

A CONTENT ANALYSIS OF STATE AND FEDERAL  
COURT CASES AND COMMENTATIVE NEWS  
ARTICLES DOCUMENTING GENDER-AFFIRMATION  
ACTIONS PURSUED BY INCARCERATED  
TRANSGENDER INDIVIDUALS

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When beginning this journey, there were moments that the end seems non apparent to me. Looking back, I allowed to many outside factors to have hold on the way I viewed my project. I know that if the circumstances had been different that this project in the form presented to you in the following pages would not exist. But this project, in both my research sample and in the completion of it, demonstrates the strength and dedication any one individual has to the idea they are passionate about. With passion and a supportive network of any makeup, what seems impossible becomes history. To the people that held my hand, told me honestly that it was okay to fail, and that I was on the right path, this is for you.

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Abstract: Individuals who identify as transgender may seek out different pathways to gender affirmation, which is the process where an individual receives social recognition as their gender expression and identity, such as social standing or medical interventions. This places individuals who are currently incarcerated at a disadvantage to gender affirmation process being met due to the restrictions and emphasis the United States criminal system places on punishment instead of reformative justice. This project aims to identify those gender affirmation processes for transgender individuals who are currently in the justice system. Specifically, this study is looking at the diverse avenues individuals use to pursue legal action against the department of corrections or facility that oversees their housing and wellbeing. By conducting a content analysis of 24 court cases of 30 male-to-female transgender individuals who are currently incarcerated in the United States, the process of gender affirmation was mapped out by the prior behaviors, reports, and requests for medical intervention that were documented as evidence. Interviews were included to further construct the narrative of the life stories of the individuals by establishing the feelings and attitudes of the persons in the sample. In this context, the research has provided support that individuals seeking gender recognition will continue to progress past both social and medical intervention to the point of legal interactions to establish gender affirmation. This project lays the groundwork for future research to build upon with this population and includes policy suggestions that may lead to more developed care for transgender individuals in the carceral system.

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## CHAPTER I

### INTRODUCTION

Can a transgender individual accomplish gender affirmation in a system designed to dehumanize people such as incarceration? If the way of gaining gender affirmation is removed or not available, will individuals still pursue other avenues to be viewed as their identified gender? The design of the prison industrial complex is a very flawed system that has been debated in the areas of sociology, criminology, psychology, and many more. Scholars and activists conclude that incarceration does not help with the recidivism rate of those serving time nor with the reduction of crime across the nation but instead provides free labor for the prison industrial complex (Davis 2003, Wang 2018) and increases the stratification and oppression of underserved communities or minority groups (Wakefield and Uggen 2010). There are further problems individuals face after release with those who have felony convictions and the impact it has on finding housing (Keene, Smoyer and Blankenship 2018), work (Uggen, Vuolo, Lageson, Ruhland, and Whitham 2014), and education (Evans, Szkola and St. John 2019). People of color and those who live below the poverty line are more likely to be incarcerated during their lifetime because of the systematic disadvantages of the criminal justice system (Davis and Barsamian 1999, Davis 2003).

There is another minority that is also incredibly disadvantaged by the carceral system: individuals who identify as lesbian, gay, bisexual, transgender, queer, intersex, and asexual. Often referred to as LGBTQIA+ or LGBTQ+, is the group of people who fall into the broad and diverse category

of gender and sexual minorities. Queer and sexual minorities have been incarcerated for centuries due to Christianity's influence on societies' views on moral sin and the belief that relations between same sex individuals is in defiance of religious faith (Mogul, Ritchie, Whitlock 2011). Stephen Donaldson (1983) referred to prisons' design as a way to force people to repent through the method of "hard labor, silence, studying the scriptures, and corporal punishment" (Donaldson 1983 pg. 122). While the laws have changed where homosexuality is no longer considered a crime, queer individuals are still disadvantaged by the carceral system through a combination of different aspects that will be explained in the literature review. Because of this, prisons have become "breeding grounds for a raced, gendered and classed archetypal amalgam of criminality, disease, predation, and out-of-control sexuality" (Mogul et al 2011 pg. 95). Because of these problems, it is important to understand the way the prison system is designed to moderate and remove all social dynamics that would promote/allow for reflect self-expression.

This project aims to provide support that even in a resourceless environment (incarceration), individuals participate in methods to gain access to resources that would provide them with access to needs identified for gender transition and affirmation, such as less harmful social networks and healthcare. This project will analyze 24 court cases that represent 30 individuals and interviews conducted with news articles to identify gender affirming actions transgender individuals have taken. Court cases will be defined as those involving a transgender plaintiff bringing forth a lawsuit against the correctional facility and/or the state Department of Corrections, suing for the provisions of any following categories: Housing and Safety Accommodations, Drug Treatment (including but not limited to Hormone Therapy), and Gender Confirmation Surgery. These categories are used because they underscore the question of how courts define civil rights for transgender individuals. If it is understood that cisgender individuals, persons who identify with the gender they were assigned at birth, are granted housing accommodations that are safe and align with their gender, why are those same rights not afforded



to trans individuals? The majority of the court cases in the sample of this thesis project are calling attention to inadequate policies or full lack of policy and for the clarification of human rights for incarcerated transgender people.

## CHAPTER II

### REVIEW OF LITERATURE

#### *Transgender Identities and People*

It is crucial to the parameters of this project that the term “transgender” is defined in the scope of the sociology field. Sex and gender are often used interchangeably, even though they are not the same thing. Sex is defined largely in a binary way by the biological markers assigned to an individual at birth based on widely defined physiological sex characteristics (i.e., male, female). Gender encompasses an individual’s social, cultural, and psychological characteristics (Gilbert and Scher 1999). West and Zimmerman (1987) articulate that often society expects the two to be aligned and for there to be no alternatives to heteronormativity, the “assumption that all people are heterosexual” (Warner 1991) “gender normals” (Garfinkel 1967, Schilt and Westbrook 2009), or the gender binary. The gender binary is defined as the binary sex system which predicates on “natural” attraction between two types of bodies defined as opposites (Schilt and Westbrook 2014). This research focuses on the individuals whose gender does not match with their sex, whose gender does not reflect their assignment at birth. Previously research that focused on individuals “whose physical bodies do not represent their true sex” (Gagne et al 1997, Lev, 2004, Lev 2007), who “disrupt cultural expectations that gender identity is an immutable derivation of biology” (Garfinkel 1967), referred to these individuals as “transsexuals” (Devor 2004,

Budge et al 2013), “Agnes” in reference to Agnes Torres the first transgender individual interviewed for ethnography studies (Garfinkel 1967, Rogers 1992, Zimmerman 1992, Jenness and Fenstermaker 2013), or the current catch all term “transgender.” Often following the label transgender, while self-applied or medically applied to an individual, the person may choose to proceed with a life phase of transitioning. This process, simply, is the method of which an individual transitions from the gender, defined by the sex organs at birth, to their authentic, self-determined gender identity (Sevelius 2013). Transitioning will be broken down into three parts; pre-transition, during transition, and post-transition (Ettner, Monstrey, and Coleman 2013). For this paper the method of self-identifying as transgender will be the basis in which the term is used regardless of which stage of transitioning the individual is in. This matches with the current work done in the field in how to identify individuals in regard to creating samples for the population of individuals who identify as transgender. For the interest of this research paper, the sample will not include anyone who is intersex or gender non-conforming because that will be studied in future research and does not follow the methods of transitioning that my sample does.

#### *Contextual Gender Affirmation Processes and Transgender People*

The academic field of psychology has already established the needs of individuals for healthy and often normative mental and emotion development. For heteronormative development with cisgender individuals, whose gender identity matches the markers assigned at birth (West and Zimmerman 1987, Sevelius 2013), it is known that social support is vital for its broad impact on both physical and mental health (Bowlby 1969, Leary et al 1995, Devor 2004). Some transgender individuals will experience “gender dysphoria,” which refers to “psychological distress that results from an incongruence between one’s sex assigned at birth and one’s gender identity” (American Psychiatric Association 2013). This will often be followed by the process of gender affirmation: “the process by which individuals are affirmed in their gender identity through social interactions.” (Sevelius 2013). For transgender individuals, the process of gender affirmation is

very important to their creation of a self-identity (Glynn et al 2016). There are multiple processes in which individuals go about gender affirmation, be it the use of clothing, medical treatment, or social network acceptance (Lev 2004). Individuals who identify as transgender may pursue multiple domains of gender affirmation, such as “social affirmation, legal affirmation, medical affirmation and/or surgical affirmation” (American Psychiatric Association 2013).

### *Social Recognition and Transgender Individuals*

There are usually three tiers to gender affirmations process for transgender and non-gender conforming individuals, the first being that of a self-realization or coming out process. This may be a long-term process for a person to undergo during adolescents or earlier in life (Lev 2004, Sevelius 2013, Ettner, Monstrey, and Coleman 2013). Historically researchers have labelled the method of a “person’s gender being authenticated by other people” (Westbrook and Schilts 2014) as one form of doing gender (West and Zimmerman 1987) or gaining “gender authenticity,” as Jenness and Fenstermaker (2014) explore in their study of how prisoners achieve their version of a “real girl.” This requires the individual to have the access and the means of resources and money to obtain gender identifying products. This would be categorized under the self and social affirmation. This stage may also include the uses of clothing to express gender as well as haircut styles and the uses of wigs or weaves. This would garner them social capital within their networks as the gender they identify with. In prison, this is virtually non-existent as prisons are restrictive of what is available on commissary or canteen within correctional institutions. Self-made articles of clothing, hair extensions, or the use of make-up is viewed as contraband and results in disciplinary write-ups and additional harassment from guards (Brown 2014). This is usually the first step in the transition process because many states require an individual to live as their identified gender for a year or more before hormones or surgery will be started (Ettner, Monstrey, and Coleman 2013).

### *Legal Transition among Transgender People*

This directly relates to the legal transition an individual goes through such as changing their name which in the United States requires a court order. Every state has a different set of procedures that must be used to change gender and name markers for driver's license. The most difficult legal transition is changing name and gender markers on the birth certificate because in the majority of the states, it requires proof of surgical treatment (Anon 2020c). There are some state that only amend a birth certificate and there are a few states that do not allow for it at all (Anon 2020a).

### *Medical Care among Transgender People*

Often following would be the second tier for this group: the medical processes. While it is important to note that many transgenders people will gain access to hormones and surgery, it is very expensive, and many insurances will not cover the cost (Sevelius and Jenness 2017). This will bar individuals who live under the poverty line from obtaining multiple aspects that can lead to gender confirmation surgery such as the access to doctors and psychologists that diagnose gender dysphoria which is often seen as the required diagnosis for the subsequent steps (Sevelius 2013, Sevelius and Jenness 2017). This has since been the mission of World Professionals Association for Transgender Health (WPATH) and their mission to provide detailed standardized guides for the care of individuals who identify as transgender. Currently on the 7th edition of Standards of Care 2011, it provides clinical guidance for medical health professionals to offer “safe and effective pathways to achieving lasting personal comfort with their gendered selves, in order to maximize their overall health, psychological well-being, and self-fulfillment” (Coleman et al 2011). It outlines different processes that have been defined to be medical affirmation of gender for individuals who identify as transgender, such as assessments of and treatments for Gender Dysphoria, hormone therapy, reproductive health, confirmation surgery, post-surgery care. This is the standard for healthcare professionals to use when engaging with this population

but because many individuals are often limited on their access to proper medical care this become an issue.

