

Article

Bodies in Confinement: Negotiating Queer, Gender Nonconforming, and Transwomen's Gender and Sexuality behind Bars

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Abstract: The criminal punishment system plays a critical role in the production of race, gender, and sexuality in the United States. The regulation of marginalized women's bodies—transwomen, butches, and lesbians—in confinement reproduces cis-heteronormativity. Echoing the paternalistic claims of protection that have inspired “bathroom bills,” gender-segregated prison facilities have notoriously condemned transwomen prisoners to men's prisons for the “safety” of women's prisons, constructing cisgender women as “at risk” of sexual assault and transgender women as “risky”, overlooking the reality of transwomen as the *most* at risk of experiencing sexual violence in prisons. Prisons use legal and medical constructions of gender that pathologize transgender identity in order to legitimize health concerns; for example, the mutilation of the body in an effort to remove unwanted genitalia as evidence to warrant a diagnosis of gender identity disorder, or later gender dysphoria. This construction of transgender identity as a medical condition that warrants treatment forces prisoners to pathologize their gender identity in order to access adequate gender-affirming care. By exploring the writings of queer and trans prisoners, we can glean how heteronormativity structures gender and sexuality behind bars and discover how trans prisoners work to assemble knowledge, support, and resources toward survival.



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1. Introduction

This article considers the conditions under which queer, gender nonconforming, and transwomen's bodies exist in carceral spaces and asks how heteronormative constructions of gender inform the policing of those bodies. By looking at prisoner communications, this article also seeks to understand the complex ways that trans prisoners navigate the oppressive landscape of prison, healthcare, and the legal system. Prisons use legal and medical constructions of gender that pathologize transgender identity in order to legitimize health concerns; for example, the mutilation of the body in an effort to remove unwanted genitalia as evidence to warrant a diagnosis of gender identity disorder, or later gender dysphoria. This construction of transgender identity as a medical condition that warrants treatment forces prisoners to pathologize their gender identity in order to access adequate gender-affirming care. The state becomes the arbiter of legitimizing transgender identity informed by legal and medical constructions of gender that are maintained by a rigidly conceived gender binary.

This article utilizes materials from an organization named *Black and Pink* to uncover the ways that medical treatment in prisons, sexual and gender violence in prisons, and the policies of prisons themselves inform transgender prisoners' experiences of gender and sexuality. *Black and Pink* advocates for, and builds community with, queer people inside and outside of prisons, primarily through fostering pen pal relationships between prisoners and “free world” people and publishing a monthly newspaper. The organization was founded by Jason Lydon in 2005, two years after his release from federal prison.

According to *Black and Pink*,

When a prisoner receives mail, both the prison guards and other prisoners know that the person receiving mail has some sort of support system on the outside. For marginalized prisoners, especially, this display of support can function as a harm reduction tactic since those connected to people on the outside are less likely to be victimized. ([Black and Pink n.d.](#), p. 1)

This was part of the reason the group launched the *Black and Pink* newspaper in 2007.

The newspaper is a free publication with a rapidly growing distribution of more than 20,000 prisoners (as of November 2020). Each issue contains submissions from incarcerated members, along with relevant news, history, and opinions from the free world and contributions from Black and Pink organizers. However, the newspaper is more than just the content and paper on which it is printed; it is also a means of survival. Lydon explains, “figuring out more ways that people can utilize survival mechanisms . . . is part of what Black and Pink always tried to do with the newspaper . . . part of the framing of it was, we just need to get things to people so that other people hear their names calls at mail call . . . so that we can hopefully reduce some amount of harm that way”.

Over the years, the newspaper has become a way for incarcerated people to communicate and share information with one another. Prisoners are explicitly prohibited from writing directly to one another, except in very few instances involving immediate family at different institutions when discussing legal matters. Other than that, prisoners cannot write to another prisoners, intentional prohibitions meant to undermine prisoners’ rebellions and the challenges they pose to state dominance. Black and Pink were receiving far more requests for pen pals from prisoners than the number of outside folks signing up to write to them; therefore, the idea of starting a newspaper emerged. It offered a way to foster connection *between* queer and trans prisoners, often isolated from any queer community or support within their given institution, without having them write directly to one another.

Studies of prison populations can have barriers for researchers; therefore, many studies on transwomen’s experiences in prisons are captured by interviewing formerly incarcerated transwomen ([McCauley et al. 2018](#)). Additionally, the vast majority of the literature concludes with suggestions and recommendations for prison staff, policy development, and training ([White Hughto et al. 2018](#); [Sevelius and Jenness 2017](#); [McCauley et al. 2018](#)). The literature so rarely engages with the work that transwomen prisoners are doing to empower themselves and one another to continue to exist as gendered beings in the oppressive prison system. This study hopes to address this gap in the literature by engaging directly with archives of trans experience in carceral settings.

2. Queer and Transwomen Prisoners in the Literature

Prisons are institutions built on and perpetuating a rigid understanding of gender and the gender binary. Early women’s penitentiaries were designed to reform women through strict regulation of deviant sexualities and gender expressions, fortifying the conduct and activities that were deemed appropriate for women. Women’s prisons are historically grounded in assumptions that criminal women could be rehabilitated by becoming experts in domesticity, obeying what was considered to be “correct womanly behaviors” ([Davis 2003](#), p. 64). Hostility to gender-nonconforming people may manifest in less perceptible ways, through the normalization of gender roles instituted through sex segregated facilities. Race affects gendered carceral experiences; from welfare to child protective services to Medicare, poor women of color are subject to intrusion and monitoring from the state at exacerbated levels, which make them more susceptible to arrest, prosecution, conviction, and incarceration ([Davis 2003](#); [Richie 2012](#)). People in women’s prisons are over five times more likely to be sexually victimized by prison staff than those housed at male prisons ([Mogul et al. 2011](#)).

Although the body of literature regarding the experiences of queer, gender-nonconforming, and trans prisoners is slowly growing, the biggest push for understanding their plight has come from advocacy organizations, collecting stories and producing reports as a first

step to understanding the treatment that gender and sexual minorities face behind bars (Sylvia Rivera Law Project 2007; Grant et al. 2011; Emmer et al. 2011; Lydon et al. 2015; National Center for Transgender Equality 2018).

