

While law enforcement is generally conceived as a state or local issue, the federal government has considerable influence over the operation of state and local law enforcement agencies through federal funding, Title VI of the Civil Rights Act of 1964, and the pattern and practice enforcement authority created through the Violent Crime Control and Law Enforcement Act (VCCLEA),²⁰ as well as through the Federal Law Enforcement Training Center and Department of Justice programs aimed at promoting best practices such as the Community Oriented Policing Services (COPS).

Additionally, the federal government exercises complete control over the actions of federal law enforcement agencies, and can issue specific regulations and guidance to federal officers such as the guidance on racial profiling issued by DOJ in 2003.²¹

Conversely, to address discriminatory policing and law enforcement in Indian country, the Indian Law and Order Commission recommends that the President and Congress act immediately to undo the prescriptive commands of federal criminal law and procedure in Indian country and, with the assurance that the federal civil rights of all U.S. citizens will be protected, recognize Tribal governments' inherent authority to provide justice in Indian country.²²

Approximately a half to two thirds of homeless LGBT New Yorkers surveyed in one study reported that they had been stopped, searched, questioned, threatened with arrest or falsely arrested by police, compared to a quarter of LGBT New Yorkers who lived in their own apartments.



LGBT community organizations join launch of Communities United for Police Reform, New York City, February 2012

IMAGE: COMMUNITIES UNITED FOR POLICE REFORM

PROFILING

As documented across the country by academic researchers,²³ international human rights organizations,²⁴ and by local groups in many urban areas,²⁵ LGBT youth and adults, and particularly LGBT youth and people of color, experience pervasive profiling and discriminatory treatment by local, state, and federal law enforcement agents based on actual or perceived sexual orientation, gender, gender identity or expression, or HIV status. Such gender and sexuality-based profiling often takes place in conjunction with and compounds profiling and discriminatory treatment based on race, color, ethnicity, national origin, tribal affiliation, religion, age, immigration status, and housing status, among other determinants.



LGBTQ youth leaders from Streetwise and Safe (SAS) advocate for an enforceable ban on police profiling in New York City, July 2013

IMAGE: A. RITCHIE

RECOMMENDATIONS:

- The Department of Justice (DOJ) should immediately adopt and enforce an updated directive on profiling by federal law enforcement agents prohibiting profiling based on actual or perceived sexual orientation, gender, gender identity and expression, disability, immigration, housing, marital and HIV status, and promptly issue and enforce an updated directive to federal law enforcement agents to that effect.
- All federal law enforcement agencies, including Immigration and Customs Enforcement (ICE), should adopt anti-discrimination and anti-profiling provisions of recent consent decrees entered into by DOJ with the New Orleans Police Department (NOPD) and the Commonwealth of Puerto Rico (PRPD) prohibiting the use of race, color, ethnicity, national origin, immigration status, religion, gender, disability, sexual orientation, or gender identity as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause, exercising discretion to conduct a warrantless search or seek a search warrant, or effecting arrest, except as part of an actual and apparently credible description of specific suspect or suspects in a criminal investigation.²⁶
- DOJ should make promulgation and compliance with policies consistent with the above referenced anti-discrimination and anti-profiling provisions of recent consent decrees entered into by DOJ with NOPD and PRPD a condition of federal funding to local law enforcement agencies.²⁷
- DOJ should make collection of data concerning stops, frisks, and searches of pedestrians and motorists a condition of federal funding to local law enforcement agencies, promulgate guidelines for data collection, and collect and publish this data on an annual basis.
- The Administration should support and promote passage of the End Racial Profiling Act, with provisions inclusive of prohibitions on profiling based on gender, gender identity and expression, and sexual orientation.