Many transgender individuals both in and out of prison are denied access to proper health care. Historically, they are less likely to receive adequate medical care (Witten and Eyler 1999, Brown and McDuffie 2009) due to state control of medical funding to underserved populations and those living in poverty (Sevelius and Jenness 2017). This is not to say that these are the only reasons why an individual would be denied access to transition-related healthcare, such as hormones and surgeries, but it was echoed again in 2011 with the National Transgender Discrimination Survey (NTDS) and in 2015 with the U.S. Transgender Survey (USTS). It was found in the NTDS 2011, that two out of five individuals reported incomes of less than \$30,000 dollars a year per household. This may be a result of trans individuals experiencing more discrimination in areas of education or employment then cisgender people (Grant et al 2011). Without consistent government protections that ensure a person cannot be fired for their gender identity, transgender individuals face more job instability. Overall, this causes an impact on the lives of transgender individuals because, without a stable source of income, they may be forced out of the formal economy. One in five make an income by participating in sex work (Herman et al 2015) which places them at lower chances of medical care (Witten and Eyler 1999, Brown and McDuffie 2009, Sevelius 2013) and a higher chance of interaction with the criminal justice system (Grant et al 2001, Reisner et al 2014, Sexton and Jenness 2016). Because of limited access to livable wages this results in one in five trans adults being uninsured and even more reporting they skipped seeking health care because of the cost (Grant et al 2011, Brown 2010, Herman et al 2015).

All of the issues mentioned prior become exacerbated when an individual interacts in any way with the criminal justice systems. Sexton et al 2020, Reisner et al 2014, Jenness and Fenstermaker 2016, all found that transgender women of color are experiencing disproportionately high rates of incarceration, increased victimization during served time, and even increases of negative health.

The USTS of 2015 found that more than half of the respondents have experienced some form of mistreatment or harassment by police, confirming and expanding on the one-fifth of transgender women that Grant et al 2011 reports on. This calls into a major issue that will be discussed further in this paper. If transgender individuals are being marginalized by employment opportunities, healthcare access, and more likely to interact with the criminal justice systems, how does that all together tie into the access and rights of trans individuals who are incarcerated?

### *Incarceration Dynamics*

Incarceration in the United States is always a major topic of conversation, be for political debate or for the classroom setting. Incarceration is defined as serving a set length of time via the prison industrial complex upon the judges' verdict delivery of guilt for a crime committed. Incarceration is one of the few things that is felt by everyone in one way or another, even for those who think they are divorced from the carceral state. As of 2018, there were 1.4 million people incarcerated in the United States (Carson 2020, Zeng 2020). The Prison Policy Initiative (2020) has found that about 0.7 percent of the United States population is currently incarcerated. This is not surprising news, as Walmsley (2019) reported that the United States holds just under one fourth of the worlds prison population. The present research, however, does not focus on that astronomically high number of incarcerations, but instead on a vastly smaller "forgotten group" (Tewksbury and Potter 2005) that falls under that larger prison populace: transgender individuals who are incarcerated. It is incredibly hard to identify exactly what proportion of the prison population consists of transgender people due to inmate records from the Bureau of Justice Statistics (BJS) only using the dominant binary biological sex categories of male and female for gender markers. This results in all the data coming from the BJS to place transgender individuals, intersex people, and gender non-conforming persons into categories that are not the most representative of individuals and their self-determined gender identity.

The following thesis project defines incarceration as “any confinement facility of a Federal, State, or local government, whether administered by such government or by a private organization on behalf of such government...” (United States 2003 Section 10). This project is not focused on the sentence for which an individual was incarcerated, nor will it hinge on misdemeanor versus felony charges. Overall, this paper is not focused on the aspect of the crime that landed them into the current sentence they are serving, but instead uses this to construct the sample. Incarcerated individuals’ civil rights and personal freedoms are removed as a form of punishment and restitution. Regardless of the charges they have against them, basic humane treatment cannot be denied because of the identity status such as gender (United States 14th Amendment, Section 2). Individuals incarcerated are solely reliant on their facilities to provide all basic care: shelter, food, and medical, but they do not get a say in how that care is distributed.

### *Transgender Individuals and Prison Experiences*

Jails and prisons are just one contextual site where transgender individuals face continued prejudice and discrimination. Often the biggest demonstration of this type comes in via the requirement for transgender individuals to occupy unsafe spaces in order to maintain the gender binary norm. For example, a male-to-female transgender who has completed gender confirmation surgery may still be assigned a cell with a cisgender male. This places undue harm on the individual, as she may become the target for physical and sexual assault from the cellmate. This would be a continuation of the theory of Sex/Gender/Sexuality system that Westbrook and Schilt (2009) demonstrated with their research in the uses of gender-based characteristics to gain access into the different social settings. Different than the sex-based criteria that are used as the opposite stance, historically this has been represented in state legislation termed “bathroom bills” (Herman 2013, Westbrook and Schilt 2014), rules by sports organizations that bar individuals from participating because of testosterone levels (Jones et al 2017), or incarceration housing placement. It is current policy, in most states, to require individuals who are convicted of a crime



to be housed in a facility that aligns with their sex assignment at birth, regardless of their current gender identity and presentation.

In 1994, Dee Farmer made history and changed the way that incarcerated transgender individuals would be able to obtain housing accommodations that fit their gender identity. The U.S. Supreme Court ruled with a 9-0 decision that the action of “deliberate indifference” to the safety of inmates can render a prison and/or prison official liable under the Eighth Amendment (Farmer v. Brennan 1994). By the Supreme Court holding up the ruling under the Section 1983 lawsuit, this now gave prisoners the opportunity to pursue civil remedies for violations of federal constitutional rights (Peek 2004). This implication became known as the Bivens complaint or Bivens action, and would go on to be the beginning motion that would be filed for much of the court cases in my research sample. “A claim under Section 1983, prisoners who had been raped while incarcerated usually allege a violation of the Eighth Amendment, on the theory that the conditions of their confinement were objectively severe and that prison authorities were indifferent to them” (Farmer v. Brennan 1994).

The next major piece of legislation was the Prison Rape Elimination Act (PREA). Signed in 2003 to combat the major issue of sexual assault in prisons, PREA outlined that the Bureau of Justice Statistics would be required to perform a comprehensive statistical review each calendar year to analyze incidents and effects of prison rape (United States 2003 Section 3). It also set up the training and education requirements for the staff and local authorities to prevent, investigate, and punish (United States 2003 Section 5). While it was signed in 2003, it was not until May of 2012, that the United States Department of Justice implemented policy changes for the safeguard of LGBTQIA+ populations in prisons. The biggest addition was the statement that each agency was responsible for the operation of its own confinement facilities and those that housed “unique populations” in reference to the LGBTQIA+ populations (U.S. 2012). This created a loophole as now states became responsible for implementing policies of their own creation and design for

their facilities instead of following one national policy that would provide more equal treatment for individuals who are transgender across the United States. With the addition of Farmer v. Brennan ruling in PREA Section 2, it did allow for transgender individuals to go to court if their rights had been infringed upon. Thus, these legislative changes started the creation of my sample for this project, which will be fully defined in the sample section later in the paper.

A few researchers have found that some transgender inmates may have already accomplished gender affirmation while incarcerated through the use of self-castration in what authors (Brown 2009, Brown and McDuffie 2010) view as the last resort gender confirmation. Inmates who have gone as far as possible to receive medical intervention for treatment of gender dysphoria and have been denied often take more extreme measures in bodily modification (Brown 2010). These actions are further looked at with the question, “Is medical transitional care a right of transgender prisoners?” (Bendlin 2013, Agbemenu 2015). This conversation around the legal situation is mirrored by Redcay et al. (2020), which looks at a historical overview of court cases that involve transgender individuals. Although these reflective articles and law reviews have major justification for its necessity, it does not shed light on the reasons these court cases are taking place. The Redcay et al study is a case study to look at how transgender individuals both incarcerated and non-incarcerated sued for civil rights. Instead, they act to bring awareness to the consistent fight for Eighth Amendment rights of transgender inmates. It does not do anything for a call to action in the field as it does not look at each case in-depth but instead at the surface level value of court decisions (Redcay et al 2020). The call to action comes from more recent published articles in the area of prisoner health that demonstrate the effect of policy changes and training development impact on transgender inmates. White Hughto and Clark (2019) demonstrated with a piloted training program regarding gender affirming care to transgender inmates that correctional healthcare staff felt more prepared and informed with how to handle situational

needs. The inmates would not have to take the further method of legal action if their gender had already been affirmed by the carceral system.

To compile an extensive list of examples of gender affirmations as they relate to transgender people who are incarcerated would be near impossible and rather unjust to do, as it would further the conversation about what any individual needs without their input on the matter. Instead, the author offers up some examples of gender affirmation as it would apply to state officials who are responsible for the care of any transgender inmate that resides in their custody. These examples coincide with the requirements from PREA, discussed previously, the gender affirmation framework by Jae Sevelius and the research sample of this paper. First are safety considerations for individuals particularly regarding housing placement in units. Currently PREA requires that housing assignments be made on a case-by-case and not solely on the individuals gender assigned at birth or person's anatomy (United States 2003). This was the standing guideline until the 2015 memorandum by the US Immigrations and Customs Enforcement (ICE) which called into question the process for housing. Second is healthcare provisions both in social interaction and its shown impact on improving mental health of transgender individuals (Budge, Katz-Wise, Tebbe, Howard, Schneider, and Rodriguez 2013, Hughto and Reisner 2016, Ashley 2019). That is then followed by access to gender affirming medical care and diagnoses (Bresner, Underwood, Saurez, and Franklin 2013, Hughto and Reisner 2016, Ashley 2019).

### *Prior Research*

There is a large, developing area in research broadly addressing individuals who identify as transgender. For Example, there are many studies looking at how different individuals go about doing gender affirming practices with the use of products like wigs and makeup (Westbrook and Schilts 2014), how interacting with gendered organizations effects visibility (Jones, Arcelus, Bouman, and Haycraft 2017), and even how medical interventions need to be more available and

standardized (Coleman et al 2011, UCSF Transgender Care 2016). It is much easier to find research looking at individuals who identify as transgender in society because they are able to participate in wider studies like the National Transgender Discrimination Survey, U.S Transgender Survey, or even more localized project such as the quality of life studies (Newfield, Hart, Dibble, and Kohler 2006).

