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NCCD | National Council on
Crime & Delinquency



PREA Standards and Policy Development Guidelines for Lesbian, Gay, Bisexual, Transgender and Intersex Youth in Custody

Professor Brenda V. Smith
Dr. Robert Bidwell
November 13, 2012

Presented by: The Project on Addressing Prison Rape
in collaboration with the
National PREA Resource Center

Welcome and Agenda for Webinar

PRESENTER:

Prof. Brenda V. Smith, Director
Project on Addressing Prison Rape

Dr. Robert Bidwell, Director of Adolescent Medicine
John A. Burns School of Medicine, University of Hawai`i

AGENDA:

- 2:30 p.m. – 2:40 p.m. Welcome and Conventions
- 2:40 p.m. – 3:45 p.m. Juvenile LGBTI PowerPoint and Discussion
- 3:45 p.m. – 4:00 p.m. Questions



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Information about the PRC and Disclaimer

PRC was established through a cooperative agreement between the Bureau of Justice Assistance and the National Council on Crime and Delinquency. The mission of the PRC is to assist adult prisons and jails, juvenile facilities, lockups, community corrections, and tribal facilities in their efforts to eliminate sexual abuse by increasing their capacity for prevention, detection, monitoring, responses to incidents, and services to victims and their families.

The information provided in the webinar is the viewpoint of The Project on Addressing Prison Rape and Dr. Bidwell, and does not represent the opinion of the Bureau of Justice Assistance, the Department of Justice, or the PREA Resource Center.



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Conventions

The conventions for this webinar are:

- Your microphone should be on mute.
- If you are joining us by phone and internet please be sure the telephone button is checked under the audio section of the webinar tool box.
- If you are joining only by phone you are on mute—you will not be able to ask questions, but if you email your question to jyarussi@wcl.american.edu we can address it.
- If you have technology issues, send an email message to Jaime Yarussi (jyarussi@wcl.american.edu) or call at 202-274-4385.

If your question is not answered during the webinar, we will respond after the session.

We will prioritize pre-submitted questions during the webinar and post them along with the webinar recording. You will receive the link to those materials immediately following the end of this session.



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Defining LGBTI Populations



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Important Terminology

LGBTI: An acronym that refers to sexual minority youth including lesbian, gay, bisexual, transgender and intersex youth

Gender expression: a person's expression of his/or gender identity, including appearance, dress, mannerisms, speech, and social interactions

Gender identity: distinct from sexual orientation and refers to a person's internal, deeply felt sense of being male or female

Gender non-conforming: gender characteristics and/or behaviors that do not conform to those typically associated with a person's biological sex



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Important Terminology Continued

Questioning: active process in which a person explores her or his own sexual orientation and/or gender identity and questions the cultural assumptions that they are heterosexual and/or gender conforming

Intersex: an individual born with external genitalia, internal reproductive organs, chromosome patterns, and/or endocrine systems that do not seem to fit typical definitions of male or female

Transgender: person whose gender identity differs from their birth sex

- Transgender girl: person whose birth sex was male but who understands herself to be, and desires to live her life as, a female
- Transgender boy: person whose birth sex was female but who understands himself to be, and desires to live his life as, a male



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Adolescent Development

Youth in Custody - Common Developmental Issues

- Sense of belonging, based on trust, safety, closeness
- Differentiating self from others
- Self-regulation of physical and emotional responses:
the ability to delay gratification
- Developing cognitive skills, including adaptive
problem-solving
- Moral/sexual development



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Adolescent Development

Behavioral Development: Identity vs. Role Confusion (12-18 years)

- **Concerned with the question of “Who am I in this world?”, “Who am I when I’m alone?”, “Who will I become?”**
- Defined by life experiences and by those who surround them in their lives: family, peers, teachers, pastors, the broader community and country
- Develop a desire for independence from parents and caregivers as they achieve physical and cognitive maturity.
- Feel inherently insecure about themselves and become highly dependent upon the peer group for support and susceptible to peer pressure.



