

Journal Article

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A Literature Review of Transgender People in Prison:

An 'invisible' population in England and Wales

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Introduction

The last few decades have witnessed a growth in advocacy for Lesbian, Gay, Bisexual and Transgender (LGBT) people, and that this activism for equality is now increasingly visible within the Criminal Justice System.¹ The Ministry of Justice report *The Care and Management of Transsexual Prisoners PSI 07/2011* provides guidelines about the duties and responsibilities that prisons must comply with in ensuring that all transsexual people are treated fairly and in accordance with the law. However, two high profile cases highlighted issues of inequality for transgender people in the secure estate. In late 2015, Vikki Thompson and Joanne Latham, two transgender women placed in male prisons in England, committed suicide in their prison cells within weeks of each other. While it is understood that Joanne Latham had not requested a transfer to a women's prison, it is reported that Vikki Thompson said she would kill herself if placed in a male prison.² Following their deaths, it was announced that a review into the care and management of transgender people in prisons would be undertaken in light of a number of concerns that the current system does not adequately address their specific needs. In addition, the Minister for Women, Equalities and Family Justice, Caroline Dinenage indicated that the review extend to transgender people being managed in the community.³ The review was published in November 2016 that aimed to ensure that the care and management of

transgender people in prison was 'fit for purpose and provides an appropriate balance between the needs of the individual and the responsibility to manage risk and safeguard the wellbeing of all prisoners'.⁴ According to Caroline Dinenage, there are approximately 80 transgender people in prison in England and Wales and although the exact number is unknown, she estimates that the population is increasing. Referring to prisons in the USA, Simopoulos and Khin Khin⁵ argue that the true estimate of transgender people may be unknown because people in prison are reluctant to disclose their gender identity for fear of transphobia and abuse. However, the recently published review indicated that there will be a data collection exercise across the prison estate (that has already been commissioned) and there will be a new equality information form that among other equality questions, will be a question on gender identity.⁶ The experience of transgender people in prison is an under-researched area generally but particularly in the UK. The majority of research about transgender people who offend has been undertaken in the USA. This is despite existing research (discussed in this literature review) indicating that transgender people in prison are significantly more likely to experience more problems than other prison populations.

Transgender people in prison pose a set of unique challenges to the prison environment. These include breach of rules about clothing and makeup; risk of sexual, physical and emotional victimisation from other people in prison; safety; and health care.⁷ Additionally, studies from

1. Stohr, M. (2015) 'The hundred years' war: The etiology and status of assaults on transgender women in men's prisons.' *Women and Criminal Justice*. 25: 120–29.
2. BBC (22nd November 2015) 'Vikki Thompson: vigil held over transgender prison death.' Available at: <http://www.bbc.co.uk/news/uk-england-leeds-34894734> Accessed 29.02.15.
3. Dineage, C. (2015) Written statement to Parliament: Review into the care and management of transgender offenders. Available online at: <https://www.gov.uk/government/speeches/review-into-the-care-and-management-of-transgender-offenders> Accessed 29.02.15.
4. Garton Grimwood, G. (2015) 'Transgender Prisoners'. House of Commons Library, Briefing Paper. No. 07420.
5. Simopoulos, E. F. and Khin Khin, E. (2014) 'Fundamental Principles Inherent in the Comprehensive Care of Transgender Inmates.' *The Journal of the American Academy of Psychiatry and the Law*. Vol. 42: 26–36.
6. Ministry of Justice (2016) Review on the Care and Management of Transgender Offenders. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/566829/transgender-review-findings-print.PDF Accessed 21.12.16.
7. Brown, G. R. (2014) 'Qualitative Analysis of Transgender Inmates' Correspondence: Implications for Department of Correction.' *Journal of Correctional Health Care*. Vol. 20 (4): 334–342.

the USA indicate that transgender people in prison do not receive adequate physical and mental healthcare provision in prison⁸ and few American prisons have developed adequate solutions.⁹ This article will highlight these issues and outline the need for qualitative research in prisons in England and Wales. The Equality Act 2010 defines nine protected characteristics including gender reassignment and sexual orientation. However, the HM Chief Inspector of Prisons (HMIP) for England and Wales concluded in the Annual Report (2012) that the protected characteristics in prisons receiving the least protection under the Equality Act 2010 is sexual orientation and gender.¹⁰ Moreover, Dunn's HMIP inspection findings reveal inadequate management and treatment of the LGBT prison population. However, Dunn does not expand further on this issue. There are two specific issues: inadequate policy and lack of research. The lack of research and inadequacy of prison policies might be explained by the transgender person's 'invisibility'¹¹ in the prison system. Dunn argues that prison staff suggest there are no specific provisions because 'we don't have many here'. The absence of research serves to ignore and diminish the opportunity for transgender people in prison to live within an equal, fair and safe environment. However, the recent review highlights that although the number of transgender people in prison is small, they 'are not difficult to find in prisons' and therefore, issues affecting transgender people in prison is worthy of attention.¹² The inability of prisons to adequately foster equality for transgender people in prison and protect them from victimisation has severe consequences. According to Coleman et al.,¹³ whilst in prison transgender people are more likely to suffer with mental health problems including depression and suicidality. The lack of research

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in England and Wales coupled with examples of inadequate treatment reveals an urgent need for qualitative research to be undertaken in prisons in England and Wales in order to explore the experiences of transgender people in relation to their specific issues and needs. It is also important to explore the experiences of transgender people in prison regarding the quality of care and treatment that they receive on a daily basis so that informed recommendations for improvement can be made.

