



Trans prisoner rights

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

“Trans” includes many different identities and expressions. If your gender identity or expression is different from your sex at birth, or you consider yourself to be neither male nor female, both male and female, or two-spirited, this booklet may be useful for you.

Basic rights

You have a right to live as other prisoners do and to have your needs met without being discriminated against because of your gender identity or expression.¹ This includes the right to be treated with dignity and respect, to live and work in conditions that are safe, and to be free from verbal harassment or violence because of your gender.² Your rights as a trans prisoner are outlined in this booklet.

If you are a trans prisoner in a BC federal institution, you can call Prisoners’ Legal Services for help at 1-866-577-5245.

1 *Canadian Human Rights Act*, RSC 1985, c H-6, ss 2-3 [*Canadian Human Rights Act*].

2 Correctional Service Canada, *Interim Policy Bulletin 584: Bill C-16 (Gender Identity or Expression)* (Ottawa: CSC, 2017-12-17) [*Interim Policy Bulletin 584*]; *Corrections and Conditional Release Act*, SC 1992, c 20, ss 4, 69-70 [*CCRA*].

Placement by gender identity

You have the right to live in an institution that fits with your gender identity. You should not be placed simply on the basis of your genitalia or the gender listed on your documents. This means you do not have to have gender confirming surgery to be at an institution that fits your gender.

Prisons in Canada are designed for either men or women. If you do not identify as either a man or woman (gender non-binary), and do not feel like you could live with dignity in either a men's or women's prison, you can call Prisoners' Legal Services for help. You should be placed in a prison setting where you will feel safe and respected.

What happens when I first get to prison?

You can ask to go to a prison that fits with your gender identity.

The Correctional Service of Canada (CSC) should place you according to your wish, unless there are serious health or safety issues that they cannot resolve.³

Staff should talk with you about which prison you will go to in a private place, where no one else can hear.⁴ For example, you might want to talk about how important it is for you to be in a women's institution for your safety. You could also talk about how living in an institution of your gender would give you access to appropriate programs, services and health care.⁵

3 *Interim Policy Bulletin 584.*

4 *Interim Policy Bulletin 584.*

5 *CCRA, ss 28, 87.*

If CSC decides not to place you according to your preference, they must give you a written decision explaining the reasons.⁶ If this happens, you can call Prisoners' Legal Services for help.

What if I am at a prison that does not fit my gender?

You can apply for a voluntary transfer.

The staff from your current prison should talk to staff from the prison you want to transfer to, and should also meet with you about your request.⁷ In this meeting, you should talk about why the transfer is important to you, such as how it will make you feel safer or how it will let you access health care, programs and services for people with your gender.⁸ If there are other issues you are facing because of your gender, you could also talk about how a transfer to a men's or women's prison would help to resolve these issues.

CSC will re-assess your security level as part of the recommendation about your transfer.⁹ If your Institutional Parole Officer (IPO) recommends that your security level be raised, you should receive an Assessment for Decision for Transfer.¹⁰ Contact Prisoners' Legal Services as soon as possible if you need help.

6 *Interim Policy Bulletin 584.*

7 *Interim Policy 584; Correctional Service Canada, CD 710-6: Review of Inmate Security Classification (Ottawa: CSC, 2018-01-15), para 22 [CD 710-6].*

8 *CCRA, ss, 28, 87.*

9 *CD 710-6, para 11.*

10 *Correctional Service Canada, GL 710-2-3: Inmate Transfer Process (Ottawa: CSC, 2018-01-15), para 23.*

Once you are transferred to another institution, you have 30 days to receive a “pen pack”. That means you can get personal property from outside the prison, unless there are health, safety or security issues.¹¹ For more information, see the section below on “PERSONAL ITEMS, CLOTHING AND CATALOGUES”.

What if my request to transfer is refused?

If CSC denies your transfer or decides to place you in higher security, you can file a final level grievance.¹² Ask staff for a national level grievance form.

If your grievance is unsuccessful, you can apply to the Federal Court to review the decision.¹³ A judicial review must be filed within 30 days of when you receive the response to your national grievance.¹⁴

What happens when I go to a new institution?

After you arrive, you will have a meeting with a staff member within 24 hours to talk about major safety issues. This is called the Immediate Needs Identification Interview.¹⁵ Tell CSC if you need your own cell, a private toilet or a private shower.

11 Correctional Service Canada, *CD 566-12: Personal Property of Offenders* (Ottawa: CSC, 2015-10-19), para 11 [CD 566-12].

12 Correctional Service Canada, *GL 081-1: Offender Complaint and Grievance Process* (Ottawa: CSC, 2018-02-19), para 2(c).

13 Correctional Service Canada, *CD 081: Offender Complaints and Grievances* (Ottawa: CSC, 2018-02-19), para 14.

14 *Federal Courts Act*, RSC 1985, c F-7, s 18.1(2).

15 Correctional Service Canada, *CD 705-3: Immediate Needs Identification and Admission Interviews* (Ottawa: CSC, 2018-01-22), para 3 [CD 705-3].

