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## The Best We Can Be: How Toxic Masculinity Creates a Second Inescapable Situation for Inmates

Mariah Woodson

Toxic masculinity is a concept that has been in modern society for some time now.<sup>1</sup> However, the recent release of the controversial Gillette razor commercial has sparked an uptick in discussions, from those who lauded the company for addressing the negative traits often associated with traditional masculinity to those who felt as though the company was unfairly targeting masculinity altogether.<sup>2</sup> Regardless of where one falls on the debate, there is no denying the need for conversation.<sup>3</sup> One point of discussion is what areas of our society embody these traits the most?<sup>4</sup> An area that may be less intuitive are prisons and the criminal justice system.<sup>5</sup> According to a study released by the Bureau of Justice Statistics in 2016, there were 1,395,141 male prisoners under the jurisdiction of state or federal correctional authorities compared to 111,616 female prisoners.<sup>6</sup> The disparity of male prisoners to female prisoners has led a few to conclude that incarceration is not an equal opportunity punishment.<sup>7</sup> Not only that, but the rate of men incarcerated in the United States could make traits of toxic masculinity more prevalent.<sup>8</sup> This article will explore why this may be the case and why the negative effects of hegemonic masculinity on inmates have not been addressed.

### PART 1: BACKGROUND

In January 2019, an article by the New York Times released in the wake of the explosive reaction to the Gillette advertisement was entitled “We Believe:

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<sup>1</sup> Maya Salam, *What Is Toxic Masculinity?*, N.Y. TIMES, Jan. 22, 2019, <https://www.nytimes.com/2019/01/22/us/toxic-masculinity.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Salam’s article lays the groundwork for this article. For example, it mentions the release of guidelines that show that men and boys are socialized in a specific way that limits their ability to explore other aspects of masculinity.

<sup>4</sup> *Id.* (The article mentions several areas of interest, including sports, crime, and education where traditional norms of masculinity are found to be most prevalent).

<sup>5</sup> Peter Wagner, *Incarceration is Not an Equal Opportunity Punishment*, PRISON POLICY (Aug. 28, 2012), <https://www.prisonpolicy.org/articles/notequal.html>.

<sup>6</sup> U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, *Correctional Populations in the United States*, April 2018.

<sup>7</sup> Wagner, *supra* note 5.

<sup>8</sup> *Id.*

The Best Men Can Be.”<sup>9</sup> In the article, the writer mentions the guidelines that had been published by the American Psychological Association for psychologists and social workers who work with boys and men.<sup>10</sup> The release of the guidelines was revolutionary as males typically did not have a guideline published specifically for them as maleness historically has been seen as the norm in society.<sup>11</sup> However, the release of the guidelines has brought to the forefront the idea that traditional masculinity may lead to negative effects in mental and physical health.<sup>12</sup> The guidelines acknowledge that men and boys have unique health and psychological challenges due to some of the effects of traditional masculinity such as increased suicide rates and feelings of loneliness.<sup>13</sup> Men also are more likely to go to prison, commit the majority of violent crimes in America and elsewhere.<sup>14</sup> No matter what aspect of society, there is evidence of traditional, or hegemonic, masculinity’s influence.<sup>15</sup>

R. W. Connell, an Australian sociologist, explored the concept in her gender order theory in which he recognized that there were multiple masculinities that vary across time, culture and the individual.<sup>16</sup> Hegemonic masculinity in particular is derived from the theory of cultural hegemony developed by Antonio Gramsci.<sup>17</sup> Instead of social classes as Gramsci discussed, hegemonic masculinity explores the dominance of men in society and the marginalization of women and other gender identities that deviate from the male norm.<sup>18</sup> The theory posited what represented the ideal form of manhood and how society has required men to adhere to it while disregarding and dominating notions of what is considered femininity.<sup>19</sup> Such characteristics included violence, aggres-

<sup>9</sup> Salam, *supra* note 1.

<sup>10</sup> Jacey Fortin, *Traditional Masculinity Can Hurt Boys, Say New A.P.A. Guidelines*, N.Y. Times (Jan. 10, 2019), <https://www.nytimes.com/2019/01/10/science/apa-traditional-masculinity-harmful.html?module=inline>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Salam, *supra* note 1.

<sup>16</sup> R. W. Connell, *MASCULINITIES*, 67-70 (University of California Press., 2nd Ed. 2005) .

