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Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2014/08/07/transgender-women-in-new-york-state-prisons-face-solitary-confinement-and-sexual-assault/>

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by [Aviva Stahl](#) | August 7, 2014

It was Gay Pride weekend in New York City, but the events celebratory spirit was absent from Michelle Scotts tidy second-floor apartment on a leafy street near Brooklyn College. Her child, Carey Smith, is a transgender woman currently locked up in solitary confinement in Upstate Correctional Facility, a mens supermax prison located in the Adirondacks.

Sometimes Im on my bed, Im crying, she told Solitary Watch. I wake up at five oclock in the morning thinking about it, and I say, God my son is stuck in a cell for 23 hours a day, said Scott, who seems to accept Smiths transition but still uses male pronouns. And I pray and ask God, Please give him the grace to do it. Smith is in disciplinary segregation, known as the Special Housing Unit, or SHU.

In an era of unprecedented victories for LGBT rights, especially in liberal New York, people like Carey Smith are still paying a high price simply for being who they are.

Over the past several months, Solitary Watch has been in contact with seven transgender women currently or formerly incarcerated in New Yorks mens correctional facilities. They each described enduring long-term solitary confinement as a result of identifying or being perceived as female/feminine instead of male, the sex they were assigned at birth. And about half of the transwomen interviewed by Solitary Watch specifically disclosed being sexually assaulted by guards in isolation, and described the psychological distress of enduring such brutality while locked up alone.

Here are the stories of three of those women, and the continuing efforts of their families, lawyers, and activists to obtain justice for transwomen behind bars.

Solitary as protection, solitary as punishment

Carey Smith, 32, was born in Jamaica and followed her mom to Brooklyn at the age of twelve. After many years struggling with addiction, in 2010 she landed in prison on a seven-year sentence for two robbery charges. Although she had come out as transgender in high school, it was not until she arrived at Coxsackie Correctional Facility a prison just south of Albany where Smith was incarcerated before Upstatethat she requested and received regular access to hormone therapy. As Smiths body changed, she began experiencing numerous sexual threats and violence from both inmates and staff.

One night last winter, Smith became overwhelmed with the constant harassment and told the Correctional Officers (COs) she felt unsafe, according to a letter sent to Solitary Watch. But when a sergeant and lieutenant arrived they dismissed her concerns, informing her that she needed to pursue transfer requests through the available bureaucratic channels. I then told the Lt., What if I flood my toilet, and he said, You would be doing a lot of SHU time. Then she explained, Right then and there I took the bait Ive been locked up since.

On any given day, about 3,800 people in New Yorks prisons are in the SHU. That means spending 23 of 24 hours in a cell the size of a parking space, with no telephone privileges, few personal possessions, and no access to activities, programs, or classes. Meals are served through a slot in cell door. Even the one-hour of recreation permitted each day is spent alone.

Solitary confinement can be a harrowing experience for anyone. But as Smiths journey story underlines, for many transwomen there are multiple and contradictory meanings attached to isolation: Although it is sometimes perceived as a place of safety, it is also frequently experienced as a form of punishment.

Her story also illustrates the very limited options available to transwomen to push back against the cruelty and indifference exhibited by staff. Mik Kinkead is an attorney for Prisoners Legal Services of New York, which provides representation to indigent prisoners on issues associated with their conditions of confinement. Ive had several clients who have tried to stand up for themselves when DOCCS staff refer to them as it or thing or use the wrong pronoun even after my clients have explained what pronoun to use and why not doing so is hurtful and emotionally cruel, he said in a recent phone interview. However standing up for yourself in prison often results in a Misbehavior Report and being placed in solitary.

Trans and gender nonconforming people are disproportionately punished in prison and isolation is a common form of punishment, explained Alisha Williams in an email to Solitary Watch. She is the Director of the Prisoner Justice Project at the Sylvia Rivera Law Project (SRLP), a NYC-based non-profit that provides advocacy for poor people and people of color who are gender non-conforming. As Williams pointed out, transwomen can even be punished for possessing panties if they have not been given the appropriate clearance by DOCCS staff. The SRLP extensively documented the experiences of transgender and intersex people in New York States men prisons in their 2007 report, [*Its War in Here*](#).

Sometimes, the crime that lands transwomen in isolation is simply appearing feminine, and therefore more vulnerable to physical or sexual violence in the general prison population. In New York and across the country, transgender people are often sent into involuntary protective custody (IPC) another form of isolation against their will, along with other prisoners perceived to be at risk. Other trans people elect to sign into voluntary protective custody (often referred to as PC) in order to escape a dangerous environment in general population.

