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**Legalized Violence, Illegal Defense: The Extreme Violence Against Trans Persons in U.S.
Prisons**

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Abstract:

The legally permitted abuse of transgender individuals in the carceral system is a dangerous epidemic that has hit an extreme peak in the past two decades. This issue is further exacerbated, by the extreme overrepresentation of trans persons in prison compared to that of the general population. Moreover, the legal doctrine and laws that should serve as protective barriers for transgender persons in prison have woefully failed in achieving such ends. This review provides an extensive exploration into such legal doctrine to better understand the procedures of these shortcomings and failures. The legal exploration centers the landmark 1994 SCOTUS ruling on the *Farmer v. Brennan* prison violence case, in conjunction with the Prison Rape Elimination Act (PREA) passed by Congress in 2003. The findings indicate that a flawed interpretation in judicial rulings and missing enforceability, accountability, and applicability structures within these laws all contribute to the dismal state of these legal structures that should be protecting trans persons in prison from increased violence. This legal review concludes with recommended legal reforms and places emphasis on a short term expansion of provisions for equitable societal support measures for trans persons, and a long term solution requiring the abolition of the carceral system.

Introduction: Trans Violence in the Carceral System

On January 20, 2025, President Donald Trump instituted Executive Order 14168 under the guise of *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*. This order directly attacks transgender persons, attempting to legally scrub their existence and identity from all federal government-acknowledged protections for transgender persons. The constitutionality of this order currently faces challenges. However, these challenges are predominantly presented by a principal section of this order that explicitly imperils the safety, security, and rights to protection by trans persons in prison. Section 4 of Executive Order 14168 requires that male inmates as assigned at birth “are not detained in women's prisons or housed in women's detention centers” (Trump 2025, 8616). Additionally this order does not allow for the administering of gender-affirming care provided by federal dollars (Trump 2025, 8617).

This dangerous order is an example of the many struggles that trans persons in prison face and have been facing for decades. On August 21, 1989, Dee Farmer, a black trans woman, filed a lawsuit against Federal Prison Officials based on the claim that they failed in their duty to protect her from a brutal attack and rape that she endured while incarcerated at a Federal Prison in Indiana (National Center For Lesbian Rights, 2020). Farmer argued that her 8th Amendment rights were violated due to the deliberate indifference of the prison officials (Farmer v. Brennan 1993, 825). This case made it all the way to the Supreme Court in *Farmer v. Brennan*, where they ruled in 1994 that prisoners have a right to be protected from sexual violence and that Farmer was entitled to seek damages from the prison officials (Strangio 2023).

Farmer v. Brennan set a precedent that is presently employed by trans defendants who attempt to seek retribution for acts of violence committed against them while in prison. In practice, however, *Farmer v. Brennan* has done little to directly curb the extreme deliberate indifference and sexual violence that trans persons, and especially trans persons of color face in prison (Sheikh 2024). This precedent is broadly and exclusively exercised in judicial settings as a means of individual defense by trans persons following instances of prison violence. Due to the current social and political state of affairs in the United States, it is probable that transgender persons in federal prison may be subject to even more violence and permissible discrimination than ever before (Rhodes 2025).

The executive order signed by President Donald Trump, if allowed to stand, would endanger thousands of transgender inmates who identify as female. More specifically, it would immediately halt their perceived constitutional right to gender-affirming medical care within the prison system (Trump 2025, 8617). In summary, this order would conclude the decades-long application of prior unstable legal precedent that was in theory to be applied to transgenders persons in prison as well as the greater prison population. Though it is currently unknown whether this order is likely to stand, it is just one of the numerous instances in which steps are being taken to dismantle legal protections and rights for transgender persons in prison. Though the trans community in prison as a whole faces these legal challenges, the scope of this problem predominantly affects trans persons of color (Northeastern University 2022).

With this in mind, this legal exploration aims to provide a deeper understanding, history and scale of discrimination and violence that trans persons in prison face. All while providing an

analysis of the failures of past laws and precedents in protecting transgender inmates from violence and harm and the continuation of such violence. The definition of the word violence as discussed throughout the analysis will include sexual violence committed by not only other inmates but prison officials, physical violence, emotional violence, and any and all forms of harm inflicted by one party on another. The central question of this exploration is why with the current legal precedent and statutes in place, do trans persons in prison continue to face extreme rates of violence and harm. Ultimately, this analysis will present legal recommendations that aim to reconcile this epidemic of violence against transgender persons in federal prison.

