



## **A CALL FOR CHANGE: Protecting the Rights of LGBT Detainees**

*"I was gang-raped my first day in prison. I was 17 years old and weighed 158 pounds. Afterward, they flipped a coin to determine who would be my man. I blamed myself for many years, thinking it was my fault, that somehow I deserved what had happened to me. This is quite common among gay rape victims in prison."*

T.J. Parsell, survivor and President of SPR's Board of Directors

### **Introduction**

In November 2004, Stop Prisoner Rape (SPR) hosted a Community Dialogue in Los Angeles that brought together more than 40 human rights advocates, rape crisis counselors, gay rights advocates, corrections officials, and politicians to address the problem of sexual abuse of lesbian, gay, bisexual, and transgender (LGBT) detainees. Many other organizations have since joined this cause, and together, we have formed a coalition aimed at providing solid recommendations for protecting the rights of LGBT detainees in local detention facilities.

The coalition agreed that in order to create effective change, organizations outside of corrections must also mobilize and create change at the community level. Examples of ways in which community groups may be helpful include:

- Creating confidential hotlines for sexual abuse victims and distributing their contact numbers to local prisons, jails, and detention centers.
- Maintaining detailed testimonies when complaints are made.
- Establishing mechanisms to monitor law enforcement officials in their response to allegations of abuse.
- Regularly publishing reports on incidents of sexual abuse behind bars.
- Reframing the issue of sexual violence behind bars as a human rights violation that breaches this nation's international and constitutional obligations.

Attached to this document is SPR's *Resource Guide for Survivors of Rape Behind Bars* (Appendix A), listing organizations that have agreed to work on the issue of prisoner rape by providing their services to survivors of this type of abuse. We encourage corrections to both implement the following policy recommendations and to utilize and promote the *Resource Guide*.

## Background

More than two 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 prisoners, an alarming number experience sexual violence. Recent studies show that approximately one in four female<sup>1</sup> and one in five<sup>2</sup> male detainees are subjected to sexual abuse. Gay and transgender 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.<sup>3</sup>

In an environment in which sexual violence occurs with some frequency, it is well known that being lesbian, gay, bisexual or transgender place a prisoner at heightened risk of torture, sexual assault, rape, and ill treatment. LGBT prisoners have little access to protection from these crimes and generally tend to endure them in silence. This is due to a number of factors including the fact that LGBT inmates may be disliked and feared by some guards, as well as by other inmates. LGBT inmates also fear retaliation and breaches of confidentiality if they report sexual abuse. They may fear triggering more attacks if they become known as someone who was raped.

Following any incident of rape, victims suffer severe physical and psychological pain. In the case of prisoner rape, the initial assault is often merely the beginning of the victim's ordeal. Prisoner rape survivors can be abused relentlessly by the same assailants, sometimes for long periods of time. In addition, they are frequently marked as fair game for attacks by other detainees. In the worst cases, they are treated like the perpetrators' property and prostituted to others within the facility.

Prisoner rape victims demonstrate a significantly higher incidence of mental health problems than non-victims. Among other afflictions, they suffer depression, post-traumatic stress disorder (PTSD), and substance abuse. Moreover, with the rate of AIDS in U.S. prisons more than three times higher than in American society overall,<sup>4</sup> rape behind bars can amount to an un-adjudicated death sentence. Upon release, survivors

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<sup>1</sup> Rates for women, who are most likely to be raped by staff, vary greatly. In one institution, 27% of females reported a pressured or forced sex incident, while in another institution the rate was 7%. See Cindy Struckman-Johnson & David Struckman-Johnson, *Summary of Sexual Coercion Data*, Address At "Not Part of the Penalty: Ending Prisoner Rape" (Oct. 19, 2001), in *Sexual Coercion Rates in Seven Midwestern Prisons for Men*, 80 THE PRISON JOURNAL 379 (2000), available at <http://www.spr.org/pdf/struckman.pdf>.

<sup>2</sup> Cindy Struckman-Johnson and David Struckman-Johnson, "Sexual Coercion Rates in Seven Midwestern Prison Facilities for Men," 80 *The Prison Journal*, 379 (2000).

<sup>3</sup> *Pugh v. Locke*, 406 F. Supp. 318, 325 (M.D. Ala. 1976).

