



CORRECTIONAL SERVICE CANADA

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GENDER DIVERSE OFFENDERS

Policy and Practice in Correctional Service of Canada

Presentation to the World Congress on Probation and Parole 2022

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Presentation Overview

- Policy and Legislation: the evolution of gender identity and expression's legislation in Canada and within the federal correctional context
- Correctional Service of Canada's (CSC) Gender Considerations Secretariat
- [Commissioner's Directive \(CD\) 100 – Gender Diverse Offenders](#)
- Encountered challenges
- CSC's Strategy in addressing the needs of gender diverse persons in Federal custody
- Initial knowledge gaps and research initiatives
- Questions



Policy and Legislation

Bill C-16, *An Act to Amend the Canadian Human Rights Act and the Criminal Code*

- Bill C-16 was introduced in the House of Commons on May 17, 2016 by the Minister of Justice. The Bill was intended to protect individuals from discrimination and from being targeted by hate propaganda as a result of their gender identity or gender expression. It became law on June 19, 2017 and, as a result, the *Canadian Human Rights Act* (CHRA) was amended to include gender identity and gender expression as prohibited grounds of discrimination.
- This amendment was also reflected in section 4 (g) of CSC's governing legislation, the *Corrections and Conditional Release Act* (CCRA) by adding the respect of gender identity and expression to its Guiding Principles.



Implications for Correctional Service Canada

- CSC had a duty to accommodate offenders based on their gender identity or expression, regardless of their anatomy (i.e., sex).
- Section 4 (g) of the CCRA provides that: *“correctional policies, programs and practices respect gender, ethnic, cultural, religious and linguistic differences, sexual orientation **and gender identity and expression**, and are responsive to the special needs of women, Indigenous persons, visible minorities, persons requiring mental health care and other groups.”*





Policy and Legislation

Prior to the coming into force of Bill C-16 in June 2017

Transfers or penitentiary placements were based solely on anatomy (specifically their genitalia), regardless of the inmate's gender identity or expression.

Penitentiary placement was based on medical model (diagnosis of gender dysphoria and gender confirming surgery).

Sex and gender were interchangeable in our policy and legislation.

Post Amendments to the CHRA

In **December 2017**, CSC published [Interim Policy Bulletin \(IPB\) 584 – Gender Identity or Expression](#), underlining CSC's duty to accommodate based on gender identity or expression, regardless of the person's anatomy (i.e., sex) or the gender marker on identification documents - unless there are overriding health or safety concerns that cannot be resolved.

In **May 2022**, CSC's [CD 100 – Gender Diverse Offenders](#), a new overarching policy was developed by the Gender Considerations Secretariat (GCS), in collaboration with the Strategic Policy Division, and in consultation with internal and external partners.

This new CD overrides other direction found in CDs or Guidelines and sets official direction relating to offenders with gender considerations.

It highlights the principles and changes to operational procedures that staff must comply with when working with an offender with gender-related needs.



Gender Considerations Secretariat

Mandate

The GCS role is to assist, support and provide guidance related to the management of gender diverse offenders to operational and case management staff, as well as to decision makers across the organisation.

Key activities

- Lead the development of procedures, guidance, tools, training, etc. on gender-related questions;
- ensure a cohesive approach and position CSC in light of judicial proceedings related to systemic and individual cases involving gender diverse offenders;
- recommend organizational direction on the management of gender diverse offenders to CSC's Executive Committee; and
- communicate direction and inform staff on how to respond to operational and case management questions on gender-related questions.



CD 100 – *Gender Diverse Offenders*

Policy Development

- CSC consulted broadly on CD 100 with a wide range of stakeholders, including CSC's regular list of stakeholders and additional with specific areas of expertise in gender identity and expression, as well as human rights advocacy groups.
- International jurisdictional scan; CSC examined how others in the international community are managing gender diverse incarcerated persons, to gather information and best practices.
- Roundtable discussion with external experts; CSC met with key stakeholders, including the Canadian Human Rights Commission (CHRC), representatives from other governments agencies and experts in fields related to gender, sex, sexuality, human rights, law, and health-related disciplines to discuss challenges, refine and seek advice on complex issues pertaining to our policy.



