

ENDING ABUSE OF TRANSGENDER PRISONERS

A GUIDE TO WINNING POLICY CHANGE
IN JAILS AND PRISONS



This is a guide for advocates who are looking to start, or strengthen, their efforts to improve jail or prison conditions for transgender and all LGBTQ prisoners.

For a basic overview of the issues facing transgender and all LGBTQ prisoners and their legal rights, please see

TRANSGENDER PEOPLE BEHIND BARS: A guide to understanding the issues facing transgender prisoners and their legal rights.

For detailed information on what policies jails and prisons should adopt, see

POLICIES TO INCREASE SAFETY AND RESPECT FOR TRANSGENDER PRISONERS: A guide for agencies and advocates.

For ways advocates can work to reduce mass incarceration and keep LGBTQ people out of jails and prisons, see

LGBTQ CRIMINAL JUSTICE REFORM: Real steps LGBTQ advocates can take to reduce incarceration.

For assistance in policy development and review, please contact Racial and Economic Justice Policy Advocate, Mateo De La Torre, at mdelatorre@transequality.org or 202-804-6045, or NCTE@transequality.org or 202-642-4542.

For all press inquiries related to this document or NCTE's work regarding prison policy and its impacts on transgender people, please contact Media Relations Manager Gillian Branstetter at Press@Transequality.org.

CONTENTS

CHAPTER 1: WHY PRISONS ARE AN LGBTQ ISSUE.....4

CHAPTER 2: WORKING WITH JAILS AND OTHER FACILITIES ON LGBTQ POLICIES.....6

CHAPTER 3: ADDRESSING COMMON CONCERNS, FEARS, AND OBJECTIONS.....19

CONCLUSION.....24

APPENDIX A: LEAVE-BEHIND MATERIALS FOR INITIAL MEETINGS
WITH JAIL AND PRISON OFFICIALS.....25

APPENDIX B: ADDITIONAL READING AND RESOURCES.....26

FOLLOW US ON SOCIAL MEDIA

 [TransEquality](#)

 [TransEqualityNow](#)

WHY PRISONS ARE AN LGBTQ ISSUE

JAILS ARE TRAUMATIZING AND OFTEN DANGEROUS PLACES, ESPECIALLY for lesbian, gay, bisexual, and transgender (LGBTQ) people and anyone who doesn't fit gender stereotypes. In a country that incarcerates more of its people than any other large nation in the world, LGBTQ people—especially LGBTQ people of color—are more likely to end up behind bars and more likely to face abuse behind bars than the general population.¹ Being LGBTQ in a U.S. jail or prison often means daily humiliation, physical and sexual abuse, and the fear that it will get worse if you complain.² Fortunately, advocates across the country are working to change this. Today, there are national standards, legal protections, and other new tools—as well as LGBTQ allies who are working to combat abuse behind bars—that make this a better time than ever to press for change.

NOW IS A BETTER TIME THAN EVER TO DO THIS WORK

Right now, jails, prisons, and other custodial agencies around the country are looking at developing policies related to transgender and LGBTQ people, many for the first time. Perhaps the biggest reason is the federal Prison Rape Elimination Act (PREA). Passed by Congress in 2003, this law led to the publication in 2012 of the National Standards to Prevent, Detect, and Respond to Prison Rape, known as the PREA Standards. These comprehensive standards include several provisions that direct agencies to pay particular attention to protecting LGBTQ people, intersex people, and people who don't fit gender stereotypes. Jails and prisons are strongly incentivized, and in some cases required, to comply with these standards, and some agencies can face financial penalties for non-compliance, although many continue to fall short of full compliance.

LGBTQ prisoners are increasingly winning in court and agencies are taking notice. There is now a growing body of court decisions saying that many of the ways LGBTQ people have been treated in prisons and jails violate the Constitution or other legal standards. For example, in recent years, there have been several cases—many of which were brought by prisoners advocating on their own without a lawyer—in which courts found that prisons violated the law by denying transition-related health care for transgender prisoners.³ While the law in some of these areas is still developing, many agencies are taking notice and taking action.

NATIONAL INSTITUTE OF CORRECTIONS LGBTI POLICY GUIDE: A CRITICAL COMPANION

The National Institute of Corrections (NIC) has released an in-depth resource for custodial settings on developing policies on LGBTI people. This resource, *Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings*, covers many of the issues that we cover in *POLICIES TO INCREASE SAFETY AND RESPECT FOR TRANSGENDER PRISONERS: A guide for agencies and advocates*. We recommend that you consider providing the NIC guide as a resource to the agency you are working with and that you use it yourself as a companion to our policy guide and a reference for policy development. Be aware, however, that the NIC guide presents some issues in a slightly different way than we do in our policy guide. Find the NIC guide at: <http://info.nicic.gov/lgbti>.

Finally, because more of this advocacy work is going on around the country, jail and prison officials are becoming more receptive to our message. LGBTQ advocates are increasingly taking this on as an important issue that affects particularly vulnerable members of our communities. For example, more currently and formerly incarcerated LGBTQ people are organized in pressing for change through networks such as Black & Pink and Transgender & Intersex Justice Project. Other advocates working on prison reform issues are increasingly recognizing LGBTQ folks as a key population in need of protection. At the same time, as jails and prisons hear about other agencies adopting policies protecting LGBTQ people, these issues start to become more familiar to them. Some agencies have started developing policies on their own initiative, even in areas where the PREA Standards don't require them to.

HOW TO USE THIS GUIDE

The purpose of this guide is to provide advocates (who are working outside facilities or agencies) with practical information about working on policy reforms in prisons and jails. It is intended for advocates who would like to work, or are working, with agencies that control jails, prisons, and other detention facilities, such as local, state, or federal corrections or detention agencies, to develop and implement more just and humane policies toward transgender and LGBTQ people. Advocates could include state or local transgender organizations, statewide LGBTQ equality groups, legal advocacy groups, or groups of grassroots activists, as well as organizations already working on prison reform or criminal justice issues that want to incorporate the concerns of LGBTQ people in their work.

This guide is mainly focused on advocacy to improve conditions for transgender people in jails, prisons, and other confinement facilities. While taking immediate actions to protect transgender and LGBTQ people from some of the worst harms they face behind bars is critical, we believe reforming jails and prisons can never be a complete solution. Too many people go to too many prisons for far too long in the U.S.—at tremendous human, and fiscal cost to all of us.

A NOTE ON LANGUAGE IN THIS GUIDE

In this guide, we generally use the term “prisoner” in discussing people who are being held in a confinement facility. Agencies themselves may use a variety of terms, such as “inmates,” “detainees,” and “residents.” These different terms reflect the different laws, environments, and cultures in these facilities. Accordingly, the excerpts from PREA Standards and sample agency policies included in this guide use varying terms.

¹ See, e.g., Center for American Progress & Movement Advancement Project. (2016). Unjust: How the Broken Criminal Justice System Fails LGBT People of Color. Washington, DC & Denver, CO. Available at: www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf; James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. (pp. 184–190). Washington, DC: National Center for Transgender Equality. Available at: www.ustranssurvey.org/report; Meyer, I. H., Flores, A. R., Stemple, L., Romero, A. P., Wilson, B. D. M., & Herman, J. L. (2017). American Journal of Public Health 107(2). Available at: https://williamsinstitute.law.ucla.edu/wp-content/uploads/Meyer_Final_Proofs.LGB_In_.pdf.

² For more information about issues affecting LGBT people in prisons, see LGBT People Behind Bars: Understanding the Basics at <https://transequality.org/transpeoplebehindbars>.

³ For more information about recent cases on the rights of LGBT prisoners, see LGBT People Behind Bars: Understanding the Basics, at <https://transequality.org/transpeoplebehindbars>.

WORKING WITH JAILS AND OTHER FACILITIES ON LGBTQ POLICIES

THIS CHAPTER OUTLINES KEY INFORMATION YOU MAY NEED, approaches to developing relationships and writing policies, and suggestions for overcoming obstacles. While there is no one way to advocate for policy changes in jails or other confinement facilities, these are some of the basics that are worth considering in any local advocacy effort.

