

FIGHT FOR THE RIGHTS OF



**TRANS PEOPLE
WHO ARE INCARCERATED**

The following is a guide for advocates to push local and state leaders to better protect transgender, gender nonconforming, nonbinary, and intersex people who are incarcerated.

NYCLU

THE PROBLEM

Being locked up is dehumanizing for anyone. Going to jail means being stripped naked, getting your belongings confiscated, being forced into close quarters with strangers, and suffering escalating indignities.

But for transgender, gender nonconforming, nonbinary, and intersex people, it is especially likely to result in harassment, degradation, and violence. This is especially true for Black people, Indigenous people, and other people of color.

One in six people who identify as transgender reports being incarcerated at some point in their lives – and this figure jumps to nearly three in six for Black transgender women.

Across the state, trans people are often held in facilities that are not consistent with their gender. This is true even though state law prohibits discrimination on the basis of gender identity and courts have held that it's discriminatory to refuse to house people consistent with their gender identity.

Beyond housing issues, trans, gender nonconforming, nonbinary, and intersex people are also routinely denied access to health care, misgendered and deadnamed, and subjected to discriminatory commissary and grooming policies. This discrimination is illegal, and it leads to severe emotional trauma.

Physical violence is all too common as well. In part because they are housed incorrectly, trans people are exposed to overwhelming levels of abuse and harassment while behind bars, and they are far more likely than cisgender people to be targeted for the worst types of violence and mistreatment.

Legally, the facilities are required to fix all these issues, but a key part of the problem is most of them have no policy protecting the rights of trans, gender nonconforming, nonbinary, and intersex people. Most lack policies prohibiting sexual abuse or harassment. Many don't have policies limiting cross-gender searches, and almost all fail to address how to respectfully house, treat, and search transgender people in their facility. There is essentially no training for how to communicate with trans, gender nonconforming, nonbinary, and intersex people.

Across the state, we need gender-affirming policies in jails, prisons, and lock-ups.

JENA'S CASE POINTS THE WAY FORWARD

Jena Faith's experience in the Steuben County Jail was a living nightmare. The military veteran spent four weeks in the jail awaiting trial in early 2018. She was initially housed in the jail's women's facility without incident, but things changed when officials suddenly transferred her to the men's facility, despite the fact that she is a woman.

The New York Civil Liberties Union, Transgender Legal Defense & Education Fund, and the law firm BakerHostetler filed a lawsuit on Jena's behalf. We reached a settlement that creates a groundbreaking model policy addressing housing placement, safety, access to medical care, name and pronouns use, search procedures, and grooming standards. The policy was negotiated with the involvement of the New York State Sheriffs' Association, so it can and should be considered a model for other jurisdictions around the state to follow.

As a result of the settlement the county will:

- Presumptively house people consistent with their gender identities.
- Ensure that staff at the jail respect a person's self-identified gender identity in all contexts, including name and pronoun use and searches.
- Require that people in custody have access to clothing, toiletry items, grooming standards, and medical care that are all consistent with their gender identities.

Jena doesn't want what she experienced in the Steuben County Jail to happen to anyone else. And it is simply not enough for Steuben County alone to change its policy. All jails, prisons, and lock-ups in New York State should adopt gender-affirming policies so that no one else suffers the way Jena did. By using the Steuben County settlement as a model, we can reach out to other facilities and advocate for gender-affirming policies across the state.





STATEWIDE CHANGE

There are three settings in which people are incarcerated in New York: jails, prisons, and lock-ups. Jails are the responsibility of the local county government and are often run by elected sheriffs. Jails house people who are presumed innocent and awaiting trial or serving a short sentence. Prisons house those who have taken a plea or been convicted of a crime and are the responsibility of state government. And lock-ups are often in local police stations. They are the responsibility of local police departments.

The goal for all three targets is to create a policy that is in compliance with the law and responsive to the needs of the people it will impact. The policy should address the most common forms of unlawful discrimination that trans, gender nonconforming, nonbinary, and intersex people face when in custody. And it should ensure that people's gender identities are affirmed.

Jails

Your first step is to obtain a copy of the facility's current policy. You can check the jail's website, call the sheriff, or reach out to a member of the county legislature.

