



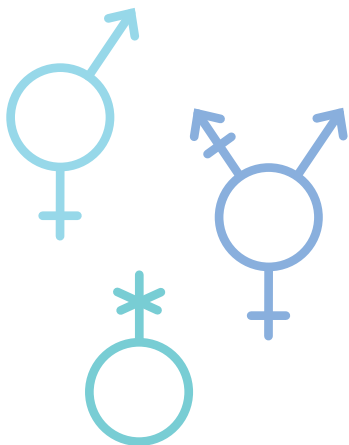
Roy W. Wesley, Inspector General

Bryan B. Beyer, Chief Deputy Inspector General

OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

September 2020



Special Report

The California Department of Corrections and Rehabilitation Has Taken Thoughtful and Important Steps to Address the Difficult Conditions of Confinement for Incarcerated Transgender, Nonbinary, and Intersex Individuals



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September 1, 2020

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California

Dear Governor and Legislative Leaders:

Enclosed please find the Office of the Inspector General's (OIG) Special Report titled *The California Department of Corrections and Rehabilitation Has Taken Thoughtful and Important Steps to Address the Difficult Conditions of Confinement for Incarcerated Transgender, Nonbinary, and Intersex Individuals*. Pursuant to California Penal Code section 6126 (b), the Inspector General may, under policies developed by the Inspector General, initiate an audit or review on the Inspector General's own accord. We chose to review the California Department of Corrections and Rehabilitation's (the department) efforts to address the difficult and evolving issues transgender, nonbinary, and intersex individuals face while in custody.

In this report, we summarize what we observed at some of the Transgender Housing and Search Working Group meetings, surveys, forums, and staff training sessions conducted by the department as well as through our conversations with external stakeholders and departmental leadership. We outline the concerns raised by incarcerated individuals through the surveys and at the forums; the concerns and insights of external stakeholders regarding the incarcerated population; and the department's thoughtful and important steps to address the issues voiced by both incarcerated individuals and external stakeholders, and to improve overall conditions of confinement for the incarcerated transgender, nonbinary, and intersex population. While we found that conditions of confinement for this incarcerated population are difficult, we commend the department for providing incarcerated transgender, nonbinary, and intersex individuals with an opportunity to share their stories and voice their concerns, and for adapting departmental policies and practices to improve conditions of confinement for this vulnerable population.

Based on our observations, we provide recommendations of additional steps the department should take to address the conditions we outline in this report.

Sincerely,



Roy W. Wesley
Inspector General



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The Inspector General may, under policies developed by **the Inspector General**, initiate an audit or review on **the Inspector General's** own accord.

—*State of California
Penal Code section 6126 (b)*

Terms Used in This Report	
Cisgender	Of, relating to, or being a person whose gender identity corresponds with the sex the person had or was identified as having at birth.*
Gender Affirming Surgery	Surgical procedures that change one's body to conform to one's gender identity.†
Gender Expression	The physical and behavioral manifestations of one's gender identity.*
Gender Dysphoria	A distressed state arising from conflict between a person's gender identity and the sex the person has or was identified as having at birth.*
Gender Identity	A person's internal sense of being male, female, some combination of male and female, or neither male nor female.*
Gender Nonconforming	Exhibiting behavioral, cultural, or psychological traits that do not correspond with the traits typically associated with one's sex: having a gender expression that does not conform to gender norms.*
Honorific	A form of address prefixing an individual's name, which signals politeness, respect, or social deference. Examples include Mr., Mrs., Ms., and Miss.
Intersexuality	The condition (such as that occurring in congenital adrenal hyperplasia or androgen insensitivity syndrome) of either having both male and female gonadal tissue in one individual or of having the gonads of one sex and external genitalia that is of the other sex or is ambiguous.*
LGBTQIA+	An abbreviation and umbrella term used to encompass the spectrums of gender and sexuality and refer to a diverse community. The term stands for lesbian, gay, bisexual, transgender, queer/questioning (one's sexual or gender identity), intersex, and asexual/aromantic/agender;* the plus sign represents every other identity on the gender and sexuality spectrum.
Locally Designated Investigator	The investigative services unit investigator or another designated institutional staff member who has been trained to conduct investigations into allegations of sexual violence and staff sexual misconduct.
Medical Classification Chrono (MCC)	The Medical Classification Chrono (MCC) is part of the Medical Classification System (MCS) and is used by California Correctional Health Care Services and California Department of Corrections and Rehabilitation (CDCR) as part of a system for considering medical factors in making patient placement decisions. The MCC is generated via an electronic database and is viewable in the Strategic Offender Management System (SOMS), and is also printed for the patient's records. It is primarily utilized to communicate the need for transmission-based precautions to custody staff.‡
Nonbinary	Relating to or being a person who identifies with or expresses a gender identity that is neither entirely male nor entirely female.*
Pronouns	Any of a small set of words in a language that are used as substitutes for nouns or noun phrases and whose referents are named or understood in the context. Examples include he/him/his, she/her/hers, or they/them/theirs.*

Continued on next page.

Terms Used in This Report (continued)	
Substantiated Allegation	An allegation that was investigated and determined to have occurred. [§]
Strategic Offender Management System (SOMS)	The Strategic Offender Management System. SOMS is primarily comprised of two complex software applications that assist CDCR staff in managing their offender population. These applications are the Electronic Records Management System (ERMS) and the Electronic Offender Management Information System (eOMIS). ERMS is used to manage an offender's central file (documentation) that is scanned into ERMS to be accessed by CDCR users anywhere in the state. eOMIS is the main web-based/centralized application that manages an offender's time with CDCR while either in custody or on Parole. Various components of eOMIS include: Intake, Movements, Counts, Offender Grievance Tracking/ Appeals, Visitation, Classification, Sentence Calculation, Discipline, Gangs, etc. CDCR continues to add significant functionality to eOMIS on a regular basis. [‡]
Transgender	Of, relating to, or being a person whose gender identity differs from the sex the person had or was identified as having at birth.*
Transgender Man	A person who was assigned female at birth, but identifies and expresses their gender as male.
Transgender Woman	A person who was assigned male at birth, but identifies and expresses their gender as female.
Transition	The period during which a person begins to live as their true gender. It may include changing one's name, taking hormones, having surgery, and altering legal documents. [†]
Unsubstantiated Allegation	An allegation that was investigated and insufficient evidence was obtained to determine if the allegation did or did not occur. [§]

* Merriam-Webster.com Dictionary, s.v. "cisgender," "gender expression," "gender dysphoria," "gender identity," "gender nonconforming," "intersexuality," "LGBTQIA," "nonbinary," "pronouns," and "transgender," accessed July 17, 2020, <https://www.merriam-webster.com/dictionary/cisgender>.

† Transgender Terminology, hr.cornell.edu, accessed July 17, 2020. <https://hr.cornell.edu/sites/default/files/trans%20terms.pdf>.

‡ The California Department of Corrections and Rehabilitation.

§ Prison Rape Elimination Act (PREA) Annual Report – Calendar Year 2018, cdcr.ca.gov, accessed July 17, 2020. <https://www.cdcr.ca.gov/prea/wp-content/uploads/sites/186/2020/01/PREA-Annual-Report-2018.pdf>.

|| Your Dictionary.com Dictionary, s.v. "transgender man," and "transgender woman," accessed July 17, 2020. <https://www.yourdictionary.com/transgender-man>.

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Summary

The California Department of Corrections and Rehabilitation (the department) incarcerates approximately 1,200 transgender, nonbinary, and intersex individuals.¹ These individuals form a vulnerable population within the prison system, as they face fear, discrimination, and violence. For many years, the unique needs of this population had been overlooked by the department. However, more recently, the department has worked with external stakeholders, lawmakers, and the incarcerated transgender, nonbinary, and intersex population itself to develop policies, procedures, and training for staff with the intent to improve conditions of confinement for this incarcerated population.

To that end, the department established a working group with various external stakeholders and administered forums and surveys to query transgender, nonbinary, and intersex individuals directly. In addition, the department is currently working with lawmakers who are crafting legislation that can improve daily life for individuals within this population. The Office of the Inspector General (OIG) observed the department's working group and its efforts to obtain pertinent information from the transgender, nonbinary, and intersex incarcerated population. We also observed the development of the staff training that resulted from the working group, and the implementation of some of that training.

The department has made noticeable efforts to improve departmental culture. However, we believe there is much work to be done to improve the safety and security of the transgender, nonbinary, and intersex population and to afford these individuals basic respect. We believe the department should take steps to implement the mandates of Senate Bill 132, regardless of whether the bill is signed into law, and require that staff and incarcerated individuals comply with these mandates. In addition, the department should establish oversight of its compliance with departmental policies relative to this population, so that both staff and incarcerated individuals are held accountable for failure to comply with policies. The department should continually optimize shelf space in canteens and effectively manage the inventory of clothing and property items for transgender, nonbinary, and intersex people as demographics, trends, and purchasing fluctuates. Moreover, the department should acknowledge that the gender binary is a social construct and work to dismantle it within departmental culture to allow more equitable access to vocational training and property items and to improve overall conditions of confinement for the transgender, nonbinary, and intersex population.

1. We recognize that terminology regarding transgender, nonbinary, and intersex issues is rapidly evolving. Some terms or definitions may not be universally accepted, and there is some disagreement among professionals and communities regarding the correct words and definitions. We use terminology in this report carefully, with intent to shed light on the complex and difficult issues facing incarcerated transgender, nonbinary, and intersex individuals with fairness, integrity, and respect.



Photo 1. Senator Scott Wiener with incarcerated transgender, nonbinary, and intersex persons. Photo provided courtesy of Terry Thornton of the California Department of Corrections and Rehabilitation.

Introduction

“No one deserves to be treated disrespectfully because of their gender identity or expression.”

—Secretary Ralph Diaz
California Department of Corrections
and Rehabilitation
January 2020

A transgender individual is a person whose gender identity differs from their assigned sex at birth.² As of June 4, 2020, the California Department of Corrections and Rehabilitation (the department) incarcerated approximately 1,176 individuals who identified as transgender or had symptoms of gender dysphoria.³ Because the transgender population has unique needs and may also be at a higher risk of victimization than the cisgender population, it is imperative that the department comply with Federal and State laws and provide these individuals with safe housing, medically necessary treatment, and protection as it should for all other individuals in its custody.

Federal and State laws, State regulations, and departmental policies already impose obligations on the department to provide safe housing, medically necessary treatment, and protection for all incarcerated individuals, especially those who may be at a higher risk of victimization.⁴ Under the Fourth Amendment, incarcerated individuals have a limited right to privacy and are protected from repetitive and harassing searches.⁵ The Eighth Amendment imposes duties on prison officials to take “reasonable measures to guarantee the safety of inmates” and “protect prisoners from violence at the hands of other prisoners.”⁶ Under the Eighth Amendment, incarcerated people have a right to be free from “cruel and unusual punishment,” and prison officials must not be “deliberately indifferent” to a “substantial risk of serious harm” to an incarcerated individual at the hands of anyone, including another

2. *California Code of Regulations*, Title 15, Section 3000; World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (7th Version, 2012).

3. The department determined this number by counting the number of incarcerated individuals with the “transgender” box checked on their Medical Classification Chronos. This number does not include transgender, nonbinary, or intersex individuals who do not have the “transgender” box checked on their Medical Classification Chronos.

4. *Farmer v. Brennan* (1994) 511 U.S. 825; *Doe v. District of Columbia* (D.C. Cir. 2016) 215 F.Supp.3d 62, 75.

5. *Bull v. City and County of San Francisco* (9th Cir. 2010) 595 F.3d 964, 974–975; *Michenfelder v. Sumner* (9th Cir. 1988) 860 F.2d 328, 332.

6. *Ibid.* 833, citations omitted.

incarcerated individual.⁷ Prison officials are also obligated under the Eighth Amendment to provide the incarcerated population with adequate medical care.⁸

Federal law, established through the Prison Rape Elimination Act (PREA) of 2003, set a zero-tolerance standard for prison rape and required the United States Attorney General to publish national standards to prevent, detect, and respond to sexual violence, sexual misconduct, and sexual harassment in all prisons. It also required that state prisons adopt standards consistent with national standards in order to receive federal funding.⁹ In response, the California Legislature enacted the Sexual Abuse in Detention Elimination Act (SADEA) to protect California's incarcerated population from sexual abuse. The law mandates, through several core requirements, that the department establish policies and procedures to address the sexual abuse of incarcerated individuals.¹⁰

Following the model established by PREA and SADEA, the department promulgated regulations, policies, and procedures intended to provide all incarcerated individuals with safe housing and humane and respectful treatment.¹¹ Departmental policy requires that all staff—including employees, volunteers, and contractors—receive instruction on preventing, detecting, responding to, and investigating sexual violence, staff sexual misconduct, and sexual harassment. The department provides this instruction during its new employee orientation and annual training as well as in its training academy curriculum for new officers.¹² Furthermore, the department provides specialized training regarding PREA to locally designated investigators at each institution.¹³

In 2012, the department designated 11 institutions to house transgender, nonbinary, and intersex individuals to ensure they receive safe housing and necessary services, including medical and mental health treatment.

7. *Ibid.*, 833–834.

8. *Edmo v. Corizon, Inc.* (9th Cir. 2019) 935 F.3d 757, 768–769; *Rosati v. Igbino* (9th Cir. 2015) 791 F.3d 1037; *Kosilek v. Spencer*; (1st Cir. 2014) 774 F.3d 63; *Fields v. Smith* (7th Cir. 2011) 653 F.3d 550; but see *Avilez v. Barr* (N.D. Cal., Feb. 5, 2020, No. 19-CV-08296-CRB) 2020 WL 570987; laws regarding transgender, nonbinary, and intersex individuals vary in federal jurisdictions and different states. Unless otherwise indicated, the law cited in this report is applicable to entities and individuals in California and will likely change as more cases are litigated and appealed.

9. 42 *United States Constitution*, Section 15601, et seq.

10. *California Penal Code* section 2635 et seq.; Sexual Abuse in Detention Elimination Act of 2005; US Department of Justice, National Standards to Prevent, Detect and Respond to Prison Rape, *Federal Register*, 77, no. 119, (June 20, 2012); California Department of Corrections and Rehabilitation, Department Operations Manual (hereafter referred to as DOM), Article 44, et seq.

11. DOM, Sections 33030.3.1, 31140.5, and 33030.3.

12. DOM, Section 54040.4.

13. Department of Corrections and Rehabilitation Training Materials: Specialized PREA Training for Locally Designated Investigators (June 2015).

That number has since grown to 14 institutions.¹⁴ To the extent practicable, transgender, nonbinary, and intersex individuals are now housed at one of the 14 designated institutions. If individuals want to be housed at another type of institution (e.g., a transgender woman requesting housing at an institution for women), they can submit a request to their assigned correctional counselor. That request is then considered as part of the department's classification process.¹⁵

In 2015, a federal district court in California found the department violated the Eighth Amendment rights of Ms. Norsworthy, a transgender woman diagnosed with gender dysphoria and housed at an institution for men, when it denied her medically necessary gender affirming surgery.¹⁶ The order was stayed while the department appealed the order to the Ninth Circuit, but Ms. Norsworthy paroled before the hearing.

Later in 2015, the department entered into a settlement agreement in *Quine v. Beard*. As part of the settlement, the department agreed to provide Ms. Quine with gender-affirming surgery and revise its policies to allow identified incarcerated individuals access to property items consistent with their gender identity and expression. The department amended its regulations to permit identified individuals at designated institutions to possess state-issued clothing consistent with their gender identity and expression and created the Transgender Inmates Authorized Personal Property Schedule (TIAPPS), which expanded the list of available items for these individuals.¹⁷ The department's operations manual also provides that individuals identified as transgender on the Medical Classification Chrono shall, upon request, receive state-issued bras or boxer shorts via the institution's clothing room and be permitted to purchase such items as needed.¹⁸

To facilitate transgender individuals' access to proper clothing and other authorized items from canteens and approved vendors, the department established the Transgender Access Card (access card) program in June 2019. When requesting, purchasing, or picking up approved transgender, nonbinary, and intersex items, individuals must have a transgender access card and state-issued identification card.

14. The 14 institutions include California Medical Facility, Richard J. Donovan, San Quentin State Prison, Mule Creek State Prison, California Substance Abuse Treatment Facility, California State Prison Sacramento, Salinas Valley State Prison, California Institution for Men, Kern Valley State Prison, California Men's Colony, California Health Care Facility, Central California Women's Facility, California Institution for Women, Folsom Women's Facility; DOM, Section 62080.14.

15. *California Code of Regulations*, Title 15, Section 3269; DOM, Section 54040.1 et seq.