GETTING STARTED

Before jumping right into an LGBTQ policy campaign with a prison or jail, it is important that you have a solid understanding of their current practices and culture concerning LGBTQ issues. First, if you or your team are not already familiar with the current experiences, needs, and risks of LGBTQ prisoners detained in the agency or facility, this will be critical to understand. Second, you should also assess staff and administration attitudes and knowledge about sexual orientation and gender identity and expression, and their openness to policy development. Finally, you should determine the current practices and policies at the facility in key areas such as screening and housing, how they are applied to LGBTQ people, and what, if any, training staff receive in this area. You will be most successful in developing your understanding of these areas and pursuing your policy goals if you can bring together a coalition of advocates with different skills, experience, and expertise. Once you and your coalition partners have a clearer picture of the needs, problems, and practices within the agency or facility, you will be in a good position to start developing a solid plan for your advocacy.

UNDERSTAND THE BIG PICTURE

It's also important to understand from the beginning that while LGBTQ people behind bars often face unique challenges, those LGBTQ-specific challenges often occur in the context of policies and practices affecting prisoners more generally, as well as the policies that drive mass incarceration. Some things to consider:

- Are there additional issues, beyond those specific to LGBTQ people, that your efforts should address?

For example, issues like access to medical care or the use of solitary confinement affect prisoners more broadly, regardless of whether they are LGBTQ, and there are many other issues that are just as important to the LGBTQ people incarcerated in your community.

- Is there an existing advocacy effort targeting this agency on another prisoner rights issue, (such as excessive force, solitary confinement, or mistreatment of people with disabilities)? If so, how can your efforts be combined or support each other?

ADVICE FROM AN ADVOCATE

If you have not been through the system, you do not know what it is like. Work with folks who have interacted with the system as well as those who work within it. Be a pen pal or visit people who are currently incarcerated or who have recently been incarcerated at the facility you're developing a policy for. Hear what they are experiencing in jail. Be conscious that their concerns and wishes about prison conditions may not be what you think.

- How can you ensure officials who are resistant to change do not exploit one issue to avoid addressing others? For example, some agencies might try to tout new LGBTQ policies to improve their public image or deflect criticism about other problems at their facilities.

UNDERSTANDING THE VALUE OF COALITION BUILDING

While you don't need a large, well-funded organization to do this work, you will be most effective if you bring together a group of advocates with different skills and expertise, including those who focus primarily on transgender and LGBTQ issues and others who may have experience focusing on incarceration issues more broadly. A strong team—even a small one—can bring together knowledge of your local agency or facility; personal experiences with incarceration, legal or policy expertise, or research; and a broad set of perspectives. Remember that this is a particularly complex and challenging area for advocates—you shouldn't go at it alone.

Consider reaching out to other organizations in your local community or state that may have experience working with this agency or on related issues, even if not with an LGBTQ focus. They may be willing to give you advice or key background information, or even join your efforts. Potential partners in this work could include:

- Transgender and LGBTQ advocacy organizations in your community or state
- Legal services organizations that represent prisoners
- Public defenders and other attorneys who handle criminal matters
- Non-legal organizations that provide services to prisoners or monitor their treatment
- Organizations that serve formerly incarcerated individuals, such as community re-entry programs and harm reduction programs
- Racial justice organizations
- Legal or policy organizations focused on criminal justice reform
- State ACLU affiliates
- Organizations in a neighboring community or state that have worked with jails or prisons before
- Local policy-focused organizations, as well as LGBTQ and prisoner rights lawyers
- Protection & Advocacy Systems (P&A) (state-based groups that provide advocacy and support for underserved individuals with disabilities)

Many advocates have found it very helpful to bring attorneys in on the policy development and have had them do trainings for the advocates on the law and other policies. You can also reach out to national LGBTQ organizations such as the National Center for Transgender Equality for advice and assistance, such as to get copies of recent policies from other jurisdictions and feedback on policy proposals.

UNDERSTANDING CURRENT EXPERIENCES OF LGBTQ PRISONERS

If you or your team do not have first-hand experience being incarcerated in the facility you're trying to improve a policy for, you may have much to learn. This is where talking to current and formerly incarcerated LGBTQ people is key. While you may already be aware of common problems and risks that LGBTQ prisoners face generally, it will be helpful for you to have a good understanding of the experiences, risks, and needs of LGBTQ people in the facility where you want to develop policy. This will allow you to focus your policy development on the specific problem areas that transgender and LGBTQ prisoners face in this facility. If you are not already in

contact with current or former prisoners, now is the time for you to reach out to them. Some ideas on how to do this include:

- Reaching out to local LGBTQ service providers
- Reaching out to service providers who work with currently and formerly incarcerated people, such as prisoner watchdog groups, prisoner advocates, public defenders, community re-entry programs, and harm reduction programs
- Participating in a community visitation program
- Requesting to be a pen pal with a current LGBTQ prisoner
- Asking community members you already know if they know anyone for you to talk to

While gathering information from currently or formerly incarcerated individuals is a good place to start, it is also important to fully engage current and former prisoners to the greatest extent possible in every step of your campaign and in your campaign's leadership.

INVOLVING PEOPLE WHO ARE CURRENTLY OR WERE PREVIOUSLY INCARCERATED IN THIS FACILITY OR OTHERS IN YOUR CAMPAIGN

Include formerly incarcerated people in your working group.

If no one in the initial group of advocates planning the work has been incarcerated, consider inviting individuals who have been incarcerated to take an active role in your advocacy work—planning your strategy, meeting with officials, and developing policy proposals. If a formerly incarcerated person isn't interested in or doesn't have the time to commit to being part of your core group, they may be able to take another role, such as providing feedback on policy proposals or sharing their story in a meeting with officials or in an officer training. Whatever their degree of involvement, it is important that formerly incarcerated individuals not be tokenized or expected to represent the experiences of all currently or formerly incarcerated LGBTQ people. Keep in mind that many incarcerated people and people marginalized in other ways may be interested in participating but may face financial barriers or other barriers to doing so, and think about ways you can address those barriers to help ensure they are included.

Conduct a needs assessment survey.

In many local communities, advocates have conducted needs assessment surveys to determine the key challenges affecting LGBTQ people and the things they think are most important to change. Sometimes these assessments focus on specific issues or segments of the LGBTQ community, such as folks who have had involvement in underground or street economies. Needs assessments can include paper and online surveys, community meetings, focus groups, or one-on-one interviews.

Create an advisory group.

For example, the Sylvia Rivera Law Project (SRLP) has a Prisoner Advisory Committee that provides regular input on the problems and concerns facing incarcerated transgender, intersex, and gender nonconforming people in correctional facilities, as well as on the strategies and objectives that SRLP uses. The advisory group currently includes around 150 currently incarcerated individuals who regularly advise on and participate in SRLP's advocacy work. The group also shares stories and artistic works through an annual newsletter called In Solidarity and through a blog on SRLP's website.

UNDERSTANDING FACILITY STAFF AND ADMINISTRATION ATTITUDES ABOUT SEXUAL ORIENTATION AND GENDER IDENTITY/EXPRESSION

In order to be able to get a facility to adopt and implement a policy, you will first need to have a good sense of its staff and administrators' knowledge and attitudes about sexual orientation, gender identity, and gender expression, as well as their openness to creating policy in these areas. While lawsuits or legislation can force change, agency culture and attitudes will determine how the laws or policies are implemented.

Current and former prisoners will have some knowledge about the facility's culture. Having honest conversations with the individuals who work in the facility or oversee it is also a critical step to getting a clearer picture of where things are. For example, is there a friendly staff member whom you already know or to whom you can arrange an introduction? If so, they should be able to help you gain an understanding of the general level of skills, knowledge, and comfort of agency staff and administration in this area.

If you are already on good working terms with facility administration, you may want to consider asking them to pull together an informal focus group or have their staff complete a short, anonymous online survey that would assess knowledge and attitudes related to LGBTQ prisoners. Is the facility administration ready to improve practices related to LGBTQ prisoners but facing reluctance from staff members or officer unions? Knowing this type of information will help you better plan for policy development as well as staff training before implementing any new policies.

