a qualified **medical practitioner**. A victim advocate is to be made available to accompany the victim through examinations and investigatory interviews.

The DOJ notes that this standard applies to both criminal and administrative investigations. There is significant information and discussion about the use of rape crisis centers and the activities and training of victim advocates in the standards overview (pp. 71-75).

Access to Emergency Medical and Mental Health Services

Standard 115.82 requires that **inmate** victims of **sexual abuse** in custody receive timely, unimpeded access to emergency medical treatment and crisis intervention services as directed by **medical** and **mental health practitioners**. This access includes information about and access to emergency contraception and sexually transmitted infections prophylaxis, where medically appropriate. All services are to be provided without financial cost to the victim.

The DOJ provides clarification on the meaning of key terms within the standard within the standards overview (pp. 145-146).

Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers

Standard 115.83 states that the **facility** is to offer medical and mental health evaluations (and treatment where appropriate) to all victims of **sexual abuse** that occurs in any **prison**, **jail**, **lockup**, or **juvenile facility**. The evaluation and treatment should include follow-up services, treatment plans, and (when necessary) referrals for continued care following a transfer or release. These services should be provided in a manner that is consistent with the level of care the **inmate** would receive in the community and include pregnancy tests and all lawful pregnancy-related medical services where applicable. All services are to be provided without financial cost to the victim.

The DOJ states that the standard is intended to encompass individuals who were victimized while in another **facility** (p. 148) but does not encompass **inmates** who committed a sex offense in the community or **staff** who have abused **inmates** (p. 151). The language "shall be offered tests" in the standard is meant to make clear that victims are not required to undergo such testing—only that such testing is offered when appropriate (p. 149).

Resources

- National Law Enforcement and Corrections Training Center. *Clean Techniques for Handling Evidence* (https://justnet.org/pdf/CleanTechniques.pdf)
- American Jail Association. *Effective Management of Female Offenders in Jails* (nicic.gov/Library/018812)
- National Institute of Justice (USDOJ). *Mental Health Screens for Corrections* (www.nij.gov/pubs-sum/216152.htm)
- The Project on Addressing Prison Rape. *Responding to Inmate on Inmate Sexual Violence* (http://www.wcl.american.edu/endsilence)
- The Project on Addressing Prison Rape. *Policy Guide: LGBTI Policies* (http://www.wcl.american.edu/endsilence)
- Transgender Law and Policy Institute with the National Center for Transgender Equality. *Handbook for Understanding Transgender Americans* (http://www.ithaca.edu/sacl/lgbt/docs/basicresources/understandingtrans/)
- National Institute of Corrections. *Gender-Responsive Strategies for Women Offenders: The Gender-Responsive Strategies Project: Jail Applications* (http://static.nicic.gov/Library/020417.pdf)