Currently, the largest study looking at transgender individuals who are incarcerated would be that of the University of California, Irvine, in collaboration with the California Department of Corrections (Jenness 2009, Jenness, Sexton, and Sumner 2009, Jenness, Maxson, Sumner, and Matsuda 2009, Sexton and Jenness 2014). This research focuses only on transwomen in prisons for men but has resulted in some of the largest work in the discipline. The project was a large qualitative study of 315 transgender inmates who were housed in male-only California prisons. These interviews covered aspects of how to study transgender people in prison (Jenness 2010, Jenness 2014), policies (Jenness 2014, Sevelius and Jenness 2017), guard interaction (Maxson, Sumner, and Matsuda 2009, Sexton and Jenness 2016), and even how gender is defined by transgender individuals (Sexton and Jenness 2014, Jenness and Gerlinger 2020). The articles that came from this research look to analyze the harsh conditions of prison and the way transgender prisoners engage in a set of activities and interpersonal connections, such as the way they present themselves in the recreational yard or how they engage with flirting in the social network including cisgender inmates. The activities together construct the pursuit of gender authenticity, which is what the authors want to define for the scholarly field. The social network is made up of other transgender prisoners within their facility (Jenness 2009). While that social network is not as strong or as fulfilling as the social network that those individuals may have if not incarcerated, it still does exist for those individuals. As one inmate states, “The transgenders are all in one group. We get along. We’re like a community” (Sexton and Jenness 2016 p560). The continued use of the phrase “like a family” throughout the interviews further solidifies that community

aspect for transgender inmates. (Jenness 2009, Jenness et al 2009, Sexton and Jenness 2014, Sexton and Jenness 2016) Thus, this finding has also created a large gap in the literature for transgender inmates who do not have the same social network or opportunities for said network. Since there is no direct statement that the authors are looking at gender affirmation, this is where I make the justification for the impact this research can have to the academic field.

### *Broader Impacts*

Currently there is no published research looking at how transgender inmates use the court of law as a way of supporting their gender expression and gender affirmation. I believe that my project can fill that missing part of the field. The California transgender prisoner study completed by Jenness and her associates clearly depicts that the sample of transgender inmates studied do have a social network that would allow for gender affirmation. By being incarcerated with the gender an individual does not identify with and not seeing others like themselves, more extreme behavior will be done in order to gain value of their gender identification (Brown 2009, Brown 2010, Brown and McDuffie 2009). Having a higher proportion of connections in prison who were also transgender indicated a higher collective identity with and between transgender inmates (Sexton and Jenness 2016). California prison populations may not be representative of the nation as a whole by the existence of those social communities that existed in Jenness and her team's research sample. I believe that, in my project, I have found support for the idea of individuals doing gender affirmation within the facility they reside, with or without other transgender prisoners to serve as a social network of support, which will enhance understandings of how trans people engage with their gender in constraining/restrictive environments. Defying the structure of prison that does not allow comparable resources that a non-incarcerated individual would have to accomplish the same gender affirmation.

### *Researcher Perspective and Purpose*

This thesis concept has resulted in some differences of opinions from peers to the justification of am I further marginalizing a group by speaking for a group of which I am not a member. Levy 2013 would say that I fall into the outsider group because my positionality does not line up with the sample group I am emphasizing. I recognize that I am a cisgender, white, female that has not been incarcerated. I will not face the transphobia that much of my sample has reported having been subjected to during their lifetime. I have an annual earning above the average of this group and I have never experienced homelessness as a result of my sexuality or gender expression. I draw much from Linda Alcoff (1991) in her article about the problem of speaking for others. My goal for this project is not now, nor ever been, to take up space where transgender individuals would be the ones speaking. My goal as an ally of the transgender community is only to bring awareness to the minority population that is incarcerated and the steps they have taken via the court of law in efforts of their civil rights.

This research is making a major contribution by being the first of its kind to connect court cases with separate freestanding personal interviews that establish a person's ability to obtain gender affirmation from the society around them. Current research does not prioritize the use of alternative models of coding to obtain data to be analyzed and my research is successful in filling that gap both in connecting different disciplines of social sciences but also impacts the broader discussion about methods used in research. By taking the time to establish the limitations of past literature definition of gender affirmation, I have been able to develop a coding strategy that establishes distinctive subcategories of which research can further clarify. Then to further establish this research as new to the field, I applied it to a data group, incarcerated transgender people, that is limited in research, resulting in a large gap in the field being addressed.

## CHAPTER III

### METHODOLOGY

#### *Research Questions:*

1. What evidence exists for the process of gender affirmation for transgender inmates in court cases?
2. How does an individual's gender affirmation network impact the way legal action is pursued and experienced?

This project methodology is a content analysis of court cases and related news articles that contain interviews with individuals who define themselves as transgender and who were incarcerated. Using NVivo, I used the functionality and size capacity of the software for data storage. It turned out to be crucial for this project and the number of legal documents involved. I pulled inspiration on how to proceed on this project from the legal discipline and social sciences in general. With my educational background I cannot, in good faith, conduct any research without the interdisciplinary aspect. My primary methodology inspirations come from Hall and Wright's 2008 paper on conducting content analysis for judicial opinion. Hall and Wright state in their introduction that legal scholars borrow much of the tools that social sciences use but must be very adaptive in how judicial opinion is coded due to the legal field. Specifically, the legal fields is

using decided cases as evidence standards for how future cases should proceed based on the history of the case and the final decision after all appeals have been exhausted. This is crucial to my methodology because my content comes from how individuals interact with the legal system and how the legal system, notably judges, interpret civil rights.

### *Population*

The larger population that this sample derives from is essential to note. Currently, it is unknown precisely how many individuals in the United States identify as transgender. This research will be using the rough estimate of 1.4 million or 0.6% of the population (Flores et al. 2016). This research is coming from four researchers, Andrew Flores, Jody Herman, Gary Gates, and Taylor Brown, from the Williams Institute, with their data coming from state-level Behavior Risk Factor Surveillance System (BRFSS). Currently, this is the best estimate the field has, but there is speculation that these numbers severely underrepresent the number of individuals who are transgender. Counting this population is and will remain an immense challenge because currently the US Census Bureau does not ask about gender identity nor does the Center for Disease Control and Prevention. There is nothing indicating this will change in the future either so this will continue to be an uphill challenge for academia and those doing outreach for these communities. There is an issue with the safety factor for individuals in self-reporting identities. There is a great deal of strain for individuals who identify as transgender because of the government protections for them regarding access to healthcare, employment, and even public spaces has been handled differently by presidential administrations. For example, Donald Trump's administration was labeled as discriminatory by the National Center for Transgender Equality for his "nonstop onslaught against the rights of LGBTQ people" (Anon 2021e), while Joe Biden signed an executive order "preventing and combatting discrimination on the basis of gender identity or sexual orientation" on the eve of his inauguration (Anon 2021b). Identifying the population becomes more problematic when they are incarcerated due to inmate records from the Bureau of



Justice Statistics (BJS) only using the dominant binary biological sex categories of male and female for gender markers. While it is almost certain there are more than thirty distinctive transgender individuals who are represented in my sample, it would be difficult to identify a precise number. Individual records are confidential, have not filed suit against their housing facilities, or are not identified by the carceral state to begin with.

### *Selection of Data*

The primary focus of this project is 24 court cases and their attached documents, including but not limited to appeals and testimony. (Full list located in Appendix B). These 24 court cases represent 30 transgender individual's legal stories. The entire sample is composed of male-to-female transgender identifying individuals who use the pronouns she/her/hers. Because of this, the sample will be referred to by preferred name and pronouns to affirm the gender identity of these individuals. Because these cases come with a significant amount of public discourse on rulings, they are often not predominantly in the mainstream media nor is there a running list. Instead, this sample had to be crafted entirely from scratch with very clear attributes the cases had to fall under such as: judicial decision was finalized and documented, the plaintiffs had to represent themselves or be represented by someone of their choosing, and the individual had to be incarcerated during the entire process of the case. Doing this removed a few individuals who either had been paroled while waiting for trial and one case that was being sponsored by the estate of a transgender individual who had been killed while incarcerated. Because this sample had to be carefully compiled, the website [prisonlegalnews.org](http://prisonlegalnews.org) was the starting point for the gathering of my eligible court cases. Prison Legal News (PLN) is a newspaper-style website that is run by the Human Rights Defense Center (HRDC). HRDC is a non-profit organization that campaigns via advocacy and litigation for human and civil rights of incarcerated individuals in the United States. This organization is actively engaged with multiple aspects of transgender inmate care and policies, so it has many articles about court cases. After collecting all the data,

the HRDC had provided on PLN, I used the suggested similar topic links at the bottom of the pages to branch out for more court case data. If any of the links only provided a case name or case number, the documents were then requested via the district court where it was filed. Most of this documentation was available for download online because of public record laws. After exhausting all avenues of procuring court cases via HRDC, I moved to three additional sites: dockets.justia.com, pacer.com, and uscourts.gov to exhaust any avenues for possible court cases to be included in my sample. This became repetitive due to the nature of court cases being filed across the sites and only a few other additions to the sample were made. Identical to HRDC, these three sites also provided public downloads of public records. At the conclusion of the sample collection, I had 24 court cases representing 30 transgender individuals that met the qualifications above to be included in my analytic sample. Two court cases, *Fields v. Smith* 2010 and *Monroe v. Jeffreys* 2018, include multiple plaintiffs who identify as transgender, and due to the nature of how the cases were filed and progressed, there was ample evidence to break down the case to each plaintiff's gender affirmation experiences.

Secondary sources for this project were news articles providing outside interviews that were given by the legal team or plaintiff as a way to use a multifaceted approach to this project. Because often the court system does not allow for the full telling of an individual's life story, information is missing from the court on personal life experiences. These news articles' interviews were the best way to gain a full model and supplement the primary documents of the court cases. This strategy comes from the concept of multimodal qualitative research because it is effective in studying differential ways of gathering data from aural and text-based data (Johnson et al. 2010). By doing this, I am adding credibility to the actions taken by the individuals of the sample in their view of their gender affirmation and gender identity. This is a key contribution to the field as there is minimal work demonstrating the way that policy, personal experience, and legal action can be studied via the multimodal system. To gather these data points, broad internet

searches using keywords and phrases were used, which are outlined in Appendix A. When selecting data, the parameters were broad so as not to be exclusive to state, region of the country, or type of court system (i.e., regional, state, or federal). Selection metrics for these articles were more relaxed and expansive at the start in order to gather all news articles that were available for each court case. After collection, news articles that did not provide any personal interviews, testimony, updates, or rulings were removed from the sample, as well as any news articles that were solely opinion-based articles or blog-style opinions of the author. It is important to note that authors of news articles can push more transphobic language such as the use of a person's dead name or misgendering the individual. The form that news articles should take would be the statement of the "individuals preferred name, formally known as ..." then would use the individuals preferred pronouns when referring to them if not using their name. The justification of these articles' removal was to ensure that the secondary data sample was factual in retelling the court events and the history of the plaintiff/inmate and not of transphobic nature to avoid further marginalization.

The major parameters were the years in which the court docket must have been filed and ruling determined. The start date for this sample is the turn of the 21st century for the following reasons. First off, transgender folks' rights have been slowly increasing since the Stonewall Riots of 1969. Even though transgender individuals were at the forefront of this social movement, as mentioned in the literature review section, the progress is slow. It has only been 13 years since gender identity was covered in the Employment Non-Discrimination Act. With the Supreme Court's ruling in *Farmer v. Brennan* 1994, it was imperative to give time for the legal system to make the adjustments that came with that ruling. It was crucial to not include any lawsuits that would have been directly impacted by that decision (settlements or dismissals). I also wanted to give the Federal Bureau of Prisons and individual state Department of Corrections time to develop and implement new policy guidelines for the safety, housing, and treatment of transgender inmates.

