

Transgenders Behind Bars: The Impact of the United States Prison System on Transgender

Inmates

By:

Maria Pia Paredes Cordova

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Professor Thomas Loikith

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Research Hypothesis:

The transgender inmate population is one of the most vulnerable populations in the United States. They experience humiliation, abuse, and constant fear on a daily basis. The transgender inmate experience presents unique challenges for the United States prison system in the disciplines of both law and psychology. As society begins to accept and appreciate the transgender community more, the prison system is forced to find solutions to the problem.

Hypothesis as a Question:

Can prisons in the United States provide medical care, housing, and other basic services to transgender inmates without undermining prison security or getting sued?

Disciplines and Sub-Disciplines:

Law (Federal and State, Constitution); Psychology (Behavioral, Cognitive, Clinical)

Abstract

The purpose of this research is to explore the current litigation involving transgender inmates in the United States prison system. It investigates whether or not prisons in the United States can more effectively manage the unique needs of the transgender population and keep them safe behind bars. The legal analysis relies heavily on the Prison Rape Elimination Act (PREA) and the Eight Amendment regarding cruel and unusual punishment. It also explores the policy of housing placement according to genitalia, which is the prevailing method used in United States prisons. The research will also examine the psychological impact of the prison system on transgender inmates. This section focuses on what it means to be transgender and looks at the issue through the lens of behavioral, cognitive, and clinical psychology.

An overall theme of the research is that this issue will become increasingly more relevant due to the fact that the transgender population in the United States is growing rapidly and transgenderism is becoming more mainstream. Through an analysis of both legal and psychological research, the reader receives a better understanding of the current situation, as well as implications for the future. An interdisciplinary approach to this issue is helpful because it allows for the integration of multiple perspectives, which provides clarity in order to offer possible solutions to the problem.

Table of Contents

CHAPTER 1: INTRODUCTION.....	6
CHAPTER 2: LAW	
<i>I. Introduction.....</i>	<i>7</i>
<i>II. Housing Placement Based on Genitalia.....</i>	<i>10</i>
<i>III. Prison Rape Elimination Act (PREA).....</i>	<i>11</i>
<i>IV. Eighth Amendment: Cruel and Unusual Punishment.....</i>	<i>13</i>
<i>V. Conclusion.....</i>	<i>14</i>
CHAPTER 3: PSYCHOLOGY	
<i>I. Introduction.....</i>	<i>16</i>
<i>II. Behavioral Psychology.....</i>	<i>18</i>
<i>III. Cognitive Psychology.....</i>	<i>20</i>
<i>IV. Clinical Psychology.....</i>	<i>22</i>
<i>V. Conclusion.....</i>	<i>23</i>
CHAPTER 4: COMMON GROUND AND INTEGRATION	
<i>I. Introduction.....</i>	<i>24</i>
<i>II. Common Ground Between Legal and Psychological Perspectives.....</i>	<i>25</i>
<i>III. Conflicts between Perspectives.....</i>	<i>26</i>

IV. Integration of Perspectives.....26

CHAPTER 5: CONCLUSION.....27

Chapter I: Introduction

Being incarcerated is an extremely dangerous and traumatizing situation for most people. For a transgender person who does not fit a certain gender stereotype, the prison situation becomes even more dangerous and traumatizing. Almost every transgender inmate in the United States experiences humiliation, mental and physical abuse, and constant fear on a daily basis. The policies and practices adopted by prisons in the United States should certainly be designed to improve the health and safety of all inmates, but there needs to be a specific focus on policies affecting the transgender population because they are the most prone to abuse behind bars. The National Center for Transgender Equality lists violence, housing placement, searches, medical care, and privacy as the key issues affecting the transgender prison population.¹ The physical and mental well-being of transgender inmates in the United States prison system is being threatened. Multiple studies have shown that transgender inmates endure higher rates of mistreatment, stricter punishment, and victimization.² The issues affecting the transgender prison population are unique and challenge the prison system to determine an appropriate course of action. Prisons must grapple with difficult questions about how to provide medical care, housing, and other basic services to transgender inmates without undermining prison security or getting sued.³ However, this is easier said than done. Accomplishing this requires analyzing these complex issues through the disciplines of both law and psychology.

¹ Victoria Harrison, CEDAW Disapproves: The United States' Treatment of Transgender Women in Prisons, 13 DePaul J. for Soc. Just. 1, 32 (2020).

² Eman Tadros et al., A Call for Mental Health Treatment in Incarcerated Settings with Transgender Individuals, 48 Am. J. of Fam. Therapy 495, 508 (2020).

