

## Gender-Inclusive Legislation Associated With Increased Harm to Women

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### Introduction

On Tuesday, February 28, 2017<sup>1</sup> the Honorable Senator Lillian Eva Dyck rose to speak in support of Bill C-16 in the Canadian Senate. In a speech marred by numerous and unfortunate errors, she sought to debunk the argument that Bill C-16 gives greater opportunities to male sexual predators in women's spaces.<sup>2</sup> In rebutting this concern she firstly quoted Senator Mitchell, saying "I'm not aware of these kinds of episodes", and Senator Petitclerc stating, "even with my best efforts, I could find no indication that these fears, which have been maintained for so many years, are founded". Sen. Dyck summarizes, "the predicted increase in sexual predation in public bathrooms as an undue consequence of providing human rights protection for transgender people has not happened."

While I wouldn't want to question the best efforts of our Honorable Senators, the WOMAN Means Something campaign has catalogued 255 incidents in which males have perpetrated violence against women in non-sex-segregated spaces as of Apr 30/2017.<sup>3</sup> Using even the most stringent category of offenses--those in which biological males identified or expressed (clothing, wig, etc.) as women, the database yields 29 incidents in the UK, USA and Canada.

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<sup>1</sup> [https://sencanada.ca/en/content/sen/chamber/421/debates/099db\\_2017-02-28-e#63](https://sencanada.ca/en/content/sen/chamber/421/debates/099db_2017-02-28-e#63)

<sup>2</sup> A few of these are as follows:

1. "If we assume 1 victim per perpetrator, then in 1 year, 1,017 females were victims of indecent acts or indecent exposure. That is only about 1,000 females out of about 17.5 million in Canada. A woman has a 1 in 17,000 chance of being the victim of an exhibitionist"
  - a. Krueger, in *Noncontact Paraphilic Sexual Offenses* (2016) says, "In a survey of 13,551 women and 11,375 men in Great Britain (Walby & Allen, 2004 ), 12.8 % of women reported being the victim of indecent exposure.... Cox ( 1988 ) reported on a sample of 846 college women taking general psychology at nine universities randomly selected from across the United States; 33 % reported being victims of indecent exposure and one- third of these at least twice. Only 15 % of these episodes were reported to police (Cox, Tsang, & Lee, 1982 ). Abel (*Multiple Paraphilic Diagnoses Among Sex Offenders*, 1988): "Exhibitionistic and voyeuristic acts occurred up to 150 times more often than official police arrest statistics indicated." Examples from our own database show that many perpetrators (in this case of voyeurism) have hundreds or thousands of victims.
2. "Colleagues, how many transgender people are there in Canada?" she states. She then goes on to quote from a Forum Research poll done in 2012 which states that 5% of Canadians identify as LGBT.
  - a. This conflates two categories of vastly different sizes. According to the [Williams Institute](#), 0.6% of the US population identifies as trans, a number that is likely here in Canada as well. In light of no Canadian data, this number should be accepted. However, even the poll Dyck chooses to use of the broader LGBT population is problematic, given that their findings are much higher than the Canadian Community Health Survey numbers, which have ranged from between 2 and 3% for the last decade, and that the [Forum Poll](#) only samples 2,694, while the [CCHS](#) samples 65,000.
3. "It should also be noted that according to the American Psychiatric Association, exhibitionists rarely do anything else but expose themselves", Dyck states.
  - a. Krueger (2016): "One-hundred and forty-two subjects were diagnosed with exhibitionism; of these, only 7% had this as a sole diagnosis. Forty-six percent were also diagnosed with female nonincestuous pedophilia, 28 % with voyeurism, and 25 % with rape." Langevin (*Erotic Preference, Gender Identity, and Aggression in Men*, 1985, p34): "Exhibiting, peeping, obscene call, toucheurism, and rape coocurred in the rapists, supporting Freund et al.'s (1983) theory."

