

Stop Prisoner Rape (SPR) is a national nonprofit human rights organization that works to end sexual violence against men, women, and youth in all forms of detention.



Call for Change

May 2007

Protecting the Rights of LGBTQ Detainees

“Because I was raped, I got labeled as a *faggot*, and everywhere I walked everyone looked at me like I was a target. It opened the doors for a lot of other predators. Even the administrators thought it was okay for a *faggot* to be raped. They said, ‘Oh, you must like it.’”

**Bryson Martel,
prisoner rape
survivor**

STOP PRISONER RAPE
3325 Wilshire Blvd.,
Suite 340
Los Angeles, CA 90010

Tel: (213) 384-1400
Fax: (213) 384-1411
info@spr.org

Introduction

An astonishing 2.3 million people are incarcerated in the U.S. at any given time, with some 12 million passing through our prisons and jails each year. Of these detainees, an alarming number experience sexual violence. Recent studies show that as many as one in four female¹ and one in five male² prisoners are subjected to sexual abuse. LGBTQ detainees are hardest hit by this violence; one survey concludes that more than four out of ten gay or transgender prisoners have been sexually assaulted.³

LGBTQ detainees have little access to protection from these crimes and generally endure them in silence. Several factors contribute to their suffering, including pervasive homophobia among corrections officials that creates an environment in which abuse is allowed to flourish. Many LGBTQ survivors do not report sexual abuse because they fear retaliation and breaches of confidentiality. They also tend to believe—often based on how facility staff have reacted to the complaints of others—that reports will be met with indifference or hostility and that no action will be taken.

Following any incident of rape, victims suffer severe psychological, and often physical, pain. In the case of prisoner rape, the initial assault is usually just the beginning of the victim’s ordeal. Perpetrators often abuse prisoner rape survivors relentlessly, sometimes for long periods of time. In addition, survivors are frequently marked as fair game for attacks by others. In the worst cases, they are treated like the assailants’ property and “sold” to others within the facility.

Prisoner rape victims demonstrate a significantly higher incidence of mental health problems than non-victims, including depression, post-traumatic stress disorder (PTSD), and substance abuse. With the rate of confirmed AIDS cases in U.S. prisons more than three times higher than in society overall,⁴ rape behind bars can amount to an un-adjudicated death sentence. Upon release, survivors often return to their communities with emotional scars, deadly diseases, and learned violent behavior.

The alarming rate of sexual violence against LGBTQ detainees requires urgent attention. Whether perpetrated by officials or by

detainees with the acquiescence of corrections staff, the sexual assault of LGBTQ detainees is a form of torture that violates international human rights law, the U.S. Constitution, and state criminal law. The U.S. has ratified two international treaties—the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)—which prohibit torture and require the U.S. to protect prisoners from sexual violence. In both *Farmer v. Brennan*, 511 U.S. 825 (1994), and the Prison Rape Elimination Act of 2003, the U.S. government has recognized

that prisoner rape can amount to cruel and unusual punishment, in violation of the Eighth Amendment of the U.S. Constitution. Moreover, every state has rape and sexual custodial misconduct laws that criminalize this form of abuse, regardless of the victim’s custody status, sexual orientation or gender identity.

This Call for Change presents recommendations that complement and build on these legal standards as well as those at the local level. If implemented, the policies included here will significantly decrease sexual violence against LGBTQ detainees.

Recommendations

I. Prisoner Awareness

All detainees need to know that sexual abuse is unacceptable in all circumstances, whether perpetrated by corrections officials or other detainees. They must be given a handbook detailing information about the policies related to sexual conduct at the facility where they are housed. The Call for Change Coalition calls on all detention facilities to:

- Confirm that the inmate handbook states every person’s right to be free from sexual abuse and the institution’s explicit prohibition of such acts. A definition of abuse—using clear, frank language—including the indicators of inappropriate staff-detainee relationships, must be included.
- Ensure that the inmate handbook provides information about the availability of mental health counseling following sexual abuse.

- Make certain that the handbook provides a clear explanation of the steps a detainee must take to file a grievance.
- Verify that the handbook is translated into the commonly-used languages of the locale. Low-literacy detainees must receive the handbook information verbally.