POLICING HOMELESSNESS

LGBT youth are estimated to make up 40% of the homeless youth population in the United States.²⁸ LGBT adults and PLWH similarly experience high rates of housing instability and homelessness.²⁹ As a result, LGBT people are disproportionately impacted by targeted policing, harassment, and abuse of homeless people by law enforcement, as well as by discriminatory enforcement of laws that criminalize everyday activities in public spaces and public housing projects. Approximately a half to two thirds of homeless LGBT New Yorkers surveyed in one study reported that they had been stopped, searched, threatened with arrest, or falsely arrested by police, compared to a quarter of LGBT New Yorkers who lived in their own apartments.³⁰

RECOMMENDATIONS:

- DOJ should issue guidance to state and local governments on the constitutionality and cost-effectiveness of anti-homeless ordinances, intervene in litigation challenging such ordinances, incorporate investigation of civil rights abuses of homeless people as a standard practice in federal pattern and practice investigations, and include provisions addressing discriminatory policing of homeless people in federal consent decrees.³¹
- DOJ should promote and support enactment of federal, state, and local legislation prohibiting profiling discrimination by law enforcement based on housing status.³²
- Federal agencies should leverage federal funding to discourage criminalization of homelessness and poverty through enforcement of anti-panhandling laws, laws prohibiting sitting or lying on sidewalks, loitering and vagrancy laws.³³ This could include providing bonus points in applications for funding for communities that do not engage criminalization of homelessness and pursue alternate solutions to housing instability along the lines of Utah's Housing First Program.³⁴

Gay men of color, along with women and transgender people of color, are among the Black and Latina/os disproportionately subjected to more than 685,000 stops and frisks by the NYPD last year. I know, because I am one of them.

Sometimes our experiences are no different than the rest of our communities. For instance, I was first stopped and frisked just months after I moved to New York as I was riding my bicycle in Fort Greene, as part of the NYPD's "quality of life" policing. The second time I was stopped, police rummaged through my bags of recently washed clothes as I was on my way home from a laundromat in Bed-Stuy. This time, presumably the goal was finding weapons or drugs. But, as in 99.9% of stops conducted by the NYPD [in 2011], no gun or contraband was found among my clean boxer briefs.

At other times, our experiences are marked by homophobia and transphobia in addition to racism and policing of poverty. This past December, my friends and I were stopped, questioned, and searched in Marcus Garvey Park in Harlem—not on the pretense that we had weapons or contraband—but because we were three Black gay men in a park. The fact that we were dancing to Beyoncé was presumably enough to give rise to reasonable suspicion that we were engaged in unlawful sexual activity.

*Chris Bilal, Campaign Staff,
Streetwise and Safe (SAS)*

POLICE DETENTION

As highlighted by many testimonies and submissions to the National Prison Rape Elimination Commission (PREC),³⁵ as well as reports by international human rights organizations,³⁶ women and LGBT people in the custody of local law enforcement, including in police lock-ups, all too often experience unlawful searches and sexual assaults by law enforcement officers and fellow detainees.

Additionally, sexual harassment, sexual assault, and rape take place in police squad cars and vans, often driven to isolated locations but still within the control of a government agent.³⁷ Such locations meet the PREA's definition of a "lock-up" in that they are "secure enclosures that are: (1) [u]nder the control of a law enforcement, court, or custodial officer; and (2) [p]rimarily used for the temporary confinement of individuals who have recently been arrested, detained, or are being transferred to or from a court, jail, prison, or other agency."

Finally, searches conducted by police officers on the street or in police detention facilities for the purposes of assigning a gender to detainees based on anatomical features—or simply to ogle or humiliate transgender and gender non-conforming arrestees—are both constitutionally prohibited and widespread.³⁸ LGBT youth and adults often experience such unlawful and invasive searches as state-sanctioned sexual assaults.

RECOMMENDATIONS:

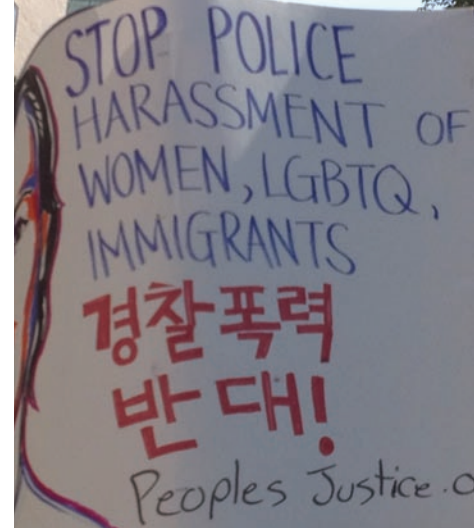
- DOJ should aggressively pursue enforcement of existing PREA standards for police lock-ups.
- DOJ should issue a clarification that the definition of "lock-ups" contained in the PREA regulations includes police cars and other temporary locations of police detention.
- DOJ should initiate new rulemaking pursuant to PREA that would more closely harmonize the PREA provisions pertaining to police lock-ups with those pertaining to adult jails and prisons, including augmenting provisions related to access to victim advocates, response planning, training and education, and screening for risk of sexual victimization and abusiveness, to police lock-ups.
- DOJ should amend PREA regulations to include an explicit prohibition on search for the sole purpose of determining genital characteristics in police lock-ups, regardless