16. *Norsworthy v. Beard* (N.D. Cal. 2015) 87 F.Supp.3d 1164, appeal dismissed and remanded (9th Cir. 2015) 802 F.3d 1090.

17. *Quine v. Kernan* (9th Cir. 2018) 741 Fed.Appx. 358; *Quine v. Beard* (N.D. Cal., August 7, 2015, No. 3:14-cv-02726); *California Code of Regulations*, Title 15, Section 3000, Section 3030, subdivision (c), Section 3190, subdivision (d), Section 3269; Transgender Inmates Authorized Personal Property Schedule (TIAPPS) (April 4, 2018).

18. DOM, Section 62080.14.; *California Code of Regulations*, Title 15, Section 3030, subdivision (c).

An individual may request a transgender access card by submitting an Inmate Request for Interview, Item of Service form.¹⁹

Also, in 2019, the department formed its Transgender Housing and Search Working Group to assess and revise its housing and search policies and procedures specific to incarcerated transgender, nonbinary, and intersex individuals.²⁰ The OIG observed the working group meetings. Based on our observations, the working group remained steadfast in developing policies and procedures pertaining to housing and searches, and simultaneously addressed interrelated issues. Members engaged in frank discussions and robust analysis regarding the needs of the incarcerated population, departmental policies and procedures, technology, systemic problems, departmental culture and practices, resources, and potential solutions.

As part of the working group, the department collaborated with external stakeholders to develop and administer a survey at 18 institutions to query the incarcerated transgender, nonbinary, and intersex population. Information gathered through the survey has helped the department to better understand the experiences and preferences of this incarcerated population.²¹ The survey included both structured multiple-choice questions and an opportunity to provide written comments regarding additional issues of concern. The surveys were voluntary and anonymous, but included demographics such as the institution where the department administered the survey, the gender identity participants most often use to describe themselves, and whether participants identify as a transgender man, a transgender woman, a nonbinary individual, an intersex individual, or other.

Following each survey session, the department invited incarcerated transgender, nonbinary, and intersex individuals to participate in a forum. During the forums, the OIG observed departmental personnel engaging in candid discussions with transgender, nonbinary, and intersex participants. Facilitators and departmental staff demonstrated professionalism, empathy, and a commitment to improving conditions of confinement for this incarcerated population. Facilitators acknowledged the department's shortcomings, provided candid

19. Department of Corrections and Rehabilitation, Form 22.

20. The working group, chaired by the Associate Director of the Female Offender Program, includes departmental employees from different disciplines, classifications, and institutions statewide, including chief deputy warden(s), associate warden(s), captain(s), lieutenant(s), sergeant(s), psychologist(s), and physician(s), a community resource manager, and an officer of transgender experience. Members of the group also include departmental executives and staff from the custody and health care headquarters, including the Assistant Secretary of Legislative Affairs, the Ombudsperson, the Public Information Officer, the Statewide PREA Coordinator, a correctional counselor, legal counsel, and employees from budgets and plant operations. Legislative staffers and external stakeholders also attended some of the working group meetings and consulted with departmental personnel between meetings.

21. External Stakeholders include but are not limited to American Civil Liberties Union (ACLU); Medina Orthwein LLP; Prison Law Office (PLO); Equality California; Gender-Variant Intersex Justice Project (TGIJP); and TransLatin@Coalition.

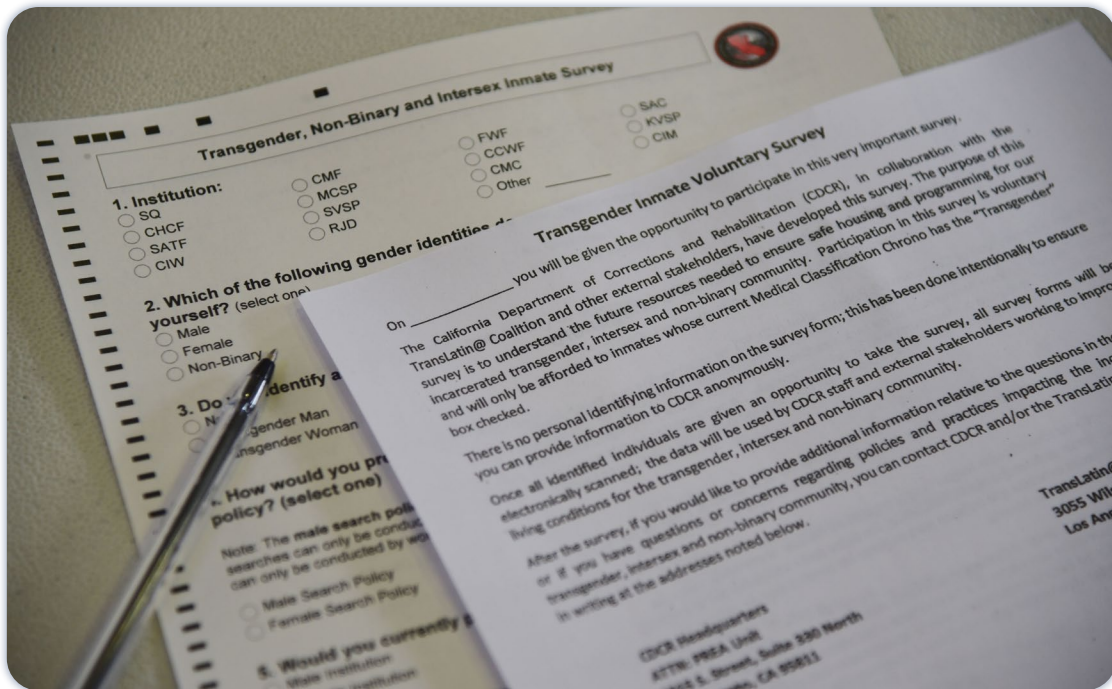


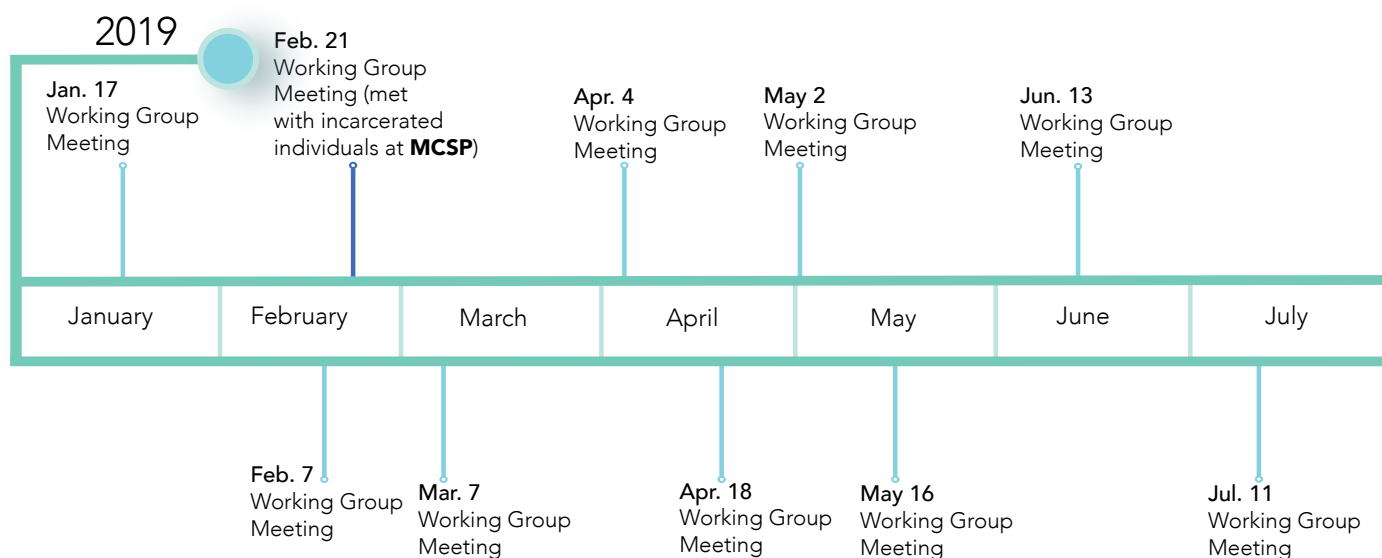
Photo 2. Transgender, nonbinary, and intersex inmate survey. Photo provided courtesy of Terry Thornton of the California Department of Corrections and Rehabilitation.

answers and, when feasible, took prompt action to resolve problems. They also invited external stakeholders to introduce themselves and the services they provide, respond to questions, speak privately with incarcerated individuals, and share their contact information for future correspondence.

We also observed the department's new Training-for-Trainers curriculum, called Working Successfully With Transgender, Intersex, and Nonbinary Inmates. During this time, the OIG engaged in ongoing dialogue with departmental representatives regarding the department's past, present, and planned efforts to improve the housing, services, and welfare of transgender, nonbinary, and intersex individuals. The OIG also consulted with external stakeholders to gain their perspective on the issues incarcerated transgender, nonbinary, and intersex individuals face.

In this report, the OIG sheds light on the experiences of transgender, nonbinary, and intersex individuals while incarcerated, conveys the concerns and advocacy of external stakeholders, and outlines the department's progress in addressing the varied and complex issues facing incarcerated transgender, nonbinary, and intersex individuals. We also make recommendations to the department to improve conditions of confinement for this incarcerated population.

Figure 1. Activities of the Transgender Housing and Search Working Group Between January 2019 and February 2020



Institutions

CCWF: Central California Women's Facility

CHCF: California Health Care Facility, Stockton

CIM: California Institution for Men

CIW: California Institution for Women

CMC: California Men's Colony

CMF: California Medical Facility

COR: California State Prison, Corcoran

DVI: Deuel Vocational Institution

FWF: Folsom Women's Facility

KVSP: Kern Valley State Prison

MCSP: Mule Creek State Prison

NKSP: North Kern State Prison

RJD: Richard J. Donovan Correctional Facility

SAC: California State Prison, Sacramento

SATF: Substance Abuse Treatment Facility

SQ: San Quentin State Prison

SVSP: Salinas Valley State Prison

WSP: Wasco State Prison

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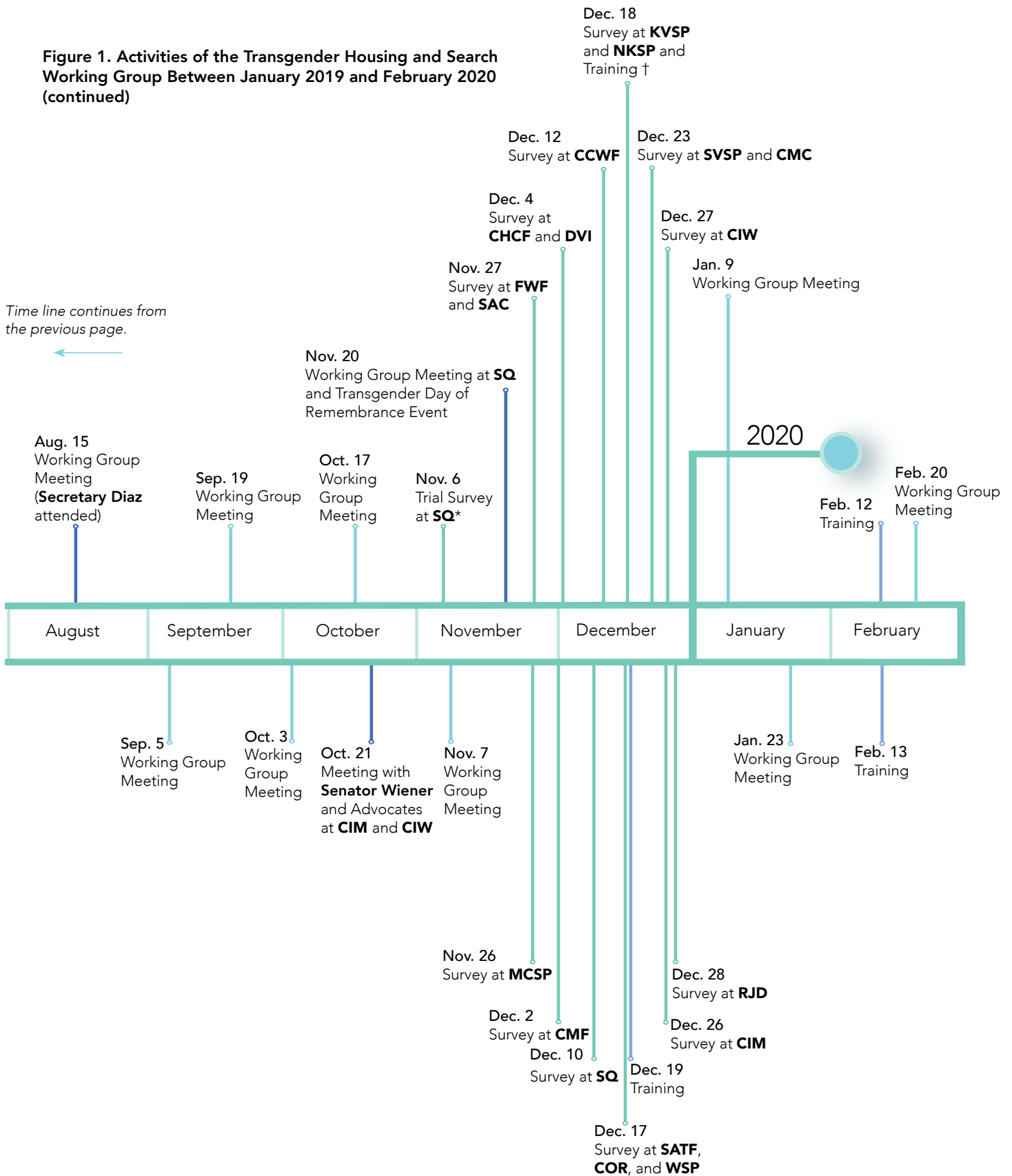


* *Survey* refers to the Transgender, Nonbinary, and Intersex Survey through which the department queried the incarcerated population regarding housing preferences, search preferences, and other topics of concern.

† *Training* refers to the department's four-hour Training-for-Trainers sessions: Working Successfully With Transgender, Intersex, and Nonbinary Inmates.

Source: The California Department of Corrections and Rehabilitation.

Figure 1. Activities of the Transgender Housing and Search Working Group Between January 2019 and February 2020 (continued)



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Transgender, Nonbinary, and Intersex Individuals Reported They Are Vulnerable to Violence and Discrimination While Incarcerated

Transgender individuals have suffered a history of persecution, discrimination, and violence.²² The Federal Bureau of Investigation’s 2018 Hate Crime Statistics indicated that 85.6 percent of hate crimes committed on the basis of gender identity were motivated by an “anti-transgender bias.”²³ The same trend occurs among the incarcerated population, as transgender people fall victim to maltreatment, sexual assault, and murder.²⁴ In 2018, the American Medical Association issued a press release noting that transgender individuals suffer disproportionately from sexual assault during incarceration. The press release cited a study of California prisons indicating “59 percent of transgender prisoners experience sexual assault, versus only 4.4 of the overall prison population,” as well as another study reflecting “the proportion of transgender prisoners in California experiencing sexual assault to be as high as 75 percent.”²⁵ The vulnerability of this population is echoed in the stories told by transgender, nonbinary, and intersex individuals during the surveys and forums we attended.

“We are not treated like women or men. We are treated as less than human. Prison is a place to change, and a place to really figure yourself out and become a better person. The way we’re treated hinders us from rehabilitation.”

—Incarcerated Transgender Woman
December 2019

22. *Crowder v. Diaz* (E.D. Cal., Aug. 19, 2019, No. 2:17-CV-1657-TLN-DMC) 2019 WL 3892300; *F.V. v. Barron* (D. Idaho 2018) 286 F.Supp.3d 1113, citing *Adkins v. City of New York* (S.D.N.Y. 2015) 143 F.Supp.3d 134; *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.* (7th Cir. 2017) 858 F.3d 1034, 1051; *Karnoski v. Trump* (W.D. Wash. Apr. 13, 2018, No. C17-1297-MJP) 2018 WL 1784464; *F.V. v. Barron* (D. Idaho 2018) 286 F. Supp. 3d 1131, 45; *Adkins v. City of N.Y.* (S.D.N.Y. 2015) 143 F. Supp. 3d 134, 139; *M.A.B. v. Bd. of Educ.* (D. Md. 2018) 286 F. Supp. 3d 704, 720; *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.* (S.D. Ohio 2016) 208 F.Supp.3d 850, 874; *Evancho v. Pine-Richland Sch. Dist.* (W.D.Pa. 2017) 237 F.Supp.3d 267, 288; *Grimm v. Gloucester Cty. Sch. Bd.* (E.D. Va. 2018) 302 F. Supp. 3d 730, 749.