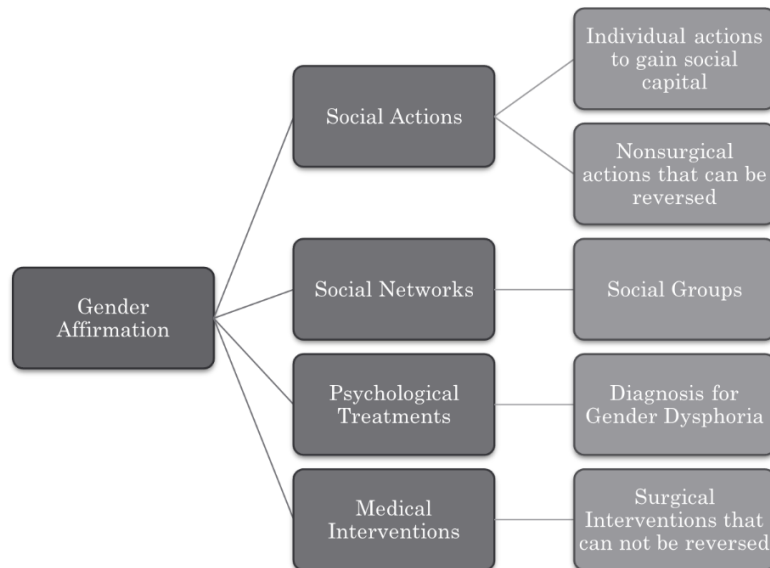
This was further qualified by the signing of PREA in 2003 and its further installment in 2012. The second primary reason is that collection of news interview articles related to the court cases needed to be digitally archived and available to the public. Because many more regional news outlets did not move to digitization until after the turn of the century, it made utilizing this year range more justifiable.

### *Coding Process*

During the duration of this project, it became crucial that coding be clear and concise in order to make the argument that gender affirmation was being pursued by individuals represented in my sample. Johnson, Dunlap, and Benoit (2010) said that "qualitative research creates mountains of words." This sample of 24 court cases lead to roughly 4,500 pages of legal documentation and that is why creating an organized method of coding that followed a standard quantitative method that could be used to write up results in a qualitative way was imperative. Additionally, because this research has not been completed in the field it was important to pull some aspects of grounded theory methodology. To do that all the court cases and supplementary documents were coded on two major topics: Examples of Gender Affirmation and Type of Case. This can best be described as allowing for focused coding of the cases because while the main points were coded the narrative was allowed to take shape freely under those broader topic areas (Bryant and Charmaz 2019). (See Appendix C for coding strategies and examples.) This ensured that there would first be a clear delineation for what the individual had done before showing progress towards gender identity regarding research question 1. Then, the type of case and supporting material would further the findings in research question 1 leading to research question 2.

Because the objective of this project is to identify gender affirmation processes that individuals who are incarcerated engage in even while being housed in prison, it was important to be exhaustive with the coding. To do that the original framework proposed by Jae Sevelius in 2013,

those points were expanded upon to include what WPATH identified as the process needed for medical gender expression. This list is exhaustive to individuals who are currently serving prison sentences because they would not have access to the same avenues as a non-incarcerated transgender individual. In the final design of the coding, four main topics were defined: social acceptance actions, social networks, psychological treatments, and medical interventions. The hardest to define category was social acceptance actions because these are behavioral decisions and I do not want to misconstrue actions of an individual. To take that concern in mind, some items were coded if only testimony, documents, or direct statements showed the behavior was being conducted. Items like name changes and birth certificate changes were documented because that is a legal process and easier to objectively identify. Alternatively, aspects of the cutting and styling of hair, use of wigs or make-up, and clothing were only documented from direct testimony of the plaintiff or if a disciplinary report was available citing the reason for acting as one of the prior. Coding for non-surgical body alterations, WPATH provided the standards coded only on self-testimony or noted in medical files from the attending physician. Social networks were the least coded for regarding the sample as incarceration removes that social networking aspect. Only three examples came to light during the coding: help groups nonspecific to individuals who identify as transgender, group therapy, and referred to as female by other inmates. The code psychological treatments, was broken down to psychological intervention, mental health screenings, talk therapy, diagnosis of gender dysphoria, and diagnosis of anxiety as a result of body surveillance. For the final section of coding, medical coding, there were plenty of directions it could have gone. For this project, it was decided that because of the different levels of medical access afforded to those incarcerated that medication prescriptions: (hormone therapy, anxiety medication, illegal drug injection/non-prescription) and medical body modifications (top surgery, bottom surgery, silicone injections, and self-castration) would be the most robust coding strategy. (See Figure 1: Coding for a visual guide to how the coding was conducted.)



*Figure 1: Coding This is a visual representation on how the coding was constructed for the sake of this research.*

In the cases that are regarding the section of housing and safety accommodations, threats were coded in two categories; verbal threats and documented threats (those provide to the facility in grievances), then the threat being acted upon in three categories: documentation, physical harm received, and sexual harm. Physical harm tending to the nature of the attack (with weapon or without), was there injuries, and by two sources, other inmates and guard/correctional staff. If there was an injury that needed medical attention in any form that was also coded to give a fuller view of the incidents. I coded sexual harm to include but not be limited to rape, sexual assault, or being referred to or use as a sexual object. In the cases that are about drug/hormone therapy, it was coded if drug/hormone therapy has been received; if yes then for how long, when it was stopped, and reasoning and/or response by the defendant/facility. Other aspects of receiving gender-affirming intervention, such as diagnoses and therapy, were coded in the prior section as it directly relates to research question 1.

A final area was coded to see if any trends appeared from the data and that was legal representation. Because of the routine of the court systems and how personal ideologies could impact how court cases are processed, it was essential to see if the legal intervention had any standing alone and in instances of success. With different representation levels: self-representing, private firm not LGBTQ+ supportive, or a LGBTQ+ supportive legal team, (ex. Lambda Legal, Transgender Law Center), it became apparent that particular methods were common practice. The use of identity statement documentation and the filing under Civil Rights violations were more common. More of this will be discussed in the discussion section of the paper.

## CHAPTER IV

### FINDINGS

#### *Analysis*

The results of this research will be presented in two categories. It was apparent very early on that plaintiffs filing under the code Housing and Safety were facing very different issues than those filing for Medical Interventions. Using Maslow's Hierarchy of Needs as the concept that some things must be met before other needs can be obtained (Maslow 1943), the results will be presented in the same way. An individual must gain secure and safe housing before social attributes can become priority. Additionally, it seemed only logical that because plaintiffs were identifying their outward expression of gender as evidence for their impacted safety that starting there would be a stronger example of the full experience impacted on these individuals. To further that affirmation, this research will use the preferred names and pronouns of all individuals in the sample as they identified themselves.



## *Housing and Safety*

There is not a particular place to start when it comes to individuals that fall into the housing and safety category of this research. These individuals have experienced a great deal of suffering at the lack of protection for them from their respective Department of Corrections. The most striking case to this sample is of Samantha Hill, a Native American who identifies as transgender and "Two Spirit" (Hill v. United States). Ms. Hill sued the federal Bureau of Prisons (BOP) for their inability to provide housing safety and proper medical and mental health treatments to her during her sentence in federal custody. In the court case documentation, testimony, and an interview with the plaintiff by Westword, Hill made clear her gender identity and the safety issues that caused her regarding housing. Her legal team and herself articulates that:

*"[Ms. Hill] strives to achieve a feminine appearance and to be recognized as a female by others. She also has a naturally slight build, standing approximately five feet, five inches tall. She wears her hair long, wears make-up, and dresses as a female whenever possible. She requests that others refer to her using feminine pronouns. Ms. Hill has identified as female almost her entire life." (Hill v. United States, Doc 57 point 21)*

Though this becomes quite overshadowed when the nature of the case takes shape identifying that even though Hill has identified as female for the majority of her life, the BOP failed to evaluate her for gender dysphoria until 2012, even though she had been requesting it since 2005. By not proceeding with psychological evaluations to identify Ms. Hill's gender dysphoria they established that they did not find her gender identity credible to her risk factors thus causing another dismissal of gender affirmation.

Similarities run between Ms. Hill and Passion Star, formally known as Joshua D. Zollicoffer, who has been incarcerated since 2003 in Texas on felony charges. What becomes striking about Ms. Star mainly is that between 2003 and 2011, she was housed in six different male-only facilities

where she was repeatedly threatened with violence, forced into coerced sexual relationships with other inmates, sexually assaulted, and raped (Passion Star a/k/a Zollicoffer v. Livingston).

Lambda Legal, a predominate civil rights organization that focuses on LGBTQ+ treatment through the continued work of litigation, education, and policy work, represented Ms. Star during her trial where many issues of her gender expression were denied by the defendants and the Texas Department of Criminal Justice (TDCJ). The court case in its entirety was about the fear that Ms. Star lived in due to the request for safe housing, its continued denial, and the deliberate indifference from TDCJ and its staff regarding her safety and stance as a high-risk individual with a substantial risk of further serious harm. During her incarceration leading up to the filing of her lawsuit, Ms. Star filed over 30 grievances that documented threats, both verbal and written, physical harm that required medical attention, and the reports of her being at risk because of her gender identity and previous history of victimization. Furthermore, actions were not taken to investigate written grievances by the staff which led to the continued denial of housing transfers. While it is essential to note that Ms. Star had not been diagnosed at the time of her trial with any type of gender identity disorder (Zollicoffer v. Livingston) she identified herself as a transgender woman and had adopted the name of Passion (Sontag 2015). TDCJ responded in such a matter that denied Star with social net worth of her chosen gender identity, with the continued use of Star's birth name and continued misgendering of her by referring to her as "he, him-her, and other derogatory terms such as faggot" (Zollicoffer v Livingston). It is important to note that Texas is a state that does not allow incarcerated individuals to legally file for name changes until two years after sentencing release (Texas Family Code 45.103), thus furthering the delay of social affirmation of transgender individuals who reside in Texas. Because of the nature of the case and the living situation, much of the case did not reflect how Ms. Star was affirming her gender so a supplementary interview was included in the context of this case. In this interview conducted during the litigation, Star stated:

*"Basically, they frown on us expressing our gender, I did at one point wear my hair longer, arch my eyebrows, shave my legs and my body and everything. I wore small, form-fitting clothes and made myself feminine underwear. But I was actually disciplined for it." (Sontag 2015)*

This use of discipline for gender expression can also be seen in Hampton v. Baldwin, where the plaintiff Strawberry Hampton was given disciplinary write-ups for her expression and requests for feminine underwear, particularly a bra. Hampton which has been deemed medically castrated due to the hormones she has taken, which caused the development of secondary sex organs and reduced the levels of testosterone to minimal in her body (Hampton v. Baldwin). Her success in the medical affirmation of her gender had placed her into unsafe grounds during her social affirmation as the housing was with male prisoners who caused her preventable harm. She had been placed in four male housing units where she received threats, was sexually assaulted, and experienced continued harassment due to her gender expression. She sued for housing safety and demonstrated claims that she was instead granted allowance to attend a transgender support group while being housed in segregation from other prisoners in the male facility. She expressed dissatisfaction with this ruling in an interview upon her releases with Injustice Watch where she said:

*"I think I should've been in a woman's facility a long time ago. I am a woman, so, there was no reason for them to house me in a man's facility. I feel like they judge me based on my anatomy, which doesn't define me as a woman. The true essence of a woman is how you present yourself and how you carry yourself." (Preston 2019)*

With her interview Hampton shows recognition of how the facility views her gender identity and how they proceeded to be non-affirming in their housing placement of her during her time of incarceration.