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Adolescent Development

Emotional Development: Sexuality and Romantic Attachments

- Middle Adolescence (14-17 years old)
 - Concerns about sexuality and sexual attractiveness; sexual energies ideally directed into safe interests
- Late Adolescence (17-19 years old)
 - Concern with serious relationships; increasingly clear sexual identity, and capacity for caring, sensitive and loving relationships



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Adolescent Development

Sexual Development

- Early adolescence: Display shyness, blushing, modesty, and crushes
- Girls often develop sooner than boys
- Increased interest in sex or sexual behavior
- Concerns about physical appearance and sexual attractiveness
- Masturbation
- Sexual experimentation
- Feelings of love and passion



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Adolescent Development and LGBTI Youth

Sexual Self-Concept, Orientation, and Identity

- One of the key developmental tasks of adolescence
- Experience increasing erotic/sexual feelings
- Experimentation around sexual behaviors
- Attempts to interpret meanings of sexual feelings and actions
- Eventually developing a stronger sense of their own gender identity and sexual orientation



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Adolescent Development and LGBTI Youth

Additional Risk Factors for LGBTI Youth

- Invisibility
- Heterosexism
- Homophobia
- Harassment, violence and discrimination
- Homelessness
- Substance use
- Suicide Risk



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Adolescent Development and Being in Custody

Limits on Adolescent Development

- Custody places limits on adolescent development in unique and specific ways:
 - Less time and social engagement in a family and family environment
 - Difficult to assert independence
 - Healthy sexual development and questioning is severely limited
- Many, if not most, youth have significant histories of multiple instances of trauma (both outside and within “the system”)
- Many lack appropriate adult role models or healthy, trusted adults (both outside and within “the system”)



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Adolescent Development and Being in Custody

Ways to Minimize Limits on Adolescent Development

- Custody can provide adolescents with highly-structured environments that can include healthy, pro-social adult role models
- In healthy correctional settings, adolescents have an opportunity to develop in ways that are free from high-risk behaviors that otherwise interfere with and stunt their growth and development.
- In healthy correctional settings, policies and programs have been developed to address the experience and needs of specific populations, including LGBTI youth.



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The PREA Standards and LGBTI Youth in Custody



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PREA Standards

History of the Prison Rape Elimination Act

- Focuses on prevention, detection, response, and monitoring of prison rape.
- Provides standards to prisons, jails, lock-ups, community confinement, and juvenile facilities to address prison rape.
- Federal facilities must comply, while state and local facilities stand to lose funding if non-compliant.



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PREA Standards

History of the Prison Rape Elimination Act

2003:	PREA legislation passes
2004:	First meeting of the National Prison Rape Elimination Commission (NPREC)
2004-2009:	Information gathering and hearings held by the NPREC
June 2009:	Report and draft standards published by NPREC
2009-2012	Establishment and convening of PREA Work Group



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PREA Standards

History of the Prison Rape Elimination Act

2010:	DOJ opens public comment period for NPREC standards
Feb. 2011:	Draft DOJ standards released
Feb.-Apr. 2011:	Public comment period
May 2012:	Final DOJ standards released
June 20, 2012	Final standards published in the Federal Register
Aug. 20, 2012:	Standards applicable to BOP
2013-2014:	First audit cycle



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PREA Standards

Key PREA Standards

28 C.F.R. § 115.315: Limits to cross-gender viewing and searches

28 C.F.R. § 115.331: Employee training

28 C.F.R. § 115.341: Obtaining information from residents

28 C.F.R. § 115.342: Placement of residents in housing, bed, program, education, and work assignments



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PREA Standards

28 C.F.R. § 115.315: Limits to cross-gender viewing and searches

(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

(b) The agency shall not conduct cross-gender pat-down searches except in exigent circumstances.

(c) The facility shall document and justify all cross-gender strip searches, cross-gender visual body cavity searches, and cross-gender pat-down searches.



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PREA Standards

28 C.F.R. § 115.315: Limits to cross-gender viewing and searches

(d) The facility shall implement policies and procedures that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering a resident housing unit. In facilities (such as group homes) that do not contain discrete housing units, staff of the opposite gender shall be required to announce their presence when entering an area where residents are likely to be showering, performing bodily functions, or changing clothing.



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PREA Standards

28 C.F.R. § 115.315: Limits to cross-gender viewing and searches

(e) The facility shall not search or physically examine a transgender or intersex resident for the sole purpose of determining the resident's genital status. If the resident's genital status is unknown, it may be determined during conversations with the resident, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex residents, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.



