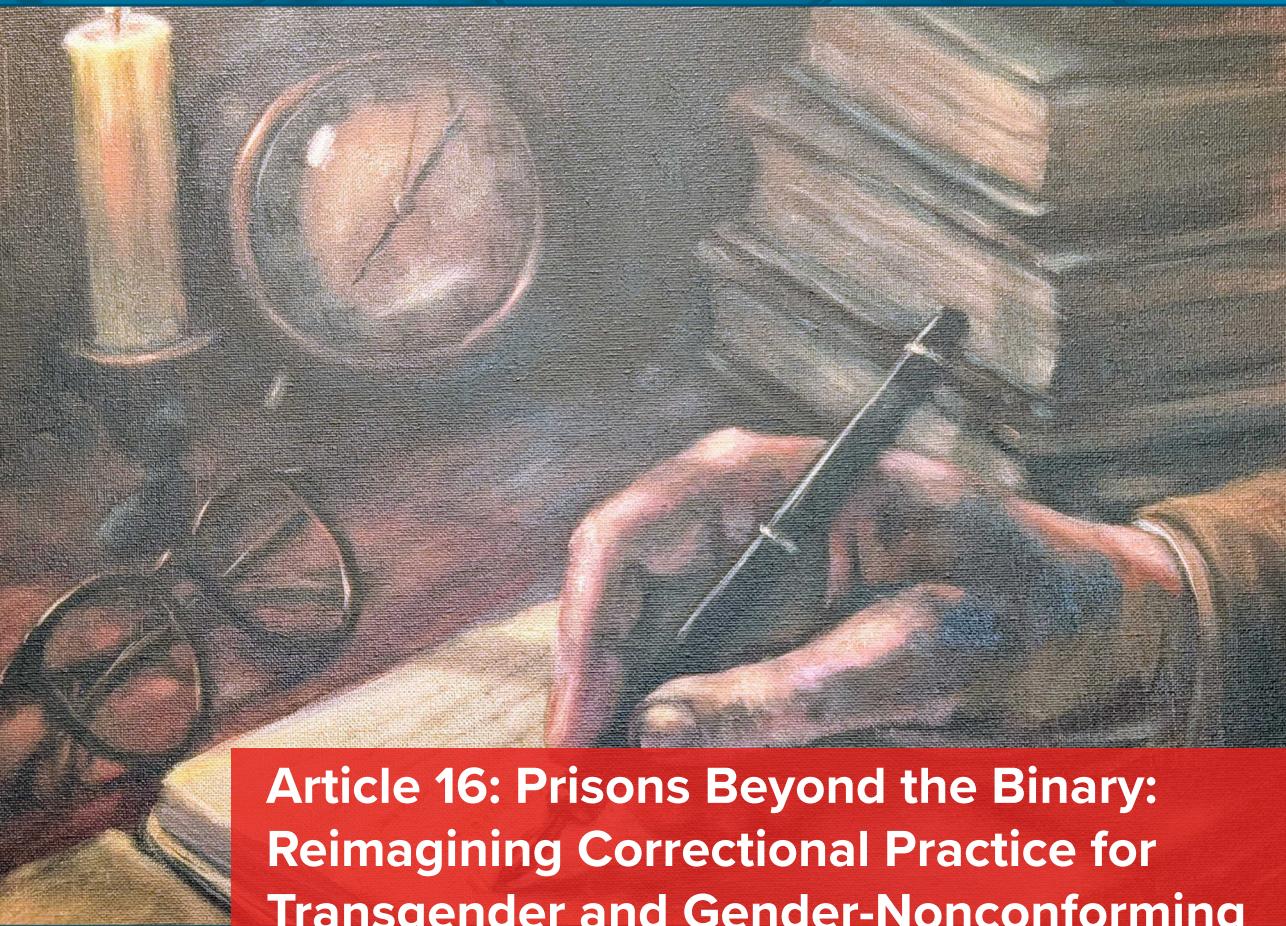


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## Article 16: Prisons Beyond the Binary: Reimagining Correctional Practice for Transgender and Gender-Nonconforming People in Custody (ACJ20-A016)



