



ADVOCATING FOR OUR COMMUNITIES

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

Re: Testimony before the Commission in San Francisco, CA

Dear Commissioners:

Thank you for taking the time today to hear testimony from a cross-section of people, including former prisoners, prison advocates, civil rights attorneys, sheriffs, and others, about the risks that many prisoners face for sexual violence in our local, state, and federal correctional facilities. As the Director of the Transgender Law Center, my testimony will focus on the experiences and needs of transgender inmates in county jails and state and federal prisons.

In testifying about transgender people, I mean those people whose internal understanding of their own gender is different from the sex they were assigned at birth and/or whose dress, mannerisms, and other expressions of their gender are non-stereotypical. This certainly includes prisoners who identify as transsexual, for instance, but also includes prisoners who appear to be effeminate men and masculine women. And, notably, some of the people who fit within this definition may not even use the term "transgender" to describe themselves.

To write that transgender prisoners are at a high risk of sexual violence in jails and prisons across the nation is to do a disservice to the issue. It has been my experience over the last four years of providing legal information and services to California's transgender communities, that sexual violence is an ever present fact of life for far too many transgender prisoners. In this context, I define sexual violence as rape, coercion, unnecessary strip searches and forced nudity, and harassment.

This violence does not exist, and can not be understood, in a vacuum. Therefore, my testimony will begin with an overview of the many areas in which individual and institutional bias against transgender people results in harassment, discrimination, violence, and alienation. Next, I will overview the many challenges that transgender prisoners face in any jail or prison because of societal bias against them. I will then specifically address the ways in which transgender prisoners experience sexual violence while incarcerated. Finally, I will conclude with common-sense recommendations that the Commission can adopt to diminish and eventually eliminate sexual violence against transgender prisoners.

Bias Against Transgender People

It is unfortunately not hyperbole to write that no institution in California is free of bias against transgender people. The Transgender Law Center, founded in 2002, provides legal information and services to approximately 750 transgender people and their families each year. We are contacted by people who are employees, students, parents, partners, youth, immigrants, renters, consumers, and/or prisoners. Too many of them are reaching out to us because they have been denied work, education, recognition of their family, respect, lawful status, health care, housing, or services because someone did not like the fact that they are, or someone in their family is, transgender.

In 2003, the Transgender Law Center and the National Center for Lesbian Rights published a report documenting the legal needs of transgender survey respondents from San Francisco. I have attached the report, *Trans Realities*, in its entirety at the end of this testimony. However, it is worthwhile to highlight some of the findings.

Over 150 survey respondents were asked to self-report on whether they had experienced discrimination in the following areas:

Area	Percentage	Area	Percentage
Employment	49%	Prison or Jail	14%
Public Accommodation	38%	Other	12%
Housing	32%	Ability to Marry	09%
Health Care	31%	Immigration	07%
Interactions with police officers	26%	Child custody	06%
Access to Social Services	20%	Not sure	01%

As this chart demonstrates, discrimination against transgender people is widespread. One of the most alarming statistics to me was the 14% of survey respondents who reported experiencing discrimination in jail or prison. This was not 14% of the respondents who reported going to jail or prison but *14% of the entire survey pool*. Even if we were to assume that this 14% were the only survey respondents to go to jail or prison, that percentage is still twice the number of people in the general population who are incarcerated at some point in their lives. And this assumption would mean that 100% of the transgender survey respondents who went to jail or prison faced discrimination there because they are transgender.

Follow-up survey questions attempted to garner some sense of the economic impact that results from such discrimination and that may lead to this over-representation.

Respondents were asked to list their income range:

Response	Percentage
\$0-\$25,000	64%
\$25,000 - \$50,000	15%

Response	Percentage
\$50,001 - \$100,000	06%
Over \$100,000	04%

And whether they have health insurance:

Response	Percentage
Yes	50%

Response	Percentage
No	43%

Clearly, the economic consequences of discrimination are stark. Almost two-thirds of survey respondents have incomes that would be defined by the US Department of Housing and Urban Development as “very-low income” for San Francisco in 2000. The percentage of people lacking health insurance is more than two times the rate for California as a whole in 2000. These two statistics can, anecdotally, help to put in context the over-representation of transgender people, particularly transgender women (people identified at male at birth, but whose internal understanding of their gender is that of a woman), in jails and prisons around the country.

