

“It’s war in here”

A Report on the Treatment of
Transgender and Intersex People in
New York State Men’s Prisons

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INTRODUCTION

Since opening in 2002, the Sylvia Rivera Law Project (SRLP) has provided free legal services to over 700 intersex, transgender, and gender non-conforming people.* Our clients are low-income people and people of color who face discrimination in the areas of employment, housing, education, healthcare, and social services. Since our founding, the attorneys and advocates at SRLP have consistently witnessed the disproportionate representation of our clients in the criminal justice system as a result of police profiling, poverty, and the necessity of becoming involved in criminalized activities to survive. We have also witnessed the exceptionally violent conditions they face once imprisoned.

Unfortunately, very little information has been collected about transgender people and people with intersex conditions across the United States or their experiences of confinement. A few key legal cases have highlighted the pervasive sexual violence¹ or gender-related medical discrimination that they encounter while imprisoned.² However, because corrections systems do not generally keep data regarding how many people in the criminal justice system are transgender or intersex or the nature of their experiences during imprisonment, a considerable gap exists with respect to information about this group of people.

Forty percent of SRLP's clients over the last four years have had criminal justice issues in their cases, demonstrating the disproportionate role the system plays in our communities. SRLP has served 106 clients who were imprisoned during the period over which we provided them with services. These clients overwhelmingly report experiencing assault, denial of urgently needed medical care, and placement in gender inappropriate facilities. While much of this discrimination is clearly illegal under existing law, the lack of legal support available to prisoners results in most being unable to enforce their rights.³

SRLP undertook this research to document the experiences of our clients in New York State prisons. We recognize that while we do not have the capacity to collect broad-scale empirical research about this population, we can share the wealth of qualitative information we have obtained through advocacy on behalf of our im-

* See Appendix A, Frequently Asked Questions, on page XXXX for explanations of language relating to gender identity and expression, as well as transgender and intersex identities.

prisoned clients over the past three years. To create this report and to illustrate the conditions of confinement that are commonly reported by our clients, the author corresponded with and gathered detailed narratives from twelve SRLP clients who are currently or were formerly imprisoned in various New York State men’s prisons. In addition, the author interviewed a range of New York City-based advocates and service providers who work with transgender communities. We hope that the information contained in this report is useful in assessing the issues facing members of our community who are entangled in the criminal justice system, and in developing and implementing policies and practices to alleviate the violence and discrimination they face inside New York State correctional facilities.

Dean Spade, 2006



SCOPE & METHODOLOGY

The main purpose of this report is to serve as a first step toward understanding the treatment of transgender, gender non-conforming, and intersex people in New York State men's prisons. The report does not seek to convey one unifying, definitive experience, or even to fully represent the experiences of the interviewees. Rather, its central objectives are to describe some of the daily realities faced by a number of SRLP's clients; to outline some of the reasons why transgender people are disproportionately poor, homeless, and imprisoned; and to propose pragmatic recommendations to improve their treatment and decrease their overrepresentation in the criminal justice system.

The research informing this report was conducted through in-person interviews and written correspondence with currently and formerly imprisoned clients of SRLP, as well as through supplementary interviews with a range of advocates in New York City. In total, twelve current and former prisoners and ten advocates working outside of prisons were interviewed for the report. In accordance with the interviewees' preferences, some names, along with all names and identifying characteristics of specific correctional facilities and officers, have been changed.

The focus of this report is specifically on conditions of confinement in men's prisons because the vast majority of SRLP's currently or formerly imprisoned clients were housed in men's facilities. Despite the focus on men's prisons, it is critical to note that many transgender, gender non-conforming, and intersex people in women's prisons, as well as their advocates, have reported similarly harsh treatment to that reported in men's prisons. Some of these experiences are discussed towards the end of the Daily Realities section. Further research on the unique experiences of gender non-conforming people in women's prisons is urgently needed.*

There currently exists only minimal research on the experiences of transgender, gender non-conforming, and intersex people in the criminal justice system or on

* Correctional Association of New York's Women in Prison Project has recently undertaken to expand the research tools it uses when visiting prisoners in women's facilities to include questions regarding harassment and violence based on gender identity or expression. The collection of this type of data is essential to understanding these issues in the context of women's facilities where they often go unremarked. For further information, contact Tamar Kraft-Stolar, Project Director, or Jaya Vasandani, Project Associate, or visit <http://www.correctionalassociation.org>.

their paths to imprisonment.⁴ This report owes much of its analysis, findings, and recommendations to this emergent research and to the range of dedicated activists and advocates in New York City working to foreground the intersections of gender identity discrimination, poverty, and criminalization. Most importantly, this report emerges out of the insights and contributions of those imprisoned and non-imprisoned people generous enough to share their experiences in our collective effort to raise public awareness about this urgent issue. It is our hope that this report will help catalyze further research about the treatment of transgender, gender non-conforming, and intersex people in prison, and on the myriad patterns of discrimination that result in their overrepresentation in the criminal justice system.



BACKGROUND

Discrimination, Poverty, & Prisons

U.S. Imprisonment Rates Continue to Rise As Prison Conditions Remain Brutal

As of June 30, 2005, there were over 2,186,230 people in U.S. prisons and jails—1 in every 136 U.S. residents is imprisoned⁵—placing this country’s rate of imprisonment far ahead of any other in the world.⁶ Over the past three decades, the U.S. prison system has undergone unprecedented growth in the rates of imprisonment, facility construction, and federal funding. In 1980, there were a total of 1.8 million adults under U.S. correctional supervision, including prisons, jails, detention centers, parole, and probation. At the end of 2004, that number had soared to almost 7 million—about 1 in every 31 adult residents—growing nearly 390% in 24 years.⁷ This surge in the prison population was largely a result of the “War on Drugs” declared by President Nixon and waged by each successive administration, as well as “law and order,” “tough on crime” policies, which have allocated an unparalleled amount of federal resources to national and local policing and imprisonment.⁸ The past thirty years have also seen a massive growth in prison construction,⁹ the widespread privatization of the correctional system, and the dramatic expansion of federal and local prison funding—in 2001, the government spent \$38.2 billion to maintain state correctional systems alone, representing an increase of 145% from the previous year.¹⁰ In 2003, the Bureau of Justice reported that the U.S. government spent nearly \$60.9 billion on corrections expenditures and employment, soaring over 423% since 1982.¹¹

The growth of the U.S. prison system has had a severe and disproportionate effect on communities of color and low-income communities. African American people constitute 12.3% of the national population, compared to 43% of the U.S. prison population. White people represent 69.3% of the national population, and 37% of the imprisoned population. Latino/a people constitute 13% of the national population, compared to 19% of the prison population. Startlingly, almost 13% of African American men between the ages of 25 and 29 are currently in U.S. prisons or jails, compared to 3.7% of Latino men and 1.7% of white men in the same age range.¹² Although statistics on the rates of imprisonment in Native American communities are underreported, research has shown that Native Americans are dispro-

portionately represented in the criminal justice system,* constituting the second most imprisoned group per capita.¹³ Additionally, the number of people in federal and state women’s prisons has grown from 12,279 in 1977 to 106,174 in 2005—an increase of more than 760%.¹⁴ In New York State, the number of people in the state’s women’s prisons increased by approximately 645% from 1973 to 2006. More than 71% of people in New York State women’s prisons are people of color: almost 48% are African American, about 24% are Latina/o, and about 28% are white.¹⁵

These national patterns are replicated in New York State, which as a state imprisons the fourth greatest number of people in the country (after Texas, California, and Florida).¹⁶ As of June 2005, 482 out of every 100,000—about 92,769—New York residents were in the state’s prisons and jails.¹⁷ New York’s rate of incarceration is nearly 153% more than the national average. People of color are disproportionately represented in New York State prisons and jails. African Americans make up 15.9% of the state’s general population, but represent 50.4% of the state’s imprisoned population. Together, African Americans and Latino/as make up about 91% of the 14,000 people in New York City jails.¹⁸

Reflecting national trends, people imprisoned in New York State are disproportionately from low-income backgrounds, lacking educational and economic opportunities. 90% of people in New York City jails do not have a high school equivalency, and between 50 and 70% of the population reads English below a sixth grade level. More than 50% of people in New York State prisons do not have a high school diploma. Additionally, between 60 and 70% of prisoners in New York have a history of drug abuse.¹⁹ Nearly 60% of people in women’s prisons nationally were not employed full-time prior to their imprisonment, and about 37% had incomes of less than \$600 per month prior to arrest.²⁰

Concurrent with the expansion of prison populations, funding, and construction, the U.S. has also intensified its use of policing and surveillance since the early 1980s.²¹ Policing and law enforcement are disproportionately concentrated in low-income communities, communities of color, and poor urban areas, forcing these communities to bear the brunt of increased police presence and “law and order” agendas. This practice has been consistent throughout the past few decades, but has been exacerbated by the federal government’s “War on Drugs” and its current “War on Terror,” which have driven the rates of arrest, detention, and deportation of people of color, homeless people, undocumented residents, and low-income people to unparalleled heights.²² Heightened police brutality and profiling and the erosion of many vital social services and public benefits have produced a national climate in which people from racially and economically marginalized communities are more likely than ever to be arrested and sent to prison. As discussed in the next section, the increasing imprisonment of low-income people, people of color, and women has

*A 1999 Bureau of Justice Statistics report found that 4% of Native American adults were under some form of correctional supervision, as compared with 10% of African American adults and 2% of white adults.

occurred in conjunction with the disproportionate arrest and imprisonment of transgender and gender non-conforming people, and has led to particularly high risk of imprisonment for people who live at the intersections of more than one of these identities.