2. Promoting Safety

One of the most important tools available to corrections officials to prevent prisoner rape is the appropriate classification of detainees. While anyone can be a victim of sexual violence behind bars, typical victims are young, nonviolent, first-time offenders who are feminine, physically small, weak, and/or shy. LGBTQ detainees or those perceived as such are exceptionally vulnerable to rape. Corrections

staff must therefore take special care in determining the housing arrangements for these detainees. The Call for Change Coalition calls on all detention facilities to:

- In classification and housing assignments, take into account risk factors that can lead to detainees becoming the targets of sexual victimization. In particular, corrections officials must acknowledge the unique safety concerns of LGBTQ individuals and avoid pairing inmates as cellmates if sexual assault is likely to be the result.
- Protect detainees at high risk for abuse by discontinuing housing policies and practices that place them in dangerous situations or that are unnecessarily punitive, including housing transgender detainees in the general population only according to genitalia or automatically placing LGBTQ detainees in segregation or special housing units. Instead, facilities must offer thoughtful housing options, including single cells when available, separate units for detainees at risk of being targeted for sexual assault, and voluntary, non-punitive forms of segregation.
- Take into account detainee objections to being paired with a specific cellmate due to fear of assault.
- Require that strip searches of transgender inmates be authorized by the supervisor on duty and that the reason for the strip search always be documented. Strip searches of transgender detainees must occur in a manner that provides privacy from other inmates and staff members. Transgender detainees must never be strip searched because staff are curious about what their bodies look like or to humiliate them.

- Provide appropriate undergarments, such as sports bras for transgender detainees, to reduce the likelihood of harassment and humiliation.

- Allow transgender detainees to use shower facilities at a separate time from others.

3. Staff Screening and Training

Proper staff screening is an essential safeguard against sexual violence. Regular, mandatory staff training—including the development of clear standards for on-the-job conduct and a zero-tolerance policy with respect to sexual violence—sets a tone of institutional seriousness and professionalism. The Call for Change Coalition calls on all detention facilities to:

- Conduct extensive background checks of all employees who will have direct contact with detainees. No individual convicted of rape, custodial sexual misconduct or any other crime involving nonconsensual sexual contact, or any individual who has been fired or has resigned from a job as a corrections employee pursuant to substantiated allegations of sexual abuse, shall be eligible for employment in a position that involves direct contact with inmates.
- Provide mandatory training for current and future corrections staff members, including all non-security personnel, on a regular basis. Training must include: a clear statement that sexual abuse of detainees is a crime; strategies for identifying and protecting potential victims; information on how to respond properly to a report of sexual abuse, and information on reporting and tracking sexual abuse.

- Include detailed information in training programs about non-discrimination against LGBTQ detainees and explicitly prohibit homophobic and derogatory comments directed against such detainees. Acknowledge, as a matter of written policy and daily practice, the unique safety concerns of LGBTQ detainees and emphasize that the prevention of sexual violence is a top institutional priority.
- Include the following as examples of prohibited conduct in training materials for employees: responding to detainees' concerns or complaints of sexual abuse in a dismissive or skeptical manner; condoning, encouraging or otherwise being complicit in sexual abuse as a method of punishing detainees; and failing to prevent or stop sexual abuse based on a belief that LGBTQ detainees "want" sexual aggression.
- Require staff to report all observed incidents of custodial sexual misconduct and all acts of indifference toward the sexual abuse of detainees, and to take a proactive role in monitoring the safety of inmates who may be vulnerable to sexual abuse.
- Reward staff for treating detainees in a respectful manner and for properly handling reports of sexual assault. When employment procedures allow, tie merit salary increases and promotions to adherence to this principle.
- Terminate and prosecute an employee if an internal or external investigation confirms that s/he has engaged in sexual misconduct against a detainee. While under investigation, such an employee shall have no direct contact with detainees. If this is not possible, then the survivor must be given the option of being housed where s/he will have no contact with the employee. If an employee exhibits indifference to the sexual abuse of a detainee, appropriate disciplinary action must be taken.
- Ensure that the above stipulations apply to all employees, including contractors, volunteers, health care professionals, and anyone else who has contact with detainees, on or off the institution grounds. For those categories of employees for whom it is not feasible to attend regular trainings on sexual abuse, a class in which pertinent information about how to prevent and address sexual violence is conveyed must be mandatory before such employees are allowed contact with inmates.

