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Obama Administration Issues LGBT-Inclusive Rules Aimed at Eliminating Prison Sexual Assault

Posted by *Chris Geidner* | May 17, 2012 1:01 PM | [Permalink](#)

Today, the Obama administration announced that it has finalized regulations implementing the Prison Rape Elimination Act. According to an executive summary provided to members of the media and a conference call held with reporters, the regulations include provisions relating to "lesbian, gay, bisexual, transgender, intersex and gender nonconforming inmates" -- a development a leading LGBT advocate calls one of the most important LGBT advancements in the administration.

Although the administration -- in a memorandum released today by President Obama -- has concluded that the PREA "applies to all Federal confinement facilities," the administration is allowing other agencies -- including the Department of Homeland Security, which is responsible for administering immigration detention facilities -- to "work with the Attorney General" to propose their own rules in this area in the next 120 days.



A senior White House official told reporters that the PREA does apply to "DHS immigration confinement facilities" and said, "There will be a separate rulemaking by DHS. They'll work with [the Department of Justice] on the standards, they'll publish proposed standards within 120 days as directed by the presidential memorandum."

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Specifically relating to LGBTI people, as part of efforts to prevent prison sexual abuse, the Department of Justice states that facilities subject to the PREA "incorporate unique vulnerabilities of lesbian, gay, bisexual, transgender, intersex and gender nonconforming inmates into training and screening protocols."

The rule's executive summary, which was provided to reporters today, expands upon this area. In a section relating to "Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) and Gender Nonconforming Inmates," the summary states: "The standards account in various ways for the particular vulnerabilities of inmates who are LGBTI or whose appearance or manner does not conform to traditional gender expectations. The standards require training in effective and professional communication with LGBTI and gender nonconforming inmates and require the screening process to consider whether the inmate is, or is perceived to be, LGBTI or gender nonconforming. The standards also require that post-incident reviews consider whether the incident was motivated by LGBTI identification, status, or perceived status."

National Center for Transgender Equality executive director Mara Keisling tells *Metro Weekly* of the news, "This is a really, really big fucking issue."

Talking about a [Bureau of Justice Statistics report](#) released today, Keisling said they show that, of recent parolees, almost 40 percent of the gay- and bi-identified men reported having been the victim of a sexual assault in their most recent incarceration. She said that NCTE estimates that the numbers are roughly the same for transgender inmates, which NCTE had to estimate based on available information because "they didn't break trans people out."

NCTE policy counsel Harper Jean Tobin adds that, "The rates of victimization were lower for lesbian and bi women than for the other categories of LGBT folks, but they were still -- lesbian and bi women still were sexually abused by staff at twice the rate of straight women."

One change from the proposed rule, according to the executive summary is with regards to dedicated units for LGBTI people in facilities. According to the summary, "[T]he final standards do not allow placement of LGBTI inmates in dedicated facilities, units, or wings in adult prisons, jails, or community confinement facilities solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates. As in the proposed standards, such placement is not allowed at all in juvenile facilities."

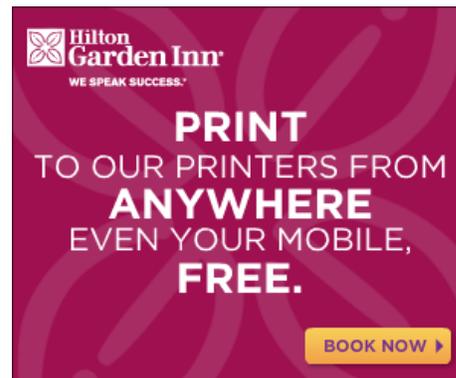
Regarding searches conducted of transgender people, the summary states, "The standards impose a complete ban on searching or physically examining a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. Agencies must train security staff in conducting professional and respectful cross-gender pat-down searches and searches of transgender and intersex inmates."

Asked about this provision by *Metro Weekly*, a senior DOJ official said, "With regards to transgender inmates, the general assumption -- and this is discussed at some point in the broader 270-page document -- is that the rules of the housing unit would apply. If the inmate is in a female housing unit, then the rules that would apply to other female inmates would apply. If the inmate were in a male housing unit, then the rules that would apply to male inmates would apply. In other circumstances, at intake, for example, staff should ask, make their own individualized assessment and take into account the preferences of the inmate to the extent possible when conducting the search."

Regarding housing and showering decisions, the rule summary states, "In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, an agency may not simply assign the inmate to a facility based on genital status. Rather, the agency must consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems, giving serious consideration to the inmate's own views regarding his or her own safety. In addition, transgender and intersex inmates must be given the opportunity to shower separately from other inmates."

Looking at the broad picture relating to today's rule, Keisling said, "It's not just about the misery that sexual assault causes, it's also about HIV transmission, it's also about good order in incarceration issues. This is one of the most important things that we've gotten done in the LGBT community because these are really vulnerable people who are really getting messed up."

"This is a really humongous deal," she said, noting the people have been working on these rules



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since the legislation passed in 2003. "There's a lot of really good LGBT stuff in it."

She added, however, "We didn't get everything we wanted," referring primarily to the decision to allow DHS and other agencies to issue their own rules to comply with PREA. "This has been the big fight for the last six months, trying to get it to cover immigration detention."

To that end, Obama wrote in the presidential memorandum, "Today, the Attorney General finalized a rule adopting national standards to prevent, detect, and respond to prison rape. This rule expresses my Administration's conclusion that PREA applies to all Federal confinement facilities, including those operated by executive departments and agencies (agencies) other than the Department of Justice, whether administered by the Federal Government or by a private organization on behalf of the Federal Government."

However, Obama then noted the reasoning for having each agency set its own implementing regulations of the PREA standards.

"Each agency is responsible for, and must be accountable for, the operations of its own confinement facilities, and each agency has extensive expertise regarding its own facilities, particularly those housing unique populations," he wrote. "Thus, each agency is best positioned to determine how to implement the Federal laws and rules that govern its own operations, the conduct of its own employees, and the safety of persons in its custody."

Of the decision that PREA applies to all agencies but that they will now establish their own rules implementing that, Tobin said, "They're trying to split the baby."

READ the executive summary: [Prison Rape Elimination Act EMBARGOED Final Rule Executive Summary.pdf](#)

READ the presidential memorandum: [2012prisonrape.mem.rel.pdf](#)

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