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# **UNITED STATES PRISON POLICIES: EFFECTIVENESS AND NEEDED REFORM FOR TRANSGENDER PEOPLE**




# ABOUT THE AUTHOR



Rose Cuthbert is a third year student at Suffolk University Madrid, studying Global Cultural Studies and Women's and Gender Studies. Through her studies, Rose has done extensive research on transgender issues and continues to educate herself and others on those issues. She is passionate about LGBTQ+ rights, women's and gender issues, environmental issue, intersectional feminism and social justice.


# ABOUT POLITICS4HER

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Politics4Her is an intersectional feminist platform & youth-led movement advocating for the inclusive participation of young women and girls in politics. Politics4Her works to broaden dialogue and to bring international human rights into practice through advising policymakers and states by bringing international best ideas. Politics4Her strives to contribute to a more equitably governed world by democratizing national laws and legislations.

## ABOUT THE PROGRAMME



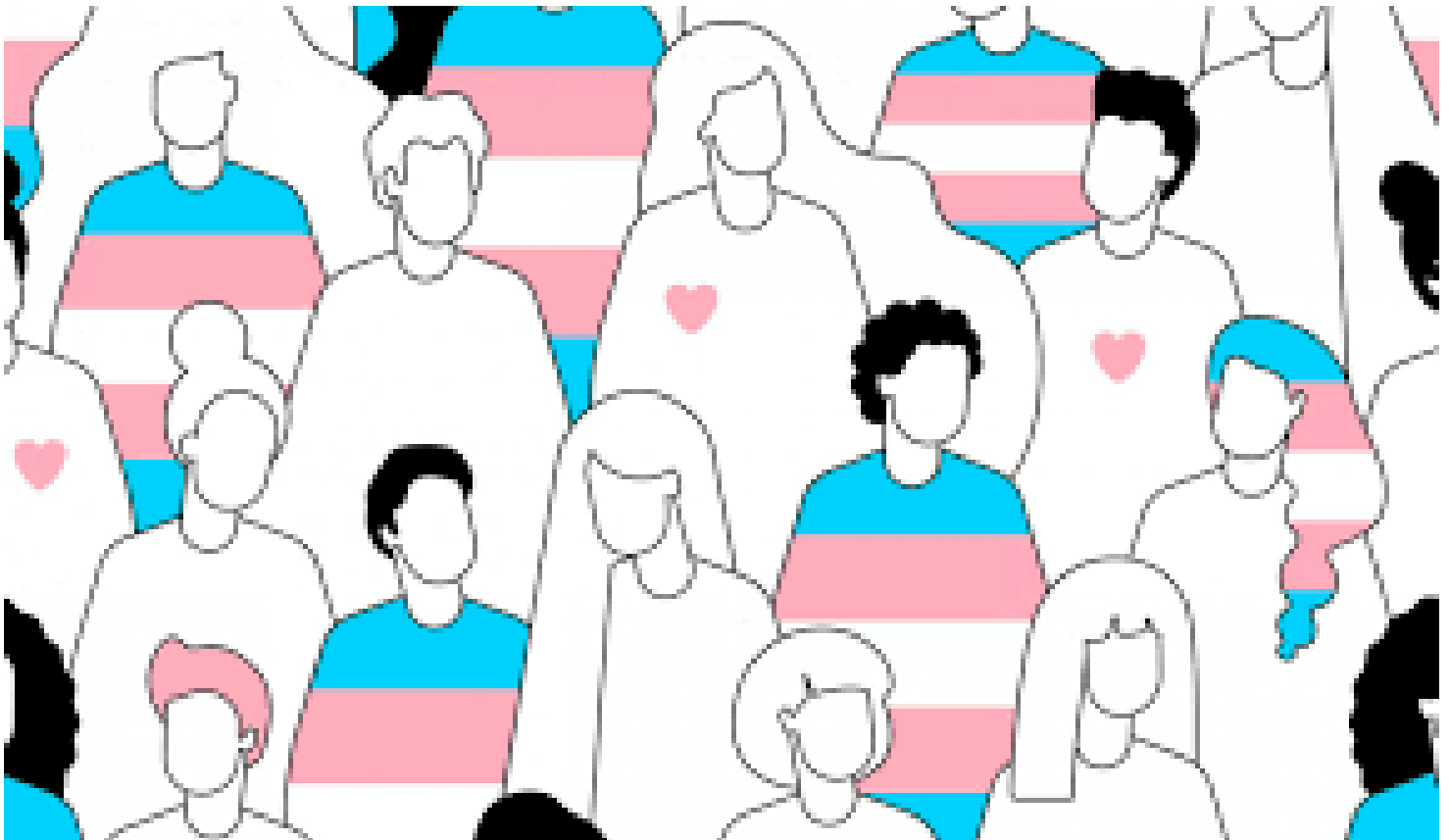
**The Young Feminist Scholars Programme** is meant for any student who is extremely passionate about feminism and gender issues. The goal will be for each scholar to deliver a report specializing on a region in the world covering issues related to gender-based violence and/or women's political participation.