Background: The state of Trans Rights in The Justice System

To understand the range and true scale of Executive Order 14168, it is important to delve into the history and context that it rests upon. The LGBTQ+ community as a whole disproportionately faces inflated arrest and incarceration rates compared to the greater population (Hereth 2022, 3). Among the arrest and incarceration rates, however, the most extreme rates are faced by transgender persons especially transgender women of color (Northeastern University 2022). For quantification, about 16% of transgender persons and 21% of transgender women have faced arrest and incarceration in their lives. Specifically, 47% (nearly half) of black transgender persons have faced arrest and incarceration in their lives (Northeastern University 2022). Contrast these rates with the overall 5% of American adults that face arrests and incarceration (Northeastern University 2022). From the onset of engagements with law enforcement, transgender persons are almost 3 times as likely to end up in jail or incarcerated than the rest of the population, despite accounting for only 0.95% of the overall population (USAFacts 2025).

Acknowledging these disparities, it should come as no surprise that transgender persons in prison continue to face extreme rates of violence and discrimination, interwoven with scarce legal recourse that explicitly preserves their protections. A 2022 survey that looked at the responses of 280 transgender persons in prison, conducted across 31 federal prisons, found that 58% of respondents reported falling victim to sexual violence (Chesnut & Peirce 2024, 10-11). Additionally, 89% had experienced solitary confinement at some point during their incarceration, which is shown to have detrimental effects on mental health (Chesnut & Peirce 2024, 9). A further 53% percent of transgender respondents that requested gender-affirming medical care were denied such care (Chesnut & Peirce 2024, 10). Through Legal precedent such as *Farmer v. Brennan*, transgender litigants have been afforded certain provisions of defense that may be delivered through interpretations of the 8th Amendment. However, as will be discussed further in this legal exploration, these provisions are constrained by broad jurisdictional coverage and overly technical terminology defense. Essentially, allowing for reactive rather than proactive protections. In effect, this makes them useful only in instances when their rights have already been violated, such as with Executive Order 14168.

In addition to *Farmer v. Brennan*, the Prison Rape Elimination Act (PREA) was signed into law by President Bush in 2004. Its goal was to curb sexual violence in the prison system. However, the bill suffers differing yet simultaneously homogeneous hindrances to transgender litigants' usage in defense, as the *Farmer v. Brennan* precedent. Therefore, it has not encountered much success in preventing sexual violence against trans persons in prison.

The culmination of these good faith, yet severely lacking, legal precedents and laws meant to protect transgender persons in prison has juxtaposingly permitted unjust treatment of these persons. President Trump's most recent executive order is the latest attempt to further weaken these laws, with the potential to cause extreme harm and possible death of transgender persons in prison. The implications of such an order being sustained would be profound, horrific, and a direct infringement of human rights. So, how exactly has current precedent and laws sanctioned the Trump administration's actions regarding transgender persons marginalization in the carceral state? Better yet, how can the law be changed and reformed to prevent such actions?

Principle Cases and Legislation: An Overview of Legal Protections, For the Trans

Incarcerated population:

Farmer V. Brennan: A History

This landmark case construed the 8th Amendment as such that trans persons in prison be entitled to protections against inmate assaults, and preventable dangers. Transgender woman Dee Farmer, the plaintiff in this case, had fallen victim to a brutal sexual attack while being unlawfully held in a men's prison. Farmer was transferred to an all-male prison in 1989 where she was then raped and brutally beaten by male inmates (Strangio 2023). Subsequently, Farmer brought legal recourse against key defendants Warden Edward Brennan, and Director of the Federal Bureau of Prisons J. Michael Quinlan.

In deliberations, Farmer's attorneys argued that prison officials may be held liable for such violent acts committed against inmates under the 8th Amendment. Whenever one acts with deliberate indifference to inmate health or safety, they know that their actions may result in the inmate facing a substantial risk of serious harm yet they disregard that risk by "failing to take reasonable measures to abate it"(Farmer v. Brennan 1993, 825). Additionally, the case language they used alleged that,

Prison officials have a duty under the Eighth Amendment to provide humane conditions of confinement. They must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must protect prisoners from violence at the hands of other prisoners. However, a constitutional violation occurs only where the deprivation alleged is, objectively, "sufficiently serious" (Farmer v. Brennan 1993, 825).

