

Gender outlaws

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Best of IDENTIFY 2005

Transgender prisoners face discrimination, harassment, and abuse above and beyond that of the traditional male and female prison population.

BY EMILY ALPERT / OAKLAND, CALIFORNIA
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Tanya Smith experienced sexual harassment and medical neglect while incarcerated in California prisons.

In Idaho, inmate Linda Patricia Thompson wanted a transfer to a women's prison. A male-to-female transgender woman, or MTF, she had been living as a woman for several years, had changed her name legally, and was taking black-market estrogen when she could. Thompson had never been able to afford sex reassignment surgery, nor could she obtain hormones legally: the signatures of two physicians and a psychiatrist were required, and she couldn't afford the visits. Still, Thompson was assertively feminine, even in handcuffs. At the time of her arrest, she wore a dress and high heels.

But prison officials refused to transfer Thompson or to provide her with estrogen. Inmates are housed on the basis of genitalia, they told her, and in their eyes she was incontestably male. So Thompson took matters into her own hands — literally. In two separate incidents, she amputated her own male genitalia, nearly bleeding to death in the process.

"I thought she had to be nuts," recalls attorney Bruce Bistline, who handled Thompson's case. "But apparently that sort of self-mutilation is not extraordinary in the transgender prison population. The level of desperation is just that high."

When genitalia — not gender identity — decides placement

"I've been raped, physically beaten, extorted, pimped out/sold, intimidated, manipulated, threatened, humiliated, [and] harassed by both officers and inmates" writes transgender prisoner Meagan Calvillo of her experiences in various California prisons since 1999. Calvillo's description is not unusual. Outside of prison, transgender people are among the most marginalized in the United States; inside it, they confound a system that's ill-prepared to serve them, or even to decide where to put them.

"There's no real legal standard" for determining the placement of transgender prisoners, says Chris Daly, director of the Transgender Law Center in San Francisco. At present, most California prisoners are assigned to male or female prisons on the basis of their genitalia, the same method applied by most states. "There's a state-level mandate that

prisons be segregated by sex, which they've interpreted to mean genitalia. Every prison we know of has interpreted it the same way," says Daly. As a result, transgender people who choose not to undergo sex reassignment surgery — or lack the means to do so — are housed with people of their birth gender.

"For instance," says Daly, "someone who's male-to-female, if she hasn't had surgery or hasn't been able to access it yet, will be housed with men — regardless of how long she's lived as a woman, or what her gender presentation is like."

One such person is Dee Farmer, an MTF whose landmark 1994 Supreme Court case, *Farmer v. Brennan*, found that prison authorities are liable for "deliberate indifference" to inmates' safety, including situations of likely sexual assault. Farmer brought the suit in 1990 after she was brutally raped and beaten by another inmate in an Indiana prison. The assault occurred two weeks after she was placed in the general male population, despite her breast implants and longtime use of estrogen.

When housed with male prisoners, MTFs rapidly become the targets of sexual assault, as Farmer's case illustrates. Some, like Farmer, have developed breasts from surgery or years of estrogen treatment. Others, though male in appearance, are immediately relegated to the bottom of prison's social hierarchies by virtue of their feminine self-presentation.

As for female-to-male transgender people [FTMs], "while they don't face the same type of violence [from fellow prisoners], they face a lot of oppression on the part of guards," explains Judy Greenspan, cofounder of the Trans/Gender Variant in Prison Committee (TIP). "When they're strip-searched, many FTMs who have had their breasts removed or take hormones are put on display. It's psychological brutality ... They're demonized."

Everyday humiliations for both MTFs and FTMs include verbal harassment, frivolous strip searches, and gender-stereotypic "grooming standards," which set requirements for men and women's hair length, facial hair, and use of cosmetics. "Prison guards refuse to call them by their chosen names or use their correct pronouns," says Greenspan, exasperated. "They look at trans- and gender-variant prisoners as deviant."

Isolation is no safe haven

Protective custody for so-called vulnerable inmates, including those who are HIV-positive, offers a modicum of safety to transgender prisoners — at least from assaults by other inmates. Another, more common option is to confine transgender prisoners individually, in what is known as administrative segregation.

"It's pretty much standard throughout California — except for San Francisco — that housing tends to be separate [for transgender prisoners]," explains James Austin, a physician affiliated with the Sacramento Sheriff's Department. "So most of the facilities are single cells. We don't have any ability to accommodate them otherwise."

However, when assaults come from prison guards, as they frequently do, administrative housing isn't safe, either, and may even be worse. Many individual confinement pens are intended for short-term punitive stays, or for highly aggressive, violent prisoners.