³ Dan Schneider, Decency, Evolved: The Eighth Amendment Right to Transition in Prison, 4 Wisconsin L. Rev. 835, 871 (2016).

The discrimination and bias towards the transgender inmate population is apparent. At the same time, society is beginning to accept and appreciate the transgender community more. Transgenderism is becoming more mainstream, which is forcing the United States prison system to answer tough questions and come up with solutions. The size of the overall transgender population in the United States is growing rapidly, which means the transgender prison population is also growing rapidly. A 2016 study reported that about 1.4 million, or 0.6% of the adults in the United States identify as transgender, nearly double the estimate from 2011.⁴ If the number of people identifying as transgender continues to grow at this rate, the problems facing transgender inmates will become an increasingly important issue. It is critical that these problems are thoroughly examined in order to understand the true legal and psychological impact they are causing. That is what this paper aims to do. The paper provides background on what being transgender means both legally and psychologically in order to fully understand the term. It will then discuss the legal perspective of the issues transgenders face behind bars including current federal and state regulations as well as legal theories. From the psychological perspective, the issues of transgender inmates will be analyzed through the lens of behavioral, cognitive, and clinical psychology. After identifying and discussing the disciplinary perspectives of law and psychology, the paper will then analyze common ground and conflicting insights in order to integrate them and achieve a more comprehensive understanding of the issue. Finally, the paper will, based on this more comprehensive understanding, offer proposed solutions to the problem.

⁴ Stephanie Rudolph, A Comparative Analysis of the Treatment of Transgender Prisoners: What the United States can Learn from Canada and the United Kingdom, 35 *Emory Int'l. L. Rev.* 95, 133 (2021).

Chapter II: Law

The national attitude towards the rights of transgender inmates is shifting fast. Modern ideas about gender are greatly outpacing current law.⁵ Transgender individuals have a history of mistreatment and prejudice by society in general. Once inside the prison system, the mistreatment of transgenders is only exacerbated. While media coverage and politicians constantly recognize the inadequacies of the criminal justice system in dealing with inmates based on skin color and socioeconomic status, the conversation about the criminal justice system's failure towards transgender inmates is a seldom-discussed topic.⁶ Although the rights of transgender inmates is becoming a more mainstream issue, nothing can really change until current state and federal law is closely analyzed. This chapter aims to identify the legal issues associated with the transgender inmate population in the United States. The three major areas that will be discussed are housing placement according to genitalia, the Prison Rape Elimination Act (PREA), and the Eighth Amendment regarding cruel and unusual punishment.

Housing placement based on genitalia is the prevailing method used in United States prisons.⁷ For most prisons, this is simply the easiest route to take at the time of confinement. If there are no laws in place to say otherwise, it is understandable that a prison will simply enforce the easiest policy. It is not surprising that the prison system fails to accommodate safe housing

⁵ Richael Faithful, Transitioning Our Prisoners toward Affirmative Law: Examining the Impact of Gender Classification Policies on U.S. Transgender Prisoners, 5 Mod. Am. 3, 9 (2009).

⁶ Kayleigh Smith, Free to be Me: Incorporating Transgender Voices into the Development of Prison Policies, 15 Hous. J. Health L. & Poly. 253, 280 (2015).

⁷ Janei Au, A Remedy for Male-to-Female Transgender Inmates: Applying Disparate Impact to Prison Placement, 24 Am. U. J. Gender Soc. Pol'y & L. 371, 400 (2016).

that respects the gender identities of individuals who are transgender.⁸ However, this policy of placement strictly based on genitalia is proven to be highly problematic for the transgender inmate population. When prisons segregate male and female prisoners by their sex, transgender people are left out of the equation because there is no capacity to accommodate them.⁹ This practice puts the transgender inmate population at significant risk. In fact, studies show that transgender inmates are thirteen times more likely than their non-transgender counterparts to be sexually assaulted in prison.¹⁰ These types of numbers present legal challenges for the prison system as they are liable for the well being of their inmates.¹¹ This is causing prison systems throughout the country to rethink how transgender inmates are housed. Although the National Prison Rape Elimination Commission (NPREC) and the U.S. Department of Justice (DOJ) emphasize the importance of considering several factors when placing transgender prisoners, these are only guidelines and the issue is largely a matter of state law.¹² As stated before, some prisons will understandably enforce the easiest policy available, which is simply segregating the population based on biological sex. In fact, five states (Idaho, Texas, Indiana, Utah, and Arizona) have even opted to forego federal funds rather than implement federal guidelines.¹³

⁸ Jessica Szuminski, Behind the Binary Bars: A Critique of Prison Placement Policies for Transgender, Non-Binary, and Gender Non-Conforming Prisoners, 105 Minn. L. Rev. 477, 526 (2020).