UNDERSTANDING CURRENT PRACTICE AND POLICY FOR LGBTQ PRISONERS AT THE FACILITY

It is important for you to be aware of any written or unwritten policies the facility follows that affect LGBTQ prisoners. You can start looking for these policies or procedure manuals online, as some agencies post some written policies on their websites. You can also make a written request to the agency asking for access to all or specific pieces of their written policies under your state's freedom of information law.¹

If you already have a good relationship with a staff member or administrator, you can ask them for copies of relevant policies and manuals as well as any informal policies that they may be aware of. Be aware that if you request all written policies it may be a large volume of information and the cost of filing a formal request for documents is sometimes significant. In some jurisdictions, prisoner advocacy groups will already have copies of written policies; this may be a good place to start looking for information that is not available online. Below are some examples of the types of policies and the areas of practice to inquire into:

- Nondiscrimination and anti-harassment policy
- Personal rights of prisoners (e.g., privacy)
- Intake and risk assessment
- Classification
- Housing policies
- Medical care and medication screening and delivery
- Any policies specific to transgender prisoners

- Clothing, grooming, and hygiene
- Searches
- PREA policies
- Other policies regarding physical and sexual abuse prevention

With this information, you'll be ready to determine how you are going to engage the agency or facility you are looking to create policy for, what your advocacy campaign goals are, and who you want to reach out to so you can create a broader coalition.

Other sources of information about agency policies and practices can often be found through PREA audits. The PREA Standards require regular audits for all facilities to assess their compliance. These audits can often be found on the U.S. Department of Justice website at <https://www.bja.gov/State-PREA-Submissions> or through state freedom of information laws. Sexual abuse incident reviews—which are meant to identify factors contributing to abuse incidents, trends, and steps to prevent future incidents—may also be available (with personal information redacted) through freedom of information laws. Note that, currently, PREA audits often fail to identify problems and areas of noncompliance. Problematic audits can be reported to the Justice Department's Bureau of Justice Assistance to help improve their quality in the future.

HOW TO BUILD RELATIONSHIPS WITH FACILITY STAFF AND ADMINISTRATION AND WORK WITH THE FACILITY

Identifying and Engaging with the Right System Officials

To make sure that a policy is specifically tailored to the facility's practices and systems, you will want to have front-line staff, security staff, and others who interact with prisoners on a daily basis involved in developing the policy. In addition, to make sure that any policy that is developed will get adopted and implemented, you will want to have department leadership and other administration actively involved in the process. You will need their buy-in and support. You may also want to consider engaging representatives from other areas in the agency, including medical, mental health, and programming/treatment staff. In some cases, the provision of medical and mental health care will be done by a different agency, and you may need to engage with representatives from that agency, such as the Department of Health or a private contractor, to ensure that medical care providers also implement transgender and LGBTQ-specific provisions. You should also identify officers' unions and assess whether they are on board: officers' unions are sometimes a source of resistance and engaging them early on can sometimes be critical to the policy's success.

It can be incredibly useful to build individual relationships with key officials and/or staff who share a personal commitment to the issues you are working on. These may be agency leaders, mid-level administrators, or front-line staff who are personally invested in ensuring the best possible outcomes and are willing to have candid conversations and help strategize about addressing the concerns of others in the agency, developing trust, and overcoming roadblocks.

These folks may reach out to you or you may identify them in larger meetings. Depending on the size of the agency, there may be an employee resource group for LGBTQ employees that you can reach out to. Keep in mind that these folks work for the agency and may have limitations on their ability to meet or share information with you, but they can still help a lot. You will often need to take the time to build these relationships and do behind-the-scenes work before you can even start discussing what a policy could look like.

While building these relationships can be important to making policy change, it is important to understand that working closely with facility staff can be alienating and painful for some formerly incarcerated people. You should make sure you are having open and honest conversations with everyone involved in the campaign about the potentially difficult dynamic of working with agency staff and you should collectively develop strategies to deal with those challenges. You can find some suggestions on this topic in the section “Handling Conflict between Policy Advocates and the Facility” below.

Gaining Buy-in from Agency Officials

To be successful in influencing agency policy, you will likely need to develop relationships with key leadership and staff and persuade them that you can help them with their mission and goals. Agency staff may see their organization and its impact on marginalized communities in a more benign light than you do, and they may start from a place of real ignorance about LGBTQ people. At the same time, agency leaders and staff can be motivated to make sure that they are following the law, protect themselves from lawsuits, minimize conflicts with prisoners that could pose dangers to their staff, and provide a basic level of decency and safety.

You can use many tools to do some initial education with agency officials and gain buy-in for policy changes. Some helpful tools include personal stories from LGBTQ community members, data, and findings from studies and official reports, examples of successful policies from other agencies, specific provisions of the PREA standards, and relevant court decisions. Being familiar with the PREA standards and their provisions related to LGBTQ people will be very helpful here because complying with PREA is (or is at least supposed to be) very important to facilities. In addition to talking about PREA, giving officials an opportunity to get to know LGBTQ individuals and understand who they are both inside and outside facilities is invaluable. Offering to provide cultural competency training for their staff can also be a helpful initial step.

Understand that leaders and staff may have a lot of questions and will look to you for answers. Sometimes their questions will be very basic and others may surprise you. Try to meet them where they are and answer their questions as best you can. If you don't know how to answer a question, tell them you'll get back to them and reach out for help from an expert.

LESSONS LEARNED

Developing policy for a jail or prison could take a very long time.

Doing this work requires perseverance and patience. Courtney Gray, a transgender advocate in Colorado, explained that a willingness to work tirelessly is crucial. When things get tough, it is important to keep in mind that there is usually a common goal between jail staff and advocates.

Establishing Task Forces, Committees, or Other Policy Development Groups

In order to more fully engage stakeholders, other advocates, and agency staff in your advocacy group's efforts at developing an LGBTQ policy, you may want to consider pulling together a task force, committee, or named coalition that will solely focus on improving conditions in the prison or jail for LGBTQ folks who are incarcerated.

What are the benefits of forming a separate group? To start with, by setting up something new and separate from the organization you are working with, you can more easily spread the word around and get folks excited about a first meeting. You can also send out organization- or individual-specific invitations to those you believe will be important players in this effort. In addition, folks who may otherwise be unsure about attending a meeting that is led by one particular organization may be interested and excited to participate in a group where the leadership is coming from multiple perspectives.

Below are three common forms that a stand-alone task force, committee, or coalition could take. There are advantages and disadvantages for each of the forms, but depending on your community and how interest in policy reform first developed, you may find that it is clear which type best suits you.

1. Advocate-led committees or task forces with the involvement of agency officials

This is a very common format for LGBTQ policy development. Advocates from different organizations come together and invite other individuals, as well as agency staff and administration, to join the new committee or task force. Advocates host the meeting at a location that is comfortable for them and are generally the ones who drive the group forward. To truly involve system staff and administration, advocates should think about how to set up meetings at times that would also work for these individuals as well as ways to help them get involved and feel some ownership.

2. Advocate committees or coalitions that work on their own and then present policy to agency officials

If you have found it too difficult or even impossible to get agency staff or administration to sit at the table with you, you may have no other option than to develop policy recommendations for them on your own. A goal of this type of committee is to figure out how to get your work in front of the agency for discussion. After presenting policy recommendations to them, the agency may become interested in working with you to refine the proposed policy.

3. System-led committees or task forces where advocates are invited to participate at varying levels

Occasionally an agency will organize its own committee or task force and will invite you or other advocates to participate in policy development. They may ask you to serve as full members of the group or as occasional advisors. When agencies do this, it usually means that high-level administrators are supportive of improving policy or that they have been required to create a new policy as a result of litigation or oversight by another government body. A potential challenge is that the agency's ideas about what a policy should look like may be very different from the advocates'. If the agency is calling the shots, hosting meetings of the group, and deciding who can and cannot participate, you can still help steer the policy in the right direction. To try to steer the policy, help the agency see that they need the input and involvement of community advocates in order to craft a policy that is workable and credible for all stakeholders. This can be done by, for example, offering trainings for the group and sharing personal stories.