Method

A systematic review of the literature identified all the publications available concerning the issues related to transgender people in prison. The review indicated a serious dearth of research; the publications were predominantly from the USA with very few studies found in the UK context. The review was carried out using the search engines Google Scholar and Athens. A variety of key terms were used such as 'transgender/transsexual prisoners', 'transgender/transsexual inmates', 'transgender/transsexual offenders', 'transgender prison policy', 'and LGBT prison policy'. The searches predominantly identified the work of Valerie Jenness, Professor of Criminology at the University of California, Irvine who has authored and co-authored several research articles and book chapters stemming from research projects concerning transgender people in prison. Jenness and her colleagues have researched extensively around issues of placement of transgender people in the prison establishment and their victimisation of physical and sexual assault.^{14,15,16}

8. Routh, D., Abess, G., Makin, D., Stohr, M., Hemmens, C., and Yoo, J. (2015) 'Transgender Inmates in Prisons: A Review of Applicable Statutes and Policies.' *International Journal of Offender Therapy and Comparative Criminology*. 1–22.
9. Simopoulos and Khin Khin (2014) see note 5.
10. Dunn, P. (2013) 'Slipping off the equalities agenda? Work with LGBT prisoners.' *Prison Service Journal*. 206: 3–10.
11. Dunn (2013) see note 9.
12. Ministry of Justice (2016: 4) see note 6.
13. Coleman, E., Bockting, W., Botzer, M., Cohen-Kettenis, P., DeCuypere, G., Feldman, J., Fraser, L., Green, J., Knudson, G., Meyer, W. J., Monstrey, S., Adler, R. K., Brown, G. R., Devor, A. H., Ehrbar, R., Ettner, R., Eyster, E., Garofalo, R., Karasic, D. H., Lev, A. I., Mayer, G., Meyer-Bahlburg, H., Hall, B. P., Pfaefflin, F., Rachlin, K., Robinson, B., Schechter, L. S., Tangpricha, V., van Trotsenburg, M., Vitale, A., Winter, S., Whittle, S., Wylie, K. R., & Zucker, K. (2012) 'Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7.' *International Journal of Transgenderism*. 13: 165–232. World Professional Association for Transgender Health.
14. Jenness, V. (2011) 'Getting to Know 'The Girls' in an 'Alpha-Male Community': Notes on Fieldwork on Transgender Inmates in California Prisons.' In *Sociologists Backstage: Answers to 10 Questions About What They Do*, edited by Fenstermaker, S. and Jones, N. New York: Routledge Press.
15. Jenness, V. and Fenstermaker, S. (2014) 'Agnes goes to prison: Gender authenticity, transgender inmates in prisons for men, and the pursuit of "The Real Deal."' *Gender and Society*. 28: 5–31.
16. Sumner, J., Sexton, L., Jenness, V. and Maxson, C. (2014) 'The (Pink) Elephant in the Room: The Structure and Experience of Race and Violence in the Lives of Transgender Inmates in California Prisons.' *The International Handbook of Race, Class, and Gender*, edited by Jackson, S. A. London: Routledge.

Other identified articles from the USA include those by Brown and McDuffie;¹⁷ Brown;¹⁸ Oparah;¹⁹ Sandor von Dresner et al.;²⁰ Stohr;²¹ and Routh et al.²² Studies in the UK include those by Poole, Whittle and Stephens,²³ Jones and Brookes,²⁴ and Dunn.²⁵ HMP Inspectorate reports and the Ministry of Justice report *The care and management of transsexual prisoners PSI (07/2011)* (hereafter PSI)²⁶ were also drawn upon. In so doing, this helped to identify three key areas that represent specific issues for transgender people in prison: placement in the prison establishment; victimisation and treatment; and healthcare provisions. It is these issues that provide the basis for this literature review and inform future research recommendations. Before discussing the specific issues identified in the literature, it is necessary to first discuss the nature and prevalence of transgenderism as well as offering an explanation as to why transgender people are over-represented in the Criminal Justice System.

Nature and scope of transgenderism and the journey towards the Criminal Justice System

Simopoulos and Khin Khin²⁷ suggest that a person's sex is their biological characteristics relating to chromosomes and genitalia. Gender, on the other hand, is socially constructed according to characteristics typically associated with sexual roles.²⁸ 'Transgender' is an umbrella term for 'individuals whose gender identity or expression does not conform to the social expectations for their assigned sex at birth'.²⁹ It is important to note that not all transgender people can or will undertake hormone treatment and sex reassignment surgery (hereafter SRS).

The term 'transsexual' is not an umbrella term and is typically preferred by some people who have, or intend to, permanently change their bodies through medical intervention.³⁰ For the purposes of this article, we shall use the umbrella term 'transgender' except where quoting from a study that specifically uses the term 'transsexual'. Transgenderism challenges the sex category binary that constitutes two categories only: male and female. Newborns are assigned a sex category and behaviours that conform to social norms are practiced throughout a person's life and non-conformity may lead to negative consequences. However, most people identify their gender according to their sex.³¹ According to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision; DSM-IV-TR,³² when an individual does not identify with their sex, and if they demonstrate a 'strong and persistent cross-gender identification' and a 'persistent discomfort with his or her sex or [a] sense of inappropriateness in the gender role of that sex', and if this causes distress and inhibits proper functioning in their life then they may be diagnosed with gender identity disorder (GID). However, the DSM-5 published in May 2013 reveals a name change to GID, which is now known as gender dysphoria. This is in recognition of the stigma associated with gender-variant people and removing the word 'disorder' serves to remove an emotive label.³³ Once the condition is diagnosed, the person is treated with hormone treatment, SRS and psychological treatment. Oparah³⁴ points out that although SRS is commonly referred to as a 'sex change', it is more accurately described as a 'sex correction' since individuals are undergoing surgery so that their physical body identifies with their true and identified gender.

Simopoulos and Khin Khin³⁵ argue that although it is difficult to estimate the scope of worldwide