In the current era of correctional expansion, we have also seen a simultaneous intensification of human and civil rights abuses inside U.S. prisons, jails, and detention centers.²³ Pervasive sexual assault—at the hands of both correctional officers and other prisoners—has been documented as endemic and routine throughout U.S. correctional facilities, particularly in women’s prisons.²⁴ Egregious medical and mental health neglect and mistreatment of prisoners are also extensively documented.²⁵ Inadequate HIV and hepatitis C (HCV) prevention and treatment, insufficient primary medical care and mental health treatment, among other violations of prisoners’ rights, are prevalent.²⁶ The consistent use of isolation and solitary confinement as punitive measures and the resulting devastating psychological impacts have also been documented.²⁷ Racial segregation and pervasive racist harassment and abuse from correctional officials further compound the institutionalized discrimination within correctional facilities.²⁸ The range of such human rights violations in U.S. federal, state, and local custody inevitably produces a climate that can hardly be characterized as “rehabilitative.” It is in this already neglectful, abusive, and discriminatory environment that the experiences of transgender, gender non-conforming, and intersex people in prison must be understood.

Due to Pervasive Discrimination and Targeting, Transgender People are Disproportionately Poor and Homeless

As a group, transgender and gender non-conforming people are disproportionately poor, homeless, criminalized, and imprisoned.* Discrimination against transgender people in housing, employment, healthcare, education, public benefits, and social services is pervasive, pushing transgender people to the margins of the formal economy. With few other options, many low-income and poor transgender people engage in criminalized means of making a living, such as sex work. Transgender people also encounter pervasive violence and physical brutality at the hands of family members, community members, and police because of entrenched social stigma and prejudice. Although incidences are vastly underreported because of antagonistic or fearful relationships with law enforcement officials, organizations such as the New York City Gay and Lesbian Anti-Violence Project have found high rates of anti-transgender physical and sexual assault and harassment.²⁹ As a result of discrimination and violence, transgender people are often unable to access the minimal safety

* See Appendix D for two useful flow charts that illustrate the cycles of systemic poverty, homelessness, and imprisonment in transgender and gender non-conforming communities.

nets that are supposed to provide for low-income and poor people—such as shelters, foster care, Medicaid, and public entitlements. This lack of access forces many transgender people to remain persistently homeless, marginally housed, unemployed, and without healthcare.³⁰

For many transgender people, this social and economic marginalization begins at a young age when they face rejection by their families and lose familial material and emotional support. One advocate who works with LGBT youth describes the frequency with which they choose or are forced to leave their homes: “Most of the kids I work with leave home for a variety of reasons, but there’s almost always a connection between homophobia, transphobia, and the family. Often this is exacerbated by poverty, and is combined with violence and harassment.”³¹ Because of a widespread lack of understanding of transgender identities, transgender youth report particularly high rates of familial rejection. As one report on the treatment of LGBT youth in out-of-home care settings notes, “A high proportion of LGBT youth who end up in state care leave home or are ejected from their homes as a result of conflict related to their sexual orientation or gender identity.”³² Many youth attempt to access the foster care system but face discrimination and harassment there and end up as homeless runaways.* It is estimated that up to 40% of homeless youth in New York City are lesbian, gay, bisexual, or transgender.³³ Many LGBT youth run away from hostile families and an unwelcoming foster care system, leading them to engage in illegal or criminalized activities to survive, placing them at a higher risk for arrest and entanglement in the criminal justice system.

Transgender youth also face discrimination at school, leading to difficulty continuing or completing their education.³⁴ Transgender youth often encounter violence and harassment from fellow students, teachers, school administrators, and school safety agents in their daily attempts to use gender-specific bathrooms, locker rooms, and other sex-segregated facilities in schools. In 2005, a national survey of LGBT students found that just over 64% of LGBT students reported feeling unsafe at their school because of their sexual orientation specifically, and over 40% reported feeling unsafe because of how they expressed their gender. In addition to extensive rates of verbal harassment (just over 64%), the survey found that over a third of students had experienced physical harassment at school on the basis of sexual orientation, and just over 26% on the basis of gender expression.³⁵ More often than not, these incidences of verbal and physical harassment and assault went without staff intervention or response. Another survey of the transgender community in Washington D.C. found that over 40% of respondents reported not having finished high school.³⁶ Compounded by racism, poverty, and familial rejection, the pervasive transphobia and homophobia found in schools produce a climate in which many

* For example, in 2002 a New York City circuit court judge recognized the widespread and illegal discrimination that transgender youth face in the foster care system, ruling in *Jean Doe v. Bell* that transgender youth cannot be forced to wear only clothing associated with the gender assigned to them at birth. The court’s decision is available at <http://www.srlp.org/documents/JeanDoe.pdf>.

transgender youth find themselves unsafe and unable to complete educational programs.

These harsh realities compound the homelessness and lack of economic and educational opportunity for transgender youth. As one LGBT youth advocate noted,

For those who have access to a home in the first place, many youth are being kicked out or running away because of violence. You also have youth dropping out of school and ending up on the streets, or in the foster care system, where they're also being neglected or abused and where they are being forcibly housed according to the biological sex they were born in, not how they identify.³⁷

In this context, it is not difficult to understand why so many transgender and gender non-conforming young people find themselves homeless, without the support of families, communities, schools, or foster care, and become entangled in the criminal justice system.

Although there is a serious lack of research documenting the poverty and overimprisonment of transgender adults, the research that has been conducted reveals high rates of discrimination, low income levels, and significant exposure to risk factors related to imprisonment. Needs assessment surveys of the transgender communities in San Francisco and Washington D.C. illustrate the ubiquitous discrimination and bias that many transgender and gender non-conforming people encounter when trying to access basic healthcare, employment, and housing. A San Francisco needs assessment surveying 155 transgender people found that half of respondents had experienced discrimination in employment, and that 64% made less than \$25,000 a year. Almost 20% did not have stable housing,³⁸ and over 40% lacked health insurance. Of the respondents who did have health insurance, very few had insurance with coverage of treatment related to their transition. Of that small group, most respondents had immense difficulty locating a competent doctor with whom they felt comfortable to provide transition-related services.³⁹ In Washington D.C., nearly 30% of the respondents reported having no income at all, and another 32% reported earning \$10,000 or less per year. Forty two percent of the respondents were unemployed, and 47% had no health insurance,⁴⁰ more than three times higher than the 15.2% national rate a year earlier.⁴¹ Thirty two percent of the respondents reported some form of discrimination in their attempts to access and maintain housing, including outright rejection, denial of conditions available to other tenants, and harassment by a landlord or fellow tenant. As the vast majority—over 94%—of participants in the sample were people of color (70% of whom were African American), overlapping patterns of discrimination become apparent from this data.

High rates of HIV/AIDS, sexually transmitted infections (STIs), hepatitis C (HCV), depression, and mental illness, along with the lack of adequate medical treatment and transition-related care have been recognized as urgent health concerns for transgender and gender non-conforming people in the U.S.⁴² The trans-

gender needs assessment in San Francisco found that 35% of MTF (Male-to-Female) respondents were HIV+. The findings of the D.C. assessment were close behind, with 25% of respondents overall and 32% of MTF respondents reporting that they were HIV+. ⁴³ This high rate of HIV is the result of a range of factors, including lack of prevention and harm reduction services, high rates of intravenous drug use, and high-risk sexual activity. ⁴⁴ Although 52% of respondents had taken hormones at some point in their lives, and 36% were currently taking some, only 34% of that group reported that a doctor monitored their blood levels while they were taking hormones, and 58% reported acquiring the hormones from friends or on the street, putting them at a greater risk for lower quality and inconsistent treatment, as well as heightened exposure to police criminalization. In these contexts, hormone injection without sufficient medical supervision or sterilized materials can also function as a vector for HIV transmission.

Lack of access to healthcare is a significant factor contributing to transgender imprisonment. Service providers and others working directly with the community often connect involvement in criminalized activity to efforts to access necessary and appropriate medical care. A Washington D.C.-based transgender advocate has witnessed this pattern:

In my experience working with the trans community, I have seen many transgender people become entangled in the criminal justice system through activities they engage in to raise money for and access safe, adequate, and nondiscriminatory medical treatment related to their transition. It is easy to see the direct connection between discrimination in trans healthcare and the over-incarceration of transgender people.

Additionally, as one advocate who works with transgender communities in California noted, this systemic criminalization of low-income transgender women of color also occurs at the level of over- and misdiagnosis: “Our communities are being labeled as having schizoaffective disorder or borderline personality disorder simply because they’re extremely traumatized from a lifetime of rejection and abuse, and use survival tactics that are also part of surviving as people of color and being poor, which seems to clinicians as ‘manipulative’ and ‘pathological.’” ⁴⁵ Ill-equipped to provide adequate mental healthcare, correctional facilities are increasingly becoming depositories for people with actual or perceived mental health concerns, ⁴⁶ a trend to which transgender and gender non-conforming communities have been disproportionately subject.

