



### I6 Update on Forensic Considerations for Gender Non-Conforming Individuals

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After attending this presentation, attendees will be familiar with terms and definitions associated with gender non-conforming, transgender, and intersexed individuals. This presentation will also provide understanding of the psychosocial stressors specific to this population by identifying the intersections of this population with the criminal justice system and understanding the unique dilemmas facing gender non-conforming individuals in confinement.

This presentation will impact the forensic science community by raising awareness about a particularly vulnerable, marginalized, and victimized inmate population within the corrections system. By raising awareness in the forensic community, efforts can be mobilized to develop empirically driven studies to better understand the experience of gender non-conforming individuals in confinement, which can then result in thoughtful and humane policy change.

Homosexual and bisexual individuals have moved over the last four decades from marginalization in society into mainstream American society. Same sex marriage is legal in six states and many states have non-discrimination laws. Psychiatry has also changed its assessment of gays and lesbians with the removal of the former diagnosis of homosexuality as being pathological. Many NATO countries permit gays and lesbians to be open members of their armed forces and the United States has taken steps to make this transition too. Gays and lesbians still experience discrimination and victimization in the correctional settings, but even here there is progress. Gender non-conforming individuals; however, have not experienced this progressive acceptance in society and certainly not in the correctional setting.

Gender non-conforming individuals merit special consideration in correctional facilities to preserve human dignity and equal protection under the law. There is very little empirical data on the experience of gender non-conforming individuals in confinement, in large part because correction systems do not collect data on the number of gender non-conforming individuals in their institutions or the experiences of these individuals while in confinement. However, there have been legal cases that have documented the targeted violence perpetrated against this population, as well as gender-related medical discrimination while in confinement. Large, empirically driven studies are needed to better characterize the experience of the confined gender variant individual.

In the community, gender non-conforming individuals are a marginalized population. They face discrimination in housing, employment, education, and have decreased access to healthcare. Because of this pervasive discrimination, these individuals are also disproportionately poor, homeless, criminalized, and imprisoned. Moreover, they are at increased risk for depression, anxiety, and substance abuse. The most up-to-date epidemiological findings regarding the psychosocial stressors of gender-non-conforming individuals will be reviewed. While incarcerated, discrimination and distress related to their gender variance is exacerbated.

Correctional facilities are sex segregated according to a prisoner's birth sex and/or genitalia. As such, gender non-conforming individuals are placed in facilities where their gender identification is not recognized and where they are visible and frequent targets of violence and discrimination by other prisoners and correctional officers. These individuals have unique medical needs to maintain their gender identity, which may include hormone treatment and sex re-assignment surgery. These treatments may not be readily available in the correctional setting, which may result in severe and profound psychological suffering on the part of gender non-conforming individuals. This presentation will review the current case law regarding the gender non-conforming individual's right to protection from violence, as well as their right to medically necessary treatment.

#### **Transgender, Gender, Incarceration**