

The Misrepresentation of Sophia Burset:  
The Reality of Trans Women within the Carceral State

By: sage elle

When *Orange Is The New Black* was first released in 2013, the world of film and television changed forever. For the first time ever arises a prominent, recurring Black trans woman character throughout all seven seasons of the Netflix show—a character who is multifaceted, powerful and imperfect, Black, and trans, all the while played by a Black trans woman. When Emmy-nominated actress Laverne Cox created the character of Sophia Burset, who is incarcerated within a minimum-security women’s prison in rural Connecticut, she shifted the way in which trans women are portrayed and perceived throughout the media. Rather than having some cis man do a poor attempt at “becoming” a trans character on screen (maintaining his privileges as a cis man off-screen and unconsciously implying that trans women when not in the public’s perception secretly transform back into cis men), the producers of *OITNB* made a critical decision that paved the way for more trans representation across all various media forms. Because of Laverne Cox’s presence on the show, we have seen more Black trans women enter television and film than ever before (although obviously still not enough). However, for the purpose of this essay, I do not seek to analyze nor critique Laverne Cox’s portrayal of Sophia Burset, because that is not my place as a white. (Also she does a fantastic job). What I seek to tear apart at and address is the misrepresentation of Sophia Burset as a subject alone placed within a women’s detention center, when the reality for most trans women is that we on a systematic level are still today forced into men’s places of detention despite wholeheartedly identifying as women.

The character of Sophia Burset is an openly Black trans woman. She is what some would label as “pre-op,” meaning she has a dick and has not received gender reaffirming surgery on her genitals. We do not know whether Burset has changed her legal name and gender documents; however, for the purpose of being completely realistic to the real experiences of trans women, that does not matter. The character of Sophia Burset is a trans woman with a penis placed in a women’s prison who, in actuality, would be very much subject to be violently incarcerated within a male detention center.

Roughly three out of four trans people in our lives will enter the prison system in some capacity (Stotzer 2014). Up until roughly the 1970s and 80s, it was perfectly legal for police to arrest a trans woman for “cross-dressing” and wearing “feminine clothing” (Beemyn 2014). As reported in the 2015 *U.S. Transgender Survey*, 86% of the trans population to this day is continually harassed, attacked, sexually assaulted, or mistreated in some way by the police, much of which occurs during the processes of arrest and adjudication. Likewise, the murder rate and violence inflicted on trans women, predominantly trans women of color, has continued to sky-rocket in the past decade. On a federal level, under the *Graham v. Connor* decision of 1989, police officers may use deadly force during an arrest if the officer believes “the person represents a serious physical threat to the officer” (Vitale 2017).

It is also completely justifiable today, across 41 states, to murder a trans woman and claim “trans panic” out of self-defense. Cisgender people are legally allowed to brutalize and murder us, and that holds true both in the free world as well as places of incarceration.

Transgender people and especially transgender women are not granted, on the reverse, even slightly such similar gracefulness. CeCe McDonald, a 23 year old, unhoused Black trans woman who was subject to a transphobic, anti-Black hate crime in 2011—despite surviving the attack after having been chased down the street of Southern Minneapolis by a man and being yelled “Faggots!,” “Bitches with dicks,” “a man!,” and “You niggers need to go back to Africa!”—was incarcerated up to 41 months in an all-male correctional facility in St. Cloud, Minnesota, guilty on the account of second-degree manslaughter (Buist 2013; Erdely 2014). McDonald notes in a conversation with Miss Major, “With the height of trans visibility has also come the height of trans violence and murder” (2017). Whereas Sophia Burset spends a majority of the various series surrounded by other cisgender women in the women’s prison, McDonald and many other trans women are systematically placed in all-male detention centers and, more specifically, solitary confinement.

Janetta Johnson, Executive Director of the Transgender, Gender-variant & Intersex Justice Project (TGJJP), was incarcerated from 2009 to 2012 in the all-male federal Sheridan Correctional Center in Oregon and similarly spent most of her time in solitary confinement (Lyseggen 2015). She would spend weeks on end—up to 23 hours a day—in complete isolation in the Security Housing Unit (SHU). Upon her release at times from solitary confinement, Johnson would be told explicitly by correctional officers: “Before you tell me this [i.e. accounts of rape and violence by other inmates or officers], I want to make sure that you know—the only place I can put you is in the SHU.”

Oftentimes, civil justice lawyers and queer criminologists recommend looking at trans prosecutions critically as such that violate the Fifth Amendment regarding “double punishment,” in which case trans women incarcerated in men’s prisons are hit with additional punishment for being trans in of itself and forced into isolation in the name of protection. Although the 8th Amendment ensures no form of “cruel and unusual punishment” to the people of the U.S. trans women have learned that we have little to no personhood when it comes to justice and liberation from the state. Chelsea Manning, who was first arrested in 2010, received a 35-year sentence in 2013 for her release of important governmental data, and was eventually sent to the all-male, level-three security facility of the U.S. Penitentiary in Leavenworth, Kansas until she was granted clemency by Obama in 2017 (2015). Trans women, because of our positionality in society at the intersections of various forms of oppression, receive the same level of justice that we would receive from other governmental sectors such as healthcare, immigration, disability, religion, employment, housing, and governmental economic support: little to nothing.

