



---

The Charles Colson Task Force on Federal Corrections  
c/o Urban Institute  
2100 M Street, NW  
Washington, DC 20037

Subject: Testimony for March 11<sup>th</sup>, 2015 Public Hearing

Dear Honorable Members of the Task Force,

The National Center for Transgender Equality, a national social justice organization devoted to ending discrimination and violence against transgender people through education and advocacy on national issues of importance to transgender people, submits the following testimony concerning conditions in the Federal Bureau of Prisons. Two partner organizations, the National LGBTQ Task Force and Just Detention International, support our testimony on issues and challenges with the federal corrections system.

Lesbian, gay, bisexual, transgender, and intersex (LGBTI) people and people living with HIV/AIDS (PLWH) experience extreme hardships in federal corrections facilities. These inmates face harassment, threats, violence, and disparate treatment from other inmates, staff, and contract service providers. The Task Force can help end this abusive treatment through recommendation of effective policies, a focus on consequences for staff or contractors who violate those policies, and a sustained commitment to providing safe and secure confinement for all inmates regardless of sexual orientation, gender identity, or HIV status. The following are key areas where current Federal Bureau of Prison (BOP) policy or practice is failing many inmates who are LGBTI and/or PLWH along with brief recommendations for change.

---

## Harassment and Environment

Many BOP inmates who are LGBTI and/or PLWH experience regular verbal harassment or bias-motivated comments or treatment. Lesbian, gay, and bisexual BOP inmates are referred to by slurs or their sexual orientation is highlighted in a negative manner. Transgender BOP inmates are referred to by incorrect pronouns or harassed based on their gender identity or expression. And BOP inmates who are PLWH are verbally degraded due to animus toward, or misconceptions about, their HIV status. While this abuse occurs in all parts of BOP facilities, it is particularly prevalent in areas where inmates shower or use the toilet or when inmates are transported to and from different BOP facilities. We recommend:

- BOP issue clear non-discrimination policy language prohibiting such conduct and consistent discipline for violations of policy, particularly when the perpetrator is a staff member or contractor.
- BOP implement effective programs aimed at changing negative behavior among inmates, staff, and contractors
- BOP LGBTI inmates, and other inmates who are particularly vulnerable to abuse, must be able to use showers and toilets safely. Transgender and intersex inmates must be able to use these facilities with increased privacy, including with individual accommodations, when needed.

## Classification and Placement

With few exceptions, the BOP is currently failing to effectively use classification and placement to protect inmates who LGBTI and/or PLWH from physical harm without relying on isolation. The Justice Department's own studies demonstrate that LGB inmates experience high rates of sexual abuse, and transgender inmates face extremely high rates of abuse. It is likely that this population is also particularly vulnerable to other forms of physical violence. We recommend:

- BOP sharply limit use of involuntary protective custody for LGBTI inmates
- BOP house transgender women in women's facilities unless an individualized safety assessment finds that the inmate believes she will be safer in a men's facility.

- BOP more effectively identify inmates, staff, and contractors who are likely to perpetrate violence against inmates who are LGBTI and/or PLWH.
- BOP increase use of creative classification solutions to keep LGBTI inmates, and other particularly vulnerable inmates, close to their communities of origin and out of facilities where they may be at the highest risk for violence.

### **Inmate Management and Programs**

In a number of important areas, BOP policies should be developed or revised to address disparate treatment or barriers to rehabilitation for LGBTI inmates and/or PLWH. We recommend:

- **Intake:** BOP staff must be trained to consistently ask questions about sexual orientation, gender identity and sexual health, including HIV/STI status, in a sensitive manner, explain to inmates why the questions are being asked, clarify that these questions are being asked of all inmates, detail steps agencies are taking to keep the inmate's answer confidential, confirm that inmates can decline to answer any question, and meaningfully request transgender and intersex inmates' views on classification, forms of address, and searches.
- **Searches:** BOP should adopt a clear policy providing that, absent exigent circumstances, searches of transgender inmates should be conducted by staff of the gender requested by the inmate.
- **Programming:** BOP program eligibility or participation rules, curricula, and facility practices cannot exclude or stigmatize inmates who are LGBTI and/or PLWH on the basis of their identity/status. The personal or religious views of staff, contractors, or volunteers cannot limit inmates' opportunity to participate in educational, recreational, work or other agency programs.
- **Family recognition:** Spouses, domestic partners, civil union partners, and children of inmates should be recognized as immediate family members for BOP visitation and furlough purposes, regardless of lack of recognition under state law.

- **Clothing and Grooming:** LGBTI inmates in BOP facilities should be allowed to express their gender identity or expression through appropriate access to clothing, grooming and hygiene items (for example, access to bras, underwear, deodorants, etc.).
- **Reentry Services:** BOP reentry planning should address barriers to success specific to inmates who are LGBTI and/or PLWH, and community supervision programs must mirror larger efforts to eliminate bias related to sexual orientation, gender identity, and HIV status.

### **Physical, Mental, and Sexual Health**

Like all inmates, inmates who are LGBTI and/or PLWH need access to safe, culturally competent, and appropriate physical, mental, and sexual health care. BOP's current level of care falls short of this in a number of respects and leaves out sexual health care almost entirely. Most state and local facilities are similarly lacking. We recommend:

- All BOP inmates should have access to robust sexual health care and prevention that includes condom access, reproductive health services (including services and counseling related to pregnancy and abortion), screening and prevention counseling related to all sexually transmitted diseases, and universal sexual health literacy training that encompasses the spectrum of sexual orientation and gender identity.
- Ensure uninterrupted access to transition-related healthcare.
- Ensure uninterrupted access to HIV/STI/Hepatitis-related healthcare.
- All BOP inmates should have access to mental healthcare upon request.

### **Lack of data**

Aside from the alarming sexual abuse rates reported by the Bureau of Justice Statistics (BJS), BOP does not seem to know enough about the experiences of inmates who are LGBTI and/or PLWH. Information about inmates housed in state and local facilities is generally not inclusive of sexual orientation and gender identity. More information is needed regarding topics such as regular

harassment and discrimination, housing placements, use of force incidents, grievances, program access, and medical care is needed to understand trends and inform policy development and training. We recommend:

- BOP work with the Bureau of Justice Statistics to collect and report more data about the experiences of who are LGBTI and/or PLWH.
- BOP convene representative focus groups of inmates who are LGBTI and/or PLWH
- BOP develop methods to track data on the experiences of inmates who are LGBTI and/or PLWH and regularly share findings with agency leadership and outside advocates.

We thank the Task Force for the opportunity to submit testimony on these important issues that affect the lives of lesbian, gay, bisexual, transgender, intersex federal inmates as well as those inmates who live with HIV.

Sincerely,

**Raffi Freedman-Gurspan**  
Policy Advisor, Racial and Economic Justice Initiative  
National Center for Transgender Equality