4. Responding to Sexual Violence

Taking action in a timely and professional manner to address allegations of sexual assault is an essential component in minimizing harmful consequences to survivors and in breaking the cycle of sexual abuse in detention. The Call for Change Coalition calls on all detention facilities to:

- Establish multiple avenues for filing a complaint about sexual abuse, so that detainees are not required to report grievances to an abusive staff member or one who they believe will not take action. It is especially important to ensure that detainees are aware of their right to breach the normal chain-of-command when reporting sexual abuse.
- Ensure that detainees who file complaints of sexual abuse are not punished, either directly or indirectly. Also

ensure that all complaints and reports of sexual violence remain confidential to the extent possible, meaning that they are divulged only to those staff members who need to know in order to carry out an investigation and to maintain the health and safety of the detainee.

- Make certain that administrative segregation of those who report abuse is not automatic. If a person is segregated for his or her own protection, such segregation must be non-disciplinary, and must not result in any unnecessary loss of privileges or access to physical or mental health care.
- Ascertain that evidence is collected as promptly as possible in the aftermath of a sexual assault; instruct the victim not to shower, remove clothing, wash, drink, eat or defecate until examined. Staff implicated in the assault must never be involved in the collection of evidence.
- Provide appropriate acute-trauma care for rape victims, including treatment of injuries, medical examination, STD testing and prophylaxis, and emergency mental health counseling.
- Facilitate the ability of hospital staff and independent rape crisis counselors to counsel survivors in private.
- Make certain that detainees who have been victimized receive appropriate physical and mental health care follow-up and confidential counseling for post-traumatic stress disorder and other mental health problems. This follow-up must also include access to confidential, voluntary testing, treatment, and counseling for HIV/AIDS and other STDs.

- Ensure that proper standards of redress and aftercare are never dependent upon the victim's willingness to press charges against an alleged assailant.

5. External Monitoring, Reporting, and Services

In order to prevent sexual violence, detention facilities must operate with transparency by fully documenting abuse, by facilitating external monitoring by independent organizations, and by providing unfettered access to entities that provide services to survivors. The Call for Change Coalition calls on all detention facilities to:

- Allow relevant, independent monitoring and regulatory organizations to enter the institution and have broad access to detainees.
- Collaborate with community rape crisis centers to provide confidential rape crisis services to survivors.
- Document all complaints of sexual abuse of detainees, including: whether the abuse was perpetrated by a staff member or another detainee; the result of the investigation; the circumstances of the assault; whether the victim chose to press charges; and any resolution of the complaint. This information should be made public (except in the case of complaints shown to be unfounded), with identifying information redacted.
- Provide copies of Stop Prisoner Rape's *Resource Guide for Survivors of Rape Behind Bars* to detainees and ensure that any effort to reach out to the organizations included therein remains free and confidential.

Conclusion

The Call for Change was initiated in November 2004, when Stop Prisoner Rape hosted a Community Dialogue in Los Angeles that brought together more than 40 human rights advocates, rape crisis counselors, LGBTQ rights advocates, corrections officials, and politicians to address the problem of sexual violence against LGBTQ detainees. Many other organizations (both within the U.S. and abroad) have since joined the coalition.

Due in part to the Prison Rape Elimination Act (PREA), corrections officials are gradually acknowledging their responsibility to prevent sexual abuse against everyone in their custody. However, LGBTQ detainees continue to be dramatically over-represented among the victims of sexual assault behind bars. By implementing the above policy recommendations, detention facilities can put an end to this dehumanizing violence and protect one of the nation's most vulnerable incarcerated populations.

Call for Change Signatories

1. AFL-CIO, Pride at Work, Washington, District of Columbia
2. AIDS Project Los Angeles, Los Angeles, California
3. Afrihealth Information Projects, Lagos, Nigeria
4. Albuquerque Rape Crisis Center, Albuquerque, New Mexico
5. American Civil Liberties Union of Southern California, Los Angeles, California
6. Amnesty International USA, New York, New York
7. Archdiocese of Los Angeles, Office of Restorative Justice, Los Angeles, California
8. Association HIV.LV, Riga, Latvia
9. Bavarian Network on HIV/AIDS in Prison, Bonn, Germany
10. Bienestar Human Services, Los Angeles, California
11. Birth Attendants: The Prison Doula Project, Olympia, Washington
12. Books Not Bars, Oakland, California
13. California Coalition Against Sexual Assault, Sacramento, California
14. California Coalition for Women Prisoners, San Francisco, California
15. California Prison Focus, San Francisco, California
16. California Women's Law Center, Los Angeles, California
17. Center for Human Rights and Constitutional Law, Los Angeles, California
18. Center for the Study of Violence and Reconciliation, Johannesburg, South Africa
19. The City of Los Angeles-AIDS Coordinator's Office, Los Angeles, California
20. Coalition to Abolish Slavery and Trafficking, Los Angeles, California
21. Community HIV/AIDS Mobilization Project, New York, New York
22. The Correctional Association of New York, New York, New York
23. East L.A. Women's Center, Los Angeles, California