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17. Brown, G. R. and McDuffie, E. (2009) 'Health Care Policies Addressing Transgender Inmates in Prison Systems in the United States.' *Journal of Correctional Health Care*. Vol. 15 (4): 280–291.
 18. Brown (2014) see note 6.
 19. Oparah, J. C. (2012) 'Feminism and the (trans)gender entrapment of gender non-conforming prisoners.' *UCLA Women's Law Journal*. 18: 238–71.
 20. Sandor von Dresner, K., Underwood, L. A., Suarez, E. and Franklin, T. (2013) 'Providing Counseling for Transgendered Inmates: A Survey of Correctional Services.' *International Journal of Behavioural Consultation and Therapy*. Vol. 7 (4): 38–44.
 21. Stohr (2015) see note 1.
 22. Routh et al. (2015) see note 7.
 23. Poole, L. Whittle, S. and Stephens, P. 'Working with Transgendered And Transsexual People As Offenders in The Probation Service.' *Probation Journal*. Vol. 49: 227–232.
 24. Jones, L. and Brookes, M. (2013) 'Transgender Offenders: A Literature Review'. *Prison Service Journal*. (206): 11–18.
 25. Dunn (2013) see note 9.
 26. Ministry of Justice (2011) *The Care and Management of Transsexual Prisoners PSI 07/2011*. Available online at https://webcache.googleusercontent.com/search?q=cache:J-XS8L9Dy90J:https://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi_2011_07_care_management_transsexual_prisoners.doc+&cd=1&hl=en&ct=clnk&gl=uk&client=safari Accessed 29.02.16.
 27. Simopoulos and Khin Khin (2014) see note 5.
 28. Marcovitch (2005) cited in Simopoulos and Khin Khin (2014) see note 5.
 29. Currah (2006: xiii-xiv cited in Oparah (2012: 244) seen footnote number 17.
 30. GLAAD (2016) *GLAAD Media Reference Guide – Transgender Issues*. Available online at <http://www.glaad.org/reference/transgender> Accessed 30.03.16.
 31. Oparah (2012) see note 17.
 32. DSM-IV-TR cited in Simopoulos and Khin Khin (2014: 27) see note 5.
 33. Simopoulos and Khin Khin (2014) see note 5.
 34. Oparah (2012) see note 17.
 35. Simopoulos and Khin Khin (2014) see note 5.

transgenderism, data shows that it is rare. They refer to ten studies about transgender prevalence across eight countries. The studies reveal a wide range of estimates: 1:11,900 to 1:45,000 male to female (MTF) and 1:30,400 to 1:200,000 female to male (FTM) individuals. It appears to be a worldwide phenomenon that more biological males than females are transgender. Although the prevalence of transgenderism is unclear, the challenges and issues transgender people experience is highly evident. According to Lev,³⁶ transgender individuals are at more risk of suicide, depression and hate crimes. They are also more likely to be living among high rates of crime, poverty and drug dealing and are therefore at risk of becoming involved in the Criminal Justice System.³⁷ In particular, Sandor von Dresner et al. suggest that research demonstrates a correlation between gender dysphoria and offending³⁸ and they refer to a study that indicates approximately 40 per cent of transgender people have been involved in prostitution.³⁹

Oparah⁴⁰ states that gender conformity begins in childhood whereby children are encouraged to behave and dress according to their assigned gender. For a teenager who is not conforming to their gender, they might experience significantly more conflict with parents, authorities and peers when it is obvious that their non-conforming habits are not limited to childhood or something they will grow out of. The conflict can result in the young transgender person being forced to leave home or run away. The literature also highlights how gay, lesbian and bisexual adolescents are at increased risk of homelessness because of conflict (with family members) regarding their sexuality.⁴¹ It has been argued that this is particularly apparent in the case of LGBT males who are at greater risk of violent expulsion from home than females, following

disclosure or discovery of sexual orientation.⁴² In this context, young homeless transgender people can resort to survival strategies resulting in offending such as prostitution, theft and selling and using drugs. In addition, populations at higher risk of victimisation are also reportedly more wary about accessing communal services. A US study of victimisation among Runaway LGBT adolescents found that because these young people often had been bullied at school and rejected by adults prior to running away, they may avoid traditional shelters.⁴³ Because these young people are likely to be overrepresented in runaway populations, the authors argued that shelters, currently not catering to LGBT adolescents, are missing some of the most vulnerable runaways.

Transgender people are also more likely to experience poverty because of discrimination in the workplace.⁴⁴ They are also more susceptible to insecure housing and homelessness because of discriminatory landlords and unstable employment or unemployment.⁴⁵ This means that the transgender prison population is likely to be over-represented in comparison to the general transgender populace. As Stohr⁴⁶ observes, '... people who are societal outcasts are more likely to exist on the margins in a community and so are more likely

... gender conformity begins in childhood whereby children are encouraged to behave and dress according to their assigned gender.

to wind up in a jail or a prison, as they may be more prone to engage in illegal activities in order to survive'. Simopoulos and Khin Khin refer to a study of the transgender people in San Francisco that indicated almost 14 per cent of transgender people had been in prison on at least one occasion. This is twice the imprisonment rate in America.⁴⁷ Moreover, Oparah⁴⁸ argues that once transgender people are released from prison, they continue to remain caught in a cycle of exclusion and marginalisation.

36. Lev (2004) cited in Sandor von Dresner et al. (2013) see note 18.

37. Blight (2000) cited in Sandor von Dresner et al. (2013) see note 18.

38. Peterson, Stephens, Dickey and Lewis (1991) cited in Sandor von Dresner et al. (2013) see note 18.

39. Hoenigh, Kenna and Youd (1970) cited in Sandor von Dresner et al. (2013) see note 18.

40. Oparah (2012) see note 17.

41. Whitbeck, L. B., Chen, X., Hoyt, D. R., Tyler, K. A., & Johnson, K. D. (2004) 'Mental disorder, subsistence strategies, and victimization among gay, lesbian, and bisexual homeless and runaway adolescents.' *Journal of Sex Research*. 41(4): 329–342.

42. Hein, L. C. (2011) 'Survival Strategies of Male Homeless Adolescents.' *Journal of the American Psychiatric Nurses Association* 17 (4), 274–282.

43. Whitbeck et al. (2004) see note 39.

44. Oparah (2012) see note 17.

45. See also Sexton, L., Jenness, V., and Sumner, J. (2009) 'Where the Margins Meet: A Demographic Assessment of Transgender Inmates in Men's Prisons.' *Justice Quarterly*. 27 (6): 835–866.

