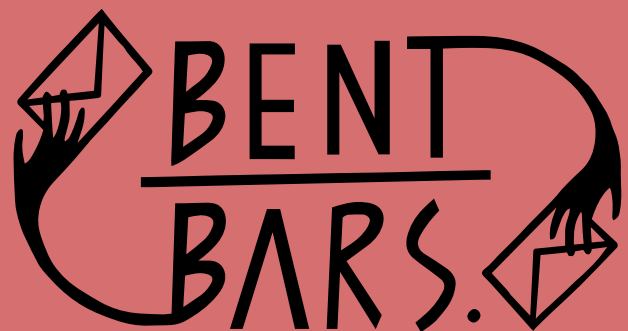


Trans Prisoners Info Sheet #2

Frequently
Asked
Questions



Bent Bars Project

December 2020



The Bent Bars Project is a letter-writing and solidarity project for LGBTQ+ prisoners in Britain. We provide direct support to LGBTQ+ prisoners, build community across prison walls, and raise public awareness about LGBTQ+ prison issues. We are a small, completely volunteer-run organisation which has been running since 2009.

Bent Bars Project
PO Box 66754
London
WC1A 9BF

www.bentbarsproject.org

Introduction

The purpose of this info sheet is to answer common questions and provide factual information about the situation of trans and non-binary people in prison in the UK.¹ This information sheet is one of three and we encourage you to read all of them.

Trans and gender non-conforming people face high levels of discrimination, inequality and social exclusion. This can result in targeted policing, criminalisation and imprisonment. When in prison, trans and gender non-conforming people are often subject to increased isolation, harassment, violence and denial of health care. This is especially the case for trans people in poverty, trans people of colour, those with disabilities and those with little family or community support.

The imprisonment of trans and gender non-conforming people is not a new issue, but recently there has been an increase in public interest around trans prisoners. Greater awareness and informed discussion is to be welcomed. However, as with much reporting of prison-related issues in general, a lot of media coverage around trans prisoners has been characterised by sensationalist reporting, misleading claims, and decontextualised statistics.

The Bent Bars Project is particularly concerned about misrepresentations of trans prisoners in the media, not only because this reinforces harmful stereotypes and discriminatory attitudes towards trans people in general, but also because such misinformation has a direct impact on trans people in prison and can contribute to wider patterns of bullying, harassment and discrimination.

The information below has been compiled and evidenced from a range of sources and is informed by the Bent Bars Project's experience of offering direct support to LGBTQ+ prisoners for more than ten years.

Contents

<u>A note on statistics</u>	5
<u>A note on terms</u>	5
<u>1. How many trans people are in prison in the UK?</u>	6
<u>2. Why are the official statistics limited / unreliable?</u>	7
<u>3. Which prisons are most trans people held in – men’s prisons or women’s prisons?</u>	9
<u>4. What are the policies and rules about trans prisoners in the UK?</u>	10
<u>5. Are trans people more likely to be arrested and imprisoned than non-trans people?</u>	11
<u>6. What kinds of offences are trans people held in prison for?</u>	11
<u>7. How many trans people are in prison for sex offences?</u>	11
<u>8. How does the official number of trans people with convictions for sex offences compare to the overall prisoner population?</u>	12
<u>9. Should we be concerned about the number of trans people who have committed sexual offences?</u>	13
<u>10. It is well documented that crime rates are highly gendered (e.g. men are more likely to commit acts of violence than women). How does this impact people who have changed gender?</u>	14

Contents

<u>11. Are trans people in prison more likely to be victims of sexual violence or perpetrators of sexual violence?</u>	15
<u>12. Are there risks in placing trans and non-trans women in the same prison?</u>	16
<u>13. But what if women prisoners who are survivors of male violence are triggered by having to share space with someone they perceive as male?</u>	17
<u>14. Do male prisoners ever falsely claim to be trans in order to get access to the women's estate?</u>	17
<u>15. Do any prisoners ever say they are trans in order to get special treatment in prison?</u>	18
<u>16. I've heard about proposals to create separate units or prisons for trans people. Is this a good solution? Will it help keep trans people safe?</u>	19
<u>17. What's the best way to show support or solidarity for trans and gender non-binary people in prison?</u>	19
<u>References</u>	20

A note on statistics

It is important to be aware that statistics around crime, criminal justice and imprisonment are often contentious. This is in part because studies involving small numbers, selective groups or limited research methods are frequently over-generalised, presented out of context or used for headline-grabbing and sensationalist purposes in the media. For this reason, we draw on a range of sources in order to put the data in context and to highlight recurring patterns and trends.

A note on terms

The Bent Bars Project recognises that people use a diversity of terms to refer to themselves and their sexual and/or gender identities. We also recognise these terms are often context specific and can change.

For the purposes of this document, we use LGBTQ+ as a broad umbrella term to encompass this range of identities. When we refer specifically to 'trans' rather than LGBTQ+ we are highlighting the specific experiences of people who identify or express gender differently from what is traditionally associated with the gender or sex they were assigned at birth - such as people who are transgender, non-binary, or otherwise gender non-conforming.

For a more detailed breakdown of terminology see this helpful [glossary](#) by Julia Serano.

1. How many trans people are in prison in the UK?

We do not have accurate or reliable figures on the number of trans and non-binary people in prison. The reasons for this are complex and are explained below.