<sup>4</sup> Statistics on HIV rates in custody vary. The U.S. Department of Justice reported in 2002 that "[T]he overall rate of confirmed AIDS in the prison population... was nearly 3 ½ times the rate in the U.S. general population...." See <http://www.ojp.usdoj.gov/bjs/abstract/hivpj02.htm>. Other studies report a prison HIV and AIDS rate 10 times higher than in the general population. See Carol Polych & Don Sabo, *Sentence—Death by Lethal Infection: IV-Drug Use and Infectious Disease Transmission in North American Prisons*, in *Prison Masculinities* 174 (Don Sabo et al. eds., Temple University Press, 2001) and Robert W. Dumond & Doris A. Dumond, *The Treatment of Sexual Assault Victims*, in *Prison Sex: Practice & Policy* 78 (Christopher Hensley ed., Lynne Rienner Publishers, Inc., 2002).

often return to their communities with emotional scars, deadly diseases, and learned violent behavior.

The problem of sexual violence against LGBT detainees requires the urgent attention of corrections institutions and officials in California and throughout the U.S. This *Call for Change* presents proposals that are meant to complement existing standards. If implemented, these policies will significantly decrease the sexual assault of LGBT detainees.

## **Recommendations**

### ***1. Inmate Awareness***

All detainees need to know that sexual abuse is never acceptable. All detainees must be given a handbook detailing information about the policies related to sexual conduct at the facility where they are housed. The coalition calls on corrections and immigration detention institutions to:

- Ensure that the handbook asserts 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 relationships shall be included.
- Ensure that the handbook provides information about the availability of confidential mental health counseling following sexual abuse.
- Ensure that the handbook provides a clear explanation of the steps the inmate must take to file a grievance.
- Ensure 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 custodial personnel 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 effeminate, physically small, weak, and/or shy. Gay, bisexual, and transgender 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 coalition calls corrections and immigration detention institutions to:

- In classification and housing assignments, take into account risk factors that can lead to detainees becoming the target of sexual victimization. In particular, corrections officials must acknowledge the unique safety concerns of gay and

transgender people and avoid pairing detainees as cellmates if sexual assault is likely to be the result.

- Provide thoughtful housing alternatives, including non-punitive forms of segregation.
- Reconsider housing policies that place detainees in dangerous situations or which are unnecessarily punitive – such as automatically placing all transgender people or gay youth in segregation, automatically housing detainees in the general population according to genitalia or automatically placing gay youth in a special housing unit.
- Allow transgender detainees to choose the gender of staff conducting strip searches. Ensure that strip searches of transgender detainees occur in a manner that provides the detainee with privacy from other inmates. Transgender detainees should never be stripped searched because staff is curious about what their bodies look like or to humiliate them.
- Respect inmate objections to being paired with a specific cellmate due to fear of assault.

### ***3. Staff Screening and Training***

Proper staff screening is an essential safeguard against sexual violence. Regular 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 undersigned coalition calls on corrections and immigration detention institutions to:

- Conduct extensive background checks of all employees who will have direct contact with inmates. No individual convicted of rape, sexual assault or custodial sexual misconduct, or any individual who has been fired or has resigned from a job as a corrections employee pursuant to credible allegations of sexual abuse, shall be eligible for employment in a position that involves direct inmate contact.
- Provide training for current and future corrections staff members. Training should include: a clear statement that sexual abuse of detainees is a crime; strategies for identifying and protecting potential victims; information on how to properly respond to a report of sexual abuse, including on respecting the victim's confidentiality; and information on reporting and tracking of sexual abuse, and on ensuring that victims remain anonymous when abuse is tracked.
- Include detailed information in training programs about non-discrimination and acknowledge, as a matter of written policy and daily practice, the unique safety concerns of gay and transgender people. Explicitly prohibit homophobic and

derogatory comments about gay and transgender inmates. If left unchecked, these attitudes create a hostile, insensitive environment which allows abuse to flourish.

- Make clear to all employees that the following behaviors are absolutely unacceptable: suggesting that detainees should fight to avoid abuse; suggesting that sexual abuse is not significant enough to be addressed; using rape as a tool to punish detainees for misbehavior; and failing to prevent or stop sexual abuse based on a belief that gay or transgender 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.
- Terminate and prosecute an employee if an internal or external investigation confirms that s/he has sexually assaulted a detainee, engaged in sexual misconduct with anyone with whom s/he has had a subordinate relationship, or exhibited indifference to the sexual abuse of an inmate. While under investigation, such employees shall have no direct contact with detainees.
- Ensure that the above stipulations apply to all employees, including contract employees, volunteers, health care professionals, and anyone else who has contact with detainees, on or off the institution grounds.