46. Stohr (2015) see note 1.

47. Minter and Daley (2003) cited in Simopoulos and Khin Khin (2014) see note 5.

48. Oparah (2012) see note 17.

Placement of transgender people in prison

Simopoulos and Khin Khin⁴⁹ argue that most prisons worldwide have basic housing policies based on the biological sex binary of male and female. Mann's⁵⁰ is the only article to date to offer a comparative analysis of the treatment of transgender people in prison on an international scale. Mann found that the USA and Canada locate people in prison according to their anatomical sex. In the USA, Sandor von Dresner et al.⁵¹ found that the most significant issue for transgender people in prison is housing. They reported that every state in America involved in the survey did not have a transgender specific housing unit; a finding reflected internationally. Moreover, they found that most prisons surveyed in America indicated that decisions about placement were based on the person's genital sex and only transgender women who had undergone SRS would be placed in a female prison. Similarly, in England and Wales, most people must be allocated to a prison according to their gender as recognised by the law. The Gender Recognition Act 2004 enables transsexual people to apply for legal recognition of their acquired gender. If the legal requirements are satisfied, then the Gender Recognition Panel will grant a full Gender Recognition Certificate (GRC).⁵² A transgender person in prison is normally required to have a GRC in order to be placed in a prison according to their recognised gender. For those without a GRC then their case will be discussed via a case conference and multi-disciplinary risk assessment as per the National offender Management Service (NOMS) policy guidance and they will make a discretionary decision.⁵³ Transgender people in prison in Scotland are not required to have a GRC for them to be acknowledged and respected in their acquired gender.⁵⁴ This is important because the GRC is not a reliable benchmark to use when making decisions about where

to place a transgender person in a prison establishment. It cannot be assumed, for instance, that all transgender people wish to undergo a full SRS as they may not deem it necessary, or, as Stohr⁵⁵ emphasises, they might want to avoid the associated physical pain of such significant surgery. Indeed, the recent review recognises that many transgender people live successfully without SRS or GRC and therefore the policy should evolve to reflect the need to respect a person in the gender with which they identify. In addition, the review remarks that enabling transgender people to experience prison in the gender they identify with, is humane, safe and supports rehabilitation.⁵⁶

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Stohr argues that because of the limited housing policies in America, transgender women placed in male prisons are more susceptible to sexual assault than if they were placed in a female prison. To reiterate, in England and Wales, transgenderism is a protected characteristic under the Equality Act 2010 meaning public authorities like NOMS, must also prevent discrimination, harassment and victimisation.⁵⁷ Despite this, Dunn's⁵⁸ findings indicate that physical and sexual assault against transgender people in prison is also a British problem. Lamble⁵⁹ also suggests

that evidence from individual people in prison and advocacy groups support these findings. Transgender people in American prisons are typically protected from physical and sexual assault via administrative segregation. Lamble argues that this also occurs in prisons in England and Wales although Lamble does not indicate the prevalence of such incidents. As well as reduced access to education and recreational activities, Lamble emphasises the impact on the psychological welfare of the transgender person in prison. Lamble further argues that the method of segregation is symptomatic of treating the transgender person as the 'problem' rather than

49. Simopoulos and Khin Khin (2014) see note 5.

50. Mann, R. (2006) 'The Treatment of Transgender Prisoners, Not Just an American Problem—A Comparative Analysis of American, Australian, and Canadian Prison Policies Concerning the Treatment of Transgender Prisoners and a "Universal" Recommendation To Improve Treatment.' *Law and Sexuality Law and Sexuality: A Review of Lesbian, Gay, Bisexual, and Transgender Legal Issues*.

51. Sandor von Dresner et al. (2013) see note 18.

52. Ministry of Justice (PSI 07/2011) see note 50.

53. Garton Grimwood (2015) see note 4.

54. Scottish Prison Service and the Scottish Transgender Alliance 2014 cited in Garton Grimwood (2015) see note 4.

55. Stohr (2015) see note 1.

56. Ministry of Justice (2016) see note 6.

57. Ministry of Justice (PSI 07/2011) see note 24.

58. Dunn (2013) see note 9.

59. Lamble, S. (2012) Rethinking gendered prison policies: impacts on transgender prisoners. *ECAN Bulletin* (16): 7–12.

addressing the underlying issues of transphobia. Similarly, Stohr⁶⁰ suggests that such methods are indicative of less respect afforded to transgender people in prison and as a consequence, they are not provided with the same level of security. The recent review suggests that care must be taken to avoid isolating transgender people in prison and that being transgender should not in itself be used as a reason to isolate a person. Emphasis is made on the importance of day-to-day contact and integration with peers.⁶¹ Jenness and Fenstermaker⁶² assert that transgender women in prison housed in a male prison will occupy a low level status by virtue of living in a hypermasculinised culture. It is the occupation of this culture that exposes transgender women in male prisons to become vulnerable targets of repeated abuse. Although the recent review indicates a desire to house transgender people according to their identified gender, it is also noted that issues may arise when this cannot be achieved. An example the review offers relates to the possible lack of evidence or counter evidence relating to the person's gender identity or concerns raised following an assessment of all known risks that indicate they cannot be safely managed according to their identified

gender. In addition, the review suggests that decisions about the transfer of a transgender person should be based on clear criteria although the review does not indicate what the criteria might be based on. It suggests that it should be taken in account that women's estates will include people who have been the victims of domestic violence or sexual abuse.⁶³ The review does not indicate the possible remedies to this.

Simopoulos and Khin Khin⁶⁴ refer to an Australian approach, specifically the Queensland Corrective Services whereby in 2008, transgender people were to be treated according to their gender identity. Upon

... some people may not want to identify themselves as transgender for fear of abuse and violence from those in prison, including staff.

declaring their identified gender, they are placed in a single cell during which time, the decision about their stay is assessed according to the safety and security the transgender person poses to the prison and other people as well as the risks posed to themselves; the nature of their offence(s); their personal circumstances; medical and psychiatry recommendations; stages of hormone treatment; and importantly, the transgender person's preference. However, without such an approach that ensures safety, Stohr⁶⁵ argues that some people may not want to identify themselves as transgender for fear of abuse and violence from those in prison, including staff.