⁹ *Id.* at 479.

¹⁰ Sarah L. Miller et al., Transgender Inmates: A Systems-Based Model for Assessment and Treatment Planning, 17 Psychol. Services 384, 392 (2020).

¹¹ D. Dangaran, Abolition as Lodestar: Rethinking Prison Reform from a Trans Perspective, 44 Harvard J. L. & Gender 161, 216 (2021).

¹² Au, *supra* note 7, at 375.

¹³ *Id.* at 375.

However, a lot of states are taking legal action in order to alleviate the problem. Illinois, the District of Columbia, and New York are good examples of states taking progressive steps to address the issue. Committees have been established to evaluate individual inmates and determine the best placement of transgender women prisoners.¹⁴ The Illinois Department of Corrections has instituted a new policy consisting of a twelve person intake committee including a chief of mental health and a psychologist specializing in gender identity issues.¹⁵ The state law is that a transgender woman is evaluated by a medical doctor and a psychologist before deciding where to house the inmate. The presumption is that placing female transgender inmates in female prisons is the safest housing policy.¹⁶ The Washington D.C. committee is a bit more comprehensive. It consists of a doctor, mental health professional, correctional supervisor, chief case supervisor, and an expert in transgender affairs.¹⁷ These states comprehensively investigate each transgender inmate on a case by case basis to determine the safest housing placement. In 2014, Rikers Island in New York opened a housing facility specifically for male-to-female transgender inmates. One important aspect of this facility is that it only houses transgender inmates who wish to be moved there.¹⁸ This unit keeps the inmates safe from the general population without subjecting them to solitary confinement, as many states tend to do.¹⁹ Even though an increasing number of Americans identify as transgender, the legal system has largely

¹⁴ *Id.* at 375.

¹⁵ *Id.*

¹⁶ *Id.* at 376.

¹⁷ *Id.*

¹⁸ *Id.* at 377.

¹⁹ *Id.*

fallen behind and often fails to recognize non-male or female gender identities.²⁰ There is currently no federal law allowing for non-binary gender designations, but a number of states have begun doing so. Some states have established non-discrimination policies, hormone treatment guidelines, and staff training requirements for transgender prisoners.²¹ The research shows that segregating the prison population strictly based on biological sex has been a disaster for the transgender population. More comprehensive approaches like the ones used in Illinois, Washington D.C., and New York, where each case is investigated on a case by case basis, have shown positive results and alleviated some of the problems in those states.

Another important legal aspect of the transgender inmate issue in the United States is the Prison Rape Elimination Act (PREA)²². PREA was enacted in 2003 to analyze the frequency of rape in prisons governed by federal, state, and local authorities in order to offer facts, resources, and recommendations to protect inmates from rape in correctional facilities.²³ PREA mandated that significant research by the Bureau of Justice Statistics and the National Institute of Justice be conducted on the topic.²⁴ The law also tasked the National Prison Rape Elimination Commission (NPREC) with developing ideas for eliminating prison rape, which were published in June 2009 and submitted to the DOJ for analysis and final approval.²⁵ The DOJ published the final PREA

²⁰ Szuminski, *supra* note 8, at 485.

²¹ Faithful, *supra* note 5, at 3.

²² 117 Stat. 972 (2003).

²³ H. Smith, Evaluating the Implementation of the Prison Rape Elimination Act (PREA): A Lessons Learned Approach, 101 Eval. and Program Planning 83, 85 (2020).

²⁴ *Id.* at 84.

²⁵ *Id.*

standards in the federal register on June 20, 2012 and they went into effect in August of 2012.²⁶ PREA was the first piece of federal legislation to address prisoner sexual violence.²⁷ The stated purposes of the act were to (1) establish a zero-tolerance standard for the incidence of rape in prisons in the United States and (2) make the prevention of prison rape a top priority in each prison system.²⁸ Since the passage of PREA, there has been significant scrutiny over the effectiveness of the act because there is little evidence that PREA has curbed transgender violence in prisons.²⁹ Although the law does not specifically enumerate transgender prisoners, it calls for procedures that would better protect them from abuse by advising case by case consideration.³⁰ The legislation consists of flexible individualized policies that do not address transgender prisoners as a class. Although these flexible policies are more effective than the current biological male/female placement system, discretionary policies are unlikely to improve conditions for prisoners whose needs remain deeply misunderstood.³¹ Nevertheless, it is still a very important piece of legislation that addresses the issue of sexual violence in prison at the federal level.