CD 100 – *Gender Diverse Offenders*

Policy Development

- In May 2022, CSC published [CD 100 – Gender Diverse Offenders](#), which reiterates and clarifies the direction found in the revoked Interim Policy Bulletin 584.
- CD 100 applies to all staff working directly or indirectly with gender diverse offenders, including contractors and volunteers.
- It reflects CSC's commitment to meeting the needs of its gender diverse offender population in ways that respect their human rights and ensure their safety and dignity, as well as the safety of others in the institutions and community.



CD 100 – *Gender Diverse Offenders*

Individualized Protocol in the Offender Management System

- The Individualized Protocol (IP) is captured in the Offender Management System (OMS) and includes gender-related accommodation measures, such as:
 - chosen first and middle name(s), chosen pronoun(s);
 - preferred institution type (men's or women's); and
 - gender of staff (man or woman) completing security operational procedures.
- At any point during their sentence, if an offender requests one or more gender related accommodations, staff will activate the Gender Considerations Need in OMS and complete the IP. The IP will be finalized within the timeframes set out in [CD 100](#).
- The Correctional Manager or Community Parole Officer will ensure :
 - the IP is developed in collaboration with the offender and reflects their gender-related needs; and
 - the initial and updated versions of the IP are signed by the offender and placed on their Case Management file.



CD 100 – *Gender Diverse Offenders*

Staff responsibilities

- Any staff member, volunteer or contractor to whom an offender discloses their gender-related accommodation needs must advise the offender to notify the Correctional Manager or the Community Parole Officer.
- All staff will report any behaviour that is disrespectful or discriminatory, as outlined in [CD 001, Mission, Values and Ethics Framework of the Correctional Service of Canada](#) and [CD 060, Code of Discipline](#).
- All staff members whose duties require them to be aware of the existence of an IP are required to abide by its provisions.



CD 100 – *Gender Diverse Offenders*

Staff responsibilities (Community)

- The Parole Officer will ensure that an offender's gender-related needs are considered and addressed as part of the pre-release decision-making process and when reviewing the Community Strategy (i.e., referral to a Community Correctional Centre/Community-Based Residential Facility).
- Upon conditional release, if the offender requests one or more gender-related accommodations, the Community Parole Officer will activate the Gender Considerations Need in OMS and complete the IP sections in collaboration with the offender.
- If a Gender Considerations Need is already active in OMS, the community Parole Officer will review the existing IP with the offender upon release and update it, if required.
- At any point during the offender's conditional release, if they request one or more gender related accommodations, the Community Parole Officer will complete the IP.



CD 100 – *Gender Diverse Offenders*

Case conferences

Case conferences are an integral part of case management. They assist staff in rendering informed decisions pertaining to offenders' gender-related needs and ensure progress towards rehabilitation and reintegration into the community. They involve representation from the institutions/districts, Regional and National Headquarters, including the Women Offender Sector and the Gender Considerations Secretariat.

The following elements are discussed, as applicable, during case conferences and are included in the appropriate section of the Assessment for Decision:

- the potential impacts on the offender population and others at the receiving site;
- the potential impacts on the gender diverse offender if they remain at their current site;
- the potential impacts on the gender diverse offender if they transfer to the receiving site; and
- the challenges related to the physical infrastructure/security.



CD 100 – *Gender Diverse Offenders*

Intake site (men's or women's)

Newly sentenced gender diverse offenders

- Provided with an opportunity to indicate if they have a preferred institution type (men's or women's).
- Should CSC have sufficient information to assess the offender's risks and needs, a case conference will occur to determine the type of intake site.
- In cases where CSC cannot assess the offender's risks and needs, the intake site for initial assessment will be based on their current sex (i.e. anatomy).