Available research regarding the treatment of transgender prisoners in the United States presents common themes such as abuse and maltreatment, sexual violence, (in)accessibility to medical and mental healthcare, solitary confinement (framed as protection or punishment), and demands for recognition of transgender identity (either through being placed in facilities that prisoners see as more appropriate according to their gender or having access to accommodations that align with how they understand their gender).

Emerging frameworks for understanding trans prisoner experiences focus on legal frameworks, policy analysis, the medicalization of gender, and public health issues (Brown and McDuffie 2009; Simopoulos and Khin 2014; Routh et al. 2017; Ruff 2018; Brömdal et al. 2019; Ledesma and Ford 2020). Research on the legal framework of transgender prisoner rights have looked at statutes and caselaw in the United States, finding that an increasing number of states are providing either statutory or policy guidelines for trans prisoners, although a number of states still lag behind and have no such guidance for medical issues relating to being transgender (Simopoulos and Khin 2014; Routh et al. 2017). Ruff (2018) takes a legal approach, arguing that in order to protect trans people from discrimination and abuse, courts should move away from the medical model of gender and toward a “self-definition model of gender,” which is defined as a model where “individuals are permitted to construct gender on their own terms, free from the arbitrary, outmoded constraints of the medical establishment . . . [where] autonomous control over one’s own gender identity is considered fundamental, and difference and variability are accepted without judgment” (Ruff 2018, p. 136). It is rare for prisoner litigation to succeed due to laws such as the Prison Litigation Reform Act (PLRA) that make it difficult for prisoners to file federal lawsuits (Ledesma and Ford 2020). Instead of framing their study on legal grounds, Ledesma and Ford present the treatment of carceral housing assignment for transgender women as a public health issue.

Much of the literature that exists about transgender prisoners looks at housing and issues of safety (Ledesma and Ford 2020). Transwomen are often held in men’s facilities. The overwhelming majority of prisons in the United States ascribe gender to genitalia (Ledesma and Ford 2020). Similar to the fearmongering that undergirds anti-trans bathroom bills, transwomen prisoners are seen as imposters, as men who will say they are women in order to fraudulently gain access to women’s spaces in prison, putting ciswomen, *real women*, at risk of sexual violence. The National Center for Transgender Equality (2018) dispels the mythology of transwomen, specifically transwomen’s *bodies*, as a danger to ciswomen in prison.

Does a woman with “male” genitalia pose a safety risk in a women’s facility? No. While a transgender woman might have genitalia that appears similar to a cisgender (nontransgender) man’s, this does not mean she presents the same risks that a cisgender male prisoner might. There are many reasons for this difference. What is most important to understand is that a transgender woman’s core psychological identity is as a woman. Typically transgender women are uncomfortable with the genitalia they were born with, and are not interested in talking about or having their bodies viewed by others. They may have a strong desire and a medical need for reconstructive surgery, but have been unable to obtain it. Prolonged hormone therapy can also eliminate both erectile function and fertility, though this should not be a prerequisite for housing placement. While any prisoner is capable of engaging in abusive conduct, there is simply no evidence to believe that transgender women present any more risk to their fellow women prisoners than other women. (National Center for Transgender Equality 2018, p. 20)

Sex segregation in prison facilities is purported to exist *for* the safety of ciswomen in particular. Paradoxically, factoring in these safety concerns for ciswomen produces *more*

vulnerability for transwomen. Prisoners in women's facilities are not free from sexual violence. Furthermore, transwomen in men's facilities are the most vulnerable to sexual exploitation and violence.

Sexual violence is a prevalent theme in the literature, often used as a means of enforcing conformity to gender roles for prisoners. A California study found that 67% of respondents who identified as LGBT that were housed in male prisons experienced sexual assault by other prisoners, a rate 15 times higher than the rest of the prison population (Mogul et al. 2011, pp. 99–100). The failure to acknowledge how the specter of rape has been weaponized against transgender communities leads to political understandings of transwomen as potential rapists, rather than understanding transwomen as at risk of rape, which more accurately reflects the lived reality of transgender prisoners, who are raped at *higher rates* than any other demographic (Beck 2014; National Center for Transgender Equality 2018). One study revealed the centrality of relationships to transgender women's experiences of victimization in prisons (Jenness et al. 2019), highlighting consensual relationship with male prisoners as a factor that is consistently and powerfully indicative of vulnerability to sexual victimization poignantly relating that the workings of gender in a total institution "privileges heteronormativity at the expense of the safety of transgender women in prisons for men" (Jenness et al. 2019, p. 603).

Another theme in the literature is the (in)accessibility to quality gender-affirming healthcare for transgender prisoners. Stigma and discrimination are fundamental causes of health disparities experienced by transgender people. Research looking at healthcare of transgender people in non-carceral settings finds that "due to the social stigma against transgender people, their care is excluded from medical training" (Poteat et al. 2013, p. 22). Training for medical personnel in prisons can be even more stymied. Prison doctors often operate outside their specialized fields, acting as general doctors without the proper training. Additionally, prisons are desperate to fill medical positions, therefore having a record of misconduct does not forestall a problematic doctor from being hired. In Louisiana, nearly two-thirds of the prison doctors in the state has a record of misconduct or discipline from the medical board (Eldridge 2019).

Some studies have sought to evaluate interventions meant to better the treatment of trans prisoners; however, efficacy of those interventions is measured through self-reporting from prison medical staff, rather than feedback on experiences from trans prisoners (White Hughto et al. 2018). Brömdal et al. (2019) recommends a "whole-incarceration-setting approach"—which transgresses solely "safety and security" by focusing on the responsibilities of every member of the carceral setting (prison staff and other prisoners) in ensuring the wellbeing of transgender prisoners across global contexts (Brömdal et al. 2019, p. 341). Others recommend policy changes in the areas of housing placement and training for prison staff (McCauley et al. 2018).

Many advocates present housing policy reforms as a potential solution to gender and sexual violence experienced by transwomen in prison (Stroumsa 2014; Ledesma and Ford 2020). Some states have recently passed laws that give transgender, intersex, and nonbinary prisoners the right to choose whether to be housed in a men's or women's facility. Within months of passing, the State of California received 261 requests for transfers, almost all being requests to transfer to a women's facility. However, transfers alone will not solve the abuse, neglect, and danger that transwomen face behind bars. Already, prison staff at a women's facility have warned prisoners that "men are coming" and to expect sexual violence (Miller 2021). Lest we not forget that women's prisons are structured on the same gender binary that undergirds men's prisons where sexual violence is used as a tool of domination and control.