Our two criteria for our scholars are to identify as international feminists (regardless of their gender) and most importantly to be able to showcase leadership. Scholars get to work in research, writing, policy as well as communications advocacy. Our main goal is for them to explore these different fields and see what they are most interested in while offering them guidance and mentorship so that it potentially helps them launch their early career.

# TRIGGER WARNING

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Please note that since this policy brief includes words and phrases that should be avoided, you may come across some that you consider discriminatory or that have been used historically to oppress certain people or groups. These may cause distress to people who have experienced discrimination on the basis of their identity. Given the nature of this policy brief, we understand that many of the issues it discusses are personal and emotive for many people. While naming oppressions is necessary to deconstruct them, we recognize that this can take a toll on those directly affected. Please take care in the reading of the policy brief and prioritize your well-being.






# EXECUTIVE SUMMARY

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This policy brief will be going through the different policies that are currently put in place in the United States prison system regarding those who are transgender and incarcerated, including healthcare, treatment, and living policies for transgender people. There will also be an emphasis on how these policies are being implemented, and to what extent they are being implemented, using in-depth sources and first-hand accounts. In many cases, these policies differ state by state and are constantly changing in some states. Not only will there be a discussion of how the policies are different state by state, but also the ways in which states choose to implement these policies.

## INTRODUCTION



In the past century, there have been huge changes to policies involving transgender people in the United States. Throughout this time, being transgender was no longer illegal, people had the ability to change their sex on important documents, as well as policies being made to protect transgender people in workplaces. Even though there have been important policies put in place to protect transgender people, there are still many more policies needed and there are many that have to constantly be defended and implemented. Transgender people are still being mistreated due to the systematic oppression, that lives in policies that still exist and others that are not being implemented. These include the policies surrounding the prison system. Including healthcare, treatment, and living policies for transgender people. Through the research conducted, it will be made clear that there are many more policies needed to ensure the safety and respect of transgender people in prison.

# METHODOLOGY

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The policy brief will include multiple types of sources that describe the current policies and treatment of transgender people in prison. Most of the research methods include articles that go over the current policies that are in place in the United States, as well as comparing those to other countries with the same issue.

