

# Term paper on sexual orientation in jail prison of the gay, lesbians, transgender...

[Sociology](#), [Violence](#)



Though LGBT (Lesbian, gay, bisexual and transgender) prisoners face challenges which other prisoners face, sexual orientation, prejudice and gender identity makes the challenges to be more difficult for them. Other human rights violations faced by LGBT persons include: physical and mental integrity rights, freedom of association and that of expression, laws that are discriminating and application of laws in a discriminatory manner (Forsyth et al, 2002). Though most of the unique challenges that LGBT prisoners face have not received extensive litigation, those that have already been litigated might receive a significant change, if the Supreme Court makes a decision that is relatively still. It becomes hard to make a prediction of the claims outcomes. The combination of the unpredictability, transphobia and homophobia may interfere with the decisions that juries and judges make, meaning that, when LGBT prisoners bring their claims in court, they face so many challenges (Kupers, 2010).

This makes most of the LGBT prisoners to contact LGBT impact litigation organizations in order to find out whether the organization's lawyers would have the willingness to take their case especially if one wants to introduce new theories that are related to gender identity or sexual orientation (Haggerty, 2007). Transgender is a term that is used to refer to a broad spectrum of individuals who have different identity or lived experiences different to that which is typically associated with the one which is assigned when one is born (NCTE, 2011). It includes masculine women, cross dressers, feminine men, and persons experiencing intersex conditions, pre, post and non-operative transgendered people and persons who live partly or fully as a particular gender as opposed to what was assigned to them when they were

born. Gender identity is a term that is used to describe the type of gender that one identifies as, be it the one assigned at birth or not (Haggerty, 2007).

Discrimination and violence by both the government authorities and civilians against LGBT, has remained in most parts of the world. The accountability of the violence is directed to the perpetrators by the states, thus creating climate full of impunity (Smith, 2006). This is a violation of international standards of human rights, which call for the state to protect all its citizens' human rights (Library Information and Research Service, 2006). Recent years have recorded violence patterns that include physical assault and murder that was particularly targeted to the gay and the transgender people in several countries. In most of the cases, the police did not bother to investigate, were complicit, or even did not hold the responsible ones accountable for their deeds (Smith, 2006). A double challenge that includes abuse and discrimination is faced by lesbians as a result of their sexual orientation and gender.

Research done on correctional facilities on sexual abuse, has a consistent documentation that both women and men who are transgender individuals, those with heterosexual orientations and those with intersex conditions, have a high vulnerability to sexual abuse (NCTE, 2011). An example is a research done on Midwestern prisons sexual coercion, which documented that, LGBT inmates were represented in a disproportional manner among sexually victimized inmates' subgroup. The gay and bisexual men were 26 percent among the victimized men and the lesbian and bisexual women were 38 percent amongst the women. According to a research done by BJS

(Bureau of Justice Statistics), sexual abuse vulnerability, is associated with certain characteristics which include gender identity and sexual orientation. The BJS youth in Juvenile facilities survey documented that in five non heterosexual youth, more than one reported of being sexually victimized by a facility staff or another youth. Almost a likelihood of ten times was reported by non-heterosexual youth as compared to heterosexual youth, of sexual abuse while in custody, by other youth (12. 5% vs. 1. 3%). County jails adult inmates in the same study confirmed that, being of another sexual orientation which is not heterosexual, made sexual orientation to increase significantly (Scribd, 2011).

In other studies, transgender girls and women, show a high vulnerability to sexual abuse. This is more so when they are kept in the same facilities with boys and men. A study carried out in 2007 by Evidence Based Corrections of University of California showed that, among transgender inmates, sexual assault has more prevalence, with reports of sexual assault being 59%. The study showed that, there was a higher likelihood of transgender victims than other victims to have experienced sexual assault on more than one occasion. The findings bring out the conclusion that, transgender people while compared to other populations which are relatively vulnerable, are perilously situated (Haggerty, 2007). This concern has led to the Correctional Health Care National Commission and the American Psychological Association to issue statements that recognize that there is a higher risk of transgender inmates to be abused and hence they should be protected.