<sup>3</sup> <http://womanmeanssomething.com/violencedatabase/>

Examples from Canada alone include:

1. [Christopher/Jessica Hambrook \(2012\)](#): assaulted two women in Toronto shelters, in at least one case after *three weeks* identifying as a woman.
2. [Darren Cottrelle \(2013\)](#): dressed as a woman and committed voyeurism in a woman's washroom at Dufferin Mall in Toronto.
3. [Xingchen Liu \(2105\)](#): dressed as a woman and committed video voyeurism at Leduc Recreation Centre in a woman's change room in Edmonton.
4. [Unknown male identified as woman \(2014\)](#): ogled elderly woman while having an erection in woman's change room in Toronto.



While not in a woman's space, the University of Toronto debacle (Oct, 2015) also illustrates the very same predator problem in which bathrooms which were made gender-neutral in order to facilitate inclusivity led to at least three women being the victims of voyeurism in showers.<sup>4</sup> An elderly woman in a unisex changing area at the new Grandview Heights Aquatic Centre in Surrey, BC was also the victim of voyeurism in June 2016.<sup>5</sup> Thus there are many examples, even in Canada, of the kind of predatory events of which Senators Mitchell, Pettitclerc and Dyck say they are unaware.

As a second piece of evidence Senator Dyck references a Media Matters website which purports to debunk what they call "the bathroom predator myth". She says, "All of them [US authorities] stated that protecting transgender individuals through legislation has not led to any increase in sexual predation in public washrooms, change rooms and so on. There were no observed increases in 16 states, 23 school districts and 4 universities." This Media Matters article has been referenced by many mass media outlets over the years, including Time magazine.<sup>6</sup> It our goal, firstly, to survey the evidence offered by Media Matters, and then secondly to test their claim of "no increase" by a statistical and geographical analysis of our violence database.

Our analysis will show that by every meaningful query, regions which have gender legislation in place (18 states, 9 provinces/territories) have a significantly greater likelihood of predatory incidences in women's safe spaces than those which do not (32 states, 4 provinces/territories). While there are limitations to our analysis, this data is superior to the anecdotal evidence thus far available and supports the contention that there is a significant correlation between gender legislation like Bill C-16, and increased harm to women. In addition we will consider Target stores as a case study in comparing predatory incidences in their stores to other's.

## Debunking the Debunkers

Media Matters' page, "*15 Experts Debunk Right-Wing Transgender Bathroom Myth*", is a frequently referenced resource for gender-policy supporters.<sup>7</sup> The summary states

<sup>4</sup> There are two different news reports of incidents at [Whitey Hall](#), and at [Sir Daniel Wilson](#).

<sup>5</sup> <https://archive.is/QJtqC>, also <https://archive.is/2gidi>

<sup>6</sup> <http://time.com/4314896/transgender-bathroom-bill-male-predators-argument/>

<sup>7</sup> <https://mediamatters.org/research/2014/03/20/15-experts-debunk-right-wing-transgender-bathro/198533>, along with the similar page Sen. Dyck mentions: <https://mediamatters.org/research/2016/05/05/comprehensive-guide-debunked-bathroom-predator-myth/210200>

Experts in 12 states -- including law enforcement officials, government employees, and advocates for victims of sexual assault -- have debunked the right-wing myth that sexual predators will exploit transgender non-discrimination laws to sneak into women's restrooms, calling the myth baseless and "beyond specious."

What follows is a collection of quotes by officials and advocates in 12 of the 18 states in the USA with gender legislation, stating the alleged safety of the legislation. However, in surveying the quotes given, a number of significant problems emerge.

Firstly, there are methodological concerns. Did they have standardized questions that they asked of officials? Given the variety of individuals referenced, from government officials to sex-assault advocates, how did MM pursue their enquiry? Is it possible to rule out a selective representation of the responses received? And how were their questions worded? For instance, many of the statements given are cause-and-effect opinions which are highly subjective. Those who have conducted studies or are familiar with poll methodology know well that the precise framing of a question can yield vastly disparate results.