Here is a sample script:

"As you may be aware, in Steuben County there was recently a settlement agreement which created a policy that clarifies the rights of transgender people in county jails and creates clear guidelines for how to comply with the law. I'm a local advocate, and I'm wondering if your jail has a policy to ensure your staff is aware of the law. I'd also like to know how you train staff on the rights of transgender people in your custody."

If they are unfamiliar with the settlement, feel free to send them a link to the case and summarize the results of the settlement. At this point it may also be helpful to mention that the settlement was done with the cooperation of the New York State Sheriffs' Association and note that the Steuben County Sheriff himself described its implementation as necessary "to ensure that all citizen rights are met" and "to ensure compliance with federal and state regulations." You could also highlight the sections of the policy that state the jail will:

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- Require that people in custody have access to clothing, toiletry items, grooming standards, and medical care that are all consistent with their gender identities.

If the sheriff doesn't have a policy, you can ask if they plan to develop one and offer a model policy, which is outlined at the end of this document.



In addition to the local sheriff, you can also reach out to a member of the county legislature, since the county is ultimately responsible for maintaining the jail. Most counties have a public safety committee, and this is a good place to start. You can usually find details about the committees on the county website. Once you have identified the committee, reach out to the chair and use a script similar to the one above.

You should also take this opportunity to remind the legislator that, if the county doesn't have an adequate policy, they are at risk of being sued. The settlement resulting from that lawsuit could have a considerable impact on the county budget.

Prisons

Prisons in New York State are overseen by the New York State Commission on Correction and are run by the Department of Corrections and Community Supervision. Creating change in prisons will require state legislation.

The NYCLU and community partners are working with lawmakers to pass a bill that will explicitly codify all the protections above into state law. There are many ways you can support this effort—from contacting your state Assemblymember and Senator directly, to participating in targeted lobbying efforts or grassroots organizing.

Since the specific needs and tactics of this state legislative advocacy effort often change quickly, please call your local NYCLU chapter or the New York City office for the most up-to-date information on how you can get involved.

Lock-ups

Many local police departments have temporary holding cells. These are facilities used to detain suspects waiting for interrogation, arrest processing, transfer to jail, or for other administrative procedures. Despite these differences, they present most of the same problems that jails and prisons do for transgender, gender nonconforming, nonbinary, and intersex people. The local police department generally has authority over lock-ups. You should reach out to the chief of police and make a request following a similar script to the one listed above for sheriffs.

You can also ask a village, town, or city council member for the police department's policies regarding the treatment of transgender people taken into custody. While these local officials may not have direct responsibility for the policy, they have an interest in creating a strong one because the local government will be held financially responsible if the police department is sued.

Some places also have a police-community advisory board or citizen review board, which may have the ability to make policy recommendations.

Your local chapter of the NYCLU may be able to help identify the best target for your advocacy.

A POLICY WORTH FIGHTING FOR

When looking through the policy of a jail, prison, or lock-up, or when advocating for a model policy, it's important to keep the following principles in mind.

A strong policy must:

- Be drafted with input from members of the community who are transgender, gender nonconforming, nonbinary, and intersex.
- Include training for all staff and regular refresher trainings, ideally yearly.
- Provide a method to report violations.
- Be distributed to all visitors, staff, and contractors.
- Be posted and shared with folks in custody, ideally with a short plain-language summary.
- Include definitions of terms.
- Acknowledge that a person's self-identification as transgender, gender nonconforming, nonbinary, or intersex is sufficient to trigger protections and procedures.
- Address issues related to names, pronouns, housing, searches, protection from violence and harassment, medical and mental health care, toiletry items, clothing, and programming.
- Be translated or interpreted in the primary language of any individuals who have limited English proficiency.

WE CAN HELP

The NYCLU is eager to assist with policy review for any and all policies—we have had extensive experience pushing back on facility administrators' attempts to weaken policy language or seek inappropriate compromises, and we can share strategies for navigating these negotiations. Reach out to your local chapter or the New York City office to request technical assistance.

You are not in this alone. Together we can work to protect the rights of transgender, gender nonconforming, nonbinary, and intersex people in custody.

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