

Submission to Review of Prison Rules

1. Details of submitting organization
2. Introduction
3. Submission

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Mission Statement

The Countess is a group of progressive women from all walks of life including doctors, lawyers and students. We are volunteer-led, self-funded and not affiliated with any political party or religion. The Countess has members all over Ireland, and in some EU member states. Since we launched nine months ago, we have gained 10k followers across social media, hosted webinars to live audiences of a thousand, and been instrumental in shifting the discourse in Ireland. We advocate for, and centre women and children in our work. We have working groups on prisons, sport, legislation, and schools & safeguarding.

As such, we represent a growing constituency of people waking up to the impact of such measures (loosely termed 'inclusivity') on women and children. We are not interested in changing anyone's beliefs around transgender identity. We are simply calling for a wider lens when it comes to examining the impact of these laws and policies on society. We are part of a growing number of people and grassroots groups worldwide, who are working together to raise awareness.

2. Introduction

The Countess welcomes this opportunity afforded by the Irish Prison Service to submit a contribution to its review of prison rules. As a stakeholder organisation advocating for women and children in Ireland, our submission will focus on female prisoners, understood at all times in this submission as biological women. Some of our proposals may also benefit male prisoners, but our focus is on women.

This submission is divided into sections covering the particular rules we think should be amended, deleted, or introduced. We are mindful of the fact that the review is limited in scope and that indeed there are aspects of policy that directly affect the lives of prisoners that fall outside the review and indeed the remit of the Irish Prison Service as such. However, we feel there is a need to state them as, regardless of remit, they have a direct impact on prisons and the welfare of prisoners and any review of current rules may be undermined by these other issues. We have included comments briefly at the end of this submission on the issue of overcrowding and sentencing policy. Our submission covers: rules governing information recorded on prisoners, searches, sex-based rights, women and children in prison, visitation rights and breastfeeding.

3. Submission

Rule 4. Recording of prisoner's details

The rule should be amended to explicitly include the prisoner's biological sex (Male / Female) regardless of the estate the prisoner is held in.

In the case of men or women who identify as other than their biological sex, this too should be recorded, along with other relevant information, such as surgeries, current hormone treatment, etc.

Rationale: Such information is important in relation to the detention and care of the prisoner and the safety of other prisoners and staff. Many changes are underway in Irish prisons and society in relation to such people. Policy cannot be properly based on a lack of statistics, and currently the Irish Prison Service is unable to provide information on the number of such prisoners, their sentencing, treatment, where they are held, etc. It cannot remain as anecdotal information known to staff or the local prison administration who deal directly with them.

This has implications for the security of such prisoners who identify as other than their biological sex, and that of those they come into contact with. It also has implications for issues around healthcare for them.

Rule 6 (5) A search under this Rule shall not be undertaken by a prison officer who is not of the same gender as the prisoner being searched.

This rule should be amended to read "who is not of the same **sex** as the prisoner being searched".

Rationale: Although the term "gender" has been used by some as synonymous with "sex", it is notable that "sex" is used in the UN General Assembly Resolution 65/229 of December 2010 Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)-¹ The use of "gender" in the 2007 Prison Rules may well have been done in good faith as synonymous with sex. However, changes in society and public discourse have rendered it a meaningless term that presents problems for staff and prisoners alike. Under this rule, as it currently stands, a male prison officer whose "gender" is female could legally search a female prisoner, and she would have no grounds to object. Likewise, as is currently the situation, female staff can be placed in a situation where they have to search males whose "gender" is female, including those with intact male genitalia.

It is only a question of time before Ireland has its first prisoner who identifies as "non-binary". Who will search such a prisoner? How many prison officers are there who identify as non-binary and could search such a prisoner? To be subject to such a requirement is an

¹ https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

affront to the dignity of female officers. Prison staff also have rights, which cannot be sacrificed.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Mandela Rules and adopted by the General Assembly of the United Nations through Resolution² 70/175 on December 17th 2015, state very clearly:

Rule 52

1. Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff **of the same sex as the prisoner.** (bold added)

Nowhere do the Mandela Rules use the ambiguous term of “gender”, but rather biological sex in relation to searches and other matters. The one important reference made is in relation to recording information upon admission, in Rule 7 (a), which calls for the recording of “Precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender”, something we are also in favour of. It is important to note that the Mandela Rules in effect draw a distinction between sex and self-perceived gender. There can be no conflating one with the other. When they call for searches to be made by people of the same sex, they mean sex, not self-perceived gender. This also applies to other measures that the Mandela Rules call for on the basis of sex.

On this point, the Office of the Inspector of Prisoners in its recent report *Covid-19 Thematic Inspection of Limerick Prison* made reference to this issue and not only referred to the men who identify as women currently held in Limerick Prison as “women”, but also backed the idea that they be searched by someone of the same “gender”, citing “international best practice”.