"Administrative segregation is basically punishment," explains attorney Alex Lee, director of the Transgender, Gender Variant, and Intersex Justice Project (TGIJP). "In prison, people call it the jail. It's much more restrictive, and a lot of trans folks in prison get put there ... simply because the prisons don't know how to take care of them, and they'd rather err on the side of being more restrictive than not."



Attorney Alex Lee directs the Transgender, Gender Variant, and Intersex Justice Project, based in Oakland, California.

In February 2004, a Wyoming judge ruled that prison officials violated the constitutional rights of Miki Ann Dimarco, a person with an intersex condition, by placing her in an isolated high-security lockup for over a year. At the time of her conviction for check fraud, Dimarco was placed at the Wyoming Women's Center: an unintentionally appropriate choice. Born with genitalia that might either be classified as a microphallus or an enlarged clitoris, Dimarco identifies and lives publicly as a woman.

However, when medical staff saw Dimarco's genitalia, flustered officials decided to hold her in complete isolation in the prison's maximum-security wing. Though a prison evaluation placed Dimarco at the lowest possible risk level, and doctors concluded she posed no sexual threat (she was "not sexually functional as a male," according to staff), she was subjected to the same living conditions and restrictions as the Center's most dangerous prisoners.

Administrative segregation "may ostensibly be a safer place," Lee remarks, but "where are they going to put you to be away from the guards?" Many of Lee's own clients won't report abuse from other prisoners for fear of being placed in isolation. Or, as in the case of Tanya Smith, they'll endure abuse to avoid it.

Former prisoners: Sex was "a way of survival"

In 1995, when Tanya Smith was first incarcerated, she was immediately isolated as "a threat to the safety of the jail population, as a transgender," she recalls. Smith is a tall African American transwoman with warm, dark eyes and a dainty silver nose ring. Recalling isolation, she purses her lips. "I couldn't access any visitors. The mental health ward would not come see me at all." Smith suffers from borderline personality disorder and requires a steady hormonal regimen. After six months, she was finally released to the general men's population, a situation she found far preferable to isolation, which she refers to as "the hole."

Three years later, when Smith returned to prison, a prison guard came on to her, saying "Ooh, you're a real woman. Do you fuck?" Smith says she sometimes stripped for officers to get medical attention, but this guard wanted more. "He threatened that I'd go back to the hole if I didn't have sex with him — or oral copulation." In exchange for sex, claims Smith, the guard kept her out of administrative segregation, protected her from other prisoners, and provided her with food, medicine and clothing, even alcohol and drugs. When asked how she felt about the officer, Smith merely shrugs. "It was a way of survival," she says simply. "Why complain when I'd get thrown into the hole?"

In California, the most notorious isolation facilities are known as Security Housing Units, or SHUs. Antoine Mahan is a board member of California Prison Focus, which opposes the use of SHUs. He is also a former prisoner who spent two years in a SHU at Corcoran State Prison. Mahan's rounded face is both feminine and masculine at once: he

wears his hair long, and favors women's blouses and headbands. "People think I've taken hormones," he divulges, "but I never have. That's just my androgynous features." He identifies as an African American gay male cross-dresser, but says that, "in prison, I was seen as transgender."

Homeless, drug-addicted, and HIV-positive, Mahan ricocheted between prison and the street from 1991 to 1997. Like Smith, he was approached by officers and prisoners for sex, regardless of his HIV status. Some assailants may have been HIV positive already; others may have wanted oral sex, which has a relatively low transmission rate. At a reception center for HIV-positive inmates, an officer began courting Mahan with food and gifts, hinting that he wanted sexual favors. Later, at the California Men's Colony [CMC], Mahan says, "I had a lot of guys getting at me, and a lot of officers harassing me sexually. I was what they call in prison terms 'fresh booty.'"

But the SHU, says Mahan, was far worse. In 1997, following a scuffle with another CMC prisoner, Mahan was transferred to Corcoran State Prison, one of the few California prisons equipped with a SHU. There, he says, "I went through more hell than I've ever been through in my life." Mahan describes the SHU as "a nine by five cell — nine by five by six, that's the length, the width and the height. It was a box. No ventilation whatsoever." According to California Prison Focus, SHU prisoners spend at least 23 hours a day in their cells, have no phone access, compromised medical care, and no work training or educational programs.

It is unclear whether transgender prisoners are routinely assigned to California's few SHUs, but California Prison Focus alleges that inmates accused of gang affiliation are regularly assigned there, regardless of their behavior, in a "draconian" effort to wipe out gangs. If transgender prisoners are perceived as making trouble — or provoking it — a similar rationale might apply.