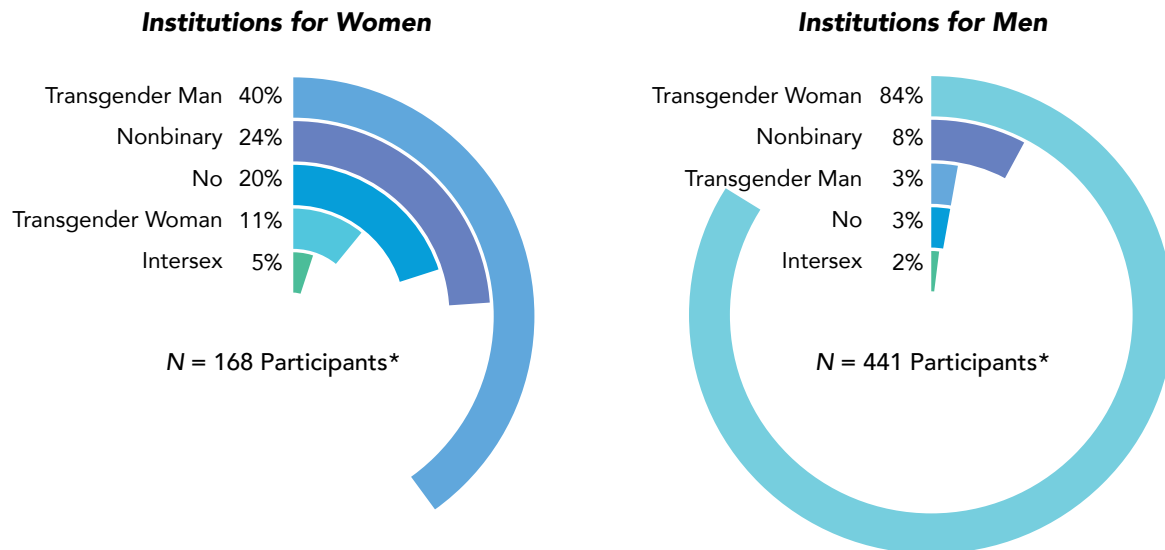
23. United States Department of Justice, Federal Bureau of Investigation: Hate Crime Statistics (2018), <https://ucr.fbi.gov/hate-crime/2018/topic-pages/victims>.

24. Prison Rape Elimination Act; “Classification and Housing of Transgender Inmates in American Prisons,” *Harvard Law Review*, 127, no. 6 (2014), 1746; Sharon Dolovich, “Cruelty, Prison Conditions, and the Eighth Amendment,” *New York University Law Review*, 84, no. 4 (2009): 881, 886–889; Gabriel Arkles, “Safety and Solidarity Across Gender Lines: Rethinking Segregation of Transgender People in Detention,” *Temple Political & Civil Rights Law Review*, 18, no. 2 (2009), 515, 537–540.

25. American Medical Association, Press Release: “AMA Urges Appropriate Placement of Transgender Prisoners” (June 11, 2018), <https://www.ama-assn.org/press-center/press-releases/ama-urges-appropriate-placement-transgender-prisoners>.

Figure 2. Identities of Transgender, Nonbinary, and Intersex Inmate Survey Participants Between November 2019 and January 2020

Do you identify as transgender, nonbinary, or intersex?



Glossary

Transgender Man: A person who was assigned female at birth, but identifies and expresses their gender as male.

Transgender Woman: A person who was assigned male at birth, but identifies and expresses their gender as female.

Nonbinary: Relating to or being a person who identifies with or expresses a gender identity that is neither entirely male nor entirely female.

Intersex: Having both male and female gonadal tissue in one individual or of having the gonads of one sex and external genitalia that is of the other sex or is ambiguous.

No: Does not identify as transgender, nonbinary, or intersex.

* These figures represent the total number of individuals who participated in the Transgender, Nonbinary, and Intersex Inmate Survey at institutions for women and at institutions for men.

Source: The California Department of Corrections and Rehabilitation's analysis of the Transgender, Nonbinary, and Intersex Inmate Survey results between November 2019 and January 2020.

Incarcerated Transgender, Nonbinary, and Intersex Individuals Described a Culture of Disrespect by Both Staff and Other Incarcerated Individuals

Departmental policy acknowledges the role of “language used by staff toward inmates” in “creating a culture of safety and respect that can impact the emotional well-being of inmates, including transgender inmates.”²⁶ It provides instruction on acceptable methods for communicating with transgender individuals, such as using gender-neutral language and the correct pronouns. Departmental policy makes clear that using “derogatory remarks, insults, and epithets,” and “repeatedly calling a transgender inmate by the wrong pronouns or name, after the transgender inmate has provided notice of his or her gender identity to staff” is a violation of departmental policy.²⁷ Nevertheless, some staff are hostile, discourteous, unprofessional, and insensitive toward transgender, nonbinary, and intersex individuals, generating a culture of disrespect.

At the forums the OIG attended, incarcerated individuals explained that staff use epithets such as “faggot” and “fag,” and other derogatory remarks toward transgender, nonbinary, and intersex people. One individual recounted a female officer asking “do you have your dick and balls tied to your back?” Another individual claimed that a male officer said “I have a real one.” Another individual reported that while identifying transgender people at a male institution, an officer called out, “Where are all my bitches at?”

Incarcerated individuals shared stories of staff who intentionally misgender them by using the wrong pronouns. For example, some staff refer to transgender male individuals as “she” or “her.” Officers also refer to individuals using first names that conflict with individuals’ gender identity. Incarcerated individuals expressed less concern about the officers who tried to use correct pronouns, and sometimes made mistakes, but were troubled by officers who repeatedly, and appeared to purposefully, use the wrong pronouns.

The intolerance endured by transgender, nonbinary, and intersex individuals extends even further than verbal abuse. Two individuals reported that when the department transported them from an institution designated for transgender individuals to a non-designated institution, staff at the non-designated institution refused to accept them into the institution, grant them access to the bathroom, or allow them to exit the transportation vehicle. Instead, staff at the non-designated institution had them transported to another institution, nearly 380 miles away.

26. DOM, Section 54040.4.1.

27. Ibid.

“Where are all my bitches at?”

—Incarcerated Individual
Quoting an Officer
December 2020

“The C/Os single out all transgender, intersex, and nonbinary inmate[s], for no other reason than to make fun of us because of our gender. It’s not right and need to be changes made to the treatment of this community.”

—Incarcerated Nonbinary Individual
Most Often Identifies as Nonbinary
November 2019

Incarcerated transgender, nonbinary, and intersex individuals also described situations in which staff drew unwelcome attention to them. According to these individuals, the department’s practice of scheduling hormone therapy and testing for transgender, nonbinary, and intersex patients on the same day and time each week draws unwelcome attention to them because it causes them to gather in waiting areas at the same time and become easily identifiable to other incarcerated individuals. The OIG observed similar attention being called to this population before a survey and forum at one of the institutions. A departmental staff member announced over the public address system for “all transgender inmates” to go to the meeting, which unnecessarily caused those who left to attend the survey and forum to be singled out and identifiable to other people. While changes to departmental policies and practices can mitigate the aforementioned issues, some forms of unwelcome attention can only be prevented through a cultural shift within the department. At one of the forums, an individual described that an officer displayed an old picture of the individual and called upon others to, “Look, this is what [the individual] looked like before.”

Without minimizing the above-referenced experiences and concerns, it is important to note that a few transgender individuals acknowledged the department’s effort to improve its culture and expressed that certain staff understand and support transgender, nonbinary, and intersex individuals. Individuals at one institution stated, “It is much better than 5 years ago,” “It’s getting better, “It’s all going in the right direction,” and “There are good staff, including [the investigative services unit].”

Incarcerated Transgender, Nonbinary, and Intersex Individuals Asserted That Staff Conduct Unprofessional Searches

The department has an obligation to comply with Federal and State laws, including the Federal Prison Rape Elimination Act (PREA), which provides that searches be conducted in the least intrusive manner consistent with security needs. Because of this, departmental policy requires that routine unclothed body searches “be conducted in a safe manner and in an area that allows the inmate to preserve some measure of dignity and self-respect.”²⁸ However, transgender, nonbinary, and intersex individuals at the forums reported that officers target them with increased searches, deny them privacy during unclothed body searches, and make vulgar comments during the searches.

At one institution, incarcerated individuals reported that officers intentionally strip search them in front of others, including routine strip searches conducted during work exchange. When individuals ask for privacy, officers respond with comments such as “Fuck that, bitch—bend over.” One individual indicated that a female officer grabbed the individual’s breast during a search rather than using the back of her hand

“Fuck that, bitch—bend over.”

—Incarcerated Individual
Quoting an Officer
December 2020

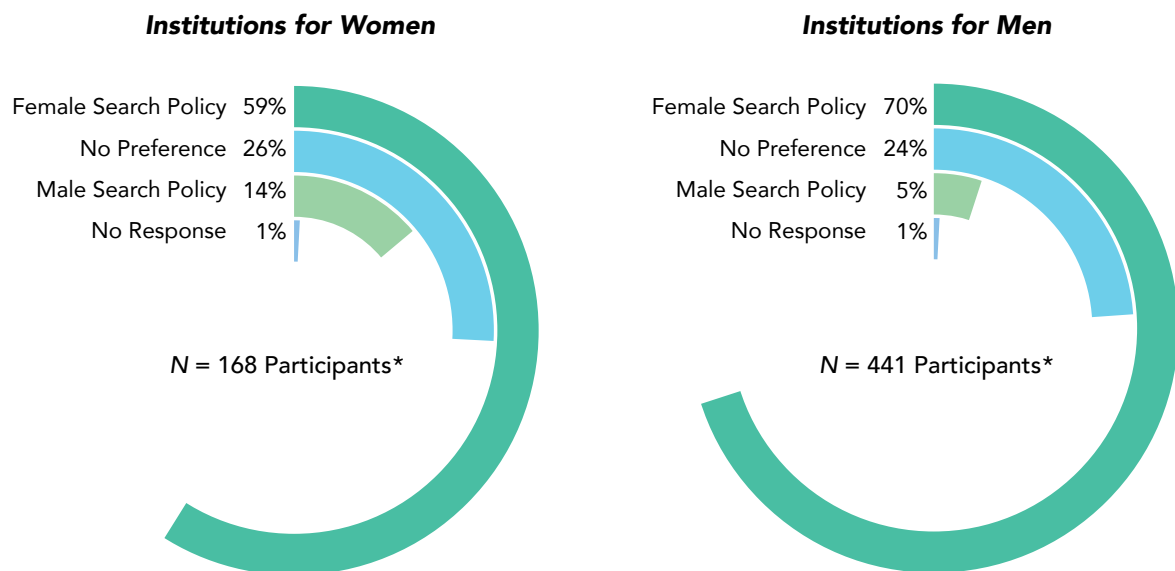
28. *Code of Federal Regulations*, Sections 115.15, 115.115, 115.215, and 115.315.

as required by departmental policy. When the individual complained, the officer replied, “Don’t worry; it’s not a big deal. I have those, too.” An individual from another institution described an incident wherein the institution terminated the individual’s job assignment and issued a negative write-up because the individual refused to be strip searched in front of other people during work exchange.

Although most transgender, nonbinary, and intersex individuals described unprofessional searches, one group shared the belief that officers would honor requests to be searched in a private setting.

Figure 3. Search Preferences of Transgender, Nonbinary, and Intersex Inmate Survey Participants Between November 2019 and January 2020

How would you prefer to be searched: with the male search policy or the female search policy?



Glossary

Male Search Policy: Clothed body searches can be conducted by men or women, unclothed searches can only be conducted by men.

Female Search Policy: Both clothed and unclothed body searches can only be conducted by women.

* These figures represent the total number of individuals who participated in the Transgender, Nonbinary, and Intersex Inmate Survey at institutions for women and at institutions for men.

Source: The California Department of Corrections and Rehabilitation’s analysis of the Transgender, Nonbinary, and Intersex Inmate Survey results between November 2019 and January 2020.

“This is not asked [in this survey], privacy partitions that adequately keep others from seeing our genitalia and bodies like we shower at as the so called privacy partitions are a joke. You can walk up to a shower and see everyones bodies, i.e., genitalia. I get harassed on a daily basis. Guys walking by the showers looking in it causes problems. I’m 6’5” tall and the privacy partitions are a joke. These showers especially in C-15, need to be fixed and or tall movable privacy curtains need to be made and brought into all the housing units.”

—Incarcerated
Transgender Woman
November 2019

Incarcerated Transgender, Nonbinary, and Intersex Individuals Expressed That the Department Does Not Provide Sufficient Privacy When They are Unclothed

The Fourth Amendment provides incarcerated individuals with a limited right to privacy, subject to limitation to maintain institutional security.²⁹ Both PREA and departmental policy are designed to limit cross-gender viewing when individuals shower, use the bathroom, and change clothes, to exigent circumstances or when viewing is incidental to routine cell checks.³⁰ PREA also provides that transgender individuals be allowed to shower separately.³¹ Except in circumstances in which safety and security would be compromised, modesty screens (also referred to as privacy curtains) are placed strategically to prevent incidental viewing.³²

Notwithstanding these policies, incarcerated individuals claimed the department denies them the basic self-respect and personal dignity of shielding their unclothed body from strangers of the opposite sex. To transgender, nonbinary, and intersex individuals, privacy is not only self-respect and personal dignity, but safety. These individuals voiced concern that the department does not provide them with sufficient privacy to take showers, use the bathroom, or change clothes. They reported that some institutions and facilities have privacy curtains while others do not; some have privacy curtains that are broken or altered; and others have curtains that are too small. They also reported that some officers do not provide them with separate shower times, thereby increasing the likelihood of cross-gender viewing. For this reason, some transgender, nonbinary, and intersex individuals forego showering altogether and instead take a “bird bath.”³³

Individuals housed in dormitory settings reported they do not have the same privacy to change clothes as individuals housed in a single or double cell. Those housed in a dormitory “have an audience” of other incarcerated individuals who stare at them and “play with themselves.”

One group of incarcerated individuals indicated that officers in one facility afforded separate shower times for transgender, nonbinary, and intersex people, which provided them with more privacy.

29. *Bull v. City and County of San Francisco*, supra, 595 F.3d at p. 972; *Michenfelder v. Sumner*, supra, at p. 333; *Bell v. Wolfish*, supra, 441 U.S. 520.

30. *Code of Federal Regulations*, Section 115.15, subdivision (d); DOM, Section 54040.4.

31. *Code of Federal Regulations*, Section 115.42, subdivision (f).

32. DOM, Section 54040.4.

33. A bird bath is similar to sponge bath; it constitutes bathing using water from an in-cell sink.

Incarcerated Transgender, Nonbinary, and Intersex Individuals Expressed That Reporting Sexual Harassment Is Futile

According to the Presidential Memorandum Implementing the Prison Rape Elimination Act, “the success of PREA in combating sexual abuse in confinement facilities” hinges on “effective agency and facility leadership and the development of an agency culture that prioritizes efforts to combat sexual abuse.”³⁴ The department has made efforts to implement PREA through its policy and expectations for staff. Departmental policy requires that staff report any information indicating an incarcerated individual is being, or has been the victim of sexual violence, sexual misconduct, or sexual harassment from departmental staff, other incarcerated individuals, or both. Staff are also expected to show sensitivity and maintain professional behavior during interactions with victims.³⁵

Despite the department’s efforts to effectively implement PREA, incarcerated transgender, nonbinary, and intersex individuals expressed that PREA “is not effective at all.” Several individuals shared accounts of being victims of sexual violence while incarcerated; some claimed they previously reported the incidents to staff, while others indicated they were reporting the incident for the first time.³⁶ Incarcerated transgender, nonbinary, and intersex individuals are reluctant to file complaints of sexual assault or harassment because staff do not take their complaints seriously, do not conduct interviews in private settings, and ridicule incarcerated individuals for complaining. Incarcerated individuals also relayed that staff retaliate against them when they complain—officers automatically place transgender, nonbinary, and intersex complainants in administrative segregation, which results in victims losing their jobs, educational programs, rehabilitative programs, and housing assignments. At one institution, incarcerated individuals explained that officers, including those in the investigative services unit, do not take allegations of sexual assault seriously and have responded with comments, such as “I thought you liked it that way.”

Individuals at the forums also indicated that incarcerated cisgender individuals as well as other gender nonconforming individuals, misuse the PREA reporting process and protections by falsely accusing transgender, nonbinary, and intersex individuals of sexual assault to have them placed in administrative segregation, and cause the them to lose their desired job, education, rehabilitative programs, and housing

“I thought you liked it that way.”

—Incarcerated Individual
Quoting Officers
December 2020

34. Memorandum of President Implementing the Prison Rape Elimination Act (May 17, 2017), <https://obamawhitehouse.archives.gov/the-press-office/2012/05/17/presidential-memorandum-implementing-prison-rape-elimination-act>.