However, there is no such best practice. The document cited by the OIP is the *Mapping of Good Practices for the Management of Transgender Prisoners* published by the United Nations Development Programme in Thailand with support from the United Nations Office on Drugs and Crime. It is a literature review, not a compendium of best practice. The literature review covered 12 countries and only looked at English language literature, even where English was not the language of the country concerned. In all, it looked at 109 documents, 28 of which were newspaper articles, which cannot be considered to be research or policy documents. It could find no examples where these “good practices”, as the review termed it, were applied in all of the countries reviewed. In fact, none of the examples cited were even applied in a majority of the countries reviewed and some were only to be found in one country, and in some cases only in certain parts of that country. It is simply not the case that international best practice dictates that prisoners be searched by someone of their own “gender” as opposed to sex. **The only international reference point**

² https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

on this issue is the Mandela Rules. A more detailed reply to the OIP's report on Limerick prison titled *Limerick Prison: The Rights of Female Prisoners* can be found on our website at <https://thecountess.ie/limerick-prison-the-rights-of-female-prisoners/>

Rule 17. (1) A child, of less than twelve months of age, of a female prisoner may be admitted to a prison and remain with the mother to facilitate breastfeeding until the child has reached twelve months of age.

We propose that this be amended to 3 years of age.

Rationale: The WHO currently recommends that breastfeeding be continued up to two years of age, six months of exclusive breastfeeding and a further period of a mixture of solids and liquids.

This is important for the good health of both the child and the mother. It offers some protection from Sudden Infant Death Syndrome (SIDS) and illnesses such as childhood infections, diabetes, asthma, and in later life, heart disease and obesity. It also protects mothers from breast and ovarian cancers and heart disease as well as having a positive impact on the mental health of both the child and mother, an important and relevant issue in the context of confinement.

Studies show that babies who are with their primary caregiver develop attachment to that caregiver and these babies suffer less anxiety and distress than babies who have been separated from their primary caregiver.³ (Bowlby, J 1969) These studies have been expanded and the same behaviours have been observed. A study by Mary Ainsworth (1978), 'Strange Situations', showed that between the ages of 12 and 18 months children displayed varying degrees of anxiety when the primary caregiver left the room they were in. Her studies showed that these behaviours were as a result of early interaction with the mother.⁴

This suggests that every attempt must be made for the mother and child to have space and time to bond during the early years.

These benefits continue beyond the breastfeeding phase into later life. Further information on the benefits of breastfeeding and skin to skin contact, and research can be obtained from the UNICEF website at <https://www.unicef.org.uk/babyfriendly/news-and-research/baby-friendly-research/research-supporting-breastfeeding/>

³ Bowlby, J., 1969. Attachment and loss. New York: Basic Books.

⁴ Ainsworth, M. D. S., Blehar, M. C., Waters, E., & Wall, S. (1978). Patterns of attachment: A psychological study of the strange situation. Hillsdale, NJ: Erlbaum.

Further, according to the COE SPACE 1 report, a total of 43 European countries allow for children to stay in the prison with their mothers. Of these, two have no specified age limit (France and Sweden), though practice seems to indicate early years of life; 22 allow for children up to the age of three to stay with their mothers and a further four countries allow for longer periods. Such a change would bring Ireland in line with best practice in Europe.

We should also like to point out that allowing children to stay in prison with their mother, under the Bangkok Rules, should not amount to the imprisonment of the child.

Rule 49. Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers **shall never be treated as prisoners.** (bold added)

The Bangkok Rules further state:

Rule 51 (2) The environment provided for such children's upbringing **shall be as close as possible to that of a child outside prison.** (bold added)

This should encourage the Irish Prison Service to provide not only suitable settings for play indoors, but also suitable open-air facilities. Some prisons in other jurisdictions have incorporated areas with swings etc. for the use of children.

Rule 18. Certification of cells or rooms

This rule should be amended that no cells be certified for more than single occupancy.

Rationale: Prisoners are entitled to privacy and dignity, which cannot be guaranteed where prisoners are forced to share cells, particularly though not exclusively in situations where the degrading practice of slopping out is still carried out.

In some older prisons there are large cells. However, when they were designed, they were not all conceived of as being for more than single occupancy; it was expected the prisoner would spend long periods in the cell working. The size, design and purpose of cells has evolved over time.⁵ Single cell occupancy when it was introduced was an innovative idea in terms of prison reform, and it should remain the norm in the operation of older prisons and in the design and construction of new prisons.

The Mandela Rules are quite clear on this point:

Rule 12

1. Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons,

⁵ Brodie Allan et al. (2013) English Prisons: An Architectural History. England. English Heritage.

such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, **it is not desirable to have two prisoners in a cell or room.** (bold added).

Such cells should be used for prisoners with special requirements, such as disabled prisoners, prisoners with specific mental health problems, prisoners who spend longer periods in their cells for whatever reasons and also pregnant women and women who have children in prison.

