

# Commentary



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## Reflections on the impact of gender self-identification policies in Canadian prisons

April Kitzul

**The following essay is based** on my experience as a former Parole Officer and Correctional Program Officer with the Correctional Service of Canada (CSC). I was employed at CSC for over 10 years and worked in four different men's institutions. My analysis is from the perspective of correctional staff in direct contact with inmates. The primary goal of correctional staff is to manage risk for the purpose of maintaining the safety and security of institutions and to protect public safety.

The 2017 passage of Bill C-16, which amended the *Canadian Human Rights Act* to add gender identity and gender expression as prohibited grounds of discrimination, has facilitated the transfer of male inmates who self-identify as transgender into women's prisons. This gives rise to a number of concerns that I outline below.

## The nature of women's prisons

In the past, female inmates were housed in the Prison for Women (P4W), which was modelled after men's prisons, with uniformed staff and static security (e.g., cells, fences, gates, bars, locks, etc.). Many women committed suicide in this prison and eventually a Commission studied the matter and realized that women have different needs than men and were not rehabilitated in such an environment. The P4W was shut down and replaced with six regional prisons that are completely different.

In these regional prisons, the facility has units of cottages where women live in something that approximates an actual house. There is a mother-child program, where mothers with young children (under four) can have their children with them. Women's prisons have multi-level security, and there is a max unit for situations where an inmate's risk becomes unmanageable in the lower security levels. However, efforts are made to re-populate the inmate into the medium security compound as soon as possible.

These prisons have less differentiation between medium and minimum security. In fact, they are quite similar in design, with cottage-style housing where women have more independence and less supervision, and Correctional Officers only doing rounds once every two hours. The only real difference is that medium security has a fence around it, whereas minimum security has no fence.

Men's prisons have a far greater degree of differentiation between medium and minimum security, as their medium security prisons lack cottage-style housing, come with a common kitchen area, and have greater static security and higher frequency of supervision. In general, women's prisons are lower security than men's prisons because women are lower risk than men.

One of the concerns about transferring trans-identified males into women's prisons is that their presence will undermine the intent of the original Commission's recommendations in how we incarcerate women. For instance, it may become necessary to start increasing the static and dynamic security features in women's prisons in order to manage the increased risk that trans-identified male prisoners present. If this starts happening, it will change the whole environment and will impact women's mental well-being (as the prison starts to resemble a men's prison once again).

## Unintended consequences

It is my understanding that in the past, and on very *rare* occasions, trans-identified male inmates who were fully transitioned (i.e., surgery and hormones before incarceration) were placed in women's prison. I can't comment on the success of those placements, but my understanding is that they go back as far as the 1980s and have been very rare.

Since the passage of Bill C-16, the ability for trans-identified male prisoners to transfer to women's prisons has been made much easier. Now all that is required is self-identification, and self-identification is just based on the inmate's say-so. No surgery or hormones are required.

This self-identification policy opens the door to any men who want to declare themselves as a "transwoman" in order to transfer into women's prison for self-serving reasons. There are a number of reasons that such inmates might want to do this:

1. They may want to transfer to women's prison because they see it as a way to do "easier time" – there is less security, nicer living quarters and more freedom of movement in women's prison.
2. They may see transfer to women's prison as a way to get immediate access to sexual partners, which is a strong reward in itself. When combined with the desire to con the system, it is a strong motivation for male inmates to "identify as women" and see how far they can get.
3. Sex offenders may see transfer to women's prisons as giving them access to their victim pool, whether adult women or children. Some sexual offenders are predatory in nature and may deliberately seek a transfer for the precise purpose of victim access. Other sexual offenders are impulsive and/or opportunistic, and although they may not be consciously aware of their desire to access victims, they are making "seemingly unrelated decisions" that indeed puts them in the path of victims.
4. Sex offenders may seek to transfer from men's to women's prisons in order to escape the harassment and "muscling" that sex offenders inevitably receive from other men. For instance, the women's prison offers them a form of refuge, as sex offenders are the most despised inmates. This is a powerful motivator for an inmate with sex offences to suddenly "identify as a woman." It should be noted that since the closing

of segregation (due to a lawsuit), the inmate practice of “checking in” to segregation (for safety/refuge) has been cut off.

