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LGBTI Individuals In the US Prison System

For a long time, certain populations within the prison system were largely ignored. Their needs were not met and it was almost like they didn’t even exist. Prison systems already work to degrade and dehumanize individuals who in many cases, may have been unjustly tried and convicted. One of these populations of prisoners were those who identified as part of the LGBTI community. Many prison systems prefer to use the term LGBTI when referring to individuals who may identify as a part of one of these communities. LGBTI stands for Lesbian Gay Bisexual Transgender or Intersex. This term is used by prisons to be able to better identify these individuals and in theory, be able to cater differently to those individuals who may need different accommodations. For a long period of time, this prison population was largely treated like every other type of prisoner with little to no recognition by the prison system of the important differences and nuances of this community. This often-caused large amounts of abuse and violence to be perpetrated against people within this community not only by other prisoners, but by prison officials and staff as well. By being able to analyze the history and present state of how LGBTI individuals are interacted with by other prisoners and prison staff, a better analysis of the ethical issue surrounding this community and ways to solve them will be formed.

Throughout history the United States at both the federal and the state level, did not address or even recognize the key and important differences and accommodations that some individuals who identify as part of the LGBTI community might need to have in order to ensure their safety and health whilst in the prison system. However, during the 1990’s this began to sharply change as the United States government started to recognize and see the need for new policy that addresses these key differences. In the year 1994, the Supreme Court heard a case about Dee Farmer, a transgender woman who was arrested and convicted of credit card fraud in the year 1986. Because of federal prison guidelines at the time which assigned prisoners based on the medical transition status, she was sent to an all-male prison to serve her time. Within weeks of arriving in prison, it was reported that she had been sexually assaulted and violated several times by other prisoners within her cell block which exposed her to HIV which she later fully developed. This later led to a unanimous Supreme Court decision in favor of Farmer in her argument that the prison system was deliberately indifferent to her safety needs when they transferred her to a general population all male prison.[[1]](#footnote-1) This was one of the first major Supreme Court cases that directly dealt with the problem of sexual assault in prison and one that was a major step in the way to more safety and security for individuals who identified as part of the LGBTI community. The case of Dee Farmer not only brought national attention to the issues being faced by prisoners inside of the prison system, but it also helped shed a light on a prison population that was often facing more abuse than individuals that were not a part of that community and that received barely to no help from the system when dealing with cases of abuse and violence. The truth was, that for a long time and still even presently in this day and age, prisoners who are a part of the LGBTI community, often get treated worse than other prisoners and have less resources and help to be able to fight back against any injustice or problems that they may face whilst doing their time.