It is first important to note that there are no reliable or robust statistics on the number of trans and non-binary people in the general population, let alone the prison population. This is in part because data on gender identity is not consistently collected and in part because definitions of gender identity vary. Estimates of the general trans population in the UK range from 200,000 – 600,000 people (less than 1% of the total population).² However, numbers vary depending on the definitions used or how the questions are asked. For this reason, it is important to be cautious about any claims made about the number of trans people inside or outside prison. They are at best estimates.

England and Wales

In terms of official statistics on prisoners, the Ministry of Justice reported that as of March/April 2019, there were 163 trans prisoners held across 62 prisons in England and Wales.³ However, the Ministry of Justice has acknowledged that the numbers are not fully representative. As stated in their report, “The figures give an estimate of the number of transgender prisoners and are likely to underestimate the true number.”⁴ For this reason, the Ministry of Justice has stated that the figures they provide “are not yet a reliable reflection of the numbers and location of trans prisoners in the prison estate.”⁵

In its 2018-19 Annual Report, HM Inspectorate of Prison England & Wales noted that in its survey of 5,990 respondents in men’s prisons, 2% of people identified as transgender. Of 458 respondents in women’s prisons, 1% identified as transgender.⁶ If those numbers are accurate and representative, it would mean that there could be approximately 1570 trans people in men’s prisons and around 35-40 in women’s prisons.⁷ However as some prisons hold more vulnerable prisoners (including trans prisoners) than others, scaling up these percentages across the estate is not necessarily reliable.

Scotland

The Scottish Prison Service does not retain central records of trans prisoners. However, it has been reported that as of December 2018, there were 20 trans people in prison in Scotland. Fifteen were identified as trans women (someone assigned as male at birth but now identifying and living as a woman), five were identified as trans men prisoners (assigned female at birth but identifying and living as a man).⁸

The Bent Bars Project is aware of a number of trans people in Scottish prisons who are not included in the figure of 20. We are also aware of reports that some staff discourage prisoners from officially reporting their trans status to avoid the work involved in putting formal supports in place. The support and identification of trans people in individual prisons varies and is

highly dependent on the presence of supportive staff in positions of authority.

Northern Ireland

To our knowledge Northern Ireland does not routinely collect statistics on trans prisoners, although some recent statistics from 2020 indicate that at any one time there has been one prisoner formally recognised as trans.⁹ The Bent Bars Project is aware of a few trans prisoners in both prisons designated for men and prisons designated for women, none of whom are housed with others who share their gender identity. According to the NI Department of Justice, prisoners are “given the opportunity to self-identify their sex at committal” but data indicates that all trans people are counted within the category of ‘male’.¹⁰ There is no formal policy on trans issues; the NI Department of Justice indicates that trans people are treated on a case by case basis.¹¹

2. Why are the official statistics limited / unreliable?

The official figures on numbers of trans prisoners are limited for the following reasons:

Prisoners often don't disclose.

Official figures are based on formal self-declarations (as is the case with most identity categories including race, gender, sexual orientation and disability), which means only those who are comfortable to disclose their identity will be counted. There are many reasons why people don't disclose their gender identity to authorities in general (whether it is to an employer, a government official or on public surveys); in prison these factors are often more acute.

Prisoners often do not disclose their sexual and gender identities for personal, political and safety reasons.¹² For example, in a letter published in Inside Time (the newspaper that circulates in UK prisons) a trans prisoner noted that many trans people fear coming out in prison because of pervasive bullying and harassment from other prisoners and staff.¹³ LGBTQ+ prisoners who contact the Bent Bars Project also regularly disclose to us that are not 'out' in prison and are afraid to reveal their identities. Prison conditions also vary across the estate, and some people tell us that they have felt safe to come out in one prison but not in another, so people's status as 'out' can change depending on the circumstances.¹⁴

Trans people in prison also face severe restrictions on their ability to access gender-affirming health care, clothing and personal items. This means they often cannot express their gender fully and are frequently subject to accusations of inauthenticity. Some decide that the risks of being out – when they cannot present themselves fully in their gender – are too high and it is better to stay closeted.

We see similar issues in relation to official statistics about sexual orientation in prison. While the Ministry of Justice collects official statistics on sexual orientation, current figures indicate that only 2% of prisoners in England and Wales officially identify as lesbian, gay or bisexual.¹⁵ A much higher number (15%) are recorded as unknown or refusing to disclose. In its 2018-19 Annual Report, the HM Inspector of Prisons noted that “Prisons were often unaware of the true number of gay, bisexual and other orientation prisoners in their population, and the support provided to this group was often limited.”¹⁶

It is acknowledged within the wider research literature that official statistics on LGBTQ+ identities in prison are vastly underestimated, and this is consistent with Bent Bars Project’s knowledge and experience of working with LGBTQ+ prisoners over the past ten years.¹⁷

Definitions of trans identity are varied.

Official numbers vary depending on whether a broad or narrow definition is used when the information is collected. For example, the first 2011 Ministry of Justice policy on trans prisoners used the more narrow language of ‘transsexual’ and did not include non-binary people, whereas the 2016 and 2019 policies use the broader language of ‘transgender’ and include non-binary people.

When information about identity is collected, the wording of the questions also influences how people interpret and answer the questions. Answers further vary depending on whether the information is collected anonymously or in person and by who.¹⁸ If people are not clear what the information will be used for, they may also be wary to share their identity with authorities. For all of these reasons, we need to treat official figures with caution.

Collection of information is not consistent.

