

CJ520 Final Project

Revision of the Boston Police Department's Transgender Policy

Samantha K. Brooks

Department of Criminal Justice, Southern New Hampshire University

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Professor Yuhas

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Abstract

As the modern world continues to learn about diversity and the importance of accepting and celebrating diverse individuals, transgender policy construction and implementation has become a critical public policy issue. Society demands attention to the unique needs of the transgender population; historical trends and public activism bestow the future direction of how agencies must govern themselves accordingly. Use of solitary confinement is inappropriate without cause, and being transgender is not a crime. Human and civil rights stand to be violated without further action. This paper explores criminological theory that supports revision and makes justified recommendations to the Boston Police Department that, if followed, will result in a policy compliant with federal and state standards required by The Prison Rape Elimination Act (PREA).

Keywords: Transgender Policy, Human and Civil Rights, Solitary Confinement, PREA

Public policy issues of human and civil rights affect every member of society. Human rights – such as freedom from torture and freedom of expression – are universal in their application and internationally supported. Civil rights – such as those included in The U.S Constitution, state legislature, and local ordinances – are determined by nations, states, and other jurisdictions and serve to grant or deny certain liberties to those existing in a specific place (*HUSL Library: A Brief History of Civil Rights in the United States: Introduction*, 2018). Certain groups suffer rights violations more than others; transgender individuals (TIs) being at the top of this list – especially those of racial minority. In fact, in 2012, Joe Biden (then Vice President) pronounced transgender discrimination as “the civil rights issue of our time” (Levi & Barry, 2021, p.114).

As it stands, the current Transgender Policy espouses rights violations of TIs in custody of the Boston Police Department (BPD). Our Transgender Policy directly infringes upon 8th Amendment (civil) rights against cruel and unusual punishment, as well as the corresponding human rights of freedom from discrimination and torture. Iteration of “a transgender prisoner shall be held in a cell without other prisoners,” mandates that those identifying as transgender be treated differently from cisgender adults demonstrating “typical” expressions of gender (*Rules and Procedures*, 2021). To be precise, the use of the word “shall” implies that this action is mandatory, not discretionary (*Shall Definition*, 2022).

Essentially, TIs arrested by the BPD for *alleged* criminal behavior are mandatorily held in isolation (solitary confinement)¹. Isolation is a psychologically damaging, inarguably harmful practice that has been deemed a form of torture by the United Nations (Klein, 2019, p.1).

¹ “Isolation” will be used in place of “solitary confinement” in most descriptions throughout this report, as solitary confinement conjures the notion of punishment deserved by and reserved for only “the worst of the worst”. Isolation is a more generalized term and depicts a broader range of use – for in a *very* small number of cases, isolation *can* function as protection.

Holding one in isolation without trial, unsentenced, inflicts undue punishment based on gender identity, sexual orientation, and their *potential* victimization, instead of proven criminality. Yet, results from a 2015 prisoner survey indicated that 85% of all LGBTQIA+ respondents had been held in isolation at some point during their incarceration (Klein, 2019, p.2).² The same directive is not imposed upon cisgender individuals, rendering it discriminatorily cruel, and unusual.

There are other notable concerns in our Transgender Policy. Though they are not direct violations of human/civil rights, they should be improved to inform our members of comprehensive best practices. Positive solutions to address the core issue of solitary confinement and these additional elements are recommended at the conclusion of this report.

Historical Analysis

Related Public Policies

The Fourth and Eighth Amendment, and Equal Protection Clause under the Fourteenth Amendment, inform most lawsuits and rulings (that become law) brought by TIs or advocates (federal, state, and local). The Constitution is intended to guarantee safety and fairness. Unfortunately, benevolent intent does not promise ethical action. The Constitution may prohibit inhumane treatment and conditions, but it does not vow to make the experience more appropriate for uniquely vulnerable offenders (Redcay et al., 2020, p. 667). The BPD must revise current policy to ensure lawful appropriateness through evidence-based practices.

Massachusetts state laws offer more protection for LGBTQIA+ individuals than ever before. The Transgender Public Accommodations Law, enacted in 2016, finally made gender identity an “explicitly protected” class – providing further protection against discrimination in public accommodations and providing the right to file official complaints against entities

² “LGBTQIA+” will be used when the cited source opted to describe this community by this comprehensive acronym and not the more specific description of “transgender individuals” (TIs).

violating the terms (GLAD, 2018, p. 6). The law also protects those attempting to act on the behalf of individuals whose rights are, or could be, violated. Code 12–9.8 states that it is unlawful to discriminate against anyone who *opposes* violating another’s rights. It is also unlawful to aid, abet, or cause someone to violate another’s rights (*CITY OF BOSTON MUNICIPAL CODE*, 2021). BPD members are morally obligated to support one another in improving current policy.

In 2021, President Biden signed an Executive Order outlining the presidency’s current stance on preventing and combating discrimination against LGBTQIA+ individuals and fully enforcing laws protecting their civil rights. The Bureau of Prisons redrafted its operations manual in 2022, substantiating that TIs (specifically) should be housed to affirm their gender identity instead of their biological sex. In June of 2021, the White House created a “toolkit” that provides best practices for the safety, freedom, and inclusion of transgender citizens (The White House, 2022). Additionally, final regulations were imposed for The Prison Rape Elimination Act (PREA) by the US DOJ in 2012, giving way to what is now known as the PREA Standards. These standards mandate that all federally-funded correctional institutions make *individualized* determinations about the “housing safety” of TIs (i.e. if they are to be housed in a mens’, womens’, or alternative facility) (Redcay et al., 2020, p. 676).

