
A Decade in the Making: Revamped Policy Evaluates Transgender Prisoners in Illinois

Corrections department policy addresses potential vulnerability or predatory risk

Twenty years ago, the U.S. Supreme Court had yet to rule that when officials look the other way when prison rape occurs, this amounts to cruel and unusual punishment.

Now Illinois is among a few jurisdictions in the country to lead the way in protecting transgender prisoners.

By Alison Flowers The Medill Justice Project Published: May 29, 2013



Cook County, Ill., is among few jurisdictions in the country housing transgender female inmates among women, according to Just Detention International, a human rights organization in Washington, D.C. (Rich Johnson/Medill)

On a January morning in 1994, then Chief Justice William Rehnquist called on Elizabeth Alexander, a prisoners' rights lawyer, to argue what would become a landmark case, the first time the U.S. Supreme Court directly addressed prison rape. She was there to speak for Dee Farmer, an HIV-

positive inmate. Farmer was beaten and raped in her cell in 1989, after being transferred to the penitentiary in Terre Haute, Ind., a high-security male facility, according to federal court records. In her suit, Farmer was seeking damages for her assault and an injunction to prevent her return to a penitentiary like Terre Haute.

“The petitioner in this case is a transsexual,” Alexander began, according to transcripts. “She is a young, nonviolent prisoner of feminine appearance and demeanor. Prior to her incarceration, she had undergone silicone breast injections and unsuccessful surgery to remove her testicles. She alleges that she was raped approximately 10 days after her placement in general population at the Terre Haute Penitentiary. Rape is one of the most painful and humiliating things that—”

A justice interrupted her, launching a set of questions, and Alexander never returned to finish her sentence, but she succeeded in making her point. Later that year, the Supreme Court unanimously ruled that deliberate indifference among prison officials to an inmate’s risk of sexual assault, or harm in general, violates his or her constitutional rights guarding against cruel and unusual punishment. Nearly 20 years later, human rights advocates see the case as a victory, even though after the Supreme Court sent the case back to the lower courts, Farmer ultimately lost her suit.

“The world has changed since then,” said Alexander, who has been in practice for more than 40 years, in an interview for this article.

This month the Illinois Department of Corrections penned revisions for the first time to its 10-year-old policy for evaluating transgender offenders as they enter the prison system. The old policy, part of the medical and health care section of the correctional codes, outlines how inmates are processed into the system when questions arise regarding their gender. The protocol involves a physical and mental examinations and a review of the prisoner’s medical history, after which appropriate placement is determined on a case-by-case basis. The new guidelines require a psychiatrist to assess how vulnerable or potentially predatory a transgender inmate is when considering whether to place him or her among males or females. The updated policy also details the role of a “Gender Identity Disorder Committee,” established more than a year ago, which addresses placement, security concerns and hormone therapy treatment plans, if any, for prisoners.

“We’re the ones who have to decide what is best for the offender,” said Louis Shicker, medical director for the Illinois Department of Corrections. “We try to look at it as objectively, clinically as possible.”

Where the old policy is silent, the new directive includes a statement that gender identity is a result of genetics and environmental influences.

“We’re proud that this is an effective policy and is more advanced than other states,” said Tom Shaer, spokesperson and communications director for the Illinois Department of Corrections. Shaer said it’s indicative of how Illinois Gov. Pat Quinn feels about human rights issues.

Shicker said the policy update is in part due to fear of litigation, but that the gender identity committee in Illinois isn’t a reaction to an incident or a response to the federal law, the Prison Rape Elimination Act of 2003, known as PREA, signed by former President George W. Bush.

“We are taking a lead in attacking or looking at this issue early on as opposed to waiting for a lawsuit to tell us that we have to do something,” Shicker said.

Only a handful of jurisdictions in the United States house transgender female inmates in women’s facilities, including two sheriff’s offices in Maine and Denver, according to Just Detention International, a human rights organization in Washington, D.C., which tracks these cases.

