



Bureau of Justice Statistics

# Sex and Gender Identity Measurement in Criminal Justice System Administrative Data: Evidence from the Instrument Redesign Efforts for the Bureau of Justice Statistics' Survey of Sexual Victimization

Session F-3 : Advancements in Sexual Orientation and Gender Identity Measurement

October 25th, 2023

Presenter: Emily Buehler, PhD, Bureau of Justice Statistics

Contributors : Greta B. Clark, U.S. Census Bureau; Krysten Mesner, U.S. Census Bureau; Jessica A.R. White,  
U.S. Census Bureau

# Overview

1. Description of the Survey of Sexual Victimization (SSV)

2. Instrument redesign – Initial review and scoping

3. Instrument redesign – Moderated and unmoderated cognitive testing

4. Final recommendations



Bureau of Justice Statistics

# History of the SSV

- Prison Rape Elimination Act 2003 (PREA)
  - Mandated that BJS collect annual statistics on incidence of prison rape, identification of facilities with high- and low-incidence rates, identification of common characteristics victims, perpetrators
  - SSV first administered in 2004
- PREA Standards 2012
  - Guidance for facilities on meeting requirements under PREA, introduced definitions for sexual abuse and sexual harassment
- SSV Redesign 2022-2023
  - Evaluation of sampling designs and instruments for adult and juvenile SSV data collections



Bureau of Justice Statistics

# SSV population

- Adult correctional facilities include—
  - All state departments of corrections and the federal Bureau of Prisons (BOP), all facilities operated by U.S. Immigration and Customs Enforcement, facilities operated by U.S. military
  - Samples of public and private jails, private prisons, Indian country jails
- Juvenile justice facilities include—
  - All state juvenile systems and samples of locally and privately operated facilities
- Respondents are PREA administrators & coordinators



Bureau of Justice Statistics

# Substantiated Incidents

- Allegation was investigated and determined to have occurred, based on a preponderance of the evidence (per 28 C.F.R. Part 115.72)
- Form collects information about -
  - General characteristics: location, time of day, video surveillance, reporting party, nature of incident, use of force, employment position and tenure of staff perpetrators
  - Outcomes of incidents: injury, sanctions, changes in housing/custody, legal action
  - Demographic details of individual victims & perpetrators: sex/gender, age, race/ethnicity



Bureau of Justice Statistics



Bureau of Justice Statistics

# Instrument redesign – Initial review and scoping

# Methods

- BJS & Census expert review
  - Data quality analysis of incident data, analysis of write-in responses and notes
  - Examination of PREA policies
- Early-stage scoping interviews
  - Initial conversations with PREA coordinators and compliance managers about the SSV forms – pain points, areas for improvement, additions, etc.
- Results from both informed an initial revised instrument

Respondent affiliation	Early-stage scoping
Federal BOP	0
State DOCs	3
Local jails	2
Private prisons, & jails, ICE facilities, U.S. military, tribal jails	1
State juvenile systems	1
Local or private juvenile facilities	2
Total	9



Bureau of Justice Statistics

# Findings from agency PREA policies

- PREA policies ranging from 2014 to 2022 found for 49 agencies → state and Washington D.C. Departments of Corrections, federal BOP
- “Transgender” and “Intersex” terms used in 49 policies
- “Gender nonconforming” term used in 41 policies, used AND defined in 27
- “Non-binary” used in 2 policies and “Gender X” used in 1 policy



Bureau of Justice Statistics



# Findings from scoping interviews

- Concerns about accuracy in reporting due to inmate/youth forms asking for “sex or gender identity” – which are they reporting?
- Add more inclusive options such as gender nonconforming or non-binary
- Specify cisgender male and cisgender female



Bureau of Justice Statistics



Bureau of Justice Statistics

# Instrument redesign – Moderated and unmoderated cognitive testing

# Cognitive testing

- Moderated cognitive testing
  - Two rounds of 60-75 minute interviews completed over the phone and Microsoft Teams
  - 15 respondents in each round, 30 interviews total
- Unmoderated cognitive testing
  - Qualtrics web survey asking for feedback on selected items, 10-15 minute estimated burden
  - Goal of 100 respondents → 189 submissions but with varied item missingness across responses



Bureau of Justice Statistics

Respondent affiliation	Moderated cognitive interviews: Round 1	Moderated cognitive interview: Round 2	Unmoderated web survey
Federal BOP	1	0	0
State DOCs	2	4	13
Local jails	3	1	104
Private prisons, & jails, ICE facilities, U.S. military, tribal jails	1	3	17
State juvenile systems	3	3	10
Local or private juvenile facilities	5	4	45
Total	15	15	189



Bureau of Justice Statistics

# Round 1 Moderated & Unmoderated – Inmates/Youth

## Original Item

What was the victim's sex or gender identity?