The certification of cells as being for more than single occupancy not only impacts the mental health of the prisoners and leads to tensions, it is also a way of hiding effective overcrowding. If a cell is designated as being for two people, then there is no overcrowding if it is occupied by two people, and should three people be housed in it, the degree of overcrowding is underestimated due to its designation.

Rule 35 Ordinary visit

We propose an extension of visiting rights in relation to women who have children under the age of twelve, which would be similar to those visits received by unconvicted prisoners.

Women with children under the age of 12 will receive one visit per day from their children on any of the six days. These visits will be in addition to any other visits from friends and relatives, and the responsible adult accompanying the children will not be counted as a visit from friends and relatives.

This would bring Ireland into compliance with Rule 28 of the Bangkok Rules:

Rule 28. Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible.

Rationale: This is in order to maintain family links and is to facilitate the development of the maternal bond and the emotional development of the child. We are aware that during school term, these visits would be limited by school timetable, days off due to holy days of obligation and other holidays that pertain to schools. During the Easter, Summer and Christmas holidays, however, there would be a significant uptake in these types of visits. We further suggest that as per Rule 28 of the Bangkok Rules, the open-air play area for children in prison with their mothers, as proposed earlier, be extended to visiting children under the age of 12.

Rule 52 (1). Unless otherwise authorised by the Minister, male and female prisoners shall be accommodated in separate areas to which prisoners of the opposite gender do not

normally have access, and, subject to paragraph (2), prisoners of one gender shall not be permitted access to areas to which prisoners of the other gender have access at the same time.

We propose as per earlier argument around searches that the word “gender” be substituted for “sex”.

Rationale: This ambiguous wording has allowed for men to be housed in the female estate as is currently the case in Limerick Prison. However, cognizant of reality, the prison authorities there have in practice kept them separate from the female prisoners. The experience in other jurisdictions indicates that when such prisoners are given full access to the female estate, as has happened on occasions in Britain, and is current policy in Canada and California, this quickly leads to a nightmare scenario (see Appendices). It is a matter of public record that men identifying as women have raped women in British prisons. This is not a discussion point, but a fact.⁶ It is not limited to the UK. Concerns have been raised in the USA as well, where lawsuits have been filed in some states. With the current policy of housing men in the female estate in California, it is expected there will be more lawsuits there. In one case concerning Fort Worth Federal Prison, the prisoners filed a lawsuit:

“The Plaintiffs have been forced to share intimate facilities with men, who allege they are women,” the Feb. 15 complaint states. “These men openly express their sexual desire for the women inmates, at times, in the showers, and bathrooms, while women are naked or partially clothed.

“The men expose themselves, intentionally, for their own sexual gratification, causing the Plaintiffs to suffer disgust, embarrassment, humiliation, stress, degradation, fear and loss of dignity.”⁷

Full access to the female estate is the end aim of both transactivists and also male prisoners currently held in isolation in the female estate, and successful cases to force this integration have been taken in Britain.⁸ We have included as Appendix C testimony from the woman who took a case against the prison. Women around the world have given testimony on the

⁶ Shaw, D. (21/05/2020) Eleven transgender inmates sexually assaulted in prisons last year <https://www.bbc.com/news/uk-52748117>

⁷ Hanna, B. (22/02/2017) Transgender bathroom battle smolders in Fort Worth federal prison <https://www.star-telegram.com/news/local/fort-worth/article134353039.html>

⁸ The Countess has published a number of articles on this issue. On the issue of the decision to house men in Limerick Prison see <https://thecountess.ie/trans-prisoners-in-womens-prisons-whose-rights-whose-dignity/> On the issue of the decision to mix prisons in California see <https://thecountess.ie/placing-men-in-womens-prisons-the-new-woke-fad/> On the issue of the recent court decision in the UK to rule that the housing of men in women’s prisons is lawful see <https://thecountess.ie/greenlight-given-to-allow-men-in-womens-prisons/> and finally the previously cited reply to the OIP report on Limerick Prison <https://thecountess.ie/limerick-prison-the-rights-of-female-prisoners/>

impacts of such policies and how normal prison policy has been changed to adapt to the needs of the men, including birth control for the inmates.

“This is real life stuff. It was happening when I was in and it’s going to continue to happen until people actually take a stand. When it mentioned the morning-after-pill being handed out, it’s not just a ‘story’. It happened, I was there. The “wo” man (who had a full grown beard and didn’t take hormones) lived in my house. He even tried to get with me on numerous different occasions. Not only was I disgusted, but I didn’t even feel safe walking to my room from the shower.”