If we look at San Quentin right now for example—California’s oldest state prison which has been an all-male level-two prison since 1933—today still holds dozens of trans women, disproportionately, Black trans women and Two-Spirit folx (Lyseggen 2015). During a time of such pandemic as result of COVID-19, trans women in San Quentin have continually been denied access to their regular hormones for months, despite the obvious effect that eliminating one’s access to hormones can severely destabilise and worsen one’s mental state, leading to even worse mental health of a population already disproportionately disregarded and criminalized for existing.

Groups like Flying Over Walls, a queer and trans prisoner solidarity project of Black & Pink works toward prison abolition and specifically organizes letterwriting & penpal programs which resist the violent isolation of the prison system by connecting queer and trans prisoners to community members outside of prison within the Bay Area. Under Janetta Johnson’s leadership with others as well, TGIJP today continues to provide rigorous legal service work, re-entry services, and diverse peer advocacy and support to trans women both in and out of prison throughout the Bay.

The question of trans abolition, if not evident enough, must be how we may critically and urgently tear down the prison system while also continuing to support those disproportionately harmed on the inside. There must be a fine balance of “starving the system” while also making sure those incarcerated has the needs to eat, survive, and re-enter hopefully a “free-er” society. S. Lambel explains that “living abolition” can stem from the ways we challenge punitive relationships and systems we are a part of, and how we may confront and seek justice in interpersonal and social conflicts. How do we seek justice for the too many trans lives that have been taken this year? How can we create alternatives to prison systems without reinventing the wheel of human labor and exploitation and murder? The effect of portraying Sophia Burset as a trans woman placed in a female prison prescribes to the false narrative that most trans women in the carceral state are in places labeled for women. Nearly all trans women who are incarcerated are placed in male prisons because of their assigned sex (Sosin 2020). The Department of Corrections across all fifty states does not care what your gender marker states, let alone how you identify your gender. What will it take to truly deconstruct such systems of violence and disregard for humanity? The time to be critical, to ask these questions of abolition, and to act in community to liberate our trans siblings, is now.

## References

- Beemyn, Genny. 2014. "Transgender History in the United States." Pp. 1-49 in *Trans Bodies, Trans Selves: A Resource for the Transgender Community*, edited by Laura Erickson-Schroth. NY: Oxford University Press.
- Buist, Carrie L. and Codie Stone. 2013. "Transgender Victims and Offenders: Failures of the United States Criminal Justice System and the Necessity of Queer Criminology." Wilmington, NC: Springer.
- Erdely, Sabrina R. 2014. "The Transgender Crucible." Rolling Stone. Retrieved September 16, 2019 (<https://www.rollingstone.com/culture/culture-news/the-transgender-crucible-114095/>)
- Griffin-Gracy, Miss Major, CeCe McDonald, and Toshio Meronek. 2017. "Cautious Living: Black Trans Women and the Politics of Documentation." Pp. 23-37 in *Trap Door: Trans Cultural Production and the Politics of Visibility*, edited by Reina Gossett, Eric A. Stanley, and Johanna Burton. Cambridge, MA: MIT Press.
- Lyssegen, Kristin S. 2015. *The Women of San Quentin: Soul Murder of Transgender Women in Male Prisons*. Berkeley, CA: SFINX.
- Lambel, S. 2015. "Transforming Carceral Logics: 10 Reasons to Dismantle the Prison Industrial Complex Using a Queer/Trans Analysis." Pp. 269-299 in *Captive Genders: Trans Embodiment and the Prison Industrial Complex*, edited by Eric A. Stanley and Nat Smith. Baltimore, MD: AK Press.
- Manning, Chelsea. 2015. "On the Intersection of the Military and Prison Industrial Complex." Pp. 185-190 in *Captive Genders*, 2nd ed, edited by Eric A. Stanley and Nat Smith. CA: AK Press.
- Sosin, Kate. 2020. "Transgender women are nearly always incarcerated with men. That's putting many in danger." *NBC News*. Retrieved July 23, 2020 (<https://www.nbcnews.com/feature/nbc-out/transgender-women-are-nearly-always-incarcerated-men-s-putting-many-n1142436>)
- Stotzer, Rebecca L. 2014. "Law enforcement and criminal justice personnel interactions with transgender people in the United States: A literature review." Pp. 263-277 in *Aggression and Violent Behavior*. Vol. 19. University of Hawaii, Mānoa: Elsevier Ltd.
- Vitale, Alex S. 2019. *The End of Policing*. Brooklyn, NY: Verso.