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28 C.F.R. § 115.331: Employee training

(a) The agency shall train all employees who may have contact with residents on:

(9) How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents.



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28 C.F.R. § 115.341: Obtaining information from residents

(a) Within 72 hours of the resident's arrival at the facility and periodically throughout a resident's confinement, the agency shall obtain and use information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident.

(c) At a minimum, the agency shall attempt to ascertain information about:

(2) Any gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the resident may therefore be vulnerable to sexual abuse.



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PREA Standards

28 C.F.R. § 115.342: Placement of residents in housing, bed, program, education, and work assignments

(a) The agency shall use all information obtained pursuant to § 115.341 and subsequently to make housing, bed, program, education, and work assignments for residents with the goal of keeping all residents safe and free from sexual abuse.

(b) Residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until and alternative means of keeping all residents safe can be arranged. During any period of isolation, agencies shall not deny residents daily large-muscle exercise and any legally required educational programming or special education services. Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible.



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PREA Standards

28 C.F.R. § 115.342: Placement of residents in housing, bed, program, education, and work assignments

(c) Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed in particular housing, bed, or other assignments solely on the basis of such identification or status, nor shall agencies consider lesbian, gay, bisexual, transgender, or intersex identification or status as an indicator of likelihood of being sexually abusive.



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LGBTI Youth

Why PREA Standards are Good Practice

R.G. v. Koller, 415 F. Supp. 2d 1129 (D. Haw. 2006)

The Facts:

- Teenagers confined at the Hawaii Youth Correctional Facility (HYCF), in Kailua, Hawaii, were subjected to a campaign of unrestrained harassment, abuse, and other maltreatment because they are or were perceived to be lesbian, gay, bisexual, or transgender.
- Staff told youth that being gay was not of God.
- Staff allowed other youth to harass youth perceived as gay.
- Administration was informed of the abuses through youth grievances and voiced concerns of staff, but failed to intervene effectively to protect the youth.



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LGBTI Youth

Why PREA Standards are Good Practice

R.G. v. Koller, 415 F. Supp. 2d 1129 (D. Haw. 2006)

Legal Claims: 42 U.S.C. § 1983

- Fourteenth Amendment: a pervasive climate of hostility toward, discrimination against, and harassment based on their actual or perceived sexual orientation, sex, and/or transgender status.
- First Amendment: acts of religious preaching by HYCF staff in content-based and viewpoint-discriminatory silencing of plaintiffs' speech.
- First, Sixth, and Fourteenth Amendment: interference with access to counsel and the courts, referencing a policy requiring parental consent before contacting ACLU.



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LGBTI Youth: Why PREA Standards are Good Practice

R.G. v. Koller, 415 F. Supp. 2d 1129 (D. Haw. 2006)

Outcome: DOJ CRIPA found conditions, policies and practices at HYCF violated constitutional and statutory rights of juvenile wards.

Liability:

- Fourteenth Amendment: Rampant and unchecked staff-on-youth abuse, exploitation of youth in a myriad of circumstances, and youth-on-youth abuse.

No Liability:

- First Amendment: Court found that youth were not able to show the staff members promotion of religion was sufficiently tied to “government endorsement of religion” either through an explicit policy, or ratification.
- First, Sixth, Fourteenth Amendment: Court found youth did not articulate facts that their right to counsel was impinged.



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States Can Do More to Protect LGBTI Youth

New California Legislation – SB 1172

- California Governor signed SB 1172, authored by Senator Ted Lieu (D-Torrance), making California the first state to ban sexual orientation change efforts for minors.
- "Under no circumstances shall a mental health provider engage in sexual orientation change efforts with a patient under 18 years of age."
- "Any sexual orientation change efforts attempted on a patient under 18 years of age by a mental health provider shall be considered unprofessional conduct and shall subject a mental health provider to discipline by the licensing entity for that mental health provider."



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Policy and Operational Practices



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Policy and Operational Practices

Non-discrimination

Agencies should develop “zero tolerance” policies for discrimination and mistreatment of youth and staff on the basis of sexual orientation or gender identity.