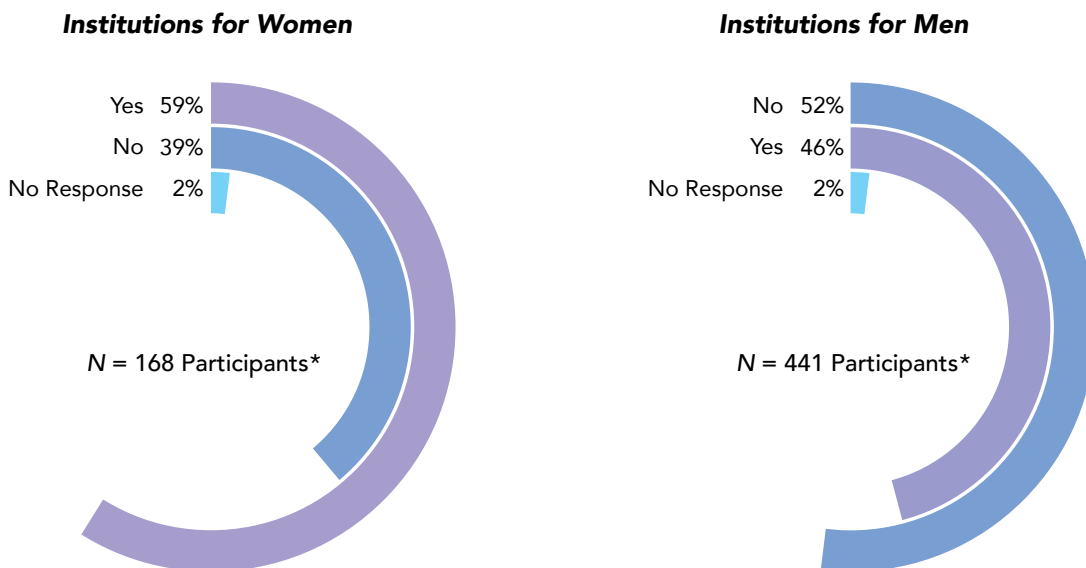
35. DOM, Section 54040.7.

36. Regardless of when the incident occurred, or whether the incarcerated person claimed to have previously reported the incident, members of the working group provided the information to the department’s Statewide Prison Rape Elimination Act Coordinator or another appropriate departmental representative who obtained the necessary information to confirm an inquiry had already been conducted or to initiate an inquiry pursuant to the department’s policies and procedures.

assignment. They explained that some people file false allegations against transgender, nonbinary, or intersex individuals to have them removed from a cell, room, or dorm.

Figure 4. Transgender, Nonbinary, and Intersex Inmate Survey Participants' Responses Regarding Safety in Reporting Discrimination, Harassment, and Violence Between November 2019 and January 2020

Do you believe you can safely report discrimination, harassment, or violence committed based on your status as a transgender, nonbinary, or intersex person?



* These figures represent the total number of individuals who participated in the Transgender, Nonbinary, and Intersex Inmate Survey at institutions for women and at institutions for men.

Source: The California Department of Corrections and Rehabilitation's analysis of the Transgender, Nonbinary, and Intersex Inmate Survey results between November 2019 and January 2020.

"Staff don't take your [PREA] cases serious[ly] and refuse you to make a complaint and staff harasses you and belittle you for alerting them, because of your status being transgender."

—Incarcerated Transgender Woman
November 2019

Incarcerated Transgender, Nonbinary, and Intersex Individuals Reported They Are at Risk of Violence Due to Unsafe Housing and the Department Does Not Respond Adequately to Their Concerns

Housing transgender, nonbinary, and intersex individuals with compatible cellmates is critical for ensuring the safety of those individuals while incarcerated. When the department overlooks incarcerated individuals' safety concerns or concerns regarding incompatibility with a cellmate, it puts these individuals' lives in jeopardy. On October 31, 2013, officers discovered a dead transgender woman in her cell, covered in a blanket with cloth ligatures looped around her neck three times, and both hands bound together and tied to her bunk. She died at the hands of her cellmate, hours after they became cellmates. Upon inspecting the cell, an investigator found two writings from the deceased: one indicating she was worried her new cellmate would rape her, and the other conveying a grim forecast—"Never mind tired of being abused better off dead." In December 2019, a judge sentenced the woman's cellmate to death. The cellmate had reportedly told officers he would kill the transgender woman if he were forced to share a cell with her.³⁷ In addition, the cellmate told the trial judge that he had previously attacked a gay cellmate, claiming "I had a restriction not to be housed with a [gay expletive]."³⁸

During the forums we attended, incarcerated individuals reported the department does not provide them with safe housing or adequately respond to their safety concerns. They recounted situations in which officers dismissed their safety concerns and placed them in unsafe housing environments with incompatible cellmates. One individual claimed that, at the behest of officers, multiple incarcerated individuals attacked her from behind on an exercise yard, which resulted in her hospitalization and confinement to a wheelchair. Because she could not identify her attackers, officers ordered her to return to the same exercise yard where the attack occurred. When she refused to return to the exercise yard, officers placed her in administrative segregation.

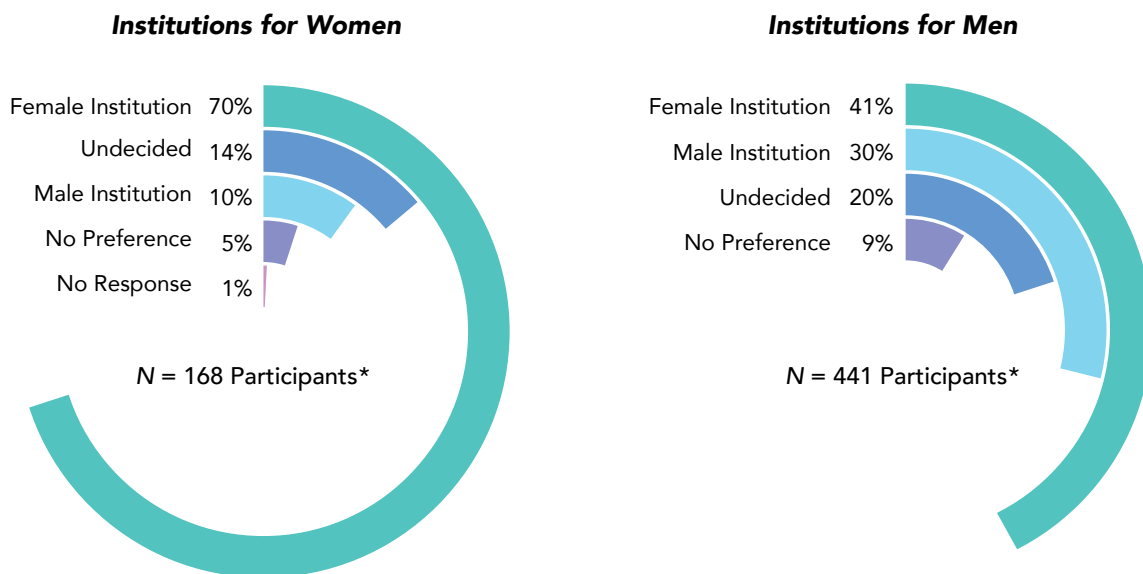
37. Miranda Leitsinger, "Transgender Prisoners Say They 'Never Feel Safe,' Could a Proposed Law Help?," KQED (January 8, 2020), <https://www.kqed.org/news/11794221/could-changing-how-transgender-inmates-are-housed-make-prison-safer-for-them>.

38. Tim Fitzsimons, "Man sentenced to death for killing transgender cellmate," NBC News (December 6, 2019), <https://www.nbcnews.com/feature/nbc-out/man-sentenced-death-killing-transgender-cellmate-n1097161>.

Another individual stated that officers housed her in a six-person room with “two serial rapists” who stood near her bunk at night and also watched her use the bathroom. Given her petite stature and the warnings she received from other incarcerated individuals regarding the cellmates’ predatory nature, the individual felt unsafe and requested a room change. However, an officer denied her request to move, citing she had a physician’s note for a lower bunk and had two options: “Go back to your cell, or go to the hole [a reference to administrative segregation].” Officers eventually permitted the individual to move to a different room after she abandoned her documented medical needs for her personal safety.

Figure 5. Housing Preferences of Transgender, Nonbinary, and Intersex Inmate Survey Participants Between November 2019 and January 2020

Would you currently prefer to be housed at a male or female institution?



* These figures represent the total number of individuals who participated in the Transgender, Nonbinary, and Intersex Inmate Survey at institutions for women and at institutions for men.

Source: The California Department of Corrections and Rehabilitation’s analysis of the Transgender, Nonbinary, and Intersex Inmate Survey results between November 2019 and January 2020.

Other incarcerated individuals reported that officers dismiss their safety concerns and requests for safer housing with comments such as “Fuck or fight,” “Fucking deal with it,” and “This is a man’s prison—deal with it like a man.” They explained that, regardless of their safety concerns, refusing to be housed according to officers’ determinations subjects them to disciplinary action, including being placed in administrative segregation.

“This is a man’s prison—deal with it like a man.”

—Incarcerated Individual Quoting Officers
December 2020

Incarcerated individuals at the forums also explained they are often denied access to the grievance process, and if they do file grievances, the complaint is lost or discarded. As mentioned earlier, these individuals expressed that officers retaliate against those who file grievances. One individual reported that, after she filed a complaint against an officer, she was moved into a cell with “a homophobic inmate.”

In contrast to the complaints shared nearly statewide, incarcerated individuals at one institution expressed that some officers would honor a request to move into safer housing.

“Cellmates are a big issue. Some people are not compatible with transgenders and that is creating a hostile environment when the cellmate is forced just because a bunk is available and the institution needs to house an inmate. CDCR already allows inmates to choose housing according to race, gang affiliation, etc., but not gender identification.”

—Incarcerated Nonbinary Individual
November 2019

“It would be great to have a support group within each institution where we could gather (like AA or NA type situation but just us) to discuss or get guidance from others who[se] experiences are like ours.”

—Incarcerated
Intersex
Individual Who Most
Often Identifies
as Male
November 2019

Incarcerated Transgender, Nonbinary, and Intersex Individuals Reported They Face Discrimination in Access to Programs and Services

By listening to the stories incarcerated individuals shared at the forums, we found that the discrimination faced by transgender, nonbinary, and intersex individuals is far-reaching, and extends to all aspects of daily life. Bias against the transgender, nonbinary, and intersex incarcerated population not only results in hostile and unsafe conditions of confinement, but also in inequitable access to essential services and programs.

Incarcerated Transgender, Nonbinary, and Intersex Individuals Described Discrimination in Vocational Training, Job Assignments, and Other Activities

Within the department, incarcerated individuals are assigned a full day of work, education, or other rehabilitative programs, or a combination of work, education, and rehabilitative programs.³⁹ Vocational training and job assignments provide these individuals with an opportunity to increase their employment marketability upon release.⁴⁰ Job assignments also provide them with income for purchasing approved items and paying restitution.⁴¹

During the forums, incarcerated individuals indicated that departmental staff deny them access to desirable job assignments because of their transgender, nonbinary, or intersex status. For example, they explained that staff deny their requests to work as porters or in the culinary. They also reported that staff have told them that other incarcerated individuals do not want them serving food because of their perceived sexuality.

Incarcerated individuals also complained that the department’s vocational training reflects outdated gender stereotypes in that it only provides vocational training that aligns with traditional gender roles. For example, at institutions for men the department offers vocational training or certificates in plumbing and welding, but not cosmetology, which the department offers at institutions for women.

Incarcerated transgender, nonbinary, and intersex individuals also explained that the department’s religious leaders do not always accept them into faith-based programs or services. One individual described

39. *California Code of Regulations*, Title 15, Section 3040.

40. California’s In-Prison Vocation Education, An Analysis of Program and Alignment to Labor Markets (2014). The department’s career technical programs and certificates may be found at <https://www.cdcr.ca.gov/rehabilitation/cte/> and <https://www.calpia.ca.gov/offender-development/accruited-certification-programs/>.

41. *California Code of Regulations*, Title 15, Section 3041.2.

that a reverend removed her from the choir after learning she was a transgender individual. The individual filed a successful appeal with the department. However, before the individual was allowed back into the choir, the reverend disbanded the choir entirely.

Incarcerated individuals also expressed that the department lacks sufficient support groups for incarcerated transgender, nonbinary, and intersex individuals. To the extent such groups exist, these individuals believe that officers allow agitators into the support groups with the intention of disrupting the meetings.

Incarcerated Transgender, Nonbinary, and Intersex Individuals Described Discrimination in Access to Clothing and Property Items That Align With Their Gender Identity and Expression

Clothing

The department is required to provide clothing to the incarcerated population.⁴² However, incarcerated transgender, nonbinary, and intersex individuals expressed that institutions, including those designated for transgender individuals, lack a sufficient inventory of clothing, such as underwear congruent with individuals' gender identities. They also explained that some staff are confused about when, where, or how individuals may wear certain articles of department-authorized clothing.

Individuals at an institution for women explained that although the department issues boxer shorts to transgender men, officers only issue women's underwear to transgender men. Because incarcerated individuals are required to wear underwear to legal visits, transgender men must wear women's underwear if they want to visit with their attorney. One individual expressed that because he refuses to wear women's underwear, officers deny him legal visits.

Incarcerated individuals also explained that officers are confused about when, where, or how the incarcerated population may wear certain articles of clothing. For example, on exercise yards at institutions for men, some officers require women to wear a shirt over their sports bra while others permit them to wear a sports bra without a shirt. An associate warden at an institution for men highlighted this confusion during one of our visits at an institution for men when he told us he corrected an officer who required a transgender woman to wear a shirt over her bra while on the exercise yard. The associate warden said he told the officer that while transgender women are on the exercise yard, they are not required to wear clothing over their bras. However, the associate warden later found the officer was correct—both transgender women and cisgender women are required to wear clothing over their sports

"I would like to bring up the clothes in prison we are judge[d] & forced to wear & look like a man. I would love it if us transgenders to be able to wear what we want to make us feel more like a woman & less like a man. Also I would like to mention how the C.O.s talk to us not all but there's a large amount of officers that mistreat us as transwomen."

—Incarcerated
Transgender Woman
November 2019

42. *California Penal Code*, Section 2084; *California Code of Regulations*, Title 5, Sections 3030, 3031, and 3032.

bras while on the exercise yard. The associate director corrected the associate warden and explained that at institutions for women, individuals must wear clothing over their sports bras while on the exercise yard and the same rule applies at institutions for men.

During one survey, an incarcerated transgender woman housed at an institution that is not designated for transgender people wrote the following:

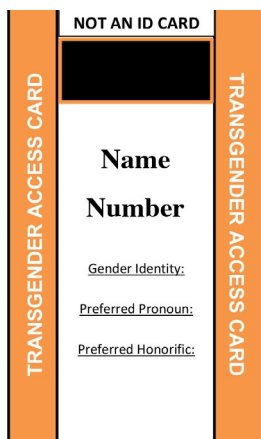
Even though [this institution] is not a transgender friendly facility they have done a good job making sure I am all right, notifying me of my rights as a transgender. They even got me female clothing from the womens prison on the same day that we gave them my sizes. They made me feel comfortable here.

Canteen

At each institution, the department maintains canteens where incarcerated individuals can purchase toiletries, candy, and other sundry items.⁴³ At the 14 designated transgender institutions, each institution's canteen must stock seven cosmetic or hygiene items for transgender individuals. To determine what items it would stock, the department polled incarcerated transgender individuals statewide. To optimize shelf space, the department selected the most popular items and mandated that all canteens at the 14 designated institutions carry those items.

During the forums, incarcerated individuals requested the department increase the type and variety of items that align with their gender identity and expression. For example, if the canteen at an institution for men sells combs, it should also sell hair brushes and more than one type of brush for women's hair; if a canteen sells foundation makeup, it should also sell more than one color of foundation.

