

“Sister, You’re Not Alone in Here”: Gender Diverse Experiences in the Criminal Penal System

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Gender segregation regimes that constitute prison geography become confused when challenged with incarcerating those whose gender does not cohere with the sex assigned to them at birth, such as trans persons. This confusion often leads to incoherent and unjust imprisonment solutions for trans people, usually resulting in isolation or solitary confinement.

This article critically examines Israeli Prison Authority policy regarding imprisonment of trans people, against the backdrop of gender diverse people’s complicated realities, and suggests alternative solutions to the current policy. The article analyzes the problems with current solutions, regarding both facility placement and the question of isolation of incarcerated trans persons. It further exposes how current carceral philosophy – rooted in gender norms – inherently collides with gender diverse practices. Thus, any attempt to fit these practices into the current carceral system exposes its inner incoherence and paradoxes. In light of these challenges, the authors suggest several concrete solutions aimed at dealing with the high representation of trans people in the criminal system.

The article juxtaposes developments in the two legal domains as well as changing legal institutions that undergird government policies toward asylum seekers. It shows how the criminal legal system performs unevenly for asylum seekers; and how immigration law enforcement takes on characteristics of preventive justice that are already influencing foundational principles of criminal law. Through its study of the simultaneous transitions that are bringing immigration and criminal policing closer together, the article establishes that these fundamental transformations are not limited to the policing of asylum seekers and extend beyond the setting of sovereign border control. In the context of handling asylum seekers, it recasts conventional justification for immigration policing and requires at least partial adoption of procedural guarantees from the criminal legal system. From a broader perspective, it traces the preference for criminal policing that expands the police powers of the state.