BPD should be operating under PREA Standards, especially when detaining TIs – there is no valid excuse not to, as Massachusetts itself has followed suit with PREA Standards, requiring individualized determinations be made part of state statutes and administrative policies. Unfortunately, criminal justice (CJ) actors often ignore this in practice (Levi & Barry, 2021, p. 138). Similarly, imposing isolation under the guise of “protection” does not resolve the breach of their Eighth Amendment rights (Levi & Barry, 2021, p. 140). Ignoring the concern will not erase

it; Boston's most vulnerable citizens need protection. The aforementioned resources, guidance and laws will help inform the Transgender Policy revision.

Historical Trends

TIs are “othered” for existing outside of traditional gender norms, leaving them dangerously vulnerable to discrimination and violence. This is especially so in CJ settings. These individuals have been “systematically targeted” by the CJ system throughout history. Undue criminalization continues in every legal jurisdiction (Goldberg et al., 2019). While arrest and detainment exacerbate the probability of maltreatment for anyone, for someone who is transgender, it practically *guarantees* it. Exclusionary, binary systems are sustained by outdated carceral policies, poorly or untrained prison officers, and the inmates themselves (Iyama, 2012, p. 25). Variance between genders remains objectionable and wholly misunderstood by our traditionally binary governmental institutions (Iyama, 2012, p. 27).

Yet, there is movement towards real change. In many ways, the 21st century has been a time of unprecedented acceptance for nonbinary persons. Visibility of their unique (often reprehensible) circumstances is a mainstream issue. Campaigns for LGBTQIA+ rights are seen regularly in news media, on social platforms, and in community gatherings. The desire to better understand gender fluidity has become a major focus in scholarship, science, and global culture. Hundreds of activists, a range of organizations, many progressive politicians, doctors, psychologists, and behavioral scientists devote incredible energy to determining evidence-based best practices that aim to improve the transgender carceral experience (Levi & Barry, 2021, p. 112–113). Unequal punitive treatment is finally being recognized as a violation of their rights. Long-overdue, increased acceptance is changing the balance of power, helping bring justice to their claims, and innervating implementation of new policies (Brown, 2020). Trends in

transgender prison protocols may not be quick or easy to change, but research shows that they are moving in one direction: towards acceptance of their righteous humanity and thus, formal recognition of their human and civil rights (Levi & Barry, 2021 p. 111).

Significant Court Cases

Throughout history, the CJ system has oppressed and over-scrutinized LGBTQIA+ individuals. While very few laws expressly target this community today, many policing and carceral tactics once used to enforce them remain. The outcome is an overrepresentation of nonbinary individuals within the CJ system (Goldberg et al., 2019). A 2017 data report showed that 16% of the over “1.4 million transgender adults in America have been incarcerated at least once in their lifetime” (Redcay et al., 2020, p. 663). Decades of court cases have been crucial in proving that refusal to acknowledge their human and civil rights is not only illegal, but deeply harmful to their overall existence.

The landmark Supreme Court case of *Farmer v. Brennan* (1994) held that the Eighth Amendment could be used to sanction prison officials who fail to protect prisoners from other prisoners by “deliberate indifference” (Levi, 2021, p. 129). Most importantly, The Supreme Court unanimously held that being brutalized in prison is not a collateral part of one’s penitence; prisoners are punished by sentencing under law, *not* at the hands and whims of other prisoners or prison officials. This case was the first case to directly address the pervasiveness of rape and sexual assault in carceral settings and directly contributed to the formation of the PREA Standards in 2003 (Iyama, 2012, p. 24).

It is hard to believe that the case of *Shorter v. The United States* (2018) happened so recently. Marked as high risk for victimization at booking, Shorter was housed in a pod of twelve men, then, after requesting safer housing, shared a two person cell with a known sex offender.

Finally provided with her own cell – a lock on her door forbidden – she was placed furthest from the guard station. Just after her request to be closer to the guards for protection was denied, another inmate entered her cell and sexually assaulted her with a sharp object. Proper medical attention was not afforded – there was no DNA collected, no rape examination. She was moved to involuntary isolation without proper investigation into her assault, prompting violation claims against her Eighth Amendment right to protection and her Fifth Amendment right to due process (Redcay et al., 2020, p. 670). Tragically, her Eighth Amendment claim was denied, as the court ruled that she had failed to prove the guards’ “deliberate indifference” towards her safety. Her Fifth Amendment claim was permitted to proceed against the responsible prison official; a small but substantial “win” (*Shorter V. United States, No. 20–2554 (3d Cir. 2021)*, 2021).

