

Gendered structural violence refers to systems that specifically serve to repress, order, and confine gender identity, gender expression, and any non-conforming or “deviant” behavior. These systems are often also racist, anti-poor, ableist, and sexist among other identities. These systems or institutions don’t take the needs of particular communities into considerations on purpose. This results in increased health risks, violence, and death within these communities that are marginalized from resources. Be aware that systemic, inter-personal, and inter-familial violence often stems from **wide-spread myths and incorrect beliefs** about TGNC people. These myths generally present us as:

- pretending to be something we are not
- sexually-deviant, overly-sexual, or sex workers because of our gender identities
- unlovable, promoting feelings of disgust, humiliation, and shame
- less valuable, less real, less trustworthy – and more disposable

### **Specific Tips for Representation of TGNC Folks in Prison and Jail**

#### **Creating a Relationship**

- Be friendly and connect on a human level. You want your client to trust you and tell you what’s going on, so you have to develop a rapport that goes beyond the legal issues.
- Ask what their experiences have been, rather than assuming you know.
- Ask (preemptively) about safety issues. Sometimes they might not want to bring something up unless you ask. Look for signs that your client is being abused (take a class if you don’t already know!).
- Don’t take a stern or scolding tone with your client.
- Be sure to have a case load that is acceptable to you doing full holistic advocacy when you take on a case.
- Remember your client is dealing with multiple concerns at once: most likely there are family court, debt, medical issues, etc. that they are all working on simultaneously.

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*The Sylvia Rivera Law Project works to guarantee that all people are free to self-determine gender identity and expression, regardless of income or race, and without facing harassment, discrimination or violence.*

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# Supporting Incarcerated Transgender and Gender Non- Conforming People

*A Tip Sheet for Attorneys  
and Advocates*



## **General Tips for Respectful and Successful Representation of TGNC Folks**

### **Affirming used names**

For many reasons, TGNC people may not have had access to or may not wish to change their names legally. Ask people how they should be addressed. Many people want to keep their transgender identity on a need-to-know basis. Ask about gender in a confidential way and honor limitations on disclosure – at your work, in conversations with DOCCS, and with family. Likewise, if you know a litigant’s preferred pronouns and honorifics, use them. Also ask if they want you to correct or advocate when mistakes are made or if they would rather you didn’t.

People may need or be forced to present in a way that does not actually reflect their gender identity. This does not mean they are not who they tell you they are.

### **Avoiding Irrelevant Questions/Making Irrelevant Comments**

Questions concerning the gendered nature of someone’s body should never be asked. Likewise, a litigant’s presentation, body, looks, voice, walk, etc. is not there to be commented on. Even if you think you have great advice on an aesthetician or a voice coach, don’t share. The individual may not be looking for that in their life.

### **Understanding How a History of Transphobia Affects Actions**

As with any individual, we must be aware of and work with them as a whole person. A history of violence and harassment may affect how someone responds to certain situations. Likewise, a history of governmental and non-profit agencies not believing or respecting a client’s identity may affect how they interact with the court.

### **Understanding How Structural Discrimination Affects TGNC People and Each Other**

In addition to inter-familial and inter-personal violence, there is also structural violence.

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Clients are often also primary care takers for their families.

- Be proactive, attentive, intuitive and mindful of your clients.

### Best Practices

- Keep up with mail and other communications – communication increases safety and health!
- When you suspect that your client's mail might be being screened, schedule time to visit in person or talk on the phone. When you're talking to them on the phone, be mindful of the fact that other people might be listening on their end. If this seems to be the case, try to ask yes or no questions.
- Share your legal plan clearly. Don't assume the client knows what you are doing or is not interested.
- Share your own knowledge about repercussions; talk your client through all the potential side effects of a legal or advocacy strategy including the collateral consequences of criminal charges. Make sure you connect your client with people who will assist in the ongoing medical, housing, employment, etc. effects.
- Don't act on anything your client tells you without checking in with them first. If you report something to the prison without asking them, for example, you could be opening them up to retaliation and making the situation worse.
- Make sure you give your client all the relevant information about their rights in jail/prison. Provide your client with extra-legal resources (e.g. pen pal info).
- Be open to working with your client's support network.
- Take affirmative steps to advocate for your client as early as you can (e.g. advocating for them not to get their hair cut).
- Be aware that laws and regulations affect trans people differently: don't assume that what worked for a cis (non-trans) client will work for a TGNC client.

