

November 19, 2024

Regan Rush, Chief
Special Litigation Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530



FOUNDATION
AGAINST
INTOLERANCE
& RACISM

Sent via email

Dear Director Rush:

The Foundation Against Intolerance & Racism (FAIR), on behalf of female inmates in Washington State, urgently requests that the Civil Rights Division, Special Litigation Division of the United States Department of Justice initiate an investigation under the Civil Rights of Institutionalized Persons Act into sex-based discrimination perpetrated by the Washington State Department of Corrections (DOC). Your office recently [initiated an investigation](#) into the California Department of Corrections and Rehabilitation based on allegations of sexual assault against female inmates by prison staff. We commend your efforts to protect these women from staff-related harm and respectfully ask that you similarly investigate to ensure the safety of female inmates from threats posed by male inmates as well as staff, in California women's prisons as well as in Washington State.

We present below a series of alarming incidents reported by current and recently released inmates from the Washington Corrections Center for Women (WCCW), collectively demonstrating a pervasive pattern of discrimination violating the Fourteenth and Eighth Amendments of the United States Constitution. This ongoing discrimination stems from recent DOC policy changes that permit male prisoners who self-identify as transgender to be housed in facilities designated exclusively for females.

The Immediate Need for Action

The solution to this dire problem is straightforward: male inmates must be excluded from correctional facilities reserved for women. It is perfectly legal to discriminate against males in this context because males and females are different in objective and significant ways. This is demonstrated by the fact that Washington law has long permitted female inmates to be confined and rehabilitated in women-only facilities, separated from male inmates, and no legal challenge to that lawful sex-based discrimination has ever been mounted or succeeded.

Critically, only females can become pregnant, and males are, on average, larger and stronger than females. Statistically, males commit the vast majority of violent and sexually motivated crimes. Further, a majority of female inmates have been victimized by male violence prior to entry into prison. The United States Constitution has consistently been interpreted to allow sex-based classifications when they are substantially related to achieving an important government interest. Excluding males from female prisons to ensure the safety of vulnerable female inmates unquestionably meets this criterion.

Disturbing Incidents Highlighting the Crisis

It is indisputable that forcibly housing female inmates with male inmates discriminates against females by exposing them to heightened risk of harms of a nature and extent not faced by males, inherently rendering them less safe than their male counterparts. Over the past several months, we have collected firsthand accounts that substantiate these grave concerns. Since late July 2024, at least 34 female inmates have filed formal complaints through the DOC's Resolution Request process, detailing a series of disturbing incidents, including:

- **Sexual Assault:** A female inmate was forcibly housed with a male prisoner who sexually harassed and groped her while she slept.
- **Physical Attack on a Disabled Inmate:** A disabled female inmate, confined to a wheelchair, was physically attacked by a 6'7" tall male prisoner.
- **Worsening Medical Conditions:** A female inmate with fibromyalgia has suffered a significant decline in her health due to the stress of being housed with a male inmate.
- **Voyeurism and Invasion of Privacy:** Multiple female inmates reported voyeuristic behavior by male inmates during showers or while changing clothes, leading to severe fear, embarrassment, stress, and sleep deprivation.
- **Triggered Trauma Responses:** A female inmate described experiencing terror, shaking, and irregular heart rhythms due to being housed with a male.
- **Exacerbated PTSD:** Another inmate reports that her PTSD, stemming from past trauma, has been severely triggered by proximity to male inmates.
- **Psychological Harm Leading to Medication:** A female inmate has been compelled to begin anxiety medication after enduring repeated sexual advances from a male prisoner.
- **Non-Consensual Sexual Activity:** Reports of allegedly "consensual" sex between male and female inmates have surfaced, which is deemed impossible under the Prison Rape Elimination Act (PREA) since incarcerated individuals cannot legally consent. This indicates that sexual abuse is occurring at WCCW.