Simopoulos and Khin Khin⁶⁶ indicate the possibility of men claiming they are transgender so that they can be placed in a female prison for the purposes of sexual predatory behaviour. Similarly, Sandor von Dresner et al.⁶⁷ suggest that the motivations of transgender people's housing preferences must be assessed for the prevention of drug activity and prostitution. Jenness' (2008)⁶⁸ found that transgender women expressed their desire to be housed in a men's prison as opposed to a women's prison. This was typically cited in the context of wanting to avoid women to be in the company of men. The participants reported that being housed with

men was an advantage because of sex and the possibility of establishing romantic relationships.⁶⁹

The California Department of Corrections and Rehabilitation (CDCR) funded Jenness⁷⁰ for a study concerning transgender people in prison that set to explore a specific area concerning their safety: where and with whom should transgender people be housed in the interests of reducing risk of sexual assault and other forms of victimisation. Jenness and her colleagues collected self-report data from transgender people in prison, demographic data, and information on where transgender people are

60. Stohr (2015) see note 1.

61. Ministry of Justice (2016) see note 6.

62. Jenness, V. and Fenstermaker, S. (2016) 'Forty Years After Brownmiller: Prisons for Men, Transgender Inmates, and the Rape of the Feminine.' *Gender and Society*. Vol. 30 (1):1 4–29.

63. Ministry of Justice (2016) see note 6.

64. Simopoulos and Khin Khin (2014) see note 5.

65. Stohr (2105) see note 1.

66. Simopoulos and Khin Khin (2014) see note 5.

67. Sandor von Dresner et al. (2013) see note 18.

68. Jenness, V. (2008) cited in Jenness, V. (2014) 'Pesticides, Prisoners, and Policy: Complexity and Praxis in Research on Transgender Prisoners and Beyond.' *Sociological Perspectives*. Vol. 57 (1): 6–26.

69. Jenness, V. (2008) cited in Jenness, V. (2014: 12) see note 63.

70. Jenness, V. (2014) 'Pesticides, Prisoners, and Policy: Complexity and Praxis in Research on Transgender Prisoners and Beyond.' *Sociological Perspectives*. Vol. 57 (1): 6–26.

housed. Jenness interviewed over 300 transgender people in 27 prisons and were asked about their housing situation as well as other experiences relating to sex and violence. The study revealed that although there is a significantly high incidence of transgender women in prison experiencing sexual assault, it is not clear what the solution should be. This is because there was not a statistically significant relationship between where transgender women were housed (either with the general population or with fellow transgender people only) and the likelihood of sexual assault and other types of assault. Rather, significant predictors of sexual assault included having been in a marriage-like or sexual relationship with another person in prison.

Jenness and Fenstermaker⁷¹ state that because prisons are one of the most sex-segregated institutions, they are therefore organised around gender in several ways. Here, the authors suggest that transgender women in men's prisons in California express a desire to be seen as a 'real girl' or the 'best girl'. Their gendered practices provoke a culture of male dominance, heteronormativity and an acceptance of inequality.⁷² Jenness⁷³ concludes that to keep transgender women safe, they need to be separated from the 'real men' and in particular those who they have had or are having intimate relationships with. However, Jenness coins this finding 'safe but sad' because the separation means denying transgender people in prison the ability to live in a meaningful way. Understanding victimisation of sexual assault in the context of living within a hypermasculinised environment is discussed in detail in the next section of this review.

The victimisation of transgender people in prison

The literature concerning the victimisation of transgender people in prison can again, be found in US studies. The physical and sexual victimisation of transgender people in prison is understood

predominantly from Jenness⁷⁴ work, which explains the victimisation in the context of the hypermasculinised culture of Californian male prisons. However, it is important to note that cultural differences exist between American and British prisons. James et al.⁷⁵ suggest that American prisons operate within a more coercive context and many American prisons allow staff to carry firearms. Dervan⁷⁶ found important cultural differences between federal and state prisons in America. The federal establishment visited was clean, well-cared for and the people in prison were occupied by meaningful employment or education. Importantly, Dervan describes a sense of community within the federal estate. In contrast, the state prison observed was described as uncared for, over-crowded, with no sense

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of community whereby people spent a significant amount of the day laying on their bunk beds with little to do other than watch television. This is important when examining why victimisation of physical and sexual assault occurs in prisons. The fact that the American research concerns transgender people in state prisons is important to acknowledge in light of Dervan's findings because he argues that prisons serving as little more than warehouses tend to experience

more violence than those that promote a community atmosphere.

In Jenness and Fenstermaker's article Agnes goes to prison an insight is offered into the daily workings of gender in prison. Transgender women in prison strive to be seen as 'natural' females and behave in a way that gives them gender authenticity or what is referred to as 'the real deal'.⁷⁷ Transgender women cannot simply 'pass' as female in a prison environment by virtue of being housed with men. Thus, they go in pursuit of becoming established and seen as a 'real girl' or 'the best girl'.⁷⁸

In order to achieve respect and status as a girl, they embrace the hypermasculine culture and accept the inequality of a male dominated environment whereby femininity is associated with weakness.⁷⁹

71. Jenness and Fenstermaker (2016) see note 58.

72. Jenness and Fenstermaker (2013) cited in Jenness (2014) see note 65.

73. Jenness (2014: 19) see note 65, p.19

74. Jenness (2008) see note 63.

75. James, A. L., Professor, Bottomley, K., Liebling, A., and Clare, E. (1997) *Privatizing Prisons: Rhetoric and Reality*. London: Sage.

76. Dervan, L. E. (2011) 'American Prison Culture in an International Context: An Examination of Prisons in America, The Netherlands, and Israel.' *Stanford Law & Policy Review*. Vol. 22 (2).

77. Jenness and Fenstermaker (2014: 13) see note 58.

78. Jenness and Fenstermaker (2014: 7) see note 58.

79. Mann (2006) see note 48.

Gender expectations mean that the transgender woman must behave in a manner that is inherently feminine as if they were 'really and truly female'.⁸⁰ It is within this context, Jenness and Fenstermaker argue, that we can begin to understand the high prevalence of rape of transgender women in prisons. They refer to this as 'the rape of the feminine'. Moreover, Dunn⁸¹ argues that 'Men who feel less powerful in prison than in their lives outside may despise gay or transgender prisoners as a means of restoring their self-image'. Indeed, studies of rape and sexual assault in men's prisons demonstrate that the environment of hypermasculinity and dominance contributes to assaults of feminine, young and new people in prison. Transgender women with a feminine appearance make this population particularly vulnerable and the denial of appropriate feminine clothing compounds their sexual objectification.⁸² Lee argues that guards may overlook assaults in a bid to control social hierarches and maintain order.⁸³