HOW POLICY DISCUSSIONS GET STARTED

Advocates Initiate Policy Discussions

If you are coming at this completely from the outside, you will need to figure out who you should contact from the facility and how to start the conversation. Before you do so, however, you should reach out to others who have worked on jail and prison policies or conditions in your area.

After completing your initial research and consulting, there are many ways to make contact. If you already have a good relationship with a local or state legislator or another government agency, or if your local government or mayor's office has an LGBTQ affairs liaison, you could ask them for advice or an introduction.

Other local or state advocates, whether LGBTQ groups or other progressive or criminal justice reform groups, may be willing to approach the agency with you or make an introduction on your behalf. If you have no other options, it is okay to make a cold call to the agency and request a meeting. If there have been any recent stories in the media or cases in the courts in your state relating to LGBTQ prisoners, this issue may already be on the minds of officials. Depending on the facts and outcomes of those situations, this may provide either a helpful opening or a sticking point you will need to get past.

Sometimes an agency will initially be hesitant to engage with community advocates or talk about LGBTQ issues. If they are very resistant, public pressure through the media, protests, or a broader coalition of community groups (beyond the LGBTQ community) may be useful—but keep in mind that ultimately you will need to develop a working relationship with the agency. You can also turn to elected officials such as state legislators, who often have oversight over prison conditions and may be able help hold prison officials accountable. While not always possible or desirable, bringing a lawsuit or passing local or state legislation can also force an agency to act—but keep in mind that it tends to be very difficult to win lawsuits against prisons and jails.

Correction Officials Initiate Policy Discussions

If your organization is approached by a local jail or department of corrections because they believe that they need to improve practices with trans and LGBTQ prisoners, you will need to figure out: (1) how open they are to working with advocates and (2) a way to get them to include you in the development of policy. You may also need to shift the focus to issues that you have identified as most important. It may be helpful to reach out to local attorneys who do LGBTQ work, prisoner rights organizations, or general civil rights organizations in order to bring more advocates to the table. When agencies initiate policy development, they may have a very clear picture of what the policy will say regarding transgender prisoners and housing or medical access. Offering to provide trainings that help staff and administration to better understand these issues may make a big difference in getting the facility to be more open about what the policy ultimately says.

In some cases, corrections officials are approaching advocates because they have been compelled to create a specific policy in response to a lawsuit or government report. If you find yourself in this situation, it may be difficult to get the facility to address broader issues. You should, however, still try pressing for a comprehensive approach to policy development.

Corrections Officials Have Created a New Policy with No Advocate Involvement

If you recently found out that the local jail or prison has created a new policy related to LGBTQ prisoners and the policy is either not being implemented or needs to be improved upon or expanded, you may find it difficult to make inroads with the agency. This is where coalition building will be key. In such a situation elected officials may prove useful allies. You also must determine how to make the administration aware and care that the policy is not being implemented or is inadequate as is.



QUESTION: *Should we try to develop one policy that is specific to the needs of LGBTQ prisoners or would it be better to add provisions that address LGBTQ issues into the already existing policies of the facility?*

As with many other topics addressed in this guide, there is no universal right answer here. You should raise this question with the facility, advocates who have worked with the facility before, and corrections experts you trust to see what they think makes most sense for how their policies work. You should also engage individuals presently and formerly incarcerated in the particular facility who may have a sense of which directives and policies are most important.

Some important questions include:

- What will be most operationally effective for the facility in order to implement change?
- What would be the best way to make sure that staff and prisoners are aware of these policy protections?
- What is the easiest way for the facility's administration to adopt the new policies?

STRATEGY AND APPROACH

It's important to remember that when it comes to writing or revising its own policies, the agency is in control of the process. They will be the ones who ultimately decide what gets into the policy and what doesn't, what level of involvement the advocates will have in the final drafting of the policy, and whether they are actually going to adopt anything that gets developed out of the work of your campaign. Even when the agency is forced to act by a lawsuit or legislation, they have the most power in deciding how to implement policy. Therefore, maintaining a working relationship with the agency staff will be an important part of the overall work of your campaign. But it won't always be easy to do this.

There will be some agency staff who mean well but don't know what to do, and others who are resistant or skeptical. Some of the individuals you are working with may make homophobic,

SPOTLIGHT

The DC Trans Coalition (DCTC) used protests to call attention to the need for a comprehensive policy for the DC Department of Corrections. DCTC had first attempted to work with the agency on policy creation but were mostly ignored, so they moved to public protests. "Protests help you get in the door," Jeff Light from DCTC stated. "When you are a group...that represents a small voting bloc, you've got to make a little bit of noise to get a seat at the table." Once at the table, DCTC brought in legal and policy experts as well as affected community members to press for the best policy they could get.

biphobic, and transphobic remarks or try to justify staff misconduct. It can be difficult for many advocates, particularly those who have experienced incarceration first-hand, to sit in meetings with agency staff who say hurtful things or who don't seem to understand or value the experiences of transgender and LGBTQ people in their facilities.

Unless the agency is being legally required to develop new policies (say, because of a lawsuit), the officials you are sitting down with likely want to make things better for LGBTQ prisoners but may not do a good job at showing it. In addition, what they think is better may not be the same as what you think is better. In order to keep things moving forward, you may sometimes have to give facility staff the benefit of the doubt that they want to learn and help. This can be hard to do, especially for people who have been personally harmed by the policies and practices in place in the facility. You must strike a balance when working with facility officials—if they feel advocates are attacking them when they see themselves as trying hard, they may stop working with you completely. While ignoring harmful behavior from the facility staff is not an option, it may mean that you'll need to figure out how to address those problems in ways that don't hurt your ability to advance your policy objectives. For example, if an administrator makes an inappropriate comment without meaning to, you might decide to speak privately with that person after the meeting instead of calling them out in front of the group.

These types of tensions are one reason it is very valuable for advocates to meet separately from facility staff to discuss how the process is going and plan next steps. Advocates can then speak freely about any anger or mistrust that they may feel without jeopardizing the relationship with agency officials. It can also be helpful for a campaign member or ally who understands both the facility's perspective and the advocates' perspective to meet with your team to help foster a better understanding of how to discuss desired policy changes in a way that everyone can understand and value.

Remember that while meeting with agency staff is often a useful tactic, it is not the only one; advocates can decide to use multiple strategies at the same time. In many cases, it can be helpful to coordinate a diversity of tactics, with some advocates quietly meeting with agency staff to hash out a policy and others drumming up public pressure from the outside by organizing protests, sharing their stories with the media, or working with elected officials. That kind of joint strategy can help bring the agency to the table more quickly, and it can make it possible for people to help lead different aspects of advocacy even if they do not feel comfortable working directly with agency staff.

LESSONS LEARNED

You may be met with ignorance and possibly even hostility from officials.

To help address this, you could consider focusing on assisting agency staff on becoming culturally competent around trans identities and issues. You may need to do a lot of education, including explaining the basics of gender identity and how (and why) to respect transgender people. Even as you do these things, you will need to give people the benefit of the doubt, especially at the beginning of the process. This process is often difficult, and you'll need to make sure you're looking out for your wellbeing and that of other advocates you're working with—and remember that people can help lead the advocacy without personally being in every meeting.

ANTICIPATING AND RESPONDING TO FACILITY ADMINISTRATION AND STAFF CONCERNS

How to Respond to Officials' Concerns or Objections

Determine what legitimate concerns exist and figure out how to address them in policies or otherwise. Identify what fears exist that could be overcome by educating staff. You will need well-supported arguments, data, tools, and other evidence to help put agency staff at ease. Examples of common concerns and responses are provided in Chapter 3.

Some departments may want assurances that they are not going out on a limb with untested policies. You can give encouragement by sharing policies from other jurisdictions and explaining how this new policy is simply a part of complying with the law. On the other hand, some departments like to see themselves as cutting-edge. If that is your situation, you can get them excited about leading the way by pointing to policies from other jurisdictions and showing them how they can do better, or by letting them know that they are going to be among the first to develop a policy that addresses a particularly important issue.

TIP:

Don't go into this conservatively or defensively. Press for the strongest possible policy and see what you can get.