According to New Yorks Department of Corrections and Community Supervision (NY-DOCCS) Directive 4948, prisoners in PC and IPC are supposed to spend a minimum of three hours per day outside of their cells, participate daily in at least two group meals, and have regular access to library and counseling services, telephone calls, visits and their personal property in other words, conditions are not supposed to mirror the SHU.

But according to women on the inside and advocates on the outside, few facilities make such distinctions. And because the vulnerable populations that end up in PC/IPC necessarily come under increased institutional surveillance, what begins as a protective measure may end as a punitive one.

Geri, 48, a German-born transwoman who asked that her last name be withheld, is twenty years into a twenty-five year sentence for second-degree manslaughter. In series of letters to Solitary Watch, she described how she spent the first 17 years of her sentence in the closet until one day, when three gang members assaulted her. She wrote:

[W]hile I fought, I was quickly beaten to shower floor. Cold, hard, wet slippery. Kicked and incapacitated. So fast, with kaleidoscope of images and thought swirl in my overwhelmed mind. She goes on to describe the rape in detail.

Geri explained that after her assailants left, she cleaned herself up and scrubbed the floor, all the while hoping she could get back to her cell without COs noting the incident. But as she crossed the recreation yard, a guard noticed she was bleeding; she taken to the facility hospital, where she was swabbed and her boxers confiscated. After being given minimal treatment, she was escorted to IPC wearing only a small towel tied around her waist.

But Geris difficulties did not end there. Instead of receiving additional medical care, she was issued two disciplinary tickets: one for not reporting an injury, and the second for a positive marijuana test. After a hearing on the charges before other prison staff, she was sentenced to six months in the SHU, which she served primarily at Upstate prison. Like many, once in the box Geri received additional tickets, and she ended up spending four years there.

Sexual assaults by prison staff

As Geris story suggests, the most significant factor that lands transwomen in protective custody is actual or perceived risk of sexual violence. However, isolation is oftentimes an equally or even more dangerous place. In fact, it was during Geris transfer to the SHU at Upstate that she experienced her most recent episode of prison sexual violence.

At layover stop [to Upstate], she wrote, I am escorted by staff member, and cuffed behind my back. I was directed into small room and to sit on bench. Staff member closed door, made some reference to rape incident, exposed semi-erect penis and standing in front of me told me to: polish his knob.

She continued: I was absolutely shocked, but recovered enough to bluff. I told him hed better just pull the pin (personal alarm). He backed off, reziping pants, tried to play off as he was just joking with me. No sane, rational person would believe these actions as mere joke.

Although no data exists tracking transgender experiences of assault New York prisons, accounts like Geris, as well as data from other studies, suggests that it is an commonplace ordeal for transwomen locked up. In a [2007 study](#) of California prisons, for example, 59% of transwomen polled reported experiencing sexual assault while on the inside a rate nearly 13 times higher than average amongst the states prison population.

According to recent [Bureau of Justice Statistics data](#), nearly half of the alleged instances of sexual violence in prisons and jails across America are actually committed by facility staff. In short, placing transwomen in protective custody may actually increase their vulnerability to predatory staff members, while simultaneously closing down potential avenues to report assaults.

For Yvette Gonzales, 37, who spent three years of her seven-year sentence in solitary confinement, the notion of isolation as protection could not be farther from the truth. Gonzales was first arrested in 1998 and eventually pled guilty to criminal possession of a weapon. She narrated her experiences to Solitary Watch from the Midtown offices of Housing Works, the HIV/AIDS advocacy organization where she now works as a testing coordinator.

Things were going good for a while, at Franklin Correctional Facility, where Gonzales was first transferred after sentencing, until my whole femininity thing just started becoming an issue for a lot of correctional officers. Guards starting harassing her, and when fights started breaking out in the dorms, she said, they were blamed on her. I went to the box, supposedly to keep me safe.

At first Gonzales was placed at the front of the tier. Then, one night, a CO moved her to a cell at the very end of the corridor, out of sight from the bubble where other guards would stand watch. A few nights later, the same guard returned and informed her he would be searching her cell, ordering her to stand in front of her bed and strip. Then, the CO came towards her.

I remember, he punched me so hard in my ribs, that I could barely breathe he hit me so hard that I grabbed myself on the bed and that's when he came behind me and he was grabbing me, choking me and hitting me, pinning me down there was a point I couldn't even move.

He made me give him oral sex and he turned me around and that's when he attacked me sexually he raped me and this went on for a few weeks.

Gonzales also told Solitary Watch that she never received medical attention. When I tried to complain to the captain he told me that I was lying. So I had to endure that for a long period of time when I was in the box.