1. Male
2. Female
3. Transgender
4. Intersex

## Tested Items

What was the victim's sex?

1. Male
2. Female
3. Intersex

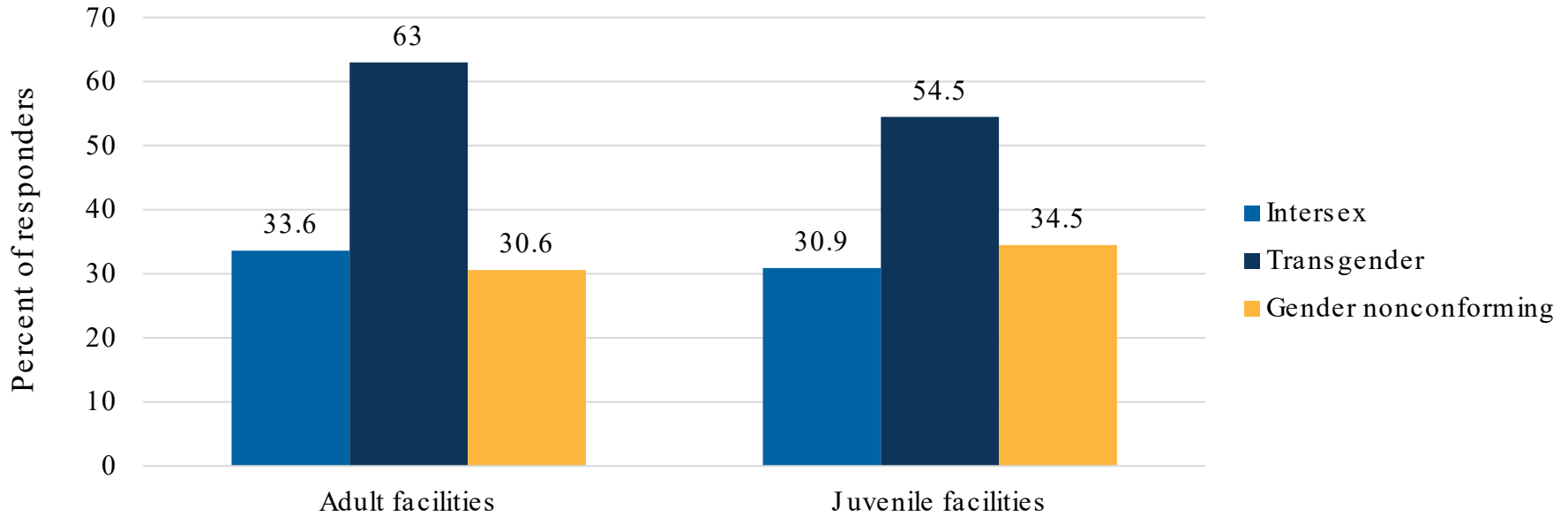
What was the victim's gender identity?