Survey respondents were not asked whether they were involved in the street economies of prostitution and unregulated medical care, but anecdotally, we know that many community members turn to these institutions for survival. For instance, a former Transgender Law Center client who settled a discrimination complaint against her employer has spent nearly a year looking for a new job. During that time, her years of professional experience and a strong job market did her no good in securing a new position. After nine months of looking, as the funds in her savings account dwindled down to almost nothing, she turned to on-line prostitution as a means to keep her afloat. Similarly, a young woman born outside of the US and here on a student Visa became involved in prostitution when her parents stopped providing her with support when she revealed to them that she was transitioning from male-to-female. Finally, a number of transgender people who are limited to working in low-wage jobs earn additional income through selling street hormones to the pool of transgender people who are unable or unwilling to access health care in a more traditional setting.

These statistics and anecdotes along with the attached copy of *Trans Realities*, help to outline only the barest sketch of the conditions that have lead to what almost everyone who has looked at the issue would define as an over-representation of transgender people in jails and prisons. They also help to set the stage for a deeper understanding of why this population is so vulnerable once incarcerated.

Overview of Jail and Prison Conditions for Transgender Prisoners

Before covering issues of jail and prison sexual violence against transgender people, it is helpful to lay out the array of issues that transgender prisoners face in general. It is of course worth noting that jails and prisons are places in which we as a society routinely allow people to experience degrees of neglect, humiliation, and abuse that would not be tolerated outside of these institutions. However, my testimony in this setting will be limited specifically to those issues that are created by bias against, or at least ignorance about, transgender people.

At the outset it is important to acknowledge the gender segregation that goes on in nearly every penal institution in the country. This segregation itself certainly plays a role in the discrimination that transgender people face. However, just as culpable, and possibly more so, are the gendered expectations that this segregation creates. The existence of a “men’s” institution and a “women’s” institution, for instance, not only raises expectations about the gender of the people housed there, but also the stereotypes associated with that gender. These expectations and stereotypes are then played out in the way in which prisoners are recognized and treated.

Respecting a person’s identity and expression – nearly every transgender prisoner and ex-prisoner to whom I’ve spoken in the last four years can recount at least one instance (and too often an endless stream of them) when they believe or know that they were intentionally referred to by the wrong pronoun or name. Most surprising to me early in my career was that the balance of these references was made by sheriff’s deputies, prison guards, and correctional officers. It is one thing to house someone who is female-to-male *with* women, but another entirely to house him *as* a woman.

I have personally witnessed these kinds of references.. For instance, when I am visiting a transgender prisoner and I refer to that person by the correct pronoun, I am regularly corrected by the facility employee and told to use the pronoun that is “appropriate” for the facility (i.e. that I should refer to a male-to-female prisoner as “he” simply because it was a male facility). This is true despite the fact that the deputy or officer often-times knows that I am a civil rights attorney who works on behalf of transgender people.

This form of harassment is not one that has the immediate negative consequences that physical violence does, but it is one that I believe facilitates the more egregious abuse and violence to which some transgender prisoners are subjected. One of the women to whom I spoke was able to speak directly about how this treatment provoked her to come into conflict with particular deputies and allowed them to take punitive action against her. While she knew intellectually that she would come out worse for the wear in these encounters, her sense of self was important enough to her that she had to stand up to deputies who were using male pronouns or her old male name in referring to her.

Ability to dress appropriately – based again on gendered expectations, too many jails and prisons limit the ability of prisoners to dress or groom in a way that is comfortable for them. With some notable exceptions, including the San Francisco County Jail, many transgender women housed in men’s facilities are denied access to bras and are forced to keep their hair at a stereotypically male length. Transgender men in women’s facilities often find that they have to keep their face

shaven despite the fact that they are not provided with proper grooming supplies. I have also heard stories of some women's institutions requiring male inmates to wear garb that is similar to a dress.

Again, this form of harassment is the kind of on-going indignity that can lead to more significant issues down the line. In this case, though, some health problems can result from women being denied bras or men being forced to shave without the proper tools. And the lack of bras has facilitated, in a number of cases, sexual harassment.

Access to programs, jobs, and recreational opportunities – many transgender people are denied basic conditions of confinement afforded to other prisoners. Most institutions will deny transgender prisoners opportunities to attend drug treatment, educational, or other programs because these opportunities are offered only in a gender segregated setting. The same is true of job assignments and recreational activities. Sometimes, the stated reason for the denial is the safety of the transgender prisoner. Other times the reason is stated as a policy change necessitated because a different transgender prisoner used the opportunity to participate in a prohibited activity (oftentimes sexual in nature).