Both advocates and many of the transwomen in touch with Solitary Watch stressed that when prisoners account of a staff assault is disputed, unless videotape evidence is available, the COs word will almost always be accepted as truth.

In an e-mail, Assistant Public Information Officer Linda Foglia told Solitary Watch, DOCCS has not identified a systemic problem of transgender women being sexually victimized by either other inmates or staff. She added that DOCCS is in the process of launching a new sexual victimization-screening tool, which will include information about individuals sexual orientation and gender identity, and sensitivity training for reception and guidance staff.

The trauma and toll of isolation

There is a growing understanding both across the country and the world that prolonged solitary confinement causes severe emotional distress, and often amounts to torture. After communicating with over 100 individuals who had served significant time in the states SHUs, the New York Civil Liberties Union concluded that extreme isolation causes emotional and psychological harm, including apathy, lethargy, anxiety, depression, despair, rage and uncontrollable impulses, even among the health and mentally stable.

Chris Daley is the deputy executive director of Just Detention International (JDI), a human rights organization that is committed to ending sexual violence in detention. [Solitary] is an incredibly harmful way to protect someone, he told Solitary Watch in a recent phone interview from the organizations Washington DC office.

The emotional and psychological damages that comes from being placed in solitary can oftentimes be just as bad as the physical violence, it just manifests differently, and it is not something you can as clearly point to in an individual case.

Gonzales told Solitary Watch that being in IPC had undoubtedly affected her well-being. There's nothing for you to do [in the box]. You sleep, you lose track of time. You start talking to yourself, you start hearing, you start imagining, you start inventing, you start making up stuff.

The Prison Rape Elimination Act (PREA), passed in 2003, recognizes the psychological toll of isolation by requiring facilities to assess all alternative remedies before placing a vulnerable person individual in IPC like relocating perpetrators, increasing staffing, or housing those at risk in single-cells within general population. The legislation also states that involuntary segregation for those at risk should not last longer than 30 days.

NYDOCCS told Solitary Watch that its facilities are PREA-compliant in these specific areas. These assurances were disputed, however, by every advocate interviewed for this article.

Being placed in solitary confinement whether for protection or punishment is often particularly psychologically distressing for transwomen: not only because of the violence they face in isolation, but also because they are cut off from transgender-affirming avenues of support, like family or friends on the outside or LGBT peers in general population.

In a note to Solitary Watch, Smith described the level of distress she has encountered in the SHU. Last year before this I was in another facility I was being treated badly by the staff as a whole in Woodbourne [Correctional Facility] while in an extremely intense solitary confinement especially because the space was so small. I asked the officer for mental health and he told me he would not get mental health for me.

Smith felt trapped. The day before, a prisoner who had twice assaulted her had been let out of the box; she believed she was kept in because of all the attention [she] was getting.

I took them off [my reading glasses], broke them up and started to slice and cut up my wrist and arm. After all the blood and cuts mental health was called and I was out of solitary for 5 days. It's sad I have to mutilate my own body just to get something done.

Transwomen do not only pay a price psychologically they also pay in time. I have multiple clients who have been denied parole because they spent their entire time in protective custody, Kinkead told Solitary Watch. Almost without exception, prisoners outside of general population are unable to access programs mandated by the courts like anger management that might otherwise enable them to be seen favorably at parole hearings.

Proposed solutions for staying safe(r)

As Chris Daley of Just Detention noted, it is the environment within mens prisons that puts transwomen at such a high risk of sexual violence in that their bodies become a means for both prisoners and staff to assert their masculinity. In letter to Solitary Watch, Geri explained, Being in a mens prison lets you know how (many) men really feel about women and makes me feel more vulnerable to sexual violence/abuse than ever before.

As a result, some advocates have suggested that the answer to keeping transwomen safe is creating policies for them to be more easily housed in womens facilities, as has been done in a number of cities and states, including Denver, Washington, DC, and elsewhere. And certainly being transferred to a womens facility is a priority for many transwomen locked up in New York and across the country. Under PREA, correctional facilities are supposed to determine housing for trans people on a case-by-case basis, taking into account where the

individual feels they would be safest.

When asked, however, most of the transwomen in touch with Solitary Watch named a different solution—creating specific pods, floors or even entire facilities dedicated to housing LGBT prisoners.

According to Daley, LGBT-segregated units can sometimes heighten vulnerability to violence, for example, if staff predators gain access. He thinks the idea is more a reflection of the dire nature of current realities than a solution in itself. [The request for LGBT-units is] shorthand for I want to be someplace where they're going to call me by the right name, use the right pronouns, and not threaten or intimidate me. That's about conditions of confinement. And everyone should be in a facility where those things happen.