Sometimes the objections you hear from the facility are not based on discomfort with LGBTQ policy, but on bureaucratic roadblocks that the facility has not shared with you. It is important to understand what is behind any objections that are being raised so that you can address them appropriately. The facility may need to handle these issues before it can move forward with policy development. There is also the possibility that you may need to find a way to get around these roadblocks without waiting on the facility to resolve its internal issues.

Policy Adoption and Implementation

Once the agency has started writing a policy, it is important to stay engaged as much as possible. The details of these policies can be critical. Ask if you can provide feedback on drafts of the policy before it is finalized or if you can participate in the actual drafting process. Allied groups in your community, national groups like the National Center for Transgender Equality, or other national groups listed in Appendix B can help you review drafts and provide focused feedback.

At some point, it may become clear that there are some issues the agency is not currently prepared to address, or are not willing to address, in the way you recommend. The agency is ultimately in charge of deciding its own policies, but you may have to decide if the changes they are ready to make are strong and effective enough for you to support their adoption.

Either before, during, or after the process of actual drafting, you may want to ask the official or officials with whom you have the best relationships whether (and how) you can help get internal buy-in to adopt the policy or help with implementation. Help getting buy-in may mean meeting with officials higher up in the agency, gathering support from community groups, leveraging relationships with elected officials, providing additional information or research, or even putting them in contact with officials at other agencies that have adopted similar policies. If you do reach out to individuals at other agencies, you will want to engage the person or people you're putting

them in touch with and have a good idea of what they are going to say. Some may be more helpful than others.

Helping with implementation may mean providing or participating in staff training, educating the media and LGBTQ community members, and finding ways to monitor how the policy is working. One option is to propose an ongoing committee or task force of agency officials and community members that would continue to meet periodically to oversee the implementation of the policy and identify and resolve any problems that may arise. Additional strategies to address implementation issues might include filing freedom of information requests, reporting violations of PREA standards to the agency's designated PREA auditor, and working with legal organizations to consider lawsuits and other legal actions. With or without a formal monitoring process, the best way to know what is really going on and what still needs to be done is to support and work with currently and formerly incarcerated transgender and LGBTQ individuals and local organizations that serve them.

TRAINING

Training staff and administration about the policy is key to its implementation. Ideally, training would happen before the policy is implemented or shortly after. Some questions that should come up include:

- Who will develop the training module and who will deliver it?
- Is this a department-led training or can advocates come in with their own materials?
- Would the facility consider conducting a training jointly with advocates?
- How long should the training be?
- Who will be required to take it?
- Will it be a one-time training or will it happen periodically?

You should make sure that the agency is documenting trainings—including who was trained, when they received training, and what the training covered. This documentation helps keep the agency accountable. It can also be helpful for some lawsuits: for example, in order to succeed in making certain constitutional claims, LGBTQ prisoners need to show that agency staff knew about risks facing them—like by getting training on key issues related to LGBTQ prisoners—and still did nothing to help them.

MEDIA AND MESSAGING

Throughout this process, you may want to use media to build support or pressure for your work. In some cases, the agency you're working with will want to publicize its work with you and take credit for doing something positive. Publicizing and praising the process you've made can be valuable for educating community members about their rights, sustaining relationships with the agency as you work on implementation, and laying the groundwork for advocacy with other agencies or lawmakers. But it's also important that your public message doesn't ignore the need for additional reforms or the harms that many prisoners, whether or not they are LGBTQ, may continue to face even if the policy is implemented. Think hard about what your message should be, as well as whether it should depend on your audience or what point you're at in your advocacy.

Keep in mind that the agency you are working with could have a very problematic history and reputation with some communities. While the staff you are working with may genuinely want to do good, the agency may be seeking publicity for its new policy in order to improve its image. You may also want to consider carefully the tone and extent of your praise for specific policy changes or other steps being taken, as well as any praise of the agency itself, especially if you know that allied advocates are struggling to convince the agency to adopt other important policies. Also, consider whether you want to mention other changes in policies or practices that still need to be made—with this agency or with other local and state agencies or laws—when you are talking about the new policy with the media or the public. For example, if there is a separate campaign underway to combat racial profiling, reform drug laws, reform criminal sentencing in your city or state, you may want to identify this as a logical next step when talking to the media. While it can be powerful for several groups to make a joint statement, in some situations, it may be useful for different organizations or individuals to use somewhat different messages. Regardless, these are things you’ll want to consider before the agency puts out a press release or a reporter calls you for a statement.

¹ For information on using freedom of information law, see Columbia Human Rights Law Review. (2017). A Jailhouse Lawyer’s Manual, Eleventh Edition. Available at: <http://blogs2.law.columbia.edu/jlm/wp-content/uploads/sites/13/2017/05/Chapter-7-Part-I-and-II.pdf>.

ADDRESSING COMMON CONCERNS, FEARS, AND OBJECTIONS

AGENCY LEADERSHIP OR STAFF MAY HAVE A VARIETY OF CONCERNS, questions, fears, or objections to making policy changes. They may be concerned that these changes would cost a lot of money, compromise the safety of their officers, open them up to lawsuits, or generate public controversy. Some of the strongest concerns or objections you may hear will likely be about recommendations specific to transgender people, especially recommendations about where transgender prisoners are housed.¹ Taking these internal concerns seriously and addressing them can be essential to successfully adopting and implementing policy changes. Below are some short answers to common questions and concerns we've heard. These examples are by no means exhaustive, and fully addressing the concerns of agency stakeholders may require additional research or consultation. Advocates are encouraged to reach out to NCTE or other groups who have done this work before.

In some cases, it can be very helpful to identify experts who might be respected and trusted by agency stakeholders to respond to these concerns. Examples of experts might include medical or mental health providers with expertise in working with transgender people (and specifically with transgender prisoners) or supportive officials at other agencies who are willing to talk agency-to-agency about their experiences. You'll want to talk with these experts first before inviting them to address agency staff to make sure you're on the same page.

We treat every prisoner the same. Why should some get special treatment?

It's important to keep in mind that agency staff are obligated to protect all the people in their custody, most of whom are not LGBTQ. At the same time, corrections officials understand that some populations are more vulnerable than others and may have unique needs that must be met to ensure that they are safe and healthy. You can help officials understand LGBTQ policies are not about "special treatment"—they are about addressing the unique vulnerabilities that many LGBTQ people face in prisons and jails. For this reason, the PREA Standards require agencies to have policies specific to the needs of LGBTQ people. Research regarding abuse and other risks that LGBTQ prisoners face, as well as court rulings regarding agency's obligations under the Eighth Amendment and other legal standards also support this approach.

This is a correctional facility. We don't make decisions about where to house people or how to search them based on their personal preferences. Why should it be different for transgender people?

When making important decisions about transgender prisoners, like whether to house a transgender person in a men's or women's facility and whether the prisoner should be searched by male or female staff, it is important—and required under the PREA Standards—that facility staff give serious consideration and priority to the prisoner's views regarding what would be safest for them. We understand that ensuring the safety of both officers and prisoners is the highest priority of the agency. Our recommendations are aimed at ensuring safety in light of the unique vulnerabilities and needs of LGBTQ people, as well as facilities' obligations under the law and national PREA Standards. The PREA Standards recognize that in many cases, prisoners may have critical knowledge regarding their own vulnerability and what situations might expose them to

greater risk of abuse. Prisoners' views regarding their own vulnerability are important because, even for members of the same group, that vulnerability will play out differently in specific situations based on individual factors such as appearance, demeanor, stature, prior victimization, and past institutional history. Asking transgender prisoners to specify whether they would feel safer if housed with, or searched by, men or women serves to minimize their risk of assault and harassment and reduce the likelihood that the facility or individual officers will be held liable for harm experienced by the prisoner. Prisoners aren't being asked to simply give their personal preferences, but to give their view of what would be safest for them. These policies have been embraced by many state and local corrections agencies, as well as major police departments and juvenile facilities.

Housing transgender women with other women is not possible. Has any other agency even tried to do this?