Stop and frisk affects women of color such as myself. It affects LGBT youth of color such as myself. I have been stopped numerous times by police in the West Village and Chelsea neighborhoods. For instance, I was stopped and frisked three years ago when I was leaving Chi Chiz, a primarily African American LGBT club in the West Village at around 2 AM with a group of four friends who were transgender women and gay men. As we left the club, we were immediately stopped by police who told us to put our hands on the wall. They told us it was a "routine search." There was no reason to believe we were committing any crime. We did what they told us to. I was facing the wall, they pat my arms down, ran their hands between my chest, patted my pockets and then went inside my pockets and pulled my wallet out, checked my ID, made sure none of us had any warrants, and then told us we were free to go, but we better not be around when they came around again. After they walked away, I felt violated. I felt like they took something from me. I felt demoralized. I felt like I wasn't safe, I was afraid that they would lock me up just for being outside.

*Don Thomas, Youth Leader,
Streetwise and Safe (SAS)*

of whether conducted as part of a broader medical examination, and regardless of whether genital characteristics are known.³⁹

- DOJ should provide necessary guidance regarding searches and placement of transgender and gender non-conforming individuals in police custody, and issue a clarification through the Frequently Asked Questions section on the PREA Resource Center's website⁴⁰ indicating that that transgender people must be allowed to specify the gender of the officer they would prefer to be searched by in the event a search is legally justified and necessary.⁴¹
- The Bureau of Justice Statistics (BJS) should develop a survey analogous to the National Inmate Survey (NIS) that would enable annual data collection concerning reports of sexual harassment and assault in police custody by mandating that selected agencies participate in the survey as a condition of receipt of federal funding.
- Federal law enforcement agencies should adopt policies aimed at documenting, preventing, and addressing sexual harassment, abuse, and assault by local law enforcement agents which are consistent with the recommendations of the International Association of Chiefs of Police (IACP).⁴²
- DOJ should condition federal funding to local law enforcement agencies on adoption of policies aimed at documenting, preventing, and addressing sexual harassment, abuse, and assault by local law enforcement agents which are consistent with the IACP recommendations.⁴³
- DOJ should condition federal funding to local law enforcement agencies on adoption of provisions of NOPD and PRPD consent decrees with respect to regulation of consent searches.⁴⁴
- In consultation with groups who have successfully advocated for local policies, DOJ should promulgate guidance for local law enforcement agencies relating to placement, searches, and interactions with transgender and gender non-conforming individuals consistent with those contained in NOPD and PRPD consent decrees,⁴⁵ and make adoption of policies consistent with the guidance a condition of receipt of federal funding.



Sign by People's Justice at Silent March to End Stop and Frisk, New York City, June 2012

IMAGE: YUL-SAN LIEM

In October 2014, I was accompanying a transgender woman to a court date for a default warrant in New Bedford, Massachusetts. When her name was called and she was brought before the judge they placed her in cuffs and sent her into the holding area before they could go forward with the probation violation hearing. When the court officer brought her into the holding area he asked her, “are you a man or a woman?” When she responded that she was a woman he grabbed her genitals and said, “women don’t have dicks.” While she was crying he called her names and continued to make comments about her breasts and genitals. All of this was reported to me after the incident as she was allowed to return home because she was already on a GPS unit. There was no one else around watching the court officer. The individual who was assaulted did not want any reports filed or comments made to the court because she was fearful that it would result in her getting in more trouble, possibly getting locked up in jail again, or having another incident of being alone with another court officer.