Some plaintiffs use other aspects of their lived experiences trying to obtain appropriate, gender-affirming housing via the court systems. Angelina Resto, who filed under the pseudonym: Jane Doe, in her court case Doe v. Massachusetts Department of Correction (MDOC), filed under the Americans with Disabilities Act to secure safe housing and hygiene resources. Resto is the only individual in my sample to identify as disabled and to use this as a legal stance in her court case. As a result, Resto was granted a private cell within the male facility where she was housed, strip searches conducted by female officers only, and private showering time to ensure she did not experience unnecessary violence related to her gender expression. Soon after the court's decision, Resto was transferred to a female facility to better accommodate her. After her release, she was the featured speaker at The Spirit of Justice Award Dinner held by GLBTQ Legal Advocates and Defenders (GLAD) [her legal team] where she shared in tears her view on the problems she faced while incarcerated and the ruling from her case saying:

*"...when the judge finally ruled in my favor it was incredible. It was like he was saying yes, Miss Angelina Marie Resto is a woman, she should not be in the men's prison. That was the best day of my life, the best day of my life." (Angelia Resto 2019)*

Her case and speech show multiple instances that she was supported by a diverse legal team who helped display her gender expression and its impact to her safety while incarcerated.

There are also cases when the individual gains the proper documentation and approvals but then still suffers at the hands of another inmate. Chrissy Shorter, a transgender inmate under Federal BOP care, received an approved housing transfer required from the facilities' Gender Identity Dysphoria Committee (GIDC). Prior to her incarceration, Shorter had been diagnosed with gender dysphoria, received hormone therapy, and was afforded the use of female undergarments due to the development of secondary sex characteristics. She was identified to be at elevated risk due to the PREA screening she had received at intake for several reasons: "She presented as

transgender; had been sexually assaulted in prison before; was small in stature; and had a history of mental health problems" (Shorter v. United States JA137-38). Even though this screening showed her at elevated risk, she was still housed in a cell with eleven other male cellmates where she felt unsafe and had no privacy. She requested a change of cells and feminine undergarments so that she could properly cover herself. Following those requests, Shorter was placed into a cell with another inmate with a history of violence and hostility. This was a deliberate action by the facility to cause harm to the plaintiff because the cell was the farthest from the guard station and the least patrolled. Filing additional requests for transfer was approved by both GIDC, the unit intake team, and the psychology department of the prison (all outside resources not tied to the facility), but due to the delay in actual facilitation of the transfer, Shorter remained housed in the same cell with the same violence-prone roommate for 40 more days until the time she was raped by that inmate. Due to the facility's disregard for both the established policies and approvals of care for transgender individuals and because they did not understand or value Shorter's established gender identity as a valid reason for her risk, undue harm was brought upon her. Shorter had already completed all the necessary requirements for her to affirm her gender both in social aspects, use of clothing, and in medical, hormone therapy but was denied having value by the facility that was responsible for her care.

There are even times when violence can happen during a prisoner's job, like in LeslieAnn Manning's case, where she was delivering papers to other prisoners. Housed in an all-male facility where there was minimal supervision from facility staff, she was attacked, held down, and raped. The lawsuit began after the attack where it was made aware that Manning was deemed to be at a heightened risk due to her appearance during incarceration. She has "presented as a woman while before and during incarceration, long hair, wore feminine undergarments including a bra and was on hormone therapy" (Manning v. Griffin). During the proceeding it came to light

that Manning was assaulted by two officers during searches proving that she had no safe network that she could rely on to protect her from undue harm.

Two additional cases talk about how guards and staff also can be assailants by taking advantage of their authority over the inmates. Valerie Jackson was required to strip during intake to verify her gender by observing her genitalia, which would govern her placement in the facility. She told the officers and staff at the facility continuously that she was a female, but the staff forced her into an unsafe location due to their view of her gender identity. Because of that, they denied her gender affirmation even though she was viewed as a female outside the facility. The court case Jackson v. Valdez brought into light that more training is needed by staff to ensure that individuals are aware of the proper interaction process with transgender inmates.

During a pat down Sonia Doe, a pseudonym, experienced groping and when she reacted was attacked by correctional officers. Because the officers had control over inmate housing, they placed her into isolation for “270 days of administrative segregation” (Doe v. New Jersey Department of Corrections). In the court documentation, it came to light that the plaintiff had been housed at four different male facilities while incarcerated and denied many items that would help her diagnosed gender dysphoria. She also cited many instances of staff dismissal of her risk of sexual assault and PREA filings. Two weeks after the case was filed in the court system, the New Jersey DOC decided to allow Doe’s housing transfer to a female prison with the pressure of the lawsuit. While all three plaintiffs’ safety and bodily autonomy was invalidated by the staff, who focused only on their genitalia, it brings forth the question of what labor transgender individuals must engage in order to gain full acceptance of their gender identity. If the individuals are not afforded the basic expectation of security of not being assaulted during incarceration, then how are they supposed to affirm their gender then in the medical process?

### *Medical Access to Hormone Therapy*

For twelve individuals in the sample the legal journey was for access to hormone therapy. Some tried to obtain it for the first time or, like Reilyn Keohane, restart it due to the abrupt stop by the holding jail she was detained in. Keohane was impacted by the Florida Department of Correction's (FDOC) freeze policy that impacts the medical treatments allowed to incarcerated individuals. Even though she had received a diagnosis of gender dysphoria and started hormone therapy outside of incarceration, FDOC had the right to deny access upon her incarceration due to this freeze policy. During her first two years under FDOC's care, she requested multiple times for feminine clothing items and to restart treatment regarding her gender dysphoria with every request being denied. As a result, Keohane attempted self-castration, physical harm, and attempted suicide. During the duration of the litigation of the original case, *Keohane v. Jones* 2018, Florida suddenly repealed their freeze policy and began providing Keohane access to hormone therapy and filed in the case to have all charges dropped. This resulted in the courts deciding that Keohane was granted the right to items to help her socially transition, such as access to female clothing and removal of the grooming standards, but still held FDOC to the case as it was viewed to be "unambiguous termination of the policy" (*Keohane v. Jones*). While this can be viewed as a success, it was the start of more problems for Ms. Keohane's standard of care by the facility. In a handwritten letter shared with the ACLU, Ms. Keohane articulates the feeling of desperation in the loss of her personal items that help mitigate her feelings of gender dysphoria and the refusal to recognize her identity:

*"I have been pepper sprayed in the face because I refused to hand over the "contraband" bra and panties I had bought from the canteen and still had the receipt for, and forced to go days without any underwear at all after having mine confiscated. I have been denied at every level, told by*

*doctors that I'm not transgender, refused hormone therapy [referencing the court case] even though I had taken it on the streets, and had to go weeks without being able to shave after being put in confinement for wearing women's clothing or standing up for my rights." (Reiyn Keohane 2016)*

Ms. Keohane litigation had been going on for five-plus years with the repeal, *Keohane v. Florida DOC Secretary*, being decided in 2020. The intention denial and then the forced removal of awarded items demonstrates that FDOC does not seek to validate Keohane's gender identity and did not support the ways in which she is trying to affirm her gender.

Keohane's case was not the first instance of a freeze-frame policy impacting an individual's access to health care nor was it the first decided litigation. That belongs to Ashley Diamond and her court case, *Diamond v. Owens*, against the Georgia policy, which was settled in 2015. Prior to incarceration, Diamond lived as a female and took hormones for 17 years, establishing her gender identity within her social communities. Upon her incarceration, she was processed like a male due to her genitalia, stripped of her female clothing, placed in a male facility, referred to by masculine pronouns and had her medical treatment terminated. The court case was not as detailed in Diamond's actions of gender affirmation because Georgia's Department of Corrections pushed to settle on the bases that they would change the policies. Quickly after that was decided, Diamond was early paroled after the Georgia Department of Corrections determined that her release "was compatible with the welfare of society and public safety" only three years of her eight-year sentence served (Anon 2021d). The author thought it would be important to note that there is another case being pursued by the plaintiff that was filed in November of 2020 [that is not included in the sample due to its active litigation]. Which the plaintiff, Diamond, is suing GDOC again, this time for not protecting her from being sexually assaulted based on their housing location for her.



Jessica Hicklin's legal team [Lambda Legal] actually used *Diamond v. Owens* as an example for the court case *Hicklin v. Lombardi*, where the plaintiff was fighting Missouri Department of Corrections' (MDOC) policy similar to the freeze-frame policy. Because MDOC had subcontracted all of its mental health contracts to the 3rd party Corizon Health LLC, it was able to deny medical treatment to inmates housed in the facility on the grounds that their medical needs were being met by Corizon. Corizon was actively refusing to provide the plaintiff Jessica Hicklin, a transgender woman housed in a male facility, access to the prescribed medical treatment necessary to treat her diagnosis of gender dysphoria, which Corizon staff had diagnosed her with. The medical staff at MDOC has also recommended the treatment of hormone therapy and access to commissary items that would affirm her gender, but all of the recommendations were dismissed by MDOC director George Lombardi. Going so far as to be:

*"...pursuant to MDOC's freeze-frame policy. Defendant Lombardi has also implemented, condoned, and ratified the custom and practice of denying inmates like Ms. Hicklin other forms of medically necessary treatment for gender dysphoria, including permanent hair removal and access to gender-affirming canteen items." (Hicklin v. Lombardi)*

Because of being denied gender-affirming items and medical care, Hicklin was driven to pursue legal action to affirm her gender and garner access to items that would provide her the social means of expressing her gender identity.

It is not always restarting hormone therapy that an individual is suing for but instead the start of it. Lisa Mitchell was denied access to starting hormone therapy for the gender dysphoria diagnosis she was given prior to incarceration. After incarceration, she requested hormones which started her on a delayed process due to Wisconsin's Department of Correction installation of a new policy related to the health care treatment for anyone diagnosed with gender identity disorder. It took WDOC over a year for them to evaluate her for her eligibility for hormone

therapy even though she already had a diagnosis prior to incarceration. After the internal evaluation, Mitchell was denied because she was to be released on parole and had established terms of her parole preventing her from taking hormones and "present as, and dress as a male in public" (Mitchell v. Kallas Doc 154 pg. 7-8). The defendants argued that the dressing presentation was standard for all individuals in Wisconsin on probation regardless of gender. This becomes a point of denying gender affirmation because Mitchell already stated that wearing female clothes helped with her gender expression and gender dysphoria, which would be coded under the social affirmation. Additionally, WDOC prevented the medical treatment which would also garner support for Mitchell's gender identity as she transitions both into her gender identity but also out of prison.

