



# Trans rights in prison

This booklet explains what rights you have as a trans person in federal prison, and how to exercise your rights.

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**“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 people in prison do and to have your needs met without being discriminated against because of your gender identity or expression.<sup>1</sup> 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.<sup>2</sup> Your rights as a trans person in prison are outlined in this booklet.

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

## **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

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

2 Correctional Service of Canada, *Policy Bulletin 685* (Ottawa: CSC, 2022-05-09); *Corrections and Conditional Release Act*, SC 1992, c 20, ss. 4, 69, 70 [CCRA].

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genitalia or the gender listed on your documents. This means you do not have to have gender-affirming 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 Canada (CSC) should place you according to your wish, unless there are serious health or safety issues that they cannot resolve.<sup>3</sup>

Staff should talk with you about which prison you will go to in a private place, where no one else can hear.<sup>4</sup> 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.<sup>5</sup>

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3 Correctional Service of Canada, *CD 100: Gender Diverse Offenders* (Ottawa: CSC, 2022-05-09), paras. 33, 36 [CD 100].

4 CD 100, para. 60.

5 CCRA, ss. 28, 87.

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After making your request, you should be provided with an opportunity to speak with a staff member from the potential receiving institution so that you can ask any questions you have about residing there. CSC has a duty to consult and involve you in the decision-making process and this should be documented in the decision once it is made.<sup>6</sup>

When considering your request, CSC will hold case conferences to assess your request. Case conferences are when staff meet to discuss your risks and needs with respect to your request. CSC will discuss the potential impact on the population of the receiving institution, potential impacts on you if your request is denied, potential impacts on you if your request is granted, and any challenges related to security.<sup>7</sup>

CSC will write an Assessment for Decision that gives recommendations for your security level and penitentiary placement. You will be given a copy of this report and you should be given a chance to give your comments (verbally or in writing) within 2 working days. Your comments should be considered by the decision-maker before making a decision.<sup>8</sup>

The warden of your current institution, in consultation with the Regional Deputy Commissioner, will forward the recommendations for the final decision to the Assistant Commissioner, Correctional Operations and Programs (for requests to men's institution) or to the Deputy Commissioner for Women (for requests to women's institutions).<sup>9</sup>

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6 CD 100, para. 37.

7 CD 100, Annex B.

8 CD 100, para. 38.

9 CD 100, para. 39.

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If CSC decides not to place you according to your preference, they must give you a written decision explaining the reasons. 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. CSC will write an Assessment for Decision that includes a security classification review and a transfer recommendation.

The Assessment for Decision will identify any health or safety concerns they have, and should say what could reduce these concerns, and why they think these measures will address the concerns or why measures cannot address the concerns.<sup>10</sup>

The Assessment for Decision is written by the Parole Officer/ Primary worker at your current institution.<sup>11</sup> They should consult with you and involve you in the decision. Your views should be included in the Assessment for Decision.<sup>12</sup>

When you submit a gender-related transfer request, you should be given a chance to speak with a staff member from the institution you are applying to transfer to, to ask questions, without delay.<sup>13</sup>

In this meeting, you should talk about why the transfer is important to you. How will it make you feel safer? How it will let you access

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10 CD 100, para. 42.

11 CD 100, para. 43.

12 CD 100, para 47.

13 CD 100, para. 46.

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health care, programs and services for people with your gender?<sup>14</sup> 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.<sup>15</sup> If your request is denied or you withdraw your application, your security classification should remain unchanged and should not be affected by the security reclassification review, which might have changed your security classification.<sup>16</sup>

You will be given a copy of the Assessment for Decision. If a recommendation is made to change your security level or if the recommendation does not support the transfer, you should be given a chance to make written comments before a final decision is made.<sup>17</sup>

The warden of your current institution, in consultation with the Regional Deputy Commissioner, will forward the transfer recommendation for final decision-making to the Assistant Commissioner, Correctional Operations and Programs (for requests to men’s institutions) or to the Deputy Commissioner for Women (for requests to women’s institutions).<sup>18</sup>

If the decision is made to deny your transfer request, contact Prisoners’ Legal Services as soon as possible if you need help. You

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14 CCRA, ss. 28, 87.

15 CD 100, para. 42; Correctional Service of Canada, *CD 710-6: Review of Inmate Security Classification* (Ottawa: CSC, 2018-01-15), para. 11 [CD 710-6].

