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ARTICLE

THE SYSTEMATIC OPPRESSION OF TRANSGENDER INMATES IN AMERICAN PRISONS

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Ms. Ashley Diamond, a transgender woman, got off a prison bus in the summer of 2012 to begin an 8-year sentence in a men's prison.¹ She recounts being strip searched as her male counter-parts stared at her naked body. Diamond had reached a crucial stage in her transition in which she had certain features such as breasts. She remembers her name "Ashley Diamond" being called off the roster and hearing fellow inmates' question if "it" was a man or a woman. This was only the beginning of three years of torment Diamond faced during her time in the Georgia Department of Corrections. Diamond was beaten, berated, medically abandoned and raped during her sentence. Tragically, her story is just one of many transgender people who face atrocities in prison. Current prison conditions for transgender inmates are both humiliating and dangerous due to the suspension of Hormone Replacement Therapy

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TUMCA Law & Policy Review is a platform for current undergraduate moot court participants and TUMCA (Texas Undergraduate Moot Court Association) Alumni to engage in legal scholarship. Each issue centers on a topic that article submissions must discuss in some form. The topic of this issue concerned any legal issues that arise due to prison conditions.

¹ Rachel Revesz, *Black Transgender Woman Delivers Emotional Interview About Her Abuse in Prison*, The Independent News (Feb. 12, 2016)

(HRT). This article will discuss how the inaccessibility of HRT in American prisons alienates transgender inmate populations.

The working definition of a transgender person is “someone whose gender identity and expression differs from the gender linked to his or her biological birth sex”.² Often there are certain medical tribulations for transgender people. American prisons have not been accommodating of that. The suspension of Hormone Replacement Therapy is a main proponent of the transgender inmate’s plight and speaks for the overarching prison conditions. Notably, many transgender inmates suffer from Gender Dysphoria.³ In this context, Gender Dysphoria “involves a conflict between a person’s physical or assigned gender and the gender with which he/she/they identify”.⁴ Hormone Replacement Therapy, among other benefits, has a positive correlation with alleviating the symptoms of Gender Dysphoria.⁵ It is a diagnosable condition—meaning it is protected by the Americans with Disabilities Act according to the Eastern District of Pennsylvania Court.⁶ However, many United States prisons have suspended options for transgender inmates to receive their hormones. When they are an integral part to many transgender people’s transitions. Upon beginning hormones, it is often dangerous to stop abruptly upon being incarcerated. This affects individuals who both had or not had sex reassignment surgery. Regarding sex reassignment patients, it affects their overall prepotency to create hormones.⁷ Meaning, an inmate would be without estrogen or testosterone. That would lead to hazardous consequences to all major organs.⁸ Inmates who have not had sex reassignment surgery also face dangers. Diamond was one of many transgender inmates who did not receive her hormones.⁹ Diamond had been taking testosterone blockers and estrogen since adolescence. She describes how she remembers being told that the State of Georgia was “going to make a man out of her”. The inaccessibility of her hormones caused nausea, rapid mood swings, and growth of body hair. This medical negligence causes an unfair

² Dan Schneider, *Decency, Evolved: The Eighth Amendment Right to Transition in Prison*, 4 Wis. L. Rev. 835 (2016).

³ Katelyn Burns, *The Dire Realities of Being a Trans Woman in a Men’s Prison*, Conde Nast. Them News, Culture and Current Events for the LGBTQ Community (Feb. 12, 2018).

⁴ Ranna Parekh M.D., *What is Gender Dysphoria*, American Psychiatric Association (Feb. 2016)

⁵ Marin den Heijer, Alex Bakker, Louis Gooren, *Long Term Hormonal Treatment for Transgender People*, The British Medical Journal (Nov. 30, 2017).

⁶ *Breakthrough: Americans with Disabilities Act Can’t Exclude Gender Dysphoria*, National Center for Transgender Equality (May. 22, 2017).

⁷ Cecile A. Unger, *Hormone Therapy for Transgender Patients*, Translational Andrology and Urology (Dec. 5, 2016).

⁸ Mike Bauerschmidt M.D., *Your Hormones: Why You Need Them, Why You Can’t Live Without Them* (Apr. 8, 2018)

⁹ Deborah Sontag, *Ashley Diamond, Transgender Inmate, Is Out of Prison but Far From Free*, The New York Times (Sept. 24, 2015)

standard for transgender inmates. Many other transgender inmates face the same plights. Such as Miss Major, a 70-year-old transgender woman who served a five-year sentence for a prostitution conviction.¹⁰ During this time, she did not have any access to hormone therapy. Much like Diamond, Major's transitional progress rescinded. Her breasts deteriorated, her body hair grew back and most notably her emotions became turbulent. In Major's exact words, she claims "It's like a roller coaster ride without anything to hang on to. You have no control over what's happening to you. It's devastating."