There are two cases that are anomalies in the sample, and they deserve to be discussed differently than the other court cases and plaintiffs. First comes Fields v. Smith, where multiple plaintiffs filed against Wisconsin's Sex Change Prevention Act of 2005 or Wisconsin Act 105. This policy states that the liability of state medical services "does not extend to that part of the medical or dental services of a resident housed in a prison" and subsection 5m denotes that "Hormone Therapy" and "Sexual Reassignment Surgery" fall under that section as well. (Wisconsin Act 105 Section 302.386.5m). Because of this Act, the plaintiffs were denied medical treatment during their incarceration under WDOC's care. The court cases provided individualized reports on the three plaintiffs: Andrea Fields, Jessica Davison, and Vankemah Moaton. All of the individuals in this case had already been diagnosed with gender identity disorder, now known as gender dysphoria, and had already received hormone therapy but due to Act 105 policy guidelines, was being interrupted as a way for the WDOC to be congruent with the policy.

Andrea Fields had started receiving her hormone therapy and breast augmentation as part of her gender transition before being incarcerated in 2005. In 2006 with the passage of Act 105, the DOC began to halve the dosage. As a result of the reduction, "Fields experienced nausea, muscle

weakness, loss of appetite, increased hair growth, skin bumps, and depression." (Fields v. Smith, Doc 212 pg. 2-3). Dr. Frederic Ettner, a physician who is also a member of WPATH, testified that Fields is fully feminine in her presentation and in her appearance. This helped to establish that the plaintiff had established social gender affirmation for it to be brought up within the trial. Jessica Davison had a similar medical history but with the addition of suicide attempts before her gender dysphoria diagnosis. With the removal of her medical treatment she, experienced more intense side effects by documenting mood swings, mental and emotional instability, hot flashes, and body aches. Dr. Ettner spoke on Davisons breast growth and presentations saying she has "a female hairstyle and attempted to present with female mannerisms." (Fields v. Smith Doc 212 pg. 14) Vankemah Moaton began taking hormones at the age of 20, where soon after she began dressing as a woman and living life as a female including expressing their gender identity at a few places of employment. She has had electrolysis [hair removal] performed on her face and has had silicone injections to multiple places on her body to further feminize her shape. When the WDOC began to decrease the hormone doses, she had similar reactions to Fields and Davis with the only additional side effect noted was developing tenderness in the chest and groin areas. Because of her appearance and feminine figure, Moaton looks like a female and was living her life prior to incarceration in fully recognized gender affirmation related to her work and social network.

Similar to Fields v. Smith and its use for multiple plaintiffs, Monroe v. Jeffreys, formally filed as Monroe v. Rauner, is litigation where the ACLU of Illinois represented five transgender women. All of the women were housed under the Illinois Department of Corrections (IDOC) which all plaintiffs were facing identical negligent actions of medical care from the facility. During coding of this particular case, each plaintiff [Janiah Monroe, Marilyn Melendez, Lydia Heléna Vision, Sora Kuykendall, and Sasha Reed] was coded individually as a way to maintain the integrity of the coding of the entire project. What became apparent during coding was that the legal team, ACLU, was able to create parallels between all the women of this particular court case in order to

demonstrate the mistreatment that they were all facing. Each plaintiff was able to submit a declaration of their person, which is not something many of the other plaintiffs in the sample were able to do. Each of the women established in their declaration their personal identity with gender, when it started, related diagnosis and their documented requests to IDOC for medical care and access to gender-confirming items, specifically clothing and grooming products. It is crucial to note that all of these women have been diagnosed with Gender Dysphoria and WPATH President Dr. Vin Tangpricha, testified that the standard of care for gender dysphoria is hormone treatment. Dr. Tangpricha also included the concern for mental health as "anxiety, depression and hopelessness are associated with gender dysphoria and are reasons to initiate hormone therapy rather than delay it" (Monroe v. Jeffreys Doc 124-2 pg. 7) Janiah Monroe articulated those feelings in her declaration due to the negligence of the IDOCs refusal to establish her on hormone therapy and their continued refusal of her gender identity. They refer to her by male pronouns and male name, and refused to grant an evaluation related to gender confirmation surgery. Marilyn Melendez echoed Monroe's statements of abuse by facility staff and the continued issue of being denied access to gender-affirming interventions. Melendez believes because of her long history of incarceration, beginning at age 14, this had led to her being continually denied access to confirming items even though she has been diagnosed multiple times for gender dysphoria by staff at the IDOC mental health centers. Lydia Heléna Vision was the only one to note that she was evaluated by four different IDOC psychiatrists, not the mental health center like Monroe and Melendez were diagnosed. Vision used this to establish documentation that IDOC was not providing anything in the realm of treatment plans but instead monthly counseling sessions with counselors who had little experience with transgender issues and continued to misgender her. Sasha Reed experienced misdiagnosis of schizophrenia when she contacted her facility's gender identities committee, where they cited her questionnaire responses as "psychotic behaviors" (Monroe v. Jeffreys Doc 124-7 pg.2). This further delayed a proper diagnosis from being assigned and caused further issues in the acquiring of hormone therapy. Sora Kuykendall

articulated that she is much further along in her process of receiving hormone therapy as it was started and has received gender-confirming clothing [bra] during her declaration. Her request from the courts is that access be provided to all transgender inmates being housed in any IDOC facility with the correct access to medical treatment. She is the only plaintiff to reference the need for social action to support other individuals going through this process. This demonstrates the awareness the plaintiff has for social affirmation of one's gender and the necessary process that others have to go through to obtain it. All of the women, identified as plaintiffs in this case, state that the treatment they have received and the battle they have had to endure because of the ill-treatment of the IDOC has caused suicidal thoughts and actions. Two individuals [Monroe and Kuykendal] also attempted self-castration as a result of delayed access to treatment.

Overall, it is clearly outlined in this case that the five plaintiffs express their need for social transition by the request of feminine articles of clothing and grooming products and for medical transition by the request and actions to obtain access to hormone therapy. While the decision of the courts was to mandate that IDOC reform the medical care system that has caused suffering not only to the plaintiffs on the case but to other transgender prisoners, it was successful in demonstrating that even within a group of incarcerated transgender individuals, the process to their desired gender affirmation was almost identical to one another. This provides evidence that gender affirmation framework does produce a process of identity obtainment. As shown by the twenty individuals so far in this sample the process starts with the diagnosis of gender dysphoria and proceeds from there. Demonstrating that there is an identifiable start to the process of gender transitioning.

#### *Access to Gender Confirmation Surgery*

There are ten individuals in this sample who were able to gain access to hormone therapy while incarcerated that found themselves using the courts to obtain the final step: full medical

transition. For the sake of clarity, this process is often referred to as sexual reassignment surgery or gender confirmation surgery and is the process of "Surgery to change primary and/or secondary sex characteristics to affirm a person's gender identity. Sex reassignment surgery can be an important part of medically necessary treatment to alleviate gender dysphoria." (Coleman et al. 2011, Appendix A)

Shiloh Heavenly Quine became the first transgender inmate to receive state-funded sex-reassignment surgery after successfully suing the state of California in her court case Quine v. Beard which resulted in a settlement in 2015 and the surgery taken place in 2017. Quine was able to demonstrate that she had gone to the limit in which her hormone therapy was beneficial to her mental health related to her gender dysphoria diagnosis. So much so that Dr. Randi C. Ettner from the Board of Directors of WPATH, testified that:

*"Ms. Quine meets, and exceeds, the criteria for surgery: She has persistent, well documented gender dysphoria. ... She understands the irrevocable nature of surgery and the potential for complications. Having been on hormonal therapy for six years, irreversible anatomical changes have already eventuated. Since 2008, Ms. Quine has consistently lived in her affirmed and well-consolidated female gender. She has no mental health or medical concerns that contraindicate surgery. On the contrary, surgery is the therapeutic intervention that would significantly improve her emotional and physical health." (Quine v. Beard, Doc 49 pg. 25-27)*

This further establishes that Ms. Quine had successfully established herself in her gender identity and had obtained that gender affirmation up to confirmation surgery.

While Ms. Quine was the first to receive SRS she was coming after cases like Ophelia De'Lonta, where the courts determine that inmates have the right to be evaluated for the surgery. This is consistent for the remainder of the sample, as the courts have to make calls for the human rights of transgender individuals and to what level the state DOCs that house them will be responsible.

In De'Lonta's instance, she had already won a prior lawsuit in 2003 to obtain hormone therapy while incarcerated at the Virginia Department of Corrections (VDOC) (De'Lonta v. Angelone). Being a veteran to obtain gender-affirming medical intervention via the court system, De'Lonta chose to actively participate again for her gender identity. Between the two cases, the plaintiff had tried multiple times to self-castration in order to force the medical staff to altogether remove her sex organs that were impacting her gender dysphoria. De'Lonta's legal team stated that "...after six years of treatment, hormone therapy has proven insufficient to address her serious medical needs and prevent her compulsion to mutilate herself through self-castration" (De'Lonta v. Johnson). Because she was a harm risk to herself with self-mutilation there was much cause for concern when medical staff and mental health of the VDOC refused to evaluate her for gender confirmation surgery.

One other individual in this sample has held multiple suits against their states' department of correction. Michelle Kosilek has held eight suits against the Massachusetts Department of Corrections where she has gained access to hormone therapy, electrolysis, and in her case Kosilek v. Spencer, which is in this sample, she sued for sex reassignment surgery. Because of the abundance of time trying to obtain medical intervention to help Kosilek transition to female, she has established a great deal of gender affirmation both in her housing facility but with the court system stating she will be legally viewed as a female and may obtain the medical process needed to achieve this. In an interview, Kosilek appeared in Boston Sprit Magazine where the comment was raised about why should incarcerated individuals receive medical care when other members of the transgender community could not and she responded with:

*"I am nonetheless a human being deserving of dignity and that medical care is one of the things that prisons are required to provide. That it breaks my heart to know that there are thousands of women and trans men like me out there who are unable to afford this surgery at this point in their life and that this makes them perhaps have very despair-filled days, some of whom might be so*

*filled with despair that they might even be depressed and on anti-depressants. I understand this. I personally experienced depression for a long time. I tried to take my own life twice. And I tried to self-castrate in a moment of despair. (Lopata 2014)*

While many individuals try to self-mutilate removing their testicles and penis, in congruence to achieve their gender identity and mitigate the suffering of gender dysphoria many of my plaintiffs were unsuccessful. One individual, however, was successful after six attempted self-castration and self-penectomy. Donna Dawn Konitzer's self-mutilation attempts ended in being transported to the University of Wisconsin Hospital, where surgeons removed Konitzer's left testicle and portions of the right testicle (Konitzer v. Frank). Following the medical intervention by medical professionals, she performed another self-mutilation attempt which resulted in medical intervention and the removal of the remaining portion of the testicle. The case was structured on the claim that Konitzer's Eighth Amendment rights had been violated by the WDOCs negligence to provide gender confirmation surgery. The plaintiff demonstrated her desperation for gender affirmation by the continued harm that she caused only to the sex organs that caused her gender dysphoria, while minimal mention was made for the social network around her while incarcerated.