Good non-discrimination policies:

- Ensure that all are treated with fairness, dignity, and respect
- Specifically prohibit sexual orientation and gender identity as bases for discrimination
- Prohibit staff attempts to change a youth’s sexual orientation or gender identity
- Make staff responsible for protecting the civil rights of LGBTI youth
- Require incident reporting for complaints of harassment, discrimination, and abuse
- Provide training and resources regarding the unique societal, familial, and developmental challenges confronting LGBTI youth



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Policy and Operational Practices

Intake and Risk Assessment

During intake, agencies must identify youth at risk for sexual abuse.

Good risk assessment policies:

- Gather information about the youth's sexual orientation and gender identity
- Periodically update information on youth in custody
- Train employees conducting intakes on LGBTI sensitivity
- Require that a youth's sexual orientation and gender identity be verified by multiple sources
- Only permit medical practitioners to physically examine youth to gather information about gender identity
- Accommodate the concerns of LGBTI youth in terms of safety, name, pronoun, shower preference, and searches
- Use screening tools which are developed specifically for LGBTI youth



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Policy and Operational Practices

Classification

Classification policies separate vulnerable youth from aggressive youth.

Good classification policies:

- Balance the youth's physical and emotional well-being and safety of all other youth
- Are objective and free of individual biases
- Prohibit blanket policies regarding LGBTI youth classification
- Place youth into sex-offender programs/units based on articulated criteria (i.e., court orders)
- Consider the physical layout and privacy issues when making placement determinations
- Place vulnerable youth in the least restrictive environment necessary to ensure safety
- Provide the youth with equal access to facility services
- Have a contingency plan for when the facility is crowded
- Do not exclusively rely on the isolation or segregation of LGBTI youth



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Policy and Operational Practices

Housing Specifications for Transgender and Intersex Youth

Transgender and intersex youth may have special housing needs, where facility capacity can accommodate them.

Good housing policies:

- Include an evaluation of current genital status
- Make individualized determinations based on factors in addition to a person's current genital status
- Evaluate factors relating to the youth's emotional and physical well-being
- Review the youths' privacy concerns, available housing options, and recommendations from the youths' mental health providers
- When possible, provide access to private showering and single rooms for sleeping
- When possible, house according to gender identity rather than birth sex
- Determine reclassification needs based on requests by youth or victimization



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Policy and Operational Practices

Respectful Communication

Staff and volunteers should use language and terminology that does not perpetuate LGBTI stereotypes.

Good communication policies:

- Have a zero tolerance policy that includes sexual harassment
- Direct staff on how to address LGBTI youth, using respectful and appropriate language
- Permit youth to express themselves through clothing or grooming (within the bounds of safety for all youth)
- Adhere to all confidentiality and privacy protections under applicable state law
- Allow for information sharing necessary to achieve a particular purpose (i.e., identifying an appropriate placement in another facility)
- Provide programming and services to eligible LGBTI youth



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Policy and Operational Practices

Medical and Mental Health Care

All youth, including LGBTI youth, must have access to health care that addresses their specific needs.

Good medical and mental health care policies:

- Provide access to services that address self-acceptance, disclosure of sexual orientation or gender identity, family relationships, healthy intimate relationships, and sexual decision-making
- Direct medical staff to assess youth's safety
- Direct those conducting medical screening to inquire about youth's sexual activity, sexual orientation, and gender identity
- Provide gynecological and obstetrical care
- Provide confidential HIV, STD testing and care
- Provide counseling to youth experiencing sexual trauma
- Provide mental health evaluations that assess an array of mental health issues, including those related to sexual orientation and gender identity
- Provide relevant care for transgender youth



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Policy and Operational Practices

Privacy and Safety

LGBTI youth may require additional privacy and safety measures.

Good privacy and safety policies:

- Prohibit cross gender supervision of youth
- Address the levels of staffing and supervision
- Address the safety and privacy needs of LGBTI youth in toileting, showering, and sleeping
- Give transgender or intersex youth the option of choosing to be strip searched by staff members of either gender
- Address search procedures and privacy needs of LGBTI youth
- Require that youth grievances are tracked, and collect and analyze information on grievances related to searches



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Policy and Operational Practices

Sexual Abuse of LGBTI Youth

Staff must be able to recognize sexual abuse and distinguish abuse from other sexual behavior.