The suspension of HRT has caused inmates to take severe maneuvers. For example, the California Department of Corrections and Rehabilitation physician Lori Kohler has witnessed several cases of self-mutilation among transgender inmates.¹¹ In many cases, Transgender inmates having their hormones suspended often causes depression and anxiety. Ms. Kohler recounts an instance in which an inmate "sliced off" her penis and testicles. These instances, as Kohler underscores, are seen by inmates as a form of "self-correction". These horrors are items that could easily be corrected by having reliable HRT available to transgender inmates. HRT has demonstrated great feats in providing relief for gender dysphoria and other mental health illnesses. With the replacement of hormones patients often report their body taking the likeness of their preferred gender. This lowers the effect of the Gender Dysphoria and the subsequent feelings of anxiety or depression. The effect of the overall psychosocial and mental quality of life of transgender patients reportedly increases with the help of hormones¹². The suspension of HRT is comparable to past medical discrepancies within American prisons. An example of this would take place in the Supreme Court case of *Helling v. McKinney*¹³. William McKinney sued claiming "deliberate indifference" towards his health due to his cellmate smoking five packs of cigarettes a day. These high levels of second hand smoke claimed to put Mr. McKinney under an unreasonable risk of harm. The Court followed the logic that deliberate indifference to an unreasonable risk of harm constitutes cruel and unusual punishment. As it has been evaluated, abruptly ceasing the progress of HRT is detrimental to both mental and physical health of transgender inmates. This is an unreasonable risk of harm that burden inmates by ceasing their hormones. Logically this would suggest deliberate indifference in its purest form and its toxicity has sprouted roots in United States' prisons.

¹⁰ Bill Briggs, *For Transgender Prisoners, Hormones Seen as Matter of Life and Death*, NBC News (Aug. 23, 2013)

¹¹ *Id.*

¹² Rosalia Costa and Marco Colizzi, *The Effect of Cross-Sex Hormonal Treatment on Gender Dysphoria Individuals' Mental Health: A Systematic Review*, The National Center for Biotechnology (Aug. 4, 2016)

¹³ *Helling v. McKinney*, 509 U.S. 25 (1993)

The high correlation of medical issues and HRT suspension in the total population of transgender inmates implies these issues are systematic. There are causes to these failures of the system that have been repeated consistently. Medical suspension of other kinds would not be taken so lightly. For example, there isn't controversy surrounding the accessibility of coumadin for inmates with weak hearts. This inattention is due to the public attitude towards transgender people. Hormone Replacement Therapy is not seen as essential as other medical issues and the blame could easily be placed on a lack of exposure to these issues. Other medical issues are not politicized in the way transgender medical rights are and to cease the negligence by the state this needs to be considered under a logos light versus a pathos one. HRT, across the board, must be considered as essential as other medications.

There have been executive trends that have worked towards putting HRT and other medical rights on the same playing field. For example, HRT unlike other medications formally subscribed to the Freeze Frame policy. Essentially, the Freeze Frame policy leaves the inmate to prove that they needed this therapy prior to incarceration.¹⁴ This policy was overturned by the Obama Administration which opened the door to the executive view of transgender inmate's right.¹⁵ Furthermore, there is a trend of judges claiming that Hormone Replacement Therapy is, in fact, essential and unconstitutional to suspend. In April 2014, it was cited by the Justice Department to be noncongruent with the eighth amendment to deny HRT. However, even with this executive trend there is still evidence of transgender inmates not receiving their hormones. A report demonstrates that 44% of transgender inmates report being denied hormones.¹⁶ The logical conclusion here is that there are prisons not fulfilling their individual duties to inmates. The executive trend shows support towards transgender inmates. One outlier in this trend is the lack of action from the Supreme Court. In 2012 the Court refused to hear a precedent setting case, *Mitchell v. Kallas*, on the official right of HRT to Transgender inmates.¹⁷ Meaning, it leaves this injustice at a state level. This lack of consistency in the United States bureaucracy is what allows these cruelties to continue.

Ms. Ashley Diamond has since been set out on parole.¹⁸ She remembers her sister picking her up from prison with "two big bags of makeup". This gesture was a step forward into society — an opportunity to present again as the woman she is. However,

¹⁴ *Know Your Rights Laws, Court Decisions, and Advocacy Tips to Protect Transgender Prisoners*, American Civil Liberties Union, (Dec. 1, 2014).

¹⁵ Casey Tolan, *Team Obama Quietly Bolstered Protections for Trans Inmates Last Week*, Vice Magazine, (Jan. 27, 2017).

¹⁶ The Editorial Board, *Prisons and Jails Put Transgender Inmates at Risk*, The New York Times, (Nov. 9, 2015)

¹⁷ Schneider, *supra* note 2

¹⁸ Sontag, *supra* note 9

life has never been the same for Diamond. Prison took a shade of her colorful personality away. Diamond's younger sister reports that "She is not the same Ashley. She's fearful and jumpy. She gets these blank stares. Prison is supposed to rehabilitate people; she's come out more damaged". The prison system failed Ashley Diamond. Her three years in confinement included unspeakable torment that no human being should ever have to weather. The prison system is given a duty to confine but also protect inmates. Inmates, independently, are an incredibly vulnerable population. This would make transgender inmates the most vulnerable subset of an already vulnerable population. There is a call for special care for these inmates, for consideration of their needs. Instead, the only reciprocation of this fact has been cold indifference from the Supreme Court. Without guaranteed constitutional protection for transgender inmates these atrocities will continue.