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## **PRISONS BEYOND THE BINARY: REIMAGINING CORRECTIONAL PRACTICE FOR TRANSGENDER AND GENDER-NONCONFORMING PEOPLE IN CUSTODY**

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### **Abstract**

Contemporary prison systems remain largely structured around cis-normative, binary assumptions of gender, with architecture, management, and everyday practices organised around and between 'male' and 'female'. However, the increasing recognition of gender diversity poses emerging and substantive questions for correctional policy and practice. This paper examines responses to such challenges in a range of jurisdictions within which prison systems have moved past the gender binary in some way. Drawing on emerging research and practice this paper argues that a shift toward individualised, rights-based approaches is essential to reduce harm, improve safety, and uphold gender-affirming dignity. Moving beyond the binary is not only a symbolic gesture toward inclusion, but a practical necessity for the legitimacy and humanity of modern correctional institutions.

**Keywords:** Gender diversity, Prison systems, Correctional policy and practice, Rights-based approaches

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## Introduction

Prison systems remain some of the most enduring gendered institutions (Jenness & Fenstermaker, 2014; Maycock, 2020b; Maycock et al., 2024; Pemberton, 2013). From its physical design to its administrative procedures, prisons have long been organised through the cis-normative, binary categories of 'male' and 'female'. Correctional systems across the world typically separate people according to sex assigned at birth, assume stable gender identities, and reinforce binary gender norms through uniforms, staffing arrangements, program design and everyday routines. This binary practice and infrastructure have appeared self-evident since the inception of the modern prison, being foundational to the development of the prison systems internationally. However, growing recognition of gender diversity in social, medical, and legal contexts has exposed the inadequacy of binary models in responding to the lived realities of incarcerated people as well as prison staff.

The experiences of transgender, non-binary and other gender-diverse (Transgender and Gender-Nonconforming, (TGNC)), people in custody reveal the everyday harms of this binary order, that go beyond being placed in the wrong parts of prison systems (Maycock, 2020b). TGNC people often find themselves misclassified, misgendered, or subject to unsafe and isolating placements. While transgender rights have gradually entered correctional debates, non-binary and other gender-nonconforming people remain largely invisible in research, data collection, and policy design. Their experiences sit at the intersection of gender, sexuality, class, race, and mental health, generating vulnerabilities that existing systems are ill-equipped to address.

This paper explores the question of what it means for prisons to "go past the binary." Rather than advocating an immediate de-gendering of entire correctional systems, the argument advanced here is that incremental, evidence-informed reforms can progressively unsettle binary assumptions across key operational domains—classification, accommodation, health care, privacy, and staff culture. Drawing on international examples, the analysis highlights both the promise and the practical limits and challenges associated with such reforms. Ultimately, moving beyond the binary in prison practice is not simply about accommodating minority identities, but about rethinking the ethical and organisational foundations of carceral experience itself.

## Brief review of justifying literature

Prison systems have conventionally been designed by and for men (Rafter, 1985a). Rafter (1985b) traced the development of women's prisons, demonstrating that it adhered to two distinct paradigms. Within the US, from a separate area for women, women's detention facilities developed out of men's prisons. Women were also placed in separate institutions, which paradoxically marked the beginning of an ongoing history of maltreatment. Rafter suggests that the criminal justice system has historically given female people in prison only partial justice by tracking racial and geographical differences in these two parts of institutions across time.