What exactly does this mean? Essentially, Farmer's attorneys relied on the assertion that prison officials who deliberately commit acts that directly contribute to the violence, harm, or danger that an inmate may face can be held liable for the violence, harm, or danger being committed. As such, these deliberate acts imply a sense of indifference or lack of care when officials knowingly place inmates in conditions with extreme prospects of being harmed. In Farmer's case, it was argued that because prison officials recognized that the penitentiary where she was being housed had a "violent environment and a history of inmate assaults," they were personally aware that Farmer would be " particularly vulnerable to sexual attack" (Farmer v. Brennan 1993, 825)

The continued implementation of the precedent set by *Farmer v. Brennan* has not only aided challenges brought by transgender inmate plaintiffs since its inception but all inmate plaintiffs as well. However, there seem to be a few large gaps in this precedent that contribute to the continued and growing violence and legal discrimination of transgender persons in prison. These gaps could allow for legal approaches such as President Trump's Executive Order to lead to the undoing of such a precedent.

The Prison Rape Elimination Act: An Attempt

The Prison Rape Elimination Act (PREA), is another apparatus employed for the protection of trans persons in prison, as well as all persons in prison. PREA was passed unanimously by Congress in 2003 (Aveledo 2022, 93). Its purpose was to,

provide for the analysis of the incidence and effects of prison rape in federal, state, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape (Prison Rape Elimination Act 2003)

Regrettably, PREA's implementation remained stalled for almost 10 years as it navigated the mechanics of bureaucracy within congressional revisionary structures. Therefore its proper implementation did not take place until 2012. Eventually, preceding its finalization in 2009 and later DOJ promulgation, PREA was enacted (Aveledo 2022, 93).

Essentially, PREA allocated no more than \$1,000,000 to each, statethat filed an application to participate in and implement the program (Prison Rape Elimination Act 2003). In

order to acquire the funding, states are required to comply with the outlined statutes of the act. These statutes observe the directives of,

(1) standards for adult prisons and jails; (2) standards for lockups; and (3) standards for community confinement facilities. The standards for adult prisons and jails include prevention and responsive planning, training and education, screening, reporting and response, investigations, discipline, medical and mental care, data collection, and audits (Prison Rape Elimination Act 2003).

The standards outline provisions for protecting persons in prison by way of “undertaking efforts to more effectively prevent prison rape; investigating incidents of prison rape; and prosecuting incidents of prison rape” (Prison Rape Elimination Act 2003).

To assess compliance with the outlined PREA criterion, Congress and the President, appoint and establish a 9-member commission under The National Prison Rape Elimination Commission (Prison Rape Elimination Act 2003). The commission applies the statutes to and audits participating states. Subsequently, the sitting Attorney General is responsible for enforcement and further guidance on measures of punishment, accountability, and prevention (Prison Rape Elimination Act 2003). PREA is often utilized concurrently with *Farmer v. Brennan* statutes, in defense cases for trans persons. However, PREA, also much like *Farmer v. Brennan* precedents, faces many limitations of scope, preventing proper implementation and effective protective systems. As such, the continuation of unlawful actions against trans persons

in prisons persists lawfully. Such actions only further inflated and permitted by law to be endorsed by leaders such as President Trump.

What is Going On: Looking at the Failures of Current Legal Precedents in Protecting Incarcerated Trans Persons

Proving Deliberate Indifference: Are you joking?

Farmer v. Brennan was able to effectively utilize the concept of deliberate Indifference which is not an easy feat. However, in regular practice, it can prove a cumbersome impediment to establish that a prison official acted with such deliberate indifference. The issue is that, by the court's standards, it must be proved subjectively that a defendant was personally aware of the harm that could be caused yet chose to ignore it (Kim 2023). It is not enough to simply assume objectively that any reasonable person would have known or that someone was negligent. You must prove the defendant personally knew (Kim 2023).