Candice Crowder, a black, transgender woman held in a men’s prison was brutalized by other prisoners and prison staff, initiating the case of *Crowder v. Diaz* (2019). She was then revictimized by being placed in isolation for over nine months. Crowder had initially reported feeling unsafe in her first housing placement. Rather than helped she was beaten again by the guards responsible for her equal protection. Once transferred to a secondary facility, she was raped repeatedly. Her pleas for help, medical services, and formal incident documentation were ignored and – by proxy – denied. Her lawsuit claims that the nine-months of isolation was “retaliatory”, substantiated by the prison officials holding her there stating that it “was her fault for choosing a transgender lifestyle” and that basically, she was “asking for it” (Brown, 2020).

Bostock v. Clayton County (2020) was yet another monumental Supreme Court ruling for further protection of LGBTQIA+ rights as it held that, “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex”. The “consequences” (incredibly positive if one supports equal rights, not so much if one

is opposed) of this decision are vast and far-reaching. As of 2020, the Federal Equal Protection Clause *and* more than a hundred federal statutes prohibit sex-based discrimination”. Thus, discrimination based on sexual identity and/or orientation now violates multitudes of modern legal standards that protect the rights of all Americans (Levi, 2021, p. 111).

Public Perception

Society’s fixation on the distinction between men and women created a binary world where one either looks and acts feminine, or looks and acts masculine. The fact that society has long tormented TIs as a result of their “failure” to adhere to gender duality cannot be denied (Iyama, 2012, p. 27). Court cases and changing policies continue to shape public outlook, but great work remains to be done. According to Parker et al. (2022) the public remains “divided over the extent to which our society has accepted people who are transgender” with 36% feeling that society has “not gone far enough”, and 38% feeling that society’s acceptance has gone too far. About 25% feel that widespread efforts towards inclusion “have been about right”, though about 50% of Americans report discomfort with how quickly “views and issues” related to TIs are changing (Parker et al., 2022). Perhaps the most important statistic proposed by Parker et al. (2022), is that 64% of Americans strongly favor increased efforts to better protect TIs and their rights. A remaining 25% report that they neither “favor or oppose” the movement, and just 10% remain in strong opposition (Parker et al., 2022). Further public activism, education, and policy revisions provide the biggest hope for continued societal change.

Correctional policies have also come into public focus. Stigmatization in society exponentially affects the threat to transgender safety in prison. Housing them in isolation remains as one method of “managing” their need for “increased protection” (Iyama, 2012, p. 29). Internationally considered a form of torture, isolation is a hotly debated issue. Court cases have

elevated public debate over the ethics of its use. TIs are placed in isolation more often than their cisgender peers charged with similar offenses, suffering drastically worse outcomes when placed there under the same exact circumstances (Brown, 2020). The overall effect of isolation is punitive and lowers likelihood of successful reentry. Reframing it as “protective segregation” is no longer acceptable, as it does not accurately describe the method. Isolation is simply a (not so) well-disguised injustice finally “outed” by TIs and their advocates (Iyama, 2012, pp. 33–35). Thankfully, growing interest in studying prison policies and advocacy for reform continues to expand global awareness of LGBTQIA+ human rights abuses (Brown, 2020).

Future Direction

The future direction of TIs’ human and civil rights is detailed within a Biden–Harris “Fact Sheet” from March of 2022; a report providing a national plan for advancing transgender equality and visibility. Stated clearly in the introduction, the Biden–Harris administration condemns recent “dangerous legislative attacks” on TI’s rights as “these types of bills stigmatize and worsen” their well-being and mental health. Biden remarks that “transgender people are some of the bravest in our nation” – profound social messaging and encouragement, never before stated so clearly by any former presidential administration. Anti-transgender violence is powerfully named as a “national crisis”, presenting a dire need and directive to intensify protections for TIs, including those incarcerated (The White House, 2022).

Transgender prisoners have been institutionally “required” to be housed according to biological sex, not somewhere mid-spectrum, and *certainly* not as *transgender* – that is, until now (Iyama, 2012, p. 27). The Bureau of Prisons corrected its manual on transgender prisoners in January 2022, improving rights and access to safer gender-confirming housing placements (The White House, 2022). While prison officials have historically failed to provide appropriate

housing for TIs, federal PREA Standards have helped modernize state policies. Many states have formally implemented PREA Standards best practice. The state of Massachusetts itself has adopted PREA Standards and requires individualized housing determinations for those incarcerated in *state* facilities (Levi & Barry, 2021, pp. 137–138). If local departments in Massachusetts maintained transgender housing policies based on their state guidelines, compliance with the PREA Standards would be achievable.

Criminological Theory

Theory Related to Policy

General Strain Theory (GST) states that strain contributes to criminal behavior. It relates to violations of TI's human and civil rights as it focuses on inequality and cultural change. Strain occurs when there is a *loss* of “positive stimuli” (wealth, autonomy, connection) and/or *introduction* of “negative stimuli” – stressors such as psychological abuse, violence, neglect, and so on (Williams & McShane, 2017, p. 174). TIs experience far greater strain than other subgroups, and begin to suffer atypical strain early in life, vastly limiting their opportunities for success. Once it is apparent that neither gender fits, loss of positive stimuli and increased exposure to negative stimuli become commonplace in their lives (Iyama, 2012, p. 28). Parental rejection, erratic discipline, negative school experiences, economic instability, homelessness (*especially* youth homelessness), abusive peer relations, failed goals, experiences with prejudice, and discrimination – all forms of victimization – beget strain that is exceedingly difficult to overcome (Agnew, 2001, p. 343–347). Furthermore, direct threats to one's sense of identity, survival needs, and personal values are most likely to become “crime-producing strains” that beget deviance more often than other types of strain (Williams & McShane, 2017, p. 174).

