

WOMEN IN PRISON PROJECT

Correctional Association of New York

135 East 15 Street, New York, NY 10003

Phone (212) 254-5700, Fax (212) 473-2807

Transgender Issues and the Criminal Justice System

What is “transgender”?

The term “transgender” describes people who understand or express their gender differently than what society expects based on the gender they were assigned at birth. This term includes people who change from one gender to another, people who express different gender characteristics, and people whose gender expression cannot be clearly defined as “masculine” or “feminine.”

What is “transition”?

Gender transition refers to the process that some transgender people go through in changing from one gender to another. This process can include going by a new name, using a new pronoun, and/or changing appearance. For some people, these changes include using medical care such as hormone therapy or surgical intervention (which is less common) to masculinize or feminize the body. Others accomplish these changes only by presenting themselves differently.

What should I call a transgender person?

Transgender people should always be called by the name they choose, even if their records still say their old name. They should also always be called by the pronoun they want to use. Transgender women should be called “she/her” and transgender men should be called “he/him.”¹

IN SOCIETY

Discrimination against transgender people occurs in all sectors of society:

IDENTIFICATION

- Transgender individuals face serious barriers to obtaining identification, including birth certificates that match their gender expression instead of the gender they were assigned at birth.² Having a birth certificate that reflects the gender an individual was assigned at birth makes it very difficult to obtain other identification documents, such as a driver’s license or state identification card, that match an individual’s gender expression.³
- Because valid picture identification is required to receive social services, transgender individuals without identification that matches their gender expression are often left without access to social supports like public housing, public benefits and food stamps.

HOUSING

- From a young age, transgender individuals risk losing the emotional and financial support of family members who may object to their desire to express a gender that is different from their birth gender. As a result, trans people, especially trans youth, often end up homeless.⁴ High rents and a short supply of safe and affordable housing make housing opportunities scarce for all low-income people. The situation is often even worse for low-income transgender individuals who may face additional discrimination from landlords, other tenants, and shelters.⁵

MEDICAL CARE

- Transgender individuals may not be able to obtain health insurance coverage (because of a lack of identification or guidance/support services), and providers sometimes deny treatment to, mistreat or misdiagnose transgender patients as a result of bias or lack of information. Even for transgender people that have health insurance, transition related

treatment is often not covered by insurance companies – a reality that can force transgender individuals to turn to the black market for hormones and other transition related therapy.⁶

MENTAL HEALTH CARE

- Because they often experience rejection and discrimination from family members, peers, and social services agencies for not conforming to gender norms and stereotypes, transgender individuals are at high risk for developing depression, anxiety and mental illness. Similar to medical care, accessing quality mental health care is very difficult for transgender people.⁷

EDUCATION & EMPLOYMENT

- Discrimination and harassment from teachers, administrators and students often forces young transgender individuals to become truant or drop out of school. Trans people often leave jobs for similar reasons. The lack of appropriate identification also makes it difficult for transgender people of any age to apply for and obtain higher education and employment.⁸

LAW ENFORCEMENT

- As a result of difficulties in accessing housing, employment, health care, public entitlements and social services, many transgender individuals turn to criminalized activity – such as working in the sex industry, abusing drugs, and transporting and selling illegal substances – to cope, and to generate income for basic survival.
- Police frequently target transgender people for arrest and harassment. Common reasons for arrest include: using public bathrooms of the “wrong” gender, not having identification that matches perceived gender, or assumptions that trans people are sex workers soliciting customers. Because law enforcement efforts are disproportionately focused on poor neighborhoods of color, low-income transgender people of color are at even higher risk for being stopped, searched, arrested and detained by the police.⁹

DRUG TREATMENT & ATIs

- Spaces at drug treatment and other alternative to incarceration programs (ATIs) are limited. The vast majority of drug treatment and other ATIs are segregated by sex. Many programs reject transgender people or force them to live in facilities and receive services according to the gender they were assigned at birth. Transgender people often face poor treatment and harassment from staff and other participants in ATI programs.¹⁰

IN PRISON

PLACEMENT & APPEARANCE POLICIES

- The New York State Department of Correctional Services (DOCS) requires that inmates be placed in correctional facilities according to their birth sex and not according to the gender they identify with: transwomen are incarcerated in prisons that house men and transmen are incarcerated in prisons that house women.¹¹
- DOCS also requires that inmates be called by their birth name – which is often different from the name a transgender person prefers to be called – and can bar inmates from keeping personal items (i.e. cosmetics and certain clothing) that are not considered “gender appropriate.” In addition, DOCS usually requires inmates entering male facilities to cut their hair.¹² Such acts can be traumatic for trans prisoners and can result in depression, frustration and anxiety.¹³

HARASSMENT & ABUSE

- Transgender inmates frequently report harassment and abuse by correction officers and other inmates. Common types of abuse include verbal threats, public humiliation, intimidation, coercion, abusive pat frisks, physical and sexual assault, and forced sexual relations.¹⁴
- Many transgender inmates refrain from using the prison grievance system (the main mechanism that inmates have for complaining about problems) because they fear retaliation by staff and/or believe that the system is ineffective and biased.