Establishing this subjective proof is oftentimes an extremely strenuous chore that plaintiffs are responsible for fulfilling. An instance in which the feasible unattainability of this task was exhibited follows the 2021 ruling of The United States Court of Appeals, Eleventh Circuit in *Marbury v. Warden*. In this case, plaintiff Mitchell Marbury was stabbed and hit in the face multiple times while incarcerated at St. Clair Correctional Facility in Alabama (Kolins 2020, 241). This incident preceded multiple written and verbal requests by Marbury to Warden DeWayne Estes and Officer Beverly Warren in which he sought a dormitory change or

protective custody due to dangerous living conditions. These requests were all denied or ignored, which he claims resulted in the attack he faced. (Kolins 2020, 241)

Marbury eventually filed a complaint alleging that both prison officials were liable for the danger he was subject to due to their deliberate indifference to his safety concerns under the 8th Amendment. This made use of the same precedent set forth by *Farmer v. Brennan*. However, in this instance, the court ruled against Marbury asserting that “the record presented by Marbury failed to rise to the necessary level to show deliberate indifference to a substantial risk of serious harm” (Kolins 2020, 242). The Eleventh Circuit Court further included that “while Officer Warren may have been put on notice of some risk that Marbury faced, she was not aware of the type of substantial risk of serious harm necessary to establish a deliberate indifference case” (Kolins 2020, 242).

Ultimately, the uncertainty of whether or not a court would decide to uphold the deliberate indifference clause when determining the future of President Trump's Executive Order is the very reason why the Order was even allowed to be considered. Especially when the caliber of expectation for one to be considered deliberately indifferent is so highly subjective that it is virtually unfeasible to apply in every scenario where one is objectively deliberately indifferent or negligible. This issue exposes the complications in relying on Supreme Court precedents as a sole protection and violence prevention method for transgender persons in prison. While generally effective, Supreme Court precedent can moreover be fragile and easily challenged. Even if the courts at present were to officially rule that this order is unconstitutional, what is

stopping future leaders from attempting to challenge this same court precedent under the judgment of an ideologically modified supreme court?

Failed Application and Accountability: Simply Pieces of Paper with Writing.

The most paramount of legal hindrances, extended by both PREA and *Farmer v. Brennan*, may be attributed to the lack of accountability procedures present in their legal framework. This is further exacerbated by their ineffective application. *Farmer v. Brennan* does not include accountability measures outside of civilian legal recourse. Though a civil suit may serve as a productive form of civilian accountability for transgender incarcerated persons, it does little to nothing to deter the violence from being committed in the first place (Aveledo 2022, 107). Moreover, as discussed previously, there is no certain assurance that such a civil suit would be ruled in favor of the transgender plaintiff. Therefore, there are no stable means of preventing offenders from committing violent acts and allowing these acts to be committed.

PREA on the other hand, does outline vague measures of accountability, but the issue with PREA standards on accountability is that they are not being enforced within prisons due to two big reasons. First U.S. prisons struggle to keep guards due to low wages and grueling job tasks (Andrews 2024). Therefore, in fear of losing the few workers that they have, prisons and prison officials are incentivized to actively suppress reported violence(Andrews 2024). Additionally, some prisons are placed in economically unstable areas where they serve as financial lifelines to those areas, such as rural regions (Andrews 2024). In small places like this, workforces are composed of intertwined families with “deep social ties” (Andrews 2024). This

again causes many prison officials to ignore complaints by persons under their authority, in fear of being socially ostracized or losing their job. These conditions essentially nullify the already dwindling measures of accountability put forth by PREA. How can they be held accountable if prisons themselves aren't even reporting the violence and abuse?

The greater failure in application and accountability, however, lies within the legal framework of PREA. For starters, PREA does not demand required adoption and implementation by states. The bill expresses that PREA standards only apply to the states that “seek the grant funding” that is tied to the enforcement of PREA (Prison Rape Elimination Act 2003). This means states may choose not to adopt this whatsoever, so long as they don't attempt to acquire the funding. Even still, if a state does elect to acquire such funding, it has proven difficult to ensure its proper implementation due to the often cumbersome and costly execution of the program (Aveledo 2022, 95). Additionally, PREA excludes private prisons from its standards, meaning private prisons do not have to comply with any of the laws set forth by PREA (Andrews 2024). PREA regulatory constraints and the scope of enforcement measures are determined by the Attorney General, as well as the commission selected by the President and Congress. This allows for the imposition and effectiveness of the act to be subject to the discretion of certain political parties and their applicable biases. Therefore, further allowing orders and legal actions such as President Trump's executive order to be implemented and test the very laws and statutes that are meant to prevent it.