When LGBT people are sexually abused, their basic human rights are violated, the government's obligation constitutionally to provide confinement conditions that are humane and safe is violated, and the successful transition likelihood of giving back into the community is impeded (Robinson, 2011). If the commission's standards are implemented, the safety of the people has a potential to be improved, this includes the LGBT people, who have an involvement in the justice system. In order to fight sexual abuse among LGBT, the officials of correctional facilities should ensure that, a zero tolerance approach to any kind of sexual abuse is observed as well as clear protocols are put in place in order for an occurrence of sexual abuse to be responded to effectively (Forsyth et al, 2002). These provisions can be of more importance to LGBT individuals who are more vulnerable to sexual abuse since any reports they make of being sexually abused are treated with minimum seriousness as compared to those of non LGBT inmates and an appropriate response is not given (Smith, 2006). Correctional officials should also appropriately coordinate with outside entities, in order to promote reporting of such cases, investigation and sexual abuse prosecution in their facilities.

When employees, contractors, volunteers and inmates are trained and educated, they get the knowledge of preventing, detecting and responding to sexual abuse incidents (Robinson, 2011). A well crafted and comprehensive training is important when it comes to fostering people to understand better, correct the misconceptions related to LGBT persons and assist staff and inmates with the right strategies in order to improve the

safety of LGBT (Library Information and Research Service, 2006). When training the staff, effective and professional communication strategies with inmates are important.

Correctional facilities should also ensure that, screening for sexual victimization and abuse risk, as well as residents' assessment and placement is done. This is to make sure that each person's particular victimization risk is known by the facilities, and that every inmate's genital status, or gender identity or sexual orientation, does not make the person to be more subjected to conditions that are more punitive (Human Rights Watch & Stern, 2008). Due to high vulnerability of sexual abuse to LGBT inmates, there should be a bisexual sexual orientation or gay inclusion and gender nonconformance for instance, intersex identity or transgender in the male inmates screening criteria for victimization risk in adult jails and prisons (Robinson, 2011). Since during screening some of the LGBT individuals may opt not to reveal their gender identity and sexual orientation, the inmates' vulnerability self perception in the female and male inmates screening should be included. Another importance of sexual victimization and abuse risk screening and residents assessment and placement, is to prohibit vulnerable segregation of inmates except on temporary basis or only as a last resort, and also the equal access requirement to services and programs, cannot receive more emphasis (Resnik, 1982). The specific requirement in sexual victimization and abuse risk screening is that LGBT and other inmates who are gender nonconforming should not be placed in specific units, facilities or wings on the sole basis of genital status, sexual orientation or

gender identity. This will help in prevention of LGBT inmates' segregation (Congress, 1998). The LGBT involuntary segregation and that of other inmates who are gender nonconforming, denies them the access they need to services, programs and the ability of moving around the facility in a manner that they are supposed to, and thus this leads to punishment. It is harmful and unjust to punish people as a result of their vulnerable status; it makes the LGBT inmates to be more biased and also gives a discouragement in receiving honest responses during question screening (Smith, 2006).

Another way that officials in correctional facilities can beat LGBT sexual abuse is by addressing the reporting and official response standards (Scribd, 2011). The reasons why inmates refuse to report cases of sexual abuse are; they won't be taken seriously, they might not be kept confidential, and/ or they won't result in positive consequences which are tangible (Human Rights Watch, 2010). For LGBT individuals, the above concerns are truer as they are presumed wrongly, as sexual abuse instigators and as persons who do not deserve credit from the assault reports.

