



It's Still War in here

A Statewide Report on the Trans, Gender Non-Conforming, Intersex (TGNCI)
Experience in New York Prisons and the Fight for Trans Liberation,
Self-Determination, and Freedom

Executive Summary

ABOUT THE AUTHORS

The **Sylvia Rivera Law Project (SRLP)** works to guarantee that all people are free to self-determine their gender identity and expression without facing harassment, discrimination, or violence. SRLP is a collective organization founded on the understanding that gender self-determination is inextricably intertwined with racial, social, and economic justice. Therefore, SRLP seeks to increase the political voice and visibility of low-income people and people of color who are transgender, intersex, or gender non-conforming. SRLP works to improve access to respectful and affirming social, health, and legal services for our communities. SRLP believes that in order to create meaningful political participation and leadership, we must have access to basic means of survival and safety from violence.

SRLP holds a strong belief that as the people most affected by the systems of violence and oppression we fight are the best people to lead that fight. We also believe that social justice organizations must find ways to directly involve the members of our community who have been separated from us by the criminal injustice system.

The **Prisoner Advisory Committee (PAC)** is one way to overcome the enormous state-created barriers to communication and political participation for the people who are most affected by the prison industrial complex. PAC currently has over 180 amazing members who are enthusiastic about sharing their time, passion, and expertise with SRLP. Our members are trans, gender-nonconforming, and intersex people and allies who are currently incarcerated. Members of PAC work together with members of our Collective to develop strategy and policy goals. Most recently, PAC Members provided feedback and comments to begin the re-launch and update of SRLP's 2007 groundbreaking report, *It's War in Here*. PAC Members are developing creative ways to work on changing policies, building community, and sharing information and strategies. They also have been contributing to SRLP's annual newsletter for folks on the inside, *In Solidarity*.

TakeRoot Justice (TakeRoot) partnered with SRLP to conduct this research. TakeRoot provides legal, participatory research and policy support to strengthen the work of grassroots and community-based groups in New York City to dismantle racial, economic and social oppression. TakeRoot's Research and Policy Initiative partners with and provides strategic support to grassroots community organizations to build the power of their organizing and advocacy work. We utilize a participatory action research model in which low-income and excluded communities are central to the design and development of research and policy.

INTRODUCTION

This report sheds light on the ongoing crisis for transgender and gender non-conforming (TGNC)¹ people in New York state prisons. From the lack of access to medical services, to verbal abuse by corrections officials, to sexual and physical violence and retaliation for placing grievances, we demonstrate the lived reality of prison for TGNC people and, crucially, we share their experiences in their own words.

We also emphasize that the experience of TGNC people in prison is a crisis within the crisis of mass incarceration, which disproportionately impacts people of color, low-income people, LGBTQ people, and other marginalized communities. It is a crisis within the crisis of our abusive prisons systems more broadly.

The Sylvia Rivera Law Project (SRLP) embarked on this research ten years after the publication of our previous report, “Its War in Here,” a groundbreaking study on the experiences of transgender and intersex people in New York State’s men’s prisons, which drew from interviews with incarcerated and previously incarcerated people and their advocates.

Our new research, based on 44 in-depth written surveys with incarcerated members of SRLP’s Prisoner Advisory Committee and interviews with members in prison, provides an in-depth look at the experiences of TGNC people in prison, centering the voices and leadership of currently and formerly incarcerated TGNC people. This research emphasizes the need for policy makers, the legal community, and all of us to push for immediate and life-saving reforms.

This executive summary shares selected research findings and policy recommendations. Please see the full report for additional content and details.

An important note on content:

This report discusses many difficult issues, including verbal and physical violence, sexual violence, self-harm and suicide. We encourage our readers to care for themselves as they need when reading. For those inside, we would like to share with you our guide to “Self Care on the Inside: Tips & Activities to Take Care of Yourself.” <https://srlp.org/wp-content/uploads/2017/05/Self-Care-on-the-Inside-Guide.pdf>

¹ When discussing our survey findings, we use “TGNC” in recognition that none of our survey respondents self-identified as intersex. In our discussion of recommendations, we use the term “TGNCI” because we believe that people who identify as intersex should benefit from any changes to the carceral system. We recognize and celebrate the many identities that fall outside the TGNC umbrella, as well as the fact that identities can change. We want to particularly acknowledge the survey respondents who identified as two-spirit, and to recognize and honor indigenous cultures.

