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Behind Bars, Consensual Sex or Even Friendly Gestures Are Often Met with Solitary Confinement and Other Harsh Punishments

by [Lizzie Kane](#) | September 16, 2021

After a Thanksgiving Day meal, J, who was incarcerated at North Central Correctional Institute in Massachusetts, complained of a stomach ache. His friend Carlos, who requested to be identified by his first name only, leaned down from his top bunk and rubbed J's head jokingly. There, there, he said, as the men laughed. Later that day, Carlos, who identifies as gay, was taken to solitary confinement in the Special Housing Unit (SHU).

Carlos's friendly head pat had been noticed by a correctional officer, who told him, I don't care what you are, but you're a man, and what I saw was PREA. The officer was accusing Carlos of violating the rules laid out in the [Prison Rape Elimination Act](#), a 2003 federal law that aims to protect incarcerated people from sexual violence by establishing clearer procedures, collecting better data, and providing resources to correctional institutions.

Fortunately for Carlos, other prison officials took his side and he was soon released from the SHU. But he should never have been there in the first place: Platonic physical touch, like his interaction with J, is *not* prohibited by PREA standards. Despite his unfair placement, Carlos's weekend stay in the hole caused him to permanently lose his place in his housing unit and, therefore, his job, as well as the [good time credits](#) he had built up to reduce his sentence by participating in programming.

Carlos's story is not unique. Although PREA was backed by many advocacy groups and passed by Congress with unanimous bipartisan support, a law is only as good as its implementation. From Carlos's letter to Solitary Watch, multiple interviews with other formerly and currently incarcerated individuals, and accounts from advocates, it is clear that PREA's intent is at times being twisted or misinterpreted to cause additional harm.

Correctional officers in many prisons and jails prohibit platonic touching, issue disciplinary infractions based on their own personal biases and beliefs instead of the official rules, conflate consensual sex with rape, and appropriate PREA standards not to protect, but to punish. This misuse of PREA leads to unfair punishment, including time in solitary confinement, and is far more likely to affect LGBTQ+ individuals, who are already incarcerated at disproportionately high rates. Several LGBTQ+ people also emphasized to Solitary Watch how their treatment in the system was further compounded by their racial identities.

Punished for Platonic Touching

Michael Cox, executive director for Black and Pink Massachusetts (which is not affiliated with the national organization of the same name), had an experience similar to Carlos. When he was incarcerated in the same Massachusetts prison in 2011, Cox and his friend both of whom were openly LGBTQ+ hugged goodbye in the prison yard. He said correctional officers approached them, led by a lieutenant, who ordered, Lock them up.

When Cox asked why they were being punished, he was told the hug was a PREA violation. Like Carlos, he spent the weekend in solitary before the administration reviewed his case and let him out.

It was very apparent that it was just a hug, Cox said. And even if the suspicion was that we were in an intimate relationship, that shouldn't be enough to put someone in solitary confinement. It is stigmatizing for LGBT people that we are treated differently than others while in the system. It happens all the time.

In the [largest-ever survey](#) of incarcerated LGBTQ+ individuals, 85 percent of the 1,118 respondents reported spending time in solitary confinement, half of whom said they were in solitary for two or more years. The survey, which was conducted by Black & Pink, a national nonprofit organization that advocates for the abolition of prisons, further found that respondents of color were twice as likely as white respondents to have experienced isolation. Transgender individuals were especially likely to be placed in solitary, often as protective custody, a form of solitary confinement used with the intent of removing people from unsafe environments.

And although PREA does not ban hugging, some prisons have. Kelly Savage-Rodriguez, a program coordinator with the California

Coalition of Women Prisoners (CCWP), was incarcerated in a California prison for almost two decades; for eight years of that time, the prison had a memorandum prohibiting hugs.

She said the ban made her job as a grief counselor more difficult. It was really inappropriate when we would have somebody who the sergeant or captain notified of a loss, and [the individual] couldn't even get a hug in a serious grief moment, Savage-Rodriguez said.

Risks of Consensual Relationships

While platonic touching is prohibited in certain prisons and jails, consensual sex is banned almost everywhere, and often leads to time in solitary. But some people who are in consensual relationships are targeted by correctional officers more so than others. Savage-Rodriguez, for example, was incarcerated in the same facility as her spouse, both of whom are white. They were allowed to remain housed together, which Savage-Rodriguez believes was because they looked feminine and led programming in the prison.

Krystal Shelley, an activist who also works at CCWP, was not as fortunate. Shelley, who does not identify as male or female and is Black, said that while they were sharing a cell with their partner at Valley State Prison for Women, correctional officers planted a shank under their mattress. Shelley was sent to the SHU.

It was falsified documentation upon me, just due to the fact that they did not want me living with my partner, Shelley said. Then a second shank was planted under their bed, they said, leading to another six-month stay in solitary.

Dominique Morgan, the executive director of Black & Pink and a Black trans woman, was punished with solitary confinement and separated from her partner as well during her incarceration. At age 19, Morgan entered the Omaha Correctional Center, an adult facility for men, after having spent many of her teenage years in juvenile detention. Around that same time, she started to identify as female.