In 2019, the department initiated a new program to improve incarcerated transgender individuals' access to authorized state-issued clothing, canteen items, and packages from approved vendors.⁴⁴ An individual may request a Transgender Access Card (access card; see Photo 3, left), which includes the individual's name, CDCR number, gender identity, pronoun, and honorific. An access



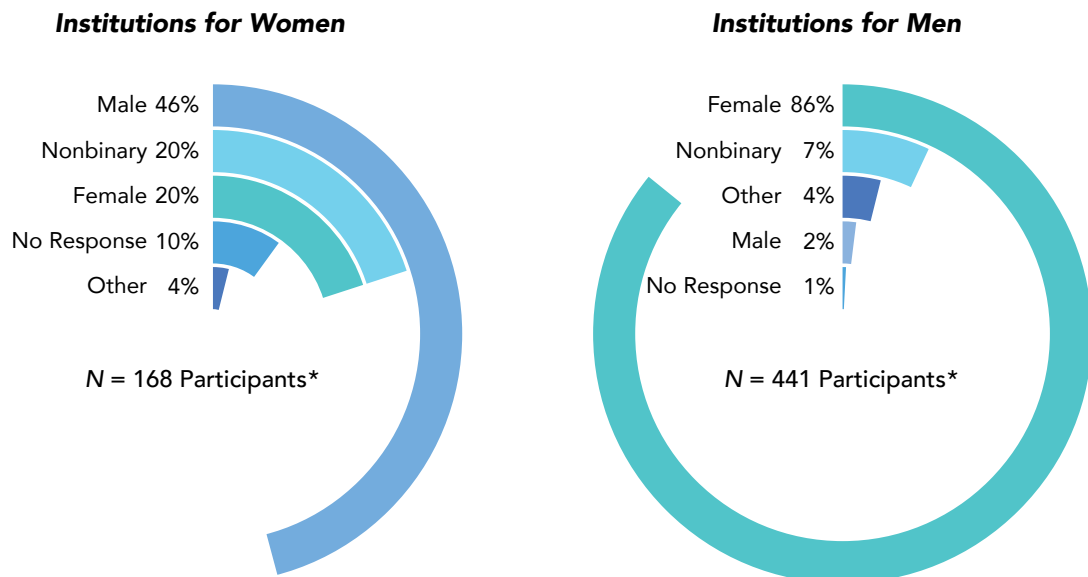
43. *California Penal Code*, Section 5005.

44. California Department of Corrections: Transgender Access Card for Transgender Inmates at Hub, Memorandum (June 19, 2019).

card is not an identification card and incarcerated individuals are not required to possess the access card on their person at all times. However, the access card is used to request, purchase, or receive items authorized only for incarcerated transgender, nonbinary, and intersex individuals.

Figure 6. Gender Identities of Transgender, Nonbinary, and Intersex Inmate Survey Participants Between November 2019 and January 2020

What gender identity do you most often use to describe yourself?



Glossary

Nonbinary: Relating to or being a person who identifies with or expresses a gender identity that is neither entirely male nor entirely female.

Other: Any gender identity that does not fall into the category of male, female, or nonbinary.

* These figures represent the total number of individuals who participated in the Transgender, Nonbinary, and Intersex Inmate Survey at institutions for women and at institutions for men.

Source: The California Department of Corrections and Rehabilitation's analysis of the Transgender, Nonbinary, and Intersex Inmate Survey results between November 2019 and January 2020.

During the forums, we learned that some institutions had not issued access cards or notified incarcerated individuals about the access card program. At one institution, transgender, nonbinary, and intersex individuals shared that the institution did not issue the access cards until the day before the working group's arrival to administer the survey. Individuals at another institution indicated that officers exhibited a dismissive attitude toward the access cards. For example, when they presented the access card, officers responded with comments such as "It's a male prison," and "You're a male in SOMS."⁴⁵ One individual reported that officers took her card during a search and did not return it to her.

Despite the department's efforts to improve access to property aligning with an individual's gender identity and expression, and despite the positive comments some incarcerated individuals voiced about these efforts, most expressed disappointment with the limited inventory and lack of access to preferred items. To increase transgender, nonbinary, and intersex individuals' access to preferred items, the department should devise ways to optimize storage space in the canteens.

Incarcerated Transgender, Nonbinary, and Intersex Individuals Indicated They Face Discrimination Because They Lack a Voice in Inmate Advisory Councils

According to regulations, wardens are required to establish an inmate advisory council that is representative of a facility's ethnic groups.⁴⁶ Council representation must include all ethnic segments of the general incarcerated population and of incarcerated individuals within a designated representation area or activity.⁴⁷ The incarcerated population at each institution selects council members to act in an advisory capacity to the warden in matters of common interest and concern.⁴⁸ When subcommittees of the council are established to represent specialized segments of the incarcerated population, only those within the particular area or segment may participate in the election.⁴⁹ Departmental policy does not require that wardens designate a position for a transgender representative or create a transgender subcommittee.

During the forums, incarcerated individuals at some institutions explained that councils do not have a transgender representative and the bylaws do not require the council to have a transgender, nonbinary, or intersex representative or subcommittee. These individuals expressed a lack of confidence that cisgender individuals would, or even could, adequately represent the transgender, nonbinary, and intersex

"At this prison there is no MAC represent[ation for] the women here when th[ere] a[re] problem[s].*

—Incarcerated
Transgender Woman
November 2019

* Inmate Advisory Councils (IAC) are also referred to as the Men's Advisory Council (MAC) and Women's Advisory Council (WAC).

45. SOMS refers to Strategic Offender Management System.

46. *California Code of Regulations*, Title 15, Section 3230.

47. DOM, Section 53120.4.

48. DOM, Section 53120.1.

49. DOM, Section 53120.5.

incarcerated population during council meetings or in its interactions with the department's administration. These individuals want a representative from the transgender, nonbinary, and intersex population on the councils to allow their concerns to be heard and to improve communication with the administration.

Transgender, Nonbinary, and Intersex Incarcerated Individuals Expressed Frustration With the Department’s Provision of Health Care

“Are they normal, or like you?”

—Incarcerated Individual
Quoting a Health Care Provider

Adequate medical and mental health services is critical for all incarcerated individuals, including transgender, nonbinary, and intersex individuals. Some transgender individuals suffer from gender dysphoria because their gender identity does not align with their assigned sex at birth.⁵⁰ Transgender people often undergo a process known as *transition*, which is a period of time in which they transition from the gender associated with their assigned sex at birth to the gender with which they identify. For some, transition is limited to social changes, such as telling family, friends, and coworkers; using a different name and new pronouns; dressing differently; and, changing one’s name or sex, or both, on legal documents.⁵¹ For others, transition can include medical treatments, such as hormone therapy and gender affirming surgery.⁵²

In February 2020, California Correctional Health Care Services revised and updated its transgender care guide. The care guide provides mental health and medical providers with an algorithm for patients seeking care. It delineates the process for assessing transgender patients for gender dysphoria as well as prescribing hormones to patients with gender dysphoria in a way that ensures that sex hormone levels are safe and appropriate for the patient’s gender.⁵³ Using this guide, the department carefully considers an individual’s request for gender affirming surgery on a case-by-case basis, taking the person’s medical and mental health history and current medical and mental health conditions into account. However, during the forums the OIG attended, transgender, nonbinary, and intersex individuals shared their discontent with providers’ medical acumen and the quality and availability of medical care and mental health services the department provides. They explained that many of the department’s health care providers are insensitive about the

50. World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (7th Version, 2012), p. 5; American Medical Association: Resolution 122 (2008).

51. World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (7th Version, 2012), p. 16; GLAAD Media Reference Guide, 10th Edition (October 2016).

52. World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (7th Version, 2012), p. 5.

53. CCHCS/DHCS Care Guide: Transgender (February 2020), <https://cchcs.ca.gov/wp-content/uploads/sites/60/CG/Transgender-CG.pdf>.

medical, psychological, and social issues facing incarcerated transgender, nonbinary, and intersex individuals. In particular, these individuals reported that hormone regimens are changed when they transfer interdepartmentally. They also expressed frustration regarding the department's delay in reviewing requests for gender affirming surgery and its ambiguity in denying those requests.

At the forums, incarcerated individuals shared that some providers do not treat them professionally. For example, one individual reported that during an exam, a health care provider asked if the individual had any siblings and "Are they normal, or like you?" Incarcerated individuals also expressed suspicion that the department approves or denies hormone therapy based on positive or negative behavior—not on medical need.

Transgender, nonbinary, and intersex individuals at the forums also reported the department does not provide them with individualized treatment, access to endocrinologists, or information about the efficacy and side effects of hormone therapy. At one institution, transgender, nonbinary, and intersex individuals reported that the institution did not have an endocrinologist or offer telemedicine, leaving these patients without access to vital appointments.

Statewide, incarcerated individuals expressed frustration that the department does not provide information on the process for requesting and receiving gender affirming surgery and does not respond timely to requests for surgery. They shared the perception that it is difficult to obtain the department's approval for surgery and when the department denies a request, it offers no explanation for the denial. The department acknowledges the need to improve its process and communication with incarcerated individuals and is currently revising its guidelines for reviewing those requests.

"We are being denied our requests to be seen by an endocrinologist here at [this institution]. The medical staff here does not manage our hormones properly. I have been told that an estradiol level of 39 is in the therapeutic range. My levels are so low my transition has stopped. We are also all denied our requests for gender affirmation surgery for any number of reasons such as 'your needs are being met with current treatment'."

—Incarcerated Transgender Woman
December 2019

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External Stakeholders Echoed the Concerns of Transgender, Nonbinary, and Intersex Incarcerated Individuals and Advocated on Their Behalf

External stakeholders amplify the voices of incarcerated transgender, nonbinary, and intersex individuals; provide them with education and services; and advocate on their behalf through open dialogue with the department, proposed legislation, and representation during litigation. These stakeholders were present during the forums and during some of the department's working group sessions.

In completing this report, the OIG engaged with external stakeholders outside of the forums and working group. In this section, we delineate the concerns these stakeholders raised regarding the incarcerated transgender, nonbinary, and intersex population.

External Stakeholders Reiterated Concerns That Transgender, Nonbinary, and Intersex Incarcerated Individuals Are Afraid to Report Sexual Assault Because Doing So May Subject Them to Being Housed in Prolonged Isolation

External stakeholders echoed the concerns incarcerated transgender, nonbinary, and intersex individuals raised about reporting sexual assault and harassment committed by both incarcerated individuals and departmental staff, and stressed that these individuals are housed in prolonged isolation as a result of reporting PREA-related incidents.

External stakeholders were aware of incarcerated individuals' fears that reporting sexual assault and harassment would subject them to misguided blame, retaliation, and coercion. They expressed that victims do not report sexual assault because they believe they would be blamed for the assault. Victims also fear that officers would share their complaints with other incarcerated individuals, thereby subjecting them to victimization and to being called a *snitch*. Incarcerated individuals also fear coercion, retaliation, and intimidation from officers in the form of false rules violations, excessive or humiliating searches, or unjustified seizures of personal property. The stakeholders explained that the inherent power and authority dynamic officers have over incarcerated individuals discourages these individuals from reporting sexual assault and harassment committed by officers or other staff.

External stakeholders suggested that the department violates PREA by placing victims in prolonged isolation. Pursuant to PREA, “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.” PREA also provides, “If a facility cannot conduct such an assessment immediately, the facility may hold the individual in involuntary segregated housing for less than 24 hours while completing the assessment.” Nevertheless, external stakeholders reiterated incarcerated individuals’ fears that reporting sexual assault may lead to being placed in prolonged isolation. They stressed that the department continues to impermissibly house transgender and gender nonconforming individuals in isolation for prolonged periods of time, purportedly for these individuals’ own protection, and not for disciplinary reasons.

External stakeholders stated their belief that even if safety is the true purpose for placing transgender and gender nonconforming individuals in administrative segregation, these individuals are denied access to rehabilitative programs, education, work, hormone treatment, and opportunities to earn credits to reduce their sentence during those periods of isolation. In addition, external stakeholders reasoned that isolation has an injurious effect on an individual’s psychological and physical well-being.

External Stakeholders Reiterated That Incarcerated Transgender, Nonbinary, and Intersex Individuals Lack Access to Services

External stakeholders echoed concerns incarcerated transgender, nonbinary, and intersex individuals raised regarding access to services. They expressed concern regarding insufficient access to clothing and personal items as well as the department's provision of health care.

External stakeholders raised two issues regarding the provision of clothing and personal items for incarcerated transgender, nonbinary, and intersex individuals. First, they contended the department violates the *Quine* settlement by not allowing the incarcerated transgender, nonbinary, and intersex community consistent access to gender appropriate personal care items, such as muumuus, boxers, and eyeliner.⁵⁴

Second, while stakeholders acknowledge that the *Quine* settlement is limited to designated transgender institutions, they are concerned the department does not extend its benefits to all transgender and gender nonconforming individuals. External stakeholders recommended that the department make these items, and more, available at every institution—not just institutions designated for transgender individuals.

External stakeholders also expressed concern with the department's performance in providing health care to this incarcerated population. They indicated that when incarcerated individuals on hormone therapy transfer into the department or within the department, the receiving institution often denies them hormone treatment or improperly reduces their hormone levels. The cessation or reduction of hormones can result in physical changes, causing psychological distress and physical pain.

54. *Quine v. Beard* (N.D. Cal., August 7, 2015, No. 3:14-CV-02726) Notice of Joint Settlement Agreement.

External Stakeholders Raised Additional Concerns Relating to Systemic Oversight of the Department's Handling of Grievances

External stakeholders highlighted concerns regarding the department's mishandling of grievances. Specifically, on December 5, 2019, an external stakeholder notified the department's Office of Legal Affairs that the department impermissibly prohibited a transgender woman housed at an institution for men from wearing a religious head covering. Even though the individual held a religious belief that she must cover her head, the department denied her request to purchase three scarves at her own expense. Although the individual previously filed appeals with the department, the department denied her request at all three levels of appeal, exhausting her administrative remedies.

On behalf of the individual, an external stakeholder requested that the department reconsider its denial and cited that "under Title 15, section 3213 (b), people in prison are permitted to possess any religious item listed on the Religious Personal Property Matrix, including 'religious headgear.'" The external stakeholder noted that the department's "appeal response denying access to the headgear runs afoul of Title 15, as well as the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. sections 2000, et seq." Thereafter, on February 13, 2020, the department's director of the Division of Adult Institutions issued a memorandum titled "Religious Head Gear Options," which provided clarification that transgender women housed in institutions for men are authorized to possess and purchase female head gear pursuant to the department's Religious Personal Property Matrix, and that transgender men housed in institutions for women are authorized to possess and purchase head gear pursuant to the same policy.

External Stakeholders Sponsored Senate Bill 132 to Improve the Lives of Incarcerated Transgender and Gender Nonconforming Individuals

Senator Scott Wiener, Senator Cathleen Galgiani, and Assemblymember Mark Stone, in consultation with external stakeholders, coauthored Senate Bill 132, the Transgender Respect, Agency, and Dignity Act, which is intended to improve conditions of confinement for incarcerated transgender, nonbinary, and intersex individuals.⁵⁵ If enacted, the law would address some of the concerns of external stakeholders and incarcerated transgender, nonbinary, and intersex individuals regarding respectful treatment, professional searches, and safe housing.

First, if enacted, the law would require the department to ask individuals entering its custody to specify “in a private setting” their gender identity, “whether the individual identifies as transgender, nonbinary, or intersex,” and “the individual’s gender pronoun and honorific.” The law would prohibit “staff, contractors, and volunteers of the department” from “consistently fail[ing] to use the gender pronoun and honorific an individual has specified” and would also “prohibit the department from disciplining a person for refusing to answer or not disclosing complete information,” and would provide that individuals may inform staff of this information at any time.⁵⁶

Second, if enacted, the law would require that individuals in the department’s custody “be housed at a correctional facility designated for men or women based on the individual’s preference.”⁵⁷

Third, if enacted, the law would require that the department conduct searches on individuals “according to the search policy for their gender identity or according to the gender designation of the facility where they are housed, based on the individual’s search preference.” The bill’s current language states that “if the incarcerated individual’s preference or gender identity cannot be determined, the search shall be conducted according to the gender designation of the facility where they are housed.”⁵⁸

55. Senate Bill 132 is authored by Senator Scott Wiener (D-San Francisco), coauthored by Senator Galgiani, and Assemblymember Mark Stone, and sponsored by Equality California, TransLatin@Coalition, TGI Justice Project, Transgender Law Center, American Civil Liberties Union of California, and Lambda Legal.

56. Wiener, Scott, Cathleen Galgiani, and Mark Stone. “Bill Text.” Bill Text – SB-132 Corrections., January 14, 2019: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB132.

57. Ibid.

58. Ibid.

According to the legislation, which is pending approval as of the date of this report's publication, if the department "has management or security concerns with an incarcerated individual's search preference" or "preferred housing placement," the department must "certify in writing a specific and articulable basis why the department is unable to accommodate that search or housing preference." If enacted, the law would also require that the department provide the incarcerated individual with a "meaningful opportunity to verbally raise any objections to that denial, and have those objections documented."⁵⁹ The legislation would prohibit an individual's housing and search preferences from being denied based on discriminatory reasons.