Carmen T. Guerrero was a transwoman incarcerated in Kern Valley State Prison, a men's facility in California. A new prisoner, Miguel Crespo, was assigned to be her cellmate. Crespo told prison staff that he would kill Guerrero if they were housed in the same cell. Crespo had previously attacked a gay prisoner; thus, it was a credible threat to Guerrero's life. The prison put them in the same cell anyway. Guerrero was killed within 9 hours of

the cell assignment. During the trial for Guerrero's murder, Crespo said he should not have ever been housed with Guerrero (Leitsinger 2020).

Most studies interrogate prison experiences through legal, medical, and public policy lenses. There are a dearth of studies that seek to understand the process of gendering itself that transgender people experience in the context of prisons. One such study finds that transwomen in prison perceive themselves to be more feminine in prison than prior to coming to prison, despite prison policies and attitudes that serve to deliberately defeminize transwomen in the context of prison. In discussing her incarceration, trans prison advocate Ashley Diamond points out that she was told over and over again that Georgia prison was going to "make a man out of me" (Daniel n.d.).

3. Theoretical Foundation and Methodology

Studies of sexuality and gender in the carceral state suggest that an intersectional approach is valuable both from a standpoint of academic analysis and in the context of creating meaningful social change. Intersectionality allows for a nuanced and holistic consideration of multifaceted identities. Intersectional theory asserts an interlocking and interdependent relationship between white supremacy, capitalism, patriarchy, heteronormativity, and all other oppressive systems. These systems of domination are not simply alike in their oppression and marginalization of peoples; rather, they depend on and mutually reinforce one another. The Combahee River Collective (1977) articulated that "major systems of oppression are interlocking. The *synthesis* of these oppressions creates the conditions of our lives" (emphasis mine, p. 292).

The conceptual roots of intersectionality can be traced to early Black feminism, although the terminology that describes systems of oppression as "interlocking" is attributed to critical race theorist and legal scholar Kimberlé Crenshaw. Crenshaw (1993) describes intersectionality as "a transitional concept that links current concepts with their political consequences, and real-world politics with postmodern insights. It can be replaced as our understanding of each category becomes more multidimensional" (Crenshaw 1993, p. 114). Our current understandings of gender and carcerality require an intersectional approach, to understand that queer and trans prisoners have experiences of cis-sexism that are "qualitatively different" from the experiences of their cisgender peers (Crenshaw 1991, p. 1245).

Intersectionality theory offers a critical perspective toward understanding how multiple social identities intersect at a micro level in individuals' lives and at a macro level of society to produce and enact systems of privilege and oppression. Furthermore, intersectionality offers a methodology to examine systems of social stratification, optimally serving as a mechanism for positive social change. As Crenshaw (1991) states, "through an awareness of intersectionality, we can better acknowledge and ground the differences among us and negotiate how these differences will find expression in constructing group politics" (Crenshaw 1991, p. 1299).

I employ intersectional theory as a framework for understanding the compounding risks and violence that describe many of the experiences of transgender prisoners. Along with race, gender, and sexuality, I conceptualize carceral status as an axis of identity, the intersections of which produce unique experiences of discrimination for queer and transwomen prisoners. Being confined through state punishment contributes to the violence of all prisoners; however, the risks that transgender prisoners experience behind bars are particularly situated in cisnormativity produced through prison policies.

People experience discrimination differently based on their overlapping marginalized identities. Studying the intersections of gender, sexuality, and carcerality makes an important contribution to the literature on both gender/sexuality and carceral studies. Additionally, intersectional approaches to understanding social problems center the embodied knowledge of people who experience and resist multiple intersecting forms of oppression. It is from the experiences of transgender prisoners and through the knowledge produced

by transgender prisoners fighting for their own liberation that we can understand more about how processes of oppression work and how to resist them.

Studies of prison populations can have barriers for researchers (Waldram 2009; McCauley et al. 2018; Brömdal et al. 2019). The materials utilized in this study come from published writings of queer and trans people at the time of incarceration. Thus, these materials become particularly illuminating because they contain the stories and strategies that queer, trans, and nonbinary prisoners are sharing within their own incarcerated LGBTQ communities, not with researchers. The *Black and Pink* archives make evident the ways that medical treatment in prisons, sexual and gender violence in prisons, and the policies of prisons themselves, inform transgender prisoners' experiences of gender.

The primary data sources of this study came from the archives of the *Black and Pink* newspaper publication. Using a grounded theory approach (Strauss and Corbin 2015), I read and took notes on *Black and Pink* publications between 2010 and 2018. Grounded theory does not approach data in the form of hypothesis testing; rather, it allows the researcher to address patterns as they emerge, inductively building theory through qualitative interpretive analysis of materials. I took thorough notes as I reviewed issues of the newspaper, paying special attention to the published writing of prisoners themselves. I conducted supplemental research for recurrent narratives, such as particular legal battles that were discussed between incarcerated writers.

4. Queer and Transwomen's Bodies behind Bars

Prisons regulate the bodies of all prisoners, but in particular ways they regulate and (re)construct the bodies of queer and trans prisoners so as to produce more properly gendered subjects. It is not only that prisons are gender-segregated facilities, but also that prisons impose heteropatriarchal order onto the prisoners. Regulations on haircuts and hairstyles limit the expression of gender nonconforming and transgender prisoners. Angel, a butch lesbian housed in a Texas women's prison, wrote to *Black and Pink*,

to be the voice for us butches . . . that have it real hard . . . [Texas Department of Corrections and Justice (TDCJ)] don't allow us to be comfortable with ourselves . . . One big discrimination that us Butches do face is that we are being forced to let our hair grow out long . . . making comments like, 'you are a female, so you will grow your hair like one', or 'you are not a man, you're supposed to let your hair grow out. (*Black and Pink* 2013, October, p. 4)

Angel calls these rules humiliating, "trying to make us be someone we are not comfortable being . . . this is a major problem in here and we are tired of it. It is discrimination of gender identity . . . to try to make me change my gender presentation, which is related to my sexuality, Gay-Butch lesbian. It is not TDCJ policy to try to convert me to a hetero-female stereotype, long hair and all" (*Black and Pink* 2013, October, p. 4). Angel aptly identified the prison's policy to coerce them into growing their hair long as both a function of gender and sexual conformity. To be properly woman to the prison is to be both feminine and heterosexual. Angel's sexuality of "Gay-Butch lesbian" is informed by and relies on gender presentation as much as it does sexual attraction and orientation. For the prison to prohibit certain hairstyles that provide comfort to queer and gender nonconforming prisoners is to demean those prisoners into submission.