Rev. Jason Lydon, Black and Pink

USE OF POSSESSION OF CONDOMS AS EVIDENCE TO ENGAGE IN PROSTITUTION-RELATED OFFENSES

As documented by Human Rights Watch in four major cities across the United States and reported in many other jurisdictions,⁴⁶ local law enforcement agencies and prosecutors routinely use possession or presence of condoms as evidence of intent to engage in prostitution-related offenses. This harmful practice has a significant deterrent effect on individuals' willingness to carry condoms or make them available to others for fear of police harassment and criminal prosecution, particularly among populations routinely profiled and targeted in enforcement efforts, including LGBT youth and adults.

“ When the police take our condoms or lock us up for carrying condoms, they are putting our lives at risk. How am I supposed to protect myself from HIV and STIs when I am scared to leave my house with condoms in my purse?”

*Trina, Youth Leader,
Streetwise and Safe (SAS)*

RECOMMENDATIONS:

- The Centers for Disease Control and Prevention (CDC) and DOJ should issue and publicize guidance condemning reliance on mere possession or presence of condoms as evidence of intent to engage in criminal activity, and encouraging local law enforcement agencies to adopt policies prohibiting this practice.
- Consistent with the resolution of the Presidential Advisory Council on HIV/AIDS, DOJ and CDC should develop, disseminate, publicize, and promote guidance to state lawmakers and prosecutors to adopt legislation and policies that would eliminate the practice of using possession or presence of condoms as the basis of criminal prosecutions or sentence enhancements.



“Know Your Rights” buttons created by LGBT youth leaders at Streetwise and Safe (SAS), IMAGE: K. LUNDIE

The practice of using condoms in prostitution related offenses affects my community, LGBT young people, because we are often profiled as being engaged in the sex trades. One time, I was going to a kiki ball on a Saturday night in the West Village. I was standing on the street talking with some friends and an officer approached me. She asked me for my ID. I gave it to her. At that time I didn't have my name legally changed. She not only would not call me by my real name, but she kept calling me a man and a faggot. She took a picture of my ID and sent it to the 6th precinct. The dispatcher told her that my record was clear but instead of letting me go, she said she wanted to see in my purse. I didn't know my rights then or I would have not consented to the search. I thought I had to show her the contents of my purse.

When she looked inside, she saw two condoms. She called the precinct back and asked for a police car to come. I asked her, "Why are you locking me up? I can't carry condoms?" She replied, "You are getting locked up for prostitution." I was taken to the precinct and put in with the men. I was 17 years old. This is my story but this is also the story of many of my friends who are Lesbian, Gay, Bisexual and Transgender, young, and of color.

When the police take our condoms or lock us up for carrying condoms, they are putting our lives at risk. How am I supposed to protect myself from HIV and STIs when I am scared to leave my house with condoms in my purse? For my community, it is not only being put at risk for HIV, STIs, and unwanted pregnancies, but having to be harassed and assaulted by police officers for being transgender or queer.

*Trina, Youth Leader,
Streetwise and Safe (SAS)*



IMAGES: NATIVE YOUTH SEXUAL HEALTH NETWORK

3 PRISONS



Artwork by Yeniell Hernandez, FL, incarcerated Black and Pink member

Every day, the lives and the physical integrity of lesbian, gay, bisexual, and transgender people are at stake within our prison systems.”⁴⁷ These are words from the report of the National Prison Rape Elimination Commission (NPREC), a group of experts convened by Congress to study the epidemic of sexual violence in prison. The NPREC made critical findings that led to the Department of Justice’s inclusion of important protections for LGBT people in the final regulations of the Prison Rape Elimination Act (PREA). The regulations limit the use of protective custody, which is routinely used to place LGBT people in solitary confinement for their “protection,” and mandate the end to harassing and abusive searches to determine genital characteristics, which transgender and gender non-conforming people have often been subjected to in custody.⁴⁸

“Prisons aren’t safe for anyone, and that’s the key issue.”

CeCe McDonald

Yet, there are many serious problems with the implementation of PREA, and LGBT people face ongoing violence in custody. In my work as an attorney serving imprisoned LGBT people, it is clear that “sexual violence is central to the operation of the prison regime...[where i]

ncarceration is itself an act of racialized sexual violence.”⁴⁹ As black trans activist and prison survivor, CeCe McDonald, said when she was released from prison this year, “Prisons aren’t safe for anyone, and that’s the key issue.”⁵⁰ For LGBT people, some particularly widespread and harmful sites of violence include the systemic denial of healthcare and the regular use of isolation.

