

CRUEL AND UNUSUAL PUNISHMENT

Stopping the Dangerous Policies Putting Men in Women's Prisons

POLICY RECOMMENDATIONS

Amend the PREA Regulations

The Prison Rape Elimination Act simply does not require, even indirectly, that prisons consider placing men in women's prisons. And yet federal regulations continue to incentivize this practice both federally and locally, by tying federal funding to states putting men in women's prisons. The regulations should be revised to eliminate this possibility.

Clarify the Americans with Disability Act, Via Regulation and DOJ Practice

The ADA explicitly states that "gender identity disorders" do not qualify as disabilities under the Act, and yet the Biden-Harris administration and federal courts have applied the ADA to mandate "transition" services in prisons. DOJ regulations interpreting the ADA should clarify that gender identity disorders include gender dysphoria.

Protect Women's Reporting of Abuse

Female inmates should not fear that reporting abuse will lead to retribution or loss of privileges. Prison staff making decisions about PREA reports and managing reports from women about potential instances of physical and sexual abuse should not overlap with staff making decisions about parole, privileges, and other benefits or demerits in the context of incarcerated life. Incarcerated women should be able to report any abuse and be entitled to a fair investigation of those allegations free from fear of consequences. Complaints should not be rewritten to eliminate that a male was involved, by using phrases like "woman with a penis."

At the State Level, Clarify that Reporting Sexual Abuse Is Not "Discrimination"

Often, especially in case-by-case states, agencies and boards tasked with balancing the needs of trans-identifying males and those of female inmates are inclined to take into account factors like discomfort, past sexual assault history, and complaints from women. But some laws and policies, such as SB 132 in California, or the proposed AB A709 in New York, explicitly forbid prison officers from taking into account some of these elements, under supposed "anti-discrimination" clauses that characterize the concerns of incarcerated women for their safety as mere unjustified bigotry. States should make it clear, through law and policy, that these kinds of concerns are well-grounded in fact, and a perfectly justifiable basis for denying male prisoners transfer.

End Government Reliance on Activist WPATH Guidelines

The Federal Bureau of Prisons guidance on "Gender-Affirming Care of Transgender and Gender Nonbinary Persons" was designed to "closely align" with the World Professional Association for Transgender Health (WPATH) standards. The WPATH standards are not rooted in science. The BOP should make clear that the science is not settled, meaning "transition" cannot be found medically necessary.

End Federal Funding of State Prison Systems That Endanger Women

The federal government provides grant money to states that adopt prison rape elimination policies. Those policies should prevent males from being housed with women.

Click [HERE](#) to read the full report.