Protecting Trans Prisoners

LeslieAnn Manning, a transgender woman in a male facility, says she was raped because her prison didn’t keep her safe. How should prisons protect their most vulnerable inmates?

By Amanda Hess

More than a decade has passed since Congress unanimously passed the Prison Rape Elimination Act, which outlines special steps that prisons must take to prevent sexual assault against their most vulnerable residents.

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LeslieAnn Manning has been living as a ward of New York state for 24 years. Since entering prison in 1991 after being convicted of attempted murder for firing a gun at a police car in a traffic-stop-turned-chase, Manning, a transgender woman, has grown her hair long, legally changed her name, undergone hormone replacement therapy, and secured the right to wear feminine underwear beneath her prison uniform. Though all of these things put her at heightened risk of sexual assault in prison, Manning was housed in a men’s facility—the Sullivan
Correctional Facility in Fallsburg, New York. At Sullivan, Manning says she was assigned a job typing letters and making coffee for disabled inmates in a poorly supervised area, where inmates moved freely with little staff oversight, and where sex offenders often gathered for program meetings and sometimes lingered to hang out. In February of 2013, Manning says that the job required her to deliver some paper to another prisoner, who was sitting alone in a room at the end of a hallway. When she arrived, she says he grabbed her by the neck, raped her, and threatened to kill her if she told. On Monday, Manning filed suit against several Sullivan officials, alleging that the prison violated her constitutional rights by failing to take adequate steps to protect her from rape.

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In the suit, Manning claims that Sullivan officials should have known that she was at a heightened risk of sexual assault in the facility. She says that the correctional officer assigned to patrol her work area would often visit the space just once a day, for only a few minutes; that she informed her supervisor of the lax oversight before the rape; that the inmate who attacked her had previously raped another prisoner; and, crucially, that the facility should be well aware that trans women like her are targeted for sexual violence at alarming rates. (A representative with the New York Department of Corrections declined to comment on the case, citing department policy on pending litigation.)

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In 1991, a young trans woman named Dee Farmer sued Indiana correctional officers after she was placed in a men’s prison, and raped there. It’s now been more than 20 years since the Supreme Court heard Farmer’s case and unanimously decided that the officers’ “deliberate indifference” to her safety violated the Eighth Amendment, which prohibits cruel and unusual punishment. And more than a decade has passed since Congress unanimously passed the Prison Rape Elimination Act, which outlines special steps that prisons must take to prevent sexual assault against their most vulnerable residents. And yet, in prisons from Oregon to Georgia, Texas to Pennsylvania, trans women like Manning are still reporting brutal rapes at the hands of other inmates and prison guards. A 2009 study of sexual assault in California state prisons found that trans inmates are 13 times more likely to be sexually assaulted than other prisoners. As many as 50 percent of trans people in California facilities report being raped while incarcerated. And while trans people make up a small percentage of the U.S. population—the
Williams Institute at the UCLA School of Law estimates that there are 700,000 trans people in the country—the dynamics of discrimination place them at a high risk of ending up incarcerated. A 2011 survey undertaken by the National Center for Transgender Equality found that 21 percent of trans women in its sample reported being locked up in their lifetimes.

PREA was meant to eliminate prison rape by increasing officer and video supervision of facilities, limiting intimate cross-gender searches, training officers around sexual assault issues, and forcing facilities to take special care of vulnerable prisoners like Manning. But at this point, it remains a largely symbolic act. Though it was passed in 2003, it wasn’t implemented until 2012, and facilities weren’t subjected to audits until August of 2013. States that fail to comply with PREA risk losing 5 percent of federal grants from the Department of Justice, but the penalty only applies to state-run facilities; though technically covered by PREA, municipal and county jails don’t risk losing any funds if they don’t shape up. Nevertheless, Texas Sen. John Cornyn is pushing for legislation that would gut PREA’s authority to leverage financial penalties on the states even further, an initiative that’s supported by both prison industry lobbyists and, surprisingly, by anti-rape advocacy group RAINN, which believes the penalty can end up denying services to inmates. And several states, including Idaho, Texas, and Arizona, have already publicly refused to comply with PREA at all, happily surrendering their chunk of federal funding in exchange for the freedom to craft their own policies—or to simply ignore the problem.

For those not willing to part with their funding, some federal guidelines for preventing prison rape are vague by design. PREA tells prisons or jails that when they decide where to house trans inmates, “an agency may not simply assign the inmate to a facility based on genital status,” but must make the decision on “a case-by-case basis” to “ensure the inmate’s health and safety.” The determination must also take into account “the inmate’s own views regarding his or her own safety.” The case-by-case rule ostensibly acknowledges that trans prisoners don’t all have the same safety needs, and that facilities don’t all operate the same way. But Chase Strangio, a staff attorney with the ACLU, says that the lack of specifics on these “individualized” assessments can also allow facilities to justify their decisions however they choose.

And right now, Strangio says, “it’s hard to imagine that there’s any meaningful assessment going on.” Though some local jails, like Washington, D.C.’s, have begun housing trans women with other women, the vast majority of trans women are still being housed in men’s facilities—a decision made based on their sex at birth—and not in women’s prisons, in accordance with their gender identity. Susan Hazeldine, director of Cornell University Law School’s LGBT Clinic and one of Manning’s lawyers, says that in New York state prisons, housing assignments for trans prisoners typically go like so: “It says ‘male’ on your birth certificate, so we’re just going to throw you in this men’s prison, and good luck to you.”