Notably, some activists often claim that transgender inmates are the *most* vulnerable inmates and undergo constant threats and assaults. In my experience, there is a very distinct hierarchy in prison culture that dictates vulnerability. At the top of the hierarchy are gang members and their associates, drug dealers and cop killers (they are “solid”). At the bottom of the hierarchy are sexual offenders (they are “goofs” and “skinners”). So, if a trans-identified male inmate happens to also be a sexual offender, then he will indeed be harassed and threatened – not because he is transgender, but *because he is a sexual offender*. That isn’t to say that transgender inmates never get assaulted or verbally disrespected, but for the most part they are generally ignored and some get along quite well in the inmate population.

Arguably trans-identified male inmates are no more unsafe than gay inmates, and we have never transferred gay men to women’s prison just because they are gay. Gay inmates have also not traditionally sought transfer to women’s prison for the purpose of seeking protection from homophobic assaults. The risk to gay inmates is managed within the men’s prison, and in my view can also be done for transgender inmates.

## **Histories of violence and aggression**

Trans-identified males who have criminal histories of violence and aggression, including sexual violence, are being placed in women’s prisons. Their mere presence is anxiety provoking for female inmates – they live in fear, worried for the safety of themselves or, in some instances, their children. Female inmates are acutely aware they cannot “just leave” the situation – they are in prison so there is no escape from this high-risk situation.

This constant sense of worry and anxiety takes an emotional toll on female inmates, putting them at risk of using drugs “to relax” or to act out in other ways that are counter-productive. A high percentage of female inmates also have personal histories of trauma from sexual abuse and physical abuse, in childhood and within domestic relationships. The presence of possibly violent trans-identified males and the constant sense of potential danger from which they cannot escape *retraumatizes* many of these women, which is deeply unhealthy for their mental health and well-being.

## Violence and aggression toward female inmates

It has been reported to me that trans-identified male inmates have sexually and/or physically assaulted female inmates. For instance, one case in particular involved an Indigenous woman who was sexually assaulted (raped) by a trans-identified male, resulting in criminal charges for the male inmate. My understanding is there are other incidents as well. It goes without saying that these incidents of sexual and physical assaults are emotionally and physically traumatizing, as well as putting them at risk of unwanted pregnancy and sexually transmitted disease.

Female inmates have also reported being sexually harassed by trans-identified male inmates. Examples involve sexualized comments, sexual advances, having their underwear stolen from the laundry, voyeurism and listening at bathroom doors to the women using the toilet and/or attending to feminine hygiene. Due to COVID-19, women are not allowed to close the curtains on their bedroom door and it is now being reported that the transgender inmates are peeping in their windows. Women now go into the bathroom to change their clothes, but they can't escape this voyeurism while they are sleeping. This violation of privacy – and the feelings of being violated, as experienced by female inmates – should not be underestimated.

“*Tran-identified males present higher risk than women.*”

It should be noted that trans-identified males share cottages with female inmates, which means they are in close living quarters with them. It would make sense for CSC to at least practise some harm reduction by putting the transgender inmates all together into one cottage, but even this small mitigating measure is not being taken.

Sexual assaults, physical assaults and sexual harassment undoubtedly have a profoundly negative impact on female inmates. These types of incidents compound the trauma that female inmates have already experienced in their life. In addition, when female inmates complain to staff, I have heard anecdotal reports that they are told to “re-educate themselves,” with the message being “it doesn't matter” and “you're the problem.” For female inmates, this dismissal of their concerns is like rubbing salt on the wound.

## Other unintended consequences

The presence of trans-identified males in women's prisons is having the unintended consequence of increased fighting. Since many of the trans-identified male inmates are heterosexual, relationships have been forming between the male and female inmates. This results in a high degree of "drama" due to jealousy, cheating and emotional manipulation. This has led to more conflict amongst female inmates, and more physical fighting between women and trans-identified males. It is being reported that some female inmates are now arming themselves with "soup can in a sock" so they can fend off assaults by trans-identified inmates, and are now refusing to leave their houses in order to avoid the compound that they view as dangerous.

## Inadequate risk management

Trans-identified males present higher risk than women, and this risk is not being adequately managed. I've been told that transgender inmates are given many chances before being maxed, and when trans inmates do get maxed, they quickly make human rights complaints. Rather than using maximum security, CSC will also use Administrative Segregation for 72 hours, then they are placed in the Structured Living Environment (SLE). If this doesn't work, then they get involuntarily transferred to another women's prison.

It should be noted that the SLE is for women who have *severe mental health problems* and can't look after themselves – they require a much greater degree of supervision. The women in this unit are *highly vulnerable* and unable to handle the physically and sexually aggressive trans-identified males in their presence. Placing violent trans-identified males with these women is a gross violation of their safety and well-being.