Federal courts have repeatedly ruled that transition-related health care is medically necessary and officials are liable for their deliberate indifference to this need, but the reality for many transgender people in custody is that this care is routinely withheld.⁵¹ Despite case law establishing that trans people should be able to get the health care they need,⁵² one transgender woman we have worked with in North Carolina has been denied an evaluation for Gender Dysphoria (GD) for the past eight years.⁵³ The majority of transgender people in custody across the country are facing the same problem. Every day I hear from people who are denied care they need to survive. Corrections agencies continue to claim that transition-related health care is not “real” health care. Even where policies have been implemented to provide hormones and surgery for transgender prisoners, like in Massachusetts or New York, people are often evaluated by providers who either don’t believe in providing the care or are not qualified to make a diagnosis. In one evaluation I read recently, the clinician determined that because the individual,

who identified as a transwoman, had an interest in cars and was attracted to other women, that she could not have GD. Whereas in the past, people were never sent for evaluations at all, in the systems that have been sued and are forced to evaluate people for GD, clinicians simply routinely deny that the patient has GD. This makes access to care even more difficult because once a medical determination has been made that the care is unnecessary, regardless of how biased the evaluation, it becomes almost impossible to override. The result is that thousands of transgender people are being denied critical medical care in our nation's prisons, jails, and immigration detention facilities.

For many LGBT and gender non-conforming people, protective custody remains the default placement for periods of days, months, years, and in some cases, decades. In addition to the conditions themselves amounting to torture, solitary confinement usually restricts a person's access to education, work, and program opportunities. These opportunities are not only essential for maintaining a person's mental health, but are usually necessary for achieving good time credit and being paroled. This means that LGBT people, who are likely to serve much of their sentence in isolation, are also more likely to serve the maximum time (or longer) of non-life sentences.⁵⁴

Rather than fulfill their constitutional obligation to keep people safe from violence, corrections agencies continue to use solitary confinement to warehouse vulnerable people. I am working with one transgender girl without any criminal convictions who is now being held in isolation in a boy's facility. The agency that is housing her agrees that solitary confinement is not sustainable, but rather than move her into the general population of a girls' facility where she would feel safer, officials are utilizing an exceptional and rarely used procedure to move her out of the juvenile system into the adult men's prison system. She now may spend the next five years in isolation in an adult men's facility.

LGBT people, who are likely to serve much of their sentence in isolation, are also more likely to serve the maximum time (or longer) of non-life sentences.

Though PREA has offered some protections for LGBT people in custody, we have also seen widespread misuse of PREA's mandate by corrections officials. In Idaho, for example, PREA has been used to restrict the gender expression of people in custody under the guise of ending sexual assault: "To foster an environment safe from sexual misconduct, offenders are prohibited from dressing or displaying the appearance of the opposite gender."⁵⁵ A few years ago, I represented a transgender woman in a New York men's prison who was disciplined after reporting a sexual assault perpetrated against her. The officials argued that her gender non-conformity was evidence that she had consented to the rape. Meanwhile, all corrections agencies continue to prohibit consensual sexual contact or touching of any kind. Consensual contact is often punished as harshly as rape. As I was writing this, the West Virginia Supreme Court upheld a disciplinary infraction against a prisoner for kissing another prisoner on the cheek. He served 60 days in solitary. Unfortunately, PREA is becoming another mechanism of punishment used by corrections officials, often especially targeting LGBT prisoners.

For all the people that advocates hear from, there are countless others who are unable to access outside support and still others who have died without ever telling their stories. While there continue to be important victories for LGBT people in prison, and the resilience and resistance of those behind bars transcends even the most egregious injustices, much work remains.

