

**Chat Transcripts**  
**Cross Gender Supervision Web Chat**  
**November 8, 2007**  
**NIC/WCL Project on Addressing Prison Rape**

**Leader:**

Good afternoon everyone. Welcome to our inaugural web chat. I am hoping that this will be the first of several web chats on substantive issues. Today, we are going to begin with a discussion of cross gender supervision. In terms of protocol, you should type your questions and our moderator will send them out.

**Team8:**

How would I go about saving the information and also getting a copy of the video?

**Leader:**

You should have a copy of the PowerPoints. I have not decided about what to do about the video.

**Team4:**

How many institutions (in this discussion) are currently doing cross gender supervision?

**Leader:**

Team 4 as a point of clarification on cross gender supervision -- do you mean all or just particular practices -- pats, strip search, viewing during shower and medical visits, etc.

**Team4:**

Not strip searches or viewing during showering but everything else.

**Leader:**

So, who is doing cross gender pat searches. My sense from some of the discussions I have had and from some research that Andie Moss did several years ago is that agencies have policies which permit cross gender supervision but try to avoid it for the most part.

**Team8:**

We exercise all supervision except at women's prison they do not do cross gender searches of any kind.

**Leader:**

Team 8's response is what I sense is the norm- that there are different supervision practices at male and female institutions

**Team5:**

We allow all except, pats, strips, showers and medical

**Leader:**

Team 4, by your response does that mean that you do cross gender supervision in everything else except strip searches and showers

**Team4:**

That is correct. We are currently doing all except those two. We are reviewing the practice but it has been in place here for 10+ years.

**Leader:**

Team 5, if not pats, however, strips and medical, what else does that leave -- escorts, non-contact housing?

**Team5:**

All housing assignments, transports, escorts, etc

**Leader:**

Team 4 what is the impetus or motivation for your review of these practices?

**Team4:**

The legal discussion at AJA- they said we should not be doing it this way and we should go back to same gender supervision.

**Team9:**

The same is true here in our state: all but showers, pats, searches, strips, etc. There may be differences between what occurs at a male facility versus a female facility with this issue as a result of staffing issues.

**Team8:**

Could each team state what cross gender practices they use currently?

**Leader:**

Team 4 -- do you anticipate any problems in going to a same gender supervision scheme?

**Team3**

We do not do pats, strips, showers - but supervise housing units (i.e. direct)

**Leader:**

Team 3 -- Direct supervision. Do you pair male and female staff in your housing units?

**Team4:**

I would anticipate our female staff will have no desire to return to the same gender supervision practice. When we had that they were pretty limited in their work assignments.

**Team5:**

Besides our department having approximately 56/44 female to male sworn staff, we additionally have shift and location assignments based on seniority with no preference based on gender

**Team3**

No, females supervise males - males do not supervise females.

**Leader:**

Team 8, as to the male and female facility differences, you can see that the courts have permitted that kind of variation. Have you had challenges from male inmates about supervision by female staff and how have you dealt with it?

**Team8:**

No legal challenges at this time.

**Team8:**

Our practice is that we have cross gender supervision in male facilities at all levels except strip searches and constant direct observation of showers and toilets. The female prison does not allow cross gender supervision for any type of personal search or direct observation of showers and toilets.

**Leader:**

I think that the issues that a number of you are raising with regard to the concerns and or opportunities of female staff are legitimate. If you look at the law, a legitimate penological interest has been enhancing the employment prospects of female staff. I think though with the number of women in the work force things may change a bit. A lot of that case law was in the early 1970s and 1980s when women were just coming into the professions in larger numbers

**Team8:**

On the policy and procedure side we do all drug screening and transport work without cross gender supervision. Normal supervision does use cross gender supervision.

**Leader:**

There are some teams I haven't heard from-- do you have any concerns? Also all, do you want me to talk a bit more about some of the cases or do you have specific questions. I can of course continue to respond to the things you raise as you raise them?

**Leader:**

Though we have not seen it in the cases yet, I think that jurisdictions like you will/can begin to articulate other interests. The real point of the case law is that if you want to do same gender supervision in certain positions, you can. You just need to articulate good solid reasons, based on good solid data.

**Team8:**

Has anyone applied for or obtained Bona Fide Occupational Qualifications (BFOQ) for women's facilities?

**Team11:**

We use BFOQs for some of the staff at our female facility.

**Team10:**

We're struggling more with how to get away from c/g supervision on male prisons in light of the equal opportunity for female staff, current case law, and the mind-set issues involved...

**Leader:**

As to the BFOQ -- a number of places are doing or considering doing it. In the case that I sent you -- Everson -- they did it quite successfully and of course it is totally permissible and not questioned in juvenile settings.