There are other implications as noted in the previous quotes. The impact of such policies is not limited to sexual violence; it also leads to a rise in anxiety, mental health problems and ultimately negatively impacts the resocialisation of the female prisoners and their safe release into society. One woman in California puts it thus:

“What about those of us who have a history of being a battered woman? How can I go to a domestic violence healing group or self-help group where I have to speak up on deeply emotional topics when I am afraid? I barely want to talk to a male nurse in a small, enclosed room, but I have to keep self-talking myself he won’t hurt me. I have to be by the door or have a way out when I do talk to male staff. It’s sad, but this is my reality.”

It also has impacts on the question of children in prison – not only the rule changes we have proposed in this matter but also on the rules as they currently stand. One prisoner in the USA explains how she felt (and it should be remembered that at all times children’s rights are paramount not just in contexts of confinement but in general):

“Let me add my rant about the violent trans, or so-called trans [name redacted] prowling the mother and child houses yard and engaged in several sexual acts with numerous women and being very sexually aggressive. Because of their presence in the yard, I told them I wouldn’t keep my child in the program unless I got my minimum. Just before his birth I got my minimum thank God. But a few months later they moved a few [trans prisoners] into our single building minimum which basically left me confined to my unit unless I was okay going into the leisure areas or anywhere besides my unit and being in their presence. They had zero restrictions in that manner for them. I was told if I didn’t like it, then not to go into those areas where they were. I spent lots of time on my unit with my child due to this.

It was so awkward for me. And I couldn’t be rude or aggressive or even give them dirty looks, or I’d get a bad report written about my attitude while in the mother child program. One [trans prisoner] leaned down and said, “He’s so cute”. I almost lost my sh*t!! I was like, remember, parole in 3 months, just walk away.”

Women in such situations are learning to “play the game” so that there are no negative impacts on their early release or on how and where they are housed, whilst at the same time trying to keep their children safe. This point was made by Rhona Hotchkiss, an experienced retired Prison Governor with the Scottish Prison Service who stated that:

“Female prisoners and prison staff both hesitate to raise their concerns officially for fear of being recorded as transphobic, and in the case of female prisoners, their progression and/or privileges being affected, and in the case of staff, facing disciplinary action or career limitation – and that applies up to Governor level and beyond.”

Her reference to staff and their hesitancy to raise concerns in the current climate means that the female inmates who are facing problems and harassment from males in the female estate have no-one to turn to; the staff feel limited in exercising their duty of care to the prisoners and this potentially leaves them and the prison service open to liability and places the females at risk. She also echoes the statements made by female prisoners that the concerns and impacts go beyond physical violence and include forms of revictimisation and trauma.

“The presence of transwomen – the majority of whom will still have male genitalia – is always an issue, and their behaviour further creates issues for the women around them. Indeed, their very presence creates confusion, consternation and trauma for some women who know these are not women but also know they cannot say so or express their concerns and fears.”

We have included Rhona Hotchkiss’s full statement as Appendix A at the end of this submission, along with some other statements from female prisoners as Appendix B.

Further statements from women in Canada may be viewed at:

<https://www.keep-prisons-single-sex.org.uk/canadian-women-speak-out>,

and other information on the issue can be viewed at:

<https://www.keep-prisons-single-sex.org.uk>.

It should be borne in mind that the current prison rules already allow for protecting prisoners who are presumed to run a greater risk. Rule 63 (1) states: “*A prisoner may, either at his or her own request or when the Governor considers it necessary, in so far as is practicable and subject to the maintenance of good order and safe and secure custody, be kept separate from other prisoners who are reasonably likely to cause significant harm to him or her.*”

Currently male prisoners are being held separated from the female population in order to protect the women from them, when the rules allow for such prisoners to be held in the male estate and be separated from the rest of the male population for their own protection,

should this be deemed necessary following a risk assessment.

The current situation not only poses a danger to the women but it also at the same time violates the rights of the male prisoners who identify as women, as they are held on a wing to themselves and are, according to statements made by them to the OIP in its visit to Limerick Prison, locked up for 23 hours in their cells. Indefinite or prolonged solitary confinement is tantamount to torture and is expressly forbidden by the Mandela Rules.

Rule 43

1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:

- (a) Indefinite solitary confinement;
- (b) Prolonged solitary confinement;

And the Mandela Rules define solitary confinement as:

Rule 44

For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

Rule 11

The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus:

- (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate.

Once again, we would like to draw your attention to the fact that the Mandela Rules make a distinction between self-perceived gender and sex. Recently Phillip Wilkinson, the Swindon and Wiltshire's Police and Crime Commissioner, and Lisa Townshend, the Police Commissioner for Surrey, have also expressed their concerns on this issue.⁹

Rule 110 and 111 regarding Education and Vocational Training

⁹ Daily Mail (09 Sept 2021) Police commissioner says 'biological men' should not be allowed into women's prisons and female toilets as he hits out against Stonewall's 'potentially dangerous' transgender 'ideology' <https://www.dailymail.co.uk/news/article-9973107/amp/PCC-warns-biological-men-not-allowed-womens-toilets-prisons-security-fears.html>

We propose in relation to the female estate that the following be inserted into both rules:

In the female estate a low take up of particular courses or a fall in the number of participants will not result in the cancellation, suspension or failure to proceed with such courses.