Three months later, Danielle, a transwoman incarcerated in a men's facility in Texas, responded to Angel's letter and shared her brutal and humiliating experience when the prison violently forced the shaving of her head.

I have been fighting with Texas officials since 1999 over the 'Grooming Policy' which requires men to keep their hair cut short but allows women to grow theirs long . . . Who else knows what it's like, to have your hair cut completely off against your will . . . I will forever carry a scar on my face from being slammed into a concrete floor by a correctional officer for refusing to cut my hair. The silence I hear from society doing anything about this tells me this doesn't matter

because I'm transgendered and therefore unimportant . . . [One warden] had all my hair cut off while I was restrained, then paraded me across the facility in front of hundreds of laughing inmates while I was still covered in the hair he'd just had shaved off. (*Black and Pink* 2014, January, p. 4)

Limited exceptions have been made to the grooming guidelines; for example, some people in men's prisons can keep their hair long for religious purposes (*Schneider* 2004).

Transwomen prisoners' bodies are objectified by prison staff in efforts to degrade and exert power over the prisoner. Jada, a transwoman incarcerated in a men's prison in California, is the only MTF transgender prisoner in the "protective custody" yard in which she is housed. In prison, Jada has been forced to perform oral sex—"raped orally"—on prison staff, fondled by prison staff, ridiculed and harassed, while prison staff have incited other prisoners witnessing the maltreatment to condone it in some way. The same guard that orally raped Jada pinched Jada's nipple in front of another prisoner, gloating, "I can do this, 'cause I'm a guard'" (*Black and Pink* 2015, November, p. 3).

5. Production of Trans Knowledge on the Inside

Black and Pink routinely updated its readers with developments in legal battles involving transgender prisoners, informing readers about incarcerated transwomen such as Ophelia De'lonta, Michelle Kosilek, Michelle Norsworthy, and Shiloh Quine, housed in men's prison facilities located in Massachusetts, Virginia, and California. All four women had a history of suicide attempts and self-harm while incarcerated, which they each attributed to not receiving the proper treatment for gender identity disorder¹ (GID) by their respective institutions.

Ophelia De'lonta's legal fight for healthcare started in 1999, when she petitioned the court for access to hormone treatment. After being dismissed by a federal judge, De'lonta filed again. In 2004, she was granted access to hormone therapy and allowed to "dress as a woman in the men's prison" (*Gremore* 2013). De'lonta continued to suffer from urges to remove her genitals, and attempted to self-castrate several times over the years.

After a failed attempt at self-castration in 2010, De'lonta filed a federal lawsuit claiming that Virginia had failed to provide her with adequate medical care for GID (*Potter* 2011). The case was initially dismissed, but an appeals court ruled that the claim should be heard and returned the case to the lower court. In 2013, Judge James C. Turk ruled that prison officials must provide De'lonta an examination by a gender specialist, albeit De'lonta had to pay for the evaluation by the specialist herself. The examination would determine whether sex reassignment surgery (SRS)² was medically necessary to treat GID.

In February 2014, *Black and Pink* shared news of De'lonta's recent parole. De'lonta believed her parole was granted to sidestep her pending lawsuit against the state. After release, De'lonta went to live with her niece in Maryland. In an interview after her release, De'lonta reflected on the three decades she spent in prison, "it was a nightmare, I had long hair, soft skin and a female body, minus the breasts". De'lonta experienced frequent sexual abuse, raped so often that she "lost track after the tenth time" (*Spies* 2015). De'lonta was the only transgender prisoner in the eight different prisons in which she lived. She says without friends, there is no one to aid in protection against attacks, "all you can do is fight back. I stabbed four people" (*Spies* 2015). Soon after she was released on parole,

¹ I refer to the conditions, experiences, and diagnoses by the names that prisoners give them. At the times of their writing, prisoners were commonly using Gender Identity Disorder (GID) to describe their experiences and treatments, because that was the recognized diagnosis of the Diagnostic and Statistical Manual of Mental Disorders prior to 2013 (DSM-V). GID was altered when the American Psychiatric Association published a revised version of DSM-V in 2013. GID was replaced with "gender dysphoria" which is characterized as follows: "Individuals with gender dysphoria have a marked incongruence between the gender they have been assigned to (usually at birth, referred to as *natal gender*) and their experienced/expressed gender . . . there must also be evidence of distress about this incongruence". (*American Psychiatric Association* 2013, p. 453). Updates to medical and psychiatric diagnoses are slow to enter into cultural discourse; however, they are even slower to enter prison discourse. Having significant limitations to access updated information and research tools, it is reasonable that the language of GID may endure in prisons and among transgender prisoners long after it has evaporated from the discourse of transgender people or activists in the free world.

² Again, here I use the language that prisoners themselves used in their advocacy for trans healthcare in prisons. Among trans activists and scholars, SRS is more commonly referred to as gender affirmation or gender confirmation surgery.

she received the first phase of the sex reassignment surgery process she fought so hard for while incarcerated. De'lonta said, "I feel free . . . really free" (Spies 2015).

Michelle Kosilek waged a decades-long legal battle for gender-affirming healthcare treatment that began in 1992. In 2000, Kosilek sued the Massachusetts Department of Corrections (MDOC) for violating her Eighth Amendment rights, stating that denial of SRS constituted cruel and unusual punishment. Kosilek's case was unusual in that it argued for the MDOC to oblige the prison doctor's assessment and recommendation that surgery was the only adequate treatment for Kosilek's diagnosed condition of GID. What was unusual, says attorney Moira Cooper (2014), was that the prisoner seeking the injunction was not refused the sought-after treatment from prison doctors. In fact, multiple doctors, including those hired by the DOC, recommended SRS for Kosilek. The prescribed treatment was instead denied by prison administration. In 2006, MDOC Commissioner Kathleen Dennehey testified that although she agreed with the doctor's plan for treatment, she determined it would create a security risk for the (male) prison facility and thus denied the acquisition of surgery for Kosilek (Wykoff 2014, p. 153).