<sup>17</sup> Douglas Litowitz, *GRAMSCI, HEGEMONY, AND THE LAW*, 2000 BYU 515, 515-517 (May 1, 2000).

<sup>18</sup> Mike Donaldson, *What Is Hegemonic Masculinity?*, 22 *Theory And Society* 643, 643-657 (Oct. 1993).

<sup>19</sup> *Id.*

sion, emotional restraint, and toughness.<sup>20</sup> Such characteristics have been indicative of the male experiences even in students.<sup>21</sup>

As mentioned before, men and boys perpetrate more conventional crimes than women and girls<sup>22</sup> and hegemonic masculinity has offered a few explanations for why that is.<sup>23</sup> One such explanation was that gendered social conditions, also known as the “male sex role,” determine the types and amounts of crime perpetrated by men.<sup>24</sup> Particular patterns of aggression have been associated with some of the traits of so-called traditional masculinity due to criminals attempting to pursue the traits of traditional masculinity.<sup>25</sup> There have been problems with this line of reasoning, including the reductionism of gender roles stating that men are naturally aggressive.<sup>26</sup>

Toxic masculinity better explains the traits that society tells men to pursue.<sup>27</sup> The term toxic masculinity has been used to refer to an important feature of hegemonic masculinity in which practices such as physical violence is used to reinforce dominance of men.<sup>28</sup> Toxic masculinity has also been used to refer to restrictive gender roles that prohibit men and boys from showing certain emotions outwardly in order to showcase dominant attitudes.<sup>29</sup> In American prisons especially, this is prevalent as inmates and staff peruse traits such as self-reliance, domination through violence, and the avoidance of femininity and weakness.<sup>30</sup> These factors have been linked to an increased rate of suicide among prisoners.<sup>31</sup> This leads into the discussion of toxic masculinity in the criminal justice system and how its presence is detrimental to the health and security of prisoners.<sup>32</sup> It is also antithetical to the purpose of the criminal

<sup>20</sup> Connell, *supra* note 16.

<sup>21</sup> Stephen Norland et al., *Masculinity and Delinquency*, 19 *Criminology* 421, 421–433 (1981).

<sup>22</sup> James W. Messerschmidt, *MASCULINITIES AND CRIME: CRITIQUE AND RECONCEPTUALIZATION OF THEORY*, 1-2, (Rowman & Littlefield, 1993).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 15-25.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> R. W. Connell, James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 *Gender & Soc’y* 829, 829–859 (Dec. 2005).

<sup>28</sup> *Id.*

<sup>29</sup> William Ming Liu, How Trump’s ‘Toxic Masculinity’ Is Bad for Other Men, *TIME* (April 14, 2016), <http://time.com/4273865/donald-trump-toxic-masculinity/>.

<sup>30</sup> Terry A. Kupers, *Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It*, 1, 1-7 (Jossey-Bass: San Francisco, 1st Ed. 1999).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

justice system which is reformation of criminals in order to prepare some, if not most, of them for reintegration into society.<sup>33</sup>

## PART 2: THE RELATIONSHIP BETWEEN TOXIC MASCULINITY AND CRIMINAL JUSTICE

This article will examine three particular areas where traits of toxic masculinity are prevalent: in-prison sexual assault, other acts of physical violence, and the insufficiencies of mental health services for inmates.

### Prison Rape Culture

From soap-on-a-rope to references on popular shows, prison rape has been the subject of ridicule for decades.<sup>34</sup> Perhaps due to the nature of the victims, the issue has not been taken seriously.<sup>35</sup> However, as highlighted by the Prisoner Resource Center, sexual assault is not a laughing matter, regardless of who the victims are.<sup>36</sup> The issue of sexual assault in prisons specifically relates to inmates at medium and high security federal prisons.<sup>37</sup> Rapists target younger inmates, those who are sexual offenders themselves, or those who are LGBT.<sup>38</sup> Juveniles are especially vulnerable, with youths who are incarcerated with adults being five times more likely to report being victims of sexual assault than if they were in a juvenile facility.<sup>39</sup>

Prison rape awareness as a serious issue is fairly recent, starting with the publication of a 1974 report which stated that of the 46 million Americans that would be incarcerated, 10 million of them would be sexually assaulted

<sup>33</sup> Jim Rice, *"This Province, so Meanly and Thinly Inhabited": Punishing Maryland's Criminals, 1681-1850*, 19 *Journal of the Early Republic* 15, 15-42 (Spring, 1999).