- Transgender inmates also sometimes willingly submit to having sexual relationships with other inmates or staff for “protection.”¹⁵
- Some officers and inmates hold the perception that transgender inmates “deserve” to be harassed because of the way that they look, speak and present themselves. As a result, there is often little recourse for transgender inmates who are victims of abuse and limited formal accountability for inmate or staff misconduct or mistreatment.¹⁶
- When prison officials do respond to violence against transgender inmates, it is often by placing them in protective custody (PC), where they are segregated from the general inmate population. While PC may provide a safer space than the general population for vulnerable inmates, PC inmates lose many of the rights and privileges afforded to general population inmates. For example, inmates in PC may spend up to 21 hours a day in isolation and are restricted from participating in educational and vocational programs in the general population.¹⁷
- Being placed in protective custody can also have the opposite of the intended effect for transgender prisoners: being separated from the general population can make it easier for prison staff to single out transgender inmates for harassment and abuse, and long periods of isolation may result in severe psychological damage.¹⁸

ACCESS TO MEDICAL CARE

- Health care for inmates in New York State prisons is often inadequate,¹⁹ and transgender inmates face additional difficulties accessing quality care. Transgender inmates report that some prison medical staff ridicule them, treat them in a disrespectful manner, dismiss their health concerns, and deny them basic medical care and/or care related to their transition.²⁰
- In order to continue receiving hormone therapy in a DOCS correctional facility, inmates are required to (1) have a diagnosis of “Gender Identity Disorder” prior to their incarceration and (2) prove that they had already begun transition-related treatment before arrest.²¹ This policy is highly problematic: many transgender individuals are forced to rely on the black market to receive general medical care and transition-related care – and individuals who receive black market services are unable to acquire official documentation about their treatment and medication.²²
- Not all transgender people go through medical treatment related to their transition. For those that do, it is critical that they receive consistent treatment. Disruptions in treatment can have severe health consequences.²³
- Because transgender prisoners face difficulty in accessing quality health services prior to and during incarceration, often have histories of rape, sexual abuse, sex work or drug use, and are often victims of sexually assault in prison, they are at particularly high risk for contracting HIV, HCV and other sexually transmitted diseases.²⁴

LACK OF DATA

- There is a dearth of systemic data about transgender individuals and the criminal justice system. For example, DOCS does not collect information about the number of transgender and gender variant prisoners in its custody and where they are placed. It is critical to collect this data in order to create criminal justice policies and programs that suit transgender inmates’ particular needs and issues.

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RESOURCES

Sylvia Rivera Law Project
 322 8th Avenue, 3rd Floor
 New York, NY 10001
 Tel. 212-337-8550
www.srlp.org

National Center for Lesbian Rights
 870 Market Street, Suite 370
 San Francisco, CA 94102
 Tel. 415-392-6257, 1-800-528-6258
www.nclrights.org

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Transgender Law Center
160 14th Street
San Francisco, CA 94103
Tel. 415-865-0176
www.transgenderlawcenter.org

**Peter Cicchino Youth Project
Urban Justice Center**
666 Broadway, 10th Floor
New York, NY 10012
Tel. 646-602-5633, 1-877-LGBT-LAW
www.urbanjustice.org

FIERCE!
437 W 16th St.
New York NY 10011
Tel. 646-336-6789
www.fierceny.org

**Juvenile Justice Project
Correctional Association of New York**
135 East 15th Street
New York, NY 10003
Tel. 212-254-5700
www.correctionalassociation.org

**Gender Identity Project
The Lesbian, Gay, Bisexual & Transgender
Community Center**
208 West 13th Street
New York, NY 10011
Tel. 212-620-7310
www.gaycenter.org

¹ Adapted from Dan Bassichis, *“It’s War in Here:” A Report on the Treatment of Transgender and Intersex People in New York State Prisons.* (hereinafter “Bassichis report”).