Last February, the New York Civil Liberties Union (NYCLU) reached a tentative agreement with the state that will remove a number of vulnerable populations from isolation, including juveniles, pregnant women, and those with developmental disabilities—but makes no reference to transgender people.

The Humane Alternatives to Long-Term (HALT) Solitary Confinement Act, introduced into the New York state legislature this past winter, aims to establish strict limits on the amount of time any prisoner could spend in isolation.

HALT also recognizes that certain people should never be placed in isolation for any length of time because either isolation itself can have more devastating effects on them or they are more vulnerable to abuse while in isolation, explained Scott Paltrowitz, Associate Director of the Prison Visiting Project at the Correctional Association, a non-profit advocating for a more humane criminal justice system in New York. Transgender people and other members of the LGBTI community are given additional protections under HALT primarily for the latter reason.

Within the broader movement against solitary confinement in New York and across the country, advocates face a difficult dilemma: namely, how to provide immediate and much-needed relief to the most vulnerable of populations without leaving everyone else to languish in the box.

Jason Lydon, 31, is the founder of Black & Pink, an organization that aims to build support between LGBTQ people across prison walls, primarily through a pen-pal scheme.

When we fight for the reduction of solitary confinement for certain individuals, he told Solitary Watch, we are saying that solitary confinement is okay that there is a certain amount of torture that is okay for certain kinds of people for [non-trans] black men, for example.

He added, We're not looking to create a pink door in a prison wall for LGBTQ people to walk out of. While centering [LGBTQ] experiences, our efforts are tied to this larger call for abolition for everybody.

For its part, NYDOCCS has also stated that it is taking steps to better accommodate the needs of trans prisoners. In an email, Linda Foglia told Solitary Watch:

In July 2012, DOCCS convened an internal multi-disciplinary GID Task Force (now the GD Task Force) to study the needs of transgender individuals, and to review policies to ensure an appropriate balance between individual needs and the agency's mission. The work of this Task Force continues and keeps DOCCS at the forefront as corrections agencies across the nation work to identify best practices for working with LGBTI inmates.

An unconditional love

While popular mobilization and policy change may seek to improve conditions on the inside, when it comes down to it, most transgender women locked up in New York and across the country rely on friends and family to survive.

In a June letter to Solitary Watch, Smith wrote, the biggest thing that bothers me [about conditions in the SHU] the most not hearing my mom's voice to ease her worries and mine.

From her home in Flatbush, Smith's mother, Michelle Scott, explained why her emotional support is so central is to her child's survival on the inside. Carey sees [my] unconditional love when everyone else turns their back. He sees the unconditional love when he goes out there and I'm walking with him on Flatbush. I see guys looking at him and say, Oh, you batty man. They cut him down and I hold his hand and we cried, and I said, This is my child.

Michelle Scott hopes that love will help keep Carey strong even as he endures isolation and abuse in prison. I never in my life fathomed he would go through this, she said.

For a firsthand account of one transgender woman's experience in solitary confinement in New York, see the accompanying piece [Voices from Solitary: Cruel and Unusual Punishment for Transgender Women](#).

Solitary Watch is interested in hearing from other transgender individuals and their families about their experiences in New York's prisons and jails. Please write to Aviva Stahl, c/o Solitary Watch, Box 165, 123 7th Avenue, Brooklyn, NY 11215 or email [aviva.stahl\(at\)gmail.com](mailto:aviva.stahl(at)gmail.com).

Aviva Stahl is a Brooklyn-based reporter who writes about science/health at the intersection of mass incarceration, national security, and trans rights. She's written for the New York Times, Wired, BuzzFeed News, Solitary Watch, and other outlets. Find her [@stahlidarity](https://twitter.com/stahlidarity) and at stahlidarity.com.

Accurate information and authentic storytelling can serve as powerful antidotes to ignorance and injustice. We have helped generate public awareness, mainstream media attention, and informed policymaking on what was once an invisible domestic human rights crisis.

Only with your support can we continue this groundbreaking work, shining light into the darkest corners of the U.S. criminal punishment system.

by [Juan Moreno Haines](#)

October 25, 2022

by [Solitary Watch Guest Author](#)

October 13, 2022

by [Vaidya Gullapalli](#)

September 29, 2022

Solitary Watch encourages comments and welcomes a range of ideas, opinions, debates, and respectful disagreement. We do not allow name-calling, bullying, cursing, or personal attacks of any kind. Any embedded links should be to information relevant to the conversation. Comments that violate these guidelines will be removed, and repeat offenders will be blocked. Thank you for your cooperation.

@p51djm22

You've got your head in the sand. Here is a quote of some stats.