Binary gender divisions are largely omnipresent in the prison architecture (Jenness & Fenstermaker, 2014; Maycock, 2020b; Pemberton, 2013). These assumptions persist in the classification and management of prisoners today. Admission forms routinely require individuals to tick "male" or "female," and electronic data systems rarely provide options beyond these categories. Custodial assignments typically follow genital-based criteria or the sex recorded on legal documents. Such

rigid systems erase the existence of those who identify outside the binary or whose bodies do not align neatly with administrative categories. Non-binary prisoners may be housed according to staff assumptions about their appearance, sometimes without consultation, or pressured to declare themselves as either male or female to enable bureaucratic processing. As Pemberton (2013) argues, the prison's gender order is maintained not only through policy but through the everyday micro-practices of surveillance, language, and spatial segregation that continually reproduce the binary.

The consequences of the gender binary organisation of prisons are profound. International evidence indicates that transgender and gender-diverse people face heightened risks of violence, sexual assault, and self-harm in custody (Jenness & Fenstermaker, 2014). Many are placed in solitary confinement purportedly for their own protection (Arkles, 2008; Coppola, 2023), yet isolation inflicts well-documented psychological harms. Health care access is often contingent on medical or legal proof of gender identity, excluding many non-binary persons whose identities do not correspond to clinical transition pathways. The binary logic of imprisonment thus produces both physical and ontological vulnerability.

Within this context, this paper begins to map significant emerging shift in the organisation of prisons around gender, although in this instance the examples below respond to gender diversity going past the pre-existing binary.

#### International examples of parts of prisons that go past the gender binary

The examples outlined below, go beyond policy documents and theoretical consideration, they are actual physical units and wings of prisons in operation specifically to house transgender people in prison (other gender diverse people are rarely considered or included in these spaces). The examples below differ significantly by context: voluntary vs. mandatory placement; newly created units vs. repurposed wings; proximity to other units and staffing arrangements vary significantly. Cumulatively, the emerging evidence (while currently relatively limited), suggests that dedicated transgender wings often trade one problem (risk of assault in general population) for other issues (isolation, visibility, adjacency to other units, resource competition). Importantly none of these examples yet offers robust publicly available data on how much safer or more beneficial these units are for the transgender persons themselves (or how they compare to alternative housing models).

#### *Brazil*

Since around 2009 several Brazilian states and prison administrations began to experiment with physically segregated spaces often termed LGBTI+ wings, galleries or pavilions where transgender women (and sometimes other gender/sexual minorities) are grouped together rather than placed in the wider male population. Academic research and field interviews with transgender women and 'travestis' in Brazilian prisons (Ferreira & de Camargo, 2024), document these practices as a mixed practical response: such wings can reduce immediate threats from mainstream male populations and enable peer mutual aid, but they also tend to reproduce stigma, limit access to work and programs, and vary widely in quality between institutions.

#### *England*

At HMP Downview in England, E wing was opened specifically for transgender people in 2019. E-Wing

provides a concrete example of a repurposed women's-estate wing used in a transgender specific way. On the ground this looked like a physically separate cell block used to manage placement and risk rather than to integrate transgender prisoners into mainstream female wings. The HMP Downview case illustrates how a "transgender unit" in practice can be an administrative solution to difficult allocation decisions and can produce forms of separation that transgender people themselves and observers find problematic. Importantly no local transgender organisations consider this unit as desirable or beneficial.

#### *Greece*

Korydallos Women's Remand Prison has a transgender unit. The Council of Europe's CPT documented the establishment of a small transgender unit within Korydallos Women's Remand Prison during its 2022 ad-hoc visit. Inspectors described refurbished cells and a distinct section for transgender women, noting improved living conditions compared with some earlier ad hoc placements elsewhere (e.g., Corfu prison). The CPT qualified its finding by emphasising the need for a formal policy framework on searches, staffing and healthcare, but the practical reality in Korydallos is clear — a physically demarcated unit that houses transgender people in prison, with observed improvements in conditions but continuing questions about protocols and integration into prison life.