#### ***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 victims and in breaking the cycle of sexual abuse in detention. The coalition calls on corrections and immigration detention institutions to:

- Establish multiple avenues for filing a complaint so that detainees are not required to report grievances to an abusive staff member. 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 report of sexual violence remain absolutely confidential.
- Ensure that administrative segregation of those who report abuse shall not be automatic, unless requested by the victim. If a person is segregated for his or her own protection, such segregation must be non-disciplinary, and shall not result in any loss of privileges.
- Make immediate efforts to collect evidence in the aftermath of a sexual assault; instruct the victim not to shower, wash, drink, eat or defecate until examined.

Staff implicated in the assault should never be involved in the collection of evidence.

- Ensure that victims receive appropriate acute-trauma care for rape victims, including treatment of injuries, medical examination, STD testing, and emergency mental health counseling.
- Ensure that victims are not shackled while in transit to or at the hospital unless absolutely necessary. Hospital staff and rape crisis center counselors shall be allowed to counsel the victim in private.
- Provide detainees who have been victimized with appropriate physical and mental health care follow-up, including monitoring and confidential counseling for post-traumatic stress disorder, depression, and other mental health consequences
- Ensure that proper standards of redress and aftercare are never dependent upon the victim's willingness to press charges against the perpetrator.

### ***5. External Monitoring, Reporting and Services***

A climate of openness and transparency encourages the safer operation of institutions. External, independent monitoring will also help strengthen the public's trust in the commitment of corrections institutions to adhere to required standards. Furthermore, providing detainees with information about resources provided by outside organizations will help survivors of sexual abuse in their healing process. The coalition calls on corrections and immigration detention institutions to:

- Allow relevant, independent monitoring and regulatory organizations to enter the institution and have broad access to detainees.
- Allow outside organizations that offer services to incarcerated individuals to place placards in institutions alerting detainees to their services.
- Keep statistics on the sexual abuse of detainees, including on whether the abuse was perpetrated by a staff member or other inmate, the result of the investigation, whether the victim chose to press charges, and any resolution of the complaint.
- Provide a copy of SPR's *Resource Guide for Survivors of Rape Behind Bars* (Appendix A) to each inmate and ensure that any effort to reach out to these organizations remains free and confidential.

### **Conclusion**

The federal Prison Rape Elimination Act, which became law in 2003, requires that all corrections institutions in the U.S. take substantive measures to end sexual violence and rape behind bars. The importance of implementing this law is emphasized by

international law as well. Protection from rape is guaranteed by the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), both of which have been ratified by the United States. Prisoner rape is also a violation of the 8<sup>th</sup> Amendment of the U.S. Constitution, which prohibits cruel and unusual punishment. Among the victims of this violation, LGBT detainees are dramatically over-represented. By implementing the above policy recommendations, corrections institutions can put an end to this dehumanizing violence and protect one of our nation's most vulnerable populations.

**Stop Prisoner Rape  
“Call for Change” Signatories  
August 2006**

- Albuquerque Rape Crisis Center
- American Civil Liberties Union, Southern California (ACLU)
- Amnesty International USA
- Archdiocese of Los Angeles, Office of Restorative Justice
- Bienestar Human Services
- Books Not Bars
- California Coalition Against Sexual Assault (CALCASA)
- California Coalition for Women Prisoners
- California Prison Focus
- California Women's Law Center
- Center for Human Rights and Constitutional Law
- The City of Los Angeles- AIDS Coordinator's Office
- Coalition to Abolish Slavery and Trafficking (CAST)
- The Correctional Association of NY
- East LA Women's Center
- Equality California
- Families to Amend California's Three Strikes (FACTS)
- Friends Outside, Los Angeles
- FTM Alliance of Los Angeles
- Gay and Lesbian Adolescent Social Services, Los Angeles (GLASS)
- Gay, Lesbian, and Straight Education Network, Los Angeles (GLSEN)
- Gay Men's Health Crisis
- Hemophilia Historical Archives
- Human Rights Watch
- L.A. Gay and Lesbian Center
- Los Angeles Commission on Assaults Against Women (LACAAW)
- National Association of Social Workers, LA Chapter, Women's Council
- National Center for Lesbian Rights (NCLR)
- National Center for Youth Law
- National Gay and Lesbian Taskforce
- National Lawyer's Guild, LA Chapter
- Program for Torture Victims
- Progressive Jewish Alliance
- Project SISTER
- San Francisco Women Against Rape
- Seattle LGBT Community Center
- Sexual Assault Crisis Agency, Long Beach, CA
- South Asian Network
- The Sylvia Rivera Law Project (SRLP)
- TGI Justice Project

- The Transgender Law Center
- UCLA LGBT Center
- Valley Trauma Center
- A Window Between Worlds
- Women's Institute for Leadership Development for Human Rights (WILD)
- Women Lawyers Jail Project
- The Women's Council of the California Chapter of the National Association of Social Workers