Within 5 working days, you will have a meeting with your IPO. This is called an Admission Interview.¹⁶ You can talk about things like your preferred name and pronoun and other ways CSC can respect your gender.

Other issues that you might want to talk about at admission are discussed in this booklet and listed in the section below titled “CREATING A PLAN TO MEET YOUR NEEDS”. If you don’t discuss these things with your IPO during your Admission Interview, you can ask a staff member later on for a private meeting. Any plan that you and the officer decide upon should be recorded in your file.

Safety and cell sharing

CSC has a duty to protect your safety.¹⁷ This means that you should not be put in a cell with another prisoner if it would put you at risk.

You have a right to living conditions that are safe and do not undermine your dignity.¹⁸ If cell sharing or double-bunking would compromise your safety or dignity, you can request single cell status.

Before CSC decides if you can share a cell with another prisoner, the officer will interview you about your risks and needs.¹⁹ They

16 *CD 705-3*, para 5.

17 *CCRA*, s 3(a).

18 *CCRA*, ss 4, 69-70.

19 Correctional Service Canada, *CD 550: Inmate Accommodation* (Ottawa: CSC, 2017-04-18), paras 15-17 [CD 550].

need to consider your safety in making this decision, and to consider your needs related to your gender identity or expression.²⁰

Ask to have your interview with the officer about cell sharing in private. In this interview, you should explain if you have any unique or particular needs, or if you feel vulnerable because of your gender identity.²¹ You should tell the officer if you do not feel safe with your proposed roommate.

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 another unit or to segregation. Segregation should only be a short-term solution. CSC should try to find a safer place for you to live where you will have as much freedom as possible.

If you are afraid to leave segregation and CSC is not providing you with another housing option that is safe for you, call Prisoners' Legal Services. If you are being held in segregation against your wishes, call Prisoners' Legal Services.

Private showers and toilets

If you do not feel that your toilets or showers are safe or private enough, you can discuss this issue with CSC staff. Ask them to create an individual plan for you so you can have safe and private shower and toilet access.²² If you try to do this and the problem is still not resolved, you can contact Prisoners' Legal Services for help.

20 *Interim Policy Bulletin 584.*

21 *CD 550; Interim Policy Bulletin 584.*

22 *Interim Policy Bulletin 584.*

Searches and urinalysis

You have the right to choose whether searches and urinalysis testing are done by male or female officers.²³ You can contact Prisoners' Legal Services for help if you are not given this choice.

Frisk searches and strip searches

You can ask a staff member to create an individual plan on your file for the process that will take place if you are to be searched.

You have a right to choose whether searches are done by male or female officers. This applies to everyone in the room, including witnesses or camera operators.

You can also ask for a “split search,” which means male officers do one part of your body and female officers do another part. For example, you could ask that a female officer search your upper body and a male officer search your lower body. Each part should be searched in private.

Body cavity searches

Body cavity searches can only be done by qualified medical practitioners and only if you agree to the search.²⁴

23 *Interim Policy Bulletin 584.*

24 *CCRA, s 52.*

Urinalysis

If you are asked to give a urine sample, you can request a male or female collector.²⁵

An officer should work with you to create an individual plan for the process that will take place if you are asked to give a urine sample and save this in your file.

Access to hormones or gender-affirming surgery

If you have gender dysphoria, you may need hormone therapy or gender confirming surgery (sex reassignment surgery). Talk to your institutional doctor to get a referral to a hormone specialist or gender identity specialist.

If a medical specialist believes hormone therapy is medically necessary for you, CSC should pay for it.

To be approved for gender confirming surgery, you need a recommendation from gender identity specialists. If it is considered medically necessary, CSC should pay for genital surgery or mastectomy (breast removal with construction).²⁶

25 *Interim Policy Bulletin 584.*

26 CSC, Guideline 800-5: *Gender Dysphoria*, (Ottawa: CSC, 2017-01-09), paras 5-6 (This guideline is now revoked, but the criteria related to gender confirming surgery continues to apply per *Interim Policy Bulletin 584*) [GL 800-5].

To qualify for gender confirming surgery, a gender identity specialist needs to be sure that:

- you experience discomfort or distress because of the sex you were assigned at birth (you have gender dysphoria);
- you are able to make a fully informed decision and to consent to treatment;
- you are 19 or older; and
- any significant medical or mental concerns you have are reasonably well-controlled.²⁷

For genital surgery, you need to show you have lived in your gender for 12 months in a row. This can be in the community or in prison.²⁸ You might need to have 12 months of hormone therapy first. Talk about this with your specialist.

CSC does not pay for other surgeries to make you look more feminine or masculine, like breast augmentation, facial feminization or Adam's apple reduction.²⁹ If you want other procedures done at the same time as genital surgery or breast removal and you can afford to pay for them, you can ask to have them done at the same time.

27 The World Professional Association for Transgender Health, "Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People" (2011), v. 7, p 104 [WPATH Standards]; GL 800-5, para 5 (see note in footnote 26).

28 WPATH Standards, p 27; GL 800-5, para 5 (see note in footnote 26).

29 Correctional Service Canada, *National Essential Health Services Framework* (September 2017) at 19-20.

You might need other procedures like hair removal, or prosthetics, to help you with your gender expression. You can ask a doctor whether they are medically necessary and ask if CSC will pay for them.