These multiple types of discrimination result in transgender and gender non-conforming people becoming disproportionately poor, or homeless; unable to access healthcare, employment, or housing; and forced to endure persistent discrimination and violence within those institutions as well as in their homes and communities. Because homeless shelters are sex-segregated and often riddled with transphobia—forcibly housing residents according to their birth sex and not their gender identity, thereby placing them at a high risk for violence and harassment ⁴⁷—

homeless transgender people are unable to access even the minimal support services available to non-transgender people who are marginally housed and without income.⁴⁸

C. Survival Crimes and Police Profiling Contribute to Transgender Arrest and Imprisonment Rates

In the face of poverty and discrimination, many transgender people engage in criminalized activity such as sex work, the drug trade, or theft, or become entangled in the criminal justice system through other poverty-related arrests involving loitering, turnstile jumping, or sleeping outside.⁴⁹ These activities, in combination with police profiling of transgender individuals as mentally unstable and violent, predisposed to involvement in sex work, inherently deceitful, or all of the above, place transgender people—particularly low-income transgender women of color—at an increased risk of contact with law enforcement. Such contact almost inevitably leads to violence and abuse at the hands of police officers acting on individual and systemic transphobia. In a recent national report on anti-LGBT police violence, Amnesty International found that anti-transgender police brutality occurs frequently throughout the country:

Transgender people, particularly low-income transgender people of color, experience some of the most egregious cases of police brutality reported to Amnesty International. AI's findings suggest that police tend to target individuals who do not conform to gender stereotypes that govern "appropriate" masculine and feminine behavior. Race plays an important factor in determining the likelihood of an LGBT person being targeted for police abuse, indicating that such abuses likely stem from racism as well as homophobia and transphobia. AI has also received reports of cruel, inhuman and degrading treatment of LGBT individuals during arrest, searches and detention in police precinct holding cells. AI heard reports of officers searching transgender and gender variant individuals in order to determine their "true" gender. AI also heard allegations of misconduct and abuse of LGBT individuals in holding cells and detention centers, including the inappropriate placement of LGBT individuals in situations which compromise their safety. In particular, transgender individuals are often placed in holding cells according to their genitally determined sex, rather than their gender identity or expression, placing them at greater risk of verbal, physical and sexual abuse at the hands of other detainees.⁵⁰

One San Francisco-based survey found that police officers were the perpetrators of 50% of incidents of transphobic and homophobic violence reported by transgender people.⁵¹ Transgender people report consistent police harassment, brutality, and profiling, a trend many attribute to the stereotyping of transgender women as sex

workers⁵²—regardless of their actual engagement in sex work—as well as transgender people’s inability to acquire identification that matches their gender expression.⁵³ As one interviewee, a young transgender woman, describes:

My friends of trans experience get arrested like everyday. Sometimes they get arrested for sex work even when they’re not working, the cops are like “She’s trans, let’s arrest her.” Cops are looking for trannies. But when we need help they’re not there, or when somebody is stalking us or somebody is harassing us, they never there. They really don’t care and they don’t want to hear it.⁵⁴

In recent decades, changes in policing of neighborhoods that were traditional meeting places for transgender community members—such as the West Village, Chelsea Piers, and Meat Packing District in New York City—have contributed to increasing rates of arrest.⁵⁵ One youth organizer describes the changes in the last decade:

The fact that the ‘Quality of Life’ [QOL] policies were initially tested on the 6th Precinct [New York City’s West Village] in the early 90s is not a coincidence. As one of the few remaining safe spaces for low-income queer and trans youth of color and homeless people, the QOL policies specifically criminalized these communities to remove them from sight and to maintain the ‘quality of life’ for the people who could afford to live in the West Village. The policies continue today imposed all over New York City and have been mimicked in many urban centers through out the United States. These types of policies are directly connected to gentrification projects that seek to displace and criminalize poor communities and communities of color.⁵⁶

It is through these patterns of systemic discrimination that transgender and gender non-conforming people are criminalized and become over-represented in the criminal justice system. Once arrested, they frequently receive severely inadequate legal representation, and experience ignorance or prejudice on the part of their attorneys, prosecutors, and the courts, which can lead to disproportionately long sentences for minor offenses.⁵⁷

The rampant discrimination that transgender people face in employment, social services, and healthcare—as well as their consequent poverty, homelessness, and increased risk of contact with the police—results in their disproportionate arrest and imprisonment. Much of the discrimination and violence experienced by transgender people outside of the criminal justice system is then replicated and amplified inside of it. As one interviewee summarized, “We go from one world that hates us to another one.”⁵⁸

IV

DAILY REALITIES: Conditions of Confinement for Transgender & Intersex People

We're seen as freaks or sick either mentally or physically or both. I know this to be true from sitting back and simply living day to day the dangerous life of a Puerto Rican pre-op transsexual locked up behind bars. I ask God everyday "when's this nightmare gonna be over."⁵⁹

I broke the law but I never did anything to deserve this... You live in fear and you do what you do to survive.⁶⁰

Many of the misunderstandings and biases about transgender people that fuel discrimination in the outside world are pervasive within the criminal justice system and contribute to discriminatory treatment of transgender, gender non-conforming, and intersex people in prison. Discrimination and abuse that transgender, gender non-conforming, and intersex people encounter in prison are centered on issues of placement, access to medical care, access to showers, and clothing and appearance. Drawing on interviews with SRLP clients and their advocates, this section describes how harassment and violence are promoted and facilitated in these contexts.

Placement

Interviewees consistently reported that placement within prisons was central to their safety concerns. U.S. correctional facilities are sex-segregated, and house prisoners according to their birth-assigned sex and/or their genitalia.⁶¹ Transgender women who live and identify as women but who were identified as male at birth are generally placed in men's facilities. In men's facilities, transgender women, gender non-conforming people, and intersex people are frequent and visible targets for discrimination and violence, and are subject to daily refusals by correctional officers and other prisoners to recognize their gender identity.⁶²

Two of the main types of housing in which a prisoner may be placed are general population and protective custody. Protective custody units are reserved for people who are at a higher risk of violence or harassment by other prisoners, those who are

receiving additional punishment, or those who are seen as more likely to commit violent acts towards others. Individuals placed in protective custody can include judges, politicians, people convicted of sex-related offenses, police officers, or people who might be targets of violence based on their gender expression or sexual orientation. The level of safety that protective custody actually provides, however, varies among facilities, sometimes providing a safe refuge from the violence of other prisoners, while other times isolating prisoners, and thereby placing them at a greater risk of violence at the hands of correctional officers.

One SRLP client, Jacquie, is currently seeking access to protective custody, hoping that such a placement would reduce her exposure to the violence and harassment she has experienced from other prisoners in the general population.

[Prison] is a horror show. It’s madness in here. Totally bizarre and crazy, and you think ‘this can’t be real.’ But it’s everyday life. The best thing about it is being locked up 23 hours a day, 7 days a week. Otherwise I would have to survive in open population.⁶³

Sunday, a former prisoner, echoes Jacquie’s sentiments, describing a specific instance in which she was experiencing so much violence and abuse in general population that protective custody seemed like the only alternative to death: “Can you imagine what it must have been like for me to have requested that? But they wouldn’t even do that for me.”⁶⁴

Other SRLP clients report that placement in protective custody is undesirable because it makes them more vulnerable to harassment and assault by correctional officers. Clients also cite the constraints it places on their relative mobility and access to vocational and recreational programs. Bianca, an SRLP client who is currently imprisoned in general population and pursuing litigation in connection with incidents in which she was raped by correctional officers, observes, “PC [protective custody] is even worse cause there are no cameras.”⁶⁵ For Bianca, placement in protective custody would mean less opportunity to document an ongoing pattern of abuse she experiences. Another interviewee reports, “I’ve spent 95% of my time in PC where there are no programs,”⁶⁶ highlighting the negative impacts of denying educational, rehabilitative, and vocational programming to those housed in protective custody units.

Vicki, who is currently in general population, is also critical of the isolation of protective custody, explaining, “I need to be in general population. I need the freedom to move, if you can call it freedom.”⁶⁷ Carrie Davis, the coordinator of the Gender Identity Project at the NYC LGBT Center, echoes Vicki’s sentiments.

Many trans people I’ve worked with prefer to be in general population because finding their place in the prison culture, although it is an exploited and vulnerable one, is preferable to the isolation of protective custody.⁶⁸

Regardless of whether or not it provides some level of protection or safety, the detrimental physical and psychological impacts of isolation prove protective custody to

be a highly undesirable alternative to placement in general population.⁶⁹ Our interviewees' experiences reveal that as long as placement in prisons is sex-segregated and based on genitalia and birth-assigned sex, and as long as isolation is the only alternative to living in general population, any placement for transgender, gender non-conforming, and intersex people in correctional facilities is dangerous and detrimental.

Harassment & Assault

Every person who was interviewed reported encountering some form of harassment and/or assault during their imprisonment. The persistent physical, emotional, and sexual abuse reported included verbal harassment, physical and sexual assault, humiliation, and rape.

Physical and Sexual Abuse

Because transgender, gender non-conforming, and intersex people in men's prisons are often highly visible, they become frequent targets for homophobic and transphobic violence and brutality.⁷⁰ As one interviewee put it, "I'm 6'3"—I'm like a walking target."⁷¹ Interviewees reported that much of this violence and brutality comes at the hands of correctional officers and other prison employees. As Bianca notes, this pervasive abuse is life-endangering: "My life is constantly threatened. I just want to get out of here alive."⁷² She describes repeated instances of rape and assault:

I'm not ashamed—it's war in here. The administration is against us. Something has to be done, and all they say is 'Act like a man!'... [There is] lots of harassment from other prisoners, but they're sort of scared of me. The correctional officers are the ones who are the most violent. They're the ones to be scared of...

I'm raped on a daily basis, I've made complaint after complaint, but no response. No success. I'm scared to push forward with my complaints against officers for beating me up and raping me. I was in full restraints when the correctional officers assaulted me. Then after they said I assaulted them. All the officers say is 'I didn't do it.' The Inspector General said officers have a right to do that to me. That I'm just a man and shouldn't be dressing like this...

When you get beat up real bad and they don't want to take you out to get checked out, they put you in the snake pit. They threw me in the snake pit for 6 months after beating me up. 6 MONTHS! They're animals... I got beat up by 12 officers. I'm only 123 lbs.⁷³

After assaulting her, Bianca reported that the correctional officers tore up her mail and repeatedly denied her urgent medical treatment. In a letter to the Office of Mental Health, Bianca describes another incident in which a correctional officer assaulted her:

I had my face smashed into a wall by C.O. [name deleted], after asking him politely to please don’t touch me, when he was pulling and tugging at my sweater. I’m hurt, cause he’s not to put his hands on females, and that being the case, why did he put his hands on me? ‘I am a woman’...Now I’m having a nervous breakdown, because my facial hair is growing, and I was deprived a shower and razor, all cause a officer smashes a woman’s face into a wall. That must make him a real man hitting a woman (me).⁷⁴

For Bianca, this type of outright violence is accompanied by ongoing harassment, discrimination, and humiliation:

At my last parole hearing they teased me, called me names. They shouldn’t be able to do that at a parole hearing...One Corrections Officer gave me women’s clothes, but then wrote me up the next day for attempted escape. They took my wedding ring—they said ‘homos can’t get married’...They make us feel like we’re the bad ones...

