

PROTECT TRANS NEW YORKERS IN JAILS AND PRISONS



THE PROBLEM

Transgender, gender nonconforming, non-binary, and intersex (TGNCNBI) New Yorkers often must survive under the weight of multiple socioeconomic burdens. They disproportionately face food, shelter, and employment insecurity. Many experience discrimination based on their race, gender, and immigration status.¹ They are also heavily policed and criminalized, and therefore disproportionately likely to be incarcerated.² In fact, one in six transgender people reports having been incarcerated at some point in their lifetime. This figure jumps to nearly one in two for Black transgender women.³

Incarceration is dehumanizing for anyone, but TGNCNBI people, especially those who are Black, Indigenous, and other people of color, are especially likely to experience harassment, degradation, and violence.⁴ In a 2017 survey of transgender and non-binary people incarcerated in New York State, 95 percent of respondents reported being verbally harassed and called derogatory names by corrections staff.⁵

TGNCNBI people in the New York State carceral system regularly face vicious physical, verbal, and sexual harassment. They are nearly 10 times more likely to be sexually assaulted than the general prison population.⁶ Assaults by facility staff are a particular

problem. According to a 2021 survey, fully 75 percent of respondents “reported at least one instance of sexual violence by corrections officers.”⁷

The vast majority of TGNCNBI people are placed in facilities that do not match their gender identities, exacerbating the violence and degradation they face. And when TGNCNBI people are attacked by other people who are incarcerated or when they report violence from correctional staff, they are often put in involuntary protective custody, which is functionally the same as solitary confinement.⁸

THE SOLUTION

The Gender Identity Respect, Dignity, and Safety Act (S.2860/A.709) would increase safety for TGNCNBI people by requiring that prisons and jails:

- Presumptively house people consistent with their gender identities, unless they opt out, with a list of reasons that cannot be used as the basis for a denial;
- Ensure that staff at facilities respect a person’s gender identity in all contexts, including name and pronoun use and during searches;
- Mandate access to clothing, toiletry items, and grooming standards consistent with a person’s gender identity; and



- Place a 14-day limit on involuntary protective custody.

This last piece of the bill is critical because isolated confinement for more than 15 days is considered a form of torture.⁹ This punishment also disincentivizes people from reporting assault and harassment,¹⁰ and often increases vulnerability to assault and harassment by corrections officers and other staff.¹¹

There is every reason to believe that these protections will be effective and workable in New York. The New York State Sheriffs' Association already signed off on a Steuben County Jail policy that adopts the vast majority of the protections in the Gender Identity Respect, Dignity, and Safety Act.¹² Connecticut, Massachusetts, and California¹³ have all enacted similar protections legislatively, and New Jersey agreed to a similar policy in a settlement to litigation.¹⁴

Ensuring that TGNCNBI people are presumptively housed according to their gender identities and treated with respect when they are incarcerated will not only decrease violence in prisons and jails, but it will also save lives.

JENA'S STORY

In 2018, the NYCLU's client,¹⁵ Jena Faith, a transgender woman, was incarcerated for four weeks in a men's general population unit. As soon as she arrived in the unit, a cisgender man who was also incarcerated in the unit began to sexually harass and proposition Jena. He rubbed his feet on her legs, tried to hold her hand, and blew kisses at her. He told her that he wanted to marry her and wrote her love letters. When Jena complained to guards about the harassment, they told her that she could not file a written grievance. Eventually, they transferred her to another section of the men's general population unit. This did not stop the harassment from either the cisgender men who were incarcerated in that unit or from guards.

Fearing for her safety, Jena hid in her cell, leaving only for meals and to shower; she spent approximately twenty hours of every day in her cell and was unable to fully access the physical facilities and programming generally available to men who were incarcerated in the unit. Jena did not bother to complain to staff this time, because she learned from prior experience that they would not protect her.

As if fearing for her physical safety was not bad enough, guards also persistently misgendered Jena throughout her time in the men's general population unit and refused to administer her prescribed hormone therapy medication, although they ensured that she received all of her other prescribed medications.

Jena's ordeal did not end with her release. As a result of the mistreatment and harassment she suffered, Jena has been unable to sleep and experiences night terrors.¹⁶

1 | See generally Sandy E. James et. al, *The Report of the 2015 U.S. Transgender Survey*, The National Center for Transgender Equality (December 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

2 | *Id.* at 184.

3 | *LGBT People Behind Bars*, The National Center for Transgender Equality, <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf> at 5.

4 | See Sari L. Reisner et al., *Racial/Ethnic Disparities in History of Incarceration, Experiences of Victimization, and Associated Health Indicators Among Transgender Women in the U.S.*, *WOMEN HEALTH* 750 (2014).

5 | Letter from Lambda Legal et. al to U.S. Commission on Civil Rights (March 25, 2019) (on file at <https://ccrjustice.org/sites/default/files/attach/2019/04/Final%20Letter%20re%20Concerns%20re%20LGBT%20women%20to%20USCCR%2C%20Women%20in%20Prison%20web.pdf>) at 3.

6 | *Id.* at 6.

7 | SYLVIA RIVERA LAW PROJECT & TAKEROOT JUSTICE, *IT'S STILL WAR IN HERE: A STATEWIDE REPORT ON THE TRANS, GENDER NON-CONFORMING, INTERSEX EXPERIENCE IN NEW YORK PRISONS AND THE FIGHT FOR TRANS LIBERATION, SELF-DETERMINATION, AND FREEDOM* 27 (2021).

8 | *Id.*

9 | Press Release, UN Office of the High Commissioner, United States: prolonged solitary confinement amounts to psychological torture, says UN expert (Feb. 28, 2020) (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25633>).

10 | Cf. SYLVIA RIVERA LAW PROJECT & TAKEROOT JUSTICE, *IT'S STILL WAR IN HERE: A STATEWIDE REPORT ON THE TRANS, GENDER NON-CONFORMING, INTERSEX EXPERIENCE IN NEW YORK PRISONS AND THE FIGHT FOR TRANS LIBERATION, SELF-DETERMINATION, AND FREEDOM* 27 – 28 (2021).

11 | *Id.* at 23 – 24.

12 | See *Faith v. Steuben County*, NYCLU, <https://www.nyclu.org/en/cases/faith-v-steuben-county> (last visited Feb. 24, 2022).

13 | Conn. Gen. Stat. § 18-81ii (West 2018); M.G.L.A. ch.127 § 39A(c) (West 2018); Cal. Penal Code §§ 2605-06 (West 2021).

14 | N.J. Department of Corrections Internal Management Procedure, PCS.001.TGI01 at 3 (2021), available at https://www.aclu-nj.org/files/6516/3000/3727/2021.08.26_ACLIU-NJ_GSE_Letter_to_Passaic_County.pdf.

15 | In a case brought jointly by co-counsel the NYCLU, the Transgender Legal Defense & Education Fund, and the law firm BakerHostetler.

16 | Amended Complaint, *Faith v. Steuben County*, No. E2019-1208CV (N.Y. Supp. Ct. 2019).