Furthermore, there is a specific trait of PREA that makes for extreme difficulty in enforcing structures of accountability. There is a certain legal requirement called cause of action, being

a set of predefined factual elements that allow for a legal remedy. The factual elements needed for a specific cause of action can come from a constitution, statute, judicial precedent, or administrative regulation (Legal Information Institute 2025).

This is a legal stipulation that requires a plaintiff who is seeking legal action against a defendant to have proper legal grounds for suing. Unfortunately, PREA does not explicitly mention that victims of violence in prison are entitled to “cause of action” through such law (Aveledo 2022, 95). This oftentimes prevents legal counsel from utilizing PREA as a primary source of defense in civil suits in fear of judicial rulings that will likely be in dissent of their case. Counsel must instead rely on 8th Amendment statutes of cruel and unusual punishment while using PREA as evidence for such violent acts being committed against their client.

Recommendations: How Do We Legally Stop This Epidemic of Violence?

Smashing the Overrepresentation:

Though violence of trans persons while incarcerated remains the scope of the issue, it is important to acknowledge that such violence would not be occurring at such rates if trans persons weren't overrepresented in prison populations to begin with. As mentioned in the

background, trans persons are incarcerated at exorbitantly higher rates than the general population. The pathways for transgender persons to end up behind bars are plenty and oftentimes unavoidable for so many in the trans community. These pathways are largely paved by homelessness and poverty, the school-to-prison pipeline, and violence and victimization of trans persons (Hereth 2022, 5-7).

More than 9% of transgender adults identify as unemployed, with 23% of LGBTQ+ people overall living in poverty (Hereth 2022, 6). These states of existence often result in many trans persons turning to illegal means of survival, such as sex work and theft. This creates a strong correlation between high poverty rates and involvement with the criminal legal system (Hereth 2022, 6). An important step in curbing such interactions is to make sure that transgender persons have equal opportunity in the workforce, as well as affordable housing options for those who are low-income. The school-to-prison pipeline is another pre-incarceration enabler of trans persons' interactions and run-ins with the criminal legal system. On average 82% Lesbian, Gay, and transgender persons face bullying and harassment in school settings (Hereth 2022, 5-6). These groups are often left to defend themselves, resulting in being subject to harsh zero-tolerance policies. Further, many trans students often skip school, even dropping out due to bullying and harassment by not only their peers but teachers and school staff as well (Hereth 2022, 5-6). All of these factors contribute to a higher interaction rate with law enforcement among trans and other LGBTQ+ students, than among cis-gender students (Hereth 2022, 5-6). It is necessary that for this epidemic to end, more attention is given to ending the bullying and harassment that trans students face in school. By implementing restorative justice programs,

trans-specific counseling and support, and pushing to end zero-tolerance practices in schools, the school-to-prison pipeline for trans students could be greatly reduced if not eliminated.

The final substantial factor in trans persons' inflated incarceration rates, is the extreme violence and victimization that trans persons face in society. This violence spans across instances of child abuse, intimate partner violence, sexual assault, and bias-related victimization (Hereth 2022, 7). A Lambda Legal Survey found that 62% of LGBTQ+ respondents who had fallen victim to assault felt that police did not properly address their grievances (Hereth 2022, 7). Additionally, 57% of LGBTQ+ respondents were uncomfortable asking the police for help (Hereth 2022, 7). Further studies show that partner violence among LGBTQ+ couples resulted in higher dual arrest and wrongful arrest rates compared to those of cisgender and heterosexual couples (Hereth 2022, 7). These increased biases and run-ins with the criminal legal systems, contribute to the inflated rates of incarcerated trans persons. Steps must be taken to better educate policing officials on dealing with their biases against trans persons and the greater LGBTQ+ population when it comes to reports of violence and victimization. Moreover, constructive means of violence survivor support and rehabilitation need to be made more accessible and accepting of trans and LGBTQ+ specific cases and persons.

