

June 23. 2021

To the Standing Committee on Public Safety and National Security
Sixth Floor, 131 Queen Street
House of Commons, Parliament of Canada

Re: Brief submitted by Lara Forsberg, member of the Canadian Women's Sex Based Rights (CaWsbar) initiative

Dear Parliamentarians,

The Correctional Service of Canada (CSC) has implemented an interim policy of placing male prisoners in women's prisons if these prisoners identify as women¹.

This policy has resulted in violent prisoners being transferred from men's to women's institutions. It also runs counter to the Geneva Convention that female prisoners should be confined in separate quarters from male prisoners.

As such, we are asking that CSC respects female prisoners' rights to dignity and safety. CSC needs to revoke its interim policy.

Background

Since 2017, CSC has been basing its policy of accommodation in women's prisons on self-identification (self ID). This appears to be based on a belief that self-ID is a protected ground in federal law, following an amendment to the Canadian Human Rights Act in 2017. This amendment added "gender identity or expression" as prohibited grounds of discrimination, albeit without defining either term.

As per [Interim Policy Bulletin 584](#), CSC places "offenders according to their gender identity in a men's or women's institution, Community Correctional Centre or Community-Based Residential Facility, if that is their preference, unless there are overriding health or safety concerns which cannot be resolved".

CSC has also indicated lack of accommodation may be defended "when, based on all the available information, there are reasonable grounds to believe the offender is not being sincere" (see Attachment A).

Prior to this policy change, CSC anticipated that most requests for placement accommodations would be from men's to women's prisons, and that this impact could be "significant". It also predicted that it would "likely receive and manage an increasing number of offenders whose gender marker on their identification cards is unspecified, is neither 'man' nor 'woman', or is incongruent with their anatomical sex" (Attachment A).

¹ For clarity, "male prisoners" refers to prisoners who are anatomically male. It is not a reference to their gender identity or expression, which may differ from their anatomical sex.

However, unless its practices have changed since 2017, CSC does not gather statistics about transgender prisoners, rendering it challenging to determine the total number of male prisoners currently housed in women's institutions.

Violent Prisoners are Transferring from Men's to Women's Prisons

While the total size of the male prisoner population in women's federal prison system is currently unknown, violent individuals in men's institutions have been requesting transfers to women's institutions since the interim policy's implementation. For example:

- Between June 1, 2017, and December 3, 2018, **7 of 8** individuals transferred from a federal penitentiary for men offenders to a federal institution for women offenders, had been convicted of **violent crimes**, including two prisoners convicted of **sexual offences** (see Attachment B).

Given that there are currently [less than 700 women housed in Canada's federal prison system](#), even a handful of transfers will have a deleterious impact on women's security - especially since considerations of the safety of female prisoners seem to rarely influence a decision to house a male prisoner in the female estate.

CSC also states that gender can be "fluid", which presumably means that there is no requirement for any male prisoner to identify as a woman consistently. Thus, it seems highly unlikely that CSC will ever have "reasonable grounds to believe the offender is not being sincere" when it comes to an individual's gender identity or expression.

Impact on Female Prisoners

Placing male prisoners who identify as women in women's prisons runs counter to [article 97, fourth paragraph of Geneva Convention III](#), which states:

"Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women".

Additionally, Article 108 states:

"A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women."

It is unclear how declarations from male prisoners that they currently identify as women mitigate any risks to female prisoners. CSC's policy appears to be in response to

“complaints made under the *Canadian Human Rights Act* concerning transgender prisoners” (Attachment A), without any consideration of the risks to female prisoners’ safety.

Anecdotally, we are aware of incarcerated women being afraid to express any concerns about being incarcerated with male prisoners, or report any instances of abuse by male prisoners, due to implicit or explicit threats of being labeled “transphobic”.

In fact, a group of women with lived prison experience recently posted an [open letter](#), outlining the traumas incarcerated women are experiencing, including a woman who described how CSC had dismissed her complaints of a male pedophile targeting and victimizing her. The woman stated that CSC had “threatened to isolate her, and labelled her calls for help as bigotry.” The authors of the letter also said that they had each “witnessed severe and harmful issues with the numerous and increasing male transfers to women’s prisons.”

These women speak for all of the incarcerated women whom they say have been “silenced” by CSC and have been told “that any complaint against a transgender person is transphobia”. They are distressed that women are not believed when they speak up about male violence.

We urge you to take their concerns seriously and revoke Interim Policy Bulletin 584.

Sincerely,

Lara Forsberg
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Canadian Women’s Sex based rights (CaWsbar) campaign