GST posits that these strains (stressors) lead to negative emotions such as frustration and anger: all-consuming emotions that create intense pressure and discomfort. Anger disrupts cognitive processing, impeding the ability to employ rational coping strategies and reduces one's ability to recognize the likely cost of their actions (Agnew, 2001, p. 327). Remedy is often sought impulsively, in haste – void of mature, logical reasoning (Agnew, 2001, p. 319). Thus, criminal behavior becomes a potential “remedy” relied on by individuals in marginalized subgroups (Agnew, 2001, p. 319). When they cannot get their needs met by any legitimate source, many TIs find themselves involved in illegal activity. In a sense, TIs are forced into criminal enterprise by a society that does not accept them, then punished more severely than cisgender inmates for actions they feel they must take to survive (Redcay et al. 2020, p. 663). Thus, GST can be applied to explain data showing that TIs experience arrest and incarceration at a much higher rate than their cisgender peers.

Theory and Departmental Policy

GST helps explain why individuals under the most societal strain are also the most likely to end up incarcerated. Moreover, GST applies to how the unequal treatment of transgender prisoners negatively compounds their short-term and long-term outcomes. Strains that are unjust, of high magnitude (severity), and promote low social control are most likely to result in criminal behavior (Agnew, 2001, p. 326). Along with the general stigmatization and faulty criminalization of this population, TIs experience victimization at an alarming rate. This aligns perfectly with information presented by Zweig et al. (2014, p. 85), stating that victimization is particularly likely to lead to poor outcomes as it “checks all three boxes”: it is felt and seen as unjust, the emotional impact is of greater magnitude, and all sense of control is lost. The cycle continues in the carceral setting as conditions or actions that a victim believes to be done

intentionally and voluntarily to violate “a relative justice norm” – such as mandatory isolation – are most likely to be evaluated as unjust (Agnew, 2001, p. 326). The current BPD policy contributes to victimization (strain) as being forced into isolation is typically not a just reaction to the severity of their crime, but rather as a result of just being who they are.

Theory and Connections to Government Policy

Connections exist between basic rights violations and the undue victimization of the transgender population, as their isolation occurs for reasons outside of the general purpose of punishment (Brown, 2020). A study conducted by Zweig et al. (2014, p. 105) found that there is support for the GST hypothesis as “related to in-prison victimization as a strain” and that negative reactions from victimized experiences raises the likelihood of negative behaviors, with consequences directly affecting their well-being and mental health long after threat subsides. The outcome is that violence, health impairments, and the “trauma of isolation” all reveal methods by which imprisonment may hinder readjustment to life in the community (Zweig et al., 2014, p. 4). Court rulings (those previously discussed and many others), portray the historically recent acknowledgement of one’s Eighth Amendment Rights and the Fourteenth Amendment’s Equal Protection Clause being threatened by use of isolation. Enactment of the PREA federal standards gave way to state adoption of similar provisions, as well as the International Bill of Rights, The Equality Act, and Biden’s associated executive orders created to address the victimization of incarcerated TIs. Though there remains a long way to go, the emerging goal of all CJ agencies should be to reduce the exorbitant strain experienced by incarcerated TIs through localized policy that promotes the restoration of their human and civil rights (Redcay, 2020, pp. 675–677).

Needs

Current Policy Needs

Law enforcement is the primary, relevant branch of the CJ system; actions in this branch lead to contact with courts (second branch) and corrections (third branch). LEOs are a visible part of everyday life. They are responsible for maintaining public safety and order, enforcing the law, surveillance, and investigations. Law enforcement must protect the rights and privileges of *all*, fulfilling public expectations of fairness and equality and eliminating unnecessary strain (Goodwin University, 2021). BPD holds this duty, just as all LEAs do.

BPD's current Transgender Policy not only fails to acutely protect the human and civil rights of transgender detainees, it chronically contributes to criminal victimization (a high-magnitude strain). GST posits that criminal victimization most often occurs in settings where one party holds the majority of power (has high control) and the other party has limited power, or none at all (low or no control). Most often, this is standard dynamic between LEOs and offenders by default. The contrast of power/control is especially stark when it comes to acts of arrest, detainment, and placement in carceral settings (Agnew, 2001, p. 346). There is already an extremely high likelihood for criminal victimization between *any* LEO and *any* offender in these circumstances. Our current policy increases TI's vulnerability to intense strain the moment the booking procedure begins. Without a proper assessment in place, housing determinations are at the discretion of the attending officers (Boston Police Department, 2021). This is highly problematic on an individual and community scale, as decades of research prove that criminal victimization specifically aggravates the likelihood of future criminal behavior (Agnew, 2001, p. 346).