<sup>34</sup> There was an episode entitled "A Date with the Booty Warrior" of the animated series called *The Boondocks* that often has a satirical take on cultural issues surrounding prisons. In the episode that aired in 2010, there was a scene that parodies the MSNBC show Lockup interview with Fleece Johnson of the Kentucky State Penitentiary.

<sup>35</sup> *Meeting The Needs Of Prison Rape Victims: A Technical Assistance Guide For Sexual Assault Counselors And Advocates*, Pennsylvania Coalition Against Rape, <http://www.ccasa.org/wp-content/uploads/2014/01/prisonrapeguide.pdf>.

<sup>36</sup> Christopher Zoukis, *Violence and Sexual Assault in Prison*, PRISONER RESOURCE, <https://www.prisonerresource.com/prison-survival-guide/special-tactics/violence-sexual-assault/>.

<sup>37</sup> *Id.*

<sup>38</sup> Tasha Hill, *Sexual Abuse In California Prisons: How the California Rape Shield Fails the Most Vulnerable Populations*, 21 *UCLA Women's Law Journal*, 89, 89-98 (Jan. 2014).

<sup>39</sup> Martin Forst, et. al., *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, 40 *Juvenile and Family Court Journal*, 1, 1-14 (Feb. 1989).

while in prison.<sup>40</sup> The statistics over the years tell a more complicated story as statistics have varied from being widespread to extremely low.<sup>41</sup> In 1992, the Federal Bureau of Prisons estimated that between 9 and 20 percent of inmates were sexually assaulted.<sup>42</sup> A study in 1996 by Cindy Struckman-Johnson showed that at least 18 percent of the sexual assaults were carried out by prison staff.<sup>43</sup> The National Inmate Survey that occurred between February of 2011 to May the following year has shown that at least 4 percent of state or federal correctional facilities have experienced sexual assault at least once.<sup>44</sup> Another statistic showed that African-American inmates were more likely to be victims of sexual assault while in prison than their white counterparts.<sup>45</sup>

Those who reported their sexuality or gender to be on the LGBT spectrum were the most likely to be victimized according to the survey.<sup>46</sup> The report placed their rates at 12.2 percent as opposed to the rest of the heterosexual and cis-gendered population.<sup>47</sup> In prison rape, the perpetrator and the victim are usually of the same sex.<sup>48</sup> Rapists in male prisons typically identify as heterosexual and confine themselves to dominant sexual acts.<sup>49</sup> The victims receive different treatment, being called denigrating names such as ‘punks’ and being forced to conform to submissive roles.<sup>50</sup>

<sup>40</sup> Carl Weiss and David James Friar, TERROR IN THE PRISONS: HOMOSEXUAL RAPE AND WHY SOCIETY CONDONES IT, 61 (Bobs-Merrill, 1976).

<sup>41</sup> Robert W. Drumond, *The Impact of Prison Sexual Violence: Challenges of Implementing Public Law 108-79 the Prison Rape Elimination Act of 2003, The Symposium*, 32 *Journal of Legislation* 142, 142-47 (May 1, 2006); see also Cheryl Bell et. al., *Rape and Sexual Misconduct In The Prison System: Analyzing America’s Most “Open” Secret*, 18 *Yale Law & Policy Review*, 195, 197-200 (1999).

<sup>42</sup> Darrell Gillard, *Prisoners In 1992*, DISTRICT OF COLUMBIA: DEPARTMENT OF JUSTICE (1992), <https://www.bjs.gov/content/pub/pdf/p92.pdf>.

<sup>43</sup> Cindy Struckman-Johnson & David Struckman-Johnson, *A Comparison of Sexual Coercion Experiences Reported by Men and Women in Prison*, 21 *Journal of Interpersonal Violence* 1591–1615 (2006).

<sup>44</sup> *National Inmate Survey, 2011-2012*, U.S. DEP’T OF JUSTICE: BUREAU OF JUSTICE STATISTICS (April 3, 2015), <https://doi.org/10.3886/ICPSR35009.v1>.

<sup>45</sup> *Id.*

<sup>46</sup> Giovanna Shay, *PREA’s Elusive Promise: Can DOJ Regulations Protect LGBT Incarcerated People*, 15 *Loy. J. of Pub. Interest L.* 343, 352 (March 2014).