1. Male
2. Female
3. Transgender
4. Gender nonconforming
5. Unknown



Bureau of Justice Statistics

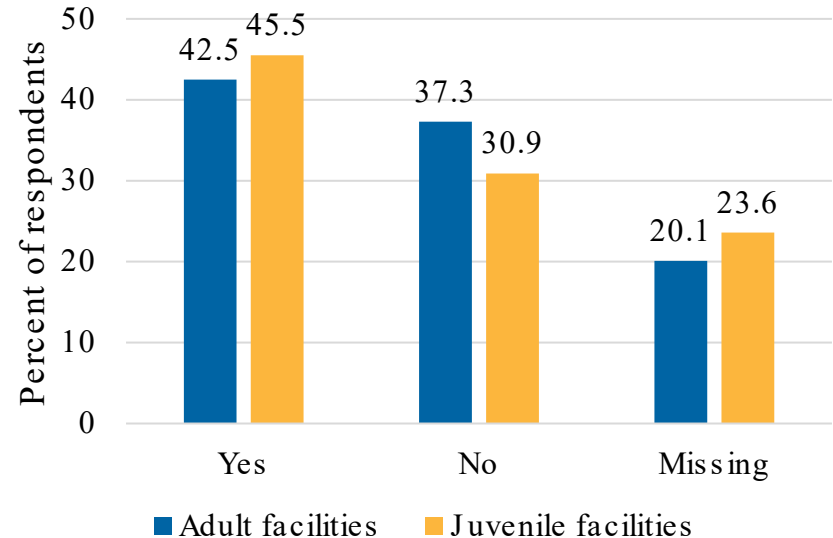
# Which of the following terms do you have in your facility records?



Bureau of Justice Statistics

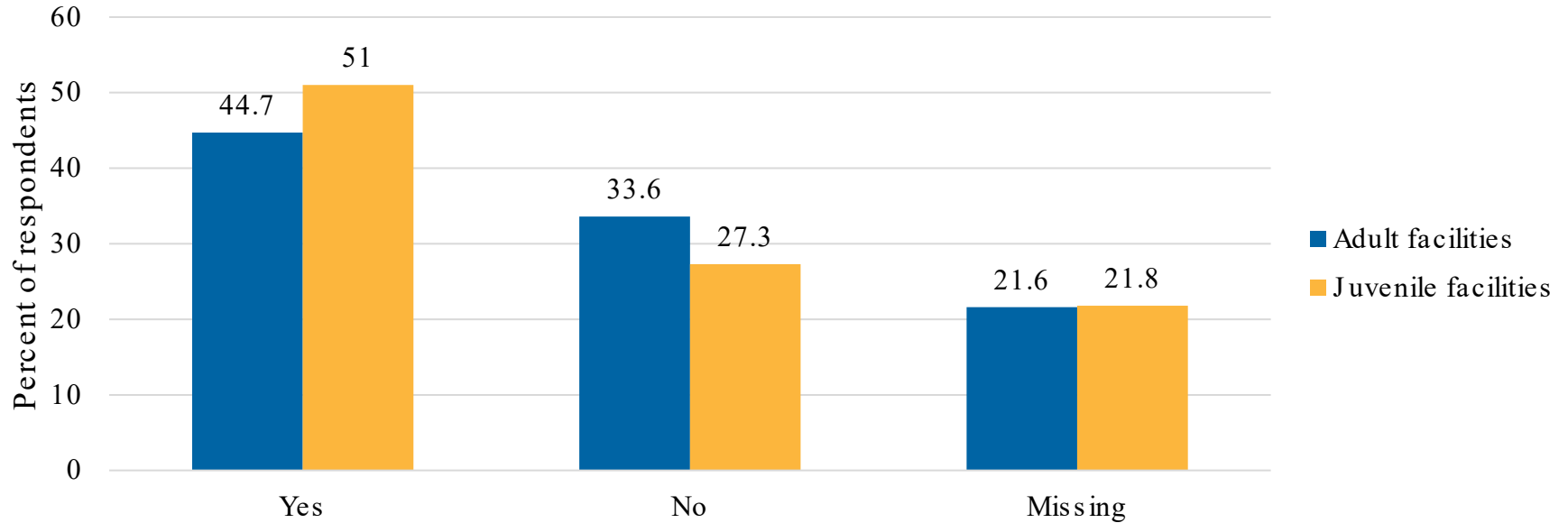
# Do these categories for sex match your records?

- Slightly less than half use categories of “male, female, intersex” in records
- Of those answering “No”, most report only recording “male” and “female”, some have “unknown” or include “transgender” in this record



Bureau of Justice Statistics

# Do you collect gender identity data for inmates/youth?



Bureau of Justice Statistics



# Other response categories

- Nonbinary
- Cisgender
- Trans-male, trans-female
- Systems with gender identity and sexual orientation categories all in a single record – bisexual, homosexual (lesbian/gay), pansexual, queer, straight, transgender, nonbinary/gender nonconforming, prefer to self-define, other



Bureau of Justice Statistics

# Feedback regarding the two-step approach of sex and gender identity

- “what is the difference?”
- “it’s confusing”
- “too political”
- “should not be needed, you are either male or female”
- “we would have to modify our data collection system”
- “adds a step to our process..would be time consuming”
- “we ask about pronouns inmates/youth prefer”
- “very helpful in explaining their identity”
- “this is useful, but we are seeing more identities during admission”
- “seems like a good idea”
- “it’s important”



Bureau of Justice Statistics

# Round 1 Moderated & Unmoderated – Staff

## Original Item

What was the gender of the staff?