In order for our implemented Community Based Policing (CBP) strategies to work, it is crucial that the BPD improves any and all practices that may lead to increased criminal behavior - in any setting and within any “group”. Tension between police and the community gives way to chaos and disorder. Recent protests and modern defunding efforts show this to be true. The public must trust our department – no matter their criminal status, nor their gender identity/sexual orientation. Trust is difficult to establish but easily broken; once broken it is hard to repair (Goldberg et al., 2019). All BPD’s policies should prioritize equality and function to reduce – if not eliminate – excessive, harmful strain.

Addressing Current Policy Needs

Gender expression is not a crime that warrants isolation; it is not a crime at all. In addition to violating human and civil rights, the current policy falls short of federal PREA Standards that Massachusetts has formerly adopted as state law (Levi & Barry, 2021, p. 138). BPD policy does not adequately address the specific needs of TIs by blindly housing them in isolation. According to the UN, overuse of isolation constitutes cruel and unusual punishment (Longo, 2017). Under the current policy, detained TIs are isolated mandatorily, vastly intensifying the strain they experience. Some CJ actors claim that use of isolation is a protective effort. Yet, data shows that isolation (for any amount of time) significantly increases their level of risk (and thus, strain) in the majority of cases (Hastings et al., 2013, p. 3). Agenew (2001) suggests positive policy changes that flow from the framework of GST: 1) efforts that reduce individuals’ exposure to strain reduce the likelihood that they will cope with strain through criminal activity, and 2), altering the pervasive, negative characteristics of situational strain will reduce the chances of strain leading to future criminal acts (p. 352). These theory-based recommendations help form the backbone of the necessary policy revision at hand.

Targeted Policy

Revision recommendations target the most troubling aspect of the current policy: TIs are mandatorily detained in isolation void of assessment. PREA Standards for “Placement in Temporary Lockup” (Standard #10) require assessment to determine housing placement. In 2019, the National Center for Transgender Equality formally reviewed the BPD Transgender Policy in comparison to PREA Standards.³ Policy aspects were rated by colors red (= completely missing), yellow (= partially missing), and green (= in compliance). Officer Sexual Misconduct and Required Training remain labeled in red (Tobin, et. al., 2019). Their absence is likely to affect the revision of Standard #10, and thus, must also be addressed. Collective improvements will strengthen the overall policy.

Policy Revision Recommendations

Recommendations for Standard #10 – Placement in Temporary Lockup:

BPD should adopt the risk/need/responsivity (RNR) model to require evidence-based risk/need assessments (RNA) for every detained TI. When done correctly, this practice provides “level of risk” data to inform appropriate housing options. RNAs help CJ actors make educated logistical decisions and there are many to choose from. A century of development sparked creation of four “generations” of RNAs, with fourth generation RNAs being most evolved, efficacious, and revered in evidence-based programs (D’Amato et al., 2021, p. 41–43). BPD must identify fourth generation RNAs that satisfy the purpose and select or create a “best match”.

Recommendations for Standard #9 – Officer Sexual Misconduct:

³ For the sake of accuracy, this author carefully adjusted for revisions made by BPD in direct accordance with NCTE’s specific, independent review in April 2021.

Shockingly, Standard #9 is missing from the current policy. BPD must draft a section within the policy *explicitly* prohibiting any on-duty sexual activity, any on/off-duty sexual activity involving departmental property, use of coercion or force to initiate sexual contact, failure to report sexual misconduct, and non-exigent searches of biological females and transgender women by male officers (Tobin et al., 2019). Clear and direct admonishment will better demonstrate that BPD has zero tolerance for inappropriate sexual contact.

Recommendations for Standard #15 – Required LGBT-Specific Training:

Standard #15 is not mandated within the current policy. A multicultural organizational development (MCOD) approach is recommended. MCOD includes a range of related practices: diversity management training, intercultural education and competency skill building, valuing differences, and community partnership (Hyde, 2018, p. 54). Training must account for varying levels of comfort with the subject in general, as well as the specific language used in the chosen RNA. Guidance on how to ask sensitive questions and discuss (unfamiliar, uncomfortable) situations will help reduce new-protocol anxiety (Hastings et al., 2013, p. 7). It is crucial that members of the transgender community help facilitate the training. Finally, organizers should draft a “stand-alone” single-page resource that is easy to understand and accessible to all actors during acute interactions with TIs (Copple & Dunn, 2017, p.13).

Justification and Improvement of Delivery

Justification for Improving Standard #10 – Placement in Temporary Lockup:

The RNR model – gleaned from decades of research – is a body of evidence-based principles that focus on service (treatment) “dosage” provided by the CJ system. The RNR model ensures that best outcomes are achieved when the “intensity” (type) of intervention or

supervision is paired with the level of risk, *and* that the delivery is constructed based on each individual's unique circumstances (Marlowe, 2018).

RNR principles and targeted RNAs have been used effectively at every level of the CJ system for decades. Virginia (VA), for example, abolished the use of parole in 1994 – making room for Truth-in-Sentencing (TIS) reform. TIS aimed to dramatically increase prison terms for violent offenders, inflating the number of carceral prisoners and sending costs soaring. To address this, VA lawmakers sought to assess “level of risk” to prevent incarceration of some nonviolent offenders in hopes of mitigating overcrowding. Lawmakers drafted VA Code 17–235, requiring the VA Criminal Sentencing Commission (VCSC) to: 1) develop an RNA tool predictive of “relative risk” of violence, and 2) create guidelines to accurately and systematically identify low-risk offenders. The goal was to divert 25% of nonviolent offenders to alternative sanctions (Ostrom et al., 2002, p. 18–19).