Now there’s a new charge just for walking with trans people (or fags, as they call us) for soliciting sex, they say. They think we’re all prostitutes. We get blamed for everything.⁷⁵

In addition to being verbally and physically harassed based on their gender identity, interviewees reported being issued disciplinary infractions for suspected “homosexual activity” based on their perceived sexual orientation. Such infractions can damage their parole eligibility and lead to more serious punishments.

Humiliation

Harassment also takes the form of humiliation focused on gender identity and expression. For instance, Vicki, a transgender woman imprisoned in general population in a maximum security men’s facility in upstate New York, reports many of the same types of harassment from correctional officers:

It’s the correctional officers that create trouble. They want me to be an out-cast...One guard put liquid soap in my toilet so it would overflow with bubbles. He hung my underwear all over the place as everyone was heading to chow so that they would all see. It was horrifying and humiliating. Alls I expected was to be left alone. One month after, I filed my complaint, no response. It’s a lot of work to write someone up. Finally he was sent on vacation. That’s it. But I’m still living with his friends...I feel like I’m being held hostage.⁷⁶

Vicki describes another incident in which a correctional officer took a love letter she had received from another prisoner, photocopied it, and posted it throughout the facility—the bulletin boards, the infirmary where she worked, and in the dining hall—for correctional officers and prisoners to see. “Can you imagine being that humiliated? It’s a joke for both correctional officers and prisoners. For everyone.”⁷⁷

Stefanie also describes humiliating incidences of harassment from correctional officers:

One time I had 2 bras missing from my laundry, which I reported to the CO’s. A Correctional Officer came on the loud speaker and announced it to the entire prison. It was one of the most mortifying things that’s ever happened. I couldn’t believe it.

There’s too much of a loophole for people to do whatever they want with us... They’ll go out of their way to make your bid a living hell—something needs to change. We need to better monitor what prison staff do and how they conduct themselves.⁷⁸

Lori, a transgender woman currently in the protective custody unit of a maximum security men’s prison in upstate New York, describes the greater impact of this kind of regular treatment:

It’s the little things, the things that are just a part of life here, but they add up to hundreds of little things all geared toward making life miserable for prisoners like me, but without risking discrimination complaints or other types of complaints against correctional officers or other staff.⁷⁹

Bea, a transgender woman imprisoned in the protective custody unit of a maximum security men’s facility in upstate New York, reports that her cell’s water and power have been shut off by correctional officers, she has been issued false tickets, and has been assaulted by prisoners at the instigation of correctional officers. The correctional officers in her unit have also denied her access to paper and pens. Bea reports, “Corrections allows all staff to abuse inmates, cheat inmates out of their privileges, and write false tickets. And the good-old-boy club supports this throughout the ranks.”⁸⁰ Maverick, an intersex person who is currently imprisoned, also describes the daily behavior of correctional officers: “They laugh at you, they call you names, they collapse you emotionally.”⁸¹

Searches

Unnecessary frisks and abusive strip searches are also commonly reported by SRLP’s imprisoned clients. Vicki explains, “They use frisk as means of harassment, with all their friends watching. After frisking me they say, ‘I need a cigarette now.’”⁸² Sunday, a transgender woman who has been imprisoned in numerous New York prisons and jails, reports similar harassment:

One or two officers got out of line—friskings and strip searches 4-5 times a day! Non-trans people don’t ever get searched unless they were suspected of something. If they want to they can just put you against a wall. And everybody knows there’s a big difference between patting you down and massaging you, feeling you up. But I couldn’t say anything cause I didn’t want no trouble.⁸³

People with intersex conditions also report experiencing regular unnecessary and forceful strip searches. One transgender attorney in Oakland, CA has noted that correctional officers will often justify these excessive strip searches by the need to “decipher” the ambiguous gender of people with intersex conditions:

People with intersex conditions who have not been surgically ‘normalized’ are seen as ‘freaks’ in the prison system, because their bodies defy easy categorization as ‘male’ or ‘female.’ People in prison with intersex conditions have been put into punitive isolation for no other reason than because administrators did not know whether to place them in men’s or women’s prisons. One client of mine who has an intersex condition was repeatedly strip searched by custody staff for no other reason than to see her genitalia. She did not identify as transgender, but the type of mistreatment, harassment, and stigmatization she experienced was similar to that experienced by my transgender clients.⁸⁴

Although non-transgender-identified people with intersex conditions and transgender-identified people experience distinct forms of discrimination in U.S. prisons and jails, it is clear that there are overlapping patterns of neglect and abuse. Both groups report enduring consistent and humiliating strip searches at the hands of correctional officers who target those with genitalia and identities that do not conform to conventional notions of gender and sex.

Punishment

A central aspect of the harassment reported by SRLP’s clients includes exaggerated punishments. As Lori articulates,

When the average prisoner gets in trouble, they are given average punishments commensurate with the offense. When someone like myself gets in trouble, it gets blown far out of proportion and usually results in the gay or transgendered prisoner getting much harsher punishments than appropriate for the offense or in comparison to other non-gay or non-transgendered prisoners.⁸⁵

Interviewees report being subjected to disproportionate isolation and solitary confinement, where they experience regular physical and sexual assault, harassment, and the denial of food and urgent medical services by correctional officers. At times, the punishment is directly linked to gender identity or expression (in addition to

race, ethnicity, and HIV status), whereas in other cases transgender prisoners are subject to disproportionate and therefore discriminatory punishment for common offenses. Lori served a 30-day sentence of solitary confinement for possession of a bra.⁸⁶ Bianca was placed in solitary confinement for six months after she was assaulted by correctional officers. She also received an additional sentence of two to four years because she was caught in possession of a weapon that she was carrying to defend herself against a group of prisoners who were continually assaulting her. To compound the situation, correctional officers are almost never reprimanded or even reported for the majority of these violations because of the serious lack of formal accountability or effective systems of recourse for imprisoned people.

Lack of Accountability

Such lack of accountability measures within prisons allows abuse of transgender prisoners to proceed with impunity. As one interviewee, Bea, reports:

I've filed close to 100 grievances in the last 6 years. Most are met with retaliation and the system is so corrupt that evil guards are supported all the way up to the central office level. In NYS, prison guards can do no wrong.⁸⁷

Lori also describes the inadequacy of the correctional grievance procedure:

There was no retaliation [to my claims] per se, but the way in which NYS DOCS [New York State Department of Corrections] prison staff and officials manage to give misdirection, hide identities of responsible staff members through conspiracies of silence and evasive propaganda, and reinterpret complaint of prisoners into entirely different issues that they refuse to address, there is often little need to retaliate because the inmate's problem is rarely even resolved.⁸⁸

Glaysa has also emphasized the lack of institutional recourse for discrimination and abuse:

The grievance procedure is suppose to be to help us, but a lot of the time this grievance procedure is a joke because most of the time they rule against us even though we have legit grievances. I have filed several grievances on the improper medical care and the treatment of myself as a transgender. Most of the grievances were ignored and I was harassed and threatened for writing these grievances.⁸⁹

One legal advocate for transgender prisoners emphasizes the thoroughly insufficient nature of correctional grievance procedures:

When a transgender, intersex, or gender non-conforming person experiences rape or sexual assault and makes the courageous decision to do something about it, the choices are often profoundly limited. One problem is a lack of evidence. Correction officers typically refuse to allow inmates access to medical care after a rape or assault or threaten retaliation if the

inmate insists on accessing medical care, so no medical records exist. When inmates try to keep and hide physical evidence of an assault, such as semen, correction officers can usually find it, destroy it, and retaliate against the inmate. Videotapes of incidents, when they exist, often mysteriously disappear or ‘fail to record.’ In one case, an assault against my client was videotaped according to procedure, but no tape was produced during discovery...Another problem is a lack of legal service providers, agencies, law offices, or other potential advocates who are able and willing to take these kinds of cases.

An even more major obstacle, however, is retaliation against inmates for speaking up. My clients have been punched, choked, thrown against walls, threatened with murder, framed with contraband, described to other inmates as an informant, and threatened with all of these acts in retaliation for receiving a letter or a visit from me or my colleagues or for filing a grievance. Understandably, many transgender, intersex, and gender-non-conforming inmates falter in their determination to bring a lawsuit or press their grievances in the face of these acts. As a legal service provider, it is difficult to contact my clients when I know from them that correction officers are reading my letters and even claim to listen in on attorney-client visits. It is also frustrating not to be able to contact someone I believe I can help because she believes the officials’ threats that they will kill her if I do.⁹⁰

Abuse by Fellow Prisoners

Although the majority of interviewees reported that the violence and abuse they encounter are at the hands of correctional officers, many interviewees also described incidences of assault and harassment from other prisoners. Importantly, these incidences were never without either the implicit permission or active participation of correctional officials. Stefanie articulates the forces underlying such abuse:

You have guys in here that for whatever there reasons were a threat to there environment. Maybe cause they find a transsexual looks good so now they question there own sexuality or manhood. You also have male prisoners who come from strong religious backgrounds and are taught from early on in there childhood to look at that as a repulsive thing and that this type of lifestyle is sinful and wrong. But they have such a distorted, twisted, and warped way of looking at things that they use there feelings of anger, bitterness, impotence, lust, denial, rage, bigotry, hatred, feeling power over someone weaker, non-understanding, homophobia, and peer pressures to inflict abuse and violence on transgenders.⁹¹

Stefanie also reports daily harassment in the form of consistent verbal humiliation:

I got a lot of slack from a lot of the CO's there and faced a lot of prejudices from inmates as well. They'd call me 'lizard,' faggot, homo, or to get me really upset, they'd call me by my boyname. 'Lizard' is a derogatory term directed at a lot of the transsexuals or "queens" in prison...Supposedly it's not the look to hang out with a 'queen' while in prison."⁹²

Bianca reports that she is subjected to so much harassment from other prisoners that she has stopped attempting to go to meals. "I don't go to breakfast, lunch, or chow, so that I can stay out of people's way. They come to me. I eat 5 or 6 pieces of bread a day. I don't go to meals—I can't."⁹³