The gender dysphoria that revolves around an individual's sex organs such as testicles is a constantly appearing issue that the sample demonstrates. Vanessa Gibson, a plaintiff who lived as a woman from the age of fifteen caused extensive damage to herself by the abuse she self-administered in order to "stop the testosterone from entering her body" (Gibson v. Collier). The damage to her testicles was so extensive she ended up in the medical unit and then in a psychiatric facility after her attempts at self-castration and suicide attempts. During Ms. Gibson's incarceration, Texas DOC did repeal its medical stance on denying treatments to inmates who identified as transgender but then her requests were denied because medical care providers denied her. Dr. Green, the primary care doctor refused to allow treatment stating: "I have never



authorized a ‘Man’ a pass to live as a female and I will never do it!” (Gibson v Collier). The blanket denial of medical treatment for Ms. Gibson demonstrates that the staff at the facility did not see her as a female trying to obtain her gender identity via the proper medical avenues. Instead allowing for her to continue to self-mutilate with no intervention for her mental or physical wellbeing.

Adree Edmo's court case became the media sensation for this portion of the sample for the unmistakable outline of if gender affirmation is not available, an individual will take action to establish that need. Edmo, a male-to-female transgender incarcerated by the Idaho Department of Corrections (IDOC) and provided medical care from Corizon Health LLC [same defendant as Hicklin] sued her state on the grounds of them violating her Eighth Amendment right by refusing Gender Confirmation Surgery for her extreme gender dysphoria diagnosis. During the court proceedings, instances were cited of negligence being provided by medical staff and their continued ignorance of the diversified healthcare needs of the plaintiff. It became apparent early on that Edmo was acting in line with the framework of gender affirmation by trying to obtain medical care that was congruent to her gender identity. She solidified the social aspect by continuing to present as feminine (used make-up, wigs and altered issued clothing to appear more feminine) despite all resulting in her receiving multiple Discipliner Offense Reports (DORs) (Edmo v. Idaho Department of Correction, Doc 149 pg. 22-28). Edmo early on in her sentence, began the process to obtain a diagnosis related to her discomfort with her physical appearance by seeking a diagnosis in June 2012. A psychiatrist on the IDOC staff was the first to diagnosis gender dysphoria with an IDOC psychologist confirming the diagnosis a month later (Edmo v IDOC, Doc 149 pg. 2). With this diagnosis on her medical chart and inmate file, Edmo was able to follow Idaho's policy for a legal name and birth certificate sex marker change to female in September of the following year. Fast forward a few years to the reason for the case regarding the denial of gender confirmation surgery and how the continued denial was the next step in medical

treatment because the plaintiff has achieved the maximum physical changes associated with hormone treatment. In this case, Edmo won the right to receive the surgery and the litigation was appealed up to the Supreme Court where that court decided in a vote 7-2 that the decision of the lower court stands. This is the most extreme court case in the sample because the individual, Edmo, had to endure multiple years of waiting due to the continued appeals. This demonstrates that the defendants still did not view the courts recognition of Edmo's gender identity valid and pushed to delay the validation of her with the gender confirmation surgery.

Even with the success of similar court courses, sometimes plaintiffs are not able to obtain similar results in their own cases. Nina McQueen, birth name Lamar McQueen, represented herself in litigation against California's Department of Correction (CDOC) in *McQueen v. Brown*. The plaintiff was seeking to obtain sex reassignment surgery for her constant gender dysphoria that was being treated with hormone therapy though the case was dismissed by the court system. In her handwritten 26-page filing to the courts, McQueen documents her continued filings with CDOC to obtain medical evaluation and sex reassignment surgery and how she does her gender expression. McQueen writes:

*"I have a femine [feminine] appearance long braided hair make-up and eye shadow. My name is Nina McQueen and have effectively lived as a woman outside and inside prison...[I] cannot live with my genitals and penis and have tried to cut it off." (McQueen v. Brown, Statement of Claims)*

Her clear documentation and attached medical documents demonstrate that she had gained aspects of gender affirmation within her community and with other inmates, but the limitations of hormone therapy was unable to fully obtain her desired gender identity.

Similar to Ms. McQueen, Michelle Renee Lamb was denied access to gender confirmation surgery via the Kansas Department of Corrections (KDOC) and her case was dismissed by the courts as well. Different then McQueen, Lamb had been provided much more in the way of social

items to help alleviate the result of her gender dysphoria that was being treated by hormones. The facility that housed her had "provided access to jewelry, specifically earrings, and was also given female undergarments" (Lamb v. Norwood, Order).

Michelle-Lael Norsworthy, another individual in this sample whose case was settled via the courts, even though she had provided nearly identical information to other successful cases. She used items such as color pencils to obtain a look of make-up on her face and wore her hair long. Her prison records even state that she is a "biological female based on her estrogen and testosterone levels" and describe her as a "pleasant-looking woman, slender and coiffed in a pony tail" (Norsworthy v. Beard). This demonstrates that she has gained the view of the facility to recognize her gender identity enough to place it in her prison record, she is obtaining social gender affirmation. Because of the housing by California's DOC facilities Norsworthy v. Beard went through the same court systems as Quine v. Beard [who had the same list of defendants]. Norsworthy though was denied a full trial and offered a settlement by CDOC. This is due to the possibility that CDOC saw the case was assigned to the same judge that had already decided Quines ruling. By the defendants settling in this case, it took Norsworthy's opportunity to gain medical treatment that would have been provided to her by the courts based on the previous case. Once again a DOC was able to remove the medical gender affirmation ability to accompany the already established social affirmation of a plaintiff.

Nicole Rose Campbell is the last of my sample and, at this write up, the most recent incarcerated individual to conclude their trial. The final decision being filed December 8th, 2020 to grant Ms. Campbell sex reassignment surgery and her transfer to a female-only carceral facility. Ms. Campbell was stuck in the aftermath of Act 105, where Wisconsin had established that SRS was not allowed on any grounds regardless of the individual. This case came after the ruling of Fields v. Smith, which decided that Act 105 was unconstitutional but still the policies of WDOC had yet to change. She was able to document early on, similar to the rest of the sample, diagnosed gender

dysphoria and had exhausted all means to gain gender autonomy. Her attorney said it best in his comment to Wisconsin Public Radio:

*"[Ms. Campbell] has done everything she can within the confines of the male prison. She was allowed to purchase feminine eyewear, she could wear feminine undergarments, they provided her with hormone therapy. But they drew the line and said, 'No prisoner in Wisconsin will ever be allowed this kind of surgery. It wasn't even an assessment of her situation.'" (Hess 2020)*

This was mirrored in the statements given by Wisconsin Department of Corrections (WDOC) and their identifying remarks of "at least five transgender inmates housed together at Racine [facility housing Campbell]" and her interaction with the other identified transgender individuals (Campbell v. Kallas). The court documents clearly state that there is no formal, prison-sponsored support group but that the WDOC viewed the five other individuals as an inmate-lead group. Whereas Campbell makes no mention of this being her view on the other inmates, nor has she identified any form of the social network to help with the continuation of her gender expression. While it cannot be said for certain, it could be interpreted that due to the lack of trust in this social network, it led to Campbell pursuing this case with her legal team that affirmed her gender in their support of her case.

## CHAPTER V

### CONCLUSION

#### *Discussion*

To summarize the sample provided via this research eight individuals pursued lawsuits over their housing and safety in regards to their gender identity, twelve pursued over access to hormone therapy, and ten pursued access to sexual reassignment surgery also known as gender confirmation surgery. All thirty individuals in this sample were male-to-female self-identified transgenders. This research has been able to identify that these individuals are establishing themselves in their self-identified gender expression in a number of ways through social processes while incarcerated. Reestablishing some of the points, individuals in this sample reported using their preferred name and pronouns, styling their clothes to fit their preferred gender style, wearing make-up, and going through a different process to receive gender dysphoria diagnosis and/or hormone therapy to more extreme behavior such as suicide attempts and self-castration with multitude levels of success. 27 of the 30 individuals made clear references to the process of which they had gone to remove their masculine genitalia that all of them cited as the cause for their gender dysphoria. It can be easily identified that all of the individuals in the sample are actively trying to gain social capital for their gender identity via the court system or they would not have sought out the legal means in which they participate in. Diamond said it best when she spoke to Southern Poverty Law Center about the success of her case.

*“This lawsuit has always been about more than me. It’s about standing up to injustice and ensuring that no other transgender people endure the horrific abuse and mistreatment that I experienced behind bars. Though I am pleased with this resolution, I remain dedicated to fighting for the rights of transgender people both in and out of prison.” (Anon 2021d)*

This shows that while Diamond did not have the social network to pave the way for her gender affirmation, she was determined to make the process easier for incarcerated individuals who came after her. Because the nature of this research was founded using aspects of grounding theory (Bryant and Charmaz 2019) in order to identify the process of gender affirmation, there is support that it exists answering research question 1. The level of dedication that some of these individuals demonstrated highlighted the resilience they had in regard to the continued denial of their gender identity. Many individuals went through the process of obtaining gender dysphoria diagnosis via multiple psychologists, psychiatrists, and mental health facilities so that it was on their records. They also filed considerable amounts of grievances and petitioning to obtain meetings with housing coordinators or designated care teams so that their needs could be heard and to garner response from the facilities that housed them. They actively pursued the methods and research that would inform them of other transgender individuals who had similar success in litigation so that they could mirror the style and necessary evidence to provide during court filings, so they were not dismissed pre-motion.

In response to research question 2, it can be identified that when an individual is unhappy with the gender-affirming network they are housed in via the prison facility that they reside in, there will be an inclination to pursue legal action as a way to gain a more supportive social network, because that social network will then legally be held responsible for providing the standard of care that establishes an awareness of the individual's self-identified gender expression. In the cases where legal teams were used such as Lambda Legal or the ACLU, they provided these

plaintiffs with a social network that demonstrated gender affirmation for these individuals in the sample this directly relates to research question 2.