If you meet the requirements for hormones or surgery but there is a long delay in receiving treatment, you can contact Prisoners' Legal Services for help.

Your name and preferred pronouns

Officers must refer to you by the name and gender pronouns (“he”, “she” or “they”) you go by. This applies to written documents and to when officers are speaking to you or about you.³⁰

You should let an officer know if you have a preferred name or gender pronoun and ask them to write that in your file.

Your OMS file will still use your legal name at the top. If you want the name you use to be listed as your legal name in your file, you will need to complete a legal name change. You can ask your IPO how to change your name. If you already changed your name, you must show the documents.

The sex code in your file can only be changed if you have sex reassignment surgery.³¹

You will need to be fingerprinted to apply for a legal name change. CSC should accommodate you by doing your fingerprints at the institution if it is difficult for you to get an escorted temporary

30 *Interim Policy Bulletin 584.*

31 *Interim Policy Bulletin 584.*

absence. If CSC says that they cannot send your electronic fingerprints to the Vital Statistics Agency (VSA), ask them to do ink fingerprints instead. When you submit your name change application to the VSA, include a letter explaining why you are sending ink fingerprints rather than electronic ones.

For help with a legal name change or gender marker change, you can contact the Gender Self Determination Project, run by the PACE Society, at 604-828-4915.

Personal items, clothing and catalogues

You have a right to have the items you need for your personal health, safety and dignity.³² That means you can have clothing, hygiene products and other personal health items that fit your gender.

If you transfer to an institution according to your gender identity, you should get a 30 day window of time to receive a “pen pack” (personal items from outside sources).³³ You should be allowed to keep these items as long as they don’t pose any risk to safety, health or security.³⁴

You are allowed to purchase items from both the men’s and women’s catalogues. The only items you cannot buy from the catalogue are those that are restricted because of safety, health or security reasons.³⁵ Wigs are allowed. CSC will not pay for them

32 *Corrections and Conditional Release Regulations, SOR/92-620, s 83; CCRA, ss 4, 69, 70.*

33 *Interim Policy Bulletin 584.*

34 *Interim Policy Bulletin 584; CD 566-12, para 11.*

35 *Interim Policy Bulletin 584.*

but Health Services should help you find a community agency that can help you get a wig.³⁶

If you need prison-issued clothes from the men’s prison or the women’s prison, or a mix, CSC should provide this to you. They have a duty to accommodate your needs without discrimination.

The rules for what items are restricted are different depending on the gender and security level of your institution. Look to Annexes B and C in CD 566-12 for a list of items that are not allowed.³⁷

Creating a plan to meet your needs

If you ask to have your needs met based on your gender identity or expression, CSC will make a protocol for you to make sure your gender identity is respected and you are safe. Your protocol might include:

- the name and pronoun (“he”, “she”, “they”) you go by;
- whether male or female staff will do your urinalysis testing, searching, video monitoring, medical escorts and shower decontamination; and
- your access to private and safe showers and toilets.³⁸

Your meeting about your protocol should be in private. Your protocol will go in your OMS file.

36 Correctional Service Canada, *National Essential Health Services Framework* (September 2017) at 20.

37 *Interim Policy Bulletin 584*; CD 566-12, Annexes B, C.

38 *Interim Policy Bulletin 584*.

CSC must respect your requests related to your gender identity or expression unless there are serious health or safety concerns that CSC cannot resolve.³⁹ Any agreement that is reached will be recorded in your file, and must be carried out with respect for your dignity.

Privacy of your information

CSC is allowed to share information about your gender identity only with people directly involved in your care and only when relevant.⁴⁰ Any conversations that they have with other staff about you must be in private where nobody else can hear.⁴¹

Conversations with you that refer to your gender identity must also be in private. That includes things like intake interviews or assessments for cell sharing.⁴²

Harassment and safety

You have a right to be free from harassment and violence. You also have a right to safety and dignity where you live and work.⁴³

If you are facing a risk to your safety or dignity, you can contact Prisoners' Legal Services for help.

39 *Interim Policy Bulletin 584.*

40 *Interim Policy Bulletin 584.*

41 *Interim Policy Bulletin 584.*

42 *Interim Policy Bulletin 584.*

43 *Interim Policy Bulletin 584; CCRA, ss 4, 69-70.*

How can I stand up for my rights?

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

You can fill out 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. See PLS' booklet: "Writing an Effective Grievance".

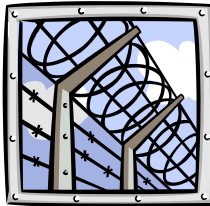
You can also call the Office of the Correctional Investigator (OCI) for help. The OCI can make recommendations to CSC about your treatment. It cannot order CSC to do anything.

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. See PLS' booklet: "Human Rights for Federal Prisoners".

You can call **Prisoners' Legal Services** for help at 1-866-577-5245. Our telephone lines are open Monday to Friday between 9-11 am and 1-3 pm. 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. Law and policy can also change. If you have a legal problem, contact Prisoners' Legal Services or a lawyer.



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