Glaysa, a transgender woman imprisoned in a maximum security men's prison in upstate New York, also reports persistent violence and harassment:

I have faced violence where I have been beaten and raped because of my being a transgender with female breasts and feminine [sic]. I have been burned out of a cell block & dorm because I wouldn't give an inmate sex. I have been slapped, punched, and even threatened because of my being a transgender that told another inmate 'No' when they told me they wanted sex from me or my commissary buy. I have been harassed verbally and have had others grab my female breasts and ass because they knew I was transgender and figured they can get away with such actions—which they do most of the time due to the fact no one cares what happens to us transgenders inside. I've been subjected to all kinds of verbal harassment from 'look at that inmate scumbag transgender' all the way to threats and sexual harassment physically as well as verbally.⁹⁴

Another aspect of the abuse that transgender, gender non-conforming, and intersex people in prison face is collaboration between correctional officers and other prisoners to implement forced prostitution and coerced sexual engagement. Sunday describes the realities of prison prostitution:

Lots of the girls were pushed into prostitution—they were pushed into sexual things in order to get by. Some were just harassed, abused, spit on. Different categories depending on how you looked. Some of us got picked out as soon as we got there, even before we got classified—apparently somebody who was doing life decided they took a liking to me. They moved me in with him, I didn't have a choice. But I also didn't have the violence like other girls, cause I was fucking one man. On the other hand, I couldn't stray—I couldn't leave him—or he'd kill me. It wasn't my choice, it was told to me. They told me he'd take good care of me. The guards orchestrated all of this. These were the officers who were selling us off, not the inmates. They said "You're gonna be with him or in solitary."⁹⁵

Sunday's description of the sexualized violence she experienced at the hands of both correctional officers and other prisoners was echoed throughout the interviews. She

goes on to explain: “If you’re not fucking somebody, you’re gonna get fucked by everybody.”⁹⁶

In his testimony during a U.S. Department of Justice hearing on rape in prison, one legal advocate for transgender prisoners remarked on the widespread practice of correctional officers forcing transgender people in prison into prostitution.

A common form of sexual abuse of transgender, intersex, and gender non-conforming people in prison is forced prostitution. In these systems, correction officers bring transgender women to the cell of male inmates and lock them in for the male inmate to have sex with. The male inmate will then pay the correction officer in some way, for example with cigarettes or money. The correction officer sometimes gives a small cut to the woman and brings her back to her cell.

The rape and sexual exploitation of transgender, intersex, and gender non-conforming people in some facilities is very open. Sometimes all or almost all the staff and officials in a particular facility know about the abuse, but even those who do not participate in it maintain a rigid conspiracy of silence.⁹⁷

As one interviewee explains, “...you’re the lowest rung on the totem pole of prison life. You have to pay somebody to protect you, but most people won’t be seen talking to you, or let you sit at their table, or touch their food.”⁹⁸ This low position within the prison hierarchy places transgender, intersex, and gender non-conforming people in prison at increased risk of violence and abuse by other prisoners.⁹⁹ Forced prostitution, sexual abuse, and the practice of exchanging sex for protection renders this population highly vulnerable to sexually transmitted infections (STIs), especially HIV and hepatitis, which are widespread in U.S. correctional facilities.¹⁰⁰ Verbal harassment, physical abuse, and sexual assault and coercion create an exceptionally dangerous climate for transgender, gender non-conforming, and intersex people in prison. As Lori explains, these factors compound one another to produce a climate in which abuse and discrimination is inevitable: “...for transsexual prisoners like me, it is very hard to stay out of the limelight, in a problem free existence.”¹⁰¹

Denial of Medical Care

It is well documented that healthcare in U.S. prisons, jails, and detention centers is severely inadequate in terms of both accessibility and quality.¹⁰² Following an extensive investigation of the recently privatized healthcare system in New York State prisons, a New York Times editorial emphasized the dilapidated state of correctional medical care, asserting: “Prison inmates are literally the sickest people in our society. The authors continue:

Shoddy care and the denial of care are unfortunately not unique to private companies, which do not provide the majority of the health care that is supplied to inmates. Many publicly run systems, which provide most of the care for the nation's inmates, are equally bad. The root problem is that the country has tacitly decided to starve the prison system of medical care, even though AIDS, tuberculosis and hepatitis are rampant behind bars, and roughly one in six inmates suffers from a serious mental illness.¹⁰³

Compounding a context in which the provision of general medical care is neglectful and inconsistent if not outright abusive, care related to mental health and sexually transmitted and preventable infections such as HIV/AIDS and hepatitis, among other conditions, remains particularly insufficient.¹⁰⁴

Exacerbating these barriers to adequate healthcare, transgender, gender non-conforming, and intersex people in prison receive additional forms of care-related discrimination and neglect. Reports of the denial of basic care, discriminatory providers, denial of hormones and other transition-related treatments, and high rates of illness and STIs are common, and reveal serious health risks for transgender, gender non-conforming, and intersex people, as well as all people, in prison. Despite the fact that medical experts agree that gender-related healthcare sought by transgender and intersex people is medically necessary, non-experimental, safe, and effective,¹⁰⁵ these services are still routinely denied to prisoners. According to one interviewee, "Medical services are poor for the average inmate. They see gender-related services as cosmetic, not essential to transition and to a healthy life."¹⁰⁶

Though not all transgender and intersex people undergo medical treatment related to their gender, those who do consider their treatment both medically necessary and a central aspect to their general well-being.* In order to obtain hormonal therapy during imprisonment in New York State, transgender and gender non-conforming people must have been diagnosed with Gender Identity Disorder (GID) prior to imprisonment and already be taking hormones pursuant to a prescription.¹⁰⁷ Even for those who can overcome the administrative hurdles necessary to be deemed entitled to gender-related care, such care is often inconsistent, featuring incorrect dosages of hormones and arbitrary termination of treatment. Denial of gender-related medical care can lead to serious medical and mental health conditions for prisoners, and can lead some to turn to hormones purchased from other prisoners, self-surgeries, and other high-risk alternatives that often make transgender, gender non-conforming, and intersex people increasingly vulnerable to formal dis-

* Gender Identity Disorder is recognized as an illness by the medical community. Diagnostic criteria are promulgated by the American Psychiatric Association (APA) and the disease is listed in the ICD-10. Treatment of GID with psychotherapy, hormonal treatments, and surgery (also known as triadic therapy) is recognized as appropriate and standard care by both the APA in its treatment text, "Treatments of Psychiatric Disorders." Triadic therapy is also recognized as medically necessary and as the standard of care by the Harry Benjamin International Gender Dysphoria Association, the largest professional organization of providers of care to transsexual patients.

ciplinary measures and unofficial punishment for having engaged in criminalized activity. Vicki, who was diagnosed with GID prior to her imprisonment, explains:

Hormones are sporadic. It’s a major chore to get refills. They took me off Premarin [commonly prescribed hormone] for FOUR MONTHS. You have no idea the effect of that. I filed a grievance, wrote letters, finally won them back after 4 months. Here I have to apply monthly, and they lie about not having them. They’re trying to lower my dosage. They treat hormones like they’re narcotics or something.¹⁰⁸

Dr. Nick Gorton, a transgender health expert, describes the severe health consequences that termination of treatment can have for transgender patients:

Numerous studies in the medical literature as well as the clinical experience of experts in the field demonstrate that denial of sexual reassignment therapies not only cause patients significant anguish and suffering but that it also results in significant morbidity and mortality. Untreated transsexual patients have a suicidality of 20-30%, which is reduced to less than 1-2% after treatment. Delay of treatment for transsexual patients not only exposes them to a longer duration of pain, suffering, and decreased social functionality, but also unnecessarily places their lives at risk. The longer the duration of suicidal feelings, the greater risk that a patient will be a completer. Treated transsexual patients have a durable and sustained remission of their illness resulting in decreased psychiatric morbidity and mortality as well as improvements in well-being, social and occupational functioning, and interpersonal relationships.¹⁰⁹

If a transgender person in prison does not meet the administrative requirements for receipt of hormone treatment and is therefore denied treatment they may have been pursuing outside of prison, the effects described by Dr. Gorton are amplified. Bianca describes her situation: “I was diagnosed with GID inside, and because of that they said I couldn’t get hormones. I was on bootleg hormones from other girls in here. I got found out, got my hormones taken away, and got moved from the block.”¹¹⁰ Bianca’s situation is not unusual. Many transgender people outside of prisons cannot access healthcare due to poverty, discrimination, and other barriers. Upon entering prison, even if they have been taking hormones from an alternative source, many are unlikely to be able to produce a paper trail that would entitle them to continue treatment under New York State’s current policy.

For Bea, the denial of care results in serious trauma and emotional anguish:

This birth defect distresses me so so much that I would rip it off right now if I could. I’ve told Mental Health several times that I will not die with this on me, but still they do nothing. I’ve been doing it intelligently to preserve needed tissue. But at this point I feel I just slice it off, put on my nightgown (pink t-shirt) and go to sleep forever.¹¹¹

Bea has faced many obstacles in her attempts to access hormones, and is completely unable to access Sex Reassignment Surgery (SRS). While in prison, Bea tried to perform surgery on herself three times with personal items she had in her cell. The first time she was caught, placed in isolation for 60 days, and put in a disciplinary segregation unit for a week. The second and third times she was taken to the hospital.¹¹² Unable to access medical care that would support and affirm her gender identity, Bea has been driven to dangerous alternatives that demonstrate the urgency of her experience.

