

PRISON AND DETENTION REFORM

Nearly one in six transgender people (16%) (including 21% of transgender women) have been incarcerated at some point in their lives—far higher than the rate for the general population. Among Black transgender people, nearly half (47%) have been incarcerated at some point¹. These high rates of incarceration are driven by disproportionate poverty, homelessness, discrimination, participation in street economies, and in some cases, law enforcement bias. Trans people are also at high risk of abuse in prisons, jails, and juvenile detention². The categorical denial of transition-related medical care is common, as is prolonged isolation of trans people, which has been shown to have devastating effects on mental health. These abuses occur within the context of a broken, overcrowded, and increasingly privatized prison system. Addressing both the causes of over-incarceration and the intolerable conditions of prisons, jails, and detention facilities are urgent issues for trans people and our communities.

1 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 163.

2 *National Prison Rape Elimination Commission, Report*, at 73 (2009); Valerie Jenness et al., *Violence in California correctional facilities: An empirical examination of sexual assault*. Irvine, CA: Center for Evidence-Based Corrections (2009).

Some progress is being made. In 2011, based on the input of NCTE and many others, the U.S. Justice Department proposed national regulations to prevent sexual abuse in prisons and jails, including specific measures to protect transgender people. We expect the final Prison Rape Elimination Act rules to be released in early 2012. Thanks to the expert work of LGBT legal organizations, the Federal Bureau of Prisons adopted new guidelines in 2011 for medical care for transgender inmates as part of a groundbreaking legal settlement, and major rulings from two federal appeals courts in 2011 are helping to make clear that the Constitution forbids states from categorically denying transition-related care to incarcerated and detained persons. A growing number of local and state agencies have adopted comprehensive policies specifically aimed at improving the treatment of transgender people. And the Department of Justice has begun investigating abuses targeting LGBT people in state prisons and jails. We need to build on these successes and ensure that all agencies that incarcerate or detain take the necessary steps to ensure that no one is abused, denied medical care, or subjected to inhumane conditions.

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Policy steps

- The Department of Justice should issue strong final regulations to implement the Prison Rape Elimination Act (PREA). These regulations should apply to all facilities that incarcerate or detain individuals and should fully address the needs and vulnerabilities of transgender and gender nonconforming people, including individualized housing determinations and strict limits on involuntary segregation.
- The Federal Bureau of Prisons should fully implement its 2011 interim guidance on medical care for trans inmates through a formal Program Statement.
- The Federal Bureau of Prisons should establish a multidisciplinary committee, with input from outside experts, to make individualized housing determinations for transgender inmates.
- The Federal Bureau of Prisons should establish a standardized process for transgender inmates to make an election whether to be subject to physical searches by male or female officers.

Ending Sexual Abuse in Prison and Detention

Passed unanimously by Congress in 2003, the Prison Rape Elimination Act (PREA) requires the Department of Justice (DOJ) to issue binding national standards to prevent and respond to sexual abuse that would apply to all facilities that confine persons in the United States and receive federal funding. Following years of study and hearings, including testimony from LGBT advocates and survivors of abuse, a National Prison Rape Elimination Commission established by Congress issued a report and recommendations in 2009. Among the Commission's recommendations were individualized housing decisions for transgender people (instead of housing based solely on birth-assigned gender or anatomy), restricting the use of protective isolation, limits on invasive search procedures, staff training on LGBT issues, and external monitoring of facility practices.

In the last three years, NCTE has worked with a large and diverse coalition, led by Just Detention International, to advocate with DOJ for strong standards that build on the Commission's recommendations. Working with the National Center for Lesbian Rights, Lambda Legal, the ACLU, the Sylvia Rivera Law Project, the Transgender Law Center, and the National Juvenile Defender Center, NCTE took a lead role in drafting extensive LGBT-focused comments for DOJ in 2010 and again in 2011, and in organizing hundreds of other organizations and individuals to submit comments to DOJ. In 2011, DOJ announced proposed PREA regulations that were strong in many respects but lacked some critical protections and failed to cover facilities holding thousands of immigration detainees. NCTE has pressed the Obama Administration to make sure that all facilities where people are confined are covered by the final rules. NCTE also plans to work with national, state, and local organizations to ensure that the PREA rules are fully implemented nationwide.