In September 2012, *Black and Pink* dedicated an entire page to republishing an article by Denise Lavoie announcing *Judge Rules Michelle Kosilek Deserves Surgery* (*Black and Pink* 2012, September, p. 7). Kosilek's case represented a landmark win for transgender prisoners seeking gender-affirming surgery. The district court judge in the case was Mark L. Wolf. Wolf had been ruling on Kosilek's various litigation since the early 2000s. In 2002, Wolf ruled that Kosilek was entitled to treatment for GID—including hormone therapy, laser hair removal, and psychotherapy. Kosilek sued the MDOC again in 2005, claiming that the treatments were not enough.

On 22 September 2012, the Human Rights Campaign (HRC) had a fundraising gala in Boston featuring then senate candidate Elizabeth Warren. As a show of solidarity with Kosilek, *Black and Pink* organized a protest at the HRC gala event in response to Warren's statement regarding Kosilek's surgery: "I don't think it's a good use of taxpayer dollars" (*Black and Pink* 2012, October, p. 7). Fifteen protesters held signs and chanted "Trans Prisons are Under Attack! Elizabeth Warren Turned Her Back!" (see Figure 1). In a statement issued on their website and reprinted in the October 2012 issue of the newspaper, *Black and Pink* celebrated Kosilek's victory in court as a victory for human rights.



Figure 1. Information regarding protest against the HRC fundraiser featuring Elizabeth Warren (*Black and Pink* 2012, October, p. 7).

Kosilek wrote to *Black and Pink* in late 2012 to thank them for their support and celebration of her milestone win in court, stating "transprisoners are often so isolated and insulated from our community that we may as well be on another planet" (*Black and Pink* 2013, February/March, p. 4). Kosilek offered readers a counter narrative to the "killer" and "murderer" she was labeled in the media:

To any who may have been manipulated into seeing me as less than human, or unworthy of being a member of our family because of the crime I was convicted of, I stand

by my truths; I was seduced out of a residential drug treatment center by my therapist, who later tried to kill me with a butcher knife after throwing boiling water on me. I killed her in self-defense (*Black and Pink* 2013, January/February, p. 4).

Black and Pink's newspaper offers an invaluable venue for prisoners to share their stories on their own terms, to resist the transmisogynist stigma of prison communications and media coverage.

In 2014, a divided federal appeals court overturned Judge Wolf's decision that Kosilek was entitled to SRS as treatment for GID. Kosilek appealed the ruling, but in 2015 the appeal was rejected by the U.S. Supreme Court, ending the decades-long legal battle Kosilek fought to obtain sex reassignment surgery to treat the GID she experienced.

The state of California was embroiled in similar lawsuits by transgender prisoners. Michelle Norsworthy, a transgender woman, spent over three decades in men's prisons in California. At 30 years old, after over a decade inside, Norsworthy was introduced to language that deeply resonated with how she felt. A psychiatrist introduced her to trans-sexualism as language and concept. Norsworthy recounts, "I'd never heard it before . . . I looked it up in a dictionary back in my cell and it clicked—a person who strongly identifies with the opposite sex . . . It gave me a language. Every opportunity I had to say the word I would, it made me feel so much better" (*Pilkington* 2015). For six years following the discovery of trans-sexualism, Norsworthy battled with the California Department of Corrections and Rehabilitation (CDCR) for access to hormone treatment. Eventually, she won that battle. After being diagnosed with GID in 1999, Norsworthy was prescribed hormones the following year. As with De'lonta, Norsworthy was granted parole before the state performed surgery. When she was released on parole, Norsworthy—and her medical treatment—were no longer the responsibility of the CDCR and the appeal was dismissed by the courts as moot.

Around the same time as Norsworthy's case, the CDCR was involved in a lawsuit filed by Shiloh Quine. Norsworthy and Quine had the same legal representation, and their cases had the same judge. Shiloh Quine was born in 1959. Quine's first suicide attempt took place while in a county jail at age 18. During this confinement in California, Quine cut her wrists, in large part because she did not feel comfortable in her own skin. Quine first tried hormone supplements on the black market at 19 years old, after she attempted to amputate her penis at age 16. After being incarcerated in the CDCR, Quine attempted suicide several more times. After a suicide attempt in 2008, Quine was referred to doctors for "transgender services" (*Quine v. Beard* 2014, p. 5). Quine began hormone treatment for GID in 2009. Soon after, Quine began petitioning the prison for SRS. Through each level of review, Quine's requests for SRS were ignored. In 2013, Quine sought access to gender-affirming clothing, cosmetics, and hygiene items that were commonly available to prisoners housed in women's facilities. In April 2014, Quine was able to see Dr. B. Bloch—a CDCR psychologist—who concluded that SRS was a medically necessary intervention in Quine's treatment. However, in June 2014, Quine attempted suicide again after prison officials told her she "can't get the surgery (for a sex change)" (*Quine v. Beard* 2014, p. 6).

In 2014, Quine filed a lawsuit against CDCR employees for their "deliberate indifference" to her diagnosis of GID and the denial of the medically necessary relief of SRS. The suit claimed that denying Quine SRS as a medically necessary treatment for GID was a violation of rights guaranteed under the Eighth and Fourteenth Amendments. The Eighth Amendment extends protection from cruel and unusual punishment. The Fourteenth amendment guarantees the equal protection of the laws. Additionally, the suit claimed that denying Quine access to personal items approved and available to prisoners at female institutions also constituted a violation of the Fourteenth Amendment on the basis of gender and transgender status (*Quine v. Beard* 2014).

The same year Quine received a visit from photographer and author Kristen Schreier Lyseggen, who was working on a project about transwomen in men's prisons. This was Quine's first visit *by anyone* in 15 years. Upon entering the visiting room, Lyseggen asked Quine how she was allowed to wear make-up in the men's prison. Quine explained they

were tattoos which she had performed on herself to give the appearance of eyeliner and plucked eyebrows (Lyseggen 2015, p. 133). Quine had a caring, romantic partnership with her cellmate, Kenny, since early 2012. As her lawsuit for SRS moved closer to a decision, Quine and Kenny prepared for a possible life apart. If Quine were allowed the SRS she needed, she would be transferred to a women's facility to serve the remainder of her life sentence. They would never see each other again.