Morgan met Doug, who was incarcerated in the facility as well, and fell in love. They made plans together for when they got out; they introduced each other to their families. Morgan leaned on Doug as she grieved the death of her father. I was building a family in a space where I felt alone, she said.

But after two years, their consensual sexual activity was reported by another incarcerated individual, and they were sent to solitary for 90 days, which she says was an unusually long stint.

The irony was that I would see people who were being pressured [into sex], and the state would never step in in those situations, Morgan said.

After those 90 days, Morgan and Doug were sent to solitary in separate prisons. Morgan to a maximum security facility. The review board at that facility repeatedly recommended her release from solitary, but each time the warden appealed to keep her in.

I remember thinking: I'm not violent. I'm stuck in this hole. I'm scared. I'm alone, Morgan said. It was sad to realize it was all because of my sexual orientation and gender identity.

After 18 months, the American Civil Liberties Union (ACLU) of Nebraska intervened, and Morgan was released from solitary.

I was happy to [go to the general population], but I was even more afraid because you took me from a minimum security prison and then you are going to put me in the general population in the supermax prison? Morgan said.

She added that this happened 20 years ago, and she is hearing similar stories from incarcerated people now.

PREA Problems Abound

The PREA Resource Center (PRC), which is funded by the U.S. Department of Justice (DOJ), is charged with carrying out the work of PREA by implementing training sessions and reviewing audits. The PREA standards require all correctional facilities to track incidents and [undergo PREA audits](#) at least once every three years, which are conducted by third-party individuals trained and certified by the DOJ.

Since the PREA Standards were implemented, reports of sexual victimization filed by correctional officers have increased significantly, [according to the Bureau of Justice Statistics](#). [Researchers at the Urban Institute believe](#) that the increase in reports may be a sign that incarcerated individuals are increasingly likely to trust the system now that PREA has been in place for some time.

Yet, experts are still concerned about the usage of the policy.

Amy Fetting, the executive director of the Sentencing Project, a nonprofit fighting against mass incarceration, was trained as a PREA auditor and spent years working to help finalize the standards in her former role as deputy director of the ACLU's National Prison Project.

Many are concerned that PREA is being used as a sword instead of a shield, Fetting said. Anecdotally, we have heard from clients that affectionate behavior is being criminalized because there is animus towards the LGBT community in prisons.

But this is not the law's intent. Fetting said that correctional officers and facilities are interpreting the law differently. PREA doesn't say no touching. I think when we have seen PREA abused, it is more about homophobia than anything else.

Cox, from Black and Pink Massachusetts, agrees. He said he does not believe he would have been punished for giving a hug if not for PREA. In his view, after their training, the takeaway from guards was that anything LGBT-related is now criminalized.

Julie Abbate, the national advocacy director for the nonprofit Just Detention, which works to end sexual abuse behind bars, noted that physical touch is complex.

In mens facilities, what looks like what might be consensual [to staff] could be what is called protective pairing, where somebody who is maybe more vulnerable agrees to pair up with a stronger inmate and provide sex in exchange for protection, she said.

But womens behavior is often different from men, according to Abbate.

Women have platonic relationships oftentimes where they might hold hands, or hug each other, or put their arms around each other. She, too, said she has heard of certain jurisdictions incorrectly punishing platonic touching as alleged PREA violations.

To address this, correctional staff should receive a deeper, nuanced training and understanding of human sexuality, Abbate said, as well as better training for the signs of coercive or protective relationships.

Morgan, from Black & Pink, believes PREA generally leaves too much discretion in the hands of correctional officers. You left the power in the institutions who were harming them [incarcerated individuals] in the first place, she said.

Some of the PRCs weakness stems from a general lack of resources, as well as a reliance on private contractors to act as the auditors overseeing PREA implementation, Fettig said. She would rather see more power and authority in the hands of a government oversight agency.

Abbate said the PRC has taken on an increased workload since its creation, to the point where it could double in size.

Asked to comment on Solitary Watchs findings, the PREA Resource Center provided a statement saying that if facilities request support in achieving and maintaining compliance with the PREA Standards, the PRC and PREA Management Office offer assistance. Requests from facilities regularly pertain to protecting LGBTQ+ individuals, according to the statement.

Long-Lasting Trauma

Being sent to solitary confinement for any length of time or for any reason can have devastating mental health effects. Since his time in solitary for platonic touching, Carlos said he has developed issues with anxiety. The sound of keys and [hand]cuffs triggers meeven a phone ringing or my name being called by an officer, he wrote to Solitary Watch.

Isolation has also left an indelible mark on Shelley, who spent two one-year stints in solitary confinement, as well as additional sporadic time throughout their incarceration. Although they came home in 2012, they said the experience of solitary continues to make it harder to communicate, which in turn makes everyday tasks difficult.

It is 2021. Solitary confinement is still affecting me today, Shelley said. I tend to want to be alone oftenAnd dont get me wrong, I go outbut I definitely dont go out and live life as much as I should.

Lizzie Kane was an intern for Solitary Watch in the fall of 2020 and spring of 2021. Her work has also appeared in The Atlanta Journal-Constitution, Dallas Morning News, and Charlotte Observer.

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