

# No Data, No Problem?

## Trans People and Healthcare in German Prisons

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*trans\* Ratgeber Kollektiv*

There is a conspicuous lack of official research and statistics regarding the number and the experiences of trans people imprisoned in Germany, in comparison with other countries such as the U.S.A., Australia, Austria or Italy (see Davis 2016; Spade 2011; Valerio 2018; Brömdal 2018; Czermak 2013; Vianello 2018). This lack of data makes it impossible to deliver a statistical overview of the German situation. This article covers the situation of some trans prisoners in Germany, their experiences and demands, as well as explaining the work of the “trans\* Ratgeber collective Berlin”. Instead of data, this article relies on oral testimony from the real experts: trans people detained in German prisons and psychiatric facilities.

### About trans\* Ratgeber Kollektiv

Our work includes ongoing research into legal precedents, by which we aim to better inform incarcerated trans people of their rights. We work to connect trans people in prison with lawyers and/or LGBTQIA+ support groups. In the process of offering this support, we have learned much about the situation of trans, non-binary and gender non-conforming people in German prisons.

Trans\* Ratgeber Kollektiv has published a brochure containing legal and medical information and practical tips. The first edition of “*Informationen für trans\* Menschen in Haft und Freund\_innen und Unterstützer\_innen*” (Information for trans people in prison and their friends and supporters) was printed in 2018 and has been distributed to incarcerated people, prison libraries, prisoner support groups, LGBTQIA+ organizations and NGOs working in prisons

around Germany. The brochure is currently being translated into several languages<sup>1</sup>.

We are aware that intersex people and people with variations of physical sex characteristics suffer specific discriminations and violence both inside and outside prison. While these experiences differ from those of trans people, there are also overlapping topics and experiences of discrimination, especially the issues of placement (in a ‘men’s’ or ‘women’s’ prison), problems in accessing support groups, and medical needs such as hormone therapy.

Regrettably, trans\* Ratgeber currently solely focuses on the situation of imprisoned trans people. We are working to broaden our contacts and increase our knowledge so that we can meaningfully support incarcerated intersex people and the intersex community.

## Different Types of Prisons in Germany

We aim to support trans people incarcerated in prison (Strafvollzug), pretrial detention (Untersuchungshaft), juvenile detention (Jugendstrafvollzug), preventive detention (Sicherungsverwahrung), psychiatric prisons (Maßregelvollzug/Forensik) and immigration detention (Abschiebehaft).

## Trans People in Immigration Detention

According to German law, people incarcerated in German migration detention centres can only be offered emergency medical care. Even then, such care is often denied (Pelzer and Sextro 2013).

So far, we have not been able to find any detailed information about the situation of trans\* people in migration detention in Germany. However, we have read that throughout Europe, LGBTQIA+ refugees who have been denied asylum are often detained in isolation for long periods. They experience an increased rate of—sometimes even life-threatening—physical and sexual violence. This violence is perpetrated both by staff and by other detainees (Fütty 2019:158; Jansen and Spijkerboer 2011:77-78). Although data is lacking, it ap-

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1 The brochure “Informationen für trans\* Menschen in Haft und Freund\_innen und Unterstützer\_innen” is available for free download from <http://transundhaft.blogspot.de>. Printed copies can be ordered via email at [transratgeber@gmx.de](mailto:transratgeber@gmx.de) or via mail to trans\* Ratgeber Gruppe, Bioladen Feuerbohne, Weichselstrasse 52, 12045 Berlin, Germany.

pears that it is very difficult for people in migration detention to get gender-affirming healthcare of any kind.

### The Situation in German Prisons

Outside of prisons, trans people in Germany report that pervasive anti-trans sentiment obstructs access even to basic health care, let alone gender-affirming treatments. Inside prisons, limited medical care and violent enforcement of gender norms compound the discrimination trans people already face.

The gender binary of ‘man’ and ‘woman’ is a key concept within German prison law<sup>2</sup>. The law requires that men and women be imprisoned in separate facilities. This results in trans and intersex people being detained in prisons which do not match their gender, breaching the human right to gender self-determination and gender expression.

Since 2018, Germany legally recognizes a third gender called “diverse” (see Bundesgesetzblatt 2018). However, there is currently no legal guideline in cases of arrest or detention of a gender diverse person.