Ending the overrepresentation of trans persons in prison, though not the only step, is a crucial step in stopping violence against trans persons while incarcerated. Investing in trans-specific resources as it relates to affordable housing, equitable employment opportunities, safe schooling environments, counseling, and overall violence support must be made a priority. Through this investment, trans persons can be protected by never even being made to face the

carceral system. Additionally, there will be fewer trans persons being incarcerated for minor offenses which could be addressed constructively through proper rehabilitation programs, and providing resources that are severely lacking in the trans community. Trans persons should be legally entitled to the same rights and privileges as the greater population.

Expanding and Specifying Legal Protections:

As necessary as shrinking the overrepresentation of trans persons in prison is, it is just as important to make sure those who end up in prison are properly protected from violence. Seemingly, an obvious solution would be to amend the constitution to specifically mention the protections of trans persons in prison, and the consequences of violating such protections. However, in practice that is a much less realistic feat due to the political and societal polarization of trans persons' existence and rights. There are, however, more attainable solutions that could be pushed for, specifically within the judicial and legislative systems. Though these solutions may prove less resilient and may be subject to greater risks of being undone depending on concurrent political power, they are still a place to start.

First, there is addressing the matter of the deliberate indifference clause and its defects. This clause, though successful in *Farmer v. Brennan*, is not a sustainable blanket solution to protecting trans persons in prison from violence. As discussed, it is oftentimes unsuccessful in its attempt at securing retribution for trans victims of carceral violence. Attempting to prove that a prison official was consciously aware of possible harm that might result in placing a trans person in a certain environment and still deciding to do so in an act of deliberate indifference is

extremely difficult. Therefore, it is salient that this clause be replaced with a less subjective and more objective-based approach.

In her article on *Gender Identity in the Era of Mass Incarceration*, legal scholar Frederica Coppola argues that it is rather incoherent and unstable of the judicial system to continuously apply the 8th Amendment in such inconsistent manners. Especially, when persons in prison are harmed due to the careless behavior of the state where they are imprisoned. Regardless of whether or not prison officials anticipated such harm or violence, that should have no factor in the decision to rule this behavior in violation of the 8th Amendment (Coppola 2023). It is the state's obligation to require that prison officials maintain humane and dignified carceral conditions for prisoners (Coppola 2023). Therefore, Coppola asserts that prison officials are in fact charged with the "positive obligation" to protect persons under their custody from harm (Coppola 2023). Additionally, Coppola contends that the 8th Amendment carries an expectation of protecting prisoners' dignity, an expectation that deliberate indifference directly contradicts (Coppola 2023). Ultimately, the simple act of placing a trans person in prison conditions that may result in serious harm or violence, dehumanizing them and stripping them of dignity, should be regarded as a failure to comply with the 8th Amendment regardless of the official intent (Coppola 2023). This subjective notion of deliberate indifference must be abolished and replaced with a more objective expectation of state obligation.

In conjunction with eradicating these terms of deliberate indifference, there is also a case to be made for expanding the applicability of the Prison Rape Elimination act (PREA) and explicitly outlining protections for trans persons in prison. As discussed, PREA fails heavily due

to its lack of enforceability across all 50 states, as well as its lack of allowing civil judicial recourse for plaintiffs. Firstly, it is important that PREA be heavily enforced across all 50 states. There should be no choice in whether or not a state chooses to implement PREA. How can PREA serve as a protective standard, when there is no expectation of its proper usage and funding by every single state? Additionally, PREA's regulatory constraints and standards should be explicitly written into the act and only be allowed to change through legislative action of Congress. The Attorney General and a commission created by Congress may decide to change the bounds and constraints of PREA as they please. This means that the effectiveness of PREA may vary from year to year and depend on the ruling political party's ideology, thus risking PREA becoming essentially useless in its goal to eradicate sexual violence in prison.

PREA must also allow for persons subjected to violence in prison to seek judicial reconciliation. PREA must explicitly carry the authorization that victims of prison violence may use PREA standards and requirements as "cause of action" in Court cases and civil recourse. If the law forbidding prison violence and sexual crimes against persons in prison does not concurrently allow for the victims of such acts to seek civil retribution against offenders, what is the point of the prohibition in the first place? Correcting this fault would allow for additional judicial support of the plaintiff in instances of civil disputes against prisons and prison officials, and strengthen their legal rights and protections.