Sky-high incarceration rates among trans people

"There were a lot of queens in jail," Mahan mentions offhandedly. Transgender and gender-variant people, as a population, are incarcerated at even higher rates than the general population of African American men, although the majority of those incarcerated are also people of color. In San Francisco, a 1997 study conducted by the city's Department of Public Health found that 67 percent of MTF respondents and 30 percent of FTM respondents had a history of incarceration. Almost a third of MTF respondents had been jailed in the past year. The numbers are staggering: among U.S. adults, only 3 percent are or have been incarcerated. Overall, "unless they're rich, [most transgender people have] spent a little time in jail," says Judy Greenspan.

TIP volunteer Nedjula Baguio, an MTF, offers one explanation: employment discrimination. Trans people are at a disadvantage in today's service economy, she says, regardless of whether they can "pass." Trans people who pass are more easily recognized as their presented gender: They may have taken hormones for many years or opted for breast implants or removal. Those who don't pass are less easily categorized. Some are mid-transition, some lack the funds for hormones or surgery, and others feel at home between — or across, or beyond — the categories of male and female.

"I don't think I ever pass," says Baguio, despite her lean figure and softly curving mouth; she recalls a tense stop at a rural diner while en route to Vacaville, and winces. Her light skin is patterned with evocative tattoos: a heart being sewn up, a marionette cut from its strings.

Trans people who don't pass "freak people out," Baguio says simply, and in a service economy, that's fatal. "Most people don't want to have anything to do with you as a potential employee, for all the obvious reasons. Your gender presentation is going to be perceived as 'freakish,' and nobody will want to deal with you, period. You're seen as interfering with money-making."

Smith agrees. Drug-free and out of prison, her job search hasn't been easy, as a former inmate or as a transwoman. "There's not a lot of people willing to hire us," she complains.

But finding work is no picnic for trans people who pass, reports Baguio: When supplying references or a work history for employers, they face another dilemma. If a prospective boss calls a former employer, and asks about Susan — only to hear all about Sean — their reaction may not be charitable.

Consequently, a disproportionate number of trans people engage in sex work. Many turn to drugs to cope with the degradation they experience as transgender people and as sex workers, and are eventually incarcerated for prostitution or drug-related offenses — what Lee calls "survival crimes." Others develop mental illness, another risk factor for landing in jail. Because employment discrimination, arrests, and sentencing patterns fall hardest on low-income people — predominantly people of color — transwomen of color are the majority of the trans prison population.

"It affects queer and transgender people across the board," explains Baguio, "but for those communities [low-income people and people of color], you're dealing with a double whammy." Baguio offers her own experience as a multiracial transwoman for contrast. "I'm perceived as lighter-skinned. I'm not targeted a lot. I live in a neighborhood with a lot of hip artists; I'm not living in Lincoln, Nebraska. I have a job where they've been accepting of my transition, and it's not an issue. I make a decent wage and have been able to spend a fair amount of money on my transition, including electrolysis, health care, and access to hormones."

Baguio also transitioned after college, insulating her from the hazards of the service economy. She hasn't needed to engage in sex work, and hasn't been exposed to its attendant health risks.

HIV prevalent, hormone provision a battle

Dr. Lori Kohler is the founder of California's only health clinic for trans prisoners, located at the California Medical Facility in Vacaville. The dominant health issue among trans prisoners, she reports, is HIV/AIDS. "Anywhere from 60 to 80 percent [of transfeminine prisoners] at any given time are HIV-infected," she says. "And many are also Hep-C infected. The next greatest problem is addiction."

Most of the prisoners Kohler sees are transwomen of color, incarcerated for nonviolent offenses related to drugs or sex work. Like Baguio, she cites the cycle of unemployment, sex work, and drug addiction. "These are not women that are working to pay for their drugs — these are women who are working for their lives, and end up using drugs to *tolerate* the life they're forced into," she contends.

Kohler has been working with transgender patients since 1994, when she took a job at the recently founded Transgender Clinic of the Tom Waddell Health Center in San Francisco. In 1999, the chief medical officer of the Vacaville facility approached Dr. Kohler and asked her to establish a clinic for the prison's trans inmates. At the time of the clinic's founding, the chief medical officer estimated that Kohler would be serving a total population of 10 to 15 patients. Six years later, Kohler says she's seen roughly 3,000 unduplicated patients, and that there are about 60 trans prisoners at CMF at any given time.

Kohler says that her exposure to trans health issues is unusual among health professionals. "Care of trans people is not something that most medical people understand," she says, and sighs. This ignorance is manifested most clearly, she says, in the issue of cross-gender hormone provision.

"As far as I know of, CMF and now CMC [California Men's Colony] are the only two prisons in the country that actually have a physician who's dedicated to providing good care, including cross-hormone therapies," says Kohler. "In all other California prisons, access to cross-gender hormones is not guaranteed. It's sporadic and inconsistent, and only given to very few people."