Settling on the ideal alternative to that scenario is a complicated calculation. “It’s very difficult to protect anybody in a custodial setting, and even harder to protect anyone who’s perceived as different. Trans women in particular push a lot of buttons for people, both staff and other inmates,” says American University law professor Brenda Smith, a former commissioner on the National Prison Rape Elimination Commission, which helped draft PREA. “The assumption is that trans people want to be housed based on gender identity, but anecdotally, that’s not always
true,” Strangio says. “The end goal for most people is to make it out of prison, so the priority is staying alive.” Many trans men are likely safer staying in women’s prisons than transferring to male ones. And some trans women who have spent their lives in the system—whether in juvenile detention centers, homeless shelters, prisons, or jails—“feel more comfortable in the men’s side, because they’ve always been there,” Strangio says. “The evil they know is better than the one they don’t.”

That leaves a couple of imperfect options for keeping trans women like LeslieAnn Manning safe within men’s facilities. Often, prisons will house vulnerable prisoners like trans women in protective custody, which can end up feeling punitive as opposed to protective; most solitary confinement solutions require prisoners to be locked up alone in a cell for most of the day, where they’re often denied access to prison programming. (Manning’s suit says that, following her rape, she’s been housed in a solitary cell for 22 hours a day.) Trans women in men’s prisons, Hazeldan says, are “left to fend for themselves in the face of an enormous danger of rape and other kinds of physical violence,” or else are made to “spend time alone in a cell simply because they’re transgender and they’re not safe.” And in some cases, “protective custody turns out to be not even as safe as we once thought it was,” says Elias Shebar, a student at Cardozo Law School’s Civil Rights Clinic, which helped file Manning’s suit.* Last year, a Georgia trans woman named Zahara Green filed suit against officials at Rogers State Prison, alleging that after being assaulted by a fellow inmate, she was placed in protective custody, only to be raped again by the same inmate, who had gained access to her cell.

Another option is for prisons to set up dedicated units exclusively for trans women and/or gay men, commonly known as “GBT pods.” In November, an L.A. Weekly story about the “gay wing” of the L.A. County Jail painted a glamorous picture of the unit, where inmates could be seen “filing down a plastic razor blade … to create a sewing needle, not a shank” and “‘smuggling’ a rumored male seamstress from another bloc to handle custom work on a dress.” The program is so popular, L.A. Weekly reported, that straight inmates feign gay to gain access to the housing unit, requiring correctional officials to screen them out by asking questions about the cover charges of local gay bars.

But Strangio warns against “glorifying the GBT pod as fabulous.” These units “have the potential to offer some safety that people want. They also have the potential, like any housing unit in a jail, to be violent and unsafe.” The success of L.A. County’s program is attributable to some hard-to-replicate features: the jail’s staff is culturally attuned to LGBT issues, and the facility houses a sufficient number of gay and trans inmates that the dedicated wing doesn’t feel isolating. Other attempts at GBT pods have been less successful. In 2005, Rikers Island shut down its long-running unit for gay and trans prisoners, citing the risk of predatory prisoners gaining access to the wing. But Strangio challenges the narrative of straight, cisgender predators worming their way into GBT safe spaces: “We know that the greatest threat of people in these separate units is usually staff, and not other prisoners,” Strangio says. Because these units are set apart from the general prison population, they can become targets for discrimination, and inmates in some GBT pods don’t have access to all the programs available to others.

Another risk of GBT pods, Strangio says, is that “the agency will absolve itself of responsibility of creating better policies across the board, ensuring safety and access to programming outside
the unit.” In light of those concerns, PREA now bars most institutions from automatically placing inmates in dedicated units based solely on their gender identity or sexual orientation, but allows trans prisoners to be housed in such units on a voluntary basis. Last November, Rikers opened a new 30-bed unit that trans detainees can opt into if they choose. When jail officials surveyed trans detainees about their feelings on the unit, Gay City News reports, about one-half said they’d like to be assigned to it, and one-half said they’d rather remain housed with the men. When it comes to keeping trans people safe in prison, the inmates themselves often know best. But of course, the very idea of inmates choosing their housing assignments can raise hackles in prison settings. “The idea of choice is somewhat antithetical to the corrections environment,” Strangio says. PREA, for example, does not reflect trans advocates’ request that trans people be able to choose the gender of the officer that performs their body searches, concluding that “such requests have the potential to be arbitrary and disruptive to facility administration.” That attitude may finally be shifting. “Some prison corrections systems have come to understand that it’s very difficult to keep people safe in the overcrowded prisons that they’ve set up,” Strangio says. “It’s often mutually beneficial to give people informed choices about where they’ll be safest.” Finally eliminating prison rape will require a bigger attitude adjustment in the criminal justice system, toward rehabilitative solutions as opposed to punitive ones. “Please keep in mind that there is no specific prison that is safe for [trans] people,” the TGI Justice Project warns in its “prison survival guide” for incarcerated trans women. “As you well know, prisons are not safe spaces for anyone.”

Correction, Jan. 6, 2015: This piece originally misspelled Cardozo Law School. (Return.) Also, due to an editing error, this piece originally misstated that LeslieAnn Manning is housed at Sullivan Correctional Facility. She is no longer at that facility. (Return.)