

Corrections 'have not followed process at all' for trans prisoner

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Is the department doing enough to ensure the safety of trans prisoners? Photo / 123RF

RNZ

By Murphy

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Warning: This story contains mentions of violence and sexual violence against trans people

A trans man says he was endangered on multiple occasions when in the care of Corrections. Is the department doing enough to ensure the safety of trans prisoners?

Lucas* looks down at the cold metal weighing against his wrists. Moments ago, the courtroom was abuzz but right now all he can hear is his heart pounding in his chest. It's three days before Christmas and he's just heard he'll be remanded in prison.

The legal aid lawyer didn't even try to get him bail and Lucas is exasperated. 'F*** you, I'm missing my office Christmas party because of this,' the lawyer snaps back.

Panic sets in at the thought of being sent to a men's prison and what may happen to him there. If there was ever a time to out himself, it was now. As he's led to the holding cells to wait out the hours before his transfer Lucas tells the guards he's trans and wants to be sent to a women's prison - he knows he'll be safer there.

"Everyone seemed really nice about it, they were like yeah sure ... thanks for telling us, we definitely wouldn't want that to happen. Then they ... brought me some documents [and] were like hey, just sign here.

"It asked if I prefer to be searched by female or male officers, if I prefer to be held in a female or a male facility, so I said female officers, female facility."

A few hours later and the door to the holding cell opens - it's time to go. Lucas is shuffled into a small metal cell inside the transfer truck. When he arrives it's dark out.

"The second I got out of the truck, my first question was 'Wait a minute, is this a men's prison?' and the guard was like 'Where else would you f***** be?'.

"From that point onwards, I knew that the document I signed meant nothing."

The Department of Corrections says trans prisoners are a vulnerable group with complex needs but is it doing enough to ensure their safety?

Corrections says as far as it's concerned, no such document exists, and it isn't found on Lucas' prison file.

But Lucas says he didn't only sign the document at the Auckland District Court in December 2017, he also signed one in the holding cells of North Shore District Court in September 2019, after his sentencing. Again, he wrote he wanted to go to a women's prison and searched by female officers. And, again, he found himself at Mount Eden Prison.

Corrections policy (since 2014) states someone in their custody who is trans must be placed in a prison that matches the sex on their birth certificate, if staff have a copy of it. Though generally, the department says, their placement is assessed on a case-by-case basis, taking into account whether going to a prison that aligns with their gender is something they want. The policy is designed to provide Corrections with flexibility to determine the most appropriate accommodation options for trans prisoners.

Lucas says he was never asked for his birth certificate, which - like about 80 percent of trans people in Aotearoa - doesn't have the correct gender marker on it. In fact, all of his documents, including his birth certificate, passport and licence, are still marked 'F'. Part of the reason he hadn't started the process to change these was because of policies like the one Corrections has.

"They have not followed process at all," Gender Minorities Aotearoa national coordinator Ahi Wi-Hongi says.

If the placement of a trans prisoner hinges on the gender recorded on their birth certificate then surely part of Corrections' standard process is to track down, they say.

Gender Minorities Aotearoa provides advocacy and support for trans people in Aotearoa and runs a fortnightly free legal clinic in collaboration with Community Law. Trans prisoners are often among those reaching out for support and advice.

"What usually gets talked about is where trans women will be placed in prison, there's not a lot of public thought about trans men, and it seems that if the policy is to place people in the prison of the gender that's on their birth certificate, but in this case they haven't done that, then is the default policy actually just to place all trans people into men's prisons? Because that's how it seems ... And if it is, it also raises the question of why would that be."

Corrections says trans prisoners are not automatically placed in a men's prison and didn't respond to questions of why Lucas was taken to one if his identity documents have an 'F' gender marker. Instead, it referred to the Prison Operations Manual which notes "when making an initial determination for a person's placement the custodial systems manager or on-call manager must take into account all the available information".