There is currently very little known about consensual and nonconsensual sexual activity in prisons in England and Wales.⁸⁴ Stewart⁸⁵ highlights how the sexual behaviour and sexual health of prisoners has been neither a research or a policy priority, noting that the National strategy for sexual health and HIV only mentioned prison health once, sexual health is not a specific category in The Prison Health Handbook and that prisoners, like the homeless are missed in most population samples and a mapping exercise aimed to highlight current trends and gaps in sexual health identified only one study of prisoners out of 346 projects. The Howard League for Penal Reform created the independent Commission on Sex in Prison in 2013, which sought to examine the nature and prevalence of sex in prisons and to make recommendations for safer establishments. There were three broad themes: consensual sex in prisons; coercive sex in prisons and the healthy sexual

Gender expectations mean that the transgender woman must behave in a manner that is inherently feminine as if they were 'really and truly female'.

development among young people in prison. The Howard League's Briefing paper 1 highlighted a number of issues including how there is little reliable evidence available on both consensual and coercive sexual activity in prisons and it is not known to what extent men and women who identify as heterosexual may have sex with other prisoners while in prison. While there is no prison rule prohibiting sex between prisoners but prison staff do not allow prisoners to have sex. It is difficult, if not impossible, for prison staff to distinguish between consensual and coercive sexual relationships.

Permission to interview current people in prison about their sexual experiences in prison was denied by the Ministry of Justice. Therefore, people who had formally been in prison were invited to partake in the study and 26 people were subsequently interviewed. The final report indicates that sexual activity between people

in prison is prevalent and that some heterosexual men engaged in homosexual activity because they considered it necessary.⁸⁶ Additionally, the availability of condoms varied between prisons, rather than being subject to national policy. A HM Prison Service report 2001/2002 found that there was a recognition of sexual activity within prisons evidenced by the supply and use of condoms by prison officers, although some governors may not allow the distribution of condoms, and in some prisons, condoms are

only available via prescription. The participants in Stevens' study generally considered the prison officers were sometimes aware of the sexual activity but chose not to intervene. Importantly, the majority of participants considered coercive sex a rarity although three of them disclosed rape by fellow people in prison.⁸⁷ Stevens points out that this perception is echoed in Edgar, O'Donnell and Martin's⁸⁸ study. She further argues that rape in prison is most certainly under-reported. In a study conducted by Single Banbury in 2004,⁸⁹ it was estimated that approximately 10,000 of 200,000 who pass through the prison system annually may have been coerced sexually.

80. Jenness and Fenstermaker (2014: 18) cited in Jenness and Fenstermaker (2016: 22) see note 58.

81. Dunn (2013) see note 9, p.4.

82. Daley (2005) cited in Stohr (2015) see note 1.

83. Cited in Stohr (2015) see note 1.

84. Stevens, A. (2015) 'Sex in Prison: Experiences of Former Prisoners.' Commission on Sex in Prison. The Howard League for Penal Reform. Available online at https://d19y1po4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Publications/Sex_in_prison_web.pdf Accessed 30.03.16.

85. Stewart, E. C., (2007) 'The Sexual Health and Behaviour of Male Prisoners: The Need for Research.' The Howard Journal of Criminal Justice. Vol. 46 (1): 43–59.

86. Stevens (2015) see note 79.

87. Stevens (2015) see note 79.

88. Cited in Stevens (2015) see note 79.

89. Banbury, S. (2004) 'Coercive Sexual Behaviour in British prisons.' The Howard Journal of Criminal Justice. Vol. 43 (2): 113–130.

This study highlighted how subsequent psychological problems are difficult to deal with in the prison environment and upon release. Surprisingly, the recent review does not discuss in any detail the issue of transgender victimisation in prison. It refers briefly to the training of staff, who, the report suggests, should undergo training to ensure their understanding of the rights of all transgender and non-binary people. In relation to victimisation specifically, the review states, 'All staff should understand their responsibility to confront discrimination, bullying or unwarranted attention aimed at transgender people'.⁹⁰ No further guidance is offered.

The management of transgender people in prison

Simopoulos and Khin Khin⁹¹ suggest that the management of transgender people in prison refers to their daily treatment including the use of the person's preferred name, clothing, personal items, and how searches are conducted. They suggest it is a worldwide phenomenon in prisons that transgender people are not permitted to wear clothing according to their identified gender. However, in England and Wales, should transgender people be housed according to their birth sex, the PSI guidelines indicate that people in prison must be permitted to live permanently in their acquired gender and this means being permitted to dress in gender-appropriate clothing and adopting a gender-appropriate name. The report emphasises that all transsexual people in prison must be treated fairly and in accordance with the law. The recently published review suggests the adoption of a 'facilities list' containing a list of items for purchase that can be used in both male and female establishments as well as standardised rules on what is considered acceptable clothing.⁹² However, according to the HM Inspectorate of Prisons for England and Wales, Annual Report (2014–15),⁹³ although most prisons had a relevant policy, the quality of care for transgender people varied between prisons. Good support was found at Altcourse, Elmley and Wormwood Scrubs (although

... it is a worldwide phenomenon in prisons that transgender people are not permitted to wear clothing according to their identified gender.

the nature of this support is not described). Good one-to-one support was identified at Northumberland but was 'undermined by insensitive staff continuing to refer to the transgender prisoner as a man and not always ensuring she had separate shower access'. The Inspectorate reported a custody officer at Kent prison referring to a transgender person as 'it', highlighting an example of poor treatment that a transgender person may be subjected to. Emphasis is placed on terminology in the recent review whereby it is suggested that staff should 'always be respectful' and guidance should be offered by NOMS in relation to what terminology is appropriate.⁹⁴

Dunn⁹⁵ refers to findings from inspectors of prisons in England and Wales and LGBT issues do not feature in equalities action plans. Additionally, homophobic incident reports were not analysed or discussed by senior management and Dunn concludes that because of the few numbers of this population, little is being done to address homophobia within the prison establishment. Dunn further argues that staff often failed to address homophobic abuse and that there was no mention during staff induction that abuse would not be tolerated. Moreover, some prisons could offer no information about LGBT support organisations. If they did, information was provided without asking people in prison what their concerns were. Dunn points out that this might have given the impression of a lack of interest or incompetence. Similarly, Sandor von Dresner et al's.⁹⁶ survey administered to prisons in the USA found that prison officials lacked knowledge and understanding in how to manage the specific issues of transgender people in prison. Having reviewed inspection reports, Dunn argues that diversity managers in prison should review staff training needs in relation to transgender people in prison. Additionally, Dunn suggests that staff should communicate and relate more with transgender people in prison with senior staff asking them about their experiences more often and then discussing and addressing the relevant issues. The recent review seeks to address the need of training staff to understand the rights of transgender and non-binary people that is inclusive of their safety and dignity. In addition, the