The Ministry of Justice does not systematically collect data on gender identity across the entire prison population (in comparison to other identity categories such as sexual orientation, ethnicity, and religion). This means that people in prison are not universally asked to provide this information and the information is often collected only for those who voluntarily come forward.

In England & Wales, the official statistics on trans prisoners include only those who have disclosed to the authorities their identity and have had a local transgender case board (a meeting of senior managers and other officials who decide how to coordinate care and security arrangements for each trans prisoner).¹⁹ However, many trans and non-binary prisoners are not aware that they are entitled to a case board and short sentenced prisoners are less likely to have a case board. Prisoners who have already transitioned and have acquired a Gender Recognition Certificate (GRC) are also excluded from the Ministry of Justice’s official statistics on the number of trans people in prison.²⁰ It is believed that the number of prisoners with a GRC is very low.²¹

3. Which prisons are most trans people held in – men’s prisons or women’s prisons?

Current prison policies allow trans people to be held across the prison estate, in both prisons designated for men and prisons designated for women. Placement depends on a range of factors.²² A very small number of trans women are held in women’s prisons, the vast majority of trans women are held in men’s prisons. Most trans men are held in prisons for women.

It is also important to be aware that some trans people wish to be held in prisons that correspond to their gender, but others do not (i.e. there are some trans men who prefer to stay in women’s prisons and some trans women who prefer to stay in men’s prisons). The reasons why someone may or may not want to move across the prison estate are complex and are often related to broader factors such as variable conditions across the prison estate, the proximity of the prison to one’s home community, access to treatment programmes, and the ability of prisoners to develop networks for support and survival.

Current policies in England and Wales and Scotland require prison officials to consider the wishes of prisoners when making decisions about placement, but these views are considered alongside a range of other factors. In practice prisoners often have very little say - if any - over where they will be placed.

According to the Ministry of Justice equalities data for England and Wales, as of 2019, there were 34 trans prisoners held in prisons for women and 129 in prisons for men.²³

Of the trans people held in prisons for women, 30 reported their legal gender as female and 4 as male.²⁴ When asked about the gender with which the prisoner identified, 11 identified as female, 20 as male and 3 did not provide a response.

Of the trans people held in prisons for men, 2 reported their legal gender as female and 125 as male and 2 did not provide a response.²⁵ When asked about the gender with which the prisoner identified, 119 identified as female, 0 identified as male and 10 did not provide a response.

According to official Ministry of Justice data, almost half of all prisons in England and Wales hold at least one trans prisoner. In 2019, there were 29 prisons holding one trans prisoner, 22 holding two or more, and 11 holding five or more trans prisoners.²⁶

In Scotland, of the 20 trans prisoners in total, fifteen were identified as trans women, six of whom are held in female accommodation and nine in male accommodation. Of the trans men prisoners, one was held in the male estate and four in the female estate.²⁷

4. What are the policies and rules about trans prisoners in the UK?

England and Wales

In England and Wales, the first policy on trans prisoners was issued in 2011. It was reviewed in 2015 and reissued in 2016. It was subsequently revised in 2019. The current policy, 'The care and management of individuals who are transgender' along with additional 'operational guidance' is available on the Ministry of Justice [website](#).

Generally when a prisoner informs the prison that they are transgender, the prison is required to organise a 'case board' to identify what supports are needed. The 'local case board' may make recommendations about where the person should be housed (i.e. in the men's or women's estate), and may recommend a 'complex case board' be held. In England and Wales, prisoners are entitled to request a 'McKenzie friend' to attend their case board for support and assistance.

Regardless of what prison a person is held in, staff are expected to respect prisoners' self-declared gender identity and use correct pronouns.

For more information on trans prisoners' rights under the policy in England and Wales, see the [Prisoners' Advice Service Self-Help Toolkits](#), specifically '*A prisoner's guide to transgender rights*' and '*A prisoner's guide to LGB rights*' (also available on the Bent Bars Project website).

Scotland

In Scotland, the trans prison policy was issued in 2014 and is known as the 'Gender Identity and Gender Reassignment policy'. It is available on the Scottish Prison Service website. The policy is currently under review.

Under the Scottish policy, trans people do not have to request a case conference. If the Scottish Prison Service is aware that a person is trans, the prison is obligated to do an assessment within 72 hours of admission or becoming aware that the person is trans. The prison must then hold a full case conference within 7 days. Depending on the circumstances of the case, these case conferences will continue at regular intervals for the duration of the trans person's time in custody.

In Scotland, trans people have the right to request the attendance of a representative of a trans organisation at their case conference to help them to understand the process and to help to communicate their needs to the prison authorities. This may be via phone conference.

Northern Ireland

Northern Ireland does not currently have a policy on trans prisoners. All trans prisoners are addressed on a case-by-case basis.

5. Are trans people more likely to be arrested and imprisoned than non-trans people?

Because we do not have accurate information on how many trans people are in prison, it is difficult to say for sure. However, there is reliable evidence from other jurisdictions which indicates that trans and gender-non-conforming people are disproportionately at risk of targeted policing and criminalisation.²⁸ Based on the information that prisoners disclose to us about how they ended up in prison, the Bent Bars Project strongly believes that trans and gender non-conforming people in the UK, particularly those from disadvantaged backgrounds, are often at greater risk of criminalisation than non-trans people as a result of wider issues of inequality and discrimination.