<sup>47</sup> *Id.*

<sup>48</sup> Leigh Goodmark et. al., *Plenary 2 – Redefining Gender Violence – Transcripts from Converge! Reimagining the Movement to End Gender Violence*, 5 *University of Miami Race & Social Justice L. Rev.* 289, 289–305 (July 9, 2015).

<sup>49</sup> Sadhbh Walshe, *The Grim Truth of Being Gay in Prison*, THE GUARDIAN (2012), <https://www.theguardian.com/commentisfree/cifamerica/2012/mar/07/grim-truth-gay-in-prison>.

<sup>50</sup> *Id.*

The reporting has shifted, with more victims coming forward with increased counseling and inquiries as well as the fear of HIV and the benefit of treatment for the disease.<sup>51</sup> There is evidence that these acts of sexual violence result in the increase of the spread of sexually transmitted diseases such as HIV.<sup>52</sup> The danger is amplified when the prisoner who is victimized is unable to escape from the vicinity of the perpetrator and is at risk of being attacked repeatedly.<sup>53</sup>

Many prisoners who commit sexual assault do so as a means to assert power over their victims.<sup>54</sup> In a situation where an individual is likely to feel powerless and vulnerable themselves, such as being incarcerated, it becomes an imperative to maintain a sense of control and dominance in order to protect themselves.<sup>55</sup> But rape culture encompasses much more than the mentality of the perpetrator and the victim.<sup>56</sup> Broader rape culture, which is arguably a feature of toxic masculinity, involves the trivialization of rape and the refusal to acknowledge the harm that is caused by these acts.<sup>57</sup> It is already an uphill battle for victims outside of prison;<sup>58</sup> people may believe that an inmate deserves whatever treatment they receive as punishment for breaking the law and that the violation of their person is a source of ridicule.<sup>59</sup>

<sup>51</sup> Rick Lines and Heino Stover, HIV, AIDS Prevention, Care, Treatment and Support in Prison Settings, UNITED NATIONS OFFICE OF DRUGS AND CRIME. 2-4 (2006).

<sup>52</sup> Ralf Jurgens, Interventions to Address HIV in Prisons: Prevention of Sexual Transmission, WORLD HEALTH ORGANIZATION. 8-10 (2007).

<sup>53</sup> Steven D. Pinkerton et. al., Model-Based Estimates of HIV Acquisition Due to Prison Rape, 87 *The Prison J.* 295, 295–310 (2007).

<sup>54</sup> Heather Murphy, *What Experts Know About Men Who Rape*, N.Y. TIMES (October 30, 2017), <https://www.nytimes.com/2017/10/30/health/men-rape-sexual-assault.html?register=google> (Last Visited Mar 3, 2019); see also Susan Brownmiller, *AGAINST OUR WILL: MEN, WOMEN AND RAPE*, 256-278 (Ballantine, 1975).

<sup>55</sup> *Body and Soul: The Physical and Psychological Injury of Prison Rape*, HUMAN RIGHTS WATCH, [https://www.hrw.org/reports/2001/prison/report6.html#n\\_330\\_](https://www.hrw.org/reports/2001/prison/report6.html#n_330_).

<sup>56</sup> Brownmiller, *supra* note 54 at 257.

<sup>57</sup> Michael Parenti, *The Cultural Struggle*, 71-72 (Seven Stories Press, 2005).

<sup>58</sup> *Id.* at 73-75.

<sup>59</sup> Kansas governor's son creates prison-themed board game., A.P. (Jan. 27, 2008), [https://usatoday30.usatoday.com/news/offbeat/2008-01-27-sebeliusgame\\_N.htm](https://usatoday30.usatoday.com/news/offbeat/2008-01-27-sebeliusgame_N.htm).

## Other Acts of Physical Violence

Prison violence is a daily reality.<sup>60</sup> Inmate on inmate violence has been reported that one in five incarcerated persons had been physically assaulted by another inmate.<sup>61</sup> The acts can be carried out by a number of means ranging from fists to homemade weapons.<sup>62</sup> Instrumental violence is more common in male prisons.<sup>63</sup> With instrumental violence, perpetrators plan out their assaults on victims in order to establish dominance and gain peer admiration.<sup>64</sup>