According to policy, once inside trans prisoners can be transferred if they provide a birth certificate that aligns with the gender of the prison they want to be transferred to, or if they are successful in requesting a review of their placement. Trans prisoners who are doing time for a serious sexual violence offence against someone of the same gender, or have served time for this within the last seven years cannot apply for a review.

Wi-Hongi says getting a review of placement isn't always straightforward.

"[Trans] prisoners have told us that they've sent in multiple applications to be changed to a different prison and those applications have not gone anywhere ... or it's taken a very very long time for them to hear anything back about it."

The reasons for a prisoner's choice around placement are nuanced, and a trans person will not always want to be placed in a prison that aligns with their gender - as was the case for Lucas. Where they will feel safest is often a major factor in decision making and is something that can change overtime.

Lucas says at no point was he told he would have to be processed in a men's prison before he was able to move to a women's prison.

It was male guards who strip searched Lucas during his processing that first time at Mt Eden prison.

"I took my clothes off and I just kind of remember everyone in the room not really knowing where to look - including me. By that point I had already gone into 'how do I get out of this' mode."

It was a little over two months before Corrections' Transgender Policy would come in, bringing with it a change that allows trans prisoners to choose the gender of the officers that strip search and pat them down. After March 2018, staff would have been expected to give Lucas the 'confirmation of search choice for trans prisoners' form on arrival. Regardless, Lucas says he was clear on the documents he signed in court that he wanted to be searched by female officers.

"I nearly fainted, panic was setting in," Lucas says.

After the search he pushed to see a doctor in the hopes they would help him out of the situation he'd found himself in. Either Corrections didn't understand, or they didn't care, he thought - maybe a doctor would.

He was taken to the health office where he told a nurse what was going on - she was clearly concerned, he says, and put in for a medical transfer. "The nurse that received me, she did everything that she could possibly pull out of her hat to keep me safe."

Just before 8pm a note written by health staff appeared in Lucas' risk assessment stating that he was to have female staff present when being searched. But an IOMS alert wasn't activated.

He spent the night in an observation unit and was checked on every 15 minutes. Just as the sun peered over the horizon the next morning, he was transferred to Auckland Women's prison - where he says "99.9 percent of the time everything was as respectful as it can get".

Three and a half months later he came out on bail and would spend the next year and a half on house arrest as he waited for his next court date.

Two men were already in the yard when Lucas arrived. The guard told him he'd be on his own - it was the only reason he agreed to have time outside of his cell. But just as Lucas turned, he heard the door shut behind him and the guard disappeared from sight.

It was early September 2019, almost two years on from when Lucas first set foot inside the prison that sits at the intersection of Auckland's southern motorway and its western train line. He had spent the past 18 months waiting out the days until his sentencing - the ankle bracelet rubbing against his skin a reminder of unfinished business.

Lucas didn't think he'd find himself there again, within the walls of a men's prison. He'd spend three nights in segregation before being transferred to a women's prison. A note on his transfer document reads: Lucas "fears for his safety due to [being] transgender".

In the yard he sat next to the younger of the two - their yard mate spun wild stories of past escapades, at times his words left bouncing off the concrete walls as he paced. He'd spent over half his life in prison, he told them. Said he was there because he stabbed someone in his unit.

The door to the yard had a small window to the outside world where guards would periodically make their presence known. Two trans women were being processed on the other side. "That's when he starts kicking the door, he starts yelling, throwing slurs around. He's like: 'I'm going to fucking kill you', using the 't' (transphobic) slur."

He looked to Lucas for affirmation, he was fired up and seemed ready to go. His yard mate hadn't clocked him as trans - yet - but Lucas was worried about what would happen if he did. When the guard circled back and peered through the window Lucas got his attention "Bro, I need to go to the toilet." Once outside he asked to be put back in his cell and not to be taken out again until his transfer.