The most important legal issue associated with the transgender inmate population is the Eighth Amendment and its clause on cruel and unusual punishment. The United States is

²⁶ *Id.* at 85.

²⁷ Faithful, *supra* note 5, at 4.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 5.

³¹ *Id.*

traditionally recognized as a melting pot of cultures.³² There are many different ethnicities, races, religions, and sexual identities, but each American is guaranteed certain rights under the United States Constitution.³³ A lot of the amendments to the Constitution prohibit government actions. For example, the Eighth Amendment prohibits the government from inflicting cruel and unusual punishment.³⁴ One of the biggest concerns of transgender inmates is that they may not receive appropriate medical treatment for their condition while incarcerated.³⁵ Some prisons even go out of their way to avoid providing medical treatment to transgender inmates. Many inmates repeatedly seek medical treatment while enduring administrative harassment and court battles in the pursuit of basic medical and civil rights.³⁶ It can often truly become a matter of life and death as failure to address the medical needs of the transgender inmate population can lead to self mutilation and suicide.³⁷ It is important to note that prisons are not legally required to provide the best possible treatment, but only the “minimum standard of acceptable care that is compatible with contemporary standards of decency”.³⁸ This minimum standard makes the situation ambiguous and it is why transgender inmates run into so much trouble in regards to receiving medical care behind bars. Fortunately, the courts have weighed in extensively on the issue, with most of the decisions revolving around the Eighth Amendment.

³² Bethany L. Edmondson, Translating the Eighth Amendment Standard: The First Circuit’s Denial of a Transgender Prisoner’s Constitutional Right to Medical Treatment, 51 Ga. L. Rev. 585, 606 (2017).

³³ *Id.* at 586.

³⁴ *Id.*

³⁵ Richard Edney, To Keep Me Safe from Harm? Transgender Prisoners and the Experience of Imprisonment, 9 Deakin L. Rev. 327, 338 (2004).

³⁶ *Id.* at 335.

³⁷ Schneider, *supra* note 3, at 843.

³⁸ *Id.* at 842.

The Eighth Amendment protects everyone, including prisoners, from cruel and unusual punishment. This creates an ongoing obligation for prisons to provide medical care to those punished with incarceration.³⁹ Today, the United States Supreme Court holds that only “deliberate indifference” to a prisoner’s serious illness or injury will rise to the level of a constitutional violation.⁴⁰ It is critical to examine this standard of deliberate indifference in order to understand the legality of transgender inmates receiving medical care. This standard requires two parts to determine if an inmate’s right to medical care has been violated. First, a prisoner must have a serious medical need requiring treatment; second, the prison must know of and disregard an excessive risk to an inmate’s health or safety.⁴¹ One can argue that these standards are objective and still subject to debate, but there is clear precedent in place from the highest court that offers clarity on the issue. If a transgender inmate has a serious medical need that requires treatment and the prison knows this and disregards an excessive risk to their health or safety, it is a violation of the constitution under the Eighth Amendment. If these two standards are not met, it is not a constitutional violation.

In conclusion, it is clear that the legal issues associated with the transgender inmate population in the United States are complex and controversial. The first issue is that the prevailing method for housing placement is strictly based on genitalia. This is the simplest, most convenient method to house inmates and there are no federal laws in place to tell prisons to do otherwise. However, this puts the transgender inmate population at significant risk because they

³⁹ *Id.* at 844.

⁴⁰ *Id.*

⁴¹ *Id.* at 845.

are much more prone to be victims of sexual assault behind bars. Although there are no federal laws in place, some states have enacted comprehensive laws that analyze each inmate on a case by case basis to determine safer housing placement. PREA, enacted in 2003, is the most important piece of legislation addressing the issue of sexual violence in prison at the federal level. Its goal is to analyze the frequency of rape in prisons and offer facts, resources, and recommendations to protect inmates. The stated purpose of PREA is to (1) establish a zero-tolerance standard for the incidence of rape in prisons in the United States and (2) make the prevention of prison rape a top priority in each prison system. Although the act does not specifically mention transgender inmates, it is most important to them because they are the most vulnerable to rape in prison. The Eighth Amendment, which protects prisoners from cruel and unusual punishment, is a crucial legal aspect to the rights of transgender inmates. The Supreme Court's deliberate indifference standard is relied upon heavily. If the two parts of the deliberate indifference standard are met, there is a constitutional violation.