In 2003, a U.S. District Court in Boston ruled that transgender prisoner Michelle Kosilek was entitled to hormone therapy; in the same year, New Hampshire ruled in favor of similar claims by state prisoner Lisa Barrett. Courts have generally recognized the responsibility of prisons to continue hormone treatment and psychological therapy, in compliance with the Eighth Amendment prohibition of cruel and unusual punishment, which courts have interpreted to include the deliberate withholding of medical treatment.

However, prisons have often been reluctant to provide hormone therapy if inmates do not have an existing prescription. Because low-income transwomen of color usually acquire hormones through the black market, few can furnish legal prescriptions.

As a result, explains Kohler, "most transwomen who are incarcerated end up being taken off of their hormones unless they can get a court order — they have to use the legal system to have access to their appropriate medical care." And in other states, she adds, "it's virtually impossible for them even to get a court order to access care." Side effects of hormone deprivation can include depression, heart problems, and irregular blood pressure.

Undeterred, Kohler prescribes cross-gender hormones to any trans-identified prisoner: a renegade position among prison medical staff, who routinely ignore her prescriptions. "I'd say about half the medical staff will refill my medical orders if I'm not around, and the other half will not recognize my recommendations," she says. "But I don't think that's any different than the medical community outside the prisons."

No option but jail: Linda Thompson today

After her life-threatening self-mutilation and the lawsuit that followed, Linda Thompson was eventually transferred to Dr. Kohler's Vacaville facility in California. She was also granted a cash settlement contingent upon a

confidentiality agreement about the suit. However, Bruce Bistline's co-counsel, Lea Cooper, says that Thompson chose to violate the terms of the settlement agreement, foregoing most of the settlement money.

"Linda decided that she wanted to get the word out," says Cooper. "That meant more than money to her."

In California prisons, Thompson was finally able to access estrogen. Because her genitalia are not readily identifiable as female or as male (something of a conundrum for prison assignment), she was housed in a small facility with other transwomen and gay men. After her release, Thompson sought jobs in Oregon, Wyoming, Los Angeles, and Washington, but couldn't find paid work — not even sex work.

"She said she was too masculine to turn tricks," Cooper explains. Eventually, at a loss for what to do next, Thompson was arrested for stealing copper wire from a construction site. "She told the judge she did it [got arrested] on purpose, because she didn't have any more options," Cooper says. Thompson is currently incarcerated at the Monroe Correctional Center in Monroe, Washington; on the basis of her birth genitalia, she has been housed in the men's facility. As Cooper describes it, "Linda jokes, 'What do I have to do, start *menstruating* to be considered a woman?'"

"Prison mirrors what's going on in the outside, so-called free world"

Though both do work that benefits trans prisoners, neither prisoners' rights groups nor transgender advocates have specifically taken up their cause. "Transgender issues are not on the radar screen of most prisoners' rights groups," says Judy Greenspan, "and the transgender movement may not be prioritizing prisoners' issues because they're involved in trans survival and support services on the street."

The Trans/Gender Variant in Prison Committee, cofounded by Greenspan, and the Transgender, Gender Variant, and Intersex Justice Project, founded by Alex Lee, are two notable exceptions. Greenspan identifies as a gender-variant white woman: biologically female, she doesn't conform to societal expectations of female behavior or appearance. She wears men's clothing, cuts her hair short and is occasionally taken for a man. For 20 years, Greenspan has worked with transgender prisoners, including Dee Farmer of *Farmer v. Brennan*. Lee is an FTM Asian American attorney who became interested in prison issues during law school and sought to connect them to transgender advocacy.



Photos of female and trans prisoners cover the walls of Lee's Oakland office.

Lee believes the void in advocacy results from mainstream queer organizations' "assimilationist politics ... They want to pretend that we are all law-abiding citizens, that we're perfect angels who want to be just like 'normal' straight people." In doing so, he says, such groups jettison trans prisoners, who are predominantly low-income people of color.

Both TIP and TGIJP advocate for trans prisoners who are currently incarcerated, but when asked, Lee says that “the [long-term] change needs to happen *before* people go to prisons.” As Greenspan explains, “prison mirrors what’s going on in the outside, so-called free world. There are really no rights in the community, unless you’re living in San Francisco.”

But even in San Francisco County Jail, reports Tanya Smith, trans people are reviled. “You’d think the officers out here would think outside the box, in this liberal city, but they don’t. It’s horrible.”

In light of this reality, Linda Thompson’s choice to be rearrested makes sense, despite the harassment she continues to face as a prisoner. For many trans people, all the world’s a prison — on both sides of the bars.

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