CHASE STRANGIO

Staff Attorney, American Civil Liberties Union



Community Members gather at the Sylvia Rivera Law Project to write postcards to prisoners. *IMAGE: SYLVIA RIVERA LAW PROJECT*

LGBT people and PLWH are overrepresented in U.S. prisons and jails, and face widespread and pervasive violence, inadequate health care, nutritional deprivation, and exclusion from much-needed services and programs.⁵⁶ LGBT prisoners and prisoners with HIV are more likely to be placed in administrative segregation or solitary confinement, to face harassment and sexual assault, and to be denied access to mail, jobs, and programs while in custody.⁵⁷ LGBT prisoners have also experienced unanticipated negative impacts from the Prison Rape

Elimination Act (PREA), including being punished through new policies purportedly created to comply with PREA that forbid gender non-conforming behavior and punish consensual physical contact.⁵⁸ Transgender women are routinely placed in men's prisons and jails in virtually every jurisdiction, where they face harassment and violence, often for extended periods in isolation ostensibly for their own protection. A 2009 survey found that transgender prisoners experience sexual victimization at a rate 13 times higher than non-transgender prisoners.⁵⁹ These conditions not only cause LGBT prisoners and prisoners with HIV harm while incarcerated, but also make them more vulnerable upon release since they are more likely to suffer unmet medical needs, mental health consequences from discrimination and violence, and fewer benefits of educational and other programming inside prisons.

DISCRIMINATION AND VIOLENCE INSIDE PRISONS AND RELATED FACILITIES

RECOMMENDATIONS:

- The Federal Bureau of Prisons (BOP) should provide guidance clarifying that federal regulations that prohibit discrimination based on “sex” include gender identity and expression-based discrimination.⁶⁰ This guidance should explicitly discuss examples of discrimination experienced by transgender and gender non-conforming prisoners and describe how it is to be avoided. This guidance should also recognize the right to identify in culturally specific ways, such as Two Spirit and tribal specific forms of gender identity and expression, and the forms of discrimination targeting individuals who express these identities.
- The Department of Justice (DOJ) and BOP should amend their regulations to explicitly add sexual orientation, gender identity, marital status, and HIV status to the forms of discrimination that federal law prohibits.⁶¹
- DOJ should amend the PREA regulations to require prisons to eliminate bans on consensual sex among incarcerated people. Current BOP policy authorizes prison administrators to ban consensual sex among people in custody, which undermines PREA's goals by discouraging prisoners from reporting sexual violence. In some cases, people who have claimed that they were raped have been punished for purportedly engaging in consensual sex after staff determined that their claim was unsubstantiated.⁶² DOJ should convene a working group of relevant agency personnel and outside experts, including people who have been incarcerated and survivors of sexual assault, to recommend modifications to BOP's existing policy with the purpose of creating a policy that allows for appropriate, consensual sexual contact among prisoners but does not undermine the purposes of PREA or authorize relationships between a prisoner and a prison staff

Black and Pink has received numerous letters from prisoners detailing ways PREA has been used to harm them as LGBT prisoners. We have seen particularly harmful patterns in Texas, Florida, and Pennsylvania. Jim, a prisoner in Texas reported that prison guards would write up disciplinary tickets against him for holding hands with his lover in the mess hall. Jim reported that the disciplinary hearing was filled with homophobic jokes and threats of being placed in solitary confinement if the prisoners were found touching again. Hope, a transgender woman prisoner in a men's prison in Massachusetts reported receiving a disciplinary ticket for a PREA violation after she was attacked by another prisoner. The attacker lied and told the guards that Hope had offered him oral sex. As a result, she was punished even though she was the person attacked, and she is now facing being moved to a maximum security prison because of the violation. We have heard numerous stories from prisoners that guards will yell out "PREA" when they see prisoners gathered together closely, creating a culture of fear around the rules created by PREA. We have received many letters about the harm PREA is causing and not a single example of PREA being used to help someone feel safer after an assault.

“Black and Pink has received numerous letters from prisoners detailing ways PREA has been used to harm them as LGBT prisoners.”