Good sexual abuse prevention policies:

- Prohibit the sexual abuse of youth in custody
- Train staff on sexuality and sexual behaviors of youth
- Require investigation of all reports of abuse
- Have multiple reporting avenues, including at least one third party
- Address the management of youth who report
- Define the roles and responsibilities of the investigative process into allegations of sexual abuse
- Require referral of allegations of potential criminal activity for review by the prosecutor
- Establish a sexual assault response team
- Provide ongoing medical and mental health care for youth who have been sexually victimized
- Specify treatment or needs for LGTBI youth



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Recommendations

Serving LGBTI Youth

- Have policies against homophobic remarks
- Enforce policies swiftly and consistently
- Be sensitive in responding to same-sex partnerships
- Include respect for others and sexual orientation as part of orientation and as part of any human development classes
- Separation of youth who are engaged in non-coercive, developmentally appropriate behaviors



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Resources from The Project on Addressing Prison Rape: Training for Staff

National Training Curricula

- *Addressing Sexual Abuse of Youth in Custody*
http://www.wcl.american.edu/endsilence/juvenile_training.cfm

Youth Workers Handbook

- *Addressing Sexual Violence Against Youth in Custody: A Handbook for Youth Workers on How to Identify and Address Sexual Abuse in Juvenile Settings*
http://www.wcl.american.edu/endsilence/juvenile_handbooks.cfm

Regional Training

- *Gender Responsive Strategies for Serving Youth in Custody*
Location: TBA - Summer 2013



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Resources from The Project on Addressing Prison Rape: Training for Youth

END SILENCE YOUTH SPEAKING UP ABOUT SEXUAL ABUSE IN CUSTODY



CARLO'S QUESTION

BY:
MELISSA C. LOOMIS
JAIME M. YARUSSI
BRENDA V. SMITH

ILLUSTRATED BY:
MICHAEL J. AUGER

END SILENCE: Youth Speaking Up about Sexual Abuse in Custody is a series of graphic novels for youth in custodial settings. These graphic novels are a first step in reaching out to youth in juvenile justice settings in order to help them identify, address, and respond to incidents of sexual abuse by staff or other youth. We hope that it will deepen the dialogue about strategies to eliminate sexual abuse of youth in custody. The graphic novels are intended to be “stand alone” material to orient and educate youth about the issue of sexual abuse in custodial settings. We also hope it provokes discussions with and between youth.

Book 1: *Billy Speaks Out* (for male youth age 14-18) Feb 2012

Book 2: *Shelia's Dilemma* (for female youth age 14-18) April 2012

Book 3: *Carlo's Question* (focuses on sexual minority youth) May 2012

Book 4: *Mary's Friend* (for female youth age 10-13) July 2012

Book 5: *Charlie's Report* (for male youth age 10-13) July 2012

All books are available online at:

http://www.wcl.american.edu/endsilence/juvenile_training.cfm



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Resources from the National Institute of Corrections

Lesbian, Gay, Bisexual, Transgender and Intersex Offenders resource page available at: <http://nicic.gov/LGBTI>

LGBTI Youth specific resource page: <http://nicic.gov/LGBTIjuveniles>

Annotated Bibliography of resources available at:
<http://nicic.gov/Library/026518>

Video Broadcast: LGBTI Populations—Their Safety, Your Responsibility November 7, 2012. A DVD recording will be available contact Lorie Brisbin at lbrisbin@bop.gov for a copy.

Smith, Brenda V. et. al. *Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Custodial Settings* (forthcoming) white paper available at:
<http://www.wcl.american.edu/endsilence/webinars.cfm>



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Questions



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Evaluation and Follow-up

We would like your feedback!

- An evaluation survey is posted at:
<http://www.surveygizmo.com/s3/1076676/PREA-Standards-and-Policy-Development-Guidelines-for-Lesbian-Gay-Bisexual-and-Transgender-Youth-in-Custody-Webinar>
- Surveys should be completed by
Thursday, November 29, 2012 at 5:00 p.m. EDT.

A follow-up email will be sent immediately following this webinar. That email will include the link for the evaluation survey as well as a link to the recording and PowerPoint for this session.

If you watched this webinar in a group, please forward the link for evaluation to the whole group.



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Contact Information

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Follow us on Facebook: <http://www.facebook.com/pages/EndSilence/152413528195301>
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