The reason why the topic of LGBTI individuals in the prison system is one of such importance, is because people in these communities have a disproportionately high contact with the criminal justice system due to many historical factors. The history of abuse, bias and aggressive profiling to people within the LBGTI community by law enforcement officials, alongside with the disproportionately high rate of homelessness, discrimination and poverty cause people within these communities to be often targeted by the system and not have any other option to get out. A 2015 study of 28,000 transgender adults showed large patterns of daily harassment, unfair profiling and overall abuse of power by law enforcement officials towards people within these communities. The survey found that just in one year, nearly 2% percent of respondents had been previously incarcerated, near twice the percentage of the general US population which was at 0.87%.[[2]](#footnote-2) This is already representative of the larger problem of how individuals within the LGBTI community, who already have to face harsher than normal circumstances in both their own personal lives and in society, become the targets of law enforcement which traps them in a larger cycle of incarceration and being in the system. The issue is even worse amongst minority individuals who identify as a part of the LGBTI community. The same study found that the incarceration rate was close to 9%, one in ten individuals, for those who identify as black transgender individuals, a percentage which is nearly ten times the national average. Similarly, it was found that close to 80% of all LGB individuals who were in juvenile detention centers were people of color.[[3]](#footnote-3) The aforementioned data helps to point to the trend that people who are a part of the LGBTI community as a whole have to face a lot more aggressive and abusive behavior by law enforcement officials than say a straight white individual would have to. However, the high rates of incarceration and abusive tendencies by law enforcement do not just end in the outside world. LGBTI individuals face a much higher-level abuse of abuse not only by other prisoners whilst inside jail, but also by prison officials and staff as well. Sexual and normal assault are a major problem that LGBTI individuals have to face and be fearful of once they are inside the prison system. A study found that LGBTI individuals were three times more likely to face a form of sexual or normal assault whilst completing their prison time as opposed to other inmates. This same study portrayed the data that showed that an estimated 40% of transgender individuals in federal and state prisons had been sexually assaulted at some point whilst completing their sentence.[[4]](#footnote-4) These are horrifying statistics because it shed a light on the truly toxic and abusive nature that a lot of LGBTI individuals have to face while they complete their sentence in prison. However, sexual abuse and assault are not the only problems they have to face. Often LGBTI prisoners have to face large forms of degradation and mistreatment while there are behind bars. This includes humiliation not only by other inmates, but also the name calling, mocking and general toxic attitudes that many correction officers and other prison officials have towards people within these specific communities. For a long time and even in present time today, many prison facilities also do not accurately take into account inmate safety into mind when making decisions about LGBTI inmates. This comes into account when prisons consider their housing assignments, shower arrangements, access to medical and hormonal treatment etc. This often leaves these individuals in even more vulnerable positions as the prisons put them in locations and situations where they are unsafe and at a risk of being abused or assaulted by others in the general population. This led many prisons to for a long time, use large periods of solitary confinement to separate LGBTI individuals and keep them housed by themselves. This obviously had a plethora of large psychological and emotional effects as individuals within the LGBTI community would sometimes be left months and long periods of time in solitary as the prison had “no better option.” A study done by the Department of Justice found that people within the LGBTI community have a significantly higher likelihood of being placed in solitary than individuals who are not in these communities, reportedly around 28% of people within these communities had been placed in solitary confinement for a period of more than a few days despite this behavior being illegal for prisons to do in many places.[[5]](#footnote-5) Not only do people within these communities have to face stereotypes and abuse from other inmates and people once they are inside the prison system, but they are also often not given adequate and safe housing which only further increases the likelihood of violence being perpetrated against them while they finish their sentence. This is done under the guise of “protective custody” which is used by jails to forcibly separate LGBTI individuals and keep them in solitary for long periods of time. The emotional and psychological trauma caused by this can leave long term damage and PTSD and can be especially hurtful for the youth and those who may have pre-existing mental health conditions or any cognitive developmental disability.

For a long time, there was little to no federal regulations or standards that specified treatment and how to interact with prisoners who identify as a part of the LGBTI community. However, in 2003 the Prison Rape Elimination Act was passed which not only addressed the major issue of sexual assault and abuse within prisons as a whole, but it also outlined and specifically spoke about the treatment and appropriate conditions of LGBTI inmates and what can be done to lessen the overall toxicity. The Department of Justice then went to expand on this by creating and enacting the PREA Standards in 2012 which were going to be used to set a standard and baseline for how prisons across the country should operate and continue to go forward. Different versions of these standards have been made and applied subsequently to different types of prison facilities across the country, but this was a major shift as it created a national guideline and overall baseline for how prisons should interact with LGBTI individuals and be able to create more safe and secure environments for them. The PREA Standards and regulations that were created were specifically done with the idea of creating a safer environment for LGBTI individuals as well as creating rules and policies for how certain procedures should be handled. One of these is the topic of searches, specifically strip searches. For a long time transgender inmates and individuals within the LGBTI community as a whole would often have to face abuse and be uncomfortable when searches and strip searches were done on them by prison officials.[[6]](#footnote-6) PREA helped create a system where these types of searches are done more carefully and with higher regard to individual privacy and space when interact with LGBTI individuals, something that was rarely to never done in the past. The PREA Standards also helped tackle the issue of “protective custody” through the use of solitary confinement by putting very strict guidelines over the amount of time that inmates are allowed to spend in solitary while new housing is being arranged. Overall, there are a lot of historical and present problems that can be found within the prison system that directly deals with the issues facing the LGBTI community. A wide variety of ethical issues such as the ones discussed can have long term impacts on these individuals which only lead to a higher recidivism and reincarceration rate. The federal government should take it upon themselves to further update PREA to better reflect some of the issues that are faced by LGBTI individuals. While some progress has been done to actively better the conditions and lives of these individuals while they serve their time, a lot more can be done both by the state and federal governments as well as the prison complex itself to ensure the safety and protection of all their inmates. People within the LGBTI community deserve the safe protections and quality of care as every other prisoner and should not have to face discrimination or any form of abuse because of their sexual preference or any other choice about their personal life.

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