Rev. Jason Lydon, Black and Pink

member. The group should also investigate and address instances of prison staff using PREA as a pretext for punishing non-sexual displays of affection, which tend to be based on homophobia and transphobia.⁶³

- DOJ and BOP should ensure that prison visitation policies, including conjugal visitation policies, do not permit discrimination or harassment on the basis of sexual orientation, gender identity, or marital status.
- PREA regulations extend important new protections to transgender people, including limitations on bodily searches and segregated housing.⁶⁴ However, the current PREA regulations provide no clarity regarding what constitutes a cross-gender search for transgender prisoners and detainees. DOJ should issue a clarification through the Frequently Asked Questions section on the PREA Resource Center's website⁶⁵ indicating that that transgender people must be allowed to specify the gender of the officer they would prefer to be searched by in the event a search is legally justified and necessary.⁶⁶
- DOJ should amend PREA regulations to include an explicit prohibition on search for the sole purpose of determining genital characteristics, regardless of whether genital characteristics are known or whether as part of a broader medical examination.⁶⁷
- The Administration should initiate, support and promote legislation that would create a private right of action to enforce the PREA regulations.
- The Administration should work with Congress to reform the Prison Litigation Reform Act (PLRA). PLRA creates significant obstacles for prisoners seeking redress for harm and violence, including sexual violence. Reforms should include repeal of the physical injury requirement, repeal or amendment of the exhaustion requirement, and repeal of the provisions extending the law to children.⁶⁸

HEALTH AND NUTRITION

- BOP should ensure that LGBT-inclusive sexual health care is available as part of essential medical care in its facilities, and make condoms and other barriers freely available to federal prisoners as part of basic sexual health care and sexual health care literacy programs. BOP should also provide guidance⁶⁹ to states and local recipients of federal law enforcement funding on the elements of basic sexual health care and literacy programming, including condom availability in all facilities of confinement.⁷⁰
- Ensure all prisoners and detainees receive access to quality necessary medical care, including continuity of care during transfers between facilities and after release, access to treatment based on contemporary medical standards, and full informed consent for all treatment.⁷¹ This should include screening, diagnosis, and evidence-based treatment for substance use-related conditions, including access to approved opiate replacement therapies such as methadone and buprenorphine. Prisoners who were previously receiving treatment with methadone or buprenorphine before incarceration should be continuously maintained on it throughout intake to any correctional facilities.⁷²
- BOP should complete an assessment of current practices to ensure that all prisoners with HIV receive regular evaluation and therapy consistent with current Department of Health and Human Services (HHS) treatment standards and guidelines and receive prescribed HIV medications immediately upon detention and transfer in a confidential and timely manner consistent with prescribed timing and dosage.
- BOP should ensure regular and comprehensive training of prison officials in the appropriate medical treatment for HIV-positive and LGBT prisoners and detainees.
- BOP should create rules and guidance ensuring that prisoners have access to gender-appropriate clothing and grooming items, which are often particularly denied to transgender prisoners. BOP should use the New York Office of Children and Family Services (OCFS) policy as a model.⁷³
- BOP should ensure that all confinement facilities follow standards set by the Department of Agriculture (USDA) and the CDC on nutritional adequacy for all people in custody, with an emphasis on creating menus that reflect the needs of people living with long-term illness, pregnant people, people with HIV, young people, and people over the age of 50.⁷⁴ Specific attention should be paid to resolving current problems of inadequate nutrition and lack of physical activity for prisoners in solitary confinement.⁷⁵

ACCESS TO PROGRAMMING

- BOP should ensure meaningful access to libraries and educational programs for prisoners in federal prisons, and provide guidance for such access in state and local facilities, including youth facilities. Access to the internet, LGBT educational materials and publications, materials relevant to a racially and religiously diverse set of populations, cultural supports and Native-specific programming, mental health resources, and programs designed to prepare prisoners for release should be provided.⁷⁶ People in solitary confinement, protective custody, or other types of segregation should also have access to such materials and programs.