Furthermore, if enacted, the law would require that gender nonconforming individuals' "perception of health and safety" be "given serious consideration in any bed assignment, placement, or programming decision within the facility in which they are housed, including, but not limited to, granting single-cell status, housing the individual with another incarcerated person of their choice, or removing the individual or individuals who pose a threat from any location where they may have access to the individual who has expressed a safety concern." The law would also provide that "if an incarcerated individual raises concerns for their health or safety at any time, their housing and placement shall be reassessed."⁶⁰

If signed into law, this legislation is scheduled to take effect on January 1, 2021. One stakeholder expressed that Senate Bill 132 is a "life saver," and its passage would set a model for other states to "follow suit and validate the lives" of gender nonconforming individuals; another stakeholder described Senate Bill 132 as "long overdue."⁶¹ Sponsors are hopeful that if this legislation passes, violence leveled against transgender and gender nonconforming individuals will be reduced, and a culture of respect and dignity within the department can be cultivated.

59. Ibid.

60. Ibid.

61. Senate District 11, "Senate Passes Senator Wiener's Legislation to Ensure Incarcerated Transgender People Are Housed According to their Gender Identity" (May 23, 2019), <https://sd11.senate.ca.gov/news/20190523-senate-passes-senator-wiener%E2%80%99s-legislation-ensure-incarcerated-transgender-people-are>.

Through the Working Group, the Department Took Thoughtful and Important Steps to Improve Its Policies and Practices

Drawing from insights gained through the working group, the department proposed policy changes, and developed and implemented new training to address the concerns raised by the incarcerated transgender, nonbinary, and intersex population. Through these efforts, the department's working group achieved several notable accomplishments. The group not only administered the Transgender, Nonbinary, and Intersex Inmate Survey and conducted the forums, but also made modifications to its policies and practices; proposed changes to the department's PREA screening form; developed a gender identity questionnaire and staff script; created a new training curriculum called Working Successfully With Transgender, Intersex, and Nonbinary Inmates; provided instruction statewide on the new curriculum; and effectuated positive change in other various ways.

In Response to Insights Gained Through the Surveys and Forums, the Department Proposed Modifications to Its Policies and Practices

Conducting forums enabled the department to discuss topics of concern directly with the incarcerated population. Doing so helped the executive team to better understand the struggles of transgender, nonbinary, and intersex individuals and more effectively address these individuals' concerns. The following examples demonstrate the department's initiative in addressing some of the issues raised during the forums.

Through the forums, departmental leaders were able to provide incarcerated individuals with clarifying information as well as address their concerns. For example, several incarcerated individuals expressed confusion about the process of finalizing a name change, stating it was difficult to get their name changes finalized. As a result, executive team members provided those individuals with additional information and clarification on the name-change process and requirements. When some incarcerated individuals inquired about misconduct allegations or incidents that occurred but may not have been reported, departmental executives followed up on the status of existing allegations or brought incidents to the attention of the warden so that inquiries could be opened.

During one of the forums, an incarcerated individual openly expressed concern about her rapidly deteriorating mental health condition and appeared physically distraught. Immediately following the forum, a

departmental executive member, a working group member, and the OIG notified an associate warden, who caused a mental health provider to personally meet with and evaluate the individual before the working group left the institution that day.

At an institution for women, transgender, nonbinary, and intersex individuals raised a concern about the institution’s “Golden Girls” program. While the program allowed specific privileges beginning at the age of 55, access to those privileges was contingent upon individuals being identified as a “Golden Girl” on their department identification card—regardless of whether they identified as female. One individual noted that even though he would be entitled to the program the following week, on his 55th birthday, he refused to be identified as a “girl.” His refusal to accept the new identification card would deny him access to the program’s benefits. Following the forums, and before leaving the institution, executives raised the issue with the warden. By the following month, the warden renamed the program as the “Golden Program,” revised the institution’s applicable local operating procedures, and began issuing new identification cards.⁶²

Incarcerated individuals appreciated the diversity of departmental staff members who attended the forums, the presence of external stakeholders and the OIG, and the open dialogue and prompt resolution of certain issues. During the forums, they repeatedly expressed gratitude to the department for its commitment to improving the lives of transgender, nonbinary, and intersex individuals. The department’s actions were so well received that these individuals requested the department administer similar surveys and forums in the future.

“Thank you for coming today and caring about our LGBTQ+ lives.”

—Incarcerated Individual
December 2019

62. California Institution for Women, Operational Procedure 321, Golden Program (January 2020).

The Department's Working Group Proposed Modifications to Its PREA Screening Form, and Developed a Gender Identity Questionnaire and Script

All incarcerated individuals admitted to the department, or those who transfer to another institution, undergo a PREA screening. The goal of the screening is to aid the department in assigning individuals to cells, dorms, rooms, and beds by identifying an individual's risk of being sexually abused, probability of sexually abusing others, or both. The department also conducts an additional biannual assessment of transgender, nonbinary, and intersex individuals known to the department.⁶³

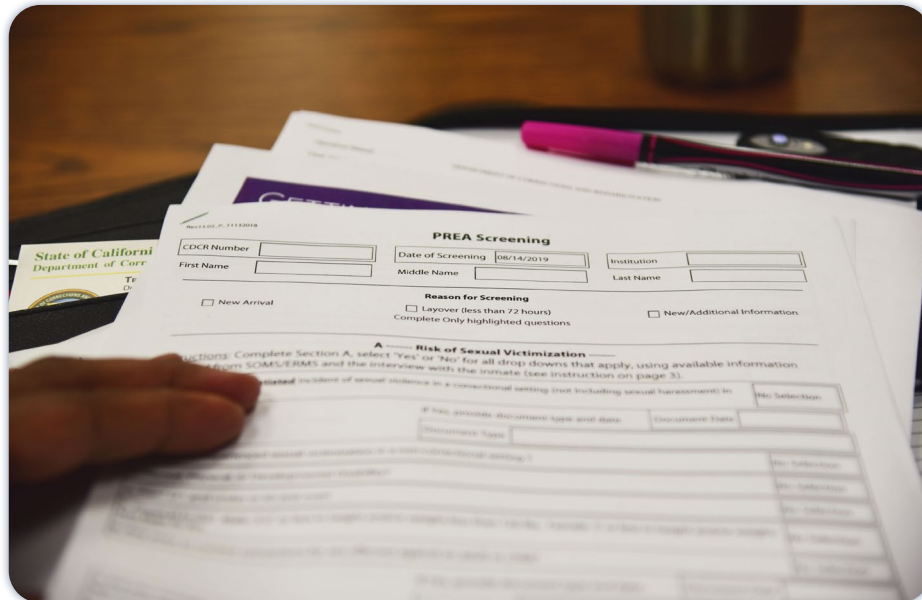


Photo 4. PREA screening form. Photo provided courtesy of Terry Thornton of the California Department of Corrections and Rehabilitation.

The department's Transgender Housing and Search Working Group proposed the department adjust the screening form to broaden the scope of information that may indicate an individual is vulnerable to sexual victimization. The group recommended the department amend the question pertaining to whether an individual has been a victim of a substantiated sexual violence incident in a correctional setting to include unsubstantiated incidents, too. The group also proposed adding a question of whether the individual has experienced sexual victimization in a correctional setting that was not reported. These proposed changes attest to the department's recognition that although some incidents of

63. DOM, Section 54040:14.2.

sexual victimization are not reported or cannot be proven, they are no less real.

The working group also developed a gender identity questionnaire and script to assist departmental staff in facilitating respectful communication and determining appropriate housing and services for transgender, nonbinary, and intersex incarcerated individuals. The questionnaire asks individuals their pronouns, honorific or title, and whether they prefer to be searched according to the men's policy or the women's policy. The script to be used in administering the questionnaire explains to participants that the questions may be personal because they relate to gender identity and that they are vital in appropriately placing them.

The Working Group Examined and Proposed Changes to the Department’s Staff Training Relating to Transgender, Nonbinary, and Intersex Incarcerated Individuals

Members of the working group developed and assisted the department in its implementation of a new training curriculum for its employees—Working Successfully With Transgender, Intersex, and Nonbinary Inmates. The curriculum includes vital information for managing the unique set of challenges employees may face when communicating with and understanding the incarcerated transgender, nonbinary, and intersex population. The training includes information on safe housing as well as appropriate terminology, search procedures, pronoun usage, and clothing and personal property allowances. The curriculum was developed by subject matter experts within the department who have a passion for or lived experience with the transgender, intersex, or nonbinary community.

The department required every institution to send five trainers to a Training-for-Trainers session to receive instruction on how to provide staff with a basic understanding of the history, terminology, and needs of the transgender, nonbinary, and intersex incarcerated population. The training also provided an overview of laws and departmental policies specific to this incarcerated population. At different times, OIG staff from different classifications observed the department’s four-hour sessions. They found the department’s instructors to be knowledgeable about the subject, adept at presenting information and answering difficult questions, and skilled in facilitating group discussions. The instructors held different positions within the department and had personal experience within the LGBTQIA+ community. They not only offered definitions of key terms, but used personal examples to cultivate a greater understanding of the topic. They emphasized and reiterated the importance of maintaining professionalism and respect by using incarcerated individuals’ correct pronouns, a core concern expressed during the forums.

The department now requires that employees at every institution attend a one-hour in-service training session that is co-taught by trainers who successfully completed Training-for-Trainers—Working Successfully With Transgender, Intersex, and Nonbinary Inmates. Every one-hour training session begins with a video-recorded address from Secretary Ralph Diaz, highlighting the department’s commitment to “maintaining a culture where everyone is safe and all are treated with respect and professionalism.” Diaz says, “This includes our fellow employees, incarcerated people, people on parole and community supervision, visitors, contractors, rehabilitation providers, and volunteers. This is more than a lofty goal or policy; this should be the norm.” Secretary Diaz’s address sets the tone for the training by letting participants know of the training’s importance to the department and what the

“I am highly appreciative and grateful of the opportunity to create and implement the lesson plan, “Working Successfully With Transgender, Intersex and Nonbinary Inmates,” in order to make the California Department of Corrections and Rehabilitation (CDCR) more in line with the LGBTQIA+ community. It is paramount for any business, including CDCR to become more inclusive with not only their workforce, but offenders as well. An important message in diversity training is for employers and staff to do all they can to create a safe and respectful working environment, which in turn can foster positive conversations for employees and reinforce the importance of empowering staff and offenders to do the right thing.”

—Correctional Lieutenant
Megan Cherinka

Subject Matter Expert and
Department Trainer for
Trainers

Transgender Housing and
Search Working Group
Member

Member of the
LGBTQIA+ Community

April 2020

department's expectations are. Echoing what they learned during the new Training-for-Trainers sessions, the trainers provide instruction on topics specific to the transgender, nonbinary, and intersex incarcerated population, such as safety in housing, appropriate terminology, appropriate pronoun usage, proper search procedures, and authorized clothing and personal property.

"Regardless of our personal beliefs, it is the sworn responsibility of all departmental employees (and an expectation) that we treat each person with respect and professionalism. The foremost of which, for the transgender, intersex, and nonbinary community, is the use of correct names, pronouns, and honorifics."

—Officer Mandi Hauwert
Subject Matter Expert and Department Trainer for Trainers,
Transgender Housing and Search Working Group Member, and
Member of the LGBTQIA+ Community
April 2020

The Department Has Effectuated Positive Change by Hosting Provider Fairs, Providing Transgender, Nonbinary, and Intersex Individuals With a Voice in Inmate Advisory Council Subcommittees, and Holding Its First Transgender Day of Remembrance

Employees are the linchpin to the department's success. Due to the passion and dedication of some departmental staff, the department has made strides in improving conditions of confinement for transgender, nonbinary, and intersex individuals in various ways. The department hosted its first transgender provider fair for incarcerated females, took steps to provide transgender, nonbinary, and intersex individuals with representation in inmate advisory councils, and supported transgender, nonbinary, and intersex individuals at San Quentin in hosting their first Transgender Day of Remembrance event.



Photo 5. Kristoffer Applegate, Associate Director, Office of Correctional Policy Research, Division of Correctional Policy Research and Internal Oversight, California Department of Corrections and Rehabilitation, speaking with two incarcerated individuals.

Photo provided courtesy of Terry Thornton of the California Department of Corrections and Rehabilitation.

On April 29, 2019, the California Institution for Men hosted the department's first Transgender Provider Fair for Incarcerated Females. Those in attendance included external stakeholders, such as Asian Pacific AIDS Intervention Team; St. John's Well Child and Family Center; TransLatin@Coalition, Restorative Justice Minister Nora Jacob; and Urban Mission, Pomona. These stakeholders provided information on postrelease housing, employment, and medical and mental health services. Thirty-six transgender females, over half of whom were scheduled to parole in two years or less, participated in a two-hour event

"Over the past two years, I have been empowered to work with this underserved demographic at the California Institution for Men. The Hiring Authority has allowed services such as provider fairs, group counseling, and a Rehabilitative Achievement Credit approved group (CAGE, Cultural Awareness and Gender Education) to spread the work of inclusion and understanding to the entire population. The goal of our efforts is to develop a sense of community amongst our incarcerated population, understanding that if we effectively teach people to cohabitate with individuals unlike themselves in here, they have a greater chance of success upon release."

—California Institution
for Men
Community Resource
Manager
Delinia Lewis
March 2020

"I have been with the department for 20 years. I recognize the hardships of being a transgender individual living in a prison. It's just common sense. . . . I am a professional employee and have always supported doing the right thing . . . and I am supported by my administration."

—Mule Creek State Prison Facility Captain and Transgender Coordinator, and Liaison
March 2020

"What the women of San Quentin put together was remarkable and emotional, and I am so proud of the hard work they did to make this event happen. Seeing their dedication, and the support of the rest of the incarcerated people and staff who attended was inspirational."

—Kristoffer Applegate
Associate Director
Office of Correctional Policy Research,
Division of Correctional Policy Research and Internal Oversight,
California Department of Corrections and Rehabilitation,
and Member of the LGBTQIA+ Community
December 2019

that included a presentation by service providers outlining the resources and services they offer, followed by an opportunity to visit the providers' display tables and collect information to assist them in transitioning back to society. The provider fair was well received by transgender, nonbinary, and intersex incarcerated individuals. External stakeholders recommended the department conduct similar fairs at all institutions.

When a facility captain at another institution found that transgender, nonbinary, and intersex individuals did not have representation on the inmate advisory council or access to the institution's management team to express concerns, the facility captain met with several transgender, nonbinary, and intersex individuals to develop a viable solution. Since then, the Inmate Advisory Council Bylaws for three facilities were amended to include six honorary members, including a transgender, nonbinary, or intersex representative, and eight Standing Committees, including a Transgender Committee.⁶⁴

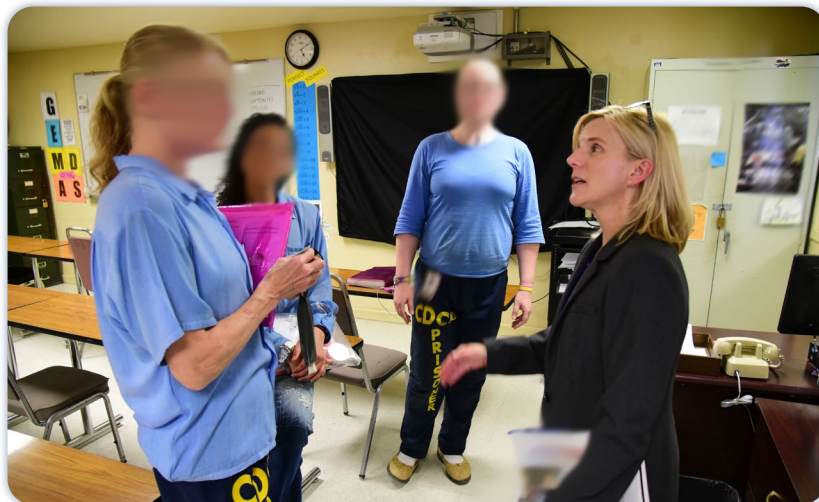


Photo 6. Amy Miller, Director of the Division of Correctional Policy Research and Internal Oversight, California Department of Corrections and Rehabilitation, speaking with three incarcerated individuals.

Photo provided courtesy of Terry Thornton of the California Department of Corrections and Rehabilitation.

On November 20, 2019, the transgender, nonbinary, and intersex incarcerated population at San Quentin State Prison was supported by the department in holding its first Transgender Day of Remembrance, an annual observance honoring the memory of transgender, nonbinary, and intersex individuals who were fatal victims of violence. Audience members included Senator Scott Wiener and his aides, executive staff from the department, external stakeholders, members of the department's working group, San Quentin State Prison employees, and members of the incarcerated population.