After several months of discovery, depositions, interrogations, and expert testimony, Quine and CDCR began pre-trial settlement negotiations. Within a month, the two parties had reached an agreement. The settlement agreed that Quine would receive the SRS that several medical and mental health clinicians had deemed medically necessary treatment. After her surgery, Quine was rehoused in a California prison for women. Consequently, she would be allowed access to the clothing and other items that are designated for female prisoners only. As part of the settlement, the CDCR agreed to change its policies so that transgender prisoners would be able to access clothing and commissary items consistent with their gender identity, regardless of the sex-segregated facility in which they were housed. CDCR would also revise their policies regarding access to medically necessary treatment, including SRS. After her historic victory for access to transgender healthcare, Quine reflected, "I felt that, you're giving surgery to people who need hearts and kidneys, and you're paying just as much for that, for these incarcerated inmates . . . [s]o it felt like discrimination. You'll provide for certain aspects of individuals, but when it comes to transgenders, we're not worthy" (Stahl 2017).

De'lonta, Kosilek, Norsworthy, and Quine were not the only cases of GID held in the pages of *Black and Pink's* newspaper. Incarcerated transwomen wrote in with their own accounts of GID within the prison system, some giving information or advice to other prisoners seeking care, some lamenting their own legal struggle, and some celebrating victories in access to affirming healthcare. In August 2011, there was an entire page in the newspaper dedicated to sharing the story of a self-identified "male-2-female (m-2-f) pre-op transsexual" named Anastasia L. Seger. Seger shared accounts of verbal harassment from both prison staff and other prisoners, but said she felt lucky because there were people who had been more harassed than she had. Seger recounted her struggle for trans healthcare in prison in Arkansas.

In 2006 I was diagnosed as suffering from Gender Identity Disorder (GID). I tried for over 17 months to get some form of treatment. I was told everything from 'You do not have a diagnosis for GID', to 'Your current licensed provider has not diagnosed you as suffering from GID.' I wrote letters to everyone that I could think of. From the mental health counselors to the psychiatrist. From the director of the entire Department of Correction [sic] to the head mental health administrator. I kept copies of all the letters and requests. I also filed numerous grievances and followed them all the way to the final step.

In September of 2007 I was finally allowed to see a specialist. He gave me a diagnosis of GID transsexual type. I took one-on-one counseling with him until March of 2009. Then he turned over my main sessions to a psychologist because of logistical reasons. But he was to be consulted on matters concerning my GID. In September of 2009 he ended his employment with the department. Since I last spoke to him in March of 2009 I have received no meaningful treatment for GID. I have steadily campaigned for treatment. I even filed a civil suit called a 1983. It was summarily dismissed as frivolous . . .

Before I started my campaign for treatment in 2006, the department had no policy for dealing with inmates that were trans gendered. If a person came into the department taking hormone therapy, that person was NOT allowed to continue it. Nothing was done for us trans gendered inmates. But since then, a policy has been written. It allows persons that were taking hormones before their arrest to continue taking them in prison if they have documentation, unless the doctor believes for some reason that they should not continue them for health reasons.

But anyone that was not taking them or cannot prove that they were taking them will not be allowed to start them no matter what. I was taking “Black Market” (birth control) before my arrest so I am not allowed to take them now. The policy allows people to get psychotherapy as a form of treatment for their GID if they were not on hormones previously. But that is the only form of treatment available to those of us that were diagnosed in prison or not prescribed hormones through a licensed physician before their arrest.

I am now trying to get the policy changed. The courts have ruled that a policy should not be used to deny an inmate a form of treatment so I am using that as the basis of my arguments. I am not a lawyer nor do I have a lot of experience in legal matters. What I know is what I have learned during my trials trying to get treatment for myself. (*Black and Pink* 2011, August, p. 4)

Seger identified herself as “not a lawyer nor do I have a lot of experience in legal matters”. Seger did not claim the kind of expertise that society says is necessary to give advice (lawyer); she illuminated her expertise as something different. Her knowledge comes from having lived experience under the weight of three oppressive systems, the prison system, the medical system, and the legal system. These three oppressive systems impacted Seger in different, yet compounding ways. Prisons rely on prison staff discretion for addressing harms. Prisons are invested in patriarchal understandings of men and women, because those understandings of gender and strictly conforming to those values and expectations are a form of social control; social control that the prison exercises at the expense of transgender dignity and safety. The medical system also understands gender in limited and rigid ways, relying on pathologizing transness in order to address it. The legal system includes things such as the Prison Litigation Reform Act (PLRA), a 1996 law that makes it difficult for prisoners to pursue remedies through federal courts (*ACLU* 2002, p. 1). The legal system also requires a kind of technical knowledge that makes filing a lawsuit correctly sometimes an impossible task for a prisoner, who lacks the resources and training of legal expertise. Prisoner lawsuits seeking redress from harm are often dismissed on technicalities, such as not being penned in the “correct” way. Seger’s positionality at the intersection of all three systems gives her a knowledge that a lawyer *could not have*. Her advice comes from having lived, having moved through the labyrinth of navigating transgender care in prison.

In December 2011, an incarcerated member named Orphan from Arizona wrote to *Black and Pink* with advice for other transgender prisoners who may be seeking redress for inadequate care. She advised, “The ADA [Americans with Disabilities Act] . . . is the most important and relevant federal law and statute for bringing suit for prisoners with disabilities who are not receiving the accommodations or care they require” (*Black and Pink* 2011, December, p. 5). The advice that transgender prisoners offer one another is based solely on their own experience or what they have learned through understanding of the grievance processes. In this way, the knowledge they impart to others is authentic, offering realistic expectations of a system that is brimming with bureaucratic conditions.

