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Policy Recommendations Regarding LGBT People in California Prisons

Dignity and Justice For All – a coalition comprised of *Equality California*, *Just Detention International*, *National Center for Lesbian Rights*, *Transgender Gender Variant Intersex Justice Project*, and *Transgender Law Center* – makes the following recommendations based on the testimony presented at the Senate Committee on Public Safety’s Informational Hearing on Issues Facing Lesbian, Gay, Bisexual, and Transgender Inmates in California Prisons, on December 11, 2008. We recognize that prison overcrowding is a major contributing factor to many of the problems facing LGBT people in prison, but we do not support the expansion of the California prison system or the California Department of Corrections and Rehabilitation’s budget as a feasible means to solve these problems. Instead, we urge the CDCR to implement the recommendations in the most cost-effective manner within the current infrastructure and budget.

Classification:

One of the most important tools available to corrections officials to protect lesbian, gay, bisexual, and transgender prisoners is an appropriate classification system. Corrections staff must take special care in determining the housing arrangements for these individuals. The *Dignity and Justice for All Coalition* urges the CDCR to:

- In classification and housing assignments, take into account on a case-by-case basis risk factors that can lead to prisoners becoming the target of sexual victimization. In particular, corrections officials must abandon stereotypes, become familiar with the different facets of the LGBT community, and must acknowledge and learn to recognize the unique safety concerns of LGBT individuals.
- Protect prisoners at high risk for abuse, including those who have been or fear becoming victims of violence, by discontinuing housing policies or practices that place them in dangerous housing placements or in placements that are unnecessarily punitive. Instead, facilities must employ safe and non-punitive housing alternatives, including single-cells when available, separate units for all detainees at risk of being targeted for sexual assault, and non-punitive forms of segregation if a detainee is in fear of being hurt or harassed. The department should also consider housing transgender women in women’s facilities. Transgender women should be housed in the facility that would provide the highest level of physical and emotional safety to them, taking into account the safety concerns of *all* prisoners.
- Respect prisoner objections to being paired with a specific cellmate due to fear of assault.
- Conduct ongoing classification reviews, particularly in cases of repeated safety concerns or in the aftermath of an assault.

Harassment, Abuse, and Sexual Assault

The federal Prison Rape Elimination Act (PREA), which became law in 2003, requires that all detention facilities adhere to national standards that are set to be released in 2009. In supplementation of PREA, California passed the Sexual Abuse in Detention Elimination Act (SADEA) in 2005. Along with the full implementation of both PREA and SADEA, the *Dignity and Justice for All Coalition* urges the CDCR to:

- Fully enforce the department's Prison Rape Elimination Policy.
- Ensure that strip searches of transgender detainees occur in a dignified manner that provides the individual with privacy from other prisoners and staff members. Revise the department's pat search policy to ensure that transgender women are not searched by male officers – except in emergencies – and that demeaning techniques are discontinued.
- Ensure that prisoners who file complaints of sexual abuse or harassment are not retaliated against or subjected to punitive treatment. Also, ensure that all complaints and reports remain confidential.
- *Do not* treat consensual sexual activity between people in prison as sexual violence under PREA and SADEA, or classify detainees who have engaged in consensual sexual misconduct as sexually abusive.
- Provide appropriate undergarments, such as bras for transgender women in prison, to reduce the likelihood of harassment and humiliation.
- Allow transgender prisoners to use shower facilities at a separate time from other prisoners.
- Ensure that staff trainings are designed to effectively reduce animosity toward the LGBT population and eliminate homophobia and misogyny in prisons. Explicitly prohibit homophobic and derogatory comments directed against LGBT prisoners, and train staff to respect transgender people's gender identity expressions.
- Where employment procedures allow, tie merit salary increases and promotions to adherence to the principle of treating all people in prison with dignity and respect, including LGBT prisoners.

Healthcare

Preventing and addressing sexual assault is a healthcare issue as well as a matter of basic human dignity and human rights. Taking action in a timely and professional manner to address reports of sexual assault is an essential component in minimizing harmful consequences to survivors and in breaking the cycle of sexual abuse in detention. Providing *all* people in prison with appropriate medical care – including hormone treatment – supports a humane and dignified living environment. The *Dignity and Justice for All Coalition* urges the CDCR to:

- Make certain that prisoners who are survivors of violence and/or sexual assault receive appropriate physical and mental health care follow-up, including monitoring and confidential counseling for post-traumatic stress disorder, depression, and other mental health problems. This follow-up must also include access to confidential, voluntary testing, and treatment and counseling for HIV/AIDS and other STDs.

- Facilitate the ability of hospital staff and independent rape crisis counselors to counsel victims in private.
- Allow transgender prisoners to dress in a manner that reflects their internal gender identity, and allow consultants who specialize in treatment of transgender patients to request a waiver from any regulations regarding clothing and grooming toiletries for a specific transgender patient.
- The CDCR should monitor compliance with the recently adopted treatment standards related to hormone replacement therapy for transgender people in CA prisons, and implement recommendations offered by the Correctional Medicine Consultation Network. Additionally, the CDCR should research the cost and benefits of providing medically necessary surgeries for qualifying transgender people in prison, for future consideration by the Department and the legislature.

Re-Entry

It is vital for the state of California and the CDCR to take measures to break the cycle of discrimination, unemployment, addiction, and incarceration that disproportionately affects the LGBT community. The *Dignity and Justice for All Coalition* urges the following

- Ensure that LGBT people have access to appropriate job training, formal education, and physical and mental health programs while in prison.
- Train parole agents and staff to respect sexual orientation and gender identity, and specify to agents that unless otherwise specified by courts, transgender parolees' expressing their gender identity cannot be used as a basis to allege a violation of their parole terms. Also, train parole agents to be able to offer appropriate referrals and resources to their LGBT clients.
- Make it easier for transgender parolees to transfer their parole to areas of the state where transgender people face relatively less employment and housing discrimination.
- Make it easier for transgender people to apply for name and gender changes while on parole to facilitate successful reintegration into the community.
- Work to restore and increase funding to social, health, educational, and economic services that alleviate poverty among transgender people in the wider community.