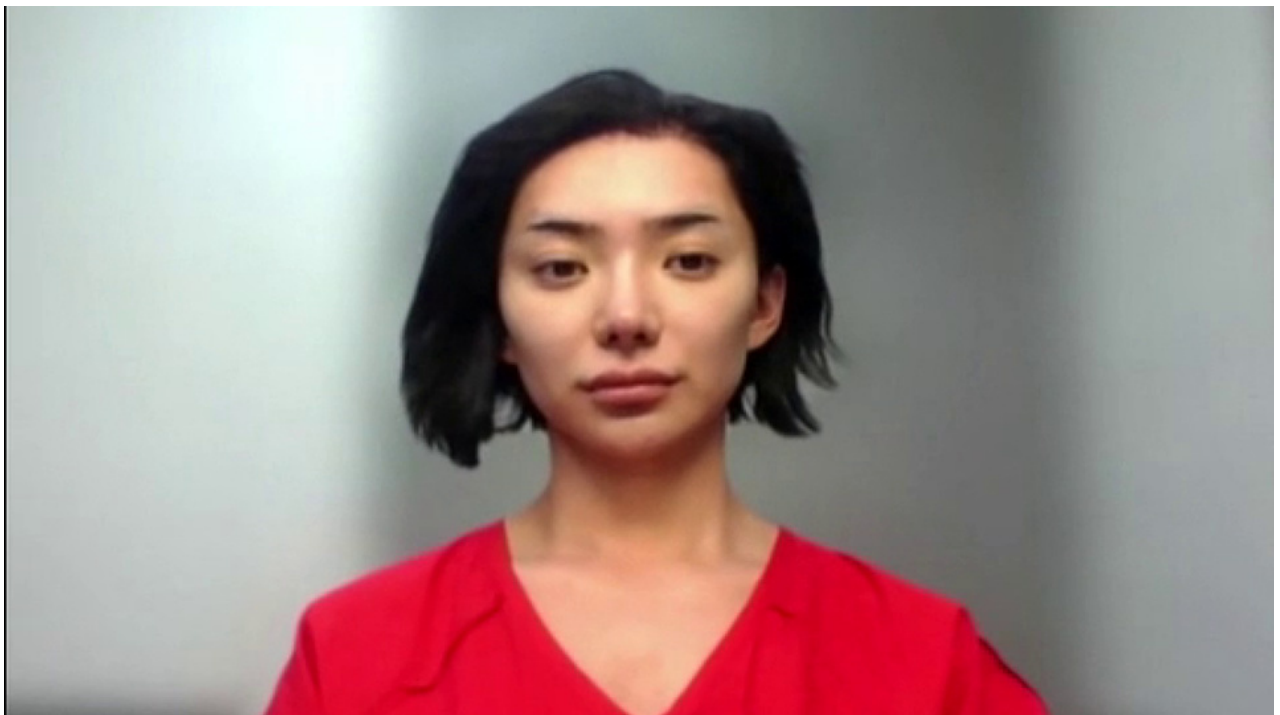
There will also be first-hand accounts and interviews of transgender women currently living in a male prison. Most of these sources will be focusing on current issues that transgender people face in prison with healthcare, treatment, and overall living conditions.



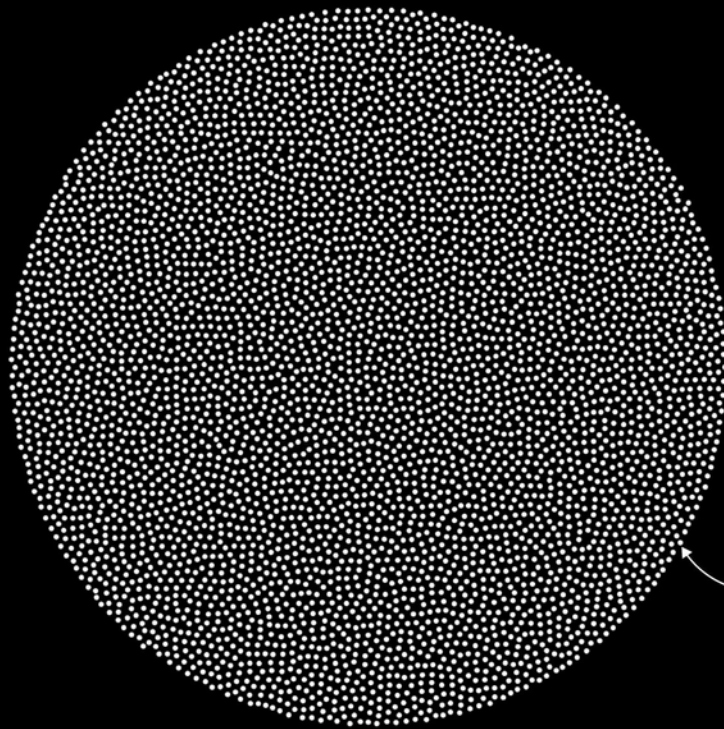
"---." KQED, [www.kqed.org/news/11794221/could-changing-how-transgender-inmates-are-housed-make-prison-safer-for-them](http://www.kqed.org/news/11794221/could-changing-how-transgender-inmates-are-housed-make-prison-safer-for-them).