Legislation is a slow process. At the moment, the national attitude towards transgender rights is shifting faster than the law, but there is good reason to expect that more legislation will be passed in the near future that will alleviate many of the problems for the transgender prison population.

Chapter III: Psychology

The constant humiliation, mental abuse, and fear that transgender inmates in the United States experience on a daily basis severely affects their psychological well being. The term “transgender” is becoming more mainstream in today’s society, so it is important to fully understand what the term means. According to the American Psychological Association, transgender is broadly defined as “a person whose gender identity, gender expression, or behavior does not conform to that typically associated with the sex to which they were assigned at birth”.⁴² It can also be used as an umbrella term when sex is different from a person’s gender identity or gender expression.⁴³ Transgender people face discrimination in every facet of life. A 2011 National Transgender Discrimination survey revealed the overwhelming impact that anti-transgender bias has on the well-being of transgender people in the U.S. The study found that 63% of the transgender participants reported having suffered a serious act of discrimination, meaning an act that had a grave impact on one’s quality of life, emotional stability, and capacity to support themselves.⁴⁴ The survey also shows an overwhelming correlation between transgender persons who experienced serious acts of discrimination and transgender persons who have been incarcerated.⁴⁵ The Bureau of Justice Statistics reported that as of 2014, the rate of incarceration of transgender individuals is estimated to be three times higher than the general

⁴² Danielle Matricardi, Binary Imprisonment: Transgender Inmates Ensnared within the System and Confined to Assigned Gender, 67 Mercer L. Rev. 707, 739 (2016).

⁴³ Justin Omar Barredo, Room Assignments, Gender Identity, and Gender Expression: A Case Study on Caring for Transgender Patients, 29 MEDSURG Nursing 237, 244 (2020).

⁴⁴ Matricardi, *supra* note 42, at 712.

⁴⁵ *Id.*

population.⁴⁶ All of this threatens the psychological well being of transgender inmates. This chapter explores the psychological issues associated with transgender inmates in the United States prison system through the lens of behavioral, cognitive, and clinical psychology.

The main reason for the horrible circumstances transgender inmates experience is society's bias and preconceived notions of transgender people in general.⁴⁷ Behavioral psychology is based on the theory that all behaviors are derived from conditioning, meaning our habitual responses to our environments.⁴⁸ In a way, transgenderism goes against the theory of behaviorism. A transgender person's gender identity or behavior does not conform to that typically associated with the sex to which they were assigned at birth.⁴⁹ For the most part, the overall prison population is very masculine and aggressive. If you combine this masculinity and aggression with the preconceived notions that transgender inmates are feminine and weak, there are bound to be numerous problems.⁵⁰ Because people are conditioned to view transgender individuals as feminine and weak, they are thirteen times more likely than their non- transgender counterparts to be sexually assaulted in prison.⁵¹

Society, through conditioning, shapes social identities such as age, race, class, nationality, and gender. It is a psychological truism that organizational context matters when it comes to

⁴⁶ Tadros et al., *supra* note 2, at 497.

⁴⁷ *Id* at 498.

⁴⁸ American Psychological Association, apa.org (last visited April 26, 2022).

⁴⁹ Miller et al., *supra* note 10, at 384.

⁵⁰ Valerie Jenness, The Feminization of Transgender Women in Prisons for Men: How Prison as a Total Institution Shapes Gender, 36 J. Contemporary Crim. Just. 182, 205 (2020).

⁵¹ Miller et al., *supra* note 10, at 384.

understanding individual and collective perceptions of ourselves.⁵² The U.S. prison system can certainly be considered an institution in and of itself. Gender is an organizing principle of prison life and a key dimension of prisoners' identities and subjectiveness.⁵³ One can argue that it would be better for everyone involved if transgender women were not placed in male prisons under any circumstances in order to prevent these situations from happening. However, prisons are "one of the most sex-segregated institutions in the United States and as such they are organized around a rigid sex/gender system in a multitude of ways".⁵⁴ Prisons are gendered organizations where assumptions about masculinity, femininity, and gender differences are encoded into the practices, ideologies, and distribution of power.⁵⁵ It is clear that society as a whole holds deeply held, negative beliefs towards the transgender population and that these beliefs are exacerbated throughout the prison system. "Male prisons have an infamous history of creating and reinforcing barbarous hierarchies of economic, social, and sexual subjugation of the weak to the strong, hierarchies that affect and victimize all prisoners."⁵⁶ The community that is victimized the most by these hierarchies is the transgender community. It is important to note that these beliefs are held not only by the non-transgender prison population, but by the prison system as an entire institution. Unfortunately, it is very hard to alter these beliefs after a lifetime of conditioning. The behavioral psychology involved with transgender inmates is tough to move

⁵² Jenness, *supra* note 50, at 182.