### Identifying PIC Legal Issues that Often Come Up For TGNC People

Even if an issue is not *immediately about* TGNC issues, a person's gender and sex identity may still shape their ability or desire to respond to a situation and their general treatment or feelings of treatment within the PIC. Remember, gender is **highly** regulated within the PIC.

#### Disciplinary Records

Be aware of the ways that rules are written to control and order gender identity and expression: Is the client accruing misconduct reports based on violations of the rules that are necessary for their mental health (i.e. altered clothing, wearing makeup, keeping facial hair, etc)? Is the client at risk for sexual violence and, when attacked, being written up as a participant? Is the client being targeted for increased surveillance because of their identity and expression?

#### SHU/Solitary/Protective Custody/Admin Seg

Does placement in SHU result in conditions that would disproportionately harm a TGNC client, such as lack of community and increased unsupervised contact with guards?

#### Sexual Violence/PREA

It's important to identify who is creating sexually violent situations for your client. Ad. Seg. and PC often result in severe isolation and limited access to resources, and can place individuals at a high risk for assault from COs and staff members. Our clients can best identify where they want to be. *There is so much more to say about PREA. We recommend the ACLU or the NCTE handouts on PREA and trans folks for an overview.*

#### General and TGNC Health Care

Many physicians are not used to working with TGNC clients and may equate general illnesses as by-products of surgeries, hormones, or mental health. TGNC people are commonly not given proper medical care for non-TGNC related issues.

In NYS, any incarcerated person has the right to a consultation in order to be classified as having Gender Dysphoria (GD). This diagnosis, *if the individual wants*, should allow them to access hormones, a private shower, bras, panties, or boxers. This should also allow for greater grooming standards (shaving, long hair, etc). A diagnosis of GD is often a necessary, though unpleasant, cornerstone to accessing these rights.

#### Family Advocacy

Has your client's gender identity or expression been used against them by OCFS or the child's other parents or guardians? Remember that many TGNC people have non-biological and non-legal family that may not be recognized under regulations but are as important to their mental health.

#### Facility Assignment

DOCCS has decided that it has the power to determine a person's identity as either male or female and assign them to a facility accordingly. DOCCS suffers from the idea that TGNC people have "a surgery" that magically transforms us. This creates a standard of authenticity that can only be met by a privileged few with access to certain types of health care and class privilege

PREA begins from a presumption that we should not be searched or asked about our genital status in order to be placed. Rather, we must be asked twice a year where we feel safe and a decision must be made accordingly. Under PREA there is no reason why a trans woman should not be in a women's prison unless she wants to be. This must all be documented.

#### Being Treated with Dignity and Respect

DOCCS often does not stand by its mission statement to treat all incarcerated people with dignity and respect. While there is little we can legally do, BOP and NCCHC standards all state that the use of preferred names and pronouns

is part of proper mental health care for TGNC people. Additionally, so do WPATH, both APAs, AMA, and the National Association of Social Workers. DOCCS now has an LGBTQI training tool that all staff must receive. Sharing this as advocacy can be helpful.

#### Facing Mental Health Concerns

There is a strong likelihood that an incarcerated TGNC client is facing mental health concerns directly related to their treatment as a TGNC person. Much like medical care, mental health problems are often not addressed because mental health professionals believe them to be manifestations of GD. Therefore, issues of anxiety, depression, schizophrenia, etc. are more likely to be undiagnosed but present.

#### Facing Drug & Alcohol Concerns

Drugs and alcohol may have been used to self-medicate when clinics were not available or affordable for working on pre-existent mental health issues AND as a survival tool that may be picked up after facing transphobia throughout the world. While more of a concern in the outside world – be aware that most rehabilitation and detox centers (even within NYC) are segregated by genitalia making them difficult to access.

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For more information on working with your client or loved one, please contact Mik Kinkead, SRLP's Director of the Prisoner Justice Project, at 212-337-8550, ext. 302 or mik@srlp.org.

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