Rationale: Participation in structured programmes is, according to the rules, a factor taken into account in calculating remission and providing an opportunity to seek further remission above the standard rate of 25% of sentence. Rule 59 (2) states (2): “The Minister may grant such greater remission of sentence in excess of one quarter, but not exceeding one third thereof where a prisoner has shown further good conduct by engaging in authorised structured activity and the Minister is satisfied that, as a result, the prisoner is less likely to re-offend and will be better able to reintegrate into the community.”

The female prison population is lower than that of the male population. The proportion of women committed in 2019, according to IPS statistics, was one woman for every seven males.¹⁰ However, this is skewed by a high rate of committals and a high turnover of female inmates. When we look at the IPS snapshot statistics, we can see that in the same year on a given day the actual number of women in prison on November 30th 2019, was 129 compared to 3,079 males, a proportion of 1:24.¹¹ So if threshold numbers for the viability of courses are applied in the female estate, women will be placed at a great disadvantage compared to males in accessing courses and ultimately in being able to petition the minister for greater remission on their sentences, which is discriminatory.

Final Comments

Overcrowding and Sentencing Policy

Overcrowding is an international problem, to be found in most prison systems. However, it is not inevitable and indeed in many jurisdictions similar arguments are put forward in relation to the causes and also possible solutions. In rare cases do penal reformers advocate building more prisons, though demolishing prisons no longer fit for purpose to be replaced with newer buildings may happen.

In most jurisdictions the problems with overcrowding are not due to a lack of space but the overuse of remand for minor and non-violent offences, including the non-payment of fines, and the failure to implement the United Nations General Assembly Resolution 45/110 of December 1990 - United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules).¹²

¹⁰ https://www.irishprisons.ie/wp-content/uploads/documents_pdf/AGE-AND-GENDER-Year-2007-to-2019.pdf

¹¹ https://www.irishprisons.ie/wp-content/uploads/documents_pdf/SNAPSHOT-Age-Profile-Year-2007-to-2019.pdf

¹² <https://www.ohchr.org/documents/professionalinterest/tokyorules.pdf>

The overuse of remand and custodial sentences is particularly the case in Ireland and this has been repeatedly pointed to by other organisations over the years. According to the recent Council of Europe Annual Penal Statistics SPACE 1 – 2020 report,¹³ Ireland’s prison population per 100,000 is lower than the average, as is the number of female prisoners and that of remands.¹⁴ However, this hides the revolving door both of remands and prisoners serving short sentences, as Ireland’s admission and releases rate are very high (more than 25% higher than the European median value). Ireland is also one of a small number of countries that uses prisons to hold Asylum Seekers and so-called Illegal Aliens. Whilst the prison population in Europe has fallen, and in Ireland it fell from a high point of 95.7 in 2010 to a low of 78.1 in 2016, it has risen since then.

Overcrowding places a strain on staff, prisoners, budgets, available space and the ability to care for, supervise and protect prisoners and staff. Once again prison rules are being revised with no corresponding revision of sentencing policy and the use of custodial sentences.

Any proper review of Prison Rules must always include all bodies and agencies that have the authority to make decisions that impact the application of those rules. It cannot simply be stated that such a rule is for the courts, etc. A full review of Prison Rules should mean all the rules in all aspects.

¹³ https://wp.unil.ch/space/files/2021/04/210330_FinalReport_SPACE_I_2020.pdf

¹⁴ The SPACE 1 report definition of remands is slightly different to Ireland’s as it includes convicted prisoners who have yet to be sentenced.

Appendix A

Statement from Rhona Hotchkiss retired Prison Governor

“I am a recently retired Prison Governor working in the Scottish Prison Service with 10 years’ experience in charge of men and women’s prisons and one prison which had units for both. In 2009 when I first took up post, the Service saw on average, 1 male prisoner a year identifying as transgender. When I left 10 years later, we had 23. It was and is unusual to have females identifying as transgender.

During the latter 4 years of my employment in particular, I met several ‘transwomen’ who were being held in the female estate. Because gender self-id was not and at this time still is not the law in Scotland, risk assessments were carried out on any person held in the male estate, identifying as transgender prior to a decision being made about whether or not to transfer them to the female estate. Consequently, most were not transferred but continued to be held in the male estate., because of the risk they posed. A very small number did not wish to be transferred. Across that same 10 years, I only met one female prisoner identifying as transgender. They were transferred to the male estate but transferred back to the women’s estate within a short space of time over concerns for their safety/well-being.

I have the following observations to make about the practice of allowing ‘transwomen’ to be held alongside women.