16 CD 100, para. 49.

17 CD 100, para. 48.

18 CD 100, para. 51.

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can submit a high priority final level grievance if you disagree with the decision.<sup>19</sup> See Prisoners’ Legal Services’ booklet “Writing an Effective Grievance” for more information on submitting grievances.

Once you are transferred to another institution, you have 30 days to receive personal property items from outside sources, in accordance with the process for admission and readmission in CD 566-12: *Personal Property of Offenders*.<sup>20</sup> 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.<sup>21</sup> Ask staff for a national level grievance form.

If your grievance is unsuccessful, you can apply to the Federal Court to review the decision.<sup>22</sup> A judicial review must be filed within 30 days of when you receive the response to your final level grievance.<sup>23</sup>

## **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 any major safety issues. This is called

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19 CD 100, para. 50.

20 CD 100, para. 56.

21 CD 100, para. 50.

22 Correctional Service of Canada, *CD 081: Offender Complaints and Grievances* (Ottawa: CSC, 2019-06-28), para. 15 [CD 081].

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



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the Immediate Needs Identification Interview.<sup>24</sup> Tell CSC if you need your own cell, a private toilet or a private shower.

Staff who do the Immediate Needs Identification Interview with you will activate the “Gender Considerations Need” in the Offender Management System (OMS) if you ask for any gender-related accommodations.<sup>25</sup>

## **Individualized Protocol**

Trans people in prison have a right to an Individualized Protocol, which sets out any gender-related accommodations you might need related to institutional procedures.

Your Individualized Protocol might include:

- Your gender;
- Your chosen name(s);
- Your pronouns;
- The process for strip searches, including what gender of officers should do your strip searches (you can choose to have officers of a certain gender do the whole search, or different genders of officers for the top and bottom);
- The gender of officers who do frisk searches of you, including for top and bottom frisk searches;
- The gender of officers who do urinalysis testing of you;

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24 Correctional Service of Canada, *CD 705-3: Immediate Needs Identification and Admissions Interviews* (Ottawa: CSC, 218-01-22), para. 3 [CD 705-3].

25 CD 100, para. 21.

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- The gender of officers who do observation of you (including camera surveillance);
  - The gender of officers who do your decontamination showers;
  - Protocol for voluntary nudity;
  - The gender of officers to escort you for medical reasons; and
  - Access to private showers and/or toilets.

The staff person who does your Immediate Needs Admission Interview will fill out the Individualized Protocol section on OMS with you during your interview. You should tell them what you need to feel safe. Anyone who needs to comply with your Individualized Protocol will see it, including officers.

Your Individualized Protocol should be updated if your needs change over time.<sup>26</sup> You will be asked to sign the Individualized Protocol and a copy should be given to you.<sup>27</sup> If you have any concerns about the Individualized Protocol that is created for you, you can call Prisoners' Legal Services for assistance.

## **Safety and cell sharing**

CSC has a duty to protect your safety.<sup>28</sup> This means that you should not be put in a cell with another person if it would put you at risk.

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26 CD 100, para. 25.

27 CD 100, para. 26.

28 CCRA, s. 3(a).

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You have a right to living conditions that are safe and do not undermine your dignity.<sup>29</sup> If cell sharing or double-bunking would compromise your safety or dignity, you can request single cell status. The needs of gender diverse people are considered when CSC completes the Double-Bunking Cell Placement Assessment.<sup>30</sup>

Before CSC decides if you can share a cell with another person, the officer will interview you about your risks and needs.<sup>19</sup> They need to consider your safety in making this decision, and to consider your needs related to your gender identity or expression.<sup>31</sup>

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. 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 the Structured Intervention Unit (SIU). SIU 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 SIU 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 SIU against your wishes, call Prisoners' Legal Services.

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29 CCRA, ss. 4, 69-70.

30 CD 100, para. 53; Correctional Service of Canada, *CD 550: Inmate Accommodation* (Ottawa: CSC, 2017-04-18), paras. 15-17 [CD 550].

31 CD 100, para. 53.

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## **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 Individualized Protocol for you so you can have safe and private shower and toilet access. If you try to do this and the problem is still not resolved, you can contact Prisoners' Legal Services for help.

## **Searches and urinalysis**

You have the right to choose the gender of officers who search or urinalysis test you. This information should be included in your Individualized Protocol if you have one. You can contact Prisoners' Legal Services for help if you are not given this choice.

## **Frisk searches and strip searches**

You have a right to choose the gender of officers who search you. This applies to everyone in the room, including witnesses or camera operators.