Lucas would later describe being very scared for his safety during this interaction in a letter to the Inspectorate after his release in 2020. He also wrote of having to advocate for his safety

needs: "Repeatedly, staff would come ask why I insisted on segregation, and over and over again I had to tell [them] how I did not want to be beaten and/or raped."

Corrections says staff are trained to consider the risks to any trans prisoner though try not to unnecessarily restrict their interactions with other prisoners. Normal segregation rules apply when someone's interactions are restricted. There is no policy for yard time specific to trans prisoners.

"Whether or not somebody ends up being a victim of sexual violence in prison, that is a very real and justified fear that people have which has a huge impact on their mental health," Wi-Hongi says.

"It's not okay to be putting people in a situation where they have quite justified fears that they're going to be raped - that needs to not be happening."

Wi-Hongi says trans people are much more likely to experience violence in prisons. Data on trans people in prisons is limited but a Californian study found trans people in men's prisons were at high risk for sexual assault.

"We know that there's violence happening in prisons, that there are physical assaults happening in prisons, that there is of course lots of psychological intimidation and threats happening in prisons and we know there is sexual violence that happens in prisons as well. Given the general rates of sexual violence against trans people especially, which are really really high outside of prison, I think that the threat of sexual violence, especially in prison, is really high," Wi-Hongi says.

The Counting Ourselves study of trans and non-binary people in Aotearoa found 32 percent had experienced sexual violence since the age of 13; rates two to three times higher than cisgender women and seven to 12 times higher than cisgender men. Forty-seven percent of trans and non-binary people reported that someone had tried to have sex with them against their will.

Lucas was visited by Corrections senior advisor inclusion and diversity Theresa Peters a few days after he arrived at Auckland Women's prison in 2019. After sharing his story Peters offered an apology, though Lucas felt it didn't quite sit right, saying it came with no action and seemed "just for show. You know, [like] Rainbow Tick".

The week he was released, in June 2020, Lucas wrote a letter of complaint to the Office of the Inspectorate stating the actions of Corrections in placing him in a men's prison had put him in danger.

Responding to Lucas a year later, after delays caused by Covid-19, Principal Inspector Andy Fitzharris concluded Lucas was transferred to Mt Eden as per the warrants. He said the documents Lucas says he signed in court couldn't be found on his prison file and they didn't appear to be from Corrections.

He did however fault Corrections for the way Lucas was received. "Given the information provided to me and the historic complaints, I think the new arrival process at MECF [Mount Eden Corrections Facility] was not completed to the required standard at that time."

Lucas is now awaiting the outcome of an investigation by the Office of the Ombudsman. He says he doesn't want what happened to him to happen to anyone else and believes Corrections needs a policy or procedural change to ensure this.

"I was just a kid with a lot of mental health issues and in the end ... it gave me a lot of other mental health issues. I had to get therapy for the s*** Corrections put me through."

Corrections says it acknowledges the impact that Lucas' initial experience being received into prison has had on his wellbeing, but it is limited in its response as the situation is still under investigation. Since being contacted by RNZ, Corrections has sent Lucas an apology letter.

"Some staff may not necessarily have first-hand knowledge or experience with the challenges and complexities involved with transgender individuals, but we are committed as an organisation to changing this," a statement attributed to Corrections chief custodial officer Neil Beales said.

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"We know we have an obligation to manage every transgender prisoner in an individualised way which respects their identity and preserves their dignity, safety and privacy."

Beales says the department is committed to addressing gaps in staff knowledge and is actively working to improve its support of trans people, including offering staff training specific to issues faced by trans people and its own policy.

The origin of the documents Lucas says he signed in court remains unclear as does why Lucas, who has the incorrect gender marker on all of his official documentation, was twice placed into a men's prison - going against Corrections policy and despite the concern he raised regarding his safety.

"How good the policies are is one issue and whether or not they're following the policies is another issue," says Wi-Hongi.

*Name has been changed for privacy