64. Mule Creek State Prison, Inmate Advisory Council Bylaws (2019) Article IV, Section 1 and Article IX, Section 2.

Senate Bill 132 Will Require Further Changes to the Department's Policies

If signed into law, Senate Bill 132, authored by Senator Scott Wiener and supported by external stakeholders, would require improvements within the department to address many of the shortcomings identified in this report. The legislation was a topic of discussion during the forums and in the written comments incarcerated individuals submitted as part of their survey. Incarcerated transgender, nonbinary, and intersex individuals expressed widespread opinions regarding the proposed legislation and future housing policies. Appendix B of this report includes some of those opinions.

As of the date of the publishing of this report, Senate Bill 132 remains pending. However, we anticipate the legislation will soon be submitted for Governor Gavin Newsom's consideration. The department informed us that it is working with Senator Wiener's office to ensure it is ready to effectively implement Senate Bill 132 on January 1, 2021, if Governor Newsom signs the bill into law.

"Incarcerated transgender people deserve to be housed in facilities consistent with their gender identity...When we house trans people based on their birth-assigned gender, we place them at high risk of sexual assault and violence. SB 132 will help ensure transgender individuals are treated with dignity and have their gender identity respected."*

—Senator Scott Wiener
California Senate District 11
May 23, 2019

* Senate District 11, "Senate Passes Senator Wiener's Legislation to Ensure Incarcerated Transgender People Are Housed According to their Gender Identity" (May 23, 2019), <https://sd11.senate.ca.gov/news/20190523-senate-passes-senator-wiener%E2%80%99s-legislation-ensure-incarcerated-transgender-people-are>.

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Recommendations

We commend the department for soliciting input from the transgender, nonbinary, and intersex population when making decisions about policy. During the department's survey and forums, incarcerated individuals articulated their need for more dignity and respect, increased privacy to shield against cross-gender viewing, a meaningful path to report sexual violence, safe housing, equitable access to jobs and programs, additional clothing and items congruent with their gender identity and expression, and better medical care.

External stakeholders provide incarcerated transgender, nonbinary, and intersex individuals with a cogent voice. They expressed concern that individuals do not report sexual violence due to potential negative repercussions, that the department impermissibly places incarcerated people in prolonged isolation, that transgender and gender nonconforming individuals do not have sufficient access to clothing or property items congruent with their gender identity and expression, that the department provides these individuals with inadequate medical care, and that the department does not adequately handle grievances. External stakeholders support Senate Bill 132, which would enable gender nonconforming individuals to choose whether to be housed at an institution for men or an institution for women, and whether to be searched pursuant to the male or female search policy.

Unfortunately, the cruel, ignorant, or misguided behavior of some staff has had a negative impact on incarcerated transgender, nonbinary, and intersex individuals and overshadows the compassion and exemplary work of other departmental staff. That transgender, nonbinary, and intersex individuals are entitled to the same respect as other individuals is an attitude that must be conveyed from the top down. Hiring authorities, managers, and supervisors must continue to emphasize that abuse, ridicule, and other inappropriate behavior is a violation of departmental policy and will not be tolerated.

While incarcerated individuals and external stakeholders articulated a number of serious concerns, the department has made headway in addressing some of the issues critical to incarcerated transgender, nonbinary, and intersex individuals. While issues remain unresolved, the department has indicated it is committed to cultivating a safe and professional environment for these individuals. Doing so hinges on the department's collaboration with external stakeholders and communication with incarcerated individuals to examine potential policy changes that better protect and serve the incarcerated population and the public.

The OIG is hopeful the department will continue its work creating a safe environment for the incarcerated transgender, nonbinary, and intersex population and continue to seek input from external stakeholders and the

incarcerated community. However, we believe there are concrete steps the department should take:

- The department should implement system-wide oversight and monitoring of complaints made by incarcerated transgender, nonbinary, and intersex individuals against staff to ensure the complaints are properly investigated and discipline is taken against staff, when appropriate.
- The department should incite a clear, department-wide policy on how, when, and where articles of department-authorized clothing may be worn by transgender, nonbinary, and intersex individuals and implement that policy through regular staff training.
- The department should continually optimize shelf space in canteens and effectively manage the inventory of clothing and property items for incarcerated transgender, nonbinary, and intersex individuals as demographics, trends, and purchasing fluctuate.
- The department should consider staggering the scheduling of health care appointments for transgender, nonbinary, and intersex patients to reduce the unwelcome attention these individuals face.
- The department should fully implement the mandates of Senate Bill 132, regardless of whether the bill is signed into law.
- The department should review the new training curriculum annually and update it as needed.
- The department should establish an annual survey of the transgender, nonbinary, and intersex population to determine whether the implementation of the new training curriculum has meaningfully improved conditions of confinement.

Finally, we encourage the department to continue to support its staff in their dedication to effectuating positive change and working with external stakeholders and the incarcerated transgender, nonbinary, and intersex population. The department's efforts have not gone unnoticed by the incarcerated population.

"I am thankful this is getting attention today. My view of self has impacted everything in life and probably a big factor to my crime and issues with addiction. Its great that we are getting a voice."

—Incarcerated Individual
November 2019

Appendices

Appendix A: The Department's Transgender, Nonbinary, and Intersex Inmate Survey

In this appendix, we include a copy of the department's Transgender, Nonbinary, and Intersex Inmate Survey as well as the department's analysis of the results of the surveys conducted between November 2019 and January 2020. We include this information to provide context on the information the department solicited directly from the incarcerated transgender, nonbinary, and intersex population and to share our source of information for some of the infographics included in this report.

Figure A-1. Transgender, Nonbinary, and Intersex Inmate Survey

Transgender, Non-Binary and Intersex Inmate Survey

1. Institution:

SQ CMF FWF SAC
 CHCF MCSP CCWF KVSP
 SATF SVSP CMC CIM
 CIW RJD Other _____

2. Which of the following gender identities do you most often use to describe yourself? (select one)

Male No Response
 Female Some Other Identity: _____
 Non-Binary

3. Do you identify as transgender, non-binary or intersex? (select one)

No Intersex
 Transgender Man Non-binary
 Transgender Woman

4. How would you prefer to be searched; with the male search policy or the female search policy? (select one)

Note: The **male search policy** means clothed body searches can be conducted by men or women; unclothed body searches can only be conducted by men. The **female search policy** means clothed and unclothed body searches can only be conducted by women.

Male Search Policy No Preference
 Female Search Policy

5. Would you currently prefer to be housed at a male or female institution? (select one)

Male Institution No Preference
 Female Institution Undecided

6. Do you think your answer to question 5 may change in the future? (select one)

No Undecided
 Yes

7. Do you believe you can safely report discrimination, harassment or violence committed based on your status as a transgender, non-binary or intersex person?(select one)

Yes No

8. Upon release, what resources do you need assistance with? (select all that apply)

Obtaining identification documents (i.e. birth certificates, name change process etc.) Obtaining employment
 Obtaining Transgender competent healthcare/insurance Obtaining temporary housing
 Resources for reporting violence and harassment Enrolling in education

1 of 2

Figure A–2. The Department’s Analysis of the Transgender, Nonbinary, and Intersex Inmate Survey Results at Institutions for Women

CCWF, CIW, FWF

**Transgender Non-Binary Intersex November
2019 - January 2020
WOMENS INSTITUTIONS**

**Instructor
Associate Director A. Miller**

1. Institution:

Response	Frequency	Percent	0	20	40	60	80	100
SQ	0	0.0%						
CMF	0	0.0%						
FWF	26	15.5%						
SAC	0	0.0%						
CHCF	0	0.0%						
MCSP	0	0.0%						
CCWF	96	57.1%						
KVSP	0	0.0%						
SATF	0	0.0%						
SVSP	0	0.0%						
CMC	0	0.0%						
CIM	0	0.0%						
CIW	46	27.4%						
RJD	0	0.0%						
Other	0	0.0%						
No Response	0	0.0%						

2. Which of the following gender identities do you most often use to describe yourself? (select one)

Response	Frequency	Percent	0	20	40	60	80	100
Male	76	45.2%						
Female	34	20.2%						
Non-Binary	34	20.2%						
No Response	15	8.9%						
Some Other Identity:	7	4.2%						
No Response	2	1.2%						

3. Do you identify as transgender, non-binary or intersex? (select one)

Response	Frequency	Percent	0	20	40	60	80	100
No	33	19.6%						
Transgender Man	67	39.9%						
Transgender Woman	19	11.3%						
Intersex	8	4.8%						
Non-binary	41	24.4%						
No Response	0	0.0%						

4. How would you prefer to be searched; with the male search policy or the female search policy? (select one)

Note: The male search policy means clothed body searches can be conducted by men or women; unclothed body searches can only be conducted by men. The female search policy means clothed and unclothed body searches can only be conducted by women.

Response	Frequency	Percent	0	20	40	60	80	100
Male Search Policy	24	14.3%						
Female Search Policy	98	58.3%						
No Preference	44	26.2%						
No Response	2	1.2%						

5. Would you currently prefer to be housed at a male or female institution? (select one)

Response	Frequency	Percent	0	20	40	60	80	100
Male Institution	16	9.5%						
Female Institution	118	70.2%						
No Preference	9	5.4%						
Undecided	24	14.3%						
No Response	1	0.6%						

6. Do you think your answer to question 5 may change in the future? (select one)

Response	Frequency	Percent	0	20	40	60	80	100
No	109	64.9%						
Yes	25	14.9%						
Undecided	32	19.0%						
No Response	2	1.2%						

Figure A-2. The Department's Analysis of the Transgender, Nonbinary, and Intersex Inmate Survey Results at Institutions for Women (continued)

CCWF, CIW, FWF

Transgender Non-Binary Intersex
November 2019 - January 2020

Instructor
Associate Director A. Miller

7. Do you believe you can safely report discrimination, harassment or violence committed based on your status as a transgender, non-binary or intersex person?(select one)

Response	Frequency	Percent	0	20	40	60	80	100
Yes	100	59.5%						
No	65	38.7%						
No Response	3	1.8%						

8. Upon release, what resources do you need assistance with? (select all that apply)

Response	Frequency	Percent	0	20	40	60	80	100
Obtaining identification documents (i.e. birth certificates, name)	110	65.5%						
Obtaining Transgender competent healthcare/insurance	95	56.5%						
Resources for reporting violence and harassment	31	18.5%						
Obtaining employment	131	78.0%						
Obtaining temporary housing	115	68.5%						
Enrolling in education	71	42.3%						
No Response	4	2.4%						

Figure A–3. The Department’s Analysis of the Transgender, Nonbinary, and Intersex Inmate Survey Results at Institutions for Men

Transgender, Non-Binary, Intersex
November 2019 - January 2020
MENS INSTITUTIONS

1. Institution:

Response	Frequency	Percent	0	20	40	60	80	100
SQ	18	4.1%						
CMF	16	3.6%						
FWF	0	0.0%						
SAC	26	5.9%						
CHCF	20	4.5%						
MCSP	76	17.2%						
CCWF	0	0.0%						
KVSP	26	5.9%						
SATF	78	17.7%						
SVSP	39	8.8%						
CMC	21	4.8%						
CIM	42	9.5%						
CIW	0	0.0%						
RJD	65	14.7%						
Other	14	3.2%						
No Response	0	0.0%						

2. Which of the following gender identities do you most often use to describe yourself? (select one)

Response	Frequency	Percent	0	20	40	60	80	100
Male	8	1.8%						
Female	381	86.4%						
Non-Binary	33	7.5%						
No Response	3	0.7%						
Some Other Identity:	16	3.6%						
No Response	0	0.0%						

3. Do you identify as transgender, non-binary or intersex? (select one)

Response	Frequency	Percent	0	20	40	60	80	100
No	12	2.7%						
Transgender Man	13	2.9%						
Transgender Woman	371	84.1%						
Intersex	10	2.3%						
Non-binary	33	7.5%						
No Response	2	0.5%						

4. How would you prefer to be searched; with the male search policy or the female search policy? (select one)

Note: The male search policy means clothed body searches can be conducted by men or women; unclothed body searches can only be conducted by men. The female search policy means clothed and unclothed body searches can only be conducted by women.

Response	Frequency	Percent	0	20	40	60	80	100
Male Search Policy	21	4.8%						
Female Search Policy	309	70.1%						
No Preference	108	24.5%						
No Response	3	0.7%						

5. Would you currently prefer to be housed at a male or female institution? (select one)

Response	Frequency	Percent	0	20	40	60	80	100
Male Institution	130	29.5%						
Female Institution	183	41.5%						
No Preference	38	8.6%						
Undecided	89	20.2%						
No Response	1	0.2%						

Figure A–3. The Department’s Analysis of the Transgender, Nonbinary, and Intersex Inmate Survey Results at Institutions for Men (continued)

Mens Institutions

Transgender Non-Binary Intersex
November 2019 - January 2020

Instructor
Associate Director A. Miller

6. Do you think your answer to question 5 may change in the future? (select one)

Response	Frequency	Percent	
No	225	51.0%	
Yes	123	27.9%	
Undecided	90	20.4%	
No Response	3	0.7%	

7. Do you believe you can safely report discrimination, harassment or violence committed based on your status as a transgender, non-binary or intersex person?(select one)

Response	Frequency	Percent	
Yes	202	45.8%	
No	231	52.4%	
No Response	8	1.8%	

8. Upon release, what resources do you need assistance with? (select all that apply)

Response	Frequency	Percent	
Obtaining identification documents (i.e. birth certificates, name)	346	78.5%	
Obtaining Transgender competent healthcare/insurance	358	81.2%	
Resources for reporting violence and harassment	170	38.5%	
Obtaining employment	323	73.2%	
Obtaining temporary housing	317	71.9%	
Enrolling in education	195	44.2%	
No Response	11	2.5%	

Appendix B: Comments Made by Incarcerated Transgender, Nonbinary, and Intersex Individuals Through the Surveys

In this appendix, we provide some additional comments made by incarcerated transgender, nonbinary, and intersex individuals as part of their responses to the survey. We include these additional comments to provide context regarding the varied experiences and concerns of the transgender, nonbinary, and intersex incarcerated population. These comments begin on the next page.

Incarcerated Transgender, Nonbinary, and Intersex Individuals Described a Culture of Disrespect by Both Staff and Other Incarcerated Individuals



Officers purposely refer to us as “him” or other types of disrespectful pronouns.

—Transgender Woman
November 2019

At this point in time CDCR officers at this facility think when you refer to a female as a him it’s a joke.

—Individual Who Most Often Identifies as Female
November 2019

The issue should have been addressed. I have experienced staff officials not referring to me with appropriate pronouns and body searches/strip searches I’ve experience[d] are horrible, with officers staff making fun of me as a TG and making derogatory comments that Oh well, your a man and your in a mans facility punk. And so on. Some making ugly remarks and gestures expressed when searching me. I feel humiliated, violated and disrespected as a women having to go through this horrible traumatic experience. I’d appreciate that the transgender policy be made law to help prevent this type of on-going problem.

—Transgender Woman
November 2019

I’m a lifer and I would very much like to live where I’m not degraded by staff and their hurtful comments and actions. I’m daily referred to as a “him” even though I’m clearly a female. I’m really tired of all the hurt and degradation I go through everyday.

—Transgender Woman
December 2019

Some staff are still have a dislike and prejudice towards transgender inmates and how we dress.

—Transgender Woman
December 2019





Would like to see improved conduct from officers in professionalism in dealings with the transgender/non-binary/ intersex community.

—Transgender Man
December 2019

What most happens here with officers is “I” keep on being called “Ser” “Him,” “He” or being made fun of by laughter by officers when I tell them to call me Ms, her, or she. They have no respect for transgenders.

—Transgender Woman
December 2019

C/Os being homophobic and trying to be funny by just putting anyone in our cells not caring about the dangers. Also the respect level CDCR has with the transgender community is not what it should be. They’re shading our rights.

—Transgender Woman
December 2019

Being nonbinary is different than transgender. We shouldn’t have to identify as trans with the box being checked. It is insulting. Can we get our own identification box?

—Nonbinary Individual
December 2019

I just wanted to say [this institution] is a transgender hub, however, it is NOT transgender friendly. We are hated, mistreated and publicly humiliated daily! We are not safe!

—Transgender Woman
December 2019

I would like if certain correctional officers have proper training when it comes to transgender inmate[s] and who are in the process because certain people may be anti-transgender and do[n’t] view are option at life the same as theirs.

—Nonbinary Individual
November 2019





My concerns are, not enough meals, not being address[ed] correctly @ all times when in paperwork and in person. The officers begin to feel threatened by us who are on the shots. So we tend to be targeted more aggressively and more often. We are being treated very poorly due to us being trans.

—Transgender Man
December 2019

There should be constant training of staff for pronouns and the misgendering of transpeople.