Violence is prevalent in these environments because in correctional facilities where correctional officers are placed in an enclosed booth and are directed to watch over the inmates, the response to violence under their supervision is often strong and swift.<sup>65</sup> However, there are often blind spots where the correctional officers are unable to observe and stop acts of violence.<sup>66</sup> In other facilities where officers are more directly supervising the inmates, acts of violence may still occur when the guard's back is turned.<sup>67</sup> In facilities where there is overcrowding, there is ample opportunity for altercations where asserting order and authority is excessively difficult.<sup>68</sup> The issue is exacerbated due to understaffing at numerous prisons.<sup>69</sup>

Survival behind bars means one has to show strength and power or risk becoming a victim themselves.<sup>70</sup> This mentality is reflective of a broader feature of so-called traditional masculinity.<sup>71</sup> After the Major Stoneman Douglas

<sup>60</sup> Demetrius Buckley, *Prisoner to Violence*, THE MARSHALL PROJECT (2017), <https://www.themarshallproject.org/2017/11/16/prisoner-to-violence>; William J. Morgan Jr., *The Major Causes of Institutional Violence*, 23 *American Jails* 63, 65–68 (Dec. 2009).

<sup>61</sup> Dave Gilson et al., *10 Stats About Assault and Sexual Violence in America's Prisons*, MOTHER JONES (2017), <https://www.motherjones.com/politics/2016/06/attacks-and-assaults-behind-bars-cca-private-prisons/>.

<sup>62</sup> J.M. Lincoln et. al., *Inmate-Made Weapons in Prison Facilities: Assessing the Injury Risk*, Brief Report, 195, 196–197 (2006).

<sup>63</sup> Morgan, *supra* note 60 at 65.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Suchat Pederson, *Underfunded, Overcrowded State Prisons Struggle with Reform*, U.S. NEWS & WORLD REPORT, <https://www.usnews.com/news/best-states/articles/2017-07-26/understaffed-and-overcrowded-state-prisons-crippled-by-budget-constraints-bad-leadership>.

<sup>70</sup> Morgan, *supra* note 61 at 66.

<sup>71</sup> Alanna Vagianos, *How Gun Violence and Toxic Masculinity Are Linked, in 8 Tweets*, The Huffington Post, February 15, 2018, [https://www.huffingtonpost.com/entry/gun-violence-toxic-masculinity-tweets\\_us\\_5a85ead4e4b05c2bcac8ec08](https://www.huffingtonpost.com/entry/gun-violence-toxic-masculinity-tweets_us_5a85ead4e4b05c2bcac8ec08).



massacre on Valentine's Day 2018, comedian Michael Ian Black tweeted the following: "Deeper even than the gun problem is this: boys are broken."<sup>72</sup> He elaborated further, stating that there was no movement for men who are generally locked into a rigid model of masculinity that prevents the healthy expression of emotion.<sup>73</sup>

Perhaps one of the best ways to hurt a man is to attack his very masculinity.<sup>74</sup> Boys are raised with the expectation that violence is an acceptable part of their behavior and that anger is the only acceptable feeling to express openly.<sup>75</sup> Violence is used to express emotions and distress when men are children and it is as they grow that aggression is used to assert power over one another.<sup>76</sup> This socialization may increase the potential for boys to engage in general acts of violence due to the restriction of emotional expression and pressure to conform to expectations of dominance and aggression.<sup>77</sup> It is no surprise that the risk factors associated with extreme aggressive behaviors parallel with violent crime perpetrators.<sup>78</sup> A history of violent behavior, bullying, and volatile family relations are common risk factors for those who commit violent crimes.<sup>79</sup>

### Mental Health

As a general matter, men are less likely to seek mental health services than women, with one of the main reasons being traditional norms of masculinity.<sup>80</sup> According to the American Psychological Association, men and boys are often told that showing emotion is a sign of weakness, hence the mantra "boys don't cry."<sup>81</sup> Toxic masculinity, according to researcher Terry A. Kupers, in-

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Anthony D. Pellegrini, *Dominance in Preschool Classrooms: Change Across A School Year*, Psyceextra Dataset (2006).

<sup>77</sup> June Feder, Ronald F. Levant and James Dean, Boys and violence: A Gender-Informed Analysis. *Professional Psychology: Research and Practice*. Vol 38(4): 385-391 (2007).

<sup>78</sup> *World Report on Violence and Health*, WORLD HEALTH ORGANIZATION, 25-32 (Krug Eg et al., eds., 2002); Sharon Carpinello, *Grief Counseling Resource Guide, A Field Manual*, New York State Office of Mental Health, <https://www.omh.ny.gov/omhweb/sv/risk.html>.