In November of 2022, social media influencer, Nikita Dragan, made news after being arrested in Miami, Florida. The shift of the news quickly changed when a video of Nikita Dragan talking to a judge where asked, "Do I have to stay here in the men's unit still?" The judge responded, "I don't make the rules up there" (Factora, James). Nikita Dragan is a transgender female who according to her publicity rep, Jack Ketsoyan, is also legally female Ketsoyan "This decision made by the Miami-Dade County Corrections Department directly violates their protocol, which mandates that transgender inmates are classified and housed based on safety needs and gender identity" (Factora, James).

This example of how a transgender woman is treated and placed behind bars has opened up many questions regarding the policies and the implementation of those policies regarding transgender people in prison. There are currently 4,890 transgender prisoners living in the United States, and according to NBC News, only 15 of those transgender prisoners are confirmed to be housed by their gender identity.



# LIVING POLICIES



NBC News was able to confirm only **15** cases in which these prisoners were **housed according to their lived gender**

Each dot represents 1 transgender prisoner

"NBC NEWS Trans, Imprisoned — and Trapped." <https://www.webbyawards.com/crafted-with-code/trans-imprisoned-and-trapped/>, [www.webbyawards.com/crafted-with-code/trans-imprisoned-and-trapped.](https://www.webbyawards.com/crafted-with-code/trans-imprisoned-and-trapped/)

The policies regarding living placements of transgender people have changed with the political shifts in the last decade. While Barack Obama was president the policies regarding transgender inmates, according to the Transgender Offender Manual its policy is to, "recommend housing by gender identity when appropriate" ("Assault, Retaliation and Abuse: Life as a Transgender Woman in a Men's Prison."). Even though this policy is on the progressive side, the language around it makes it open to interpretation, which could cause the policy as a while not being implemented. The use of frasses like "recommend" and "when appropriate", allows the correctional staff to make the decision instead of following the policy. Making matters worse, while Trump was president the policy changed to "use biological sex as initial determination". This means that gender identity is completely disregarded when placing a person in a living situation. Since then, the justice department has come out with a policy stating that prison must provide "gender-affirming housing where appropriate", where again the language is completely up to interpretation. This is what could be causing situations like Nikita Dragun's, where policies are being interpreted in different ways, and are being used only when the correctional staff wants to.






# LIVING POLICIES

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When it comes to long-term facilities and prisons, there are more policies to consider. NBC News went into the Californians' Institute for Men in Chino, California, to interview current transgender women prisoners who are living at the all-male facility (NBC News). At this prison, there are 78 female transgender people out of 3,500 prisoners total. This created an environment where the interviews could conduct interviews with several transgender women. Through the interview proses, the transgender prisoners were able to express their negative feeling towards living in a male prison and they're wanting to live in a female prison. The most compelling part of the interview was when they interviews were discussing what the policies were with Amy Miller, an associate director of Female Offender Programs. Miller stated "We actually have a proses where we talk to our transgender population. We interview them twice a year to talk about their safety, their housing, and their placement, and whether or not they are looking for changes or believe that they need to have accommodations because of their status of being transgender."

That policy is federally put in place, meaning it is not just used in the state of California. In her statement, it seems as though there is support for the transgender prisoners to live in the courters they want to live in, but when the interviewer asked done of the transgender prisoners about this policy, it was clear that the policy was not being implemented. The interviewer asked a transgender women's prison, "Do you get interviewed every six months about where you would feel safest?", she responded with "The question about my safety in a women's or men's facility has never been asked... not once" she has been incarcerated for 23 years and has never been asked about her safety (NBC News). The federal policy is not being implemented. This prison, meaning it is most likely not to be implemented in many other prisons. In the same interview, another transgender woman shared her story of a rape attempt that happened to her in recent years during her stay at the same male prison she is still housed in. The current housing policy is not protecting transgender women enough and needs to be implemented in a stronger way.





"Trans, Imprisoned — and Trapped." NBC News, [www.nbcnews.com/feature/nbc-out/transgender-women-are-nearly-always-incarcerated-men-s-putting-many-n1142436](https://www.nbcnews.com/feature/nbc-out/transgender-women-are-nearly-always-incarcerated-men-s-putting-many-n1142436).