90. Ministry of Justice (2016: 8) see note 6.

91. Simopoulos and Khin Khin (2014) see note 5.

92. Ministry of Justice (2016) see note 6.

93. HM Chief Inspector of Prisons for England and Wales Annual Report (2014-15). Available online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444785/hmip-2014-15.pdf Accessed 29.02.16. p.47

94. Ministry of Justice (2016: 7) see note 6.

95. Dunn (2013) see note 9.

96. Sandor von Dresner et al. (2013) see note 18.

review suggests that staff need to understand how to access support from specialist colleagues.⁹⁷

Healthcare provisions for transgender people in prison

Coleman et al.⁹⁸ offer a very important point of view in understanding the mental health issues often experienced by transgender people. They argue that the resulting psychological distress is 'socially induced' and 'not inherent to being transsexual, transgender, or gender-nonconforming'. Despite the fact that many transgender people live in a variety of social and cultural contexts across the world, stigma and prejudice are apparent among all societies.⁹⁹ The PSI outlines that transsexual people in prison diagnosed with gender dysphoria can expect to receive the same quality of healthcare provisions as they would from the NHS if they were living in the community. Jones and Brookes¹⁰⁰ refer to Petersen et al's.¹⁰¹ review of prison policies relating to transsexual people in prison. The review covered Europe, Australia, Canada and the USA. Their findings included: only 40 per cent of prisons had a formal or informal policy addressing issues such as hormone treatment; people are placed in prison according to their genital status; in almost all prisons, there was no specialised counselling available; in most cases SRS would not be considered; there was no agreed determination of risk of sexual or physical assault; most institutions fostered the 'freeze-framing' approach whereby hormone treatment is only provided for those who have already started it prior to entering prison. The freeze-frame approach is based on the argument that prison does not reflect the 'real world' and therefore assessing gender dysphoria is more difficult in such a controlled setting.¹⁰² Prison is described as an artificial environment and fosters a culture of rigidity and control.¹⁰³

Despite the fact that many transgender people live in a variety of social and cultural contexts across the world, stigma and prejudice are apparent among all societies.

However, Sandor von Dresner et al.¹⁰⁴ argue that it 'condemns' transgender people in prison who are serving life sentences to live the rest of their lives untreated. Stohr refers to Colopy¹⁰⁵ who highlights a case whereby a transgender person became depressed and self-mutilated as a result of stopping hormone treatment. The guidelines for the standards of care for transgender people in the World Professional Association for Transgender Health state that a 'freeze frame' approach is not considered an appropriate course of action in the majority of situations. Its guidelines outline the consequences of preventing the initiation of hormone treatment for people in prison such as autocastration and suicide.¹⁰⁶ Coleman et al.

point out that the Standards of Care guidelines apply to all transsexual, transgender, and gender-nonconforming people in its entirety—that is, regardless of where the person lives. Therefore, people in prison should not be discriminated against when they attempt to access healthcare.¹⁰⁷ Additionally, Coleman et al. argue that outside consultation from specialists should be sought if in-house expertise is unavailable.

In recent years, the recognition to protect transgender people from discrimination can be observed through The Patient Protection and Affordable Care Act 2010 and there have been significant changes within the health care system that similarly aim to treat transgender people equitably. Despite the implementation of the Act, Sandor von Dresner et al's.¹⁰⁸ survey found a lack of psychological and physiological treatment for transgender people in US prisons and importantly, nearly all prisons indicated that they provide no specialised therapy. More recently, Routh et al.¹⁰⁹ analysed state statutes and DOC policies on the management of transgender people in prison and found inconsistencies between states in their approaches to counselling, hormone treatment and SRS. They found

97. Ministry of Justice (2016).

98. Coleman et al. (2012: 168) see note 11, p.168.

99. Peletz (2006); Winter (2009) cited in Coleman et al. (2011) see note 11.

100. Jones, L. and Brookes, M. (2013) 'Transgender Offenders: A Literature Review'. *Prison Service Journal*. (206): 11–18.

101. Petersen et al. (1996) cited in Jones and Brookes (2013) see note 91.

102. Peterson, Stephens, Dickey and Lewis (1996) cited in Sandor von Dresner et al. (2013) see note 18.

103. Stohr (2015) see note 1.

104. Sandor von Dresner et al. (2013: 41) see note 18, p.41.

105. Colopy (2012) cited in Stohr (2015) see note 1.

106. Brown (2010) cited in Coleman et al. (2012) see note 11.

107. Brown (2009) cited in Coleman et al. (2012) see note 11.

108. Sandor von Dresner et al. (2013) see note 18.

109. Routh et al. (2015) see note 7.

that there is a lack of guidance concerning the medical issues of transgender people in prison. They argue that until each and every state fosters a written policy regarding the classification, protection and treatment of transgender people in prison, there remains much work to ensure that such people are adequately taken care of.

In another recent study, Brown¹¹⁰ reviewed 129 unsolicited letters from transgender people in prison from various states across the USA. A number of themes were identified in the letters and the main concerns cited by transgender people included access to healthcare, social issues, legal issues, physical abuse, gender dysphoria, sexual abuse, poverty, housing, suicide and mental health problems. Brown argues that it is worrying that healthcare provisions were most often cited as an issue faced by transgender people because when gender dysphoria goes undetected and undiagnosed, morbidity and mortality becomes significant.¹¹¹

Brown found that a small proportion of letters from people in prison (five per cent) reported having carried out autocastration and suicidality (eight per cent) that included past attempts and current thoughts about it. Brown further suggests that there are several examples of autocastration occurring in other prisons in various countries.¹¹² Importantly, Brown found that suicidality was linked to gender dysphoric feelings and not having proper access to healthcare. Brown recognises the limitations of his research because of its naturalistic manner. However, he does assert that the number of complaints about inadequate treatment warrants further consideration and claims that not treating gender dysphoria is no different to not treating diabetes or heart disease. Addressing healthcare needs properly, Brown argues, would improve health and wellbeing of transgender people in prison as well as reducing the cost of associated litigation when the system fails this particular group.