Ultimately, the “Risk Assessment Form” – a simple, but useful, one-page scoring system – created by the VCSC was a rave success. The National Center for State Courts (NCSC) commended the VCSC and The (VA) General Assembly not only for their effective design, but their vigilant pilot testing in six different VA court service units. The NCSC found that the instrument was predictive of and successful in identifying low-risk offenders. At the time, no other sentencing structure in America had designed – let alone implemented – an evidence-based RNA protocol able to discern “diversion thresholds” with regard to future criminality and public safety concerns (Ostrom et al., 2002, p. 122).

Similar protocol should be used to assess the needs and risks of TIs detained by the BPD; VA Code 17–235 is just one of many successful examples. Identifying and implementing an RNA would redeem compliance with PREA Standards, limiting potential for human and civil

rights violations as well as the undue victimization of TIs. Ideally, this is the final outcome and a wildly positive adjustment for all actors throughout the department and community.

Justification for Improving Standard #9 – Officer Sexual Misconduct:

Research shows that transgender bias and criminalization is not the end of the line for bad-actor LEOs. TIs in the CJ system are too often verbally, physically, and sexually assaulted by LEOs – especially during the time of arrest and in detention (Goldberg et al., 2019). Cases are documented in academic journals, court records, and more than ever, in popular media. Goldberg et al. (2019) reports that in 2009, a transgender woman from NYC was taunted, called a “transvestite” and then chained to a fence for over 24 hours; her dignity destroyed as she was prohibited from using the restroom due to being nonbinary. In 2003, another transgender woman reported being raped in an alley by LAPD officers moments after her arrest. Victims of police violence are *far* less likely to reveal information/incidents to authorities. It is understandable that one would avoid reporting (their own, others’) abuse to the party that caused it. Thus, the cycle of negative interactions and lost trust in law enforcement continues, “diminishing the effectiveness” of CBP and the credence that it could accrue (Goldberg et. al, 2019).

Justification for Improving Standard #15 – Required LGBT-Specific Training:

MCOD is highly effective in creating culturally competent organizations that are attune to the needs and risks of those they serve. This is because MCODE implores “low-power actors” (patrol and booking officers, the average transgender individual, the average advocate, etc., in this case) to lead from below, and “high-power actors” to support them (Hyde, 2018, p. 64). A true MCODE organization is shaped by the perspectives of varied actors and their diversity of knowledge. Members enjoy a sense of inclusion, fairness, and representation across all levels of

superiority and within all departmental functions. Having “voice” is crucial to initiating, adapting to, and sustaining change (Hyde, 2018, p. 54).

Appropriateness of Criminological Theory

General Strain Theory (GST) provides a foundation for this policy revision by making a case that reduced strain leads to a reduction in negative outcomes post-release. According to Zweig et al. (2014), certain types of strain are particularly damaging to those that experience them, especially victimization experiences. These noxious strains result in highly negative outcomes because they are unjust, carry emotional impact, and leave room for little, if any, personal control. Loss of control results in anger (the primary response for most), fear, and distrust. Strain of this nature is also credited with higher rates of depression, traumatic flashbacks, insomnia, and PTSD (Zweig et al., 2014, pp. 86–87). These outcomes do nothing to increase a sense of trusting partnership between TIs and LEOs. Resentment and disdain contribute to higher rates of negative outcomes in general, and increase potential for recidivism post-release. Antisocial behavior and emotional distress compound with exposure to victimization, and are proven predictors of continued criminal activity. This furthers public harm within the local community (Zweig et al., 2014 p. 97). A GST-based revision justifies the identified recommendations as they intend to reduce tension and increase protection for TIs. Finally, there is an unintended (potential) outcome worth mentioning: recommended changes will likely provide further protection for and strain reduction within BPD as well. Policy that includes the aforementioned recommendations will prevent rights violations – especially if the tools are properly implemented and actioned - further protecting BPD from potential sanctions.

Potential Impacts

A case study completed by Baker et al. (2020) provides highly relevant and useful data on how BPD's policy improvements might impact the actors involved. Their study focused on policy revision in an educational setting, not a CJ setting, but the premise of it is the same: acknowledgement of transgender rights can eliminate maltreatment through policy revision. Challenges and impacts identified in the study appropriately transfer into the LEA setting and thus, will be described here in that context:

- Some actors may understand the need and weight of this revision, but find it quite difficult to adapt to. Reforming personal beliefs requires time and insight – particularly so when the source of discomfort is not the policy, but the paradigm shift itself (Baker et. al, 2020, p. 104)
- Level of “internalized bureaucracy” has varying effects, but is most likely to hinder those that value the precision of rules and procedure (administrators, for example) and tend to struggle with making acute judgment calls in unusual settings (Baker et. al, 2020, p. 105)
- Questioning one's own agency (authority) may cause concern amongst lower-level actors that worry supervisors will not assist them when the policy is put to the test and does not go as hoped. Without consistent empowerment and support, there will be greater resistance from those in the most active (crucial) positions (Baker et. al, 2020, p.106).
- Sentiment barriers emerge when actors are forced to evaluate their own beliefs about gender in the context of a larger structure – such as a department constructed with binary practices. Their concern is likely to focus on limits of the policy and the fact that no matter the intent, it is impossible to create policy that protects the rights of everyone

equally. These actors will be wary of the potential blow-back effects – infringing upon rights of others for the sake of protecting the rights of TIs (Baker et. al, 2020, p. 107)