Yes, many agencies have such policies in place. Case-by-case housing placements for transgender people, including housing transgender women in women's housing in appropriate cases, has been the policy of numerous local, state, and federal corrections agencies for many years. This has also been the practice or policy of the many juvenile corrections systems—including in Hawai'i since the late 1990s, New York State since 2008, Santa Clara County since 2012, and New Orleans since 2011. Because the national PREA Standards require policies that allow transgender people to be placed according to their gender identity in many instances, many more agencies are adopting this approach. Policies housing transgender people according to their gender identity have also been implemented successfully in homeless shelters, domestic violence shelters, health facilities, and school dormitories around the country, and such policies are increasingly required under state and federal laws.

This practice is also becoming common outside the United States, with many corrections agencies in Europe, Canada, and Australia housing transgender women in women's facilities on a case-by-case basis.²

Does a woman with “male” genitalia pose a safety risk in a women's facility?

No. While a transgender woman might have genitalia that appears similar to a cisgender (non-transgender) man's, this does not mean she presents the same risks that a cisgender male prisoner might. There are many reasons for this difference. What is most important to understand is that a transgender woman's core psychological identity is as a woman. Typically transgender women are uncomfortable with the genitalia they were born with, and are not interested in talking about or having their bodies viewed by others. They may have a strong desire and a medical need for reconstructive surgery, but have been unable to obtain it. Prolonged hormone therapy can also eliminate both erectile function and fertility, though this should not be a prerequisite for housing placement. While any prisoner is capable of engaging in abusive conduct, there is simply no evidence to believe that transgender women present any more risk to their fellow women prisoners than other women.

In practice, a growing number of corrections facilities for youth and adults have successfully housed transgender women alongside other women without experiencing any incidents of abuse by transgender women or other prisoners. By contrast, sexual abuse of transgender women in men's facilities is a common occurrence. A statewide study in California found that when transgender women were automatically housed with men, they were 13 times more likely to be

sexually assaulted than male prisoners in the same facilities.³

Does placement of a transgender woman in a women’s setting violate the privacy of other women?

No. The mere presence of a transgender woman does not infringe upon the privacy of other female prisoners. Again, it is important to remember that regardless of their anatomy or the gender they were assigned at birth, transgender women are women, and their presence is no more a privacy invasion than that of any other woman. Most lived their lives as women prior to incarceration, and they will continue to do so afterward.

Of course, some prisoners may feel uncomfortable or object to sharing a cell or pod with a transgender woman—just as some prisoners may feel uncomfortable being housed with a lesbian, or a woman with a visible disability or different religion. If prisoners have questions about another prisoner’s placement, staff can explain that the placement was made according to official policy, based on all the circumstances, and in the interest of safety and security. Staff can also make clear that the transgender female prisoner is a woman and not a man. Finally, staff should always make clear that any harassment or other misconduct by any prisoner or staff member should be reported and will be taken seriously.

Facilities are encouraged to provide as much privacy as possible for all prisoners to change clothes, shower, and attend to bodily functions, consistent with security needs. Notably, the DOJ PREA rules require that transgender prisoners (regardless of where they are housed) be provided the opportunity to shower separately from other prisoners, and most transgender prisoners will choose to do so out of concern for their own privacy and the risk of harassment or abuse. Facilities can also take steps to provide additional privacy for showering to any prisoner who requests it, or to all prisoners, such as by providing privacy dividers or other measures that increase all prisoners’ privacy.

What about housing for transgender men, or for prisoners whose gender is not male or female?

For all transgender prisoners, as well as for intersex prisoners, the PREA Standards require a case-by-case assessment that considers gender identity and the prisoner’s own sense of where they would be safest. For example, one transgender man may fit in best and be safest housed with other men, while another may have previously been incarcerated with women and feel this is the safest option for him.

Prisoners whose gender is neither male nor female sometimes face unique challenges in male or female housing, since neither fully match their gender. As a practical matter, however, agencies should apply the same policies to prisoners who are neither male nor female as they do to transgender men and women: assess the appropriate placement on a case-by-case basis, prioritizing the prisoner’s assessment of where they would be safest. Typically, prisoners who are not male or female have a well-developed understanding of whether, based on their gender presentation and other factors, they would be safest in a men’s or women’s facility.

Won't housing transgender people based on their gender identity increase the risk of pregnancy among transgender men and among cisgender (non-transgender) women?

The reality is that the risk of pregnancy is negligible. First, many transgender people take hormone therapy that limits or eliminates their fertility, and many have undergone surgical treatments like hysterectomies or orchiectomies that result in sterilization. Though such treatment should not be a prerequisite for appropriate placement, in practice it often means that pregnancies are highly unlikely. Additionally, agencies already have rules in place prohibiting the sort of sexual contact that would lead to pregnancy, and can continue to enforce them, just as they already do to prevent pregnancies between staff and prisoners.

Would these policies violate state laws or expose the agency to legal liability?

Policies that protect the safety and rights of LGBTQ prisoners decrease an agency's legal risks, rather than increase them. The risk of liability from failing to protect vulnerable LGBTQ prisoners is substantial—as evidenced by the large body of case law it has produced. On the other hand, the scenarios agencies may be worried about if they made LGBTQ-protective policy changes are typically either highly unlikely, legally unfounded, or both.

An agency would not be liable simply because a cisgender (non-transgender) woman objects to being housed with a transgender woman. Courts have rejected such claims, stating that a person does not have a right to be free from a presence of another person who shares the same gender identity within a prison or other sex-segregated facility simply because the other person is transgender. Rather, when an institution has made a considered decision as to which facility is most appropriate for a transgender person, courts have deferred to that decision.⁴

Every facility is responsible for preventing any abuse, regardless of who it is committed by or against. This is the purpose of a classification system. The risk that a transgender woman could be abused in a men's facility may be very great, while in general transgender women present no more risk to fellow women prisoners than other women. A case-by-case placement process allows agencies to consider an individual's criminal, institutional, and other history, as well as any prior history of being victimized by sexual violence.

In general, state laws do not require agencies to house individuals according to their anatomy or the gender they were thought to be at birth rather than their gender identity. At most, state statutes may require that anatomy be considered along with many other factors in classifying prisoners. (If this concern is raised, you may need to do some legal research, or find a partner who can do this. Keep in mind that sometimes agency staff will raise legal objections when their real objections have to do with other underlying concerns.)

Does this approach create the risk that a cisgender (non-transgender) prisoner may attempt to “game the system” in order to be housed with women?

It is highly unlikely that a male prisoner might state that he is transgender in an attempt to obtain a housing placement with women. Transgender women are an extremely stigmatized population, and are well-known to be highly vulnerable to abuse in custody. Involving a trained medical or mental health care provider in the assessment process, and asking a standard set of questions, will ensure any such rare cases would be easily identified.

ENDNOTES FOR ADDRESSING COMMON CONCERNS, FEARS, AND OBJECTIONS

¹ For more information about recommended policies, see POLICIES TO INCREASE SAFETY AND RESPECT FOR TRANSGENDER PRISONERS: A guide for agencies and advocates, at <https://transequality.org/safetyfortransprisoners>.

² See, e.g., Correctional Services Canada. (2018). Interim Policy Bulletin 574: Bill C-16 (Gender Identity or Expression). Available at: <http://www.csc-scc.gc.ca/acts-and-regulations/584-pb-en.shtml>.

³ Jenness, V., Maxson, C. L., Matsuda, K. N., & Sumner, J. M. (2009). Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault, p. 3. Irvine, CA: Center for Evidence-Based Corrections.

⁴ See Crosby v. Reynolds, 763 F.Supp. 666 (D. Maine 1991) (rejecting claim by non-transgender female prisoner who objected to housing with transgender female prisoner). See also Cruzan v. Special School District No. 1, 294 F.3d 981 (8th Cir. 2002) (rejecting claims by non-transgender female employee who objected to using restroom with transgender female employee); Students & Parents for Privacy v. U.S. Department of Education, No. 16-cv-4945 (N.D. Ill. Oct. 18, 2016) (rejecting similar claims by non-transgender students who objected to using restrooms and locker rooms with transgender students); Doe v. Boyertown Area School District, No. 17-1249, 2017 WL 3675418 (E.D. Pa. Aug. 25, 2017) (same).

CONCLUSION

Throughout your advocacy, it is important to recognize that while policy change can have a life-saving impact on countless incarcerated LGBTQ individuals, these changes may take months and even years to be fully implemented.