Forget Accountability and reform, Tear it Down:

The final recommendation for curbing violence against trans persons in prison, is dismantling the carceral state as we know it. Ultimately, the carceral system in America is

extremely corrupt, which has allowed for the dodging of the law and the subversion of accountability standards (Andrews 2024). Currently, neither *Farmer v. Brennan* nor PREA alone could properly police these institutions. Though accountability standards and legal protections in PREA could certainly be strengthened, and in the meantime they should be, the problems run too deep for reform to serve as the sole sustainable solution in the long run. The issue lies within prisons and prison officials simply lacking the incentive to report acts of violence and punish offenders and enablers of prison violence (Andrews 2024). The system is broken and current laws are not being adhered to. It is time to tear it down.

Decarceration with the ultimate goal of abolition of the prison system is the most constructive and sustainable solution to end carceral violence against not only trans persons but other marginalized groups. In her article titled *Rethinking Global Justice: Black Women Resist the Transnational Prison-Industrial Complex*, scholar Julia Sudbury, explores the methods by which, and implications of, decarceration and abolition. Sabury ultimately argues that the “prison-industrial complex is a system of radicalized state violence that cannot be fixed” (Sadbury 2008, 354). This is something that she says can be done gradually starting with reforming drug law, and releasing incarcerated survivors who killed or harmed their partner in self-defense (Sadbury 2008, 352). The former is especially an issue that negatively affects transgender persons. Furthermore, stopping the construction and building of new prisons and jails, is also an important step in the movement to decarcerate the U.S. (Sadbury 2008, 353).

Ultimately, the very existence and prosperity of the current prison-industrial complex is exactly the issue with the system. The violence against trans persons within the carceral system

will never truly end until the system itself ends. In addition to highlighting goals of decarceration and abolition, Sadbury also presents approaches to reaching these goals. She recognizes that we must “transform people's consciousness so that they can believe a world without prisons is possible” while also “taking practical steps to oppose the prison industrial complex” (Sadbury 2008, 355). In order to do these things, it is important that people are presented with alternatives to the prison system, so that society can still deal with crime and harm. To reconcile this, Sadbury presents alternatives such as, encouraging communities to find solutions and build community safety without prisons as well as having constructive community conversations about violence against women (Sadbury 2008, 355). All this in hopes of creating methods of accountability that do not include criminalization and punishment (Sadbury 2008, 355). All of these methods and solutions would aid in the protection of trans persons from carceral violence. There is no carceral violence if there is no carceral system.

Conclusion: The Work is Just Beginning

Overall, there is an abundance of work that needs to be done in order to address the legal failings of current laws and legal doctrine that are supposed to protect trans persons from violence in prison. Statutes such as *Farmer v. Brennan*, and the Prison Rape Elimination Act, may be successful in some instances, serving as methods of retribution for trans victims of violence in prison. On the whole, they are largely unsuccessful in their goal of preventing these violences and abuses from happening in the first place. Their severe lack of standards that enforce consistent application, applicability, and structures of accountability are all factors that contribute to their failed effectiveness. Further, the corrupted and desolate state of the U.S. prison system is largely beyond repair by reform or change.

In order to temporarily reconcile these issues of violence against trans incarcerated persons, it is key that services and greater support are provided to trans persons as a whole to prevent their incarceration in the prison system. Additionally, for trans persons who do suffer incarceration, there must be better methods of reporting abuses, as well as massive legal restructuring and reinterpretations of current legal statutes and laws. Those seeking judicial recourse must be afforded more objective examinations of legal arguments against prisons and prison officials that violate their rights. Protective laws must have powerful standards of requirement state implementation, and more effective accountability structures must be put in place. However, in the long run the most necessary form of reconciliation is one where the carceral system is torn down and replaced with community solutions and constructive methods of accountability. Punishment and criminalization is not working and never has. We have to find another way.

The continued disregard for trans-incarcerated persons' legal rights, protections, and dignity is an epidemic that must cease. The politically fueled polarization and further disposing of such rights is a practice that should not be legally allowed. Regardless of one's opinions on transgender persons, they still are and always will be people and under the law, they are protected by the same rights as everyone else. They are entitled to dignity, and humanity as everyone else. They are entitled to fair treatment, and a just application of their 8th Amendment rights. Most of all, they are entitled to the same freedoms as every other American, because that is what this country stands for.

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