⁵³ *Id.* at 183.

⁵⁴ *Id.* at 184.

⁵⁵ *Id.*

⁵⁶ Harrison, *supra* note 1, at 7.

away from because society has been conditioned to view the transgender population a certain way. Because of this, it is unlikely that much will change in the near future.

The mental health of transgender inmates in the United States has become a major concern. Cognitive psychology deals with the mental processes related to perception, language, attention, thinking, memory, and consciousness.⁵⁷ Psychological problems in this area include anxiety disorders, depression, personality disorders, substance abuse, and especially gender dysphoria. Many of the psychological problems that transgender inmates face are due to the policy of genitalia-based placement. Under this policy, individuals with typically female genitalia are placed in female prisons and individuals with typically male genitalia are placed in male prisons, regardless of which gender the individual identifies.⁵⁸ By housing inmates strictly based on their genitalia, the prison system is effectively denying the existence of transgender individuals. Transgender inmates are not allowed live as who they are in the U.S. prison system and it leads to serious cognitive psychological problems.

Gender dysphoria is a real medical condition that transgender individuals suffer from. The condition is recognized by the Diagnostic and Statistical Manual of Mental Disorders and the International Classification of Diseases.⁵⁹ One can be diagnosed with gender dysphoria if they experience prolonged, significant discomfort or distress from the incongruence between their assigned and expressed gender.⁶⁰ The International Classification of Diseases defines

⁵⁷ APA, *supra* note 48.

⁵⁸ Harrison, *supra* note 1, at 6.

⁵⁹ Matricardi, *supra* note 42, at 714.

⁶⁰ *Id* at 714.

gender dysphoria as “a desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one’s anatomic sex, and a wish to have surgery and hormonal treatment to make one’s body as congruent as possible with one’s preferred sex”.⁶¹ It is safe to say that although gender dysphoria is recognized by the scientific community, it is not recognized in the U.S. prison system. If it were, there would not be countless horror stories of transgender inmates self castrating themselves. The case of Adree Edmo, a 27 year old transgender inmate in Idaho, received national attention in 2015. She left a note saying, “I do not want to die, but I am a woman and women do not have these.”⁶² She then took a razor and sliced it into her right testicle. She was unsuccessful, but this was only her first attempt at self castration and she would try again multiple times. This is incredibly dangerous, but it shows the commitment of the transgender inmate community and the reality of gender dysphoria.

As mentioned before, there is an increased risk of violence and sexual assault against transgender individuals in the prison system. Because of this, it is often prudent to remove transgender inmates from the general population.⁶³ For many, this means the only option is solitary confinement. A 2015 Black and Pink National Prisoner survey suggests that 85% of transgender respondents reported having been in solitary confinement at some point in their sentence, and half reported spending two or more years there.⁶⁴ This option perhaps protects the

⁶¹ *Id.*

⁶² Rudolph, *supra* note 4, at 95.

⁶³ Tadros et al., *supra* note 2, at 499.

⁶⁴ *Id.* at 500.

transgender inmates from physical harm, but exposes them to more psychological harm. The psychological impact on transgender inmates due to lack of social interaction is a huge concern. “Psychologically being separated from human contact, and in this case long term unnecessary confinement, is proven to be highly detrimental to mental health.”⁶⁵ The National Center for Transgender Equality claims that placing transgender inmates in solitary confinement is effectively punishing them for being potential victims.⁶⁶ Solitary confinement causes a wide range of cognitive psychological symptoms such as anger, hatred, bitterness, boredom, stress, loss of sense of reality, suicidal thoughts, trouble sleeping, impaired concentration, confusion, depression, and hallucinations.⁶⁷ In a report, Amnesty International analyzed how solitary confinement is cruel and unusual punishment that should only be imposed as a last resort and for the shortest period possible.⁶⁸ “In general, solitary confinement is extremely comparable to torture, but to be subjected to these conditions only because an individual is vulnerable is unacceptable and perpetuates the victimization of transgender women in prisons.”⁶⁹ Solitary confinement should only be used in the most extreme cases, but unfortunately, it is common practice within the U.S. prison system to deal with transgender inmates. There is no regard for the severe psychological impact of these policies.