<sup>79</sup> *Id.*

<sup>80</sup> Erlanger A. Turner, *Mental Health Among Boys And Men: When Is Masculinity Toxic?*, PSYCHOLOGY TODAY, (February 28, 2019), <https://www.psychologytoday.com/us/blog/the-race-good-health/201902/mental-health-among-boys-and-men-when-is-masculinity-toxic>.

<sup>81</sup> *A Closer Look at The APA Guidelines for Psychological Practice with Boys and Men*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <https://www.apa.org/news/apa/2019/boys-men-look>.

volves the need to aggressively compete and dominate others.<sup>82</sup> However, the toxic masculine norms are a feature of life for men in American prisons, where qualities of self-reliance, domination of other men through violence, and the suppression of emotions is adopted to cope with the harsh realities of incarceration.<sup>83</sup> However, these norms have resulted in detrimental effects to the mental health of inmates, including psychological trauma and increased risk of suicide.<sup>84</sup>

Toxic masculinity may not be the sole contributor to the insufficiencies of mental health services for incarcerated persons.<sup>85</sup> Such factors include a general stigma and ineptitude in budgeting.<sup>86</sup> Profit motive may play a role in trumping quality of services for prisoners and jeopardizing prisoner health.<sup>87</sup> Perhaps an even larger reason why mental health issues are so prevalent is the stigmatization of the mentally ill.<sup>88</sup>

In a 2016 case called *Braggs v. Dunn*, an inmate named Jamie Wallace testified about the Alabama Department of Corrections' policies and procedures when dealing with prisoner's mental health.<sup>89</sup> His testimony was difficult to understand and rife with outward showings of distress to the point where he needed to be taken to the judge's chambers to complete this statement.<sup>90</sup> Presiding Judge Thompson requested a report on Wallace's condition and what the facility was doing to address it, but Wallace committed suicide before the report could be completed.<sup>91</sup> In a rather poignant opinion, Judge Thompson called the mental health care system grossly inadequate and a violation of the Eighth Amendment's Cruel And Unusual Punishment Clause.<sup>92</sup> Afterwards, the Middle District Court of Alabama issued a liability opinion and a series of remedial orders that required the department to address the

<sup>82</sup> Terry A. Kupers, *Toxic Masculinity as a Barrier to Mental Health Treatment in Prison*, 61 *Journal of Clinical Psychology*, 713, 713–724 (2005).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Jonathan Beynon and Natalie Drew, *Mental Health and Prisons Information Sheet*, World Health Organization [https://www.who.int/mental\\_health/policy/mh\\_in\\_prison.pdf](https://www.who.int/mental_health/policy/mh_in_prison.pdf).

<sup>86</sup> *Id.*

<sup>87</sup> Daniel Anasseril, *Care of The Mentally Ill in Prisons: Challenges and Solutions*, 35 *The Journal of The American Academy Of Psychiatry And The Law*, 406, 406–410 (2007).

<sup>88</sup> *Id.*

<sup>89</sup> Matt Ford, *A Mental-Health Crisis in Alabama's Prisons*, *THE ATLANTIC* (July 1, 2017), <https://www.theatlantic.com/politics/archive/2017/07/alabama-prison-mental-illness/532242/>.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *See Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1212 (M.D. Ala. 2017).

inadequacies.<sup>93</sup> However, inadequate mental health treatment continues to this day with inadequate resources and failure to institute strategies to tackle this issue.<sup>94</sup>

### PART 3: POSSIBLE SOLUTIONS

The Prison Rape Elimination Act (“PREA”) was enacted by Congress in 2003 with unanimous support.<sup>95</sup> Its purpose was to provide for the analysis of the incidence and effects of prison rape in correctional facilities across the country.<sup>96</sup> The act created the National Prison Rape Elimination Commission with the purpose of developing policies aimed at addressing these violent acts.<sup>97</sup> The passage of the act was spurred on in part by research done by the Human Rights Watch, which cast the issue in the serious light that it deserved.<sup>98</sup> As a result of the passage of the act, prevention of prison rape became a top priority of the Department of Justice with annual reports required regarding efforts to address prison rape.<sup>99</sup>

As for other acts of physical violence, correctional facilities have been implementing measures to reduce instances of violence within the facilities.<sup>100</sup> Supervision strategies as well as crisis intervention training evolved to foster more interaction between prison staff and inmates.<sup>101</sup> Mental health awareness for prisoners has become a hot button issue for criminal justice reform advocates.<sup>102</sup>

<sup>93</sup> *Braggs, et al. v. Jefferson Dunn, et al.*, Southern Poverty Law Center, <https://www.splcenter.org/seeking-justice/case-docket/braggs-et-al-v-jefferson-dunn-et-al>.