SELECT RESEARCH FINDINGS

The following findings are based on 44 in-depth surveys with TGNC people incarcerated in New York State prisons at the time they submitted surveys. Please see our full report for a detailed description of our methodology.

Facility placements fail TGNC people

Housing placements do not affirm gender identity, are structured to recognize only a male/female binary, and are otherwise unsafe. TGNC people diligently advocate to transfer to safer housing placements, but are often ignored by formal systems. Instead, many TGNC people have no other option but to intentionally receive disciplinary tickets or be placed in solitary confinement in order to remove themselves from unsafe housing situations. Nearly all participants had been in housing other than general population during their time in New York State Prisons.

- All participants who identified as women were held in men's prisons.
- Of those currently incarcerated in a men's facility—the large majority of our survey participants—the preferred housing placement is a women's facility within a specialized TGNC unit.
- Half of participants reported they have purposefully gotten Tier III disciplinary tickets or gone to solitary in order to remove themselves from an unsafe housing situation (49%).
 - *In March 2017 I allowed an argument with a CO and Sgt to escalate, and then intentionally made threats (verbal) so I'd get sent to SHU/ RMHU because I was being sexually harassed, abused, touched and threatened on an hourly basis and no staff were responding to my complaints. I had to get out no matter how.* –Participant THL
- Nearly all participants report that they have been in housing other than general population during their time in New York State Prisons (95%).
 - *“Let me simply tell you that I've landed in either the SHU and/or an MHU strip cell in just about every prison I've ever been housed in at some point in time, frequently for gender related issues.”* –Participant WN
 - *“[I ended up in housing other than General Population] for a Tier III that I did not do because they want me out of the facility because I am transgender and they did not know how to deal with me as a human being.”* –Participant SJH

Verbal, physical and sexual violence is perpetrated by Corrections Officials and staff

There is extremely pervasive verbal, physical, and sexual violence perpetrated by Corrections Officers and Department of Corrections and Community Supervision (DOCCS) staff against TGNC people. Many survivors use official channels to make reports of sexual violence, but few have positive outcomes, and many face subsequent retaliation for seeking recourse.

- More than three-quarters of participants report that Corrections Officers and other DOCCS staff do not use correct name or pronouns to identify TGNC people.
- 80% of participants experienced at least one physical assault by a Corrections Official.
- 75% of participants reported at least one instance of sexual violence by Corrections Officers (COs).

- Of those who reported sexual violence (81% of participants who experienced sexual violence reported it), **67% said they experienced retaliation for reporting sexual violence.**
 - *“Sent to the box, had mail thrown away, had personal property destroyed, received multiple retaliation misbehavior reports.”* –Participants TDC
 - *“Lock me up sent to the box giving all my property away not letting me shower playing with my food.”* –Participants PD

Medical care is discriminatory and lacking

The majority of participants report that gender-affirming and transgender-specific medical care is withheld or overly restricted. Medical providers dissuade people from accessing gender-affirming care, and participants also experience discrimination when seeking to access general medical services.