### *Limitations and Future Research*

This research is the first being done with the transgender population looking at these issues provided areas of limitations in the research, but those limitations give much opportunity for future research to be conducted. I wanted to present them both here to you, so that we do not focus on the negative but instead identify some areas of issue and ensure that those issues may be rectified in the future. To begin, my sample was very hard to reach and a protected population per IRB guidelines and other state and federal limitations regarding gaining access to currently incarcerated individuals. I further made that a limitation by choosing to work with a minority population within that protected population specifically self-identified transgender individuals. To fix this, I believe that access could be gained with proper institutional support both by the academic researcher and the facilities that house these individuals. The second limitation was my sample was only 30 individuals, for qualitative research this is often satisfactory, but I did not have individuals being represented from every state nor geographical district. This sample size does not lend itself to forming a fully developed concept of how intersectionality, the idea that a persons' social and political identities impact the way society may discriminate or give privilege to an individual (Crenshaw 1991) plays a driving factor in these women's lives. Because the main focus of the study was the discrimination received on their self-identified gender identities, the concepts of race and sexual orientation could have played in the day-to-day interactions this sample experienced. This could be fixed with the inclusion or follow-up or expansion of this research to include litigation that is currently under review. I know for my sample, I had to exclude many court cases because they had not reached court or judge decision regarding the case. The final limitation for this research is that it is the first of its kind, and this research has not been done with this population in this manner. While it is a limitation of course, because the first

attempt is always challenging, I know with future research this study can be expanded on and the methods further developed to ensure that the findings in this research is conclusive and valid. There are even more transgender individuals whose cases could not be included in this sample because they are still in court at the conclusion of this research. The imposed limitations of this research were impactful to the way the research developed. Originally this project was not designed to be a content analyses but instead as a qualitative study utilizing interviews to identify trends within incarcerated transgender individuals. Due to Covid-19 and institutional structures limiting the access to this protected population, it became much more difficult and resulted in this becoming a multimodal structured content analysis.

### *Policy Suggestions*

Overall, this research demonstrates that there are a multitude of issues arise when there is not a national standard for states to adhere to regarding transgender health and care they receive while incarcerated. While PREA is still in effect in the United States, many states (shown in the sample) do not follow the recommended guidelines regarding housing, access to personal items, and medical care. There are two way in which policy change could be implemented to help these individuals. Individual states could implement their own policies that outlines affirming actions that have to be taken by the DOCs. This is unlikely because the lack of policy or strict policy with no individual evaluation, has been demonstrated by this research to have negative impacts to transgender individuals' access to gender affirming resources. The second and much more likely way would be an amendment made to PREA that outlined in great detail the standards of care that WPATH identified as necessary for transgender individuals. This would create a standard of care across the nation that could be implemented in all facilities from local to federal level and guaranteed that individuals regardless of location were able to access the outlined resources.



## *Conclusion*

Overall, these 30 individuals' stories depicted in the 24 court cases of my sample are not the full story. I have done everything in my power to do my due diligence as their storyteller to demonstrate the issues that these individuals are facing and the methods used to advocate for their own gender affirmation. Again, I have done this work not in a way to overpower their voices but instead using my position as an ally to carve the space necessary for them to be heard by the larger population. This research project demonstrates that transgender individuals are still experiencing the refusal of their self-identified gender by individuals in charge of their care and wellbeing during the length of their incarceration. State Department of Corrections and prisons are the sole source of care for these individuals and they should not be allowed to deny social identity, safety, and standards of care. That stance is made prominently clear by some of the court rulings in these cases. Because of this, future research has the power to be expanded to reach more cases that will be concluded in the next few years and improve upon the ways this research was conducted. Additionally, I call for not only the disciplines of gender studies, sociology, criminology, and even LGBTQ+ activism, but on everyone to further this new opportunity for research and advocacy for transgender individuals who are currently incarcerated.

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## APPENDICES

### APPENDIX A: Search Terms

plaintiff name+ defendant +state  
plaintiff name+ defendant +state +transgender  
plaintiff name+ defendant +state +transgender +inmate  
plaintiff name+ defendant +state +result  
plaintiff name+ defendant +state +news  
plaintiff name+ defendant +state +judge name  
plaintiff name+ defendant +state+ judge name +ruling  
plaintiff name+ state  
plaintiff name+ state +interview  
plaintiff name+ state +interview+ judge name  
plaintiff name+ state +interview+ judge name+ ruling



APPENDIX B: Case List

*Campbell v. Kallas*, 16-cv-261-jdp (W.D. Wis. Dec. 8, 2020)  
*De'lonta v. Johnson*, 708 F.3d 520 (4th Cir. 2013)  
*Diamond v. Owens*, 131 F. Supp. 3d 1346 (M.D. Ga. 2015)  
*Doe v. Massachusetts Department of Corrections*, 17-12255-RGS (D. Mass. Mar. 5, 2018)  
*Doe v. N.J. Department of Corrections*, Civil Action No. 14-5284 (FLW) (D.N.J. May. 29, 2015)  
*Edmo v. Corizon, Inc.* 935 F.3d 757 (9th Cir. 2019)  
*Fields v. Smith*, 712 F. Supp. at 830 (E.D. Wis. 2010), *aff'd* 653 F.3d 550 (7th Cir. 2011)  
*Gibson v. Collier*, 920 F.3d 212 (5th Cir. 2019)  
*Hampton v. Baldwin*, Case No. 18-cv-550-NJR (S.D. Ill. Feb. 6, 2020)  
*Hicklin v. Precynthe*, No. 4:16-cv-01357, 2018 WL 806764 (E.D. Mo. Feb. 9, 2018)  
*Hill v. United States*, U.S.D.C. (D. Colo.), Case No. 1:13-cv-03404-MSK-NYW.  
*Jackson v. Valdez*, Civil Action No. 3:18-CV-02935-X-BH (N.D. Tex. Mar. 23, 2020)  
*Keohane v. Jones*, 328 F.Supp.3d 1288 (N.D. Fla. 2018).  
*Konitzer v. Frank*, 711 F. Supp. 874 (E.D. Wis. 2010)  
*Kosilek v. Spencer*, 774 F.3d 63 (1st Cir. 2014)  
*Lamb v. Norwood*, 262 F. Supp. 3d 1151 (D. Kan. 2017)  
*Manning v. Griffin*, No. 15-CV-3 (KMK) (S.D.N.Y. Mar. 31, 2016)  
*McQueen v. Brown*, No. 2:15-cv-2544 JAM AC P (E.D. Cal. Feb. 26, 2019)  
*Mitchell v. Kallas*, No. 16-3350 (7th Cir. 2018)  
*Monroe v. Jeffreys*, Case No. 3:18-CV-00156-NJR (S.D. Ill. Feb. 4, 2021)  
*Norsworthy v. Beard*, 74 F. Supp. 3d 1100 (N.D. Cal. 2015)  
*Quine v. Beard*, Case No.14-cv-02726-JST (N.D. Cal. Apr. 28, 2017)  
*Shorter v. United States*, Case No. 4:19cv143-MW-HTC (N.D. Fla. Jul. 17, 2019)  
*Passion Star a/k/a Zollicoffer v. Livingston*, 169 F. Supp. 3d 687 (S.D. Tex. 2016).

## APPENDIX C: Coding

### *Gender Affirmation*

1. Social actions (Used to gain social acceptance as preferred gender)
  - a. Name Change
    - i. Legal Documentation
    - ii. No Legal Documentation
    - iii. Referring to self with gender confirming pronouns
  - b. Gender Change on Birth Certification
  - c. Use of Wigs\*
  - d. Cutting and Styling of Hair\*
  - e. Use of Make-up\*
  - f. Item Access
    - i. Acquired preferred gender style clothes
    - ii. Altered institution-issued clothes into preferred gender style
    - iii. Requested hygiene items
  - g. Body Alterations non-surgically
    - i. Genital Tucking
    - ii. Genital Packing
    - iii. Chest Binding
    - iv. Chest Lifting (Binding to enhance the appearance of breast tissue)
    - v. Facial Hair Removal
    - vi. Voice Modification/Voice Training
2. Social networks
  - a. Help Groups
  - b. Group Therapy
  - c. Referred to as female by other inmates
3. Psychological Treatments
  - a. Psychological Intervention
  - b. Mental Health screenings
  - c. Talk Therapy
  - d. Diagnosis of Gender dysphoria
  - e. Diagnosis of Anxiety as a result of body surveillance
4. Medical Intervention
  - a. Anxiety Medication resulting from Anxiety Diagnosis
  - b. Hormone Therapy
    - i. Prior to Incarceration
    - ii. During Incarceration
    - iii. Duration
      1. Less than year
      2. More than year
      3. 1-3

- 4. 3-5
- 5. 5+
- iv. Was hormone therapy stopped during incarceration?
  - 1. (not coded/only for write up)
- 5. Medical Body Modification
  - a. Top Surgery
  - b. Bottom Surgery
  - c. Silicon injections
  - d. Self-castrations
  - e. Illegal drug injection (non-prescription)
- 6. Legal Intervention
  - a. Self-representing
  - b. Private firm (no LGBTQ+ agenda)
  - c. LGBTQ+ Legal Team
    - i. Lambda Legal
    - ii. Transgender Law Center
  - d. Case Success (obtaining sought after result)

*Type of Case*

- 1. Housing/Safety
  - a. Verbal Threats
    - i. Guards,
    - ii. Medical Staff
    - iii. Other Prison Staff
    - iv. Cellmate
    - v. Other cellblock inmate
    - vi. Other prisoner non specified
  - b. Document Threat
    - i. Guards,
    - ii. Medical Staff
    - iii. Other Prison Staff
    - iv. Cellmate
    - v. Other cellblock inmate
    - vi. Other prisoner non specified
  - c. Documentation
    - i. Infraction with
      - 1. Guards,
      - 2. Medical Staff
      - 3. Other Prison Staff
      - 4. Cellmate
      - 5. Other cellblock inmate
      - 6. Other prisoner non specified
    - ii. Cell reassignment request
    - iii. Cell reassignment confirmation
  - d. Physical Harm Received
    - i. Injury
      - 1. No medical intervention required

- 2. Medical intervention required
  - ii. Attacked with
    - 1. Fists
    - 2. Fashioned weapon
    - 3. Guard baton
  - e. Sexual Harm
    - i. Sexual Assault with object
    - ii. Sexual Assault with body part (non-genitalia)
    - iii. Rape
    - iv. Used as a sexual object
- 2. Drug/Hormone Therapy (start/restart)
  - a. Received prior to incarceration
  - b. Why hormone therapy stopped during incarceration?
  - c. Medically suggested as GD diagnosis
- 3. Gender Confirmation Surgery
- 4. Other

\*Reported by Discipliner Offense Reports (DORs) or Disciplinary Write-Ups

Examples of how coding write-up would appear during the coding period.

Code: “GA11gi” translates to: gender affirmation: social action: yes, body alteration non surgically: genital tucking. In the results section it was documented by: “*Plaintiff* documented that they tucked their genitalia while interacting with other inmates as a way to appear with a more feminine silhouette.” (Document #, Page #)

Code: “GA14bi:iii4” translates to: gender affirmation: medical intervention: yes, hormone therapy, started prior to incarceration. Colons were coded as additional information. Then the following code iii4 translates to: duration of hormone therapy: 3-5 years. This coding example is provided because the write up of these documentations were often provided via medical records that were summarized by a testimonial witness. This was document in the write up by “*Primary physician* provided medical information that confirmed *plaintiff* was prescribed hormone treatment and had been on it for *duration*.” (Document #, Page #)

Code: “TC:1:1di2” translates to: type of case: Housing/Safety: yes, injury, medical intervention required. Due to the nature of the sample being court cases and the types of court cases giving a clear subset of groups in the sample, it was important to document all cited reasons for case. In the write-up, this became more statistic-based information instead of a story telling write up. For example, “The sample of court cases regarding Housing and Safety, # of *plaintiffs* reported receiving physical injury that required medical intervention.”

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