

Washington SB 5859/HB 1956

“An Act Relating to exempting from public disclosure sensitive records pertaining to current and formerly incarcerated individuals’ dignity and safety.”

Submission in Opposition

February 19, 2022

Dear State Government and Elections Committee,

Our opposition to Senate Bill 5859 is a narrow one. We understand and agree that incarcerated individuals have a right to privacy in documents such as their medical records and in their victimization risk assessment.

This Bill goes beyond that. SB 5859 has the potential to remove from public discussion data necessary for the public to understand and express their views on a matter of significant public policy. The Bill would make “exempt from public inspection ... Records that would disclose information about an incarcerated individual’s transgender, ... non-binary, or gender nonconforming status.”

While the Bill does permit disclosure “in aggregate form if the data does not alone or in combination with any other records reveal the identity of an incarcerated individual,” we remain concerned with data being classified as “sensitive” and therefore non-disclosable when there is a public interest in, and need for, the data. Records which demonstrate how many male inmates are being housed in, or are being moved to, the women’s prison is information the public has a right to know. The particular timing of transfers may be important data in analyzing changes to volume and type of PREA complaints or prison infraction records. Even if the identity of an inmate is not sought, it is possible that some records necessary for a full and complete analysis would enable someone to determine that a particular incarcerated individual identifies as “transgender” or “nonbinary.” The mere fact of someone’s biological sex should not prevent the public from obtaining these records.

These records are vitally important to a discussion of the public policy question regarding the State of Washington housing male inmates in the women’s prison based on “gender identity.” The safety, well-being and constitutional rights of incarcerated women and girls in Washington is at issue. Thus far, public debate on this question has been muted as changes have not come about through legislation (which would open the matter for debate and input by the public), but, rather, by policy. The public has a right to understand what has been implemented and its effects.

This is particularly true on an issue such as this where there is not widespread support. According to polling, 77% of American voters agree that male sex offenders

or domestic abusers should not be housed in women's prisons, regardless of how they identify.¹

A brief background to further explain our concern:

In the Spring of 2021, a whistleblower report alleged that a male inmate recently arrived at the women's prison had raped a female inmate.² As a result of this report, a private citizen made public records request on Washington State seeking data, which included the number of inmates transferred from a men's facility to a women's facility. The requester was not seeking any personally identifiable information. In response to this request and a separate request made by a media outlet, both of which were shared by the State of Washington with the ACLU, the ACLU filed for a restraining order seeking to halt access to public records which would demonstrate that men were, in fact, being housed in the women's prison in Washington.³ Signatory WoLF represented the requester in this litigation.

The effect of that lawsuit and of this Bill is straightforward: To hide from the public the fact that there are male prisoners, including murderers and sex offenders, being housed in the women's prison in Washington State. Further, to hide from the public that records may show a corresponding increase in volume and a change in nature of complaints lodged by inmates against other inmates. In other words, records which could demonstrate the adverse impact on incarcerated women of the policy to house males with them.

Washington law favors disclosure of public records, requiring disclosure unless a specific exemption applies. (RCW 42.56.070.) This Bill establishing a new exemption would be in the service of protecting an existing policy, making an informed public debate over the policy near impossible. Using legislation to shield data to preclude a full debate is not in the public interest.

There have been significant findings on a state and federal level that are not currently known in Washington. For example,

- In California, since they began allowing males who identify as transgender to transfer to women's facilities, they have seen a **30% increase** in incarcerated people identifying as transgender.
- Also in California, there have been nearly **300 requests for transfer from men's to women's facilities, one third of which are from registered sex offenders.**⁴

¹ Majority of 2020 Voters Support Protecting Single-Sex Spaces — Women's Liberation Front (womensliberationfront.org)

² DOC employee reports men are claiming to be women to transfer prisons - MyNorthwest.com

³ 7+Pltffs+Mtn+for+PI-compressed.pdf (squarespace.com)

⁴ CDCR-Response-on-Data-of-Offenders-Seeking-Transfer-to-Female-Facilities.pdf (kpssinfo.org)

- The federal Bureau of Prisons reports that **48% of trans-identified male inmates in the federal system are sex offenders.**⁵

The exemption provided by this Bill could be used to refuse to provide records on similar information on Washington prisons.

We ask that the Committee reject Senate Bill 5859 and, should it come to a vote, that it be voted down.

Thank you for the opportunity to submit this written testimony.



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⁵ Transgender Inmate Report from BOP 12/04/2021 | Keep Prisons Single Sex USA (kpssinfo.org)