² The New York City Board of Health considered eliminating its policy requiring trans individuals to undergo sex-change surgery in order to change the sex on their birth certificates. They recently decided to drop the plan. See Damien Cave, “New York Plans to Make Gender Personal Choice,” *New York Times*, November 7, 2006 and Damian Cave, “City Drops Plan to Change Definition of Gender,” *New York Times*, December 6, 2006.

³ Testimony of Z. Gabriel Arkles, Sylvia Rivera Law Project, to the National Prison Rape Elimination Commission, Washington, DC, August 2005; Testimony of Dean Spade, Sylvia Rivera Law Project, to the National Prison Rape Elimination Commission, Washington, DC, August 2005; Testimony of Christopher Daley, Transgender Law Center, to the National Prison Rape Elimination Commission, Washington, DC, August 2005; Alexander L. Kee, “Nowhere to Go But Out: The Collision Between Transgender & Gender-Variant Prisoners and the Gender Binary in America’s Prisons,” Boalt Hall School of Law, Spring 2003.

⁴ Feinstein, Greenblatt, Hass, Kohn and Rana, *Justice for All? A Report on Lesbian, Gay, Bisexual and Transgendered Youth in the New York Juvenile Justice System*, Lesbian and Gay Youth Project of the Urban Justice Center, 2001; Daisy Hernandez, “Young and Out: Anything But Safe,” *ColorLines Magazine*, Winter 2004; Bennett Baumer, “Fierce Resistance: LGBT Group Launches Cop Watch Program to Improve Interactions with Police,” *City Limits Weekly* Number 491, June 27, 2005; “LGBTQ Youth in the Juvenile Justice System,” National Center for Lesbian Rights, San Francisco, CA, June 2006.

⁵ New York City recently revised its policy of mandating transgender individuals to be assigned to shelters according to their birth gender. The City now requires shelter intake staff to determine a client’s gender by his or her gender identity. See New York City Department of Homeless Services, Procedure No. 06-1-31, “Transgender/Intersex Clients,” Issued January 31, 2006.

⁶ See note 3.

⁷ *Id.*

⁸ *Id.*

⁹ *Drop the Rock* Fact Sheet, Correctional Association of New York, February 2006.

¹⁰ See note 3, Spade Testimony.

¹¹ Darren Rosenblum, “‘Trapped’ in Sing Sing: Transgendered Prisoners Caught in the Gender Binarism,” *Michigan Journal of Gender & Law*, vol. 6, 2000, pp. 522-526, as cited in Bassichis report.

¹² Exceptions to the required haircut are made for inmates who practice certain religions. See DOCS Directive 4914: Inmate Grooming Standards.

¹³ See note 3.

¹⁴ See note 3.

¹⁵ *State of the Prisons 2002-2003: Conditions of Confinement in 14 New York State Correctional Facilities*, Prison Visiting Project of the Correctional Association of New York, June 2005. See note 3, Daley Testimony. See also, Christine Peek, “Breaking Out of the Prison Hierarchy: Transgender Prisoners, Rape, and the Eighth Amendment,” *Santa Clara Law Review*, vol. 44, 2004, pp. 1211-1212, as cited in Bassichis report.

¹⁶ See note 3. See note 1, Bassichis report.

¹⁷ See Inmates in protective custody are offered the opportunity to participate in “cell study” programs” if they are available at facility. DOCS Directive 4948: Protective Custody Status.

¹⁸ See *Mental Health in the House of Corrections: A Study of Mental Health Care in New York State Prisons*, Prison Visiting Project of the Correctional Association of New York, June 2004, and *Lockdown New York: Disciplinary Confinement in New York State Prisons*, Prison Visiting Project of the Correctional Association of New York, October 2003.

¹⁹ See *Health Care in New York State Prisons*, Prison Visiting Project of the Correctional Association of New York, February 2000.

²⁰ See note 1, Bassichis report.

²¹ New York State Department of Correctional Services, Division of Health Services Policy HSPM 1.31: Gender Identity Disorder, October 1999. See *Brooks v. Berg*, 270 F. Supp. 2d 302, 312 (N.D.N.Y. 200), as cited in Bassichis report.

²² See note 3.

²³ See note 1, Bassichis report.

²⁴ Jules Levin, Joseph Bick, MD and Elizabeth Stubblefield, *Recommendations For Those On The Frontline Against Hepatitis C, HIV & Hepatitis Education Prison Project (HEPP)*, Vol. 5, Issue 8 & 9, Aug./Sept. 2002. See note 1, Bassichis report.