Such challenges are surmountable under provision of extended training, deeper education, and further collaboration with outside experts that are better positioned to address these specific concerns (Baker et al., 2020). Regardless, negative impacts may persist and require adjusted recommendations. Though the first page of the current policy states that advocates and members of the LGBTQ community contributed to its formation, there is no mention of promoting continued civilian involvement within the policy itself (Boston Police Department, 2021). Formation of an “oversight committee” is a valuable, recommended effort. The committee should be free from political interference, hold authority to review complaints, conduct basic investigations, and make further recommendations. This will promote trust as well as more committed, comprehensive actor involvement going forward (Tobin et al., 2019).

Value of Informed Implementation

Policy revision will undoubtedly improve our service delivery, provide a safer and emotionally healthier experience for TI offenders, reduce potential for rights violations and subsequent sanctions, and finally, render BPD in compliance with federal and state standards. It will also be challenging and difficult work. Successful implementation of revision recommendations will demand great time, energy, and patience from all actors. To acknowledge positive reactions and create buy-in, it is important to honor and consider the prodigious work of CJ actors already promoting fair and equal treatment of TIs (Copple & Dunn, 2017, p. 13). Already, there are hundreds of LEAs and individual LEOs that are deeply passionate about improving their policies to protect TIs. Reviewing the work they have done will increase the sentiment that such incredible change is not only possible, but plausible. It will put worth behind

the struggle to get there. There are also thousands of individual and organizational advocates and allies committed to helping LEAs/LEOs revamp their policies and procedures (Tobin et al., 2019, p. 6). These positive actors can help increase willingness to participate and increase buy-in among hesitant members by personalizing the need for a more educated outlook and internal growth.

Conclusion

The Boston Police Department is a pillar of community leadership. Our department must accept responsibility for protecting all individuals equally. To better serve our community - specifically transgender individuals (generally understood to be part of the greater LGBTQIA+ community) - our current Transgender Policy necessitates intentional and adequately-informed revision. As wisely summarized by Redcay (2020), real change is only truly achieved through the mindful adaptation of organizational beliefs and attitudes – lasting, legitimate mutual respect between stakeholders cannot take hold without it (p. 676). The Boston Police Department *can* foster and embrace *real change*; previous policy improvements (such as the revision of this very policy in 2021) furnish evidence of our collective capability. We face a challenging, but admirable and worthwhile, endeavor: the result of our Transgender Policy revision will propel our department towards meeting the needs of modern society and governing legal standards.

References

- Agnew, R. (2001). Building on the Foundation of General Strain Theory: Specifying the Types of Strain Most Likely to Lead to Crime and Delinquency. *Journal of Research in Crime and Delinquency*, 38(4), 319–361. <https://doi.org/10.1177/0022427801038004001>
- Baker, A. C., Hillier, A., & Perry, M. (2020). Street-Level Bureaucrats and Intersectional Policy Logic: a Case Study of LGBTQ Policy and Implementation Barriers. *Journal of Policy Practice and Research*, 1(3), 96–112. <https://doi.org/10.1007/s42972-020-00010-1>
- Boston Police Department. (2021, April 12). *Rules and Procedures: RULE 113B, TRANSGENDER POLICY*. bpdnews.com. Retrieved November 21, 2022, from <https://bpdnews.com/rules-and-procedures>
- Brown, J. A. (2020, June 30). *LGBT People in Prison: Management Strategies, Human Rights Violations, and Political Mobilization*. Oxford Research Encyclopedia of Criminology. Retrieved November 30, 2022, from <https://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-647>
- CITY OF BOSTON MUNICIPAL CODE: 12-9 HUMAN RIGHTS*. (2021, December 13). American Legal Publishing Corporation. Retrieved November 24, 2022, from https://codelibrary.amlegal.com/codes/boston/latest/boston_ma/0-0-0-3895
- Copple, J. E., & Dunn, P. M. (2017). Gender, Sexuality, and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community. In *COPS Office Resource Center* (COPS-W0837). The COPS Office. Retrieved December 19, 2022, from <https://cops.usdoj.gov/RIC/ric.php?page=detail&id=COPS-W0837>

