

**CALL FOR CHANGE**

FEBRUARY 2009



## A Call for Change: Protecting the Rights of LGBTQ Detainees

### Introduction

**B**ECAUSE I WAS RAPED, *I got labeled as a 'faggot,' and everywhere I walked everyone looked at me like I was a target. It opened the doors for a lot of other predators. Even the administrators thought it was okay for a 'faggot' to be raped. They said, 'Oh, you must like it.'*

— Bryson Martel,  
prisoner rape survivor

**A**N ASTONISHING 2.3 million people are incarcerated in the U.S. at any given time, with some 12 million passing through prisons and jails each year. Of these detainees, an alarming number experience sexual violence. According to the best available research, 20 percent of inmates in U.S. men's institutions are sexually abused at some point during their incarceration.<sup>1</sup> The rate for women's institutions varies dramatically from one facility to another, with one in four inmates being victimized at the worst ones.<sup>2</sup>

In an inmate survey mandated by the Prison Rape Elimination Act (PREA) and published in December 2007, the Bureau of Justice Statistics (BJS) found that 4.5 percent (or 60,500) of the more than 1.3 million inmates held in federal and state prisons had been sexually abused in the previous year alone.<sup>3</sup> A subsequent BJS survey in county jails was just as troubling; nearly 25,000 jail detainees reported having been sexually abused in the past six months.<sup>4</sup>

Lesbian, gay, bisexual, transgender, and queer (LGBTQ) detainees are hardest hit by this violence. The BJS survey of sexual violence in jails found that sexual orientation was the single most predictive characteristic of who was targeted for sexual assault. A 2007 study conducted at six California men's prisons found that a shock-

ing 67 percent of inmates who identified as "non-heterosexual" reported having been sexually assaulted by another inmate during their incarceration – a rate that was 15 times higher than for the inmate population overall.<sup>5</sup>

LGBTQ detainees have little access to protection from these crimes and generally endure them in silence. This is due to a number of factors, including pervasive homophobia among corrections officials that creates an environment in which abuse is allowed to flourish. Many LGBTQ survivors do not report sexual abuse because they fear retaliation and breaches of confidentiality. They also tend to believe – often based on how facility staff have reacted to the complaints of others – that reports will be met with indifference or hostility and that no action will be taken.

Following any incident of rape, survivors suffer severe psychological, and often physical, pain. In the case of prisoner rape, the initial assault is usually just the beginning of the victim's ordeal. Perpetrators often abuse prisoner rape survivors relentlessly, sometimes for long periods of time. In addition, survivors are frequently marked as fair game for attacks by others. In the worst cases, they are treated like the assailants' property and "sold" to others within the facility.

Prisoner rape survivors demonstrate a significantly higher incidence of mental health problems than prisoners who have not expe-

*See INTRO, continued on page 2*

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### INTRO, continued from page 1

rienced sexual violence, including depression, post-traumatic stress disorder (PTSD), and substance abuse. Furthermore, the HIV prevalence rate inside U.S. prisons is more than four times higher than in society overall<sup>6</sup> and detainees have only limited access to screening and treatment during and after incarceration, meaning that rape behind bars can amount to an un-adjudicated death sentence. Upon release, survivors often return to their communities with few resources to deal with the emotional scars and deadly disease that result from prisoner rape.

The alarming rate of sexual violence against LGBTQ detainees requires urgent attention. Whether perpetrated by officials or by detainees with the acquiescence of corrections staff, the sexual assault of LGBTQ detainees is a form of torture that violates international human rights law, the U.S. Constitution, and domestic criminal law.

The U.S. has ratified two international treaties – the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) – which prohibit torture and require the U.S. to protect prisoners from sexual violence. In both *Farmer v. Brennan*,<sup>7</sup> and the Prison Rape Elimination Act of 2003,<sup>8</sup> the U.S. government has recognized that prisoner rape can amount to cruel and unusual punishment, in violation of the Eighth Amendment of the U.S. Constitution. Moreover, every state has rape and custodial sexual misconduct laws that criminalize this form of abuse, regardless of the detainee's custody status, sexual orientation or gender identity.

This *Call for Change* presents recommendations that complement and build on these legal standards as well as those at the local level. If implemented, the policies included here will significantly decrease sexual violence against LGBTQ detainees.

