



October 2, 2024

Senator Corey Booker
Chairman
Subcommittee on Criminal Justice and Counterterrorism
Senate Committee on the Judiciary
Washington, D.C. 20510

Senator Tom Cotton
Ranking Member
Subcommittee on Criminal Justice and Counterterrorism
Senate Committee on the Judiciary
Washington, D.C. 20510

Dear Chairman Booker, Ranking Member Cotton, and Members of the Senate Judiciary Committee,

Thank you for the opportunity to testify last week at the “Sexual Assault in U.S. Prisons Two Decades After the Prison Rape Elimination Act” hearing. It was an honor to appear before the subcommittee.

As you may recall from my [testimony](#), I am the Director of IW Features at Independent Women’s Forum (IWF), the leading national women’s organization dedicated to developing and advancing policies that aren’t just well-intended, but actually enhance people’s freedom, opportunities, and well-being. I have been privileged to also work closely with Amie Ichikawa, the founder of [Women II Women](#), an organization dedicated to advocating for and assisting current and former female inmates. As someone who speaks with female inmates on a daily basis, Amie worked with me closely on my series and in offering these recommended policy changes.

IWF has serious concerns about the inhumane treatment of vulnerable women in custody whose safety and ability to live in dignity have been upended by the forced integration of male prisoners into their correctional facilities.

IWF welcomes and applauds your willingness to examine proposed changes to harmful policies that allow men to self-identify into women's prisons. We appreciate the opportunity to provide input and stand ready to help the committee however we can to advance these important policy changes that put an end to this miscarriage of justice.

As our **mini-documentary series**, "Cruel & Unusual Punishment: The Male Takeover of Women's Prisons," has exposed, far too many women have suffered well-documented physical and psychological damage after being forced to share their most private and intimate spaces with men—many of whom are violent, sexual predators serving time for heinous crimes.

The **vast majority** of incarcerated women have extensive histories of sexual trauma and abuse. These women are far from bigoted. In fact, several expressed trying to befriend new transgender-identifying male inmates before being manipulated, harassed, abused, and even raped by them.

In 2003, the **Prison Rape Elimination Act (PREA)** was passed unanimously by both houses of Congress. The aim was to create zero tolerance for prison rape. By allowing men to self-identify as women and transfer to women's prisons, we are not just tolerating rape, but enabling it.

As you weigh recommendations for policy reforms, we urge you to champion policies that prioritize the safety of incarcerated women so they no longer find themselves locked into rooms with convicted male rapists, pedophiles, and murderers—the very definition of cruel and unusual punishment.

A place to start would be to review the U.S. Department of Justice, Federal Bureau of Prisons' **Transgender Offender Manual**, released on January 13, 2022. Sections 5 (Initial Designation) and 6 (Housing and Programming Assignments) describe the need for prison staff to evaluate inmates on a case-by-case basis in an effort to ensure that "the inmate placement does not jeopardize the inmate's wellbeing and does not present management or security concerns." Note here that the inmate's wellbeing is balanced against "management and security concerns"—the "wellbeing" of all the other inmates is ignored.

This guidance states: “In making housing unit and programming assignments, a transgender or intersex inmate’s own views with respect to his/her own safety must be given serious consideration.” The trans-identifying inmate’s “own views” warrant “serious” consideration. The views and well being of women inmates aren’t not given equal consideration. And when it comes to showering, “Transgender inmates shall be given the opportunity to shower separate from other inmates when individual shower stalls are unavailable.” Note that transgender inmates must be given the opportunity to choose where to shower. But what about the female inmates who will have no choice but to accept the decision of the male bodied inmate who wants to shower with them?

This guidance exemplifies what is wrong with the current policies. The views and declared preferences of the inmate who claims a trans identity are supreme over the interests of other inmates, including female inmates who will be physically and mentally at risk.

New guidance and policies must be embraced to reprioritize the constitutional and civil rights of female inmates. Female inmates should have the right to:

- Prison facilities that offer them women-only housing and the determination of “womanhood” must be based on the basis of sex, rather than gender identity. **No female prisoner should be required to share prison facilities with male inmates.**
- A dedicated staff member, who is separate from decision making about other privileges and the potential for parole, to take complaints under the PREA and other instances of abuse. **No inmate should fear that speaking up about abuse will be met with retribution.**

The Federal Bureau of Prisons and all those in charge of prison facilities should explore increasing penalties for inmates found guilty of sexual assault or physical abuse of fellow inmates. Consequences are the only way to discourage this behavior.

Similarly, Congress should explore limiting federal funding for any prison system that is failing to protect women’s civil rights by transferring men into

women's prisons. For example, California's **SB 132**, which took effect on January 1, 2021, "allows incarcerated transgender, non-binary and intersex people to request to be housed and searched in a manner consistent with their gender identity." In other states, such as **Washington** and **Minnesota**, the departments of corrections have accepted, as a condition of legal settlements, a new policy that allows male inmates to request transfer into women's prisons based on gender identity. These policies wrongly prioritize the interests of men over the safety and well-being of women.

This is not a Left or Right issue. It is a human issue. Incarcerated women need and deserve female-only spaces. Anything less is a violation of their dignity and most basic human rights.

We would welcome the opportunity to discuss this critical issue as well as any of the solutions that we have put forward for your consideration. Thank you.

Sincerely,

Kelsey Bolar

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Director of Storytelling

Independent Women's Forum