Even with stronger policies on paper, LGBTQ prisoners often need individual support and advocacy. As so, it is imperative to maintain supportive connections outside prison walls—these can be invaluable in surviving the trauma and isolation of imprisonment, even if it comes only in the form of letters.

LGBTQ prisoners often lack the support of family or friends outside, and may face additional obstacles to accessing the limited organizational supports available to prisoners generally. When prisoners' rights aren't being respected—whether under an LGBTQ policy or any other law or policy—it can be virtually impossible to resolve alone from behind bars. Targeted individual advocacy by those outside can be incredibly effective, and is sometimes the only way any policies regarding prisoners' rights get enforced.

Remember that you don't need to be a lawyer, social worker, or expert to support and advocate for individual prisoners. This can involve:

- corresponding by mail
- visiting in person
- helping track down information or obtain needed personal items
- writing letters or making calls to prison officials to address grievances
- contacting supportive organizations to provide legal assistance or make arrangements for needs following release
- using a petition or local media to draw attention to an urgent problem (e.g., being denied medical care or kept in solitary confinement)

To do the above, you'll need to be familiar with facility policies on letters and visits. Much of this work is done by small groups of individuals or grassroots organizations like Black & Pink and the Transgender & Intersex Justice Project. It will be helpful in your advocacy work if you make a commitment to stay engaged and support LGBTQ prisoners.

For assistance in policy development and review, please contact Racial and Economic Justice Policy Advocate, Mateo De La Torre, at mdelatorre@transequality.org or 202-804-6045, or

APPENDIX A: LEAVE-BEHIND MATERIALS FOR INITIAL MEETINGS WITH JAIL AND PRISON OFFICIALS

Lesbian, Gay, Bisexual, and Transgender People: Key Facts for Custodial Agencies

LGBTQ individuals are part of your population. Lesbian, gay, and bisexual men and women make up at least 3.5% of the U.S. population. Transgender people represent 0.6% of the U.S. population, or nearly two million people. LGBTQ people are of every age, race, ethnicity, socioeconomic class, religion, and profession (including law enforcement and corrections). Every custodial agency has LGBTQ people in its population, whether they initially identify themselves or not.

Transgender people are people whose gender identity—their innate knowledge of who they are—differs from the gender they were thought to be when they were born. A transgender woman lives as a woman today, but was thought to be male when she was born. A transgender man lives as a man today, but was thought to be female when he was born. Some transgender people identify as neither male nor female, and may use a variety of terms to describe themselves, like non-binary or genderqueer.

LGBTQ individuals experience “the highest rates of sexual victimization” in custody, according to the Department of Justice. LGBTQ prisoners experience sexual abuse by staff at twice the rate of other prisoners, and sexual abuse by another prisoner at 2.5 times to 10 times the rate of other groups. Transgender women housed in men’s prisons are most at risk, reporting sexual assault at 13 times the rate of male prisoners.

PREA Standards require protection and individualized placement for LGBTQ individuals. National PREA Standards from the U.S. Justice Department require agencies to do the following:

- Ask all individuals to voluntarily state whether they are LGBTQ at intake
- Not place LGBTQ people in segregation or specific units solely because of being LGBTQ
- Consider each transgender person for potential placement in female or male housing based on their gender identity, making case-by-case decisions that are not solely based on anatomy
- Ensure transgender people can shower separately from others if they choose
- Search transgender individuals in a respectful manner that considers the individual’s gender identity, and never conduct searches solely to determine anatomy
- Train staff on communicating respectfully with LGBTQ individuals
- Assess whether victims were targeted for being LGBTQ in incident reviews

Courts have said agencies have a legal responsibility to provide protection and care for LGBTQ prisoners. Courts across the country have ruled that agencies have a responsibility to recognize the vulnerability of LGBTQ prisoners and protect them from abuse; treat sexual orientation or transgender status as confidential information; and provide transgender-related medical care based on medical needs and standards.

APPENDIX B: ADDITIONAL READING AND RESOURCES

Department of Justice Resources

National PREA Resource Center: www.prearesourcecenter.org. *The National PREA Resource Center includes a suite of publications and other resources maintained by the Department of Justice on implementing PREA Standards, including information specific to LGBT prisoners and a comprehensive FAQ (www.prearesourcecenter.org/frequently-asked-questions).*

National Institute of Corrections, Online Resources on Lesbian, Gay, Bisexual, Transgender and Intersex Resources: <http://nicic.gov/LGBTI>. *The National Institute of Corrections, a Department of Justice agency, provides a range of policy resources, technical assistance, and other information about the treatment of LGBTI prisoners.*

State PREA Submissions: <https://www.bja.gov/State-PREA-Submissions>. *This site collects PREA audits conducted for state prisons and juvenile detention facilities. PREA audits for local agencies can often be obtained through the agency or using state freedom of information laws.*

Smith, B. & Yarussi, J. M. (2014). *National Institute of Corrections Policy Review and Development Guide: LGBTI Persons in Custodial Settings (2nd ed.)*. Available at: <https://info.nicic.gov/lgbti/>.

Beck, A.J., Berzofsky, M., Caspar, R., Krebs, C. (2013). *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12*. Available at www.bjs.gov/content/pub/pdf/svpjri1112.pdf.

Beck, A. J. (2014). *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12: Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates*. Washington, DC: Bureau of Justice Statistics. Available at: https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf.

U.S. Department of Justice. (2016). *Report and Recommendations Concerning the Use of Restrictive Housing*. Available at: <https://www.justice.gov/archives/dag/file/815551/download>.

General Research, Personal Narratives, and Background Reading

Alexander, M. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: New Press.

American Civil Liberties Union & National Center for Lesbian Rights. (2014). *Know Your Rights: Laws, Court Decisions, and Advocacy Tips to Protect Transgender Prisons*. Available at: http://www.nclrights.org/wp-content/uploads/2014/12/KnowYourRights_GuidetoProtectTransgenderPrisoners.pdf.

Center for American Progress & Movement Advancement Project. (2016). *Unjust: How the Broken Criminal Justice System Fails LGBT People of Color*. Available at: <http://www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf>.

Columbia Human Rights Law Review. (2017). *Jailhouse Lawyer Manual: Special Considerations for Lesbian, Gay, Bisexual, and Transgender Prisoners*.

James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Available at: <http://www.ustranssurvey.org>. See *Chapter 14: Police, Prisons, and Immigration Detention (pp. 184–196)* for information about experiences related to law enforcement and incarceration.

Lydon, J. (2015). *Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Survey*. Available at: <http://www.blackandpink.org/wp-content/uploads/Coming-Out-of-Concrete-Closets.-Black-and-Pink.-October-21-2015.pdf>.

Meyer, H. I., Flores, A. R., Stemple, L., Romero, A. P., Wilson, B. D. M., & Herman, J. L. (2017). Incarceration rates and traits of sexual minorities in the United States: National Inmate Survey, 2011–2012. *American Journal of Public Health* 107(2), pp. 234–240. Available at: https://williamsinstitute.law.ucla.edu/wp-content/uploads/Meyer_Final_Proofs.LGB_In_.pdf.

Mogul, J.L., Ritchie, A.J., & Whitlock, K. (2011). *Queer (In)Justice: The Criminalization of LGBT People in the United States*.

Stanley, E.A., & Smith, N. (2011). *Captive Genders: Trans Embodiment and the Prison Industrial Complex*. Available at: <https://theloon2013.wikispaces.com/file/view/Stanley-Eric-Captive-Genders-Trans-Embodiment-and-Prison-Industrial-Complex.pdf>.

Medical Care and Resources for Medical Staff

Blunt, M. (2017). *Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention*. Available at: <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>.

Gay Men's Health Crisis. (2012). *Fenced In: HIV/AIDS in the Criminal Justice System*. Available at: <https://www.hivlawandpolicy.org/sites/default/files/Fenced%20In.pdf>.

National Commission on Correctional Health Care. (2015). *Transgender, Transsexual, and Gender Nonconforming Health Care in Correctional Settings*. Available at: <http://www.ncchc.org/transgender-transsexual-and-gender-nonconforming-health-care>.