<sup>94</sup> Christie Thompson, *Federal Prisons Were Told To Improve Inmates' Access To Mental-Health Care. They've Failed Miserably*, WASH. POST (November 21, 2018), <https://www.washingtonpost.com/news/national/wp/2018/11/21/feature>.

<sup>95</sup> Prison Rape Elimination Act, Public Law 108-79 § 972, 2003.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Brenda V. Smith, *The Prison Rape Elimination Act: Implementation and Unresolved Issues*, 10, 10-12 (American University Washington College of Law Research Paper No. 2008-49, 2008), <http://ssrn.com/abstract=1129810>

<sup>99</sup> Public Law 108-79, Department of Justice: Office of Juvenile Justice and Delinquency Programs (September 4, 2003).

<sup>100</sup> Nancy Lavigne & Sara Debus-Sherrill, *Preventing Violence and Sexual Assault In jail: A Situational Crime Prevention Approach Preventing Violence and Sexual Assault In jail: A Situational Crime Prevention Approach*, Urban Institute Justice Policy Center, December 2011, <https://www.urban.org/sites/default/files/publication/26746/412458-Preventing-Violence-and-Sexual-Assault-in-Jail-A-situational-Crime-Prevention-Approach.pdf>.

<sup>101</sup> *Id.*

<sup>102</sup> *Jailing People with Mental Illness*, National Alliance on Mental Illness, <https://www.nami.org/learn-more/public-policy/jailing-people-with-mental-illness>.

However, there is still much work to be done in all three of these areas.<sup>103</sup> Criticism regarding the PREA highlighted a lack of substantive action on the part of the Department of Justice in addressing the issue of prison rape.<sup>104</sup> Mental health care for inmates, while improving in some instances, remains inadequate as a whole with suicide still being the number one cause of death within prison walls.<sup>105</sup>

Alan Mills, Executive Director of the Uptown People's Law Center ("UPLC") in Chicago, Illinois is familiar with the issue of prison reform in the state.<sup>106</sup> The center that he runs is a not-for-profit legal center that has been around since 1975.<sup>107</sup> Among other practice areas the center focuses on prisoner rights and has made strides through numerous lawsuits targeting unconstitutional conditions within Illinois prisons.<sup>108</sup> The first case addressing prison conditions was in 1981 and since then, there have been seven class action lawsuits regarding mental and physical care, excessive use of solitary confinement, and failure on the part of prisons to accommodate deaf and hard of hearing prisoners.<sup>109</sup>

One such case is *Rasho v. Baldwin*, in which the UPLC entered into a settlement agreement in May 2016 with the Illinois Department of Corrections ("IDOC").<sup>110</sup> The case was brought on allegations of inadequate mental health treatment for inmates.<sup>111</sup> After the settlement was implemented, UPLC continued to monitor conditions of several Illinois prisons.<sup>112</sup> One year later, in May 2017, it was determined by Federal Court Monitor Pablo Stewart, MD

<sup>103</sup> Robert Weisberg and David Mills, Violence Silence: Why No One Really Cares About Prison Rape, SLATE (Oct. 1, 2003), <https://slate.com/news-and-politics/2003/10/why-no-one-really-cares-about-prison-violence.html>.

<sup>104</sup> *Id.*; Mike Farrell, Ending the Hidden, Savage Routine of Prison Rape, THE HUFFINGTON POST (March 17, 2008), [https://www.huffpost.com/entry/ending-the-hidden-savage\\_b\\_91867](https://www.huffpost.com/entry/ending-the-hidden-savage_b_91867).

<sup>105</sup> Emanuella Grinberg, *Prison Suicides Are on The Rise Nationally and It's Pretty Bad in Massachusetts*, CNN (April 19, 2017), <https://www.cnn.com/2017/04/19/health/prison-suicides-massachusetts-trnd/index.html>.

<sup>106</sup> Interview with Alan Mills, Executive Director, Uptown People's Law Center (March 15, 2019).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Settlement Agreement* at 6-30, *Rasho v. Baldwin*, No.1:07-cv-01298-MMM, (N.D. Ill. May 10, 2016).