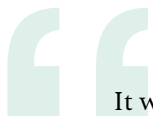
—Transgender Woman
December 2019

I strongly feel staff needs to be retrained on how to address our transgender needs whether it comes to searching, being spoken to. I find alot of Hispanic C/O have a real problem with transgender Latinas. Its a cultural thing. And they (C/Os) become aggressive and offended like we embarrass the Hispanic race.

—Nonbinary Individual
December 2019



Incarcerated Transgender, Nonbinary, and Intersex Individuals Expressed That the Department Does Not Provide Sufficient Privacy When They Are Unclothed



It was pointed out that there is nothing but two partial partitions instead of doors on the showers. The partitions hid[e] very little. Lots of transgenders take “bird baths” in their cells instead of being exposed in one of these showers. There isn’t any major security concerns with a door because a staff can still see and it provides privacy.

—Transgender Woman
November 2019

Using a urinal is degrading, we are forced to use the bathroom in the dayroom and yard. We should be given the opportunity to use the bathroom in private in our cell, and not in front of a yard or dayroom.

—Transgender Woman
November 2019

Getting shower time without the males looking in.

—Transgender Woman
December 2019

There are not enough privacy curtains in housing units.

—Transgender Woman
December 2019

Shower program: alot of times we are only allow[e]d showers with other inmates that are not transgender or even gay w[h]ich forces us to “bird bath” only in our cells to avoid problems.

—Transgender Woman
December 2019

Being housed in [this institution] theres no privacy in restroom areas. I feel that we should have doors on stalls.

—Transgender Woman
November 2019



Incarcerated Transgender, Nonbinary, and Intersex Individuals Expressed That Reporting Sexual Assault and Harassment Is Futile



There are problems with staff taking our reports of sexual misconduct and violence against us seriously, even when it is reported years later. They even are disrespectful when addressing us when we are addressed. I believe that staff need to be more professional in their actions with us and take our complaints seriously.

—Transgender Woman
November 2019

I do not believe I can safely report harassment, violation of law or violence committed based on my transgender status. As one who has received retaliation and retaliatory transfers as a result of filing 602s and staff complaints I am concerned about reporting staff misconduct. This prison has a reputation of such harassment. Also that threat of transfer to men's prison without volunteering.

—Transgender Man
December 2019

The PREA standards for transgender optional female housing assessments are not in compliance by CDCR nor is the prohibition of cross-gender strip searches. Even though I have a legal gender change and a new birth certificate as "female."

—Transgender Woman
November 2019

It isn't safe reporting harassment because staff, in indirect ways, still retaliate. A lot of times it's in the form of searches and "shake downs" that staff can say is perfectly in their right to conduct. They also use abusive language and are very hostile.

—Transgender Woman
December 2019

I feel as a transgender we can't report any discrimination or sexual harassment because I'm being retaliated against.

—Transgender Woman
December 2019





PREA does not work and investigations are a joke and half investigated the same results of insufficient evidence even when there has been a crime.

—Transgender Woman
December 2019

When a PREA complaint is lodged they (staff) have a tendency to minimize your issues and let everyone know you made the complaint. They try to make you a pariah as if you are making complaints for personal reasons.

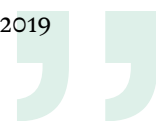
—Transgender Woman
December 2019

I believe that CDCR staff should take transgender concerns more seriously, including addressing those concerns by recording such concerns. (e.g., inmates harassing transgenders by inappropriate sexual conduct as requests, comments, exposing themselves to transgenders for wanting sex from us. This includes, staff always transferring out transgenders to other facilities who report incidents, instead of the male inmate violator's, especially when were innocent.

—Transgender Woman
December 2019

We cannot safely report discrimination, harassment or violence based on being a transgender because correctional staff retaliate by moving us or our cellies, stealing our property, fabricating RVRs, and intentionally placing us in situations where we will be harmed or have to use violence to protect ourselves.

—Transgender Woman
December 2019



Incarcerated Transgender, Nonbinary, and Intersex Individuals Reported They Are at Risk of Violence Due to Unsafe Housing and the Department Does Not Respond Adequately to Their Concerns



The staff will put anyone in your cell and that is a danger to transgenders. If a person refuses a celly that person gets disciplined. [This institution] has a surprising number of cell murders since I've been here. I myself will rather go to ad-seg than accept a stranger as a celly. I believe that because of the delicate nature of this, staff should give that person a reasonable amount of time to find a compatible celly instead of endangering us with involuntary co-habitation.

—Transgender Woman
November 2019

Being a M to F transgender, CDCR does not honor housing in choice of housing based on what feels safer for the individual and discriminates due to genital anatomy.

—Transgender Woman
December 2019

I would appreciate if staff would not force me to double cell with just anybody because I have been threatened because of my identity as a woman.

—Individual Who Identifies
as Both Male and Female
December 2019

As a transgender [it] is hard to talk to staff when you feel unsafe in the cell with a celly. They do no listen to us all they do is write us 115s and punish us and we end up getting hurt.

—Transgender Woman
December 2019



“

As a transgender its hard to feel like we can go to staff because when we do they do not listen and write you up for being out of bounds.

—Transgender Woman
December 2019

Not getting 115s for refusing housing to other inmates due to people not being comfortable with living with a transgender.

—Transgender Woman
December 2019

When told I wasn't safe I was threatened with ad segregation (the hole) as the only place to keep me safe.

—Intersex Individual Who Most
Often Identifies as Female
December 2019

I don't believe that gender identity and sexual preference are taken into consideration on the same level or to the same degree as other mental health and housing considerations. For example, you are asked if you mind being housed with other races and certain offenders. People are not asked if preference and identity impact their living conditions which creates room for one to live uncomfortabl[y] or get written-up for refusing housing.

—Nonbinary Individual Who Most
Often Identifies as Male
December 2019

”

Incarcerated Transgender, Nonbinary, and Intersex Individuals Described Discrimination in Vocational Training, Job Assignments, and Other Activities



Transgenders are still being denied access to HRM and PIA laundry vocational skills.

—Individual Who Most Often
Identifies as Female
November 2019

I am discriminated against when it comes to job assignments. I am good at any trades related work/repair but can only get low skill work.

—Transgender Woman
December 2019

Was wondering if female institutions could by chance get the ACT program that San Quentin has.

—Transgender Man
November 2019

There needs to be an LGBTQ class weekly that will inform and advise the community here at [this institution].

—Nonbinary Individual
November 2019

Work discrimination is a problem here as well.

—Transgender Woman
December 2019

More jobs for transgender, not yard crew.

—Transgender Woman
December 2019



Incarcerated Transgender, Nonbinary, and Intersex Individuals Described Discrimination in Access to Clothing and Property Items That Align With Their Gender Identity and Expression



Will the state provide compression bras to indigent inmates[?]

—Transgender Man
November 2019

I enjoy very much that the canteen [has] transgender makeup at all. The issue I have been having is the selection is very limited, what is on canteen here works well only for darker comple[x]ions. I think a few more color-type options would go over well.

—Transgender Woman
November 2019

We should be able to get female i[t]ems on canteen.

—Transgender Woman
December 2019

Access to more make-up, lingerie, razors.

—Transgender Woman
November 2019

We need to have transgender clothing.

—Transgender Woman
November 2019

I feel discriminated in the clothing distribution that we are given. The jean jacket is excellent most of the time except in the very cold months and we transgenders are not allowed sweatshirts. It would be very considerate of CDC[R] to allow us sweatshirts too, but if that is not possible would we be able to ask to wear our own catalog purchased sweatshirts?

—Transgender Woman
December 2019





Need of plus size clothing and any resources available.

—Transgender Woman
December 2019

Inability to access razors or close shave razor like devices for indigent transgender inmates at this [Institution] 180 hub trans prison. M[ore] access to transgender literature.

—Transgender Woman
December 2019

More effeminent clothing and especially the boots and more variety in make-up it's almost racist, the choice available.

—Transgender Woman
December 2019

Being nonbinary is fluid. I personally switch genders every month or so. I need access to *both* male and female clothing in order to accommodate my fluidity.

—Nonbinary Individual
December 2019

I think not being allowed make-up and other feminin[e] products is damaging in the SHU to our ment[a]l state bec[a]use some of us are back here for 2-5 years at a time.

—Transgender Woman
November 2019



Incarcerated Transgender, Nonbinary, and Intersex Individuals Indicated They Face Discrimination Because They Lack a Voice in Inmate Advisory Councils



[Facility] has no transgender MAC rep and it seems like a roadblock and hemming and hawing happens. Its an issue that isn't taken seriously.

—Transgender Woman
November 2019

Transgender I.A.C. rep doesn't get the same access to administration as the other I.A.C. gets.

—Transgender Woman
December 2019



Transgender, Nonbinary, and Intersex Incarcerated Individuals Expressed Frustration With the Department's Provision of Health Care



Obtaining SRS surgery has been hard for me to get approved of an[d] I would like to have the surgery to complete the physical aspect of my transition.

—Transgender Woman
November 2019

I would like the sex change done because I've been denied twice.

—Transgender Woman
November 2019

I believe as transgenders we should be provided with more information about the shots. Also for those who stop taking them they should not stop them cold turkey. The side effects are really affecting people who stop them and aren't provided care for their bodys side effects without the shots.

—Transgender Woman Who Most
Often Identifies as Male
November 2019

Educating staff on transgenders. Medical staff addressing you as gender you are especially if on hormones.

—Transgender Man
December 2019

I feel that only the inmates who are in the process of changing their preference should be documented as “transgender” meaning if they are taking the testosterone shot. Also, a lot of us who are transgender and are on the shots should have more resources regarding how to deal with the possible side effects, do we need to take certain vitamins, we need more food, etc. Also our clothing needs to be changed and if transgenders are considering breast removal, we should be able to begin the process after discussing it with a doctor.

—Transgender Man
November 2019





Mental health was very adamant on making sure I didn't get diagnosed GD here @ [this institution] and it took another institution to help me upon transfer.

—Nonbinary Individual
November 2019

I would like an in person transgender doctor so I could ask more questions and concerns about my body change. I also want to know how does my transgender continue on the outside world.

—Transgender Man
November 2019

I'm not sure if this is the box but I would like to address not being able to have the proper medical care that will initially go with being on testosterone shots. I say this because the nurses administering the shots really don't have the transgender knowledge or even being able to be monitored as directed by the shots. I just feel like I'm on the shots without having proper guidance and knowledge from my practitioner.

—Individual Who Most Often
Identifies as Male
November 2019

I am being refused my medical slips. I have brought it to their attention to give me my hormones pri[o]r to coming to [this institution] but still no answer.

—Transgender Woman
December 2019

Why is it so difficult to approved or even get approved gender reassignment surgery while housed in CDCR[?]

—Transgender Woman
December 2019



Comments Regarding Safe Housing and Senate Bill 132



Housing needs to be sensitive to trans inmates' needs.

—Transgender Woman
November 2019

Hoping that [Senate Bill] 132 changes this so I can go to a women's facility where I would feel safe. Also [I] hope if discipline history is looked into, that consideration is given [to] "why" that resulted in discipline and that you not be excluded based on violence not directed at institution.

—Transgender Woman

I would opt to live in a male institution if I could get the bottom surgery—but the process seems to be denied for all the FTM trans I know, with only a few getting [a] mastectomy.

—Transgender Man
December 2019

My only concern with being housed at a female institution is whether or not I would be accepted by the female inmates.

—Transgender Woman
December 2019

The designation of being transgender should require a diagnosis of 'Gender Dysphoria' (through medical/trans specialist and also mental health) because men want to shower with us and have access to our property.

—Transgender Woman
December 2019

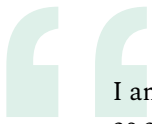
Housing transgender women by ourselves until we find somebody we are comfortable with. We as transgender women should have lower bunk chronos permanently!

—Transgender Woman
December 2019

I would prefer the *option* to chose (after reassignment surgery) to stay in a male institution.

—Transgender Woman
December 2019





I am afraid of going to a female prison because their policy is to treat us as a ‘new commitment’ and restrict access to razors and I have facial hair that if unshaven is upsetting my ability to function.

—Transgender Woman
December 2019

No female inmate (trans) should be housed in a mens prison. The risk is to[o] great to both the inmate and CDCR.

—Transgender Woman
December 2019

You should just make all prisons and jails in California co-ed meaning both men and women will be housed together.

—Individual Who Most Often
Identifies as Female
December 2019

I would like to see SB 132 pass, because it is very helpful to help protect girls in CDCR.

—Transgender Woman
December 2019

I only want to be housed with female I/Ms or transgender females. I don’t feel safe in the shower. Every day I am harassed by I/Ms & staff. Eventually I will be assaulted or in a fight.

—Transgender Woman
December 2019

It would be beneficial if we had the option to live at a womens facility but not mandatory.

—Transgender Woman
December 2019

As a trans-female I would like the option of only being housed with other inmates when a signed chrono (by both inmates) addresses compatibility.

—Transgender Woman
December 2019

I feel as though although I identify as trans male, I would become a rape victim being housed with men twice my size with a penis. Especially since I still keep getting denied breast removal and I am without a penis. I don’t feel it would be a safe transfer.

—Transgender Man
December 2019



Miscellaneous Comments



Those of us taking the shots and holding our transgender cards are going thru a complete body change and [this institution] doesn't allow us to get fed sufficiently according to our body change. We should be getting the same portions as the men. Thank you.

—Individual Who Most Often
Identifies as Female
November 2019

As FTM trans, my metabolism has changed with testosterone therapy, but [this institution] does not allow increased food portions—amounts that match the men's diet.

—Transgender Man
November 2019

More transgender survey and questionnaires for future purposes.

—Transgender Woman
December 2019



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The California Department of Corrections and Rehabilitation's Response

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

GAVIN NEWSOM, GOVERNOR

OFFICE OF THE SECRETARY

PO Box 942883
Sacramento, CA 94283-0001



August 27, 2020

Mr. Roy Wesley
Office of the Inspector General
10111 Old Placerville Road, Suite 110
Sacramento, CA 95827

Dear Mr. Wesley:

The California Department of Corrections and Rehabilitation submits this letter in response to the Special Report entitled "The California Department of Corrections and Rehabilitation Has Taken Thoughtful and Important Steps to Address the Difficult Conditions of Confinement for Incarcerated Transgender, Nonbinary, and Intersex Individuals."

The Department has reviewed the draft Special Report and appreciates how the Office of the Inspector General (OIG) recognizes the complexity of the issues that impact incarcerated transgender, nonbinary, and intersex people. As noted in the Special Report, the needs of this particular population are diverse and they are at greater risk of victimization both in the community generally as well as in a correctional environment. The experiences described by these individuals, some of which are laid out in the first two sections of this report, are very concerning, and emphasize why the Department proactively developed and engaged in these in person surveys to hear directly from the people the policy and law changes would impact as we work to improve their experiences. As your report notes, and the Department wants to reiterate, much of what is recounted in the first two sections of this Special Report was provided anonymously and did not include specific details that could be investigated. However, when Department staff were speaking to individuals during surveys and the subsequent group discussions, if statements were made that indicated misconduct or victimization, as noted in these sections of the Special Report, the Department staff immediately raised those issues to institution leadership so the concerns could be addressed appropriately through established processes. The Department is grateful to the incarcerated individuals who voluntarily participated in the survey and provided candid feedback on their experiences. The Department takes the kinds of allegations noted in these two sections very seriously, and maintains a zero-tolerance policy for sexual harassment, sexual violence, staff sexual misconduct and retaliation.

The Department appreciates the recognition this report provides for the many dedicated staff who have spent countless hours trying to proactively address and improve the experiences of incarcerated transgender, nonbinary, and intersex individuals in our care. When the Transgender Housing and Search Workgroup was initially established, the group set out to work solely on housing and search issues for this community, but as is made clear in the Special Report, the need for additional policy changes is apparent and the scope of the working group quickly expanded beyond these two distinct issues. This working group is also unique in that it is not solely an

The California Department of Corrections and Rehabilitation's Response (continued)

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internal Department workgroup, but instead includes various external stakeholders, including Legislative staff, advocacy and legal groups, as well as OIG representatives. I am proud of the work that has been accomplished so far, and the Department is committed to continuing to engage with this community to ensure the gains made through this Workgroup are not lost, and that this important work continues. As your Special Report makes clear, continued work in this area is absolutely necessary.

If you have further questions, please contact me at (916) 323-6001.

Sincerely,



RALPH M. DIAZ
Secretary

Special Report

**The California Department of Corrections
and Rehabilitation Has Taken
Thoughtful and Important Steps
to Address the Difficult Conditions
of Confinement for Incarcerated
Transgender, Nonbinary,
and Intersex Individuals**

OFFICE *of the*
INSPECTOR GENERAL

Roy W. Wesley
Inspector General

Bryan B. Beyer
Chief Deputy Inspector General

STATE of CALIFORNIA
September 2020

OIG