It is evident that something needs to be done in order to improve the psychological health of transgender inmates. Clinical psychology is the branch of psychology focused on the

⁶⁵ *Id.*

⁶⁶ Harrison, *supra* note 1, at 7.

⁶⁷ *Id.* at 8.

⁶⁸ *Id.*

⁶⁹ *Id.*

assessment and treatment of mental illness and disability.⁷⁰ Over the past 20 years, research has been increasing on the etiological aspect of transgenderism, but not enough focus has been directed towards the policy standards for the transgender population in the prison system.⁷¹ However, it is in this area that transgender inmates can hope to see the most improvement as the issue of transgender rights becomes more mainstream. To understand the clinical psychology of the transgender prison population, a full assessment needs to be conducted. The results of a survey done by the International Journal of Behavioral Consultation and Therapy show that transgender inmates suffer from a lack of psychological treatment and a consistent acknowledgment of discomfort with the lack of understanding about transgender specific issues.⁷² Fortunately, the survey also shows that inmates are reporting more openness by prison officials to providing special services to transgender inmates who require special attention.⁷³ This is a promising sign that the prison system is beginning to acknowledge the problem and become more open to providing solutions. Solutions focused on understanding and acceptance of transgenderism will help dissuade the negative preconceived notions that cause so many of the issues in the first place. All states should also adopt a standardized national level protocol for dealing with transgender inmates. Such protocols would allow states to share and develop new methods and procedures to address the problem.⁷⁴

⁷⁰ APA, *supra* note 48.

⁷¹ Kara Sandor von Dresner et al., Providing Counseling for Transgendered Inmates: A Survey of Correctional Services, 7 Int'l J. Behavioral Consultation and Therapy 38, 44 (2013).

⁷² *Id.* at 42.

⁷³ *Id.*

⁷⁴ *Id.*

The World Professional Association for Transgender Health (WPATH) published the Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People in 2011.⁷⁵ WPATH's standards of care are now universally recognized as the medically accepted guidelines for treatment of gender dysphoria. The WPATH standards include psychotherapy and surgical intervention as ways of helping those who identify as transgender in the prison system.⁷⁶ It is important to note that these standards of care apply to all transgender individuals, incarcerated or not. "Transgender inmates must be afforded the same or substantially similar medical treatment available to them prior to incarceration."⁷⁷ Because the transgender prison population experiences constant victimization, abuse, dehumanization, and increased suicide risk, it is also important that trauma and self worth be incorporated into any therapeutic approaches.⁷⁸ Psychological interventions for post traumatic stress related events have shown to be extremely beneficial when implemented in the prison systems themselves.⁷⁹ There is still a long way to go in assessing and treating the psychological needs of transgender inmates, but the research shows that steps are being taken to improve the situation. Hopefully, this will continue to be the case.

Prison life is hard enough without having to deal with the psychological impact of being transgender behind bars. The U.S. prison system clearly does not do enough to address the challenges and needs of the transgender inmate population. This is a population that continues to

⁷⁵ Matricardi, *supra* note 42, at 716.

⁷⁶ Miller et al., *supra* note 10, at 385.

⁷⁷ Matricardi, *supra* note 42, at 717.

⁷⁸ Tadros et al., *supra* note 2, at 501.

⁷⁹ *Id.* at 502.

grow and steps need to be taken to prevent further psychological harm. A large part of the problem involves behavioral psychology. Society has been conditioned to view the transgender population as weak, and this conditioning is only exacerbated inside the prison system. This leads to numerous cognitive psychological issues for the transgender inmate population like anxiety, depression, suicide, and gender dysphoria. The current prison system's policy for "protecting" the transgender population is to place them in solitary confinement. However, this has been proven to lead to even more psychological problems. Fortunately, strides are being made in the area of clinical psychology in order to protect transgender inmates. The most important improvements that can be made are those dealing with acceptance and understanding of transgenderism as a whole. Transgenders behind bars are perhaps the most vulnerable population of any in the country, and therefore, should be protected.

Chapter IV: Common Ground and Integration

After identifying and discussing both the legal and psychological perspectives that are necessary to understand the problems of transgender prisoners in the United States, it is now possible to explore common ground and conflict between the disciplines. This will allow for integration between the disciplines to achieve a more comprehensive understanding of the issue. This chapter will analyze the common ground found between both disciplines as well as the main conflicts in order to better answer the research question of whether or not prisons in the United States can provide medical care, housing, and other basic services to transgender inmates without undermining prison security or getting sued.