For instance, if you ask "has your gender inclusion policy led to any (relevant) violent incidences in washrooms or change rooms?", you are asking a cause-and-effect question which may yield a "no incident" response. However, if the question is worded "has there been any (relevant) violent incidences in washrooms or change rooms?", the same respondent with the same data may potentially give a different answer.<sup>8</sup>

Secondly, a number of the statements address a straw-man argument that few, if any, women's-protections advocates are making-- that trans individuals are particularly dangerous. For instance Cassandra Thomas, a Houston Sexual Assault Victims' Advocate is quoted saying, "so all of a sudden women are in danger because of transgender people?" The DC Trans Coalition is cited similarly, "All over the world, anti-trans bigots try to convince the public that trans people are somehow a "threat" in public bathrooms." It is highly prejudicial to conflate the argument that gender legislation grants greater opportunities to male predators with the idea that trans people are a "threat in public bathrooms." This kind of category confusion does not lend itself to confidence in the evidence presented.

In fact, in at least one case, this straw-man argument hides, albeit barely, a very serious incident of the kind that pro-protections advocates warn about. Oregon Bureau of Labor and Industries spokesman Charlie Burr is cited saying, "Our agency has encountered zero allegations of LGBT assault related to this public accommodation protection." However, on July 2011, predatory sex offender Thomas Lee Benson, dressed as a female and entered the women's change room at North Clackamas Aquatic Park. Oregonlive.com states that Benson " who was convicted of sexually abusing children 17 years ago, has a long history of dressing as



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<sup>8</sup> Two examples will suffice: "Law enforcement officials (Washington D.C., Delaware, and Maryland) reported that their civil rights laws hadn't been linked to any crime", and "In an email to *Media Matters*, Jim O'Neill, legislative liaison and spokesman for the Connecticut Commission on Human Rights in Opportunities, reported no problems as a result of the state's non-discrimination law".

a female and using women's dressing areas", and "was wearing a bra, lipstick and eye-liner when he was arrested."<sup>9</sup> While it is just possible that this event would not be seen by some gender policy advocates as an incident by an LGBT individual, it is certain that Benson was expressing as a woman by his clothing, something overtly protected by gender legislation like Bill C-16.

Thirdly, the states which have gender legislation but which were not surveyed or reported by Media Matters are a notable group. Of these six states, five are among the most populous states with gender legislation: California, Maryland, New Jersey, New York, and Washington. Is there a reason the most populous states wouldn't be included in their survey?

Furthermore, and most problematically, some of the states which Media Matters have left out are *precisely* the States where incidents and problems have arisen. California has more incidents of sexual violence in women's spaces by those dressed or identified as women than any other state--five. These are incidents that Media Matters claim *do not exist*. Washington has 3 incidents perpetrated in women's spaces by males. Moving into the category of incidents by males in unisex spaces, examples balloon, with California represented in our violence database by 19 incidents, Washington by 9, and New York by 7.

To say that the evidence provided by Media Matters is highly problematic would be charitable. The presentation of their data, and omission of other evidence, calls into question motive and methodology. Even if one were to overlook these concerns, we would be left with no more than a collection of anecdotal testimony in a variety of jurisdictions. Although this is marginally better than mere opinion, as presumably officials *ought* to be more knowledgeable than the general public, is there a way to at least move a little closer to an objective analysis? Our violence database offers us the potential to do this and potentially draw some helpful conclusions. A full breakdown of findings, methodology and tables are available at [www.womanmeanssomething.com](http://www.womanmeanssomething.com).