For example, because of wider issues of inequality trans young people are often at greater risk of bullying and harassment, dropping out of school and becoming homeless.²⁹ Once on the street, they may turn to criminalised survival strategies such as sex work or drug trade, or may self-medicate to cope, which can put them at higher risk of contact with police. Trans people also face systemic discrimination in employment, which means they are vulnerable to economic precarity or poverty, which can increase risk of criminalisation.³⁰

6. What kinds of offences are trans people held in prison for?

Just as non-trans people are held in prison for a range of offences, the same is true of trans and non-binary people. There is no credible evidence to suggest that trans people are more or less likely than other people to commit particular kinds of crimes.

7. How many trans people are in prison for sex offences?

Because we do not have accurate figures on the number of trans people in prison, it is difficult to say how many trans people are in prison for what offences. It is important to be cautious around claims in this area. For example, a number of newspapers, including The Times, The Guardian, The Daily Mail have repeatedly circulated the misleading claim that “almost half of trans prisoners are sex offenders.”³¹ Variations of this statistic have then re-circulated on social media. For example in discussion threads on Mumsnet, this figure has been quoted as high as 80%, and numerous Twitter accounts have presented the figure as 50% of all trans women (not just trans prisoners). These figures are false and inaccurate.

Reasons why these claims are misleading:

a) The 50% statistic comes from a Freedom of Information request submitted to the Ministry of Justice in 2018, which inquired about the number of trans prisoners who were imprisoned for sexual offences. The Ministry noted that there were 60 trans prisoners serving sentences for one or more sexual offences.³² However, the 50% statistic is based on an overall figure of 125 trans prisoners, which the Ministry of Justice itself has noted is unreliable.

b) The Prison Inspectorate's 2018-19 report found in prisoner surveys that 1% of prisoners in prisons designated for women, and 2% of prisoners in prisons designated for men say they are transgender. If we were to generalise based on this estimate, it would indicate that a much greater overall number of trans prisoners were being held in prison than is officially recorded (i.e. as many as 1600 prisoners rather than 125). This would mean that the proportion of trans people held for sexual offences would be much smaller and potentially as low as 4%.³³ In other words, the percentage figure is entirely dependent on the overall number of trans people in prison, which we know is unreliable.

c) The Ministry of Justice has acknowledged that trans prisoners serving longer sentences (including for sexual offences) are more likely to be counted within their official statistics as trans. This is because the overall number of trans prisoners includes only "prisoners who are currently living in, or are presenting in a gender different to their sex assigned at birth and who have had a case conference (as defined by PSI 17/2016) as known to individual prisons." This means that anyone who had not requested a case conference would not be included in those figures. As the Ministry of Justice notes, "prisoners on longer sentences are more likely to be managed as a transgender prisoner than those on shorter sentences." This is in part because "there is little point having a case conference if the inmate won't be in prison long enough to benefit from it".³⁴

8. How does the official number of trans people with convictions for sex offences compare to the overall prisoner population?

If we look at the Ministry of Justice's official statistics, the number of trans people in prison for sexual offences is very small compared to the overall population of prisoners serving time for sexual offences. For example, as of 31 December 2018, there were 13,512 prisoners serving sentences for sexual offences in England and Wales. This represents 19% of the sentenced prison population.³⁵ If there were 60 trans prisoners serving sentences for sexual offences, that represents 0.4% of all sex offenders in prison. In other words, less than half-a-percent of prisoners serving sentences for sex offences are known to be trans.³⁶

Ministry of Justice data also indicates that there are twice as many non-trans women in prison for sex offences than trans women.³⁷ While the Ministry has not provided a breakdown of the

specific sexual offences women in prison were charged with, we can look at defendants in court as an indication. For example, in the year ending 2017, there were 186 female defendants proceeded against at magistrates' courts for sexual offences. Of those, 69 were for sexual assaults on females; 18 were assaults on males; 67 were sexual activity with minors; 24 were other sexual offences.³⁸

One of the questions we should consider when looking at data is why some groups of people are more scrutinised than others in relation to conviction rates. It is also important to recognise that statistics about convictions can often be misleading; they do not convey a full picture of why someone ended up in prison or what the circumstances were around their conviction or imprisonment.

9. Should we be concerned about the number of trans people who have committed sexual offences?

We should absolutely be concerned about the high rates of sexual violence across our communities in general. This is a widespread and pervasive problem that urgently needs addressing, particularly in the wake of cutbacks and chronic underfunding of anti-violence and sexual assault survivor services.

However, we should be wary when particular groups of people - especially socially disadvantaged and marginalised groups - are singled out and portrayed as inherently prone to sexually predatory behaviour.

Attempts to demonise oppressed groups by associating them with stories of sexual risk and danger has a long history. Narratives of sexual predation are deep seated within anti-black racism; narratives of dangerous sexual others are often used as justifications for war and imperialism; they continue to be used in anti-migrant discourses.³⁹ For this reason, we should be wary of claims that try to demonise any oppressed group as a threat or danger to others on the basis of their identity.

Even if a disproportionate number of trans people were imprisoned for sexual offences, this does not necessarily mean that trans people are more likely to commit sex offences than non-trans people. Rates of offending (i.e. how often people commit a crime) are not the same as rates of criminalisation (i.e. how often people are charged and convicted of a crime).

For example, it is well documented that black and minority ethnic people use drugs less than white people in England and Wales, but are more likely than white people to be stopped and searched for drugs, charged and convicted for drugs, and imprisoned for drug offences.⁴⁰ In other words, just because one group of people are more likely to be charged, convicted and imprisoned for a particular offence, doesn't mean that they commit that offence at higher

rates.