**Leader:**

Team 10 -- talk a little more about your issues around cross gender supervision in male facilities. I have actually written on this issue and think that there are positions in male facilities where men should have the opportunity for the same degree of privacy that women receive

**Team9:**

We do not have BFOQ's.

**Leader:**

Team 11, which positions are BFOQ positions? How did you get them? Any challenges?

**Team10:**

We agree - but our agency has fairly recently moved to a policy that all officers must be able to work all posts and all shifts as an essential function - which seems to tie our own hands.

**Leader:**

As I said on the tape and in the PowerPoint -- BFOQ is not the only way if you want to do it. You can also go the Turner route and argue penological necessity and identify your interest.

**Team11:**

We try to keep a 65/35 split for security positions at the women's prison so we have enough female staff to perform the gender-specific duties. We worked with our Human Resources Department and there were no challenges.

**Team5:**

One issue we run into is at times male inmates will masturbate in front of female officers, they are appropriately disciplined and charged however guys facing life really doesn't care about a misdemeanor charge

**Team9:**

Team5- Here we only have disciplinary infractions for such behavior. This has been an issue for years here.

**Leader:**

Team 5 -- masturbation is a common complaint. It is really difficult when there is cross gender supervision at all times. I know in some systems, there are particular times when facilities are same gender staffed so that inmates can feel more comfortable showering and doing other functions that require nudity [not masturbation of course]

**Team5:**

It can also be a liability as staff can and will file suits if agency turns a blind eye

**Leader:**

Team10, I want to get back to your comment about your current policy

**Team10:**

It really has more to do with addressing staffing shortages than anything else: getting people to work midnights, etc.

**Leader:**

In crafting this policy, what was the rationale? Were there discussions about the need to have some positions be gender specific? This is a particularly interesting development given the very strong case law in your circuit around misconduct.

**Leader:**

I see -- on the rationale front. What happens often is that other issues drive policy but may also put you in a position of vulnerability

**Leader:**

I am going to try something to get people to weigh in a bit more. You watched the video and went through the PowerPoint-- what else should we have discussed there? Did we miss anything? What else would you have wanted to know?

**Leader:**

Team 11, I think that your solution -- 65/35-- is a great way to address the need for more staff of a particular gender to handle particular duties.

**Leader:**

Team 5 --I think your concerns about masturbation are something that we will look into. There was a recent case where the agency faced liability but it really was pretty egregious.

I think administrative/disciplinary sanctions on a consistent basis are sufficient to shield the agency from liability.

**Team11:**

Is there any case law regarding the role that security cameras can play at a facility?

**Leader:**

Ah yes, security cameras

**Leader:**

Campos v. Nueces County - In that case, there were security cameras and doors that were not working. Female inmates in a county run drug treatment program were sexually abused by male inmates and staff. Court found that county could be liable for the problems with the cameras and doors particularly given the outcome

**Team5:**

There is draft legislation being proposed for the next session which if passes would make it a felony crime, if committed in correctional institution

**Team6:**

Are there any legal implications regarding cross gendered supervision as it relates to the transgendered inmate population?

**Team4:**

I should clarify an earlier comment. The AJA discussion said we should not do cross gender searches, not necessarily cross gender supervision.

**Leader:**

There is so much work that needs to be done on transgender issues -- how we identify -- is it by genitalia or by how they present themselves? Do they have issues with being supervised by someone of the opposite gender if they identify as a different gender than their genitalia. There is a lot of work going on in this area in particular with recommendations on these issues. But to the question that you asked, sexual orientation is not a suspect class under the constitution. I think that legally as long as you treat transgendered folks with respect and sensitivity with the awareness that they can be quite vulnerable to physical and sexual abuse from staff and inmates you should be good to go. Now, what that means in terms of policy and practice differs from jurisdiction to jurisdiction.

**Leader:**

Team 4 -- that's how I understood your comment.

**Leader:**

All, we have about 5 minutes left -- if there are things that you want to ask, or want us to send you should get that in.

**Team9:**

Please send information on transgender issues.

**Team5:**

Pre-op transgendered inmates are segregated here what about elsewhere?

**Team4:**

Not here. We place them where they are comfortable.

**Team9:**

In the one incident that we are aware of, the offender was sent to single cell housing to prevent safety risks.

**Leader:**

Team 5, there are a range of practices for transgender inmates. There are also many medical issues too. For example, many transgender folks who are moving to sex reassignment take hormones. Many agencies have trouble continuing that treatment during incarceration.

**Leader:**

All, I want to thank you for your engagement and great questions. Please email us with questions, comments and other requests for information.