PLACEMENT WITHIN PRISON FACILITIES

- PREA regulations extend important new protections to transgender people, including limitations on segregated housing.⁷⁷ Consistent with these regulations, BOP should eliminate involuntary placement in protective custody in federal prisons and DOJ should provide guidance to state and local jurisdictions to do the same. Such placement is regularly used to effectively place LGBT prisoners in solitary confinement.⁷⁸
- BOP should eliminate all forms of solitary confinement in federal prisons and DOJ should provide guidance to state and local facilities to eliminate such placements, sometimes called “Intensive Management Units,” “Communication Management Units,” “Special Housing Units,” or “Security Housing Units.” LGBT prisoners, including youth, and prisoners with HIV and/or other serious health conditions are regularly placed in such units at the discretion of prison staff for long periods without justification, due process or outside oversight. Such placement causes significant psychological harm and adverse health outcomes, including suicidality.⁷⁹
- BOP should make transparent determinations of whether to place transgender prisoners in women’s or men’s facilities⁸⁰, and enable engagement of transgender advocates in those determinations. PREA regulations require officials to make case-by-case decisions that are not solely based on anatomy, and give serious consideration to the individual’s own views as to his or her safety.⁸¹ However, significant challenges remain regarding the pace of implementation of these requirements as well as the process for making the determination. BOP should ensure that this process is meaningful by making it transparent, disclosing statistics on the assignment of transgender people and the preferences that they expressed, and inviting advocates from the transgender community to play a role in the review process.



IMAGE: TALCOTT BROADHEAD

I spent three and a half years in federal prison on a drug charge. As a black trans woman, I experienced sexual violence while in prison. I was put in blatantly dangerous housing situations where officials knew I would be taken advantage of. When I went to tell the prison staff that the guy that I was in the cell with had several times fondled my breast when I tried to sleep, I was told that if I reported the assault the only place he could house me was in the SHU, which is isolation. I knew that being housed in the SHU would prevent me from participating in the drug program that was allowing me to qualify for early release and I would not be able to attend school programs that I was involved in. I chose to keep quiet about what was happening to me so that I could be part of the program and be released from prison 18 months early. No one should have to make the choice between enduring a longer prison sentence or being sexually assaulted. It was one of those things that I felt caused me so much pain and helplessness—a hard decision to make but I learned to shut my mouth and do the best I could just to stay strong. I was even afraid to talk about it via mail or phone where I was housed because they listened to your phone calls closely.

*Janetta Johnson, Program Coordinator,
Transgender, Gender Variant, and Intersex
Justice Project*

4 IMMIGRATION



Community United Against Violence (CUAV) member at a march against S-Comm deportation policy, San Francisco, 2013. IMAGE: CUAV

My client, Julio, came to the U.S. from Mexico under stressful and difficult circumstances when he was 21. He was marginally housed when he arrived and had homophobic experiences at shelters that made it harder for him to access social services. His life was chaotic, between trying to find both housing and a job in a new country. He missed the one-year deadline for applying for asylum because he was unaware of it. Three years after arriving in the U.S., he found himself in an immigration detention center following a fight with his boyfriend. The fight resulted in a malicious mischief charge and an arrest by local police. The criminal charges didn't stick so he should have been released, except that, because of the Secure Communities (S-Comm) program, he was turned over to Immigration and Customs Enforcement (ICE). I met him when he was in detention, awaiting deportation. He was very ill, and was not getting the medical care he needed. When he learned that he might be detained for months and even years while his case was pending, he lost hope and signed off on his own deportation. I lost touch with him after his deportation. I worry about whether he is still alive.

Immigration laws and policies in the U.S. present a difficult and sometimes impossible maze for most immigrants. For LGBTQ people and people living with HIV, this maze can prove deadly. The past seven years have seen an unprecedented build-up in immigration enforcement efforts, justified as a pre-requisite to comprehensive immigration

reform. The results have been disastrous for immigrant communities, including LGBTQ immigrants and immigrants living with HIV.

The enforcement build-up includes increased partnerships between ICE and local law enforcement, best exemplified by the S-Comm program. S-Comm has been forcibly implemented across the country despite state and local efforts to opt out of the program. Under S-Comm, fingerprints of individuals booked into jails are automatically checked against Department of Homeland Security (DHS) immigration databases. If there is a “hit” in an immigration database, ICE is automatically notified, even if the person has not been convicted of any criminal act. ICE then places an “immigration hold” on the person, and they are transferred from local custody into ICE custody, where they face detention and deportation.

S-Comm and the 12 other “ICE ACCESS” programs transform any contact with local law enforcement into a direct conduit to immigration detention. LGBTQ people are especially likely to be swept up into the criminal legal system because they are targets of police profiling and because they are disproportionately economically marginalized due to discrimination in employment and social services. LGBTQ immigrants face heightened levels of police and other violence in the U.S., all the while fearing deportation to countries they may have fled due to the same types of harm.