#### *Italy*

Italy's plans to establish a dedicated transgender prison wing in 2010 marked an unprecedented moment in correctional practice. The unit, located at the Pozzale facility near Florence, was created within what had previously functioned as a women's prison. It was designed to accommodate over thirty transgender people in prison, offering an environment that was intended to provide greater safety and dignity than placement in male prisons. Initially, Italian authorities presented the initiative as a pioneering step toward inclusion, providing access to medical care and social programs consistent with gender identity. However, despite the progressive rhetoric, the unit didn't eventually open and now transgender people in prison are held in informal specific wings across prisons in Italy. The Pozzale prison itself was eventually closed, and the dedicated TGNC wing did not continue elsewhere formally.

#### *Iran*

For many years, investigators, survivors and human-rights monitors have described a distinct "transgender ward" in Evin in Teheran (commonly referred to as Ward 240). This functions as a physically separate section of the prison with long corridors of cells and very limited daylight and exercise. Accounts from former detainees and NGO field reports portray Ward 240 as an institutional site of segregation: people branded as gender-nonconforming or same-sex attracted were located there, often experiencing overcrowding, poor sanitary conditions and restricted movement (<https://www.peace-mark.org/en/articles/103-4-en/>). Recent reporting around the June 2025 Israeli airstrike on Evin, which reportedly destroyed parts of the prison's trans wing and left many trans detainees missing or presumed dead, has also drawn renewed attention to Ward 240 and to longstanding descriptions of inhumane conditions within it.

#### *Thailand*

In March 2017, Thai authorities established the first prison wing specifically designated for TGNC people within Minburi Prison in Bangkok. The initiative was framed by officials as a response to

increasing numbers of TGNC people in prison, and was presented publicly as a measure for "better management" rather than a human rights reform. Activists and advocacy groups in Thailand expressed concern that the creation of this separate wing was motivated more by administrative convenience than by the safety or dignity of those incarcerated. Conditions in the TGNC unit reportedly mirrored those in the rest of the prison, with little evidence of specialised healthcare, access to gender-affirming treatment, or training for correctional officers. Moreover, segregating TGNC prisoners often resulted in further social isolation and limited access to education or work programs. Nonetheless, the establishment of the Minburi wing marked a significant institutional acknowledgment of gender diversity within Thailand's carceral system, with another TGNC wing now open in Pattaya prison.

*U.S.*

In the US there was previously a transgender specific Unit at the Rikers Island Jail Complex in New York that opened in 2010 but is due to be closed. Rikers has often been cited as an example where a discrete housing unit for transgender detainees was opened that housed up to around 30 transgender women. This was intended as a voluntary, safer alternative to the male general population or protective solitary housing. Implementation, however, was unstable with the unit's fortunes fluctuating with leadership changes. Beyond Rikers, several U.S. County jails and state prisons have set up protective housing pods or administrative segregation units that are effectively transgender specific in practice. Some units are voluntary dorm-style groupings, others are more isolating protective-custody cells.

### Challenges and Limitations

It is important to recognise the diversity within the transgender and gender diverse community, this diversity maps onto different expectations and demands around where TGNC people want to be housed within prison (Brömdal et al., 2023; Maycock, 2020a). A survey conducted by the Vera Institute (Chesnut & Peirce, 2024) of 280 currently incarcerated transgender people in state prisons across the US, suggested:

Many [participants] called for units designated specifically for transgender people and/or for the option for transgender women in men's facilities to transfer to women's facilities—but not everyone would choose either of these options.

Therefore, if TGNC spaces in prison are to progress, such spaces must be created in alignment to TGNC community expectations and needs in prison. Additionally, and the fact that within many of the examples above, changes in policy and the practice of placement within parts of the prison system not labelled 'male' and/or 'female' have happened to and not *with* TGNC people within prison settings. In the examples outlined above, there is little evidence that community engagement or consultation has taken place in the establishment of the new wings, reflective of approaches within the wider policy landscape around gender diversity in prison.