- Women’s opinions and concerns are rarely taken into account when developing policies concerning the accommodation of transgender prisoners either in general or specifically. Even Equality Impact Assessments do not take their perspective into account.
- Organisations advocating for women are not involved in the development of policy to the same extent as are those advocating for transgender people.
- Women’s rights to privacy, dignity and safety are rarely taken into account when developing policies on the management of transgender prisoners.
- The presence of transwomen – the majority of whom will still have male genitalia – is always an issue and their behaviour further creates issues for the women around them. Indeed, their very presence creates confusion, consternation and trauma for some women who know these are not women but also know they cannot say so or express their concerns and fears.
- There is an inherent understanding that it poses a risk to a female prisoner identifying as male – a ‘transman’ – to accommodate them in the male estate but there is no such understanding that males pose an inherent risk to females when accommodating transwomen in the female estate.
- The rights of staff are almost entirely disregarded when making calls for e.g., prisoners being allowed to choose the sex of the person searching them. This is of particular relevance when prison services in predominantly white, majority Christian countries are striving to develop a staff cohort which reflects increasingly diverse communities: being exposed to bodies of those who continue to display the genitalia

of the opposite sex would not be acceptable to many from minority ethnic communities and religions.

- Unpublished research conducted by a pro-transgender researcher in the Scottish Prison Service demonstrated that the vast majority (80%) of female prisoners and the majority of staff had serious reservations about men who identified as women being held in women's units.
- Female prisoners and prison staff both hesitate to raise their concerns officially for fear of being recorded as transphobic and in the case of female prisoners, their progression and/or privileges being affected and in the case of staff, facing disciplinary action or career limitation – and that applies up to Governor level and beyond.
- There have been high profile cases in recent years in the UK and elsewhere of female prisoners being seriously sexually assaulted by males identifying as transgender; however, what goes largely unreported are the numerous and ongoing low-level sexual aggressions and intimidation perpetrated on women by 'transwomen'. Given that a large majority of women in prison have suffered trauma at the hands of violent and sexually abusive men, this can only be a re-traumatising experience.
- Information from the Ministry of Justice in England indicates that the percentage of sexual offenders amongst the transgender prison population is as high as 40%. This is in comparison to around 15% of the male population in general and 1-2% of the female prison population. This exposes an inherent flaw in the assertion that all those who identify as transgender are. Either they are, and for some reason transwomen are more likely than men to be sex offenders and far more likely than women to be sex offenders, or – as is much more likely – a high number of those who identify as transgender in prison are doing so for disingenuous purposes.

Rhona Hotchkiss
September 2021

Appendix B

Statements from Female Prisoners

(All names are pseudonyms, institutions are real)

Tanya, Grand Valley Institution, Canada

“I was an inmate at Grand Valley on a 4 year prison sentence. When I was incarcerated I was housed with a transgender male. This inmate would tell each woman that would move to our unit, ‘I may identify as a women but I’m really a man. I act like a man, I think like a man, so I must be a man!’ She would make comments like, ‘Are you married cause I would marry you in a heartbeat.’ She on another altercation punched me in my shoulder and bruised it. I never said anything only to someone I trusted. The guards came and removed her from the unit. This inmate would ask us girls to look at their private area (because she had the surgery). To me I’m sorry she identifies as a lady but she’s built like a man, her hands look like men, she acts like a man, why are they allowed to be housed with the women? Another thing, there are a lot of females there that have trauma and feeling an anxiety because of men, yet they are allowed to interact and do programs with women that have trauma. To me that’s ridiculously stupid and cruel. How are we as women supposed to get the programs when they can’t talk or heal their wounds because they have the constant reminder of a male figure in the programs with them?”

May 23, 2021

Sondra, Central California Women’s Facility, Chowchilla, California

“Can somebody please help us women in California Women’s Prisons? Most recently men with a functioning penis have been transferred to this facility claiming they’re transgender under a new bill SB 132.

Currently I’m housed at Central California Women’s Facility in Chowchilla, CA, the world’s largest women’s prison. I have been incarcerated for almost 27 years for a crime I committed when I was 16 years old. I was sentenced to juvenile life without parole. I come from a background of physical, mental and spiritual abuse, emotional neglect, molestation at the age of seven, rape, rejection, abandonment and rooted toxic shame. I have for many years been working on many factors and choices that led me to participate in my life crime. I’ve been through intense therapy and self-help groups acquiring healing and understanding. When a few months ago I was told that I should prepare to live with a man. Wait, what? I have no choice?! If I refuse to live with a man I will get rehoused in the ‘hole’. Please do your research of a prison ‘hole’ and tell me how this is fair or right. Not only that but I will get a rule violation. This means losing everything I’ve worked hard to earn like living in an Honor Dorm, access to my education, self-help, therapy, and any little sanity I have of prison normalcy.