You can also ask for a “split search,” which means you can choose the gender of the officer who searches your upper body, and choose that another gender searches your lower body. Each part should be searched in private.

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## Body cavity searches

Body cavity searches can only be done by qualified medical practitioners and only if you agree to the search.<sup>32</sup>

## Urinalysis

If you are asked to give a urine sample, you can choose the gender of the collector.

## Access to hormones or gender-affirming surgery

Talk to your institutional doctor to get a referral to a hormone specialist or qualified health care professional if you need hormone therapy or gender affirming surgery.

If a medical specialist believes hormone therapy is medically necessary for you, CSC should pay for it.<sup>33</sup>

To be approved for gender affirming surgery, you need a recommendation from a qualified health care professional.<sup>34</sup> If it is considered medically necessary, CSC should pay for genital surgery, mastectomy (breast removal with construction) and breast augmentation (if a doctor or surgeon determines you don't have breast growth after 12 months of taking hormones or if you have asymmetrical growth).<sup>35</sup>

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32 CCRA, s. 52.

33 Correctional Service Canada *National Formulary*, August 2017.

34 The World Professional Association for Transgender Health, "Standards of Care for the Health of Transgender, and Gender Diverse People" (2022), v. 8 [WPATH Standards of Care].

35 Correctional Service of Canada, *National Essential Health Services Framework* (September 2020) at pp. 18-19 [CSC Health Framework].

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To qualify for gender affirming surgery, a qualified health care professional needs to be sure that:

- You experience ongoing and serious distress because of the sex you were assigned at birth and that surgery is the right treatment;
- You are at least 19 years old;
- You have been on hormone therapy for at least 6 months;
- Any mental health conditions that could negatively impact the outcome of your gender affirming medical treatments are assessed and discussed with you before a decision is made; and
- You are able to make a fully informed decision and to consent to treatment.<sup>36</sup>

CSC does not pay for other surgeries to make you look more feminine or masculine, like facial feminization or Adam's apple reduction.<sup>37</sup> 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.

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.

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36 WPATH Standards of Care.

37 CSC Health Framework.

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## Your name and preferred pronouns

CSC staff, including 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.<sup>38</sup>

Your chosen name and pronouns should be included in your Individualized Protocol.

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. Your IPO has the duty to assist you with requests to change your legal name.<sup>39</sup> If you already changed your name, you must show the documents.

The sex code in your file can only be changed if you have gender-affirming surgery involving a change to your genitalia.<sup>40</sup>

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 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.

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38 CD 100, para. 62.

39 CD 100, para. 9(c).

40 CD 100, para. 61.

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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 604-872-7651.

## Personal items, clothing and catalogues

You have a right to have the items you need for your personal health, safety and dignity.<sup>41</sup> 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).<sup>42</sup> You should be allowed to keep these items as long as they don’t pose any risk to safety, health or security.<sup>43</sup>

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.<sup>44</sup> Wigs are allowed. CSC will not pay for them but Health Services should help you find a community agency that can help you get a wig.<sup>45</sup>

You should be provided institutional clothing that better aligns with your gender identity or expression. Your clothing will still be

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

42 CD 100, para. 56.

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

44 CD 100, para. 55.

45 CSC Health Framework, p. 19.



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based on the dress code for the institution you are physically in (an institution designated for men or for women), but you should be given a cut and size of clothing according to your preference.<sup>46</sup>

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.

## **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.<sup>47</sup> Any conversations that they have with other staff about you must be in private where no one else can hear.<sup>48</sup>

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.<sup>49</sup>

## **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.<sup>50</sup>

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

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46 CD 100, para 54.

47 CD 100, para. 58.

48 CD 100, para. 60.

49 CD 100, para. 60.

50 CCRA, ss. 4, 69-70.

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## 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 final level grievance to CSC. Ask a staff person to give you the form. See PLS' booklet "Writing an Effective Grievance" for more information.

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.

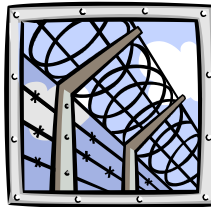
Make sure you keep copies of all of the complaints and grievances you submit. You should also keep a journal of your treatment with dates and names, if you know them.

If you are not happy with the outcome of your complaint or grievance, you can make a human rights complaint. People in federal prisons 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" for more information.

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. Our phones are closed on Wednesday afternoons.



**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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