

National Prison Rape Elimination Commission
810 Seventh Street, Northwest, Suite 3432
Washington, DC 20531

Submitted Via Email

August 15, 2005

Dear Commissioners:

Thank you for the opportunity to submit written and oral testimony to the National Prison Rape Elimination Commission regarding the high incidence of rape and sexual assault that transgender, intersex, and gender non-conforming prisoners face.

The Sylvia Rivera Law Project is a non-profit organization providing free legal services to transgender, intersex, and gender non-conforming low-income people and people of color. I founded SRLP in 2002, and since then, we have served over 550 clients, the majority of whom reside in New York and New Jersey, but many of whom are incarcerated people living in prisons across the United States.

The Problem

Our clients are face pervasive discrimination in employment, housing, education, health care, and social services. Loss of family support at a young age, discrimination in schools, employment discrimination and violence and discrimination in shelters, foster care, and other programs that are supposed to support needy people result in disproportionate poverty and homelessness in the transgender population. Living on the street, transgender people face more exposure to police, who often harass and falsely arrest them, relying on stereotypes that all transgender people are criminals, and prostitutes.

Like prisons, most of the programs through which homeless youth and adults may seek shelter are sex-segregated and place transgender people according to birth gender, resulting in unsafe conditions that many find even less safe than living on the street. Without options for gainful employment, and living at the edge of survival, many transgender people become engaged in criminal activities such as prostitution or drug use, and end up entangled in the criminal justice system. Because many alternatives to incarceration programs, such as drug treatment facilities, are also sex-segregated, many will not admit transgender residents or treat transgender residents so poorly that these residents cannot access the support necessary to complete recovery, and end up in the prison system.

Once incarcerated, our clients describe very dangerous conditions. First of all, 100% of SRLP's incarcerated clients have been placed in facilities according to birth gender, meaning that transgender women are in men's facilities and transgender men are in women's facilities. This placement scenario makes them obvious targets for sexual harassment and assault. Even accessing the most basic necessities, such as showers, can mean risking rape. The reports we receive from clients are consistently horrifying, and include not only repeated rape by inmates and corrections officers, but also forced prostitution rings coordinated by corrections officers, retaliation for reporting rape, and rape scenarios coordinated by corrections officers.

I am attaching to this letter an excerpted section of a draft report that SRLP aims to release in December 2005 focusing on the conditions faced by prisoners in New York State. This report includes extensive excerpts of letters from incarcerated transgender people, describing the difficulties they face inside prisons. I apologize that I can only provide a draft version at this point, and only an excerpt of that, but I hope that hearing the prisoners' own stories and their advocates' experiences as well will help to paint a clear picture of the violent conditions under which they live.

I hope that sharing some of the experiences of our advocates will also be instructive. Below I have included accounts from our practice, indicating the aspects of this systemic problem that we have witnessed as advocates for incarcerated transgender, intersex, and gender non-conforming people in the last three years.

- We have consistently witnessed the exclusion of transgender and intersex people from drug treatment programs. In a series of trainings about transgender issues that we did with Covenant House, a large youth shelter in New York City, the case workers consistently told us that the drug treatment programs they call to place transgender youth say "we don't take trans." Similarly, when attempting to find residential treatment for an intersex client as an alternative to incarceration, we encountered intake workers who demanded to know inappropriate information such as whether the client urinated standing or sitting in order to determine whether he would be admitted.
- We have heard repeated stories of corrections officers facilitating the sexual assault and exploitation of our clients. In 2003, we were contacted by a transgender inmate in a New Jersey jail who reported that the guards had arranged for her to be placed in a cell to be raped, and she was not let out until a sympathetic guard came on duty over 24 hours later. She had to be hospitalized for her injuries. Similarly, a client who was recently transferred out of Attica reported to us that there are 16-18 transgender women

incarcerated there and that they are forced into a prostitution ring coordinated by the corrections officers.

- We have heard stories of retaliation for reporting sexual assault or refusing to comply with sexual requests from corrections officers. We have one client who reached out to us because of repeated, sometimes daily, rapes she endured. After we began to work on her case, we received another letter from her stating that she wanted us to stop writing because the corrections officers had told her they would kill her if she pursued a legal case. We were not able to pursue her case until she could be transferred to another facility.
- Clients report to us the difficulties they have accessing showers because they are forced to shower with groups of other inmates despite the high threat of rape they face. In 2003, I witnessed the unwillingness of the prison administration of Clinton Correctional Facility to act to prevent rape first-hand when advocating for a client who was afraid to shower. At the time, the Sylvia Rivera Law Project had two clients incarcerated in the facility, a transgender woman and a man with an intersex condition. The client with the intersex condition was allowed to shower alone, but the transgender woman was forced to shower in groups. She had breasts and other feminine characteristics, and her fear of rape was such that she refused to shower rather than enter a group shower. When I called the superintendent of the facility to inquire about why these two inmates were being treated differently and to request that the transgender woman be allowed to shower alone, I was told, “our policy is to prevent pregnancy.” My request was refused. The superintendent was making it clear that he was not concerned about rape, only about making sure that the intersex client did not become pregnant.

These stories are only a small snapshot of the disturbing reports we consistently receive from incarcerated clients across the United States and the interactions with discriminating defense attorneys, prison administrators, prison medical personnel and others that we encounter. We view the conditions that transgender and intersex people face in prisons and jails as the most violent faced by any of our clients, and we believe that remedying this systemic violence is vitally necessary.

Recommendations for Change

One of the most significant obstacles to meaningful change is the lack of information that policymakers, advocates, and government have about transgender intersex and gender non-conforming prisoners.

- We recommend that data-gathering be done, and statistics collected about the numbers of transgender, intersex, and gender non-conforming prisoners, their placement in US prisons, their access to medical care, and their experiences of assault and rape.
- We recommend that a new policy regarding placement of transgender and intersex prisoners be researched and developed. Criteria for placement should include gender identity (focused on placing inmates in facilities that comport with their current gender identity rather than birth gender) and safety (assessing where an inmate will be least vulnerable to sexual assault).
- We recommend that education and policy change be undertaken that would allow transgender and intersex prisoners to have equal access to programs that provide alternatives to incarceration.
- We recommend that policies be clarified and enforced to allow all transgender prisoners to access transition-related health care while incarcerated, regardless of whether they accessed such treatment under the care of a physician prior to incarceration.
- We recommend that policies be researched and developed to ensure that grievances filed by inmates regarding harassment, assault and rape are fully investigated and that retaliation for the filing of such grievances is prevented or fully investigated and acted upon.
- We recommend that policies be researched and developed regarding the use of protective custody units to ensure that they increase the safety of inmates, that inmates in need can access them, and that they do not provide opportunities for increased vulnerability to sexual violence at the hands of corrections officers.
- We recommend widespread training and education regarding transgender, intersex, and gender non-conforming identities and medical needs for corrections officers, prison administrators, defense attorneys, judges, prison medical personnel, and court personnel.

We appreciate the work of the National Prison Rape Elimination Commission, and we hope that our testimony regarding the conditions we have witnessed as advocates for transgender, intersex, and gender non-conforming prisoners are useful in your work to eliminate prison rape.

Sincerely,

Dean Spade, Esq.
Founder

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