1. Male
2. Female

## Test Items

What was the staff perpetrator's sex?

1. Male
2. Female
3. Intersex

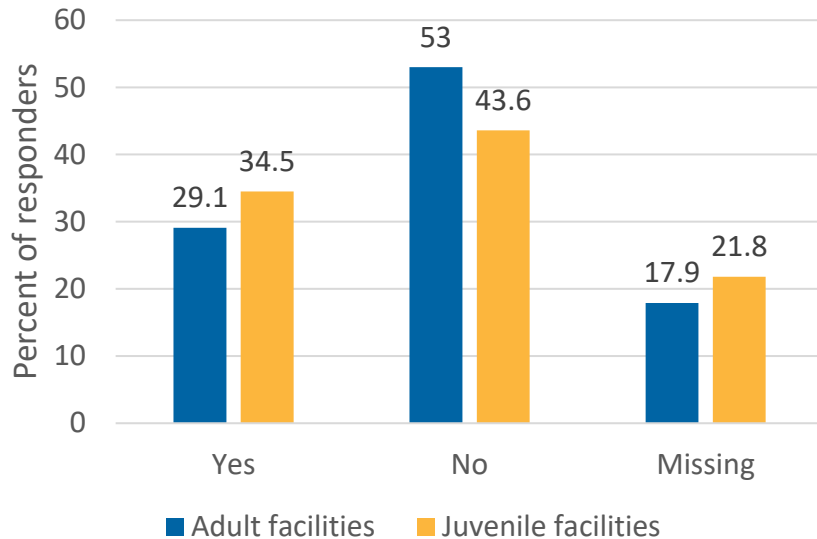
What was the staff perpetrator's gender identity?