<sup>111</sup> *Id.* at 1.

<sup>112</sup> *First Annual Report of Pablo Stewart, MD*, at 113; *Rasho v. Baldwin*, No.1:07-cv-01298-MMM-JEH, (N.D. Ill. 2017).

that IDOC was not meeting the guidelines of the settlement agreement.<sup>113</sup> While acknowledging improvements in mental health care and how the IDOC was hampered by the state budget crisis, the report also mentioned serious problems that still exist in several areas of inmate mental health care, including use of force and verbal abuse of inmates.<sup>114</sup> The sense of urgency was apparent in the report, but and was not adequately addressed by IDOC.<sup>115</sup> This led that the monitor to declare a state of emergency regarding its psychiatric care.<sup>116</sup> The situation continued until June 8, 2018 when the Second Annual Report stated that the IDOC was noncompliant with eighteen of the Settlement agreement terms.<sup>117</sup> UPLC moved for a preliminary injunction on the Department which was granted.<sup>118</sup> The state has since filed a notice of appeal.<sup>119</sup>

However, the issue is far from resolved. Illinois has moved from fiftieth in prison mental health care to forty-third in the country, meaning that there is still much to do.<sup>120</sup> Meanwhile, UPLC has dealt with other areas of concern within prisons including violence against and among prisoners.<sup>121</sup> Mr. Mills discussed a case that dealt with a young male victim of sexual assault who was placed in solitary confinement.<sup>122</sup> The guards grilled him endlessly and threatened him with the revocation of his privileges should it be found that he was lying.<sup>123</sup> Even though he had reported the incident to the investigator, he recanted out of fear.<sup>124</sup> He eventually told his in-prison therapist about the assault.<sup>125</sup> Word got out to the prison officials and he was sent to solitary confinement for allegedly lying.<sup>126</sup> Guard on inmate violence is an issue as well, especially against prisoners with mental illnesses.<sup>127</sup> According to Mr.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Rasbo v. Baldwin*, *supra* note 112 (Pablo Stewart sent a letter to the court which stated that the situation pertaining to the mental health of Illinois prisoners had reached a critical point and implored the court to redress the failure of the Department of Corrections to comply).

<sup>117</sup> *Second Annual Report of Pablo Stewart, MD*, at 117, *Rasbo v. Baldwin*, 1:07-cv-01298-MMM-JEH, (N.D. Ill. June 8, 2018); *Rasbo v. Walker*, 1:07-cv-01298-MMM (N.D. Ill. 2018).

<sup>118</sup> *Id.* at 49.

<sup>119</sup> Mills Interview, *supra* note 105.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

Mills, there is a culture of violence among guards.<sup>128</sup> There is no training to handle mentally ill prisoners and often the frustration and inadequate education on mental illness has resulted in violence against the inmates.<sup>129</sup> Just recently, three prison guards have been arrested in connection to prison violence, though the problem is systemic.<sup>130</sup>

One of the significant challenges that Mr. Mills acknowledged was that change in the prison system comes with an acknowledgment of its complexity.<sup>131</sup> “On one level it is money. On another level, prisons have largely abandoned any claim of rehabilitation. The remedy for anything we do not like in society is to put them in cages. That is the problem we have to face. We have engaged in a forty-year long experiment that has been an abject failure.”<sup>132</sup>

### CONCLUSION

Toxic masculinity is a subject that has gained traction since the inception of the #MeToo movement and various other social movements.<sup>133</sup> The issue is that hegemonic masculinity has elements that pervade most aspects of our culture, including treatment of disadvantaged and marginalized populations.<sup>134</sup> What is even more alarming is the inability or unwillingness of our society to address the toxic elements of masculinity and reform what we perceive to be masculine norms.<sup>135</sup> Based on the research, this does more harm than we think.<sup>136</sup> Change may come with the acknowledgement of harmful aspects of masculinity while celebrating newer, positive characteristics that all genders can embrace. Only then may we begin to see the change that we want in the world.

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<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> Salam, *supra* note 1.

<sup>134</sup> Messerschmidt, *supra* note 25.

<sup>135</sup> Chloe Taylor, *Gillette Draws Fire for #MeToo Commercial that Challenges ‘Toxic Masculinity’*, CNBC (Jan. 15, 2019), <https://www.cnbc.com/2019/01/15/gillette-draws-fire-for-metoo-commercial.html>.

<sup>136</sup> *Id.*