

## Comments received during 30-day notice and responses from BJS

| Comment                                                                                                                                                                                                                                                                                | BJS response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <p>On SSV, questions 9 and the 30 asks about the victim's and perpetrator's gender assigned at birth. As one of the options, Intersex is listed. I have not heard of a State or entity that list "intersex" on a birth certificate at birth. Is this something they are doing now?</p> | <p>This is a valid point made concerning the placement of the "intersex" response category. It is true that intersex people are usually assigned male or female at birth and it may not be until later in life that they are diagnosed/identified as having an intersex variation. Intersex straddles a challenging line – it is defined according to physiological traits but it can also a word used to describe one's identity. When considering the nature of sexual abuse or harassment, it is important to understand the anatomical characteristics of the people involved. However, if someone <i>identifies</i> as being intersex, it would be a logical conclusion that they also possess intersex physiological traits. We do know that DOCs and agencies use the term and have it in their PREA policies. The National Academies report on measuring sex and gender identity had recommended it being asked about as a third question separate from both sex and gender when measured ("Have you been diagnosed/identified as having an intersex condition?" for example), but they noted it was not something that has been validated or researched much and not in an administrative data collection capacity. BJS would be hesitant to add a third item here since it would increase respondent burden and most likely not be utilized often (there are very few instances of this response option being selected in prior years of SSV data). The fact that we use "assigned at birth" in the sex item does present a challenge to having "intersex" as an option here since it is usually a condition that is diagnosed later in life.</p> <p>When we tested the item in the first round and in the unmoderated cognitive testing, the item had read "What was the victim's sex?" and it wasn't until the second round of interviews that we added "assigned at birth". Results from the</p> |

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>question stem stated “what was the victim’s sex” indicated 53% of adult and 60% of juvenile respondents reported a binary measure of sex in their records systems. Those who did not have a binary measure indicated that options of transgender, intersex, or unknown were part of their response options.</p> <p>BJS will address this comment by moving the response option of “intersex” from the item of “sex assigned at birth” to the item measuring “gender identity” for both inmate and youth victims and perpetrators.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>Additionally, questions 10 and 31, is it asking if the person themselves identifies as gender non-conforming or if the assessor perceives the person to be? As standard 115.41 requires the assessment to ask whether the inmate is or is perceived to be. Utilization of gender non-conforming, is subjective, because what we normally see is incarcerated persons either identifies themselves as Gay, Lesbian, Bi-sexual, Transgender, or Intersex. Gender non-conforming is more about gender expression rather than gender identity or sexuality.</p> | <p>The definition we provided on the SSV-IA which was taken from the PREA standards for gender non-conforming, relates to expression as defined (includes the words “appearance or manner”). However, it is a term that can also be a self-identified gender. We know thru external research and our cognitive interviews that there are other terms that may be used by individuals to describe their identity such as nonbinary, genderqueer, genderfluid, etc. The reason BJS plans to use this term specifically is because of its widespread use in PREA-related policies and guidance. If DOCs and other facilities have policies written to address “gender nonconforming” persons in custody, and if this is a term that someone may select on a PREA intake assessment for example, then BJS anticipates it would be selected and used where appropriate on the SSV. If it is not a term used by the person themselves, perhaps they identify as “nonbinary”, that can be written in as part of the “other-specify” response option.</p> <p>BJS will address this comment by altering the text of the definition to read “A person whose gender identity does not conform to traditional societal expectations”.</p> |
| <p>I am writing to provide public comment on the <b>Survey of Sexual Victimization (SSV)</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>BJS plans to collect both race and ethnicity data for victims and perpetrators of sexual</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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| <p><b>for the Prison Rape Elimination Act of 2003</b> which requires the Federal Bureau of Prisons; state prison and juvenile justice systems; private prisons; correctional facilities operated by the U.S. Military and U.S. Immigration and Customs Enforcement; local, private and tribal jails; local and private juvenile justice facilities; and juvenile facilities in Indian country to track the data collected in SSV.</p> <p><b>There is a critical data point missing in SSV. That is the race of the survivors and perpetrators.</b></p> <p>There is an extreme disproportionality of Native Women and Girls of sexual violence. It is well known and documented that there is disproportionality for people of color as well as transgender people.</p> <p>Another data point is the gender identity including transgender to be able to identify the sexual violence that we know is disproportionate. This is critical information that is needed to protect people within the system. Moving towards understanding how to create systems that protect victims of sexual violence, it is absolutely imperative to collect race data.</p> | <p>victimization.</p> <p>Additionally, a measure of gender identity of inmate victims and perpetrators is a proposed addition to the substantiated incident forms.</p> |
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