- **63% of participants report they have been denied healthcare specific to their gender identity.**
 - *“An RN at Upstate CF refused to administer my medication as she said it is not right.”* –Participant EF
 - *“I would like to be given gender reassignment surgeries and to be able to live as the woman that I am but DOCCS just keeps on denying me the surgeries.”* –Participant KBD
- **Participants describe medical providers refusing services or dissuading participants from seeking gender-affirming medical services,** including nearly 40% who were encouraged by a medical provider to “just be a gay man” or “just be a lesbian,” nearly 40% who were encouraged not to take hormones, and more than a third who were encouraged not to pursue a GD diagnosis.
 - *“He [a doctor] actually lectured me on “God’s Plan” and it being against His design.”* –Participant THL
 - *“I’ve had nurses (medical) make a lot of the same abusive comments listed for COs, and refuse to provide me emergency sick call, due solely to me being transgender.”* –Participant THL
 - *I’ve often had to educate health care providers about TG medicine.”* –Participant KNC
- **Hormone access is overly restricted.** Of those who receive hormones, 54% must go to a nurse or medical call to receive them. Only about a third are allowed to carry their hormones.
- **Participants face discriminatory barriers to accessing general medical care.** When attempting to access medical care that is not transgender-specific:
 - 41% of participants report being asked invasive or inappropriate questions about their gender, unrelated to their medical complaint.
 - 57% report being denied medical services.
 - *“My heart goes out to my transgender sisters that have to endure and navigate the prison medical system.”* –Participant ME

Barriers to the expression of gender identity are imposed

Participants report many obstacles to expressing their gender identity on the inside, ranging from prison rules to the risk of abuse. They experience exclusion from programming due to their gender identity or expression, and programs they do participate in impose limits on their gender expression.

- **Participants described exclusion from programs on the basis of gender identity or sexual orientation.**
 - *“After they found out that I’m transgender, they took away my job at the gym.”* –Participant KE
 - *“They said I ‘wasn’t man enough’ for the program.”* –Participant TCM

- Many also describe limits placed on their ability to express their gender identity, as well as negative consequences faced when expressing their gender identity.
 - *“Because of HSP 1.31, DOCCS now has to provide us bras and panties. However, unlike the state’s female prisoners, we are expressly prohibited from ordering and obtaining our own. DOCCS makes no exceptions to standing rules, such as hairstyles, makeup and some clothing. The ONLY things that are allowed are state-issued bras and panties, no exceptions.”*
–Participant KNC
 - *“In prison you have no gender identity. You’re nothing but a number.”* –Participant TDC
 - *I was told not to use my gender identity because it might make others upset, they don’t care how it makes me feel.”* –Participant F
 - *“It’s very difficult, especially nowadays. They put you in the box if caught wearing makeshift makeup, etc. It’s always risky.”* –Participant WN

The Prison Rape Elimination Act (PREA) does not provide sufficient protection

The implementation of the Prison Rape Elimination Act (PREA) has failed to sufficiently address sexual violence and unsafe conditions for TGNCI people.

- While the majority of participants have seen materials explaining their rights under PREA, and a phone number to report sexual violence, fewer than half had seen material about how to grieve sexual violence.
- The information that people do have access to is limited, sometimes illegible, and not inclusive.
- Those participants who were inside both before and after the implementation of PREA in 2012 report that while access to correct bras and underwear has improved, many other key issues have stayed the same, or even gotten worse, after the implementation of PREA. For example, 52% said that verbal harassment from DOCCS staff has gotten worse since 2012, and 46% said it remain unchanged.
 - *“A lot of times I’ll explain to them that they are not only using the wrong pronouns and name but they are obligated by PREA to get that right. They just tell me “It’s a men’s jail. deal with it.” This will never change unless there are real consequences for failure to comply with this.”*
–Participant ODL

TGNC people in prison exercise staunch self-advocacy through the grievance system, but face retaliation for doing so

Ninety-eight percent of participants have used the grievance system, many using it numerous times. However, 63% of those who have used it have never had a positive outcome. Fifty-nine percent of participants reported that they have attempted to use the grievance system but have been denied. And 75% of participants have faced retaliation from Corrections Officers for using the grievance system.

- *“I wrote up an officer and he came to my cell, kicking my bars and yelling at me. He also wrote misbehavior reports against me. They all (CO’s) stick together, once you are known for writing up officers they make your stay very difficult.”* –Participant B
- *“I have filed numerous grievances, and it almost always results in every CO having a target out for you. I’ve been ran down on by CO’s in my cell, had my cell trashed and property/photos destroyed. I have other inmates put up to attacking me. I’ve been sexually assaulted. The list is endless, filing a grievance is a serious game of Russian Roulette that can way out-weigh the benefits of grieving!”* –Participant THL

SELECTED RECOMMENDATIONS

SRLP developed the recommendations in our report as harm reduction measures. Our members on the inside are the movement leaders, and they are the people who are creating the world without prisons and systems of harm. We call for these policy changes to create less traumatic environments for our movement leaders to continue and expand their revolutionary work.