1. Male
2. Female
3. Transgender
4. Gender nonconforming
5. Unknown



Bureau of Justice Statistics

# Do these categories match your system's records for sex?

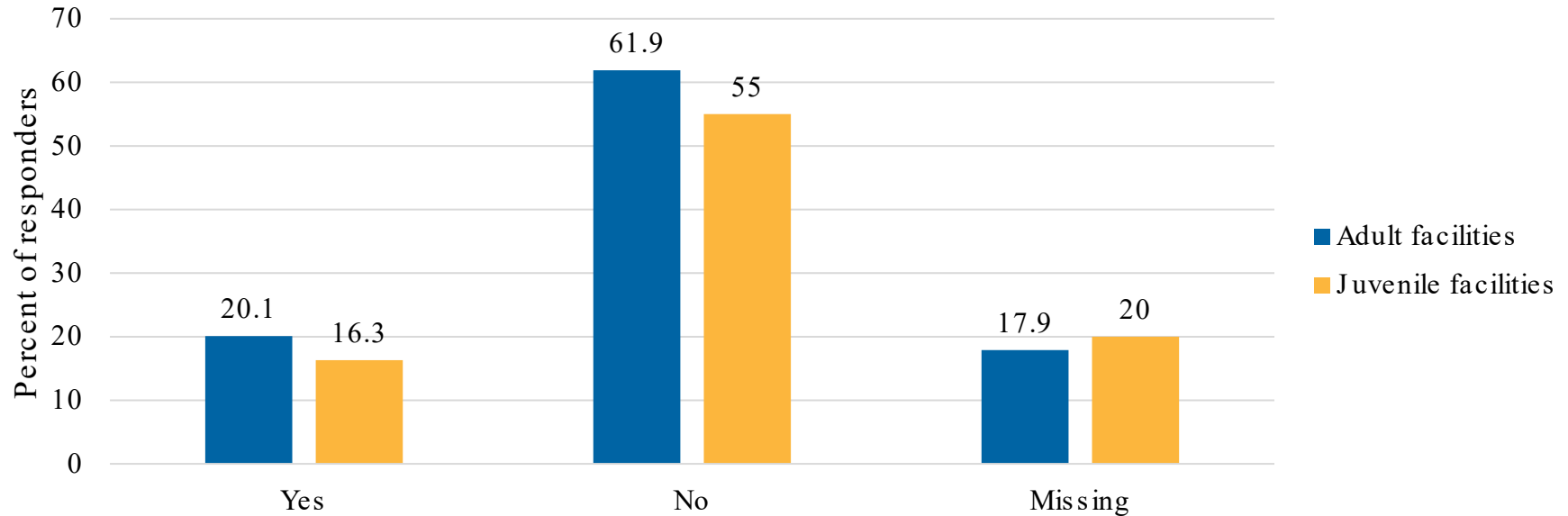


- Nearly all noted “male” and “female” as only response categories



Bureau of Justice Statistics

# Does your record system include the gender identity of staff?



Bureau of Justice Statistics

# Feedback on the two-step approach for staff

- “don’t know if I could access”
- “this would require HR”
- “privacy issues”
- “assumptions would have to be made”
- “same for inmates, the physical gender is most important”
- “we don’t ask about gender identity”
- “take it or leave it”
- “I think it would be helpful”



Bureau of Justice Statistics

# Round 2 Moderated Testing – Inmate/youth

What was the victim's sex assigned at birth?

Sex is a multidimensional construct based on a cluster of anatomical and physiological traits that include external genitalia, secondary sex characteristics, gonads, chromosomes, and hormones.

1. Male
2. Female
3. Intersex [A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as differences in sex development.]

What was the victim's gender identity?

Gender identity is a person's core internal understanding or sense of who they are regardless of sex assigned at birth.

1. Male
2. Female
3. Transgender [A person whose gender identity is different from the person's sex assigned at birth.]
4. Gender nonconforming [A person whose gender identity does not conform to traditional societal gender expectations.]
5. Unknown



Bureau of Justice Statistics

# Round 2 – Findings

- Respondents can answer both sex and gender identity questions based on self-identification at intake or from administrative records
  - PREA risk assessment questionnaires
- Respondents found definitions shown with the items to be helpful
- Some said they would consult a “definitions” section elsewhere on the form, but preferred seeing definitions with the item in the first instance



Bureau of Justice Statistics



# Final Recommendation – Inmate/youth

What was the victim's sex assigned at birth?

Sex is a multidimensional construct based on a cluster of anatomical and physiological traits that include external genitalia, secondary sex characteristics, gonads, chromosomes, and hormones.

1. Male
2. Female
3. Intersex [A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as differences in sex development.]

What was the victim's gender identity?

Gender identity is a person's core internal understanding or sense of who they are regardless of sex assigned at birth.

1. Male
2. Female
3. Transgender [A person whose gender identity is different from the person's sex assigned at birth.]
4. Gender nonconforming [A person whose gender identity does not conform to traditional societal gender expectations.]
5. Other – specify [BOX]
6. Unknown



Bureau of Justice Statistics

# Final recommendation – Staff perpetrators

What was the staff perpetrator's gender?

1. Male
2. Female

- Given the feedback about concerns for privacy, difficulty in accessing these data, confusion and uncertainty related to self-disclosure, a lack of records for gender identity, we plan to keep the item the same
- “gender” associated with presentation & is usually assumed by proxy reporters



Bureau of Justice Statistics

# Lessons learned

- Prison, jail, and juvenile justice administrators are not in agreement about sex and gender identity of inmates/youth → different definitions, conflicting viewpoints, changing categories & means of identification
  - Clarification of terms, breadth of response options are important
- Proxy reporting for staff is difficult for administrators due to privacy, access, and a lack of records



Bureau of Justice Statistics



Bureau of Justice Statistics

Questions?

Emily D. Buehler, PhD

Statistician  
Corrections Statistics Unit

[Emily.Buehler@usdoj.gov](mailto:Emily.Buehler@usdoj.gov)

202-598-1036



Bureau of Justice Statistics

810 Seventh Street, NW, Washington, DC 20531

Phone: +1 (202) 307-0765

[bjs.ojp.gov](http://bjs.ojp.gov)