

July 30, 2024

Cheryl Strange, Secretary
Washington Department of Corrections



FOUNDATION
AGAINST
INTOLERANCE
& RACISM

Charlotte Headley, Superintendent
Washington Corrections Center for Women

Re: Sex-based discrimination in Washington prisons

Dear Secretary Strange and Superintendent Headley:

We are writing today to outline our concerns regarding sex-based discrimination in Washington Department of Corrections (DOC) facilities and to urge immediate action to end discriminatory treatment and ensure the safety of female inmates. These concerns arise from reports from both current and recently released inmates of the Washington Corrections Center for Women (WCCW). We have been informed of rape, sexual assault, physical assault, and emotional harm perpetrated against female inmates forced to cohabit with male prisoners. We are committed to assisting female prisoners in seeking all available recourse.

Our goal is simple: to secure equitable protections for female prisoners by ensuring the availability of a female-only DOC facility. To achieve this, we will execute a multi-pronged advocacy plan and, if necessary, file a lawsuit.

First, we will continue to encourage female inmates to report their grievances to you following DOC policies and procedures. We are aware of retaliation against inmates who have complained about these issues in the past. To help ensure the safety of inmates who report grievances, we are closely monitoring and logging the content, date, and time of these submissions. If new retaliation is reported, we will compare those allegations to the grievances submitted.

Second, as we continue to receive documentation and supporting information about reports filed with the DOC, we will send a letter of complaint to the United States Department of Justice's Civil Rights Division, Special Litigation Section. This section has the statutory authority to investigate the DOC based on these allegations and may choose to bring suit against the DOC for civil rights violations.

Third, we will raise local awareness of the pattern of discrimination against female prisoners by sending a similar letter to the Washington Office of Corrections Ombuds, which works to reduce harm in the corrections system by negotiating outcomes, recommending positive change, and reporting individual and systemic concerns.

Finally, regardless of potential DOJ action, we will file a lawsuit against the DOC if the internal grievance procedures do not provide timely and adequate remedies to ensure the equal protection of female prisoners.

Background & Facts

In recent years, the DOC has taken significant steps to accommodate transgender, nonbinary, and intersex prisoners. While we support efforts to honor the humanity of each inmate, the DOC policies in question have resulted in unequal treatment of male and female prisoners. Notably, the DOC allows prisoners who self-identify as transgender, nonbinary, or intersex to seek housing that aligns with their gender identity. In practice, this means that the DOC maintains two types of prisons: male-only prisons and mixed male and female prisons. There is no facility exclusively for females.

Due to biological and sociological differences, females are vulnerable to physical and emotional harm in ways males are not. For example, females are generally smaller and have less upper and lower body strength than males. Additionally, only females can become pregnant. Incarcerated females are also at least six times more likely than males to have been sexually abused by males before entering the prison system. These differences mean that any policy allowing prisoners to select housing based on gender identity, rather than biological sex, inherently results in discriminatory treatment of females.

For example, a female inmate reported being forced to share a cell with a male prisoner who identifies as transgender. The male prisoner was allowed to select housing based on gender identity, resulting in being housed with female prisoners. This scenario, driven by DOC policy, eliminates the possibility of a female-only facility, thereby depriving female inmates of the benefit of selecting housing with only other females. The presence of a larger, stronger male who can impregnate her heightens the female inmate's trauma, especially if she has a history of being raped or otherwise sexually or physically assaulted. Most importantly, the female prisoner in this scenario is literally at risk of being impregnated by another prisoner, a risk that does not exist in a female-only facility.

When a male prisoner is housed in a female-only facility, it ceases to be female-only, depriving female prisoners of equal protection under the Constitution and constituting cruel and unusual punishment under the 8th Amendment.

The reports we have received, along with our independent investigation, demonstrate a pattern of discrimination against female inmates due to DOC policies and practices. The remedy is simple: the DOC must maintain a facility exclusively for female prisoners.

We would like to give you the opportunity to respond to our concerns and would be glad to set a meeting to discuss the issues raised. We hope that adequate changes to DOC policies can be implemented immediately to address the reported discrimination. We look forward to your response.

Sincerely,

Leigh Ann O'Neill

Leigh Ann O'Neill
Director of Legal Advocacy, FAIR

Candice Jackson

Candice Jackson
Network Attorney, FAIR

cc: Mary Ann Curl, MD, Chief Medical Officer
Yen Huynh, Director, Office of Equity, Diversity, Inclusion & Respect
Melissa Andrewjeski, Assistant Secretary, Prisons Division
Donald Holbrook, Assistant Secretary, Prisons Division
Tim Lang, Senior Assistant Attorney General, Correction's Division
The Honorable Jay Inslee, Governor, Washington State
Joby Shimomura, Chief of Staff, Office of the Governor of Washington