In March 2012, an incarcerated member with the name Anastasia—perhaps the same Anastasia L. Seger but it cannot be confirmed because this Anastasia was only identified by first name—was featured with two pages of tips for receiving treatment for GID in prison (see Figures 2 and 3). She shared relevant information for case law dealing with GID inside and outside of prison and taught prisoners the chain of command for prison officials. She instructed them to keep copies of all correspondence, which become useful in the final action of filing a formal complaint or grievance. Anastasia warned readers of the rigidity of the Prison Reform Litigation Act (PRLA), a law that was instituted by Congress in 1996 to halt so-called frivolous lawsuits from prisoners. However, the law has, as legal scholar *Schlanger* (2003) asserts, “significantly undermined the already sharply limited ability of inmates to obtain counsel . . . [and] imposed new and very high hurdles so that even constitutionally meritorious cases are often thrown out of court” (1644).



Getting Treatment

Being a transsexual in prison offers many challenges. From dealing with harassment from your fellow inmates and/or the guards to getting treatment. In some states getting treatment for Gender Identity Disorder (GID) is one of the hardest challenges that you will face. If you are seeking treatment there are several things that you must keep in mind:

1. You have to have a diagnosis of suffering from GID. Either one made prior to your incarceration or one from within the system or Department of Correction (DOC).
2. If you do not have a diagnosis of GID then you need to contact the mental health department with your concerns to start the process of getting a diagnosis and treatment. You will most likely have to start with a counselor to get a referral to see the psychologist and/or the psychiatrist.
3. If the people you see within the mental health department are not knowledgeable in the diagnosis and treatment of GIDs then try to get seen by someone that has training and experience in the diagnosis and treatment of GID's.
4. If you are unsuccessful in your efforts to get to see someone about your GID, send letters explaining your situation to the deputy/assistant director or deputy/assistant commissioner of the department of correction that you are in. Then is that gets no satisfactory response then you go the next step and write to the director or commissioner of the department. Also be sure to write to the head of the mental health department at your unit and also the one over the entire department. Keep copies of all your correspondence for your records. Also, make sure that the copies say exactly the same thing as the ones you send out.
5. If after writing letters, you still do not get treatment, it is time to file a Formal Complaint or Grievance. Be sure to list all persons involved and the dates. If you do not complete the entire process including the appeals stage, you may be unable to pursue your complaint in a court (a 1983 civil rights suit). This is per the Prison Reform Litigation Act (PRLA). 6. If you were taking hormones prior to your arrest and incarceration and can provide documentation that they were prescribed by a licensed doctor then the DOC is required to continue them at the same level unless a doctor says that they are detrimental to your health. *Continued on page 4*

Figure 2. Article by *Black and Pink* inside member Anastasia (*Black and Pink* 2012, March, p. 3).

Continued from page 3: Prisons and jails are required by law to give you some form of treatment. But, they are not required to give you the form of treatment that you want. The treatment given can be little as psychotherapy.

If a licensed doctor recommends or prescribes you a certain course of treatment such as hormone therapy then the prison or jail may be required to give you this medically necessary treatment. If the prison or jail refuses to do so and you have exhausted the entire grievance process then you can file a 1983 complaint. The law library at your unit should be able to provide the forms for you. If not then you can write to the clerk of the district or area that you are in and request them. The law library has or can get this address for you. You will have to send copies of grievance/s and the appeals process along with the completed 1983 form to show that you have exhausted the grievance process. You may also want to send copies of all the letters and/or requests that you have sent to various individuals and their responses if any to show their involvement. It is a good idea to keep a record of the dates that you spoke with people and about your desire for treatment as well as the dates of all the letters and requests that you have sent.

There are several cases that deal with the treatment of GID. If you have access to a computer that has a data base of cases in your law library use the search feature and use the keywords: Gender Identity Disorder; Transsexual/ism; Gender Dysphoria; and Transgender.

There are a lot of cases. Some deal with discrimination, some with prisons, and other with medical issues. Some examples are: "Gammett v. Idaho Board of Correction," "Schwenk v. Hartford," "White v. Farrier," and "Fields v. Smith." You will just have to see which ones you can use.

If you do not have access to a computer then ask a law library worker if they can use the computer to look up the cases for you. They are generally able to at least point you in the right direction. The American Civil Liberties Union may be able to help you. Good luck and keep up the good fight. Be careful. Once you start requesting treatment you may become a target of the inmates and/or administration.

The things that I've stated here are things that I have discovered from personal experience and research. You have to educate yourself about your illness. Contact support groups and advocacy groups. I am not a lawyer nor do I claim to be an expert in these legal matters or on GID's. But I am sympathetic to your plight. I am also an inmate seeking treatment in my state. I have already caused a policy to be written that has been of some help to incoming persons suffering from GID. Before I started my campaign for treatment there was no policy and people coming into the system taking hormones were not allowed to continue them. But now they are if they have documented proof of them.

Sincerely,
Anastasia, Arizona



*Editor's Note: Anastasia has shared some great knowledge and resources with us. Some people may be uncomfortable asking to be given a "diagnosis" of a psychiatric illness to receive "treatment," or the existence of this diagnosis within Psychiatry in the first place. However, within the belly of the prison beast, you may find it helpful to use the tactics Anastasia described to gain the things you want: hormones, permission to present yourself according to your gender identity, etc. It's up to you, best of luck.



Figure 3. Continuation of the article by *Black and Pink* inside member Anastasia (*Black and Pink* 2012, March, p. 4).

Jessica, an incarcerated trans-sexual, shared news of a novel policy adopted by the Texas Department of Criminal Justice (TDCJ) dealing with GID. “Under the new policy, inmates will be able to continue the same hormone therapy they were prescribed before being incarcerated . . . and the prison will be able to initiate hormone therapy while incarcerated in accordance with current standards of care” (*Black and Pink* 2012, October, p. 5). Similar to the policy identified by Seger in Arkansas, this policy permitted prisoners to continue their course of hormone treatment for GID if they had documentation for their treatment prior to incarceration. However, this Texas policy differed from Arkansas’s by allowing prisoners who had no prior licensed hormone therapy the possibility of beginning hormone treatment while incarcerated.

