



## **NAPD Statement On DOJ Memo Re: Transgender, Intersex, and Gender-Nonconforming Prisoners**

December 10, 2025

According to a recent internal memo from the US Department of Justice [obtained by NPR](#) on December 4 2025, the DOJ has instructed inspectors to cease evaluating prisons and jails on their compliance with standards created to protect transgender, intersex, and gender-nonconforming incarcerated people, in order to align with President Trump's Executive Order on "gender ideology extremism." Not only does the National Association for Public Defense strongly oppose this order, but we also condemn this catastrophic endangerment of LGBTQIA incarcerated people in the strongest possible terms and demand that the DOJ immediately resume enforcement of protection standards.

In the United States, every person has a constitutional right under the Eighth Amendment to be free from cruel and unusual punishment. For public defenders, that principle is not abstract. It is our obligation to defend and uphold our clients' constitutional rights at every stage of the criminal legal process. The Constitution requires that people in government custody be protected from harm, including physical and sexual violence. Sexual abuse in jails and prisons is not an inevitable condition of incarceration; it is a violation of human dignity and a constitutional harm. In 2003, the federal government enacted the Prison Rape Elimination Act (PREA), affirming that prison officials have a duty under the Eighth Amendment to prevent, detect, and respond to sexual violence behind bars. PREA was enacted after decades of research documenting pervasive sexual abuse in correctional facilities, with two studies from 1982 and 1996 finding between 12 and 14% of male prisoners had been victimized and the Federal Bureau of Prisons in 1992 estimating a rate between 9 and 20 percent.

The risks are especially acute for transgender, intersex, and gender-nonconforming people. National data consistently show that these individuals experience disproportionately high rates of sexual violence while incarcerated. The 2015 U.S. Transgender Survey conducted by the National Center for Transgender Equality found that transgender people in state and federal custody were more than nine times more likely to be sexually assaulted by other incarcerated individuals, and five times more likely to be sexually assaulted by correctional staff, compared with the general prison population. Research from the U.S. Department of Justice's Bureau of Justice Statistics similarly found that, among 4,110 substantiated incidents of inmate-on-inmate sexual violence between 2019 and 2020, 4.3 percent of victims were transgender or intersex. Advocacy organizations have further documented systemic failures: for example, a 2015 report from Black & Pink reported that, among LGBTQIA people who suffered sexual violence by other incarcerated individuals, 76 percent said that staff placed them in settings where assault was

likely. These statistics exist despite the implementation of PREA. Eliminating or weakening even these baseline protections would place already-vulnerable people in even greater danger.

The PREA standards which specifically address transgender, intersex, and gender non-conforming people include directives against cross-gender strip searches, against physical examinations and searches by staff specifically for the determination of a prisoner's genitals, on communication with LGBTQIA prisoners, on the safety of housing and programming assignments, on risk assessment with regard to potential for sexual violence victimization during intake and transfer, on separate showers from the general population, and more. The absence of these standards would pose an ever-present, very real and potentially life-threatening risk for these incarcerated people.

Before this recent move by the DOJ and despite the PREA standards which specifically sought to address the uniquely pronounced risks for incarcerated transgender, intersex, and gender-nonconforming people, prisons and jails in the US have already been failing systematically to comply with the most fundamental constitutional and human rights of this population. The DOJ's latest instructions, along with many of the Trump administration's policy decisions with regard to LGBTQIA people in the past year, now serve as a tacit endorsement of unconscionable levels of sexual violence and deliberate victimization.

The National Association for Public Defense calls on the Trump Administration to immediately rescind this dangerous order.