Transgender Rights in federal prisons

This booklet explains what rights you have as a transgender federal prisoner, and how to make sure those rights are protected.
Prison

Trans prisoners can face hard time in prison. Many are victims of verbal or sexual harassment or assault, and many may not be able to get the medical treatment they need. If you are a trans prisoner in a BC federal institution, you can call Prisoners’ Legal Services for help at 1-866-577-5245.

Basic Rights

According to human rights law, trans prisoners have the right to live without harassment or discrimination based on gender. This should mean that you have the right to:

- Shower in private;
- Wear clothes and makeup as you choose;¹
- Order personal effects according to your gender (such as deodorant, etc.);
- Be addressed by your preferred name and pronoun (to be referred to as “she” if you are a woman, or “he” if you are a man); and
- Be treated with dignity and respect, and not be the target of verbal harassment or violence because of your gender.

Prisons do not always respect these rights. If you have a problem having your basic rights respected, you can call Prisoners’ Legal Services for help.

**Placement**

Federal trans prisoners are placed according to their genitals. If you have had Sex Reassignment Surgery (SRS), you should be placed in a men’s or women’s prison according to your gender. If you have not had SRS, you will most likely be placed in a men’s or women’s prison according to your birth sex.²

Correctional Service of Canada (CSC) policy simply refers to “pre-operative” trans prisoners. It is not clear what elements of SRS are required to be placed according to your gender. In practice, CSC seems to be most concerned about penises in women’s prisons. You may be able to be placed according to your gender, if that is your wish, without having full SRS. You may be able to remain in a women’s prison even if you have had some SRS if you are a trans man, if that is your wish.

Any policy must comply with human rights law. There may be an argument in your case that you should be placed according to your gender, even if you have not had SRS. If you are placed in a prison that is not the same as your gender against your wishes, you can call Prisoners’ Legal Services for help.

---

² Guidelines 800-5, paragraph 3.
Safety – Double Bunking and Solitary Confinement

CSC has a duty to protect your safety.³ This means that you should not be double bunked with another prisoner if you feel it puts your safety at risk.

CSC policy says it will consider your vulnerability and the risk you face of being a victim from a roommate. Staff should consider whether your proposed roommate has a history of victimizing others and his criminal record.⁴

If the institution is trying to double bunk you, ask to have your interview in private. If you do not feel safe with your proposed roommate, tell the officer who is interviewing you. It might be a good idea to get a letter from your community doctor if possible, or from health care staff at the institution saying that you should not be double bunked.

Trans women prisoners are often classified as “protective custody” because of their vulnerability to victimization. This means that they are put in the same prisons as sex offenders, which increases their risk of sexual violence.

If you feel unsafe, speak with a staff person you trust, or call Prisoners’ Legal Services. If you are worried that you will be assaulted, you can ask to go to solitary confinement (also called segregation). You should be kept there only as long as you feel unsafe. The prison should try to find a safer

³ Corrections and Conditional Release Act, s. 3(a).
place for you to live where you will have as much freedom as possible.

If you are being held in solitary confinement against your wishes, call Prisoners’ Legal Services.

**Strip searches and urinalysis testing**

CSC’s policy allows the officer to decide whether a male or female officer will frisk search a trans prisoner. CSC’s policy on strip searching trans women prisoners allows for a “split search” – a female officer searches your top half, and a male officer searches your bottom half. The policy does not offer you your choice of the gender of the officers who do the search.\(^5\) CSC policy on urinalysis testing says: “the collector will be of the same sex as the offender”.\(^6\)

An Ontario Human Rights Tribunal decision\(^7\) has found that it is humiliating to require a trans woman to be strip searched by a male officer against her wishes, and ordered that the Peel Regional Police Department change its policy. The Peel Police policy now allows the person being strip searched to choose between being searched by male officers, female officers or a split search. This decision is not binding on CSC, but you can argue that human rights law requires you to have a choice of how you are strip searched and urinalysis tested.

---

Access to Hormones or Sex Reassignment Surgery (SRS)

Federal prisoners should get the same quality of health care that they can get in the community. If you were on hormones in the community, they should be continued in prison.  

You might be able to get SRS if:

- a recognized gender identity specialist recommends that you get SRS while in prison; and

- the specialist can confirm that you have lived in the community for at least one year as a member of your gender (the “real life test”) before you went to prison.

Internationally recognized standards do not require prisoners to satisfy the “real life test” in the community before qualifying for SRS. If you have lived as a member of your gender for at least a year in prison, you might be able to get SRS while in federal prison. You can call Prisoners’ Legal Services for help.

---

8 Guidelines 800-5, paragraph 2.
9 Guidelines 800-5, paragraph 5.
How can I stand up for my rights?

If you have been treated unfairly because you are trans, you can make a complaint to the prison.

You can make a complaint on a complaint form and submit it to staff. If you are not happy with the response you get, you can file a grievance with the Warden. If you are not happy with the Warden’s response, you can make a national grievance to CSC. Ask a staff person to give you the form.

You can also call the Office of the Correctional Investigator (OCI) for help. The OCI can make recommendations to CSC about your treatment. It cannot order CSC to do anything.

Make sure you keep copies of all of the complaints and grievances you submit. You should also keep a journal of your treatment with dates and names, if you know them.

If you are not happy with the outcome of your complaint or grievance, you can make a human rights complaint. Federal prisoners can make a complaint to the Canadian Human Rights Commission. The Commission decides whether or not to refer your complaint to the Canadian Human Rights Tribunal. You can call the Commission at 1-888-214-1090.

You can call **Prisoners’ Legal Services** for help at 1-866-577-5245. Our telephone lines are open Monday to Friday between 9-11 a.m. and 1-3 p.m. Before you contact us, you must call the Legal Services Society Call Centre at 1-888-839-8889 for a referral.
This publication contains general information only. Each situation is unique. The law and policy can also change. If you have a legal problem, contact Prisoners’ Legal Services or a lawyer.