What about my mental state? Personally, I'm terrified of having to live with a man. I'm talking about the ones that are lying to get to a women's facility to get all the p***y they want. Their words. I'm a petite woman, how will I fight off a man or help someone if I see her being assaulted?"

Marion, Federal Prison, Canada

"It is sad that CSC feels they need to protect the rights of transgender women at the cost of putting actual women at risk. I am not sure when the system stopped caring about the actual inmates it housed and put its own political agenda before our safety, but it's happening each and every day in the women's jails across Canada, and I have bore witness to it too many times.

I just was forced to live in a unit with a self-proclaimed "transgender" who will remain nameless. I don't say it like that out of disrespect or transphobia, I am a lover of and member of the LGBTQI community and am friends with many trans people. However, the lack of protocol CSC has in place allows any man to proclaim trans status to be transferred to a women's prison to do their time. This such individual told me themselves that their presence at [redacted] was a coup and they were playing the system. I witnessed them have sexual relations with eight different women I was aware of and causing such emotional chaos between some of the women (some were driven to attempted suicide, and violent attacks on this person).

This person thought it was a game to them and treated the women in the prison as toys to be played with; this should never be a situation that women are stuck dealing with. We are already in a vulnerable and damaged situation, now we have to worry about being preyed upon by men who have no cares for our emotional well-being. Prior to my release this individual was charged with sexual assault and harassment on a woman in our living unit. This never should have happened; it was just one event of many he was guilty of. He threw his own sh*t and p*ss at a woman outside his living unit one day because she called him a rat... women don't do things like that to each other, and we never have. I have done over 20 years in jail and never seen anything quite like the things this individual did and claimed to be a woman. No woman should be susceptible to that kind of living environment."

Appendix C

In March 2021 FDJ, a female prisoner brought a judicial review against the Secretary of State for Justice, R (FDJ) v SSJ. She had been sexually assaulted by J, a male prisoner who identifies as transgender and has a Gender Recognition Certificate. J was serving a sentence for serious sexual offences against women and was held in a women's prison with her. FDJ challenged the lawfulness of the prison policies concerning the allocation of transgender prisoners on the basis that they unlawfully discriminate against women and misstate the law.

FDJ:

“Being in prison with male prisoners, you always feel on edge. You know something could happen at any time. We know they are not women. They are physically threatening and aggressive. I was sexually assaulted and I am not the only woman who has been. They haven't had surgery and they expose themselves. One of them had been told he couldn't shower at the same time as us women. He made a formal complaint and said this was a breach of his human rights. So now he is allowed to shower with us. And because he now has that right, the other males have that right too. There's only a shower curtain between us. He moves the curtain so we can all see his penis when he is washing himself or shaving his legs. This is disgusting and I think it is disgusting that the prison allows this.

We can't complain about anything. They are very well protected and it feels like our rights as women just don't count. We have to call them 'she' and 'her' and have to use their female names. If we don't, we are punished and lose our enhanced prisoner or D-Category status. It is horrible to do that to women.

I am very upset that I lost my legal case. I can't understand how anyone can say that imprisoning males alongside women is the right thing to do. The prisoner who attacked me was convicted of the most serious sexual offences against girls and still has his penis. How can the government say that putting him in prison with women is the right thing to do? It's not. I am out of prison now. But I think about all the other women still in prison who have to live with these males. This is dangerous, disgusting and wrong.”

Appendix D

Female prisoners effected by SB 132.

A.B:

“When I first heard of SB 132, I thought it was a bad joke. Not that legitimate trans women would be able to transfer – I think the majority of women want trans women to be safe – but that anyone “identifying” as a woman, non-binary, or intersex could transfer to a woman’s prison. It goes without saying that women’s prisons tend to be easier places for people to do time, so given the option, of course some men are going to take full advantage of the legislation and manipulate a bill meant to promote safety for all trans people.

What we’re seeing now, approximately 9 months into this bill becoming law, is the realization of some of our worst fears. Men transferring here – not trans women, men. Men who can, and do have erections because neither surgery nor hormones are necessary to transfer. Men who use their size, strength and other biological attributes to intimidate women.

Further, when thinking about incarcerated women, it is well-settled that a huge majority have experienced some type of abuse in their lifetime, and most often at the hands of a man. To now allow men to transfer here creates an environment of fear and intimidation for women who have no recourse because SB 132 is a law – not a CDCR or CCWF policy, but a law.

Most women I have talked to are scared – some just a little, others to an amazing degree – and none know what to do. Women in their sixties and seventies are talking about going to administrative segregation in order to protect themselves because they feel they have no other recourse. As a survivor of repeated molestation over the course of my formative years, I have no idea what I’ll do if put in a situation where I may be forced to live with a man or worse – and shame on those who have created a situation where I have to think about this! This should not be the reality for any incarcerated woman, and yet that’s what the nearly 3000 women at CCWF are having to grapple with.