Systemic Factors Exacerbating the Risk

Beyond the evident physical differences between the sexes, it is crucial to recognize that female inmates have disproportionately experienced higher rates of physical and sexual abuse by males prior to incarceration. Also, prisons designated for male inmates are specifically designed to

secure individuals with a higher propensity for violent crimes. Women's facilities lack the infrastructure to accommodate the heightened security risks posed by male prisoners. These factors culminate in a disproportionate risk of harm to female inmates as well as altering the environment in which female inmates are rehabilitating, making it less likely for these women to successfully overcome their trauma and other mental health issues to prepare to reintegrate into society upon their release from prison. These factors underscore the discriminatory impact of the current DOC policies.

Ongoing Psychological Trauma

The women who have submitted grievances have not only suffered the initial harms outlined in their Resolution Requests but are also enduring ongoing psychological trauma due to the DOC's failure to promptly accommodate their need for sex-segregated room assignments. Furthermore, because bathrooms and other common spaces are shared among all inmates within a unit, these women are continually exposed to the presence of male inmates at WCCW, perpetuating their distress even if they are not assigned to share a room with a male. This distress is caused by, *inter alia*, the indignity and violation of privacy expectation women retain (even in prison) to not be forced to expose their unclothed bodies to the gaze of males, and to not be forced to see the exposed unclothed bodies of males. Whether a male inmate professes a "gender identity" of "woman" or "female," whether a male inmate is taking exogenous estrogen to try and "transition" or "change sex," whether a male inmate has had genital surgery castrating him and/or removing his penis, the fact remains that male inmates are male, and forcing females to use intimate facilities in the presence of the opposite sex violates long-understood rights of privacy and dignity accorded to each sex.

Facially Discriminatory Policies

Moreover, the DOC's recent policies are overtly discriminatory. The DOC employs a Preferences Request form that allows certain inmates to request "gender-affirming" housing and other accommodations. However, this form is exclusively available to transgender, nonbinary, or intersex inmates, thereby excluding inmates who do not identify as "transgender" from making similar requests. In other words, inmates who self-identify as transgender are granted the opportunity to make specific housing requests, but this same opportunity is denied to other inmates. With respect to housing males in the women's facility, this is sex-based discrimination, inasmuch as men are given the option to request transfer into the women's facility and be housed with female inmates, and it is women who are not given the same option to, for instance, request NOT to be housed with males. It is also worth noting that the DOC's 2023 PREA Annual Report plainly lists the 11 DOC prison facilities, 9 of which are described as facilities housing "adult males," while the other 2 are described as facilities housing "incarcerated individuals." This is a direct admission by the DOC that due to its "gender identity"-based policies allowing men to be housed in the women's facilities, the DOC de facto has converted the women's facilities into

coed or mixed-sex facilities. This change, without legislative or constitutional approval, deprives women of a long-accepted right to rehabilitate in a space separated from the dangers, risks, and negative repercussions that flow from housing men and women together.

A Call to Uphold Justice and Safety

We urgently implore you to investigate the Washington DOC and WCCW's alarming pattern of sex-based discrimination against female inmates. The DOC has made extensive efforts to accommodate male inmates who self-identify as transgender, nonbinary, or intersex, but these accommodations have severely eroded the rights and compromised the safety of female inmates. Allowing this practice to continue not only violates constitutional protections but also implicates the Department of Justice in the ongoing and systemic erosion of women's rights in America.

The State Attorney General, Bob Ferguson, supported the DOC's policy shifts to accommodate the wishes of "transgender" male inmates. Mr. Ferguson was elected Governor earlier this month. Clearly, the women in DOC custody will have no government or political support for re-establishing women's prisons as female-only environments. The women incarcerated in the State of Washington urgently need the Department of Justice to investigate and vindicate their rights.

Conclusion

The safety, dignity, and rights of female inmates are being jeopardized under current DOC policies. Immediate action is required to rectify this injustice. We respectfully request that the Department of Justice fulfill its duty to uphold the Constitution by investigating these violations and ensuring that female inmates are protected from discrimination and harm.

We stand by ready and willing to meet with you to provide any additional details available to us to assist your office in evaluating this request and initiating investigation.

Sincerely,

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cc: The Honorable Donald J. Trump, President Elect
The Honorable J.D. Vance, Vice-President Elect
The Honorable Matthew Gaetz, Attorney General appointee
Kristen Clarke, Assistant Attorney General, Civil Rights Division