More than 216,600 people were sexually abused in prisons and jails and, in the case of at least 17,100 of them, in juvenile detention. Overall, that's almost six hundred people a day twenty-five an hour.

Overall, most victims were abused not by other inmates but by corrections staff: agents of our government, paid with our taxes, whose job it is to keep inmates safe.

And what you think is consensual between inmates is all too often coercion.

<http://www.nybooks.com/articles/archives/2011/mar/24/prison-rape-and-government/?pagination=false>

These are a few of the reasons why prisoners fear reporting rape.

Fear of being written up and possibly losing good time.

Fear of retaliation.

Fear of feeling that no one will believe them.

Fear of feeling that no one really cares.

For all these reasons, a large majority of inmates who have been sexually abused by staff or by other inmates never report it.

Justice Wayne Justice of Texas wrote in 1999:

Texas Observer Cruel and Unusual Still

Texas prison inmates continue to live in fear a fear that is incomprehensible to most of the states free world citizens. More vulnerable inmates are raped, beaten, owned, and sold by more powerful ones. Despite their pleas to prison officials, they are often refused protection. Instead, they pay for protection, in money, services, or sex. Correctional officers continue to rely on the physical control of excessive force to enforce order. Those inmates locked away in administrative segregation, especially those with mental illnesses, are subjected to extreme deprivations and daily psychological harm. Such practices and conditions cannot stand in our society, under our Constitution.

Here is a quote from the Supreme Court?

U.S. Supreme Court Justice Harry A. Blackmun, Farmer v. Brennan:

The horrors experienced by many young inmates, particularly those who are convicted of nonviolent offenses, border on the unimaginable. Prison rape not only threatens the lives of those who fall prey to their aggressors, but it is potentially devastating to the human spirit. Shame, depression, and a shattering loss of self-esteem accompany the perpetual terror the victim thereafter must endure.

Human Rights Watch wrote a 2001 report titled No Escape

All of this resulted in

The Prison Rape Elimination Act (PREA) which was passed in 2003 with unanimous support from both parties in Congress.

But you know better huh?

Thank you for writing this, Aviva Stahl!!! Commenters denying the lived experiences of the women quoted in the article and the violent reality of prison can take *several* seats.

This is ALL such bullshit! I worked in male and female facilities in NYS for 28 years. Inmates in IPC are required to have at least three hours out of their cells, but in reality, they are locked in only for master counts and at night. They don't even have to work. They sit

around and watch TV all day. No staff are interested in whatever kind of gender the inmates proclaim themselves to be. No lieutenant would ever tell an inmate he didn't believe him if he claimed to have been sexually assaulted by staff. There is a clear procedure to be followed in such instances, and like the author said at the start, NY is a liberal state. A lieutenant failing to follow the procedure for something like that would be committing a career-ender. There is plenty of consensual sex between inmates that staff do not catch, so there is no need for cons to rape each other. In fact, I only know of one rape in 28 years, and that was committed against a white kid whose father was a cop. Security staff would not allow their peers to commit any act like that, just as they won't allow fellow officers to traffic contraband. Of COURSE inmates are going to claim they've been sexually assaulted to lawyers or reporters, because they lie. That's what they do! You people who believe in these fairy tales need to quit watching so much TV. Oz was not reality.

Rape should not be a part of a prison sentence. Also, what is happening to the staff that are committing the crimes? Rape is a crime? This is truly horrifying, .

.SC I don't want to open a massive debate, that's perhaps for another forum, however compelled to inform anyone referring to a transgender woman as he or using masculine pronouns is at best offensive at worst despairing .
Whatever we have between our legs doesn't always show who or what we are. This has been a recognized medical condition, whether or not the operation has been performed.
I weep and send my support to these ladies who are raped for who they are.

While it is important for all people to feel safe in our correctional institutions, how much attention is going to the support of and defense of the officer? The LGBT community is less than 1% of the population. They consider themselves women yet they are isolated in a male facility. That needs to change. If they are women, then Bedford Hills is their next stop. On a whole, officers are respectful and fair, firm and consistent. They are well trained and follow not only established rules but a moral compass. Just as in teaching, there are people who do not represent the majority of that work force and need to be dealt with. I would love it if the state would spend the same amount of time and attention on the lives of COs and the disparaging difference in what they endure daily and the lifestyle of being in a prison 8 hours a day and victims to the PLS services inmates get for free. There is not balance here.

He is not locked down 23 hours a day. That is yet another stereotype pushed by advocate groups and reforms have provided more instructional out of cell time even though they are housed in segregated housing, whether due to protective custody status or for serious infractions of institutional rules and regulations. Time to update your information!!

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