The movement toward greater inclusion of gender diverse people in some prison systems, faces multiple obstacles. Within a wider context of the rolling back of transgender rights in some jurisdictions (cf. TGEU's Trans Rights Index and Map 2025), institutional conservatism and public

scrutiny create strong disincentives for experimentation. Correctional systems are risk-averse bureaucracies that equate safety with standardisation; diversity is often perceived as a threat to order. Media sensationalism around trans prisoners has further politicised the issue, narrowing the space for nuanced reform.

Staff culture and training remains pivotal. Without attitudinal change among frontline officers, policy reform risks remaining purely symbolic. A significant Canadian study (Johnston et al., 2022; Ricciardelli et al., 2020) and a wider scoping review (Daken et al., 2024) reveal that staff uncertainty and fear of making mistakes often lead to avoidance or over-correction in dealing with TGNC people in prison. Comprehensive training programs that combine legal knowledge, empathy building, and exposure to lived experience could mitigate this.

Legal frameworks can also constrain change. In many jurisdictions, legislation mandates the segregation of male and female prisoners, leaving limited room for gender-neutral or mixed housing. Where legal reform is politically unviable, administrators have resorted to ad hoc solutions, such as "protective custody" units or single-cell placement. These arrangements, though intended to ensure safety, frequently reproduce isolation and stigmatization.

Data limitations present another barrier. Few correctional agencies systematically collect information on gender identity beyond the binary, making it difficult to evaluate the scale of the issue or the effects of policy change. Privacy concerns and the potential misuse of identity data add further complexity.

Resource constraints must also be acknowledged. Training programs, infrastructure modifications, and healthcare integration require funding in systems already stretched by overcrowding and austerity. Yet some of the most effective changes, revising administrative forms, amending search protocols, or procuring gender-neutral clothing are inexpensive. The challenge lies not primarily in cost but in institutional will.

### Towards a Rights-Based Framework for Correctional Inclusion of Gender Diversity

Despite these challenges, a growing consensus affirms that gender diversity in prisons is a human rights issue rather than a discretionary matter of management. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) emphasise respect for dignity, non-discrimination, and individualisation. The Yogyakarta Principles plus 10 (2017) extend these obligations explicitly to gender identity and expression. When interpreted together, they require correctional authorities to ensure that all persons in custody are treated in accordance with their self-defined gender identity, and that necessary measures are taken to protect their physical and psychological integrity.

A rights-based framework does not eliminate operational complexity, but it provides a potential approach for reform. It obliges States to balance safety and security considerations against the principle of equality. It also legitimises participatory policy design, where people with lived experience of incarceration contribute to shaping procedures that affect them. An initiative in Australia (Simpson et al., 2024) involving an advisory group of transgender and gender-diverse former prisoners

exemplify how participatory governance can enhance both legitimacy and practical effectiveness.

## Conclusion

Historically, prisons have not only held up a gender binary, but have consolidated and reproduced it in many countries. The persistence of binary gender regimes within prisons represents both a practical and moral challenge for contemporary correctional systems. It denies recognition to those whose identities do not conform to binary categories, exposes them to heightened risks, and undermines the legitimacy of institutions that claim to uphold human rights. Yet across diverse jurisdictions, there is growing momentum toward more flexible, individualised, and rights-affirming practices.

Moving beyond the binary does not require the immediate creation of entirely gender-neutral prisons. Rather, it entails re-engineering specific domains of prison life—classification, healthcare, uniforms, searches, and staff training—so that they no longer depend on rigid gender assumptions. International experience demonstrates that such reforms are possible although it is unclear how beneficial such changes are. The further development of TGNC specific parts of prison needs careful and detailed analysis. Ultimately, to move past the binary is to reassert the principle that dignity, not anatomy, should anchor correctional practice. In doing so, prisons may take a modest but meaningful step toward becoming spaces that reflect the diversity and complexity of the societies they serve.

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