Sometimes, an alternative activity or educational opportunity will be provided, but such alternatives rarely compare to the lost opportunity. Also, some facilities will credit transgender prisoners for time they would have had taken off their sentence had they worked. However, the actual opportunity to keep busy is lost to transgender prisoners. Finally, transgender prisoners are rarely, if ever, provided with alternative drug and alcohol treatment programs.

Lack of competent medical care – as is currently being made clear in a Northern California Federal District Court, health care in jails and prisons can oftentimes be wholly inadequate. Couple with that the general lack of knowledge about transgender health care among providers and it is not hard to imagine how difficult it can be for a transgender person to receive appropriate care while incarcerated.

In an institution that provides some level of care, transgender prisoners can face issues ranging from the proper issuance of hormones, to the ability to monitor drug interactions and typical hormone side effects, to the reluctance to start a prisoner on hormone therapy, to improper questions or genital inspections to satisfy a provider's curiosity. However, in other institutions where care is completely denied, the outcomes can be even worse.

For one of our female-to-male clients who was denied testosterone for six weeks while incarcerated in the Orange County Jail, the consequences ranged from genital bleeding, to heart trouble, to a spike in his blood pressure. This denial was in the face of advocacy by his physician, family, attorney, and outside advocates. I have also heard stories of women who can't get prescription hormones sometimes resorting to buying them from other inmates. In order to get the "money" to buy these hormones, some women will participate in commercial sex work within the facility and once they get the "hormones" can never be sure what they are injecting or what side effects it may be having on them.

Abusive Use of Detention Against Immigrants – a number of transgender people in jails and federal prisons around the U.S. are there not because they have been convicted of a crime, but because they have no recognized legal basis for being in the U.S. Many of these people are in the United States due to horrible abuse and persecution in their home country and a number of them have submitted applications for asylum and are awaiting a ruling from a judge.

In the face of this, our Department of Homeland Security confines these people to conditions that are too often as bad or worse than those they will experience in their home country. In one recent case, a woman agreed to return to her country, where anecdotal accounts exist of federal personnel murdering transgender women, because the conditions in the jail where she was awaiting a decision on her asylum application were so deplorable.

Reliance on Administrative Segregation to “Protect” Transgender Prisoners – abdicating their responsibility to create confinement conditions in which individual prisoners are safe from violence, some sheriffs and wardens will allow transgender prisoners to be confined to administrative segregation or its equivalent. This restrictive housing classification allows a prisoner minimal interaction with other people, no access to jobs or treatment programs, and greatly restricted privileges (including phone and commissary). The stated purpose of administrative segregation is that people being confined within it are a proven danger to themselves, staff, or other inmates. By using this classification for transgender prisoners, the message is being sent that a person’s gender identity itself is threatening to the institution and that person must be locked away in a prison within the prison.

Retaliation for complaints – whether the complaint is for any of the above issues or for the issues of sexual violence detailed below, retaliation is a common occurrence for many transgender prisoners. And due to the vulnerability of this population, the retaliation can take many forms. For instance, a deputy who previously referred to someone in the proper manner may begin to use the incorrect pronoun for them. Or someone who was regularly getting medical treatment may find that treatment cut-off. For this reason, I believe that incidents of harassment and discrimination go dramatically under-reported among transgender prisoners.

Sexual Violence Against Transgender Prisoners

Rape – while I have not seen verifiable data on this issue, I have met enough transgender women who have been raped in jails or prisons to believe that it is a widespread practice. Rape comes in many forms. It can be perpetrated by a lone fellow prisoner; a group of fellow prisoners; deputies, guards, or officers; or an inmate assisted by a deputy, guard, or officer.

For instance, a woman being held in Sacramento County Jail has told me about her experience where she believes she was set-up by a Sheriff’s Deputy. She was in her own cell in administrative segregation when a bigger, male prisoner was allowed to enter and the door locked behind him. Despite her protests, this prisoner forced himself on her and raped her. Once he was done, this woman reports hearing him say to someone on the outside that he was done. Her cell was unlocked and the man exited. When this woman saw the man later, she says that he apologized to her and said he was told to rape her by a Deputy.