Transgender People in Prison at High Risk for HIV/AIDS

HIV/AIDS in prison has reached endemic proportions,¹¹³ particularly for transgender, gender non-conforming, and intersex people, who often find themselves at a higher risk for contracting HIV and for receiving inadequate and discriminatory treatment. Sunday, who is HIV+ and an active member of an HIV+ homeless transgender advocacy group in New York City, describes the impacts of inappropriate medical care for HIV/AIDS on transgender, gender non-conforming, and intersex people in prisons:

Last time I was inside they told me they couldn't give me my regimen that I needed, because I'm HIV+ too. Even though they were in contact with my doctor. They told me they didn't have the meds I needed, so I chose not to take anything. Thank god everything was OK, because I could have died. You can't play with HIV medication. I'm wondering how many girls go in there non-resistant and come out resistant. And the psych meds are the same way.¹¹⁴

HIV and AIDS are highly stigmatized in prison, and people who are HIV+ are consistently denied proper treatment and discriminated against based on their HIV status. Failure on the part of correctional administrators to promote harm reduction strategies further compounds the problem. Sunday describes this difficult situation:

[T]hey don't give you condoms because they say you're two men and you're not allowed to have sex. What are you supposed to do? They know it's happening. You're in bunks a foot from each other, and if you blow someone up, they'll cut you in the bathroom. Who you gonna tell? The police? Most of the time you pray they're cute and you do what you gotta do. What do you expect? Men go in there for a long time, don't have sex, and then here we come? And you won't give us condoms because you don't think we're having sex. But what do you expect? It's not a coincidence. There's no information about HIV, no condoms, no classes. There's almost no testing. There's nothing. And there are people getting raped all the time.¹¹⁵

The high rates of rape, sexual coercion, and prostitution and the denial of condoms and safer sex education put transgender, gender non-conforming, and intersex pris-

oners at a much higher risk for HIV infection than other prisoners. This high-risk situation is then exacerbated by widespread failure on the part of correctional administrators to provide appropriate medical care for prisoners with HIV.

Showers and Lack of Privacy

SRLP’s imprisoned transgender, gender non-conforming, and intersex clients report that accessing shower facilities safely is extremely difficult. Because most facilities have group showers, transgender, gender non-conforming, and intersex people fear showering because of the unwanted sexual attention they receive from other prisoners and correctional officers. SRLP’s clients and advocates have had little success in their efforts to obtain permission to shower privately. Bea explains, “I asked for a medical permit to take private showers but individual correctional officers continue to try to force me into group showers. They constantly try to force me to take showers with men and if I refuse they won’t give me one.”¹¹⁶ Bianca recalls, “Somebody ran up on me in the shower and the officer just sat there and laughed.”¹¹⁷ Lori continues:

It is really uncomfortable taking a shower in a room with several other men, at least some of which are incarcerated for some type of sex crime, and every one of them has his eyes all over your body. I could get rich by charging men to see my body in here, but would rather be poor and do without the uncomfortable sensation of being watched so intensely.¹¹⁸

Sunday echoes Lori’s sentiments:

And the showers were the worst. They are one big open area with shower heads. If you get in there with titties, or with any other work done, it becomes a masturbation-athon. The officers are right next to you, they can see everything. How I survived is sticking with the girls. Or you find somebody big and you become the typical jailhouse punk.¹¹⁹

Another client of SRLP reports similar harassment in the shower setting:

I have trouble showering safely because that’s when others come in the bathroom and always try to see me naked, ask me for sex, or try to take sex from me even though I’m unwilling to do anything sexual with them.¹²⁰

An attorney at SRLP describes one particularly disturbing experience in advocating for access to private showers for two clients at a New York State prison, which clearly illustrates correctional officers’ indifference to the abuse that accompanies this basic daily function for transgender, gender non-conforming, and intersex people in prison:

I have two clients in the same facility. I heard from one, a trans woman, that she was not being allowed to shower alone, and was afraid to shower

in the group shower because she has breasts and other feminine characteristics and already gets a lot of sexual attention. She feared assault in a group shower, but was being denied private showering so she wasn't showering at all. My other client, a person with an intersex condition, was being allowed to shower alone, so I reached out to the superintendent to ask that the trans client receive the same treatment. It seemed clear that both of these clients were vulnerable to assault in group showers. The superintendent told me "Our policy is to prevent pregnancy." He was making it clear that he was not concerned about rape, only about making sure that the intersex client did not become pregnant.¹²¹

As this incident demonstrates, for many transgender, gender non-conforming, and intersex people in New York State prisons, showering is a particularly dangerous aspect of imprisonment because group showering facilities make them exceptionally vulnerable to sexual harassment and assault.

Appearance Regulations and the Denial of Gender Expression

The denial of access to gender-appropriate clothing, make-up, and other items associated with gender expression, as well as punishment for possessing such items, are other concerns that SRLP's imprisoned clients frequently raise. As one client reports, "Anything feminine—if it says 'ladies' on it—you're not getting them."¹²² Lori describes one instance of punishment for possessing feminine clothing:

I am currently serving a 30 day keeplock [disciplinary segregation] for possession of brassieres which were not authorized. Unless I develop breast tissue, I will never get authorization for bras. And I will only develop breast tissue after receiving hormonal therapy, which the state has continuously denied me.¹²³

Jacque also raises the problem of restricted access to feminine clothing in the facility where she is imprisoned, explaining, "You can have a bra but you can't have panties. You're only allowed a sports bra, but no make-up."¹²⁴

Many transgender women also report having their hair forcibly cut upon entrance to men's prisons. Stefanie describes this traumatizing experience:

It was the most devastating day of my life when they made me cut my hair when I was transferred to [facility removed]. It took me so long to grow it. It was like taking an arm. I wish they would not have done that. They don't do that to female inmates. I have to keep my fingernails trimmed, like they are weapons or something.¹²⁵

Interviewees in men’s prisons reported that wearing longer hair and nails are often some of the only outlets available to them to express their gender.

During a hearing before the U.S. Department of Justice on conditions of confinement for transgender and intersex prisoners, one advocate spoke about the damaging effects of restrictive policies around gendered clothing and expression:

Too many jails and prisons limit the ability of prisoners to dress or groom in a way that is comfortable for them...many transgender women housed in men’s facilities are denied access to bras and are forced to keep their hair at a stereotypically male length. Transgender men in women’s facilities often find that they have to keep their face shaven despite the fact that they are not provided with proper grooming supplies... some women’s institutions require male inmates to wear garb that is similar to a dress.

This form of harassment is the kind of on-going indignity that can lead to more significant issues down the line...health problems can result from women being denied bras or men being forced to shave without the proper tools. And the lack of bras has facilitated, in a number of cases, sexual harassment.¹²⁶

In a letter to the Office of Mental Health in her facility, Bianca also describes the destructive impacts of having her gender expression regulated:

I style my long hair in a feminine manner, and I’m getting picked on and called names, and everybody is laughing at me. These are coming from the correctional officers...

I get so depressed, and I hide under my covers and start crying, cause this isn’t fair, ‘why me,’ I’ve been a respectful person. I do not deserve this. I try to stay strong, and keep in mind, that soon, I will be 100% woman the way I was ment to be, but as each day go by, I hurt, and hurt, and hurt. I need weekly psychological counseling, cause I am to depressed to feel good about myself, and consintrate. And I’m asking for help. I do not want to hurt myself no more, but I need weekly counseling in private, so I can prevent any suicidal thoughts or attempts...

I refuse to come out of my cell until I be able to shower and shave. If I continue to be deprived of shower and shaving, I will start with a letter to Albany Mental Health Department, followed by a hunger strike.¹²⁷

Multiple interviewees described the traumatic consequences of having their appearance and gender expression monitored and curtailed by policies such as those described above. These regulations create an environment in which transgender, gender non-conforming, and intersex people are more likely to suffer from depression, anxiety, and a range of other mental health conditions.

Women’s Prisons

As is the case in men's prisons, authorities in women's prisons target transgender, gender non-conforming, and intersex people in those facilities with verbal harassment, humiliation, excessive strip searches, and isolation, and refuse to recognize their gender identities.

A transgender attorney who works with transgender and intersex people in California's women's prisons has noted the discriminatory and abusive treatment that transgender and gender non-conforming people encounter in those facilities.

Trans men and gender variant people—many of whom identify as butches, studs, and aggressives—receive particularly forceful treatment and neglect by correctional officers. They are faced with homophobic and transphobic harassment from guards who call them 'it' and write them up for hugging another prisoner because they assume they are violating rules against 'homosexual contact.' They are almost completely denied hormones and transition-related care, and they are subjected to excessive, humiliating, and voyeuristic strip searches. These types of harassment are particularly pervasive for trans and gender variant people of color—especially black and Latino people—who are also targeted by correctional officers because of their race.¹²⁸

One transgender man imprisoned in a women's correctional facility in California articulates the imposition of clothing requirements as part of the constant harassment he experiences: "At one point I was being made to wear a dress, despite the fact that no one else in the prison was forced to. It was just to humiliate me." He also describes an incident in which another transgender man in his facility was strip-searched publicly by correctional officers so they could "tell his gender."¹²⁹ Another person imprisoned in the same facility who identifies as an aggressive femme lesbian, describes repeated incidents in which male correctional officers harassed transgender and gender non-conforming prisoners, questioning why they "think they're men:" "Butch and aggressive women get messed with the most. They're the ones who get written up, harassed. They do this to isolate and quarantine people—it's all motivated by hate."¹³⁰

The excessively harsh treatment that male-identified and masculine-appearing transgender and gender non-conforming people—particularly people of color—frequently report at the hands of law enforcement carries over into their experiences in custody.¹³¹ During a police raid of a predominately LGBT people of color political event in New York City, a Filipino transgender activist reported that two police officers "grabbed and pushed him down on the trunk of the car, kicked his legs apart, and repeatedly hit his head against the trunk, then handcuffed him."¹³² After he was taken into custody, at the NYPD's 77th Precinct in Brooklyn, one of the arresting officers verbally targeted him because of his non-conforming gender expression, allegedly saying, "I know what you are. I know your kind. I just want you to know you're never going to have a family like me, kids like me, a dog like me. And know that whatever you strap on between your legs will never be as real or as big as mine.

You’re going to end up like the rest of your kind, without a job, homeless, and shooting up drugs.” Because officers were unclear how to handle his search or placement, he was subsequently left handcuffed to a pole during questioning and ultimately detained in the female section of the jail. Throughout his detention, the officers insisted on using female pronouns when referring to him.¹³³ As his experience illustrates, the forms of harassment, humiliation, and abuse that are common in women’s prisons, jails, and detention centers are compounded when correctional officers and law enforcement target people for non-conforming gender identities and expressions, as well as for their race and political views.