Sandor von Dresner et al. refer to Israel's¹¹³ observations of transgender people's self-reports, that

Brown ... claims that not treating gender dysphoria is no different to not treating diabetes or heart disease.

some prisons will make every effort to avoid providing treatment to transgender people resulting in the majority of people not receiving adequate medical and psychological care. Although Israel's study is now 13 years old, it is important to remain aware of the possibility of such obstruction and prevention despite statutes and policies being in place. The HMP Inspectorate of Prisons for England and Wales, Annual Report (2014–15)¹¹⁴ findings offer a hint to the possibility of cultural differences between prisons and that some prisons may not foster and promote fair and equal treatment towards transgender people in prison. The studies conducted in the USA reveal an important finding. It cannot be assumed that recent legislation and policies protecting the rights of transgender people in prison have been implemented properly and accordingly. Although the PSI explicitly states that transsexual people in prison should be

afforded the same quality of care as they could expect if living in the community, there is no research to help ascertain if this is occurring. The only clue currently provided is the recent suicides of two transgender women in English prisons and the recently published review was undertaken in light of a 'number of representations expressing concern that the present system doesn't sufficiently address the needs of

transgender prisoners'.¹¹⁵ Not anywhere did it state what these concerns actually were and the review invited a number of key stakeholders to take part in a survey that asked them a series of questions about how transgender people are managed in the Criminal Justice System.¹¹⁶ The recently published review does indicate that the views of stakeholders and transgender people in prison were sought. However, the review does not refer to the healthcare provisions that transgender people in prison might need. It mentions that if transgender people choose not to disclose their preferred gender identity, then they risk not receiving the services deemed necessary to support them in their daily lives that in turn, will help them in their journey towards rehabilitation.¹¹⁷

110. Brown (2014) see note 6.

111. Brown (2010); *Gammett v. Idaho Department of Corrections* (2007) cited in Brown (2014) see note 6.

112. Blight (2000); Brown (2010); Conacher and Westwood (1987); More (1996) cited in Brown (2014) see note 6.

113. Israel (2002) cited in Sandor von Dresner et al. (2013) see note 18.

114. The HMP Inspectorate of Prisons for England and Wales, Annual Report (2014–15) see note 86.

115. Dineage (2015) see note 3.

116. See *Trans Equality Inquiry* (2016) 'Review on the care and management of transgender offenders. Available online at <http://uktrans.info/offendersreview> Accessed 29.02.16.

117. Ministry of Justice (2016).

Conclusion

In an American context, Jenness and Fenstermaker¹¹⁸ argue that although transgender people in prison were once a forgotten group,¹¹⁹ they are no longer. However, this literature review reveals quite a different finding in the UK context. Although there is a significant dearth of UK research, the current available literature indicates that transgender people in prisons across England and Wales remain, to some extent, invisible. Dunn¹²⁰ highlights the current mind-set of 'we don't have many here' in British prisons, which leads to the 'cycle of invisibility'. The lack of support, therefore, is seemingly justified because of the low numbers of the LGBT prison population. It is promising, however, that the recent review has acknowledged this issue and emphasised the importance of addressing issues associated with the transgender prison population.¹²¹ The LGBT prison population might also explain why there is more research in the USA (although the research there is still somewhat lacking). For instance, there is a significantly higher general population and prison population in the USA (and therefore higher transgender prison population) and the number of interviews Jenness has gained with transgender people in prison demonstrates this point. Perhaps a higher population puts demands on authorities to 'do something' and address the specific issues and needs of transgender people in prison. More focus and attention on this area is likely to catch the attention of academics. Furthermore, perhaps the cultural difference of the more coercive context of American state prisons serves to help understand why more attention is paid to transgender people in US prisons where there is seemingly more awareness regarding the prevalence of coercive sex in prisons. In contrast to the US, the work of Stevens¹²² reveals that people who have served time in prison seem unaware of sexual assaults taking place in British prisons. In the USA, Jenness was also afforded the unusual opportunity of access to such prisons. Stevens' denial of such requests to British prisons is revealing. It appears

that perhaps the exploration of sexual relationships and sexual assaults is an unwelcome area of research in British establishments.

Whilst acknowledging cultural differences, indicators from the UK research literature appear to reflect similarly to that of the USA. The key issues highlighted in this review offer a solid starting point at which to begin undertaking research in the UK. Because of the lack of research in the UK, there is no way of knowing how effectively these guidelines are implemented and why they have failed to meet the needs of transgender people in prison. In summary, future research should begin by conducting a content analysis of the relevant prison policies to examine guidance on placement, victimisation and management, and healthcare provisions. The research would help to identify areas of good practice and follow up semi-structured interviews with prison staff and transgender people in those identified establishments should be conducted. It is reasonable to anticipate problems accessing prison establishments similar to those experienced by Stevens,¹²³ particularly since an important aspect of the study focuses on victimisation of sexual and physical assault. A similar study to Stevens' (Commission on Sex in Prisons) could be conducted in order to examine transgender people's experiences of coercive sex in prison by interviewing people who have previously served custodial sentences. Such access issues are most unfortunate because without it, the most important people's voices cannot be heard. Although the recently published review demonstrates some promise for the care and management of transgender people in prison, it only provides a brief outline of the care and management, offering no specific and detailed information on how specifically needs will be met. Only transgender people experiencing the prison system can explain the more subtle and unobvious concerns that might relate to the issues highlighted in this review. Excluding them from such a process is to inadvertently continue the 'cycle of invisibility'.¹²⁴

118. Jenness and Fenstermaker (2014) see note 13.

119. Tewksbury and Potter (2005) cited in Jenness and Fenstermaker (2014) see note 13.

120. Dunn (2013) see note 9, p.6

121. Ministry of Justice (2016) see note 6.

122. Stevens (2015) see note 79.

123. Stevens (2015) see note 79.

124. Dunn (2013) see note 9, p.6.