Though the Illinois corrections department is considered progressive for having such a policy, the name of the “Gender Identity Disorder Committee” is already outdated. Last week, “gender dysphoria” officially replaced “gender identity disorder” in the American Psychiatric Association’s fifth edition of the Statistical Manual of Mental Disorders, what doctors use to diagnose patients. The Illinois Department of Corrections policy follows the prior edition, published more than 10 years ago, which includes in its “disorder” criteria the strong and persistent desire to be a member of the opposite gender, persistent discomfort with his or her gender and clinically significant distress. According to Shaer, the department needs time to study the new diagnostic manual before making any changes to its policy, which includes the name of the committee.

Shicker, an internist, heads the committee of half a dozen members including the state department of corrections chief of mental health services, a corrections psychologist with expertise in gender identity issues and the chief of operations who offers a security perspective.

The committee meets once a month, or as needed, evaluating inmates in the 30 days after a doctor has initially examined them during prison intake. That doctor conducts a physical and mental health examination and contacts the medical director, Shicker, to discuss the inmate’s anatomy, sexual

preference and prior medical history, such as any sex reassignment surgeries. Shicker makes a preliminary determination about the inmate's gender and gender-related needs, such as housing, showering and hormone therapy.

During the assessment, for security reasons, most transgendered inmates are placed in single cells without a roommate and shower alone, according to Shicker.

After the inmate is interviewed about his or her experience in the role of the opposite gender, the committee then reviews the case and makes a final determination about such matters as his or her housing. An inmate can file a grievance with the correctional center, which is forwarded to the committee to possibly reconvene on the matter.

"An offender is not going to be housed at a particular facility just because that's his preference," Shicker said. "Very few of them actually want to be at a female facility."

When asked why inmates wouldn't want to be as safe as possible, Shicker said he could not speculate.

The big debate isn't over housing, according to Shicker. It's over whether they will receive hormone therapy. Many inmates want to be on hormones because they were on them in the past, sometimes off the black market, Shicker said.

Housing should be the top concern, according to Chris Daley, deputy executive director of policy of Just Detention International.

"Housing women based on their gender identity is the single most important thing that can be done to protect her from sexual abuse," Daley said. "The presumption should be that a transgender woman should be housed in a woman's facility."

Alexander, the lawyer who represented Farmer before the Supreme Court, is also the former director of the American Civil Liberties Union's National Prison Project, which aims to ensure prisons and jails comply with the Constitution. She said placement of transgender prisoners should weigh a number of factors, including how dangerous a place is.

"[Farmer] should never have been put where she was," Alexander said. "It was more or less inevitable that what happened would happen."

The Center for Evidence-Based Corrections at the University of California-Irvine examined violence in correctional centers, finding in 2007 that 41 percent of transgender inmates face violence, compared to 2 percent among a random sample of inmates in the same California prisons. Nationwide, the Bureau of Justice Statistics said in a report this month an estimated 4 percent of state and federal prison inmates were sexually victimized by prison staff between 2011 and 2012. The rate of sexual victimization among prisoners themselves was lower: 2.4 percent.

The Illinois Department of Corrections does not believe transgender inmates are at greater risk of being victimized. "Our experts [doctors and program managers], with decades of experience, have no basis to say sexual assault occurs more often among transgender inmates, compared to the IDOC's General Population," Shaer said in a statement.

Illinois does not track assaults based on sexual identification or orientation, according to Shaer. Last year there were 82 allegations of sexual assault among 48,000 inmates in Illinois facilities. Only five were substantiated, according to Shaer.

In Illinois, the recent closing of two prisons has raised concerns about overcrowding. Six facilities are using gyms to house inmates, Shaer said. Illinois' gym population is down 65 percent since earlier this month and as of last Friday, the count is at 382 prisoners, he said. The National Prison Rape Elimination Commission, part of the U.S. Department of Justice and formed under the Prison Rape Elimination Act, cited in a 2009 report that crowding issues make it difficult to protect vulnerable prisoners from sexual abuse.

Alexander said extra measures should be taken to ensure the safety of transgender prisoners. "While it's terrible to put people in protective custody when it's a form of solitary confinement, I think the prime directive is to keep people from being assaulted," Alexander said. This, she added, could have prevented tragedy for her former client, Farmer.

A repeat offender, Farmer is awaiting trial on mail fraud and identity theft charges at the Metropolitan Detention Center Brooklyn in New York. Prison officials declined to submit The Medill Justice Project's request to interview her.

Farmer is housed among males.