V

RECOMMENDATIONS

As extensive research has shown, the criminal justice system continues to devastate those communities who are subject to the most intense forms of marginalization and criminalization—communities of color, transgender communities, and poor communities. Because of this reality, SRLP recognizes the urgent need for a fundamental shift away from our culture’s over-reliance on imprisonment, policing, and surveillance as solutions to poverty, violence, drug use, and other social and economic problems. As such, we support strategies that help communities to attain the resources they need to combat poverty and discrimination, and to avoid contact with law enforcement. However, we also recognize the need for immediate relief from the life-endangering violence and abuse that transgender, gender non-conforming, and intersex people, as well as all people, face inside the criminal justice system. These recommendations articulate immediate changes that can be made to alleviate some of these conditions.

Adopt measures that will reduce the criminalization and imprisonment of transgender, intersex, and gender non-conforming people in recognition of the extreme danger this population faces while imprisoned.

1. **Ensure access to safe and gender identity-appropriate housing, employment, healthcare, social services, and education for transgender, intersex, and gender non-conforming people.** Such access is essential to mitigating the high rates of homelessness, poverty, illness, and unemployment resulting from transphobic discrimination that leads to survival crimes and the disproportionate rates of arrest and imprisonment of transgender and gender non-conforming people.
2. **Expand funding for and use of community-based gender identity-appropriate alternatives to imprisonment,** including drug treatment programs.
3. **Improve re-entry services, providing access to programs upon release from imprisonment that can effectively meet the needs of transgender, intersex, and gender non-conforming people,** such as employment support, drug treatment, and trauma counseling to help transgender prisoners heal from the violence they experience inside prisons. Such programs will help to decrease parole violations and

recidivism among formerly imprisoned transgender people. Most importantly, no person leaving prison or jail should be mandated against their will to participate in a program in which they will be forced to live as a different gender identity than their own, or in which they are likely to be mistreated on the basis of their gender identity, gender expression, or intersex conditions.

4. **Eliminate the profiling and false arrest of transgender, intersex, and gender non-conforming people**, as well as people of color, low-income people, and homeless people. This can be achieved through strategies such as producing and implementing clear policing policies relating to gender identity issues, ongoing training at all levels of law enforcement, and developing oversight and accountability structures to monitor police conduct and ensure compliance with behavior guidelines and policies.

Make concrete changes to correctional policies to improve the safety and treatment of transgender, intersex, and gender non-conforming people in prison, as well as all people in prison.

1. **Place transgender, intersex, and gender non-conforming people based on their own assessment of where they will be most safe and least vulnerable to violence and harassment while fully respecting their gender identity.** Upon entry to a correctional facility, officials should place transgender and intersex people according to where individuals determine they will be able to achieve a maximum level of safety and respect for their gender identity. Possible placements include women's facilities, men's facilities, general population, protective custody, and/or single bunk cells. Officials should not automatically place transgender people according to their birth-assigned sex, but allow them to determine the most appropriate placement based on their safety concerns and gender identity. Provide for immediate changes in placement should an individual's assessment of their safety change.

2. **Develop clear written policies about the treatment of transgender, intersex, and gender non-conforming prisoners**, providing guidelines for appropriately addressing safety concerns, prohibiting discrimination, verbal harassment, and inappropriate and abusive searches, and providing for effective enforcement. These policies should make clear that verbal harassment (such as using homophobic or transphobic epithets), sexual harassment, or using a name or pronoun other than that which a person prefers are unacceptable. These policies should also ensure that transgender, intersex, and gender non-conforming people in prison have access to private showers upon request for safety reasons.

3. **Provide in-depth, regular, and mandatory training to all civilian and correctional staff and contractors** who interact with people in prison by appropriately qualified outside trainers to increase awareness of issues specific to transgender, intersex, and gender non-conforming people, including appropriate ways to interact with this population. This training should also be provided to all other parties involved in the criminal justice system in an official capacity, including police officers,

judges, attorneys, prosecutors, parole and probation officers, and inspectors general and their staff.

Improve and enhance grievance procedures and accountability measures to address assault, discrimination, and abuse when it does occur.

1. **Improve methods for prisoners to quickly and easily make confidential complaints of abuse, discrimination, or harassment to an independent agency.** This agency should be adequately trained and have unrestricted access to the correctional facility and the necessary authority and resources to conduct thorough, sensitive, and prompt investigations, including affirmative investigations.

2. **Eliminate statutory and practical obstacles to prisoners seeking legal redress for harms they suffer while imprisoned.** This should include repeal of the Prison Litigation Reform Act and the Son of Sam laws, which place unfair limitations on the ability of prisoners to seek such redress. Additionally, prisoners should be ensured meaningful access to law libraries, and free legal assistance resources for prisoners should be increased.

3. **Create a strong statutory presumption against prisons, jails, detention facilities, and their officials if they fail to produce evidence related to a prisoner’s lawsuit** (e.g. video records, medical records, grievance claims).

Ensure access to adequate and nondiscriminatory medical and mental healthcare, vocational and educational programming, recreational activities, and gender-appropriate clothing.

1. **Provide consistent and adequate access to medical care to all prisoners, including hormonal therapy and transition-related services,** even if a prisoner cannot adequately document that s/he was receiving hormonal therapy prior to imprisonment. The ability to transition and express their gender identity is central to the psychological and physical health of many transgender people. If they have not accessed transgender-related healthcare prior to imprisonment, they should be provided with access to a clinician who can help them begin this process, and provided with the subsequent treatment to facilitate their transition.

2. **Improve access to basic medical and mental healthcare without discrimination or harassment.** Guarantee basic medical and mental healthcare that is free from discrimination, harassment, and abuse.

3. **Provide access to educational, vocational, and rehabilitative programming, recreational activities, and employment without discrimination or harassment.**

4. **Ensure access to gender-appropriate clothing.** Allow transgender prisoners access to clothing and related items that they feel are compatible with their gender identity and expression, and with which they feel most comfortable. For transgender women, this may include bras, skirts, blouses, and feminine underwear. In addition,

officials should lift prohibitions on long hair and nails, as they are often essential aspects of the gender expression of transgender people.

Ensure that appropriate medical and mental health services are available to survivors of rape, sexual abuse, assault, or harassment.

Ensure that condoms are readily accessible to prisoners. This is a critical measure because of the extremely high rates of transmission of HIV and other STIs in prison.

Appendix A • Frequently Asked Questions: Gender Identity & Expression¹³⁴

The following are a series of questions that are frequently asked as people attempt to better understand gender identity and expression and the experiences of transgender, gender non-conforming, and intersex people. These questions, their answers, and the terms used are constantly evolving, deeply personal, and vary greatly across cultural and agelines. The following is only one set of answers, and does not represent the full range of answers or experiences that exist among transgender, gender non-conforming, and intersex people.

1. What is “transgender”?

Transgender is a term used to describe people whose way of understanding their own gender, or whose way of expressing their gender (clothing, hairstyle, etc.), is different from what society expects based on what gender they were identified with when they were born. This term includes a wide range of people with different experiences—those who change from one gender to another as well as those who sometimes express different gender characteristics, or whose gender expression is not clearly definable as masculine or feminine.

2. What do the terms “transgender woman” and “transgender man” mean? Who do I use them for?

When speaking about transgender people, always refer to their *current* gender. A transgender man is someone who is a man now, even though he was identified as female at birth. A transgender woman is a someone who is a woman now, even though she was identified as male at birth.

3. What is “transition”?

Transition refers to the process that some transgender people go through in changing from one gender to another. This process can include beginning to go by a new first name, using a new pronoun (“she” instead of “he” or “he” instead of “she”), and changes in appearance.

4. What is “intersex”?

People with intersex conditions have bodies that are not easily classifiable as “male” or “female” according to current Western medical standards governing what “male” and “female” bodies are supposed to look like. There are a variety of intersex conditions. For example, some people have chromosomes that are not XX or XY but are XXY or some other set of shapes. Similarly, many people have masculine or feminine hormones in their bodies in balances that are not considered the norm for female or male bodies. The most commonly discussed intersex experience is that of people who are born with what some doctors call “ambiguous genitalia,” meaning genitalia

that do not look the way doctors think male or female genitalia should look. Too often, parents of children with this intersex condition are pressured to make a rushed decision to have the child undergo surgery to make the child's genitals conform more closely to the medical standard for their assigned sex.¹³⁵ These procedures are often performed without giving parents sufficient information about intersex conditions and what options exist, and can sometimes result in the loss of sexual or reproductive function.¹³⁶

Intersex activist organizations are working to educate doctors, parents, and medical students so that children with intersex conditions will be allowed to determine what procedures they may or may not want for their bodies after they have fully developed. The Intersex Society of North America website, <http://www.isna.org>, is a great source of information. Many people are surprised to learn how high the rates of intersex conditions are: one in 2,000 babies have intersex conditions, and five or six babies a day in the U.S. are subjected to related surgery.¹³⁷ Despite these large numbers, the experiences of people with intersex conditions remain marked by stigma and secrecy.

5. With all these new terms emerging all the time, what am I supposed to call people?

Transgender communities, like other communities facing discrimination, have used different words to refer to themselves over time. Some words are acceptable to use if you are part of the transgender community but can sound offensive if someone outside the community uses them. All communities fighting discrimination develop new terms over time to refer to themselves and their experiences. For example, years ago people commonly referred to “homosexual rights,” whereas now people often say “gay and lesbian rights.” All of these communities continually revise the language they use to self-identify—language that more accurately describes their experiences—in an effort to move away from outdated, offensive, and inaccurate terms. Transgender communities are the same, and different members of the community will use different words to describe themselves. It would be impossible to create a glossary that included every potential word a person might use, especially since these terms are still emerging. For that reason, the best way to use this glossary is as a general guide. First and foremost, always *refer to people in the way that they prefer*.