For Senator Wiener and any other senator who advocated for this bill, I urge you to come visit CCWF, speak with those whom your law is directly impacting and realize, perhaps for the first time, that your legislation is being manipulated and is actually putting countless women in danger. What will be done when women become pregnant? Or worse? The fact that posters advertising abortion and adoption services – posters that have just been put up within the last 3 months – shows that SOMEONE at this institution or within CDCR sees all the potential issues with creating a co-ed prison, yet ... the law remains. We need help and I pray to God we get it before something horrendous happens to someone here.”

JG:

“SB 132 has impacted me, by impacting my community of regressing in so many areas. From our self-esteem, going back to that victim mode with no escaping our abuser, to fear of childhood trauma resurfacing, of being used to stress upon stress of being another victim to this system, and seen once again as a piece of meat. SB 132 has brought my safety from a 10 to a 1! The violence in here has risen and the hostilities are through the roof!

The substance abuse has increased to numb the reality of CDCR (the California Department of Corrections and Rehabilitation) forcing us to live with known serial rapists and women abusers. Our self-help groups have gone from awesome to none! No staff sponsors to support us, out of their own fear of SB 132! If staff are fearful for us, what does that tell you of who we are forced to live with. I say “forced” to live with because we can’t refuse to house with them without being penalized, aka write-up/RVR115. Because they have MORE RIGHTS than us!

Roughly 80% of our population have been abused by a male in their lifetime, and yet again males have control over us and our safety. I totally get it, civil rights for minorities and women aren’t that advanced from 1960s, but when will women be heard? We have the world’s highest stats of death by domestic violence in society; what will this be in a closed controlled environment, where there’s two housing offices to 256 inmates???

Night terrors have started again for most of us who have male co-habitants. Why, you might ask? Well, for myself, mine is homophobic and would use this bill as a loophole to get out of a male prison where he has either been a victim or became a predator himself in order to survive, so he can come and get me for all that he went through. My safety as a role model and pillar leader to my community, in helping them, is causing me panic attacks of running into a dude and being subjected to danger.

Yes, SB 132 is to help those trans women be safe and escape their rapist, but they are coming over here all for the wrong reasons. Pregnancies are happening and Medical is now giving options for when we’ll become pregnant? Like what happened to CDCR helping us go home and not becoming a baby making warehouse. Taxpayers are spending more on the effects of SB 132 than on children’s school supplies.

According to Federal Law we can’t segregate them from us but yet we can live in Honor Dorms or RPU (mini honor dorms), so how is this any different? There are over 30 male prisons in California where they could convert into a trans prison to meet their specific needs and keep us safe. But if not, then we’re better off saying the raw truth of this new reality, of it being a co-ed incarceration life, LWOP, or death sentence. Where CDCR believes in punishment on top of punishment for your whole sentence, but emotional and mentally isn’t enough for them, so they’ve thrown in sexual too!”

S.N:

“My biggest issue with men coming here...We’ve been victimized by men in our lives already, now the prison system is purposely putting us back in a position to get re-victimized by men again, in our own room/cell. We’re housed in 8 person cells in the largest WOMEN’S prison in the world. The men took a whole prison from the women about five years ago, and now they want this one too!? Men, are men ... they look like men, talk like men, act like men, and think like men ... changing a body part, and/or giving hormone injections, DON’T change all of the other things that make you a man!

Another friend, in my room says: That’s why there are now “4!” women inmates that are now pregnant, by the men being allowed in a women’s prison! (They’ve been shipped to the other women’s prison, for their pregnancy/delivery and to hide the fact that it happened here). This info was given by mental health staff, here.”

Amie Ichikawa: Founder, Woman II Woman inc. <https://womaniwoman.org/>

“SB 132, ‘The Transgender Respect, Agency and Dignity Act’, affects me every day and I’m not even incarcerated anymore. I am in constant fear for these women.

There is nowhere for them to run, no mental health services available, and they have to idly watch as men invade their limited space and access the rights and privileges they have never dreamed of having in prison. The majority of transfers are violent sex offenders who are having sex that has already resulted in pregnancies. Women’s options if pregnant are on posters in the Medical units: 1. Plan B pill, 2. Abortion, 3. A social worker will assist with adoption.

The prisons are not checking if the transfers have victims, wives, or co-defendants before placing them with the women. Women are being told if they have a problem then they can move to another prison.

We understand fully that prison is not meant to be enjoyed or comfortable, but this is an absolutely cruel and unusual punishment. No matter what crime any of the women committed, none of them deserve to have to share 6 feet and a bunk with a serial rapist or the man who murdered their children who suddenly identifies as a woman.

California does not require these men to be on hormone therapy, have a desire to be a woman, present as a woman, or have had or plan to have gender reassignment surgery. This means heterosexual, violent male sex offenders have more rights than any woman in women’s prison. This is a death sentence for so many, and it haunts me.”