In Germany racial profiling is a common practice. Police stop and search Black people, People of Color, Rom\_nija and people who are perceived to be Muslims at much higher rates than white people (see KOP – Kampagne für Opfer rassistischer Polizeigewalt 2019).

In the USA it is widely acknowledged that racial profiling is but one facet of the racist colonial justice system. Both cis and trans Black people, People of Color and First Nations people experience increased police harassment, are arrested and detained at disproportionately high rates and are subject to high rates of racist police violence, including killings by police (see Fütty 2019; Spade 2011; Davis 1989). One recent campaign that has brought public attention to racist police violence in the USA is #BlackLivesMatter (see Black Lives Matter 2020). So far, we have not found any statistics relating to rates of racist police profiling and violence in Germany.

Institutional racism is not only found in the justice system, but also the healthcare system, housing, education, and the jobs market. Medical racism exists in many countries including Germany. The consequences are, for example, that Black people and People of Color often experience discrimination when trying to access healthcare. Existing racism in German society doesn’t disappear within prison walls; rather, it is amplified. This means that Black

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2 The so called “separation principal paragraph” (Trennungsgrundsatz Paragraph) in the “penitentiary laws” (Strafvollzugsgesetze).

people and People of Color within the prison are likely to experience more violence and have even less access to healthcare, compared with white people in prison. For Black trans people and trans People of Color in prison, the situation is even worse, due to the intersectional oppressions that they face.

### **Support Organizations for Incarcerated Trans People in Germany**

Several organizations in Germany are working on healthcare issues within prisons, but their focus tends to be on drug use and/or the prevention of HIV and hepatitis.

We don't know of any German LGBTQIA+ organizations that are officially working within the prison system to support trans people. However, we have heard of organizations such as TransInterQueer e.V., LesMigras, GLADT and Queer Leben in Berlin, as well as the Trans\*beratung in Düsseldorf, that are working to support individual trans people in prisons. We are also aware of several more clandestine, less formal activist groups working on this topic and supporting incarcerated trans people, for example by writing letters to them. Writing letters to prisoners can help to break the violent isolation that they often face. Furthermore, trans prisoners may face additional seclusion due to anti-trans hate from prison staff and other prisoners. In many cases trans prisoners are also physically isolated from other prisoners. Writing to trans prisoners is a simple act of solidarity that may help to break the lived isolation so that feelings of loneliness do not become overpowering. Writing can also provide important information and gives the detainees a chance for their voice to be heard outside the prison walls. We try to give trans prisoners support and to empower them to fight for their rights.

We believe that trans people's healthcare needs should be an integral part of any discussion about prisons and health. This is why we presented a session focusing on the needs of incarcerated trans people at the *10th European Conference on Health Promotion in Custody* in Bonn, Germany, in 2019. We made use of the opportunity offered to present our work supporting trans people in custody and their specific health needs. The response of the audience was positive. Several psychologists, healthcare workers and social workers approached us after the presentation, emphasizing that they find this an important topic. Our general impression was that there is a significant lack of information about trans issues in prison life (see *Gesund in Haft* 2019).

## Experiences of Trans People in German Prisons

We are in contact with a number of trans people imprisoned in Germany, who have shared their experiences with us so that we can offer support and connect them with resources and other organizations. These people have asked us to preserve their anonymity, to avoid putting them in danger or causing them additional harassment. For this reason, no names, prison types, or medical information are mentioned in the following accounts.

In conversations with people who have been incarcerated, we heard of one individual who requested a transfer from a male prison to a female prison. This person was able to transfer, but only after a legal fight. There are no official statistics regarding the number of people who have asked for a transfer to a different prison, according to their gender (Berliner Abgeordnetenhaus 2016).

Based on the right to gender self-determination, and the virulent anti-trans violence in prisons, we argue that trans people must have the option to choose whether to be incarcerated in a male or female prison.

It has been shown that violence harms people's mental and physical health, and trans people are exposed abundantly to violence inside and outside of the prison system. This may include anti-trans physical, sexualized, psychological and/or medical violence. Inside prisons, violence may come from both staff and prisoners.

Solitary confinement causes significant mental harm and has been recognized by human rights experts as a form of torture. "For many prisoners, solitary confinement is a sentence worse than death." (Bowers et al. 2014:8). We have received reports from trans people isolated in prisons, supposedly for their protection, as well as the maintenance of 'safety and order' in the prison. Although there are differences between solitary confinement and partial separation from the general prison population, we believe both are harmful and believe that research into the effects of isolation on trans people is needed. German laws regulate access to medical care. However, these laws are vague, which means that every medical institution and/or doctor may interpret them differently.