## HEALTHCARE POLICIES

A huge focus of policymaking for transgender prisoners is healthcare. Most transgender people or people who experience gender dysphoria, seek medical care to better feel, look, and live according to the gender they identify with. This can bring up many issues when imprisoned. Since prisons use taxpayer dollars to pay for the food and healthcare of prisoners, there has been a constant debate about whether or not transgender people should receive gender-affirming healthcare while imprisoned. The current policy in place regarding the healthcare of prisoners is set on the current interpretation of the Eighth Amendment, which states that "prisons violate an inmate's constitutional rights when they show a "deliberate indifference" to the serious medical needs of an inmate" (Erin Murphy Fete). Because of the vague language of 'deliberate indifference' and what constitutes a 'serious need', most of the time these cases are left up to the courts.

Unfortunately, "federal courts have tended to strike down rules or practices that either are or amount to, blanket bans on various kinds of gender-affirming medical care" (Erin Murphy Fete). Denied access to gender-affirming healthcare, including hormones or gender-affirming surgeries, can lead to many health issues, including many self-afflicted ones, "such as genital self-harm, including auto castration and/or auto penectomy" (Sevelius, Jae, and Valerie Jenness). According to the medical communities, "Hormone therapy and gender-affirming surgeries are widely accepted as best practices for treating gender dysphoria when desired by the patient and not medically contraindicated". Leaving the policy open to interpretation by individual courts is not a sufficient way for transgender people to get the medical care that they need.




"Deze Transgender Vrouwen Hoeven Niet Bij De Mannen in De Cel." NRC, [www.nrc.nl/nieuws/2016/04/03/deze-transgender-vrouwen-hoeven-niet-bij-de-mannen-in-de-cel-a1404451](http://www.nrc.nl/nieuws/2016/04/03/deze-transgender-vrouwen-hoeven-niet-bij-de-mannen-in-de-cel-a1404451).

## OVERALL TREATMENT

The policies surrounding living placements and health care for transgender people, in general, have a huge effect on the experience and treatment of a transgender person imprisoned. As of 2015, a survey conducted by the Survey of Sexual Victimization found many issues surrounding the treatment of transgender people in prison. The results showed that about 35% of transgender inmates experienced at least one incident of sexual victimization by either another inmate or a correctional staff member. The report concluded that there are high levels of sexual misconduct by the prison staff towards transgender prisoners ("Prison Rape Elimination Act of 2003 PREA Data Collection Activities, 2015").

There are obvious policies put in place that do not allow for sexual misconduct in prisons, especially by staff, but often times these become very difficult to control. It is hard to make policies surrounding controlling the treatment of transgender people, but it is easier to make policies that have a direct correlation to the treatment of transgender people, like in living placements and in healthcare.

# PUBLIC AND POLITICAL OPINION



In order to create a new policy recommendation, it is important to look at the opinions of the public, because without public support policies have less chance of being implemented. It is also important to look at how politicians, the people who will be passing these policies, view this issue. On the subject of public opinion, according to a data telephone survey done by the University of Delaware, most people have a positive attitude toward transgender rights. In fact, in the questions regarding transgender rights, 72-65% of people favored laws that would protect transgender people and their rights. This survey was done in 2015, and since then the public has become even more prone to agree with such laws (Jones, Phil).

The opinion of policymakers differs greatly in the United States. Politicians show a range of political opinions from the radical right to the radical left and everything in between, so what opinions end up making the most change, both in good and bad ways, tend to simply be who is the loudest. For example, U.S. Senator Tom Cotton, a representative for Arkansas, is trying to pass a bill named "Preventing Violence Against Female Inmates Act of 2022". This bill, according to Cotton, "will stop the president's ill-conceived plan and keep men and women separate in Federal prison". For Cotton, the definition of men and women completely disregards someone's gender identity (Daniels, Jordan).

Like many who disagree with placing Transgender prisoners in housing based on their gender identity, they use the argument that it puts other women at risk of violence since they do not see transgender women as 'real' women and are disregarding the safety of transgender women. Other politicians like President Biden, strongly oppose this bill.



