



IMAGE VIA SHUTTERSTOCK. COLLAGE BY CATHRYN VIRGINIA.

Identity

Trans Women Are Still Being Held in Men's Prisons. Is Changing That Enough?

A California bill would require that incarcerated trans women be held in prisons corresponding with their gender. But amid calls for abolition, the reform feels seismic to some and merely cosmetic to others.

KT By Kim Tran

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transgender woman currently incarcerated at San Quentin Prison, has served over two decades behind bars—always among men. She would have been eligible for parole in 2023, but now faces up to 10 extra years behind bars, for what she says were infractions correctional officers gave her unfairly, as a form of retaliation for coming forward about being severely and consistently harassed and sexually assaulted by fellow prisoners. Now, she's suing California prison officials for the alleged retaliation, and for claims that officers continually refused to investigate her reports of assault.

The complaint filed by Smith's attorneys against the California Department of Corrections and Rehabilitation is extensive. Nearly forty pages long, it lays out how, when Smith first arrived at a CDCR Reception Center 1998, she was raped by multiple male inmates consecutively over the course of four days. It then goes on to detail her 22 year history of incarceration in men's prison, which includes "indecent exposure and lewd sexual acts by many men in custody" and another instance of rape by other prisoners.

In early March, Smith told her Mental Health Primary Clinician that she was being repeatedly sexually harassed and assaulted by another prisoner who raped her seven years prior. Her report initiated a mandatory investigation. But instead of starting a process to determine whether Smith needed additional protections, the complaint states that prison guards interrogated her for hours and referred to her with transphobic slurs. The guards "caged Ms. Smith like an animal, verbally berated her, threatened her with physical assault, sexually harassed and assaulted her, and issued her multiple fabricated Rules Violations Reports ("RVR") riddled with glaring inconsistencies and due process violations," the complaint reads.

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Does the US Prison System Expose Transgender Prisoners to Rape?

ALLIE CONTI

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Smith's experiences are endemic to trans women, and particularly trans women of color, in the prison system. A 2007 report looking at sexual assault in California's prisons found that the rate of sexual assault for trans women was 13 times higher than for men in the same prisons. Other studies have found that correctional staff themselves can be a major obstacle to preventing sexual violence in prisons because of their lack of acceptance of trans people, tolerance of sexual violence, unwillingness to intervene, and lack of interest in informing inmates about its prevalence. But a new law seeks to change the experiences of people like C Jay in the state of California.

State Bill 132, the Transgender Respect, Agency, and Dignity Act, would require that prisons appropriately gender and house incarcerated people based on their identity and preferences. It would further require that trans people "have their perception of health and safety given serious consideration." The bill is currently in the assembly's appropriations committee after being passed by the state senate in May. All legislative business in California must conclude by August 31st, which means SB 132 could be passed in a matter of weeks. California State Senator Scott Wiener, who proposed the bill, said he's hopeful about its chances of passing, but can't yet be sure that it will.

California is not alone in considering gender based reforms in prisons to protect transgender people. New York, Washington DC, Massachusetts and Connecticut have already taken similar legal and informal steps. But in an abolitionist future, SB 132 is caught in a familiar paradox of either going too far, or not far enough. Jennifer Orthwein, one of Smith's attorney's, said Smith's experience is common. "Their first time down, there's generally a

The extremely limited research on incarcerated trans people reveals that trans prisoners in general endure disproportionate levels of sexual assault. A 2015 report found that trans respondents who had been held in jail, prison, or juvenile detention in 2014 were “over five times more likely to be sexually assaulted by facility staff than the U.S. population in jails and prisons, and over nine times more likely to be sexually assaulted by other inmates.” Meanwhile, national incident-level data has shown that when trans prisoners are sexually assaulted by another prisoner, the incident is more likely to involve weapons yet less likely to evoke medical attention if needed.

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'The State Is Her Ultimate Killer': How a Trans Woman Died at Rikers

DIANA TOURJÉE

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Senator Wiener says this particular form of violence is precisely what SB 132 seeks to stem. “Trans women in particular are at such high risk for severe violence,” he said. Transgender community members and advocates came to speak with Wiener years ago about the horrific experiences of trans people in California prisons, and opened his eyes to issues such as “lack of healthcare access, to being misgendered, to staff using the wrong pronouns, to the housing issue.” Wiener believes SB 132 provides a corrective. While trans people are incarcerated, SB132 will ensure they “be treated with the dignity that they deserve,” he said.

But activists, and Smith’s own lawyers, know that SB 132—which relies on legal compliance, training, and cultural change within the prison industry—walks a fine line between cosmetic and seismic change. Especially at a time when closing prisons and defunding police has become a part of the national political conversation, some greet reforms like SB132 with reservation.

tasked with implementing SB132. That's not necessarily promising, considering that 37 percent of trans people who served time in jail reported having been harassed by correctional officers.

"We see this [retaliation] all the time," Orthwin said, "particularly with trans women who raise concern and dissent over their safety."

Felicia Medina, Smith's other attorney, added: "The fact that people [outside of prisons] think they're safer with police or corrections officers who function like a gang to terrorize people kills me."

Still, activists see the importance for such reforms as a form of harm reduction. Freddie Francis is a member of the Transgender Advocacy Group (TAG), a coalition based in California that supports, advocates for, and organizes with members of the trans community behind bars with the long-term vision of abolishing all carceral systems. Francis is also one of the many organizers who have been pushing for SB132 in the last few years. "It's been complicated," they said, "but [SB132] has the potential to set the stage for how trans people are imprisoned on a national basis."

At the same time, Francis is concerned. "[SB132] makes me nervous because I don't want people in institutions to get the impression that there is a safe, just, or humane way to imprison people."

Eric Stanley, a longtime community organizer and co-editor of the landmark anthology *Captive Genders*, which traces the relationship between transness and the prison industrial complex, agrees. "Is the thing we're fighting for the thing that we have to be fighting against in five years?" they asked.

Bamby Salcedo, the CEO and President of the TransLatin@ Coalition, spent 14 years in and out of prison. For her, abolition is a dream and SB132, which she helped create, is a reality. “How can we support individuals who are incarcerated?” she asked. “Many who have life sentences will continue to be incarcerated. We do our best to support them until we finally get to the abolition of the prison industrial complex.”

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Major LGBTQ Orgs Across the US Are Waking Up to Racial Justice

NICO LANG

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A staggering one in every two Black transgender people has been behind bars. Such statistics highlight the myriad pipelines to prison that trans people of color face, and the reasons that trans activists of color are fighting for widescale change—from decriminalizing sex work, to gaining access to housing and education. This week, Salcedo became one of only two people she knows in her community to have earned a master’s degree.

Salcedo wants to see a sweeping systems-level overhaul. “I’m hoping that people understand the fact that our community continues to be criminalized because of who we are and how we have to resort to street economies to survive and get arrested and incarcerated,” she said. “Next, we’re going to push for what is just, what our communities deserve, and to seek the dignity we deserve.”

Similar to Salcedo, Medina said Smith is a leader who protects other trans women incarcerated at San Quentin. “Her life before incarceration was of marginalization and oppression,” Medina added. “She never should have been locked up to begin with.”