Similarly, if we look at the incarceration rates of gay prisoners in the 1950s and 1960s, a high proportion were classified as sex offenders, due to the criminalisation laws at the time and to police targeting of gay men. These classifications were then used to portray gay men as predators and paedophiles.

Some media reporting is currently contributing to a similar moral panic around trans people and trans women in particular. This is not to deny the fact that there are some trans people in prison who have committed sexual offences. But the media has been using selective examples to fuel anti-trans sentiments that equate trans women with sexual predators and suggest that trans people are inherently dangerous. This is inaccurate and misleading.

10. It is well documented that crime rates are highly gendered (e.g. men are more likely to commit acts of violence than women). How does this impact people who have changed gender?

Some anti-trans groups have incorrectly claimed that trans women have ‘male’ patterns of criminality. The main research they cite is a Swedish study which reviewed the long term mortality, morbidity and criminal offence rates of trans people following sex reassignment.⁴¹ However, as the lead author of the study Cecilia Dhejne notes, the study has been widely misused, misinterpreted and misrepresented. As Dhejne explains, ‘The study as a whole covers the period between 1973 and 2003. If one divides the cohort into two groups, 1973 to 1988 and 1989 to 2003, one observes that for the latter group (1989–2003), differences in mortality, suicide attempts and crime disappear. This means that for the 1989 to 2003 group, we did not find a male pattern of criminality.’⁴²

As Dhejne further explains: ‘The difference we observed between the 1989 to 2003 cohort and the control group is that the trans cohort group accessed more mental health care, which is appropriate given the level of ongoing discrimination the group faces. What the data tells us is that things are getting measurably better and the issues we found affecting the 1973 to 1988 cohort group likely reflects a time when trans health and psychological care was less effective and social stigma was far worse.’⁴³

The key finding of the study was that sex reassignment in itself was not sufficient to address trans health needs and that a broader range of social and mental health care should be

provided to trans people, particularly to address the social impact of discrimination, including criminalisation. As Dhejne explains: “Medical transition alone won’t resolve the effects of crushing social oppression: social anxiety, depression and posttraumatic stress. What we’ve found is that treatment models which ignore the effect of cultural oppression and outright hate aren’t enough. We need to understand that our treatment models must be responsive to not only gender dysphoria, but the effects of anti-trans hate as well. That’s what improved care means.”⁴⁴

The misrepresentation of this study and other comparable ones is also partly the result of failing to recognise the difference between rates of offending (who commits offences and at what rates) and rates of criminalisation (who is most likely to be arrested for offences).

11. Are trans people in prison more likely to be victims of sexual violence or perpetrators of sexual violence?

Trans people in prison are far more likely to be the victims of sexual assault than the perpetrators. In May 2020, the Ministry of Justice reported that 11 trans women had been sexually assaulted in men’s prison within the last year. This was compared to one case in 2019 of a trans person suspected of carrying out a sexual assault.⁴⁵

The Ministry of Justice noted that in five women’s prisons there were 124 officially recorded cases of sexual assault over the previous nine years, from 2010 to 2018. Seven of those 124 cases had been carried out by trans prisoners. The Ministry stated that those seven included trans people who were born female but identified as men, non-binary or intersex, as well as people who were male by birth and now identified as female.⁴⁶

Evidence from other jurisdictions has found that trans people, particularly trans women, are at high risk of sexual violence and other assaults in prison.⁴⁷ While the statistical evidence is limited for trans and non-binary prisoners in the UK, based on the correspondence we have received over ten years, the Bent Bars Project believes that trans people are also highly vulnerable to sexual harassment, violence and assault in prisons in the UK.

12. Are there risks in placing trans and non-trans women in the same prison?

There is no evidence to suggest that trans women pose a greater threat to women than non-trans women do. While there have been some high profile cases of trans women who have assaulted non-trans women, there are far more cases of non-trans women assaulting other women.

Physical and sexual assault, bullying and other forms of violence are present in all prisons, including women's prisons. For example, in 2017, there were 1206 recorded incidents of assault in prisons for women, which is a rate of 303 assault incidents per 1000 prisoners (compared to a rate of 346 in prisons designated for men).⁴⁸ This included 21 recorded sexual assaults in prisons for women, though many assaults go unreported.⁴⁹

A Ministry of Justice report on sexual assault in prisons in England and Wales noted that "for much of the period between 2002 and 2014, a disproportionately high number of sexual assault incidents were reported in women's establishments....This over-representation continued until 2012, since when proportions of incidents in male and female establishments more closely aligned to their respective share of the prison population." The report notes that the rebalancing of the figures is not because the rate of assault in women's prisons had decreased, but likely because men's reporting had increased."⁵⁰

While sensationalist media and anti-trans organisations frequently present trans women as predatory and dangerous, there is no reliable or robust evidence to suggest that trans women are any more risky or dangerous in their actions or behaviours than non-trans people. As the Ministry of Justice has itself acknowledged: "We have seen no evidence that being transgender is in itself linked to risk. Risk assessments must be free from assumptions or stereotyping."⁵¹ Media suggestions that trans women are inherently more dangerous than non-trans women are based on false and discriminatory stereotypes.