Another Sacramento County Jail prisoner, who was being held pending a decision by a federal attorney on whether to appeal a judge's grant of her asylum petition, was raped by a prisoner. She too was in administrative segregations when she was pulled into a cell close to hers. Once inside, she was held down and raped. An attorney who visited her three days later commented that bite marks were still visible at the top of her breast, just below her collarbone. One week later, she was released from the jail as an asylee when the government attorney decided not to appeal her case.

Coercion – even more common, but no less scaring is the coercive sex to which many transgender women are subjected. Such coercion comes from fellow prisoners and deputies, guards, and officers. It is oftentimes exchanged for protection or special privileges and is too often seen by officials as consensual.

One young Latina who has been in touch with the Transgender, Gender Variant, Intersex Justice Project reported that she had to join a gang in prison for safety. Her membership in the gang required her to provide frequent sexual services to her fellow gang members. An inmate in San Francisco County Jail sued the county in 2002 because a Sheriff's Deputy coerced her into performing sex shows for her. When the coercion became known, the Deputy threatened that he would get her once she was released.

Unnecessary strip searches and forced nudity – a frequent substitute for, or precursor to, sexual violence or coercion is the use of strip searches or forced nudity by deputies, guards, officers, or medical personnel. Because of the severe reduction in privacy that occurs in jails and prisons, transgender people have very little control over who sees their bodies. Bodies that often times do not conform to the identity they know to be true or at least society's expectations about that identity. Therefore, strip searches and public nudity can be especially humiliating to transgender prisoners.

Transgender men in particular report being subjected to unnecessary strip searches. Two men who have been held in San Francisco County jail have told me about frequent strip searches conducted by deputies and medical personnel for no reason other than to seemingly satisfy curiosity. These searches were not related to visits or interactions in which these guys could have been passed contraband. Instead, they seemed to come randomly from many quarters and occasionally involve two or more people doing the search.

Back in Sacramento County Jail, one of the two women described above and two of her fellow transgender prisoners related stories of being forced to walk topless through a gauntlet of male cells in order to get new clothes each week. Along the way, the women were subjected to taunts and catcalls. The very act of walking the line made them objects of both harassment and ridicule.

Harassment – in fact, the most common form of sexual violence to which transgender prisoners are subjected seems to be verbal harassment. The harassment can include comments that exhibit this mixture of ridicule and objectification or can be a running stream of sexual propositions. Without a doubt, the comments can as often be threats as anything else and can rob a transgender prisoner, especially a woman, of any sense of security.

Again, many transgender men complain of almost non-stop verbal sexual harassment from women prisoners. Much of the harassment is in the form of overt sexual offers or aggressive flirting. However, for the men, it can become a challenge to their masculinity and a source of friction with women prisoners who resent the attention these men are getting.

Recommendations

In recognition of the charge of the Commission, the following common sense recommendations are organized into three sections. The first are recommendations on which the Commission can act. The second are recommendations that the Commission can offer to Congress. The third are recommendations that the Commission can offer to local, state, and federal agencies.

Commission Recommendations

- 1. Create Best Practice Resources on Alternative Sentencing for Transgender Prisoners** – recognizing that only radically altered jails and prisons will be safe for transgender inmates, the Commission could create resources for use by criminal justice professionals looking for alternatives to incarceration for this population. Looking perhaps to the expertise that the Transgender, Gender Variant, and Intersex Justice Project is developing, the Commission could provide a powerful and needed voice to the effort to move more transgender people from jails and prisons to community based alternatives.
- 2. Conduct Research on Classification Issues for Transgender Prisoners** – many questions remain about the best way to house those transgender prisoners for whom alternative programs would not be appropriate. This Commission is well suited to investigate those issues and call together experts on the subject to explore different model recommendations.
- 3. Support the Promulgation of Model Policies for Transgender Prisoners** – identifying a set of model policies that could be implemented by jails and prisons around the country that comprehensively deal with the issues raised in this and other testimony would go a long way towards educating criminal justice professionals about the needs of transgender prisoners and the interconnected nature of the issues that they face in places of incarceration. One such model, created by the San Francisco Human Rights Commission and the National Lawyers Guild, is included for your reference.
- 4. Identify or Create Model Training Curriculum for Deputies, Guards, and Officers** – many of the issues raised in this and other testimony could be addressed through comprehensive and on-going training with deputies, guards, and officers. Having the Commission issue or approve model curriculum would facilitate the use of such curriculum in in-service trainings.
- 5. Issue a Statement on Over-Incarceration** – Recognizing that the Commission’s primary charge is to eliminate prison rape, it is indisputable that overcrowding in our jails and prisons facilitates sexual violence. A statement from the Commission urging local, state, and federal jurisdictions to find ways to reduce jail and prison populations by focusing on incarcerating violent criminals and finding alternative programs for other offenders would go a long way

towards highlighting the connection between over-incarceration and sexual violence in prisons.

