

TRANSGENDER WOMEN'S SAFETY IN PRISON STOP THE ABUSE NOW

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WHO ARE TRANSGENDER WOMEN?

Transgender: A term for people whose gender identity, expression or behavior is different from those typically associated with their assigned sex at birth

Transgender Woman: A term for a transgender individual who currently identifies as a woman (National Center for Transgender Equality, 2018)

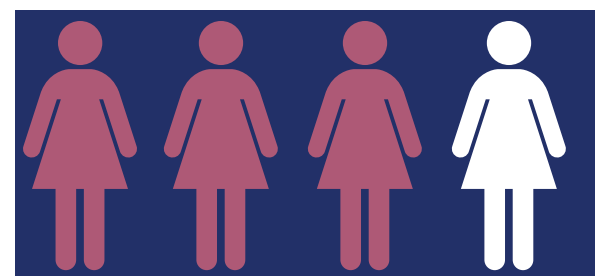
WHY ARE TRANSGENDER WOMEN IN PRISON?

Transgender women are **disproportionately discriminated against** in society. Because of this discrimination, many transgender women are **living in poverty and consequently participating in criminal activities, such as sex work, drug sales, theft, loitering or sleeping outside in order to survive** (Bassichis 2007). This causes a disproportionate arrest and imprisonment rate for transgender women.

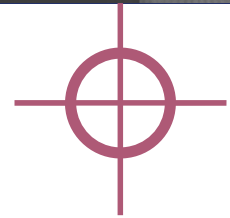
75% of the transgender inmates who had been sexually assaulted

reported being sexually assaulted on multiple occasions.

(Jenness 2007)



EASY TARGET



Once imprisoned, **transgender women are generally placed in men's facilities** (Bassichis 2007). Due to the placement of transgender women in men's facilities, our prison system is failing to protect transgender women's safety.

Transgender women clearly stand out in men's facilities making them an **easy target for harassment and sexual abuse**. In fact, transgender women imprisoned in men's facilities are raped at 13 times the rate of the general inmate population (Jenness 2007). Current prison policy surrounding transgender women's housing placements is not sustainable due to human rights violations.

"I'm 6'3"—I'm like a walking target."

(Bassichis 2007)

Some policies try to address this issue by separating transgender women from the rest of the prison population in solitary confinement. However, once in solitary confinement, transgender women are easy targets for prison guards, rendering **solitary confinement ineffective in preventing sexual abuse**. Additionally, solitary confinement has proven to induce increased levels of depression and suicidal ideation, making solitary confinement detrimental to mental health (Bonner 2006).

Transgender women imprisoned in men's facilities are

raped at 13x the rate

of the general inmate population (4.4% compared to 59%).
(Jenness 2007)

THE SOLUTION: VOLUNTARY PLACEMENT PRACTICES

The National Center for Transgender Equality suggests avoiding blanket policies regarding housing for transgender individuals. They suggest the creation of separate units for vulnerable populations with the same resources available to them that are available to the general population, but with voluntary placement based on individual inmates' concerns (2019). **Transgender women should have input in whether they feel safest in a women's facility, men's facility or separate unit for vulnerable populations.**

One method that has been proposed to streamline transgender inmates' placement is an **extensive gender related intake form** which could include a section for transgender inmates to discretely disclose their transgender status while simultaneously expressing which facility they would feel safest housed in. The idea behind these policies is that individuals typically know the most about their own situations and what would be safest for them. Jenness suggests that these placements should be **re-evaluated at least twice a year (2007).**

“My life is constantly threatened. I just want to get out of here alive.”

(Bassichis 2007)

MYTHS AND MISCONCEPTIONS

Many people believe that transgender women would be a threat to women's safety if placed in women's facilities because they “aren't real women” or because of their genitalia. **There is no evidence that transgender women perpetrate violence in trans-inclusionary spaces (Apsani 2014).** In reality, rape culture has much more to do with socially learned roles than it does with the possession of a penis at birth (Apsani 2014).

Others believe that criminals are undeserving of protection in prison settings. However, sexual assault can be extremely traumatizing for many individuals, and is not part of the intended punishment, determined by judge and jury, for an inmate. Courts have consistently ruled that **sexual assault in prisons is considered cruel and unusual punishment under the 8th amendment, and therefore, unconstitutional (Coker 2014).** Therefore, transgender women deserve equal protection from sexual assault that any other inmate would receive.

Potential Intake Template

(National Center for Transgender Equality)

Pennsylvania Department of Corrections Checklist

(28 C.F.R. §115.42)

GENDER REVIEW COMMITTEE (GRC) CHECKLIST

Inmate Name: _____ Inmate Number: _____
Date of Review: _____ Inmate Present: Yes/No
Facility: _____

This committee shall consider numerous items regarding the safety and care of the transgender/intersex individual. The GRC should meet within five working days of the administration of the PRAT regardless of whether the inmate agrees to participate or not. A determination shall be made regarding the appropriate placement of a transgender/intersex inmate based on their responses to the following questions. This information is confidential.

Gender at Birth:
1. Were you born a Male Female or Intersex?

Gender Identification:
2. Which gender do you identify as?
3. Which gender were you living your life as before your most recent incarceration?
4. If either of the above answers differ from your physical sex at birth, provide answers to the following:
a. How long have you been living as that gender?
b. What name(s) were you using, if different than your legal name?