Below are selected recommendations.² We encourage readers to view our full report for comprehensive and detailed recommendations:

- **Create new TGNCl housing units within existing facilities** with clear and accessible mechanisms by which currently incarcerated people can transfer into these units. Such units should include safety and privacy measures, such as ensuring TGNCl people have access to private showers up to three times per day. This recommendation should not lead to the creation of more prisons, but rather the reconfiguration of existing facilities.
- **Create a facility placement and transfer process to accommodate the needs of TGNCl people.** The New York State Legislature should revise and then pass and meaningfully implement New York Senate Bill S4702A. The bill should be revised to allow TGNCl people to prioritize specific needs, such as private showers or cells, programming needs, or being closer to family or origin or chosen family.
- **End solitary confinement. In the immediate term, implement and monitor the Humane Alternatives to Long-Term Solitary Confinement Act, while working to abolish the use of solitary confinement.** Swiftly implement, enforce and monitor the Humane Alternatives to Long-Term Solitary Confinement Act (HALT Solitary). In addition, the Protective Custody Directive must acknowledge that all people held in protective custody will not be prohibited from engaging in programming, nor should they be required to engage. Comprehensive evaluation of Protective Custody units must be undertaken, and no one should be placed in units that are out of compliance with the Protective Custody Status Directive.
- **Give special consideration to situations in which TGNCl people are given disciplinary tickets, ensuring they are screened for safety considerations.** Our research shows that half of respondents have intentionally gotten Tier III tickets or gone to solitary to remove themselves from a housing situation, and that disciplinary tickets have been given in retaliation for self-advocacy. Procedures must be developed for safety consideration screening by staff who deal with disciplinary matters including prison guards, Commissioner's Hearing Officers, members of the Board of Parole Hearings. In addition, all people should have a right to an attorney to represent them in disciplinary hearings.
- **Implement procedures that require DOCCS staff to use affirming language and give people the opportunity to self-identify.** New York State Senate Bill S4702A should be updated to require DOCCS to ask individuals their preferred name, gender and honorific upon admission, and to permit updates to that information. Identification should be issued that aligns with people's gender identity. DOCCS staff and contractors should be required to use the correct name, pronouns and honorific for all incarcerated people, and disciplinary procedures should be implemented for prison staff who violate these requirements.

² While our survey focused on TGNC people, throughout the recommendations we are using the acronym TGNCl instead of TGNC, because we believe that people who identify as intersex should benefit from any changes to the carceral system.