## Risk to children

As noted earlier, women's prisons have a mother-child program that allows children under the age of four to stay with their mothers who are incarcerated. While some institutions (like Grand Valley Institution for Women) restrict their program to minimum security, I've been told that others (such as Fraser Valley Institution for Women) allow children to stay with their mothers in medium security.

CSC's current policy, which allows trans-identified male inmates to be housed in women's prisons, means that some male pedophiles are currently serving their time in a facility that houses children. This is astonishing, as it puts these sexual offenders into close proximity with children. It should be noted that when pedophiles are released to the community, they typically receive conditions that prevent them from having access to children, specifically avoiding places where children are known to congregate such as parks, playgrounds, pools, community centres, etc.

So, if pedophiles on the street are not even allowed to walk by a playground, it is astonishing that they should be incarcerated in a facility where they will have access to children. All it would take is one distracted mother (or babysitter) and an opportunistic pedophile to side-line a child for sexual touching. A more violent offender may also physically or sexually assault the mother in front of the child, causing trauma to the child. The risk to children is a constant worry for the mothers, who need to be hyper-vigilant, which can take a toll on the mother's mental health. Overall, the practice of housing pedophiles and other sexual offenders in a facility that also houses children is a stunningly bad idea. The current policy does not take this risk into account.

## **Programming is not appropriate**

CSC runs correctional programs that are cognitive-behavioural based and designed to target an inmate's risk factors. Programs are either moderate intensity or high intensity. The intensity-level is based on the inmate's assessed risk level. Women's programs are also different than men's programs. Despite some overlap, for instance, women's programs are tailored to meet women's unique needs. It would be concerning if a trans-identified male inmate was placed into women's prison without having taken any men's program, and was then referred to the women's program, as the women's program would not properly address his risk factors.

Secondly, the presence of a trans-identified male in the women's group would likely be a source of distress to the female inmates. Programs are a time when female inmates will discuss and think about many aspects of their history, some of it potentially very painful. As a result, they may hold back and not disclose certain things they otherwise would. Even if the trans-identified male is on his best behaviour, his mere presence has the potential to be disruptive to the program and interfere with the women's ability to fully gain from the program.

If the trans-identified male is not on his best behaviour and acts in a dominating or openly disruptive way, then this will negatively impact the group.

In addition, sexual offenders require very specific program material – even in men’s prisons the sex offender population takes a different program than general offenders. This program is called the ICPM (Integrated Correctional Program Model) Sex Offender Moderate or High Intensity Program (and Maintenance), which is designed to target their specific risk factors for sexual offending. Trans-identified male sex offenders don’t have access to this specific program in women’s prisons. Without this program, they would effectively remain untreated sex offenders. In the event that trans-identified male sex offenders get transferred directly into women’s prisons from the Regional Reception and Assessment Centre (RRAC), they would never have access to the men’s sex offender program. Although I have not yet heard of this happening, it is not inconceivable if the self-identification policy continues over time and picks up steam.

### **Bad for reintegration**

Spending a lot of time in maximum security is bad for reintegration. In men’s medium security prisons, if an inmate is really difficult to manage and on the edge of being maxed, staff will try pretty hard to keep him in medium *if* they know he is close to release.

So, if a trans-identified male inmate ends up in the max unit due to harmful behaviour toward female inmates and then gets released to the community, he is less likely to have a successful reintegration (i.e., more likely to reoffend or have his release suspended or revoked). However, if staff try to keep him in medium security and he continues to act out toward female inmates, then the female inmates will be negatively impacted and less likely to have a successful reintegration themselves due to behavioural incidents that lead to: a) not getting parole, b) increased security ratings, or c) getting their Statutory Release from maximum security.

In the case cited earlier, where the Indigenous woman was sexually assaulted by a trans-identified male inmate, she reacted emotionally and lashed out, which resulted in her being transferred up to maximum security. If she was released from maximum security, then this was not good for her reintegration – higher likelihood of relapse, reoffending and revocation.

The same dynamic is true for offenders residing in half-way houses in the community. Trans-identified males are being placed into community facilities for women. If a woman is sexually assaulted or sexually harassed in a half-way house, this may elevate her risk to react by using drugs, acting out or re-offending – bad for reintegration and bad for public safety.

Overall, the presence of trans-identified male inmates sets female inmates up to fail and can have a negative impact on the reintegration of both groups. If either women or trans-identified males are not having successful reintegration, this is bad for public safety. If the goal of corrections is to rehabilitate and work to lower recidivism, then this policy works against those goals.