# TRANS RIGHTS ARE HUMAN RIGHTS

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"Over 100 Major Companies Join Together to Say Trans Rights Are Human Rights." Stonewall.org, [www.stonewall.org.uk/about-us/news/over-100-major-companies-join-together-say-trans-rights-are-human-rights](http://www.stonewall.org.uk/about-us/news/over-100-major-companies-join-together-say-trans-rights-are-human-rights).

## CONCLUSION

In conclusion, transgender prisoners are not protected enough by the current policies that are put in place. On top of this, the policies that are in theory, spot to help and protect transgender prisoners, are not being implemented due to the broad and unclear language of the policy. For example, the current policy reading housing that President Biden has put in place uses language like "when appropriate" to place people in the housing that they identify with. This leads to the policies being subject to the opinions of the judges or prison staff, instead of being protected under a stricter law.

Housing policies also directly correlate to the overall treatment of transgender prisoners in prison as well as their health and safety. How transgender people are being treated, and how they are living is also based on what healthcare they are receiving.

Having an open and broad policy regarding transgender-affirming health care is also not a sufficient way to protect the lives of transgender people. The mistreatment of transgender people in prison caused by incorrect housing assignments, lack of healthcare, and overall bad treatment, can have terrible effects on the mental health and overall living of transgender people, in a disproportionate way to other cis-gender prisoners.

# POLICY RECOMANDATIONS

## **1 CHANGE THE LANGUAGE SURROUNDING THE CURRENT PROTECTIVE POLICIES**

As mentioned before, the language used in the policies that are supported to be protect transgender inmates, is not sufficient to achieve the safely and no not insure the correct housing of transgender prisoners. Instead of saying recommend housing by gender identity when appropriate" ("Assault, Retaliation and Abuse: Life as a Transgender Woman in a Men's Prison."), the policy should be changed to 'must house by gender identity at all times". This ensures that no one can jump through the hoops that are put forth with the language that is currently used.

## **2 ALLOW FOR GENDER AFFIRMING HEALTHCARE IN THE WAYS NEEDED BY THE INDIVIDUALS**

There is currently no direct policy protecting the rights of gender affirming healthcare fort transgender prisoners. Instead, these cases go to the courts and end up being decided by one person. There needs to be a policy put in place that specificizes the healthcare that a transgender person needs. The policy must include that every form of transgender affirming healthcare must be allowed for transgender inmates.

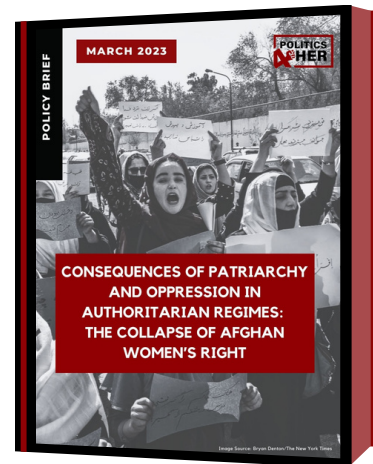
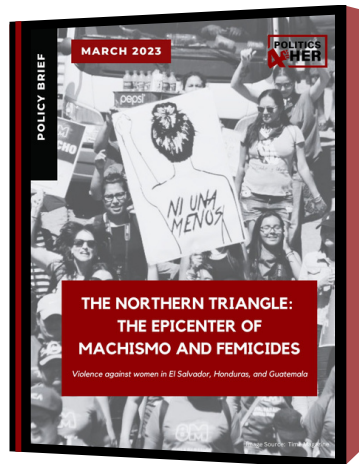
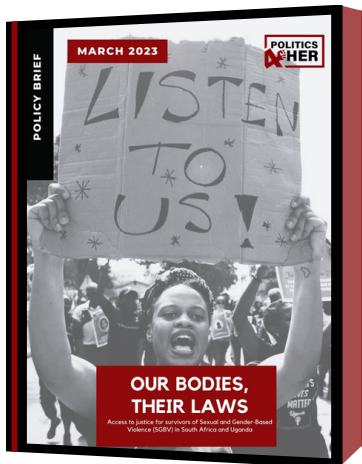
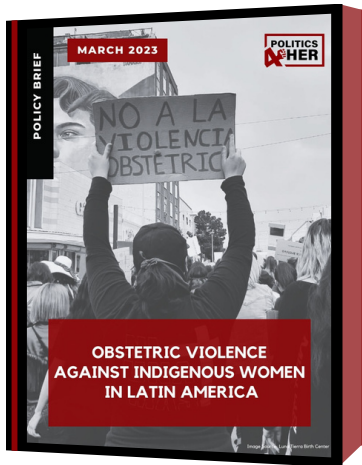
## **3 PUT THE HEALTH AND SAFETY OF TRANSGENDER PRISONERS FIRST.**