24. Equality California, Sacramento, California
25. Families to Amend California's Three Strikes, Los Angeles, California
26. FIERCE!, New York, New York
27. Friends Outside, Los Angeles, California
28. FTM Alliance of Los Angeles, Los Angeles, California
29. Gay and Lesbian Adolescent Social Services, Los Angeles, California
30. Gay, Lesbian, and Straight Education Network, Los Angeles, California
31. Gay Men's Health Crisis, New York, New York
32. Hemophilia Historical Archives, Woodland, California
33. Human Rights Watch, New York, New York
34. In The Life, Atlanta, Georgia
35. International Gay and Lesbian Human Rights Commission,
Asylum Documentation Program, New York, New York
36. L.A. Gay and Lesbian Center, Los Angeles, California
37. Men Can Stop Rape, Washington, District of Columbia
38. Münchner Aids-Hilfe, Munich, Germany
39. National Association of Social Workers, Women's Council, Los Angeles,
California
40. National Center for Lesbian Rights, San Francisco, California
41. National Center for Youth Law, Oakland, California
42. National Gay and Lesbian Taskforce, Washington, District of Columbia
43. National Lawyer's Guild, New York, New York
44. November Coalition Foundation, Colville, Washington
45. Peace Over Violence, Los Angeles, California
46. Program for Torture Victims, Los Angeles, California
47. Progressive Jewish Alliance, Los Angeles, California
48. Project SISTER, Claremont, California
49. The River Fund, Sebastian, Florida
50. SafeSpace for LGBTQQ Survivors of Violence, Burlington, Vermont
51. San Francisco Women Against Rape, San Francisco, California
52. Seattle LGBT Community Center, Seattle, Washington
53. Sexual Assault Crisis Agency, Long Beach, California
54. South Asian Network, Artesia, California
55. Stop Prisoner Rape, Los Angeles, California
56. The Sylvia Rivera Law Project, New York, New York
57. TGI Justice Project, Oakland, California
58. The Transgender Law Center, San Francisco, California
59. The Triangle Foundation, Detroit, Michigan
60. UCLA LGBT Center, Los Angeles, California
61. Unitarian Universalist Service Committee, Boston, Massachusetts
62. Valley Trauma Center, Van Nuys, California
63. A Window Between Worlds, Venice, California
64. Women's Institute for Leadership Development for Human Rights,
San Francisco, California
65. Women Lawyers Jail Project, Los Angeles, California
66. The Women's Council of the California Chapter of the National Association of
Social Workers, Los Angeles, California

Endnotes

1. Rates for women vary greatly. In one institution, 27 percent of females reported a pressured or forced sex incident, while in another institution the rate was seven percent. See Cindy Struckman-Johnson and David Struckman-Johnson, *Sexual Coercion Reported by Women in Three Midwestern Prisons*, 39 JOURNAL OF SEX RESEARCH 3 (2002).
2. Cindy Struckman-Johnson and David Struckman-Johnson, *Sexual Coercion Rates in Seven Midwestern Prison Facilities for Men*, 80 THE PRISON JOURNAL 379 (2000).
3. *At Risk: Sexual Abuse and Vulnerable Groups Behind Bars*, Hearing Before the National Prison Rape Elimination Commission (August 13, 2005) (testimony of Jody Marksamer, Esq. of the National Center for Lesbian Rights).
4. LAURA M. MARUSCHAK, BUREAU OF JUSTICE STATISTICS, HIV IN PRISONS, 2003 (2005) (available on-line at <http://www.ojp.usdoj.gov/bjs/pub/pdf/hivp03.pdf>).



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