The *Black and Pink* newspaper was a powerful forum for sharing knowledge, experiences, and extra-legal advice from transgender prisoners to transgender prisoners. Contributors used the publication to encourage other prisoners to advocate for the trans healthcare treatment they needed and deserved, providing helpful tips and advice on how to do so within the rigid institutions of prison bureaucracy and medical treatment. This kind of knowledge resource sharing is a form of mutual aid. Transgender prisoners sift through their experiences with prison medical authorities and distill useful knowledge for the purpose of accessing transgender healthcare, illustrating the empowering nature of a newspaper produced with the belief that “those most impacted by the violence of the prison industrial complex are best equipped with the knowledge of how to tear it down” (*Black and Pink* 2011, March, p. 6).

Not all tactics employed for transgender legibility are toward the goal of accessing hormones or undergoing surgery. Some prisoners want to access gender-affirming clothing or make-up. Tracy R., a transwoman in Alabama, sought shower privacy. She wrote,

In July I finally got the mental health staff to [officially declare] me as transgender. This was done so the ADOC would facilitate the PREA [guidelines] which allows me private showers Since I’ve been in this block since 2011 I talked the administration into installing a curtain around one of the shower heads . . . It took over a month for the curtain to be installed. While we were waiting ADOC made it policy that the showers were off limits thirty minutes each day while I bathed”. (*Black and Pink* 2017, November, p. 21)

In March 2015, *Black and Pink* shared information with readers about Ashley Diamond, a black transgender woman who was imprisoned in a men’s facility in Georgia. With the help of the Southern Poverty Law Center, Diamond was suing the Georgia Department of Corrections (GDC) for violating Eighth Amendment protections from cruel and unusual punishment. Prior to incarceration, Diamond had been receiving hormone therapy for 17 years; however, upon entering prison, her hormone therapy was halted and never resumed. Additionally, Diamond’s feminine clothing and undergarments were confiscated. In December 2013, the Rutledge State prison warden, Shay Hatcher, put Diamond in solitary confinement for “pretending to be a woman” (*Michaels* 2015).

On 3 April 2015, the U.S. Justice Department filed a statement of interest in Diamond’s case. The statement noted that “[t]wo things are clear from the record in this case: one, the generally accepted standards for treatment of gender dysphoria require treatment decisions be individualized; and two, Ms. Diamond did not receive individualized care” (*U.S. Department of Justice* 2015, p. 11). The statement acted as a reminder to departments of corrections that prisons have the obligation to treat gender dysphoria just as they have the obligation to treat any other medical or mental health condition. The lawsuit was settled before trial, and as a result the GDC has abolished its “freeze frame” policy, which prevented transgender prisoners from receiving hormone therapy.

In early 2016, the TDCJ expanded access to hormone therapy for transgender prisoners, loosening its strict guidelines for who could receive hormone treatment after the Department of Justice confirmed that denying hormone therapy for trans people constituted cruel and unusual punishment. Being denied healthcare, including hormone treatment and SRS, is one of the ways transgender people are systematically discriminated against in prisons.

Additionally, this denial fuels self-harm and suicide. Inside member Cassie, a transwoman serving time in Texas, wrote to *Black and Pink* to share how these policy changes have affected her. As a transgender woman in the prison system, she was denied hormones for six years while incarcerated, even though prior to prison she was on hormones. With the changes in the policy, Cassie was able to access hormones again. Whitney Lee, an incarcerated transwoman in Ohio, sued the State of Ohio for denying her hormone therapy.

Outdated ideas on gender often inform what constitutes a legitimate transgender experience to prison medical staff. Therefore, transgender performativities based on stereotypical gender presentations, such as hyper-feminine or hyper-masculine characteristics, may be viewed as more legitimate than less stereotypically gendered performativities. Informed by cisnormativity, transgender prisoners' gender experiences are pathologized, creating conditions that construct transgender prisoners as vulnerable. Without a diagnosis, transgender identities in prison are illegible (Brown and McDuffie 2009, p. 218). Prisons *require* transgender prisoners to be pathologized in order to access their right to medical care.

Some U.S. prisons have adopted what some consider "progressive" policies toward transgender prisoners, where transgender prisoners are allowed to continue hormone therapy once in prison if they began hormone therapy *before* they were incarcerated. Of course, only hormone therapy administered through licensed medical establishments is considered legitimate to the prison. Therefore, for prisoners such as Anastasia, who were taking "black market" hormones prior to incarceration, their transgender identity was illegible in the context of prisons. It is only through pathologizing that transgender prisoners can access treatments inside that may align their bodies with their genders.

In what may appear as a benign or even an obvious remark, *Black and Pink's* editor does something really important by recognizing the precarity and danger of existing as trans in prisons.

Editor's Note: Anastasia has shared some great knowledge and resources with us. Some people may be uncomfortable asking to be given a "diagnosis" of a psychiatric illness to receive "treatment," or the existence of this diagnosis within Psychiatry in the first place. However, within the belly of the prison beast, you may find it helpful to use the tactics Anastasia described to gain the things you want: hormones, permission to present yourself according to your gender identity, etc. It's up to you, best of luck. (*Black and Pink* 2012, March, p. 4)

The editor acknowledges that in the particular context of transgender prisoners—wedged between and under oppressive boulders of the prison system, the medical system, and the legal system—sometimes in order to survive, people take whatever path will allow them air to breathe. Without judgment, *Black and Pink* offers its readers validation that the pathologization required of them may not be right, it may not be accurate or comfortable for them; however, all tactical maneuvers toward survival are fair game when people are in the "belly of the prison beast". As a movement, there may be broader calls to destigmatize trans identities, but, importantly, none of that is possible without trans survival. The editor ends by recognizing trans prisoners' agency in deciding how to advocate for themselves. The decision is theirs.

6. Conclusions

Carceral spaces have become "sites of compounded punishment" for queer, gender nonconforming, and transgender prisoners (Girshick 2012, p. 205). Prisons do not merely reinforce the gender binary, they actively create it through transphobic policies that restrict deviant gender expression based on sex-segregated facilities, enforced through intimidation and violence. However, queer and trans prisoners are resilient and rely on one another to survive. Through sharing information about their own gendered encounters with the prison, medical, and legal systems that structure their confinement, transwomen form networks of knowledge to build pathways toward gender self-determination. Prisons' use of legal and medical constructions of gender coerces prisoners to ascribe pathologizing

narratives to their gender identities in order to access gender-affirming care or policies that allow things such as hormones or access to gender-affirming clothing. These narratives rely on putting the trans body in danger, often manifesting through self-harm, in order to be understood as properly transgender.

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