## Recommendations

### 1. Prisoner Awareness

All detainees need to know that sexual abuse is unacceptable in all circumstances, whether perpetrated by corrections officials or other detainees. They must be given a handbook detailing information about the policies related to sexual conduct at the facility where they are housed. The Call for Change Coalition calls on all detention facilities to:

- Confirm that the inmate handbook states every person's right to be free from sexual abuse and the institution's explicit prohibition of such acts. A definition of abuse – using clear, frank language – including the indicators of inappropriate staff relationships must be included.<sup>9</sup>
- Ensure that the inmate handbook provides information about the availability of mental health counseling following sexual abuse.
- Make certain that the handbook provides a clear explanation of the steps a detainee must take to file a grievance.
- Verify that the handbook is translated into the commonly used languages of the locale. Low-literacy detainees must receive the handbook information verbally.

### 2. Promoting Safety

One of the most important tools available to corrections officials to prevent prisoner rape is the appropriate classification of inmates. While anyone can be targeted for sexual violence behind bars, people who are young, nonviolent, first-time offenders, physically small, weak, and/or shy are more frequently singled out by perpetrators. LGBTQ and gender non-conforming detainees, or those perceived as such, are exceptionally vulnerable to rape. Corrections staff must therefore take special care in determining the housing arrangements for these detainees. The Call for Change Coalition calls on all detention facilities to:

- In classification and housing assignments, take into account risk factors that can lead to detainees becoming the target of sexual victimization. In particular, corrections

officials must acknowledge the unique safety concerns of LGBTQ individuals and avoid pairing inmates as cellmates if sexual assault is likely to be the result.

- Protect detainees at high risk for abuse by discontinuing housing policies and practices that place them in dangerous situations or that are unnecessarily punitive, including housing transgender detainees in the general population only according to genitalia or automatically placing LGBTQ detainees in segregation or special housing units. Instead, facilities must offer thoughtful housing alternatives, including single cells when available, separate units for detainees at risk of being targeted for sexual assault, and voluntary, non-punitive forms of segregation.
- Take into account detainee objections to being paired with a specific cellmate due to fear of assault.
- Conduct ongoing classification reviews, particularly in cases of repeated safety concerns or in the aftermath of an assault.
- Require that strip searches of transgender inmates be authorized by the supervisor on duty and that the reason for the strip search always be documented. Strip searches of transgender detainees must occur in a manner that provides privacy from other inmates and staff members. Transgender detainees must never be strip searched because staff are curious about what their bodies look like or to humiliate them.
- Provide appropriate undergarments, such as sports bras for transgender inmates. Appearance or mannerisms related to gender expression must not result in punishment or other disciplinary measures.
- Allow transgender and other detainees vulnerable because of their gender identity or sexual orientation to use shower facilities at a separate time from others.

### 3. Staff Screening and Training

Proper staff screening is an essential safeguard against sexual violence. Regular, mandatory

staff training – including the development of clear standards for on-the-job conduct and a zero-tolerance policy with respect to sexual violence – sets a tone of institutional seriousness and professionalism. The Call for Change Coalition calls on all detention facilities to:

- Conduct extensive background checks of all employees who will have direct contact with detainees. No individual convicted of rape, custodial sexual misconduct or any other crime involving nonconsensual sexual contact, or any individual who has been fired or has resigned from a job as a corrections employee pursuant to substantiated allegations of sexual abuse, shall be eligible for employment in a position that involves direct contact with inmates.
  - Provide mandatory training for current and future staff members, including all non-security personnel, on a regular basis. Training must include: a clear statement that sexual abuse of detainees is a crime; strategies for identifying and protecting potentially vulnerable inmates; information on how to respond to a report of sexual abuse, including how to respect the survivor's confidentiality; and information on reporting and tracking sexual abuse.
  - Include detailed information in training programs about non-discrimination against LGBTQ detainees and explicitly prohibit homophobic and derogatory comments directed against such detainees. Acknowledge, as a matter of written policy and daily practice, the unique safety concerns of LGBTQ detainees and emphasize that the prevention of sexual violence is a top institutional priority. Require that staff use respectful language toward and in reference to all LGBTQ detainees.
  - Include the following as examples of prohibited conduct in training materials for staff: responding to detainees' concerns or complaints of sexual abuse in a dismissive or skeptical manner; condoning, encouraging or otherwise being complicit in sexual abuse as a method of punishing detainees; and failing to prevent or stop sexual abuse based on the false belief that LGBTQ detainees want or invite sexual aggression.
  - Require staff to report all observed incidents of custodial sexual misconduct and all acts of indifference toward the sexual abuse of detainees, and to take a proactive role in monitoring the safety of inmates who may be vulnerable to sexual abuse.
  - Reward staff for treating detainees in a respectful manner and for properly handling reports of sexual assault. When employment procedures allow, tie merit salary increases and promotions to adherence to this principle.
  - Terminate and prosecute an employee if an internal or external investigation confirms that s/he has engaged in sexual misconduct with a detainee. While under investigation, such an employee shall have no direct contact with detainees. If this is not possible, then the survivor must be given the option of being housed where s/he will have no contact with the employee. If an employee exhibits indifference to the sexual abuse of a detainee, appropriate disciplinary action must be taken.
  - Ensure that the above stipulations apply to all employees, including contractors, volunteers, health care professionals, and anyone else who has contact with detainees, on or off the institution grounds. For those categories of employees for whom it is not feasible to attend regular trainings on sexual abuse, a class in which pertinent information about how to prevent and address sexual violence is conveyed must be mandatory before such employees are allowed contact with inmates.
- 4. Responding to Sexual Violence**
- Taking action in a timely and professional manner to address allegations of sexual assault is an essential component in minimizing harmful consequences to survivors and in breaking the cycle of sexual abuse in detention. The Call for Change Coalition calls on all detention facilities to:
- Establish multiple avenues for filing a complaint about sexual abuse, so that detainees are not required to report grievances to an abusive staff member or one who they believe will not take action. It is especially important to ensure that detainees are aware of their right to breach the normal chain-of-command when reporting sexual abuse.
  - Ensure that detainees who file complaints of sexual abuse are not punished, either directly or indirectly. Also ensure that all complaints and reports of sexual violence remain confidential to the extent possible, meaning that they are divulged only to those staff members who need to know in order to carry out an investigation and maintain the health and safety of the detainee.
  - Make certain that administrative segregation of those who report abuse is not automatic. If a person is segregated for his or her own protection, such segregation must be non-disciplinary, and must not result in any unnecessary loss of privileges or access to physical or mental health care.
  - Ensure that evidence is collected as promptly as possible in the aftermath of a sexual assault. Instruct the survivor not to shower, remove clothing, wash, drink, eat or defecate until examined. Staff implicated in the assault must never be involved in the collection of evidence.
  - Provide appropriate acute-trauma care for rape survivors, including treatment of injuries, medical examination, STD testing and prophylaxis, and emergency mental health counseling.
  - Facilitate the ability of hospital staff and independent rape crisis counselors to counsel survivors in private.
  - Make certain that detainees who have been victimized receive appropriate physical and mental health care follow-up, including monitoring and confidential counseling for post-traumatic stress disorder, depression, and other mental health problems. This follow-up must also include access to confidential, voluntary testing, and treatment and counseling for HIV/AIDS and other STDs.
  - Ensure that access to comprehensive aftercare never is dependent upon the survivor's willingness to participate in an investigation or to testify in legal proceedings.

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### 5. External Monitoring, Reporting, and Services

In order to prevent sexual violence, detention facilities must operate with transparency by fully documenting abuse, by facilitating external monitoring by independent organizations, and by providing unfettered access to entities that provide services to survivors. The Call for Change Coalition calls on all detention facilities to:

- Allow relevant, independent monitoring and regulatory organizations to enter the institution and have broad access to detainees.
- Collaborate with community rape crisis centers to provide confidential rape crisis services to survivors.
- Document all complaints of sexual abuse of detainees, including: whether the abuse was perpetrated by a staff member or another detainee; the result of the investigation; the circumstances of the assault; whether the survivor participated in the investigation; and any resolution of the complaint. This information should be made public with identifying information redacted.
- Provide copies of Just Detention International's *Resource Guide for Survivors*

of Sexual Abuse Behind Bars to detainees and ensure that any effort to reach out to the organizations included therein remains free and confidential.

### Conclusion

The Call for Change was initiated in November 2004, when Just Detention International (then Stop Prisoner Rape) hosted a Community Dialogue in Los Angeles that brought together more than 40 human rights advocates, rape crisis counselors, LGBTQ rights advocates, corrections officials, survivors, and politicians to address the problem of sexual violence against LGBTQ detainees. Many other organizations (both within the U.S. and abroad) have since joined the coalition.

Due in part to the Prison Rape Elimination Act (PREA), corrections officials are gradually acknowledging their responsibility to prevent sexual abuse against everyone in their custody. However, LGBTQ detainees continue to be dramatically over-represented among those targeted for sexual assault behind bars. By implementing the above policy recommendations, detention facilities can put an end to this dehumanizing violence and protect one of the nation's most vulnerable incarcerated populations.

### About Just Detention International (JDI)

Just Detention International (JDI) is a human rights organization that seeks to end sexual abuse in all forms of detention.