## Summary of Findings<sup>10</sup>

- Total database incidents were almost twice as likely (1.8x) to occur in regions with gender legislation.
- Incidents where bio-males identified or expressed (clothing, wig, etc.) as women were more than twice as likely (2.1x) to happen in regions with gender legislation.
- Regions with the highest incidents per population (per million) are all regions with gender-inclusive legislation\*
  1. Connecticut (1.40)
  2. Ontario (1.36)
  3. Washington (1.23)
  4. Maryland (1.00)
  5. Alberta (0.98)

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<sup>9</sup> <https://archive.is/ZvG5D>

<sup>10</sup> Full overview of findings, together with methodology, limitations, and tables are available at [www.womanmeanssomethings.com](http://www.womanmeanssomethings.com)

## Target Stores: A Comparative Case Study

In April 2016, Target stores became a lightning-rod of controversy after touting its gender-inclusive policies for its washrooms and change rooms.<sup>11</sup> While Target claims that these policies had long been in place, the visibility of their stance caused many to boycott the supermarket giant who competes with Costco and Wal-Mart. Target, of course, is not the only retailer to have non-sex-segregation policies. And indeed many clothing stores have long had unisex changing spaces with individual stalls.

In an article in the Wall Street Journal on April 5, 2017 Khadeeja Safdar wrote, "Earlier this year, a coalition of about 50 companies, including Amazon, Williams-Sonoma Inc. and Gap Inc., signed a document saying their gender-inclusive policies haven't contributed to an increase in sexual assaults or other incidents. Target didn't sign the document." It seems likely that Target didn't sign the document because of the surprising amount of violent incidents that have taken place in their change rooms and washrooms.<sup>12</sup> Our violence database allows us to make some comparisons between Target and other clothing stores. Target has 13 incidents listed in our database. The next highest is Asda (UK) with 7, then Old Navy with 6. Goodwill Thrift Stores has 5, while H&M and Forever 21 have 4 each.

Moreover, it seems as if there is a correlation between the timing of Target's announcement and the incidents. From Apr 2016 to Apr 2017, Asda (UK) had two incidents, as had Old Navy. Target had seven! There have been three incidents in 2017 alone at Target stores.

One of the most notable of these Target incidents occurred in July 2016 at the Target in Ammon, Idaho. Shauna Smith, a transwoman, perpetrated voyeurism against an eighteen-year old woman by videotaping her on her cellphone while she changed. The teenage victim related that she "has not entered any public restrooms or dressing rooms" since, and "won't go into stores alone. 'I live with anxiety and fear that men will only focus on my body,' she said. 'I have felt emotional mutilation.'"<sup>13</sup>



At the sentencing of Smith in January of this year, Judge Joel Tingey stated, "I, perhaps along with others, thought that Target has now adopted a questionable policy (and wondered) is someone going to come in and victimize someone because of that," Tingey said. "You took advantage of that and victimized this young lady." The data supports Judge Tingey. Target's gender-inclusion policy has seemingly been an invitation to predators, and women, include teenagers, have paid the price.

<sup>11</sup> " In April last year, Target Corp. published a blog post welcoming transgender employees and shoppers to use restrooms and fitting rooms corresponding with their gender identities. 'Everyone deserves to feel they belong,' read the post, which turned half of Target's red bullseye logo into a gay-pride rainbow." <https://www.wsj.com/articles/how-target-botched-its-response-to-the-north-carolina-bathroom-law-1491404107>

<sup>12</sup> I have only counted incidents here adhering to the criteria set out in our violence database. There are other incidents at Target which include upskirt voyeurism, change room masturbation, and more. I am not counting these.

<sup>13</sup> <https://www.eastidahonews.com/2017/01/target-voyeur-sentenced-victim-says-felt-emotional-mutilation-following-incident/>

## Conclusion

Our geographical analysis of the violence database provides the best evidence yet that gender-inclusive policies and legislation are correlated to increased harm against women. While limitations exist to our analysis, and it may not meet the rigor of peer-reviewed research, it constitutes significantly better evidence than that which was previously available, which tends to be anecdotal and circumstantial.

The case study of Target stores also supports our findings, as violent incidents have been comparatively greater than other stores, and especially in the year since the public announcement of their gender-inclusive policy.

An infographic is also available that presents key findings of this article in a summary and graphical form.