The fact that many protective policies for transgender prisoners do not get implemented, as the transgender women from Californians' institute for men in Chino have experienced, there needs to be governmental check up on these prisons with a high population of transgender people. These women's mental health, safety, and physical health have been put to the side and not taken seriously; this must change. There must be added policies to ensure that the federal laws requiring 6-month checkups for transgender people are actually being put in place, by having more governmental programs that directly focus on the Transgender prisoners.

# REFERENCES

- "Assault, Retaliation and Abuse: Life as a Transgender Woman in a Men's Prison." NBC News, 17 Sept. 2021, [www.nbcnews.com/nbc-out/out-news/justice-department-reviewing-policies-transgender-inmates-rcna2067](http://www.nbcnews.com/nbc-out/out-news/justice-department-reviewing-policies-transgender-inmates-rcna2067).
- NBC News. "Female Transgender Prisoners Ask to Move Out of Male Prisons | NBC News." YouTube, 29 Feb. 2020, [www.youtube.com/watch?v=uBQjOEQhB3k](http://www.youtube.com/watch?v=uBQjOEQhB3k).
- Daniels, Jordan. "Tom Cotton Wants to Force Trans Women in Prisons to Be Housed With Men Xtra Magazine." Xtra Magazine, 19 Jan. 2022, [xtramagazine.com/power/tom-cotton-trans-prison-assigned-sex-216530](http://xtramagazine.com/power/tom-cotton-trans-prison-assigned-sex-216530).
- Erin Murphy Fete, In Need of Transition: Transgender Inmate Access to Gender Affirming Healthcare in Prison, 55 UIC L. Rev. 773 (2022)
- Factora, James. "Trans Influencer Nikita Dragun Says She Was Held in Men's Jail Facility After Being Arrested." Them, 9 Nov. 2022, [www.them.us/story/nikita-dragun-arrested-mens-prison](http://www.them.us/story/nikita-dragun-arrested-mens-prison).
- "Few Transgender Prisoners Are Housed According to Their Identity — Putting Many in Danger." NBC News, 26 Feb. 2020, [www.nbcnews.com/feature/nbc-out/transgender-women-are-nearly-always-incarcerated-men-s-putting-many-n1142436](http://www.nbcnews.com/feature/nbc-out/transgender-women-are-nearly-always-incarcerated-men-s-putting-many-n1142436).
- Jones, Phil, et al. "Explaining Public Opinion Toward Transgender People, Rights, and Candidates." Public Opinion Quarterly, vol. 82, no. 2, Oxford UP, June 2018, pp. 252-78. <https://doi.org/10.1093/poq/nfy009>.
- "Prison Rape Elimination Act of 2003 PREA Data Collection Activities, 2015." <https://bjs.ojp.gov/content/pub/pdf/pdca15.pdf>, NCJ 248824, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, June 2015, [bjs.ojp.gov/content/pub/pdf/pdca15.pdf](https://bjs.ojp.gov/content/pub/pdf/pdca15.pdf).
- Sevelius, Jae, and Valerie Jenness. "Challenges and Opportunities for Gender-affirming Healthcare for Transgender Women in Prison." International Journal of Prisoner Health, vol. 13, no. 1, Emerald Publishing Limited, Mar. 2017, pp. 32-40. <https://doi.org/10.1108/ijph-08-2016-0046>.

# OUR OTHER POLICY BRIEFS







We are committed to assisting and providing resources for young women to become active participants of politics, international affairs and diplomacy. **Ideas matter, they shape the world we live in.** So, we strive to build a community to allow us to raise our voices, promote our ideas and share our vision, empowering women to be part of the change.



[politics4her@gmail.com](mailto:politics4her@gmail.com)



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