- 6. Request that Federal Officials Offer Testimony to the Commission** – Request that representatives from the Federal Bureau of Prisons appear before the Commission to explain what their current written policies are in regards to transgender prisoners and the issues outlined in this testimony. Also, request that an appropriate representative from the Department of Homeland Security appear before the Commission to explain the Department’s use of detention for transgender asylum seekers and the tools that the Department uses to ensure that such detainees are safe in the facilities in which they have been placed.

Congressional Recommendations

- 1. Create Meaningful Administrative and Civil Remedies for Prisoners Sexually Abused in Jails and Prisons** – federal regulations and statutes have a strong role in providing meaningful civil remedies to victims of prison rape. A strong recommendation to Congress to create and pass civil rights reform that facilitates the positive resolution of such claims will create a stronger incentive for local, state, and federal facilities to address problems when they arise and prevent them from occurring in the first place.
- 2. Increase Funding to Jails and Prisons and Advocacy Organizations Who are Working to Solve Prison Rape** – much of the expertise needed to eliminate prison rape exists. The experts simply need the resources to do their job and the incentive to work together to bring about substantive change.
- 3. Recommend Modifications to the Immigration and Naturalization Act to Limit the Use of Detention by Federal Attorneys** – In recent years, federal courts have limited the federal government’s ability to indefinitely detain immigrants. The Commission would be well served to recommend that Congress go one step further and limit the ability of federal attorneys to use this tool to house transgender asylum seekers in unsafe facilities where they are at increased risk of the same kind of sexual violence that they are often fleeing in their home countries.

Recommendations for Local, State, and Federal Agencies

- 1. Recommend that Local and State Governments Hold Their Own Hearings on Prison Rape** – The Commission’s hearings are a vital step towards ending prison rape. However, state and local governments will likely need to go through their own process in order to fully buy into the idea of that prison rape can be eliminated. Recommend that appropriate local and state agencies hold similar hearings in their own jurisdiction to inform their own communities about this important issue.
- 2. Recommend that all Deputies, Guards, and Officers Receive a Minimum of Eight Hours of Transgender Cultural Competency Training** – correctional professionals can learn to manage the expectations about gender and gender stereotypes that underlie much of the

discrimination against transgender prisoners. Recommending that all deputies, guards, and officers undergo intense training on these issues within their first three years of service (or within their next three years of service for veteran professionals) is a meaningful way to increase protection for transgender prisoners.

- 3. Recommend that all Jail and Prison Health Care Professionals and Staff Receive a Minimum of Eight Hours of Transgender Cultural Competency and Health Care Training** – health care professionals are a vital link in creating safe environments for transgender prisoners. Basic training in how to interact with transgender patients and provide appropriate and competent care will greatly improve the doctor/patient relationship, improve the health of transgender prisoners, and lead to a safer environment.
- 4. Recommend that Ex-Offender Treatment and Training Programs Take Steps to Create Non-Discriminatory Environments** – it is important to ensure that transgender former prisoners are able to break the cycle of incarceration. One key to doing that is having a strong support system upon release. Many of the existing programs serving ex-offenders are ill-equipped to provide services to transgender people. A strong recommendation that these programs take steps to create non-discriminatory environments will facilitate change within the programs and reduce the number of transgender people returning to prison.

Conclusion

This testimony and these recommendations are respectfully submitted to the Commission along with my deep gratitude for the opportunity to work with you. I am very hopeful that the inclusion of transgender prisoners, their experiences, and their needs in this hearing will lead to additional exposure of the issues raised through the Commission's work. As many of you know all too well, the challenges of reforming jails and prisons in the U.S. can sometimes be daunting. However, the efforts of this Commission and the hundreds of prisoners, ex-prisoners, correctional professionals, advocates, and concerned participants who are helping you to fulfill your charge are inspiring. I expect that this is simply the beginning of a long, and hopefully fruitful, endeavor and offer whatever assistance I can provide to you along the way.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 15th day of August, 2005.

Christopher Daley
Director