It is also important to note that while media reports often focus on incidents of violence between prisoners, the structure of prison often gives rise to institutional forms of violence, including incidents of bullying, violence and abuse by staff against prisoners. Such incidents tend to be formally underreported but warrant greater scrutiny and attention. For example, the Ministry of Justice "Safety in Custody Statistics" report prisoner-on-prisoner assaults and prisoner-on-staff assaults, but do not regularly report staff-on-prisoner assaults.⁵²

13. But what if women prisoners who are survivors of male violence are triggered by having to share space with someone they perceive as male?

Trans-inclusive, women-only service providers have been successfully navigating these concerns for many years. As noted in a trans inclusive policy guidance document from 2002: “For some survivors of male violence, a generalized fear of men is not uncommon, at least for a period of time. Survivors often struggle with a wide range of triggers which can activate feelings associated with the abuse; including sounds, colours, smells and the time of day. A woman (non-trans or trans) with some “masculine” features may remind a survivor of her male abuser. Another woman (non-trans or trans) may remind a survivor of her female abuser. There are any number of characteristics that may trigger a survivor. Part of a survivor’s healing process is to learn to differentiate her abuser from others with a similar characteristic: whether it’s the muscular arms of a non-trans woman or the curly red hair of a trans-woman.”⁵³

Addressing trauma in prison is particularly difficult because the experience of imprisonment itself is traumatising and because most people in prison have experienced trauma and are trying to navigate this in a punitive environment.⁵⁴ It is also important to note that women’s prisons are not male-free spaces; concerns about trauma have to be navigated around staff as well. Prisons officers, support workers, NHS staff, educators, and drug treatment staff often include male workers, all who are in significant positions of power and authority over prisoners.⁵⁵ There are many cases of prison officers - regardless of their gender - abusing their positions of authority and causing harm.⁵⁶

14. Do male prisoners ever falsely claim to be trans in order to get access to the women’s estate?

While it is possible that male prisoners might pretend to be trans to access women’s prisons, such cases would be rare.⁵⁷ Even if such cases arose, the Ministry of Justice policy robustly guards against this. The assumption, often circulated in the media, that a person can simply declare themselves to be trans and be immediately moved to a different prison is not consistent with the Ministry of Justice policy or practice. It certainly does not reflect the experiences of prisoners in contact with the Bent Bars Project. There are very few cases of trans people being moved from the male to female estate and vice versa. When it does happen, it usually

takes considerable time before someone is moved.

Some newspapers have also contributed to false claims that particular high profile prisoners are claiming to be trans, when this is not actually the case. These false stories often make headline news, but the subsequent correction does not.⁵⁸

15. Do any prisoners ever say they are trans in order to get special treatment in prison?

Coming out in prison is often a difficult process and it is important to support people in exploring and expressing their identities. Just because someone comes out for the first time in prison does not mean their identity is not genuine.

Because of scarcity of resources and limited access to support, prison environments encourage prisoners to be suspicious of each other and hyper-vigilant to any possibility that someone is getting better treatment. Any attempt to address discrimination is often perceived as special treatment.⁵⁹

It is also important to bear in mind that trans people in general are often subject to unfair presumptions of disbelief about their gender identity. This can be especially acute for trans prisoners. As a result, trans prisoners are often subject to intense public scrutiny and judgement from others about whether or not their identities are authentic.

The ability of trans prisoners to fully present themselves in their self-determined gender is also significantly impacted by limited access to gender-affirming health care, appropriate clothing and personal items in prison. In some cases, trans prisoners are prevented from expressing themselves / wearing gender-affirming clothing outside of their own cells, which means they have difficulty presenting their gender consistently. It is also extremely rare for a trans person in prison to obtain gender-affirming surgery while in prison.

We should be very cautious about assuming that anyone is in a better position to know the 'truth' about someone else's gender identity than the individual themselves. Those who do not respect people's identities often do so on the basis of unfair stereotypes and discriminatory perceptions of trans people.

16. I've heard about proposals to create separate units or prisons for trans people. Is this a good solution? Will it help keep trans people safe?

The Bent Bars Project has heard mixed views from trans prisoners on this question. Some trans people prefer to be in prisons where there are other trans people and there is potential to develop a greater sense of community support. Others have felt that being in separate spaces has only increased overall stigmatisation and group isolation. We also know that prisoners held in specialist units within prison can be exposed to antagonism and feelings of resentment from the rest of the prison (both staff and prisoners). Separate units can increase feelings of animosity between prisoners, particularly when it is perceived that some groups are being given 'special treatment'.

There is also a broader danger that proposing separate prisons for particular groups will be used to justify prison expansion. We have seen this happen in other jurisdictions, where proposals for 'new and improved' prisons rarely achieve their stated ambitions and often result in little more than an enlarged prison estate.⁶⁰

17. What's the best way to show support or solidarity for trans and gender non-binary people in prison?

Check out our [Trans Prisoners Info Sheet #3: Solidarity / Things you can do](#).

For further information please see our [Trans Prisoners Info Sheet #1: Issues faces by Trans, Non-Binary, and Gender Non-Conforming People in Prison](#).

All infosheets are available on our website: www.bentbarsproject.org.