- **Hold prison staff and contractors accountable if they engage in verbal abuse or verbal violence.** Employment consequences should be imposed for such behavior, including the use of slurs, derogatory names and other verbal violence.
- **Address the crisis of sexual violence in prison.** Materials that explain rights under the Prison Rape Elimination ACT (PREA) must be improved and made prominently and permanently available in various locations, including private locations such as toilets. PREA managers and coordinators should have dedicated mail addresses, and PREA staff should introduce themselves to incarcerated people, especially those known to be TGNCI. PREA and associated rights should be explained at orientation and in other spaces. Information about what can be expected from a visit by the Office of Special Investigations should also be made publicly available . The 90-day monitoring period for retaliation after a report of sexual assault must be enforced. The union contract agreement between New York State and the New York State Correctional Officers and Police Benevolent Association should be amended to allow for meaningful discipline to be imposed when an allegation is substantiated. PREA should be amended at the federal level to add a private cause of action, and, in the immediate term, New York State should pass legislation allowing state action for any violations of New York State’s signed acknowledgement of PREA.
- **Improve the access to and quality of healthcare, both TGNCI-specific healthcare and general medical care, and improve information sharing to ensure that TGNCI people and their advocates know their rights.** “Know Your Rights” materials about TGNCI-specific healthcare should be developed, made readily available, and distributed by medical personnel. Additional health professionals who are competent and sanctioned to provide a Gender Dysphoria diagnosis should be hired. DOCCS directives and policies should be updated under supervision of a trans healthcare provider in the New York area. An oversight system for hormone replacement therapy and other trans-specific medical care should be implemented. All incarcerated people should be allowed to keep hormones in their lockers. TGNCI competency training should be required for all medical personnel, and the Department of Health should conduct regular audits for TGNCI competency, and implement changes as necessary. Clear complaint mechanisms to report doctors to the board, for TGNCI bias or other issues, should be established.
- **Improve the quality of and access to mental health services, and ensure that mental health providers are TGNCI competent.** TGNCI competency training should be required for all mental health service providers. OMH should provide counselors with experience in GD and coexisting diagnoses, and incarcerated TGNCI people should have access to ongoing therapy, not only on an emergency basis. A trauma-informed protocol should be implemented. Mental Hygiene Legal Services should evaluate the TGNCI competency of mental health service provision.
- **Allow TGNCI people to self determine their gender expression fully and without reprisal.** TGNCI people should be able to obtain their own gender affirming-underwear through the same channels as cisgender people, rather than having to go through medical. The availability of personal hygiene items for TGNCI people should be increased, such as wigs, hair extensions, curling irons and makeup. People should be allowed to tailor clothing to express gender identity without retribution.
- **Improve access to safe and accessible private showers and other privacy measures.** Establish clear standards about what it means to “shower alone,” including visual privacy, and ensure that showering alone does not require showering at unusual hours, compromising participation in programs, recreation or visiting. Do not penalize people for trying to achieve privacy while using the toilet or dressing. Convene a task force to redesign current facilities to provide privacy for showering, using the toilet and dressing.

- **Improve the grievance system and monitor for retaliation.** Require an evaluation of the grievance process at every facility, and implement changes to make it possible to place a grievance directly and privately. Monitor the grievance system for retaliation by implementing a 90-day monitoring period similar to that in place for PREA-related grievances.
- **Ensure access to programming for TGNCI people and protect against discrimination. Create new programming to promote the cohesion and self-advocacy of TGNCI people.** Require regular trainings for DOCCS staff and volunteers, delivered in partnership with TGNCI-competent outside organizations. Implement a regular review of program assignments and investigate instances of possible discrimination. Require program committees to produce written statements explaining why someone has been denied a program. Implement a program in which TGNCI people are trained to speak at orientation for new arrivals. Give TGNCI people an active voice in orientation to humanize them and make clear that they are part of the community.
- **Foster community connections among incarcerated people as well as between incarcerated people and people on the outside, which keeps people safer.** Allow for, and create, more support groups by and for TGNCI people. Make visits more accessible by including lockers, making information about visiting hours readily available, and making it easier to determine if someone has been transferred. Expand trailer visits beyond immediate biological or legally recognized family.
- **Improve oversight, monitoring and transparency.** Implement independent, external monitoring of the treatment of TGNCI people in New York State prisons, including monitoring verbal violence, physical violence, sexual violence, access to housing transfers, and the grievance process. Increase transparency about current DOCCs policies and intended revisions.

CALL TO ACTION

Our research makes clear what our members know and experience every day: the crisis for TGNC people in New York State prisons continues. The prison system is abusive for everyone who encounters it, by design. For TGNC people, this experience is compounded by pervasive violence and discrimination, limited access to medical services, restricted access to programming, retaliation for placing grievances and more.

The need for change could not be more urgent. Our TGNC community—our family; our loved ones—are suffering daily. This very moment, they are being subjected to inhumane and discriminatory treatment, to violence, in New York State prisons. They are also fighting for themselves and their community: advocating for themselves and others, defending their rights and fighting to win new ones. We honor their strength and resistance.

We will continue to work towards a world without prisons and systems of harm. Simultaneously, we call on DOCCS and others to take immediate action to implement the recommendations in our report. These reforms are critical, lifesaving, and imperative.