Outside of prison, many trans people find it hard to access healthcare (Veale et al. and the Canadian Trans Youth Survey Research Group 2015). A trans person might see many different doctors before they find someone understanding and knowledgeable about trans health. People incarcerated in Germany do not have the option to choose between different doctors, and it

is very difficult to see a specialist. Prison doctors are part of the prison system and therefore are anything but 'neutral'. As well as being subject to violence from prison guards and other prisoners, trans people in prison may also experience violence at the hands of prison medical staff. In some cases, medical staff in prisons may choose to provide gender-affirming medical care, but when this care is denied, it is very difficult to challenge this decision. In theory, prisoners could take legal action to demand better healthcare, but as the laws applying to these cases are vague, this may require far greater time and legal resources than are available.

Trans people in German prisons report that, due to these structural barriers, it is extremely difficult for them to access gender-affirming medical care. Trans healthcare does not only include hormone therapy or gender reassignment surgery, it may also involve psychological support, regular endocrinological exams, lab tests, logopedic voice training, laser epilation, etc. Staff in German prisons lack general knowledge about trans related matters and are not equipped to provide adequate health care and general support for trans prisoners. We have received accounts from trans people imprisoned in Germany that transphobic stereotypes have been used as pretexts to deny them medical care. One person told us that he was denied gender-affirming testosterone therapy based on the misconception that 'higher testosterone levels would make him aggressive'. Incarcerated trans people have also reported that they were denied gender-affirming healthcare on the grounds that their sentence was 'not very long'—so they could wait until after their release to start gender-affirming treatments.

According to German law, new prisoners are supposed to receive a medical check-up. During this procedure, their medical needs are discussed with a prison medic. People who were officially undergoing gender-affirming hormone therapy before being imprisoned cannot be legally denied hormones while they are incarcerated. 'Official' eligibility for gender-affirming hormone therapy requires that the prisoner provide documentation of an F64 Gender Identity Disorder diagnosis under the ICD10<sup>3</sup> (International Classification of Diseases) guidelines (WHO n.d. a).

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3 The "Working Group on Sexual Disorders and Sexual Health" has developed a different classification for trans for the updated ICD11: it speaks of "gender incongruence" (WHO n.d. b) The ICD11 classifications was supposed to come into force in Germany in January 2022.

For this reason, if a person was undergoing hormone therapy without medical supervision before imprisonment, it will likely not be possible to continue the treatment. Approval for continuation of gender-affirming hormone therapy may be possible but depends on the decision of the prison doctor.

Official statistics regarding the number of gender-affirming surgeries undergone by prisoners in Germany do not exist, but according to the Berlin Senate (Senat Berlin 2016), some prisoners in Berlin have had gender-affirming surgery. Due to doctor-patient confidentiality, the doctors in question are not able to speak about the procedures. Our collective, through personal contacts, are aware that some prisoners have requested and been denied gender-affirming surgery. The reason given was that ‘it would not be possible for them to complete the needed aftercare while in prison’. Another person also told us that she was denied gender-affirming surgery while in prison and was also denied a detention break to undergo the surgery outside the prison.

Some people in prison have access to group or individual therapy. As the available therapists are part of the prison system, it is difficult for prisoners to develop the necessary relationship of trust with them. We received reports of trans people who were able to see a psychologist in prison, but they were not allowed to see an expert on trans healthcare. We have also heard of cases where the medical staff in psychiatric prisons were drugging incarcerated people to the point that they could barely walk.

In 2011 a trans woman in Celle, Germany, was denied the right to wear female clothes in prison. Prison authorities argued that if she wore women’s clothing, she might be attacked. She went to court to fight the arbitrary decision and won the case: She was allowed to wear women’s clothes and use make-up while in prison (Oberlandesgericht Celle 2011). The option to wear gender-affirming clothes can have a huge effect on a trans person’s mental health. “People with GNC [*gender non-conforming*, the authors] identities and expressions face significant discrimination and victimization that contribute to the development of poorer mental, physical, and behavioral health.” (Eckstrand, Ng and Potter 2016:1108). Although the above-mentioned case in Celle provides a legal precedent, it is not always easy for imprisoned people to access gender-affirming clothing and accessories. Some trans prisoners who contacted us mentioned that it is difficult for them to access important auxiliaries such as binders, packers, or breast prosthetics.