All of JDI's work takes place within the framework of international human rights laws and norms. The sexual assault of detainees, whether committed by corrections staff or by inmates, is a crime and is recognized internationally as a form of torture.

JDI has three core goals for its work: to ensure government accountability for prisoner rape; to transform ill-informed public attitudes about sexual violence in detention; and to promote access to resources for those who have survived this form of abuse.

JDI is concerned about the safety and well-being of all detainees, including those held in adult prisons and jails, juvenile facilities, immigration detention centers, and police lock-ups, whether run by government agencies or by private corporations on behalf of the government.

When the government takes away someone's freedom, it incurs a responsibility to protect that person's safety. All inmates have the right be treated with dignity. No matter what crime someone has committed, sexual violence must never be part of the penalty.

### Endnotes

1 Cindy Struckman-Johnson & David Struckman-Johnson, *Sexual Coercion Rates in Seven Midwestern Prison Facilities for Men*, 80 THE PRISON JOURNAL 379 (2000).

2 Rates for women vary greatly. In one institution, 27 percent of females reported a pressured or forced sex incident, while in another institution the rate was seven percent. See Cindy Struckman-Johnson & David Struckman-Johnson, *Sexual Coercion Reported by Women in Three Midwestern Prisons*, 39 JOURNAL OF SEX RESEARCH 3 (2002).

3 ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN STATE AND FEDERAL PRISONS REPORTED BY INMATES, 2007 (2007).

4 ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN LOCAL JAILS REPORTED BY INMATES, 2007 (2008). Unfortunately, the data provided by the BJS still represent only a fraction of the true number of detainees who are victimized in county jails. The number of admissions to local jails over the course of a year is approximately 17 times higher than the nation's jail population on any given day.

5 Valerie Jenness et al., Center for Evidence-Based Corrections, *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault* (2007).

6 Susan Okie, *Sex, Drugs, Prisons, and HIV*, 356 NEW ENG. J. MED. 105 (2007). In 2005, the confirmed AIDS rate was two and one-half times higher in prisons than in society. LAURA M. MARUSCHAK, BUREAU OF JUSTICE STATISTICS, HIV IN PRISONS, 2005 (2007).

7. 511 U.S. 825 (1994).

8. 42 U.S.C. §15601, *et seq.*

9. While the power that officials wield over a person in their custody makes staff-on-inmate sexual contact inherently coercive, consensual sexual activity between inmates should not be included in definitions or policies concerning sexual abuse.

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## “Call for Change” Signatories

### February 2009

1. A Window Between Worlds, Venice, California
2. ActionAIDS, Philadelphia, Pennsylvania
3. AFL-CIO, Pride at Work, Washington, District of Columbia
4. Afrihealth Information Projects, Lagos, Nigeria
5. AIDS Project Los Angeles, Los Angeles, California
6. Albuquerque Rape Crisis Center, Albuquerque, New Mexico
7. Allied Cultures Against Discrimination, Van Nuys, California
8. American Civil Liberties Union of Southern California, Los Angeles, California
9. Amnesty International USA, New York, New York
10. Archdiocese of Los Angeles, Office of Restorative Justice, Los Angeles, California
11. Association HIV.LV, Riga, Latvia
12. Bavarian Network on HIV/AIDS in Prison, Bonn, Germany
13. Bay Area Immigrant Rights Coalition, Oakland, California
14. Bienestar Human Services, Los Angeles, California
15. Birth Attendants: The Prison Doula Project, Olympia, Washington
16. Books Not Bars, Oakland, California
17. California Coalition Against Sexual Assault, Sacramento, California
18. California Coalition for Women Prisoners, San Francisco, California
19. California Prison Focus, San Francisco, California
20. California Women's Law Center, Los Angeles, California
21. Campaign for Youth Justice, Washington, District of Columbia
22. Center for Human Rights and Constitutional Law, Los Angeles, California
23. Central American Resource Center, Los Angeles, California
24. Centre for the Human Rights of Imprisoned People, Flemington, Australia
25. Centre for the Study of Violence and Reconciliation, Johannesburg, South Africa
26. Children of Lesbians and Gays Everywhere, San Francisco, California
27. City of Los Angeles AIDS Coordinator's Office, Los Angeles, California
28. Coalition for Humane Immigrant Rights of Los Angeles, Los Angeles, California
29. Coalition to Abolish Slavery and Trafficking, Los Angeles, California
30. Colorado Anti-Violence Program, Denver, Colorado
31. Community HIV/AIDS Mobilization Project, New York, New York
32. Community United Against Violence, San Francisco, California
33. The Correctional Association of New York, New York, New York
34. DC Rape Crisis Center, Washington, District of Columbia
35. DC Trans Coalition, Washington, District of Columbia
36. East Los Angeles Women's Center, Los Angeles, California
37. Equality California, Sacramento, California
38. Families to Amend California's Three Strikes, Los Angeles, California
39. FIERCE!, New York, New York
40. Friends Outside, Los Angeles, California
41. FTM Alliance of Los Angeles, Los Angeles, California
42. Gay, Lesbian, and Straight Education Network, Los Angeles, California
43. Gay and Lesbian Activists Alliance, Washington, District of Columbia
44. Gay and Lesbian Adolescent Social Services, Los Angeles, California
45. Gay Men's Health Crisis, New York, New York
46. Hemophilia Historical Archives, Woodland, California
47. Human Rights Watch, New York, New York
48. Immigration Equality, New York, New York
49. In The Life, Atlanta, Georgia
50. International AIDS Empowerment, El Paso, Texas
51. International Gay and Lesbian Human Rights Commission, Asylum Documentation Program, New York, New York
52. Just Detention International, Los Angeles, California
53. Juvenile Justice Project of Louisiana, New Orleans, Louisiana