Gender Diverse Offenders returning to federal custody

- Gender diverse offenders returning to federal custody from the community are sent to the institution type (men's or women's) that better aligns with their gender, if that is their preference, unless there are new overriding health or safety concerns that cannot be resolved.
- In such cases, a case conference will be held to determine the most appropriate institution type.



CD 100 – *Gender Diverse Offenders*

Penitentiary placement and transfers

- Offenders will be penitentiary placed or transferred according to their gender in a men's or a women's institution, if that is their preference, regardless of their sex (i.e., anatomy) or the gender/sex marker on their identification documents, unless there are overriding health or safety concerns that cannot be resolved.
- The offender will be consulted and involved in the decision-making process.
- A case conference will occur without delay and the results of the case conference will be documented.
- Assessment for Decisions are reviewed during case conferences by a multidisciplinary team, usually comprised of the GCS, Offices of Primary Interest, CSC's Departmental Legal Services Unit, Regional Administrators, etc.



Encountered Challenges

- Community partner's involvement when offenders are released (i.e. Community Residential facilities, community resources, etc).
- Sex-segregated nature of the correctional system.
- Balancing human rights and the public safety mandate, requiring CSC to ensure the safety of all staff, offenders, and the public.
- Histories of abuse and trauma, gender-based violence, sexual coercion and violence against the 2SLGBTQQIA+ community.
- Bias, prejudice, culture change and raising awareness of staff and offenders.
- Communication, multidisciplinary approach and conciliating dissenting opinions to ensure consistency in CSC's approach.



CSC's Strategy

Upcoming staff and offenders 2SLGBTQQA+ awareness sessions

- As part of its Strategy in addressing the needs of gender diverse persons in Federal custody, CSC identified the importance of promoting awareness through the development and implementation of awareness sessions and tools, in order to support its frontline staff and currently incarcerated persons.

Partnerships and collaborations

- CSC has created a community of practice with representation from Canadian provincial and territorial correctional jurisdictions to provide a forum to discuss operational issues and best practices.
- On April 5, 2022, the Bureau of International Narcotics and Law Enforcement Affairs hosted virtual roundtable addressing 2SLGBTQQA+ issues in corrections management. Representatives from five corrections agencies as well as members from the American Correctional Association, International Corrections and Prisons Association, the National Center for State Courts, and the International Development Law Organization participated in the roundtable.



CSC's Strategy

Partnerships and collaborations

- CSC ensures the involvement of the GCS in litigation cases and that they are working closely with CSC's Legal Counsel in reviewing these cases.
- CSC established and maintains partnerships with internal and external partners as we move forward with refining our policies and guidance on this matter.

Data tracking

- CSC developed a performance measurement strategy to track CSC's progress in addressing the needs of gender diverse offenders, as identified in their IP.

Decision-Making Guide

- The GCS produced the *Gender Diverse Offenders: A Decision-making Guide*, in August 2021, in order to assist staff working with gender diverse incarcerated persons. This evergreen document was further updated on May 9, 2022, when CD 100 was promulgated.



Initial Knowledge Gaps and Research Initiatives

Initial Knowledge Gaps

- No comprehensive profile of gender diverse incarcerated persons in CSC custody.
- Need for a more in-depth understanding of the health and safety barriers regarding placement of some gender diverse incarcerated persons to a site that better aligns with their gender identity and/or expression and possible solutions.
- Lack of an evidence base regarding effective assessment and interventions with gender diverse individuals in a correctional setting.



Initial Knowledge Gaps and Research Initiatives

Research Initiatives

- In response to these identified knowledge gaps, the Research Branch at CSC launched projects aimed at examining and detailing the profile of gender diverse federal offenders – results will be described in the next presentation.
- The Research Branch is also engaging with external experts to undertake a closer examination of health and safety barriers around placement of gender diverse offenders and possible solutions.
- Research regarding appropriate assessments and interventions will take time and be impacted by the relatively small population of gender diverse offenders and their heterogeneity. An individualized approach based on case specifics is key.



Questions?

Please feel free ask your questions or share your comments!

How to reach us?

The Gender Considerations Secretariat may be reached at :
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The Research Branch may be reached at:
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