- D'Amato, C., Silver, I. A., Newsome, J., & Latessa, E. J. (2021). Progressing policy toward a risk/need informed sanctioning model. *CRIMINOLOGY & Public Policy*, 20(1), 41–69. <https://doi.org/10.1111/1745-9133.12526>
- GLAD. (2018). GLAD Answers for the LGBTQ Community: Massachusetts: Overview of Legal Issues For Gay Men, Lesbians, Bisexuals and Transgender People. In www.GLADAnswers.org. GLBTQ Legal Advocates and Defenders. Retrieved November 23, 2022, from <https://www.glad.org/wp-content/uploads/2017/01/ma-lgbt-overview.pdf>
- Goldberg, N. G., Mallory, C., Hasenbush, A., Stemple, L., & Meyer, I. H. (2019). Police and the Criminalization of LGBT People. *The Cambridge Handbook of Policing in the United States*, 374–391. <https://doi.org/10.1017/9781108354721.020>
- Goodwin University. (2021, August 11). *The Three Components of the Criminal Justice System & Where You Fit In*. Retrieved December 20, 2022, from <https://www.goodwin.edu/enews/components-criminal-justice/>
- Hastings, A., McGarry, P., & diZerega, M. (2013). Screening for Risk of Sexual Victimization and for Abusiveness: Guidelines for Administering Screening Instruments and Using the Information to Inform Housing Decisions. In prearesourcecenter.org. VERA Institute of Justice. Retrieved November 29, 2022, from <https://www.prearesourcecenter.org/node/1695>
- HUSL Library: *A Brief History of Civil Rights in the United States: Introduction*. (2018). Law Library: Howard University School of Law. Retrieved November 25, 2022, from <https://library.law.howard.edu/civilrightshistory>

- Hyde, C. A. (2018). Leading From Below: Low-Power Actors as Organizational Change Agents. *Human Service Organizations: Management, Leadership & Governance*, 42(1), 53–67. <https://doi.org/10.1080/23303131.2017.1360229>
- Iyama, K. (2012). “We Have Tolloed the Bell for Him”: An Analysis of the Prison Rape Elimination Act and California’s Compliance as It Applies to Transgender Inmates. *Tulane Journal of Law & Sexuality*, 21, ISSN 1062-0680. <https://journals.tulane.edu/tjls/article/view/2850>
- Levi, J., & Barry, K. M. (2021). TRANSGENDER RIGHTS & THE EIGHTH AMENDMENT. *Southern California Law Review*, 95(109), 110–160. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4077035
- Longo, C. (2017). Justice and Community Safety Policy Brief: Transgender Rights in Public Prisons. In *siena.edu*. SIENACollege - The Community Policy Institute. Retrieved December 22, 2022, from <https://www.siena.edu/files/resources/transgender-rights-in-public-prisons.pdf>
- Marlowe, D. B., JD, PhD & SAMHSA’s GAINS Center. (2018, July 17). *The Most Carefully Studied, Yet Least Understood, Terms in the Criminal Justice Lexicon: Risk, Need, and Responsivity*. Policy Research Associates. Retrieved December 10, 2022, from <https://www.prainc.com/risk-need-responsivity/>
- Ostrom, B. J., Kleiman, M., Hansen, R. M., & Kauder, N. B. (2002). Offender Risk Assessment in Virginia. In *Virginia Criminal Sentencing Commission* (ISBN 0-89656-217-4). The National Center for State Courts. Retrieved December 10, 2022, from http://www.vcsc.virginia.gov/risk_off_rpt.pdf

- Parker, K., Horowitz, J. M., & Brown, A. (2022, June 28). *Americans' Complex Views on Gender Identity and Transgender Issues*. Pew Research Center's Social & Demographic Trends Project. Retrieved December 8, 2022, from <https://www.pewresearch.org/social-trends/2022/06/28/americans-complex-views-on-gender-identity-and-transgender-issues/>
- Redcay, A., Ludquet, W., Phillips, L., & Huggin, M. (2020). Legal Battles: Transgender Inmates' Rights. *The Prison Journal*, 100(5), 662–682. <https://doi.org/10.1177/0032885520956628>
- Shall Definition*. (2022). www.nolo.com. <https://www.nolo.com/dictionary/shall-term.html>
- Shorter v. United States, No. 20-2554 (3d Cir. 2021)*. (2021, September 1). Justia Law. Retrieved December 9, 2022, from <https://law.justia.com/cases/federal/appellate-courts/ca3/20-2554/20-2554-2021-09-01.html>
- The White House. (2022, March 31). *FACT SHEET: Biden-Harris Administration Advances Equality and Visibility for Transgender Americans*. Retrieved November 26, 2022, from <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/31/fact-sheet-biden-harris-administration-advances-equality-and-visibility-for-transgender-americans/>
- Tobin, H. J., Cifredo, J., & Mottet, L. (2019). FAILING TO PROTECT AND SERVE: POLICE DEPARTMENT POLICIES TOWARDS TRANSGENDER PEOPLE. In M. De La Torre (Ed.), *The National Center for Transgender Equality*. The National Center for Transgender Equality. Retrieved November 23, 2022, from <https://transequality.org/issues/resources/failing-to-protect-and-serve-police-department-policies-towards-transgender-people>

Williams, F. P., & McShane, M. D. (2017). *Criminological Theory* (7th ed.) [VitalSource Bookshelf 10.2.0]. Pearson.

Zweig, J. M., Yahner, J., Visser, C. A., & Lattimore, P. K. (2014). Using General Strain Theory to Explore the Effects of Prison Victimization Experiences on Later Offending and Substance Use. *The Prison Journal*, 95(1), 84–113.
<https://doi.org/10.1177/0032885514563283>