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# “Call for Change” Signatories

## February 2009

*Continued from reverse*

54. Kansas City Anti-Violence Project, Kansas City, Missouri
55. LGBT Community Center of Greater Cleveland, Cleveland, Ohio
56. Los Angeles Gay and Lesbian Center, Los Angeles, California
57. Men Can Stop Rape, Washington, District of Columbia
58. Milwaukee LGBT Community Center, Milwaukee, Wisconsin
59. Münchner Aids-Hilfe, Munich, Germany
60. National Association of Social Workers, Women's Council, Los Angeles, California
61. National Center for Lesbian Rights, San Francisco, California
62. National Center for Transgender Equality, Washington, District of Columbia
63. National Center for Youth Law, Oakland, California
64. National Coalition of Anti-Violence Programs, New York, New York
65. National Gay and Lesbian Taskforce, Washington, District of Columbia
66. National Immigrant Justice Center, Chicago, Illinois
67. National Lawyer's Guild, New York, New York
68. National Youth Advocacy Coalition, Washington, District of Columbia
69. The New York City Gay and Lesbian Anti-Violence Project, New York, New York
70. November Coalition Foundation, Colville, Washington
71. Parents, Families and Friends of Lesbians and Gays National, Washington, District of Columbia
72. The Parolee Human Rights Project of the New York City AIDS Housing Network, New York, New York
73. Partnership for Safety and Justice, Portland, Oregon
74. Peace Over Violence, Los Angeles, California
75. People Against Prison Abuse, Odessa, Texas
76. Pikes Peak Gay & Lesbian Community Center, Colorado Springs, Colorado
77. The Prison Honor Program of The Catalyst Foundation, Lancaster, California
78. Program for Torture Victims, Los Angeles, California
79. Progressive Jewish Alliance, Los Angeles, California
80. Project SISTER, Claremont, California
81. The River Fund, Sebastian, Florida
82. SafeSpace for LGBTQQ Survivors of Violence, Burlington, Vermont
83. San Francisco Women Against Rape, San Francisco, California
84. Scarlet Alliance, Sydney, Australia
85. Seattle LGBT Community Center, Seattle, Washington
86. Sexual Assault Crisis Agency, Long Beach, California
87. South Asian Network, Artesia, California
88. Southerners On New Ground, Atlanta, Georgia
89. Sylvia Rivera Law Project, New York, New York
90. Texas Jail Project, Austin, Texas
91. Transformative Justice Law Project of Illinois, Chicago, Illinois
92. Transgender, Gender Variant and Intersex Justice Project, Oakland, California
93. Transgender Law Center, San Francisco, California
94. Transgender Legal Defense & Education Fund, New York, New York
95. Trans-health Information Project, Philadelphia, Pennsylvania
96. Triangle Foundation, Detroit, Michigan
97. UCLA LGBT Center, Los Angeles, California
98. Unitarian Universalist Service Committee, Boston, Massachusetts
99. Urban Justice Center, New York, New York
100. Valley Trauma Center, Van Nuys, California
101. Washington DC Community Center for GLBT People, Washington, District of Columbia
102. Women Lawyers Jail Project, Los Angeles, California
103. Women with a Vision, Inc., New Orleans, Louisiana
104. Women's Institute for Leadership Development for Human Rights, San Francisco, California
105. Women's Prison Association, New York, New York
106. Youth Law Center, San Francisco, CA