## Double standards

While CSC is taking a highly accommodating attitude toward trans-identified male inmates seeking transfer to women's prison, the same is not true for trans-identified female inmates seeking transfer to men's institutions. CSC recognizes that it would be highly dangerous to place a trans-identified female in a men's prison. CSC knows very well that such a person would be pounced on immediately. They see the danger that males pose to females by not placing trans-identified females in men's prisons, but they *ignore* the danger that males pose to females when placing trans-identified males in women's prisons. This double standard is not acceptable and needs to be confronted. CSC needs to be consistent in their standards of care in regards to protecting female inmates in women's prisons. They are not doing this.

## Alternatives are possible

Most reasonable people agree that transgender people shouldn't suffer inequality or indignities because they are transgender, and the government has a "duty to accommodate" such people. However, there are other ways to accommodate the needs of trans-identified male inmates without transferring them to women's prison.

One way to meet the need is to create transgender units (or LGBTQ units) in men's prisons. These units can house trans-identified male inmates in a way that ensures their safety and dignity, while meeting their unique needs; for instance, by providing single cells, their own shower area, access to women's clothing and make-up, transgender health care, and counselling or peer support

groups. Trans-identified male inmates do have some unique needs that should be considered, but not at the expense of women's safety.

There are five regions within CSC: Atlantic, Quebec, Ontario, Prairies and Pacific. Depending on the numbers, CSC could create one transgender unit in each region, or one nationally depending on the need. This is operationally possible, as many institutions are set up with several living-units on-site. For instance, in Mountain Institution there are four living-units, each with three wings and two tiers each (ranges). They could dedicate one whole wing to transgender/LGBTQ inmates, as they have done with Indigenous inmates.

This does not necessarily mean that trans-identified male inmates will have absolutely no contact with the rest of the population, as they would still encounter other inmates during time spent in work, school, programs, library, gym, etc. The only way to prevent *all* contact with non-transgender inmates is to create an entire facility dedicated to transgender/LGBTQ inmates, which would have to be multi-level security in order for these inmates to serve their full sentences there.

In any case, CSC is obligated to ensure the safety of *all* inmates, including trans-identified male inmates, but also including women. It is not the job of female inmates to provide the solution to male-on-male violence within men's prisons. Trans-identified males should be housed safely in men's prisons. The safety and dignity of trans-identified male inmates can be upheld, all while ensuring the safety and dignity of female inmates. Sex and gender are separate and distinct, and public policy should reflect this by acknowledging that women's protections are *sex-based*. Current policy fails to address the distinct needs of women and also fails to distinguish any differences between women and trans-identified males.

## **A study needs to be done**

A focused study needs to be done on the impact of trans-identified male inmates in women's prisons, specifically their impact on female inmates and women offenders in the community. The most important aspect is to interview female inmates and *ask them* to describe their experience. Female inmates need to be heard. File reviews will also reveal how many observation reports and/or grievances there are, in relation to assaults and harassment by trans-identified male inmates. It would be helpful to look at the institutional charges and placements in maximum security. Care also needs to be taken to ensure

the study is not conducted or controlled by activist interest groups hijacked by a rigid ideology. Some possibilities that come to mind are the Senate or the Office of the Correctional Investigator, but it is not clear whether the latter can be neutral, given the clear direction from the current government on how Bill C-16 is to be interpreted, with gender identity and gender expression taking precedence over sex as a protected characteristic.

In my view, the practice of placing trans-identified male inmates in women's prisons has given rise to numerous negative impacts on the health and safety of female inmates. This policy must change, or female inmates will continue to suffer the consequences. [MLI](#)

**Editor's note:** On February 6, MLI released the study, *Rights and wrongs: How gender self-identification policy places women at risk in prison*. Authored by Jo Phoenix, this paper looks at the impact of *Commissioner's Directive 100: Gender Diverse Offenders*, which have redefined women's prisons as places that incarcerate by gender identity and not sex. As she notes, this policy places women at risk, undermines their rights, and disproportionately disadvantages minority women.

## About the author



**April Kitzul** is a former Institutional Parole Officer and Correctional Program Officer at Correctional Service Canada, where she acquired extensive experience working in men's institutions until her retirement in July 2022. Previously, she worked at the provincial level in the Ministry for Children & Families as a Child Protection Social Worker. She took an interest in transgender ideology and its impact on women and children in 2019, when she became aware of mounting problems as a result of Bill C-16. In 2021, she created her own website ([trans-truth.com](http://trans-truth.com)) to serve as an information resource and to encourage people to do their own advocacy/activism.

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