

## KNOW YOUR RIGHTS

### Being Transgendered in Jail

During the Republican National Convention (RNC), the National Lawyers Guild New York City Chapter Mass Defense Committee will be in consultation with attorneys from the Sylvia Rivera Law Project, [www.srlp.org](http://www.srlp.org), to maximize the protection of transgender (“TG” or “Trans”) people at the RNC protests.

Note: Most of the information contained in this document relates to prisons and not to being held in a precinct waiting to be arraigned.

### Your Rights if in Jail

#### Housing

It may help if you tell the booking officer (police or DOC person) or the nurse that you are TG – you may ask to be put in the unit for vulnerable prisoners.

Jails normally separate inmates by genitals. An inmate with a penis is placed with the men, regardless of how “female” she may look. This means a TG woman will be placed with men. In some cases, TG women who have undergone vaginoplasty will be placed with women, especially if her identification indicates her as female. In some jails, TG women will be segregated away in a separate unit, sometimes in a unit where gay men are also placed. Some precincts have these facilities as well.

Rikers Island, New York City's main prison complex, and some precincts have such a facility, but during the RNC there is no telling where you

will be detained or if there will be any special consideration given.

If you stress to the staff your vulnerability as a TG person, the jail will be more likely to put you in this special unit rather than in the general male population. It is usually safer. TG men or TG women people are most likely to be placed with women, although in some cases, if the arrestee has identification that says ‘male’ and the arresting officers do not discover him to be TG through a strip search, he may be placed with the male population. Jails don’t usually have special units for vulnerable people identified by the prison as female.

Think about where you will likely be placed upon arrest BEFORE you go into a protest scenario where a risk of arrest exists. What does your ID say about your gender? Do the people you are going to the protest with know about your vulnerability? If you are protesting and feel you are at risk of arrest, it might be a good idea to have friends of both genders with you so no matter where the police take you, you will have a friend.

If you are interested in getting the gender designation on your ID changed or talking through your risk assessment before the RNC, please contact the Sylvia Rivera Law Project at 646-602-5638 or by email at [dean@srlp.org](mailto:dean@srlp.org).

#### Protective custody/Solitary confinement

While protective custody may sound great, it usually means solitary confinement. This means you get punished for being TG.

The jail must have a valid, written reason for placing you in protective custody or solitary confinement, and the confinement cannot be indefinite.<sup>1</sup> The jail must regularly review your

placement in solitary confinement. The jail can only put you in solitary/protective confinement if:

- You put others or yourself in danger
- You cause disturbances
- You attempt escape
- There is no other safe place for you

Being TG is not enough reason to put you in protective/solitary confinement; complain to your lawyer if they put you in solitary for no good reason, and insist on a review of your placement.

If the threats to your safety are so bad that there is no safe place for you except in solitary, then the jail should there. If this happens TALK to your lawyer.

#### Medication

If you are currently taking hormones and have not had sexual reassignment surgery you are not necessarily entitled to continue treatment once incarcerated. If you have been on hormones you are entitled to an individual evaluation. However, the bias is against continuing hormone treatment. If you have had partial sexual reassignment surgery you should be entitled to continued treatment. However, accessing any trans-related health care while locked up is VERY DIFFICULT and inconsistent, no matter what law and policies say. You should speak to your lawyer and the Sylvia Rivera Law Project if you anticipate being detained for a long time and want to continue your treatment.

Carry all your necessary medication with you in the original prescription bottle to avoid the possibility being charged with possession of a

controlled substance. However, be aware that anything you are carrying with you when you are arrested may be difficult to get back later, so don't carry medications you don't need immediately that you don't want to lose.

If you were not on hormones before being put in jail, then the jail is not required to start you on hormones.

### **Searches**

TG people are often strip searched unnecessarily and harassed because the NYPD and DOC officers are not educated about TG issues.

The police and jail can only strip search you to search for weapons or contraband (e.g., drugs). Also, a strip search is only legal if you have been charged with a felony. Most protest charges are misdemeanors or violations. That means the police and jail do not have a right to strip search you if you have only been charged with disorderly conduct.

If you are to be strip searched, you can ask for an officer of your gender to be present – although there is no “right” to have an officer present of the same gender as your own, some jails will provide one if you ask.

### **Discrimination and verbal harassment**

In New York it is against the law to discriminate based on gender, which includes being TG. This means that jail staff is supposed to offer TG inmates all of the same programs they offer regular inmates, and that harassment and violence against TG inmates are illegal.

While there is a good legal argument for why the staff is supposed to address you with the name, title, and pronouns that are based on your current

gender identity, it is unlikely you will be referred with your preferred pronoun.

The staff is also supposed to allow you to dress in a way that matches your gender and use cosmetics the same as any other inmate.

If the jail staff is mistreating you because of your TG status, complain to your lawyer

1) Enomoto v. Wright, 434 U.S. 1052 (1978);

Robinson v. California, 370 U.S. 660 (1962)



## **Transgender Rights in Jail**

Produced by

The National Lawyers Guild

New York City Chapter Mass Defense  
Committee

[www.nlgnyc.org](http://www.nlgnyc.org)

and



The Sylvia Rivera Law Project

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Special thanks to the San Francisco Chapter  
of the

National Lawyers Guild