Medical Considerations:
5. Have you had any form of gender-affirming surgery? Yes/No/Declined to Answer
a. Type(s) of surgery: _____
6. Are you on any medicine or therapy related to your gender identity? Yes/No/Declined to Answer
a. If yes, how long have you been taking these medications? _____
7. Do you know what it means to be intersex?
8. Have you been told by a medical provider that you have an intersex medical condition? Yes/No/Declined to Answer
9. Do you know what Gender Dysphoria means?
10. Have you been told by a medical provider that you have Gender Dysphoria? Yes/No/Declined to Answer

Legal Considerations:
11. Have you had a legal name change? Yes/No/Declined to Answer
12. Have you taken any steps to legally change your gender marker on legal ID cards/documents (i.e., Driver's License, Social Security Card, birth certificate, or other)? Yes/No/Declined to Answer
If yes, which one? _____

Safety/Security Considerations:
13. Explain whether your current housing placement represents a safety or security concern?

DC-ADM 008, Prison Rape Elimination Act Procedures Manual Attachment 9-A
Section 9 – Working with Transgender and Intersex Inmates

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(28 C.F.R. §115.42)

14. Does inmate present as a gender nonconforming individual (i.e., does appearance or manner differ from typical gender expectations)? Yes/No

Other Considerations:
Pre-Sentence Investigations, if available
Personal Data Questionnaire
Sentencing Order
Other: _____

GRC Recommendation for housing placement: Male Facility/Female Facility
Additional GRC Recommendations: _____

Does the Inmate concur with the GRC housing placement recommendation? Yes/No/Declined to Answer

PREA Compliance Manager Signature: _____
Inmate Signature: _____

Additional follow-up information post-interview:

Information contained on this form shall not be disclosed to anyone other than to the extent necessary to make security classification, housing/placement, programming, treatment, investigation and other security and management decisions.

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REFERENCES

- Apsani, Rishita. (2018). NOTE: Are Women's Spaces Transgender Spaces? Single-Sex Domestic Violence Shelters, Transgender Inclusion, and the Equal Protection Clause. *California Law Review*, 106, 1690. Retrieved from [https://advance-lexis-com.libproxy.lib.unc.edu/api/document?collection=analytical-materials&id=urn:contentItem:5TJB-20D0-02BN-00GW-00000-00&context=1516831](https://advance.lexis-com.libproxy.lib.unc.edu/api/document?collection=analytical-materials&id=urn:contentItem:5TJB-20D0-02BN-00GW-00000-00&context=1516831).
- Bassichis, M. (2007). "It's war in here": A Report on the Treatment of Transgender and Intersex People in New York State Men's Prisons. *Sylvia Rivera Law Report*. New York, NY. Retrieved from www.srlp.org
- Bonner, R. L. (2006). Stressful segregation housing and psychosocial vulnerability in prison suicide ideators. *Suicide & Life - Threatening Behavior*, 36(2), 250-4. Retrieved from <http://libproxy.lib.unc.edu/login?url=https://search.proquest.com/docview/224870301?accountid=14244>
- Coker, M. (2014). COMMON SENSE ABOUT COMMON DECENCY: PROMOTING A NEW STANDARD FOR GUARD-ON-INMATE SEXUAL ABUSE UNDER THE EIGHTH AMENDMENT. *Virginia Law Review*, 100(2), 437-477. Retrieved from <http://www.jstor.org/stable/24362693>
- Developments in the Law: SEXUAL ORIENTATION & GENDER IDENTITY. (2014). *Harvard Law Review*, 127(6), 1680-1814. Retrieved from <http://www.jstor.org/stable/23741987>
- Jeness, V., Maxson, C. L., Matsuda, K. N., & Sumner, J. M. (2007). *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*. Retrieved from https://ucicorrections.seweb.uci.edu/files/2013/06/PREA_Presentation_PREA_Report_UCI_Jeness_et_al.pdf
- National Center for Transgender Equality. (2018). *POLICIES TO INCREASE SAFETY AND RESPECT FOR TRANSGENDER PRISONERS*. Washington DC. Retrieved from <https://transequality.org/sites/default/files/docs/resources/PoliciesToIncreaseSafetyandRespectforTransgenderPrisoners.pdf>
- Patler, C., Sacha, J. O., & Branich, N. (2018). The black box within a black box: Solitary confinement practices in a subset of U.S. immigrant detention facilities. *Journal of Population Research*, 35(4), 435-465. doi: <http://dx.doi.org/10.1007/s12546-018-9209-8>
- Sexton, L., & Jenness, V. (2016). "We're like community": Collective identity and collective efficacy among transgender women in prisons for men. *Punishment & Society*, 18(5), 544-577. doi:<http://dx.doi.org/10.1177/1462474516642859>
- Smith, W. E. (2012). In the footsteps of Johnson v. California: Why classification and segregation of transgender inmates warrants heightened scrutiny. *The Journal of Gender, Race, and Justice*, 15(3), 689-727. Retrieved from <http://libproxy.lib.unc.edu/login?url=https://search.proquest.com/docview/1508764482?accountid=14244>
- World Prison Brief, I. for C. P. R. (2019). Highest to Lowest - Prison Population Rate | World Prison Brief. Retrieved February 26, 2019, from http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All