References

- 1 The Bent Bars project supports people held in prisons, immigration detention centres, secure hospitals and other places of forced confinement.
- 2 See for example: Government Equalities Office (2018) [Fact Sheet on Trans People in the UK](#); Stonewall (2018) [The truth about trans](#).
- 3 Ministry of Justice (2019) [Offender Equalities Annual Report](#). For further details, see [Chapter 2 Tables: Transgender Prisoners](#).
- 4 Ministry of Justice (2019) [Guide to HMPPS Offender Equalities Annual Report 2018-19](#).
- 5 BBC Reality Check: [How many transgender inmates are there?](#)
- 6 HM Chief Inspector of Prisons for England and Wales (2019) [Annual Report 2018-19](#).
- 7 In March 2019 (when much of the equalities data was collected), the [prison population](#) in England and Wales was 82,634. This included 78,806 people in men's prisons and 3,837 in women's prisons. If the HMIP figures are generalised across the entire population, 2% of 78,806 would be 1576 prisoners; and 1% of 3837 would be 38.
- 8 Taylor, Pennie (2018) [Scots Prisons to consult on change to transgender policy](#)
- 9 Northern Ireland Department of Justice ["Weekly Situation Reports 2019-20"](#)
- 10 Northern Ireland Department of Justice (2018) [First time entrants to the justice system in Northern Ireland 2017-18](#)
- 11 Freedom of Information Request (2015) [FOI Case No 15:350](#) published on the Northern Ireland Department of Justice; Beard, Jacqueline (2018) House of Commons Briefing Paper on Transgender Prisons, [Briefing Paper Number 07420](#)
- 12 See for example, Dunn, Peter (2013) Slipping off the equalities agenda? Work with LGBT prisoners. [Prison Service Journal 206](#): 3-10. See also Carr, Nicola and Siobhán McAlister and Tanya Serisier (2016) [Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prison](#) Irish Penal Reform Trust.
- 13 Baker, Sarah (2016) [Transgangsta Bites Back](#). InsideTime 16 June 2019. See also: Greenhalgh, Hugo (2018) [Phil Forder: prison reformer](#)
- 14 See for example, letter from Jason, published in the [Bent Bars Newsletter \(issue 3\)](#).
- 15 See Ministry of Justice (2019) Offender Equalities Annual Report, [Chapter 1 Tables: Prison Population](#).
- 16 HM Chief Inspector of Prisons for England and Wales (2019) [Annual Report 2018-19](#).
- 17 See for example Dunn, Peter (2013) Slipping off the equalities agenda? Work with LGBT prisoners. [Prison Service Journal 206](#): 3-10.
- 18 See for example, this [reflection](#) from a charity worker in Holloway Prison on how collecting identity data in prison can vary significantly depending on who and how that data is collected; See also Dunn, Peter (2013) Slipping off the equalities agenda? Work with LGBT prisoners. [Prison Service Journal 206](#): 3-10.
- 19 Ministry of Justice (2019) [The care and management of individuals who are transgender](#).
- 20 Ministry of Justice (2019) [Offender Equalities Annual Report](#)

[21](#) Only a small proportion of people who identify as trans in the general population have acquired a Gender Recognition Certificate since the Gender Recognition Act 2004 came into force. See Government Equalities Office factsheet on [Trans People in the UK](#). This is due in part to onerous financial, bureaucratic and medical requirements to obtain a GRC. It is especially challenging to obtain a GRC in prison.

[22](#) See Ministry of Justice (2019) [The care and management of individuals who are transgender](#).

[23](#) Ministry of Justice (2019) [Offender Equalities Annual Report](#)

[24](#) Because the official statistics exclude those with a gender recognition certificate, these figures likely indicate that there are only 4 trans women prisoners without gender recognition certificates in the women's estate.

[25](#) Ministry of Justice (2019) [Offender Equalities Annual Report](#)

[26](#) Ministry of Justice (2019) [Offender Equalities Annual Report](#), see [Chapter 2 Tables: Transgender Prisoners](#).

[27](#) Taylor, Pennie (2018) [Scots Prisons to consult on change to transgender policy](#)

[28](#) See for example Carr, Nicola and Siobhán McAlister and Tanya Serisier (2016) [Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prison](#) Irish Penal Reform Trust; Mogul, Joey and Andrea J. Ritchie and Kay Whitlock (2011) *Queer (In) Justice: The criminalisation of LGBT people in the United States*, Beacon Press.

[29](#) See for example, Albert Kennedy Trust (2015) [LGBT Youth Homelessness: A UK National Scoping of Cause, Prevalence, Response & Outcome](#); Hudson-Sharp, Nathan and Hilary Metcalf (2016) [Inequality among lesbian, gay bisexual and transgender groups in the UK: a review of evidence](#), National Institute of Economic and Social Research; Bachmann and Gooch (2018) [Stonewall LGBT](#)

[in Britain: University Report](#)

[30](#) See for example, Whittle, Turner and Al-Alami (2007) [Engendered Penalties: Transgender and Transsexual People's Experiences of Inequality and Discrimination](#).

[31](#) See for example, Gilligan, Andrew (2017) 'Up to half of trans inmates may be sex offender' published in The Times, 19 November; Matthews, Alex (2017) 'Half of transgender prisoners could be sex offenders', published in The Daily Mail, 19 November; Topping, Alexandra (2018) 'Sexual assaults in women's prison reignite debate over transgender prisoners' published in The Guardian, 9 September 2018;

[32](#) BBC Reality Check (2018) [How many transgender prisoners are there?](#)

[33](#) If the Prison Inspectorate figures are generalised up (see footnotes note 6 and 7) this would mean there were potentially 1600 trans prisoners across the estate in England and Wales. Of these, if 60 had convictions for sexual offences, this would amount to less than 4% of trans prisoners. It is possible that some of those 1600 could also have convictions for sexual offences. However, the key point to note is that the percentage of known trans prisoners who are serving time for sexual offences will vary significantly depending on the overall number of trans prisoners.