Investigations and discipline standards should also be introduced in order to ensure that all abuse allegations that include reports by anonymous or third party are investigated fully and that there is proper handling of substantiated allegations in the criminal and administrative proceedings. Perpetrators who normally target to abuse LGBT inmates most of the time act with impunity (Miller et al, 2010). The provision of the discipline and investigations standards will make it able for LGBT inmates' sexual abuse cases to be treated with seriousness as any other sexual abuse would be.

In order to assist staff' identify the victimization risk of an inmate, health care both medically and mentally should be given (Loue, 2008). Mental and medical health care also protects inmates from burdens and financial incentives which are not due through ensuring that they receive for free, emergency, mental and medical health care. These provisions also ensure that victims' responsive services are in the same level as those offered in the community. They are also important as LGBT inmates may be more comfortable while they tell a medical or a mental staff about a certain abuse or an abuse fear and hence the basic care level should be accessible to sexual abuse survivors in the community (Loue, 2008).

In order to improve prevention, detection, practices, response policies and training, agencies should collect information and review it not leaving behind the incident based and the aggregate information (Resnik, 1982). The standards of data collection and review, help agencies to identify victimization patterns, learn from problems which have occurred in the past and improve LGBT protections and other inmates who are vulnerable.

Due to the high risk of sexual abuse to LGBT inmates, they need to be given more supervision that would make them feel more protected other than punished (Miller et al, 2010). This is by observing them continuously by both sight and sound. Supervision does not mean camera over reliance but the use of cost effective and appropriate technology on the feasibility assessment and plan basis that accounts for the financial limitations of an individual's jurisdictions'. Using this flexible approach is different to using



local expertise and analysis therefore it would impose fewer expenses on facilities (Messinger & Morrow, 2006).

According to the survey conducted by BJS, most sexual abuse is conducted by the opposite sex staff members showing the need of minimizing the contact that inmates have physically with the opposite sex staff. Instead of limiting the cross gender supervision in every area that the inmates perform bodily functions or undress, actual viewing of the opposite gender inmates should be prohibited only exceptional to emergencies or in circumstances that are unforeseen or extraordinary (Human Rights Watch, 2010). This is contrary to some corrections officials concerns, as the requirements require low cost solutions, which do not require additional hiring and which abide to the employment law. The BJS study showed that cross gender sexual abuse by the staff, was high in men's facilities and so its important to put these basic measures in both the men's and women's institutions as well. To avoid viewing inmates as they conduct their bodily duties, opposite gender officials should make announcements before they make an entrance to the dormitory area (Messinger & Morrow, 2006). Towels can also be provided for the inmates so that while in the toileting and showering areas, basic privacy can be allowed without security compromise. While conducting intrusive searches which demand physical contact or bodily exposure, limitation to areas that act as contraband potential contact points, should be done. Staff should not be allowed to carry out pat searches anywhere in the facility but they should be done at the right places as this will reduce contraband confiscation (Human Rights Watch & Stern, 2008). When the cross gender

basic limitations of viewing and searching are observed, the LGBT inmates and other inmates who are vulnerable are protected from sexual abuse by staff.

Since the corrections culture is pervaded by transphobia and homophobia, it is good to conduct outside review (Kupers, 2010). This is vital in LGBT inmates and residents protection. A sound oversight that is done by an independent entity that is qualified can identify the problems which are systemic at the same time offering solutions which are effective (Congress, 1998). When the oversight monitoring is done in a proper manner, a facility's safety credible objective assessment can be provided; this is by problems identification which may be apparently ready to an independent monitor as compared to an official who works in the detention system. In case the systems do not meet the required standards, then they are held accountable; another advantage of having outside monitoring (Human Rights Watch, 2010). It is also important to have judicial oversight. In case the officials do fail the LGBT inmates' protection from being sexually abused, the victims should be able to access the judiciary without facing the procedural and unrealistic requirements barriers (Smith, 2006). Every individual whether LGBT or straight has his or her own human rights. The state should therefore look into these rights to avoid violation.

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