Another significant problem is that prisoners in Germany are generally denied internet access, and prison shops provide a limited—and binary gendered—range of items, especially cosmetics and sanitary products. This

makes it difficult for trans people in prison to access even basic gender-affirming items like make-up, or personal care and hygiene products (shampoo, shower gel, aftershave, razors, hair-removal products, body lotion, deodorant, etc.).

One person told us that he was able to contact a trans-self-help organization while in prison, but in general, we do not know much about the extent to which trans people in prison can access support groups. As mentioned above, there are no specifically trans-focused organizations that operate inside German prisons.

## **Research is Lacking, But Incarcerated Trans People Have Clear Demands**

We have received several reports from individuals talking about their particular experiences, but due to a lack of official documentation, it is impossible to get an overview of the overall situation of trans prisoners in Germany. We do not even know how many trans people have been incarcerated in Germany, nor do we know anything about the reasons they have been sentenced and whether anti-trans discrimination was a factor in their criminalization and imprisonment. Almost nothing is known about their most violent experiences inside prison, and we don't know what experiences they had after being released. It is very clear that more data about trans prisoners are needed. We advocate for ethical, participatory research with a special focus on the needs of trans prisoners.

Radical changes are needed to improve the situation of trans people in prisons. For example, trans people need to be able to choose which prison they are detained in (male/female). They should have the option to wear gender-affirming clothing and have access to cosmetics and other personal care and hygiene products necessary for adequate gender expression. Furthermore, gender-affirming medical treatment (including hormone therapy and gender-affirming surgeries) should be made available, and trans people should be legally allowed to change their name and gender while in prison.

Many improvements could be made to reduce the repression and discrimination faced by trans people in German prisons. To ensure these changes truly meet the needs of incarcerated trans people, it is necessary to heed the demands of current and former trans prisoners.

## Prison Is a Mirror of Society

Prisons harm people's health. General medical care is lacking in all prisons, and trans people suffer from this on top of a lack of gender-affirming care. As a collective, we fight for better healthcare not only for trans prisoners, but for all prisoners. Prison systems should not be viewed as isolated institutions. They are a part of the society as a whole and they will never be better than the society of which they form part. Although we work to support trans people inside the prison system, in the long-term we are committed to prison abolition. Prisons exacerbate societal harms instead of fixing them. We need to address the root causes of poverty, addiction, homelessness, and mental illness instead of criminalizing them. To call for reform of the prison system without its abolition addresses only the symptoms, not the cause.

Most prisons outside Europe were established during colonization (see Dikötter 2007). In colonized countries, prisons “were part of an intense policy of taming political, economic and cultural resistance to white domination.” (Bernault 2007:65-66). There are examples of non-western societies where violent conflicts are confronted with tools of transformative justice. We are committed to creating an equitable society—one that favors transformative justice approaches in dealing with cases of interpersonal violence, rather than locking people away (see Davis 2016).<sup>4</sup> Work to eliminate poverty, racism, (cis-)sexism and incarceration is inextricably linked with the work of eradicating interpersonal harm. Aside from improving the situation of trans prisoners, we strive for community accountability, social justice, freedom of movement and inclusive gender politics.

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4 See also “World without Prisons” : <https://www.worldwithoutprisons.org> (13.02.2021). Organizations working in support of incarcerated trans people: Abo comix ([www.abocomix.com](http://www.abocomix.com)); Bent Bars ([www.bentbarsproject.org](http://www.bentbarsproject.org)); Black and Pink ([www.blackandpink.org](http://www.blackandpink.org)); Immigration Equality ([www.immigrationequality.org](http://www.immigrationequality.org)); Let's Get Free ([www.letsgetfree.info](http://www.letsgetfree.info)); Sylvia Rivera Law Project ([www.srlp.org](http://www.srlp.org)); TGI Justice ([www.tgijp.org](http://www.tgijp.org)); Trans Prisoner Day of Action and Solidarity – ([www.transprisoners.wordpress.com](http://www.transprisoners.wordpress.com)); Black Lives Matter (<https://www.blacklivesmatter.com/six-years-strong/>)

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