[34](#) BBC Reality Check (2018) [How many transgender prisoners are there?](#)

[35](#) Ministry of Justice (2018) [Offender Management Statistics Bulletin](#), England and Wales Quarterly July to Sept 2018 Prison population: 31 December 2018.

[36](#) According to the Ministry of Justice [annual statistics](#), as of March 2018, there were also 58,637 people who are 'registered sexual offenders' who are currently being managed outside of prison under the Multi Agency Public Protection (MAPPA) framework.

[37](#) The total prison population at 30 June 2018 was 82,773. Females represented 5%

of the total prison population (3,803 in June 2018). The Ministry reports that 4% of women in prison are in prison for sexual offences. If we take 4% of 3803, this equals 152 prisoners, compared to the 60 trans prisoners serving sentences for sexual offences. While it is possible that some of these 152 could include trans women with a Gender Recognition Certificate, the numbers are likely to be very low. See Ministry of Justice (2018) [Statistics on Women and the Criminal Justice System 2017](#).

38 Ministry of Justice (2018) [Sexual Offending: Ministry of Justice Appendix Tables](#).

39 See for example, Sophia Siddiqui (2018) [Fascist white feminism is exploiting fears of sexual violence to push racist agendas](#) Gal-dem; Sara R Farris (2018) [#MeToo shows sexism is not men of colour's prerogative](#) Aljazeera.

40 See for example, Eastwood, Shiner and Bear (2013) [The Numbers in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences in England and Wales](#). [Release.org.uk](#)

41 See Dhejne et al (2011), [Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden](#).

42 Williams, Cristan (2015) [Fact check: study shows transition makes trans people suicidal](#) The Trans Advocate.

43 Williams, Cristan (2015) [Fact check: study shows transition makes trans people suicidal](#) The Trans Advocate.

44 Williams, Cristan (2015) [Fact check: study shows transition makes trans people suicidal](#) The Trans Advocate.

45 BBC (2020) [Eleven transgender inmates sexually assaulted in male prisons last year](#).

46 BBC (2020) [Eleven transgender inmates sexually assaulted in male prisons last year](#). See also UK Parliament (2020) Written questions, answers and statements: Prisoners Sexual

Offences - [Question for Ministry of Justice UIN HL3198](#), tabled on 21 April 2020.

47 Ryan, Jane (2016) [Transgender issues in the criminal justice system](#) Legal Action Group; Association for the Prevention of Torture (2018) [Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide](#); Carr, Nicola and Siobhán McAlister and Tanya Serisier (2016) [Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prison](#) Irish Penal Reform Trust; Black and Pink (2015) [Coming out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey](#); National Centre for Transgender Equality (2018) [LGBTQ People Behind Bars: A guide to understanding the Issues faced by transgender prisoners and their legal rights](#); Amnesty International (2005) [Stonewalled: Police Abuse Against LGBT People in the US](#)

48 Ministry of Justice (2018) [Safety in Custody Statistics](#); See: [Table 3.1](#)

49 See Ministry of Justice (2018) [Safety in Custody Statistics, Table 3.9](#).

50 See Ministry of Justice (2018) [Sexual Assaults Reported in Prisons: Exploratory Findings from Analysis of Incident Descriptions](#).

51 Ministry of Justice (2016) [Review on the Care and Management of Transgender Prisoners](#).

52 Ministry of Justice (2019) [Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to June 2019 Assaults and Self-harm to March 2019](#) .

53 Julie Darke & Allison Cope (2002) [Trans Inclusion Policy Manual for Women's Organisation](#); see also Stonewall (2018) [Supporting trans women in domestic and sexual violence services: Interviews with professionals in the sector](#).

54 See Lamble, S (2019) [Why Context Matters in the Trans Prisoner Policy Debates](#).

55 See for example, this 2013 Freedom

of Information Request [Number 86754](#) which confirmed that up to 50% of prison officers in women's prisons are men.

56 Grierson, Jamie (2019) [More than 2,500 prison staff disciplined in five years, MoJ figures show](#). The Guardian.

57 Anti-trans organisations often cite the British Psychological Society's submission to the 2015 Transgender Equality Inquiry, which notes an awareness of some cases where men convicted of sex offences have falsely claimed to be trans for a number of reasons. However, most of the reasons noted in their report relate to an attempt by the person to overcome their offending behaviour (including a mistaken belief that taking oestrogen and blocking androgen will reduce risk of offending). The report notes that only in "rare cases has it been thought that the person is seeking better access to females and young children through presenting in an apparently female way." See (2015) [Written evidence submitted by British Psychological Society to the Transgender Equality Inquiry](#).

58 See for example the claims about Ian Huntley that were given prominent headlines in major papers across the UK, which were later [found to be false](#).

59 See for example, Amelia Abraham (2019) [What its like to be trans in the UK Prison System](#) DazedDigital.com.

60 See for example Hayman S. (2000) Prison Reform and Incorporation: Lessons from Britain and Canada. In: Hannah-Moffat K and Shaw M (eds) [An Ideal Prison? Critical Essays on Women's Imprisonment in Canada](#). Halifax: Fernwood, 41-51; Hayman S. (2006) [Imprisoning Our Sisters: The New Federal Women's Prisons in Canada](#): McGill-Queen's University Press.



Bent Bars Project

PO Box 66754

London

WC1A 9BF

www.bentbarsproject.org