The area with the most common ground between disciplines is the medical treatment of transgender inmates. Scholars from both disciplines widely agree that the rights of transgender inmates in regards to receiving medical treatment are being threatened. This is a complex issue that requires both legal and psychological perspectives to fully grasp the problem. From the legal perspective, it is clear that the Eighth Amendment of the Constitution protects all citizens, including prisoners, from cruel and unusual punishment. From the psychological perspective, this is also true and the Eighth Amendment serves as a tool to protect the mental well being of the inmates. The Supreme Court's long held standard of deliberate indifference is a guiding principle for scholars in both disciplines. The standard is that a prisoner must have a serious medical need requiring treatment and that the prison must know of and disregard an excessive risk to an inmate's health or safety. The psychology community strongly believes that gender dysphoria is a serious medical condition that requires treatment. The legal community is also

trending towards considering gender dysphoria and other needs of transgender inmates as serious medical conditions. *Kothmann v. Rosario*⁸⁰ is a case that exemplifies the legal perspective. In the case, the Eleventh Circuit denied a motion to dismiss brought by the Chief Health Officer of the Florida Department of Corrections.⁸¹ Transgender inmate Sebastian Kothmann was denied hormone therapy and sued. The court found that the prison knew the inmate suffered from gender dysphoria and was seeking hormone therapy to treat the condition. The fact that in the medical community, hormone therapy is the medically recognized, accepted, and appropriate treatment for gender dysphoria was enough to meet the subjective test of the Eighth Amendment.⁸² Decisions like this show that the disciplines of law and psychology are aligned in this area. There is common ground between the disciplines that the medical treatment of transgender inmates is necessary both legally and psychologically. The research showed some instances where officials were concerned about using taxpayer money to pay for what they deemed unnecessary medical procedures. As long as the deliberate indifference standard is held, these arguments have no merit. If a prisoner has a serious medical need requiring treatment and the prison knows and disregards an excessive risk to an inmate's health or safety, it is a violation of the Constitution under the Eighth Amendment. It is rather straight forward and both disciplines have been able to find common ground around this standard.

The area with the most conflict is the housing placement of transgender inmates. In this area, the two disciplines are far apart. From the legal perspective, there are no federal laws that

⁸⁰ 558 F. App'x 907 (11th Cir. 2014)

⁸¹ Lizzie Bright, Now You See Me: Problems and Strategies for Introducing Gender Self-Determination into the Eighth Amendment for Gender Nonconforming Prisoners, 108 J. Crim. L. & Criminology, 137, 170 (2018).

⁸² *Id.* at 154.

designate any other gender besides male and female. Many prisons simply use the most convenient policy of segregating the prison population by biological sex and it is their right to do so. From the legal perspective, it is very much up to the states themselves to decide the housing policy. Housing based on genitalia is still the most used policy in the country. On the other hand, the psychological perspective is that this policy leads to numerous problems. Psychology scholars point out that this policy can be the direct cause of severe mental disorders and even death. Also important to this discussion is the science behind transgenderism. In terms of the law, male and female is simply defined as being a member of that biological sex. The psychological definition of gender is more complicated and includes a variety of factors. The disagreement between what the term “gender” even means is another reason there is so much conflict in this area. In the area of housing placement, the insights of the two disciplines are very different. In a way, the legal perspective views the issue as it is while the psychology perspective views the issue as it ought to be.

Integrating the insights from both disciplines helps create a more accurate assessment about the issue in terms of identifying the problem and providing solutions. Firstly, it allows the realization that there is in fact a problem. Ultimately, it is the opinion of scholars from both disciplines that the status quo is not sustainable. The laws regarding the rights of transgender inmates need to change and the psychological impact needs to continue to be studied to come up with effective solutions. Both disciplines are in strong agreement that this population is growing rapidly and the issue will become increasingly more relevant in society.

Chapter V: Conclusion

Analyzing the issues of transgender inmates in the United States using an interdisciplinary approach was helpful in order to gain a more comprehensive understanding of the issue. The transgender prison population definitely creates unique challenges for the prison system in the disciplines of law and psychology. Overall, the research has clearly shown that the problems facing the transgender prison population are immense and are not going to be solved quickly. It will take more effort and research such as this to bring about any meaningful change. Finding common ground and recognizing conflicts between different disciplines is a very effective way to bring clarity to a complicated issue. Integrating the two disciplines has shown that in order for prisons in the United States to provide medical care, housing, and other basic services to the transgender population without undermining security, changes need to be made, specifically within the law, and alternative solutions need to be examined further.

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