National LGBT Health Education Center. *Learning Modules*. Available at: <https://www.lgbthealtheducation.org/lgbt-education/learning-modules>.

Office on Violence Against Women, Department of Justice. (2013). *A National Protocol for Sexual Assault Medical Forensic Examinations*. Available at: <https://www.prearesourcecenter.org/sites/default/files/library/anationalprotocolforsexualassaultmedicalforensicexaminations-adultsadolescentsapril2013.pdf>. *Note: LGBT-specific information is included on pages 38–39.*

University of California Center of Excellence for Transgender Health. (2016). *Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People*. Available at: <http://transhealth.ucsf.edu/protocols>.

World Professional Association for Transgender Health (2011). *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (7th ed.)*. Available at: [https://s3.amazonaws.com/amo_hub_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20\(2\)\(1\).pdf](https://s3.amazonaws.com/amo_hub_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20(2)(1).pdf).

Youth

Child Welfare League of America (2012). *Recommended Practices to Promote the Safety and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Youth at Risk of or Living with HIV in Child Welfare Settings*. Available at: <https://www.lambdalegal.org/sites/default/files/publications/downloads/recommended-practices-youth.pdf>.

Marksamer, J., Spade, D., Arkles, G. (2011). *A Place of Respect: A Guide for Group Care Facilities Serving Transgender and Gender Non-Conforming Youth*. Available at: http://www.ncrights.org/wp-content/uploads/2013/07/A_Place_Of_Respect.pdf.

Remlin, C. W., Cook, M. C., Erney, R. Cherepon, H., & Gentile, K. (2017). *Safe Havens; Closing the Gap Between Recommended Practice and Reality for Transgender and Gender-Expansive Youth in Out-of-Home Care*. New York, NY: Children's Rights, Lambda Legal, & Center for the Study of Social Policy.

Wilber, S. (2015). *Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System*. Baltimore, MD: Annie E. Casey Foundation. Available at: <http://www.aecf.org/m/resourcedoc/AECF-lesbiangaybisexualandtransgenderyouthinjj-2015.pdf>.

The Equity Project: <http://www.equityproject.org>. *The Equity Project seeks to educate and train juvenile justice professionals, providing the resources and information necessary to ensure safety and fairness for LGBT youth in the juvenile justice system.*

Law Enforcement and Police Reform

Amnesty International USA. (2005). *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the US*. Available at: <https://www.amnesty.org/en/documents/AMR51/122/2005/en>.

Bazargan, M. & Galvan, F.H. (2013). *Interactions of Latina Transgender Women with Law Enforcement*. Available at: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Galvan-Bazargan-Interactions-April-2012.pdf>.

Copple, James E. & Dunn, Patricia M. (2017) *Gender, Sexuality, and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community*. Washington, DC: U.S. Department of Justice, Office of Community Oriented Policing Services (COPS). (Note: Appendices to this report contain helpful sample law enforcement policies.)

Mallory, C., Hasenbush, A., Sears, B. (2015). *Discrimination and Harassment by Law Enforcement Officers in the LGBT Community*. Available at: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf>.

Ritchie, A. J. (2017). *Invisible No More: Police Violence against Black Women and Women of*

Color. Boston, MA: Beacon Press.

Other Topic-Specific and Local Research and Reports

Fitzgerald, E., Patterson, S. E., Hickey, D., Biko, C., & Tobin, H. J. (2015). *Meaningful Work: Transgender Experiences in the Sex Trade*. Available at: http://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf.

Human Rights Watch. (2016). *“Do You See How Much I’m Suffering Here?”: Abuse Against Transgender Women in U.S. Immigration Detention*. Available at: https://www.hrw.org/sites/default/files/report_pdf/us0316_web.pdf.

Jenness, V., Maxson, C.L., Matsuda, K.N., & Sumner, J.M. (2007). *Center for Evidence-Based Corrections, Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault (2007)*. Available at: http://ucicorrections.seweb.uci.edu/files/2013/06/PREA_Presentation_PREA_Report_UCI_Jenness_et_al.pdf.

Jenness, V., Sexton, L., & Sumner, J. (2010). *Where the Margins Meet: A Demographic Assessment of Transgender Inmates in Men’s Prisons*. Available at: <http://ucicorrections.seweb.uci.edu/files/2013/06/A-Demographic-Assessment-of-Transgender-Inmates-in-Mens-Prisons.pdf>.

Sylvia Rivera Law Project. (2007). *“It’s War in Here”: A Report on the Treatment of Transgender and Intersex People in New York State Men’s Prisons*. Available at: <https://srlp.org/files/warinhere.pdf>.

Transgender Law Center. *Advocating for Yourself While in Custody in California*. Available at: <https://transgenderlawcenter.org/resources/prisons/advocating-for-yourself>.

Support for Incarcerated/Detained Individuals

Just Detention International: <http://www.justdetention.org>. *JDI is a health and human rights organization that advocates for the safety of inmates around the world, seeking to end sexual abuse in all forms of detention.*

TGI Justice Project: <http://www.tgijp.org>. *TGIJP is a support and survival organization for low income transgender people of color and their families, who are in prison, formerly incarcerated, or targeted by the police.*

Black & Pink: <http://www.blackandpink.org>. *Black & Pink is a family of currently and formerly incarcerated LGBTQ people, working to abolish the prison industrial complex through advocacy, education, direct action, and organization.*

Sylvia Rivera Law Project: <https://srlp.org/about/prisoner-advisory-committee>. *The Sylvia Rivera Law Project (SRLP) provides legal services and engages in organizing with incarcerated people.*

Justice Now: <https://www.justicenow.org>. *Justice Now fights to end the practices of policing and imprisoning, with a focus on gendered violence in those contexts.*

The Prisoner Correspondence Project: <http://www.prisonercorrespondenceproject.com>. *The*

Project is a Montreal-based direct-correspondence program for LGBTQI, gender-variant, and Two-Spirit prisoners in Canada and the United States.

Hearts on a Wire Collective: <https://www.scribd.com/user/78046739/Hearts-on-a-Wire>.
Pennsylvania-based Hearts on a Wire produces a newsletter by and for trans and gender-variant prisoners and provides outside support and advocacy.

Tranzmission Prison Project: <http://www.tranzmissionprisonproject.org>. *Tranzmission sends books and resources to LGBTQI prisoners.*

LGBT Books to Prisoners: <https://lgbtbookstoprisoners.org>. *LGBT Books to Prisoners sends free books and other resources to LGBT prisoners across the country.*

© **2018 The National Center for Transgender Equality.**

We encourage and grant permission for the reproduction and distribution of this publication in whole or in part, provided that it is done with attribution to the National Center for Transgender Equality. Further written permission is not required.

Acknowledgements:

Thanks to all NCTE staff and fellows who assisted with the development of this publication, especially Ma'ayan Anafi, Harper Jean Tobin, Mateo De La Torre, and Jen Jenkins.

NCTE would like to thank the following organizations who provided invaluable input on this publication. Any mistakes that remain are our own.

- ACLU LGBT & HIV Project
- Black & Pink
- National Center for Lesbian Rights
- Transgender Law Center

We are also indebted to Jody Marksamer, who co-authored the 2014 publication *Standing with LGBT Prisoners* from which this resource was adapted, and to the following organizations who provided input on that publication:

- Sylvia Rivera Law Project
- Transgender & Intersex Justice Project
- Streetwise and Safe
- GLBT Community Center of Colorado
- Chicago House & TransLife Center
- Advocates for Informed Choice

Recommended Citation:

National Center for Transgender Equality. (2018). *Ending abuse of transgender prisoners: A guide for advocates on winning policy change in jails and prisons*. Available at: <https://transequality.org/endingabuseoftransprisoners>.

Published October 2018.

About the National Center for Transgender Equality

The National Center for Transgender Equality advocates to change policies and society to increase understanding and acceptance of transgender people. In the nation's capital and throughout the country, NCTE works to replace disrespect, discrimination, and violence with empathy, opportunity, and justice.

National Center for Transgender Equality

1133 19th Street, NW, Suite 302

Washington, DC 20036

202-642-4542

ncte@transequality.org

www.transequality.org

 [TransEqualityNow](#)

 [TransEquality](#)