6. What should I call a transgender person?

Transgender people should always be called by the name they currently prefer, even if their legal or medical records still use their old name. They should also always be called by the pronoun they currently use. Transgender women should be called “she/her” and transgender men should be called “he/him.”

7. Do all transgender people have surgery?

What is transgender healthcare like?

Misconceptions about transgender healthcare are pervasive. Perhaps the single most erroneous misconception is that transgender healthcare consists of a single “sex-change operation.” In fact, there are several different kinds of treatment that people seeking sex reassignment pursue, including psychotherapy, hormone therapy treatment, voice surgery, voice training, Adam’s apple reduction, facial surgery, chest or breast surgeries, and a range of genital surgeries. Medical professionals, in conjunction with their patients, determine what treatment is medically appropriate for each person, taking into account pre-existing medical conditions, mental health status, and lived gender experience.

Although a common medical treatment that transgender people undergo is hormone therapy, there are many people who prefer to use hairstyle, clothing style, and other non-medical interventions to express their gender identity.

There is no medical rationale for linking legal recognition of a person’s new gender to genital reconstructive surgery or any other specific treatment that may not be desirable, medically appropriate, or possible for all people. For example, the most common sex reassignment surgery for transgender men is chest surgery. In contrast, fewer than 3% of male-identified transgender people undergo any reconstructive genital surgery, due to the severe limitations and medical risks associated with this surgery at this time.¹³⁸

8. Are transgender people gay?

Although they are often confused in our culture, gender identity and sexual orientation are different parts of a person’s identity. Sexual orientation is about who you are sexually or romantically attracted to, whether you are lesbian, gay, straight, bisexual, etc. Gender identity is about how you understand your own gender: whether you understand yourself to be male, female, or something else, and how you express that.

- Every individual has a sex assigned to them at birth, a gender identity, and a sexual orientation.
- Being transgender does not mean that you are gay and being gay does not mean that you are transgender.
- Gender is about who we believe ourselves to be; sexual orientation is about who we are attracted to.
- Just like non-transgender people, transgender people can be gay, lesbian, straight, bisexual, or anything else.
- Assuming a transgender person’s sexual orientation, or asking them detailed personal questions about it, is never appropriate.

9. Are there certain words I should avoid saying that might offend someone?

Some terms are used often by the media, but are actually offensive or inappropriate to use when talking about transgender people. Here are some ways to avoid potentially offending a transgender person:

- **Avoid the term “transvestite.”** This term is used often by the media to refer to anyone who is transgender. It is not a very commonly used term in transgender communities in North America, and can sound very offensive when used to describe someone who does not identify that way. “Transgender” is a better general term to use. Most importantly, refer to the person as they refer to themselves.
- **Always refer to a person’s current gender.** A person who was identified at birth as male but sees herself as a woman now is a woman or a transgender woman. A person who was identified at birth as female but sees himself as male now is a man or a transgender man.
- **Avoid the terms “pre-op” and “post-op.”** These terms suggest that every transgender person is on the road to some kind of surgery when, in reality, individual decisions about whether to have any medical procedure vary from person to person. These terms can also often be used as a judgment, indicating that some transgender people are more “real” than others. Referring to people in terms of what medical procedures they have undergone is inappropriate and could potentially reveal private information about them. These terms should not be used to refer to clients or co-workers.

Appendix B Organizations

The following is a list of organizations in New York City and across the United States working on issues related to criminalization, poverty, and imprisonment in transgender and intersex communities.

American Friends Service Committee

1501 Cherry Street
Philadelphia, PA 19102
(215) 241-7125
<http://www.afsc.org/lgbt/fighting-violence.htm>

Amnesty International, OUTfront!

5 Penn Plaza
New York, NY 10001
(212) 807-8400
<http://www.amnestyusa.org/outfront/>

Correctional Association of New York

135 E. 15th Street
New York, NY 10003
(212) 254-5700
<http://www.correctionalassociation.org>

Critical Resistance

1904 Franklin Street, Suite 504
Oakland, CA 94612
(510) 444-0484
<http://www.criticalresistance.org>

FIERCE!

437 W. 16th Street, Lower Level
New York, NY 10011
(646) 336-6789
<http://www.fierceny.org>

Housing Works

57 Willoughby Street
Brooklyn, NY 11201
(347) 473-7400
<http://www.housingworks.org>

LockedOut

c/o Prison Book Project
P.O. Box 396
Amherst, MA 01004

NYC Gay & Lesbian Anti-Violence Project

240 W. 35th Street, Suite 200
New York, NY 10001
(212) 714-1184
<http://www.avp.org>

Peter Cicchino Youth Project

c/o Urban Justice Center
666 Broadway, 10th Floor
New York, NY 10012
(646) 602-5600
<http://www.urbanjustice.org>

Stop Prisoner Rape

3325 Wilshire Boulevard, Suite 340
Los Angeles, CA 90010
(213) 384-1400
<http://www.spr.org>

Sylvia Rivera Law Project

322 8th Avenue, 3rd Floor
New York, NY 10001
(212) 337-8550
<http://www.srlp.org>

Transgender, Gender Variant, and Intersex Justice Project (TGJIP)

1322 Webster Street, Suite 210
Oakland, CA 94612
(510) 677-5500
<http://www.tgijp.org>

Transgender/Gender Variant in Prison (TIP) Committee

1540 Market St, Suite 490
San Francisco, CA 94102
<http://www.tgijp.org/tip>

Transgender in Prison Journal

c/o Gender Identity Center of Colorado
1401 Saulsbury, Suite G9
Lakewood, CO 80214
<http://www.gicofcolo.org>

Transgender Law Center

870 Market Street, Room 823
San Francisco, CA 94102
(415) 865-0176
<http://www.transgenderlawcenter.org>

TransJustice c/o Audre Lorde Project

85 South Oxford Street
Brooklyn, NY 11217
(718) 596-0342
<http://www.alp.org>

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Notes

- 1 See, e.g., *Farmer v. Brennan*, 511 U.S. 825 (1994) (finding that prison officials are not liable for violence inflicted on a transsexual prisoner by other prisoners unless they have *actual subjective knowledge* that the transsexual prisoner is at risk and deliberately fail to act on that knowledge. See also *Lucrecia v. Samples*, 1995 U.S. Dist. LEXIS 15607 (Oct. 16, 1995) (finding no Eighth Amendment violation where prison officials transferred male-to-female transsexual prisoner, who had developed breasts and had her testicles surgically removed, from female prison to male prison, where she was subjected to constant verbal, physical, and sexual harassment and assault by other prisoners and by prison guards). But see *Powell v. Schriver*, 175 F.3d 107 (2nd Cir. 1999) (holding that qualified immunity did not protect prison official from claim that the disclosure of the inmate's transsexual status constituted deliberate indifference to a substantial risk of serious harm, in violation of the 8th Amendment).
- 2 See *Kosilek v. Maloney*, 221 F. Supp. 2d 156 (D. Mass. 2002) (holding plaintiff's transgender healthcare was a serious medical need and prison officials were required to provide treatment as prescribed by a physician with experience in treating gender identity disorder; the court further held this treatment could include hormone therapy or gender reassignment surgery); *De'Lonta v. Angelone*, 330 F.3d 630 (4th Cir. 2003) (holding termination of a transgender prisoner's hormone treatment which led her attempts to mutilate herself, could constitute deliberate indifference). See also *Allard v. Gomez*, 2001 WL 638413 at **1 (9th Cir. 2001) (holding that whether a transgender prisoner who was denied hormone therapy on a case-by-case basis or a blanket rule either of which was deliberate indifference was a triable question of fact); *Wolfe v. Horn*, 130 F. Supp. 2d 648 (D. Pa. 2001); *Phillips v. Michigan Department of Corrections*, 731 F. Supp. 792 (W.D. Mich. 1990).
- 3 See, e.g., *Powell v. Schriver*, 175 F.3d 107 (2nd Cir. 1999) (holding that qualified immunity did not protect prison official from claim that the disclosure of the inmate's transsexual status constituted deliberate indifference to a substantial risk of serious harm, in violation of the 8th Amendment); *Kosilek v. Maloney*, 221 F. Supp. 2d 156 (D. Mass. 2002) (holding plaintiff's transgender healthcare was a serious medical need and prison officials were required to provide treatment as prescribed by a physician with experience in treating gender identity disorder; the court further held this treatment could include hormone therapy or gender reassignment surgery); *De'Lonta v. Angelone*, 330 F.3d 630 (4th Cir. 2003) (holding termination of a transgender prisoner's hormone treatment which led her attempts to mutilate herself, could constitute deliberate indifference). See also *Allard v. Gomez*, 2001 WL 638413 at **1 (9th Cir. 2001) (holding that whether a transgender prisoner who was denied hormone therapy on a case-by-case basis or a blanket rule either of which was deliberate indifference was a triable question of fact); Joslin, Courtney. "Fact Sheet: Rights of Transgender Prisoners." National Center for Lesbian Rights. July 2006. 4 December 2006 <<http://www.nclrights.org/publications/tgprisoners.htm>>.
- 4 In particular, Alexander Lee's 2003 article, "Gendered Punishment: Strategies to Protect Transgender, Gender Variant & Intersex People in America's Prisons" (hereinafter *Gendered Punishment*) and the Urban Justice Center's 2001 report, "Justice for All? A Report on Lesbian, Gay, Bisexual, and Transgendered Youth in the New York Juvenile Justice System" (hereinafter *Justice for All?*).
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Acknowledgements

This report was written by Daniel Bassichis and edited by Dean Spade, founding director of SRLP. Insightful feedback and editorial assistance was provided by Gabriel Arkles, Jessica Brooks, Cecilia Chung, Tamar Kraft-Stolar, Alexander Lee, Robin Levi, Andrea Ritchie, and Stefanie Rivera. Emily Drabinski served as an invaluable copy editor.

We wish to thank the many community members and activists who generously shared their knowledge and determination with us, without whom this project would not have been possible.