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**IN THE SUPREME COURT OF THE
STATE OF WASHINGTON**

AMBER KIM,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

**BRIEF OF *AMICI CURIAE*
FORMER CORRECTIONS OFFICIALS**

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I. IDENTITY AND INTERESTS OF *AMICI CURIAE*

Amici Curiae are James Austin, PhD, Kathleen Dennehy, PhD, MPA, MA, Martin F. Horn, Brian Fischer, Steve J. Martin, and Emmitt Sparkman, six former high-ranking corrections officials with centuries of combined experience in some of the largest correctional systems in the country. Each has worked at various levels of the prison system, from entry level staff to senior roles, including positions as final responsible authorities within their respective state and territorial systems. As demonstrated by the more detailed identifying information provided for each of them in the accompanying Motion for Leave to File Brief of *Amici Curiae*, *Amici*'s experience spans several jurisdictions, working at or overseeing numerous facilities that collectively housed hundreds of thousands of prisoners.

As corrections professionals, *Amici* have an interest in assuring that corrections facilities are managed in a manner consistent with sound penological principles. *Amici* thus respectfully submit this brief to inform the Court of common

dynamics in corrections facilities that are relevant to this case because they bear upon the basic responsibilities of officers working in these facilities to keep incarcerated people like Petitioner safe.

II. INTRODUCTION

This case asks the Court to determine both (1) whether Petitioner’s housing placement in a men’s prison poses an “objectively significant risk of serious harm” to her as a transgender woman and (2) whether that housing placement is “reasonably necessary to accomplish a legitimate penological goal.” *Matter of Pers. Restraint of Williams*, 198 Wn.2d 342, 370 (2021). This is a question of first impression for the Court, but *Amici* have significant expertise on this subject, gained through decades of managing correctional institutions and making housing decisions and policies to protect highly vulnerable individuals in their care, including transgender women.

Through their training and day-to-day experience managing correctional facilities, *Amici* know that Ms. Kim faces an “objectively significant risk of serious risk of harm.” *Id.* As a transgender woman in a men’s prison, she is at least ten times more likely to be sexually assaulted than the average adult prisoner. And *Amici*’s experience and expertise also teaches that Ms. Kim’s transfer was not “reasonably necessary” to address the DOC’s legitimate safety concerns. *Id.* Ms. Kim and her cellmate both broke a rule prohibiting all sexual contact, and both were punished for it, but only one of them was then transferred to a men’s prison. To transfer a woman to a men’s prison based solely on such misconduct is unnecessary, and it is also unfair to do so for a transgender woman when a cisgender woman would never face this result, even if she committed the most extreme acts of sexual violence. The decision to transfer Petitioner thus threatens not only her safety but also the legitimacy of corrections officials as authority figures, which in turn makes

prisons less safe for both incarcerated people and the corrections officers who serve in these facilities.

III. STATEMENT OF THE CASE

Amici adopt Petitioner's Statement of the Case.

IV. ARGUMENT

A. Transgender Women Like Petitioner Are at Substantial Risk of Harm in Men's Prisons.

Prisons are generally dangerous environments, but the danger is especially severe for transgender women who are housed in men's prisons. This reality has been repeatedly documented by government entities.

Most notably, the National Prison Rape Elimination Commission, a body created by Congress to study sexual abuse in prison and develop national standards on the subject, produced an extensive report in 2009 which found that "most male-to-female transgender individuals who are incarcerated are placed in men's prisons . . . [which] puts them at extremely high risk for

abuse.”¹ Likewise, a 2015 policy report issued by the National Institute of Corrections (NIC), an agency within the Bureau of Prisons responsible for providing assistance to corrections institutions, concluded that “transgender women and girls are highly vulnerable to sexual abuse, especially when housed in facilities for men or boys.”² That is in part because “male facilities have more documented cases of prison sexual assault, and male facilities rely more heavily on the power structures that fuel sexual assaults in prison.”³

¹ Nat’l Prison Rape Elimination Comm’n Report 74 (June 2009) (“2009 PREA Commission Report”), <https://www.prearesourcecenter.org/sites/default/files/library/NPREC-Final-Report.PDF>.

² Nat’l Inst. of Corr., *Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender, and Intersex Persons In Custody*, 11 (2d ed. 2015), <https://www.congress.gov/116/meeting/house/109200/documents/HHRG-116-JU00-20190402-SD036.pdf>.

³ Maurice Chammah, *Rape in the American Prison*, Atlantic (Feb. 25, 2015), <https://www.theatlantic.com/politics/archive/2015/02/rape-in-the-american-prison/385550>; 2009 Commission Report, *supra* note 1, at 73.

The culture of men’s facilities creates conditions in which transgender women, in particular, are at high risk of violence.⁴ Within the power dynamic in men’s prisons, hypermasculinity is rewarded and often perpetuated through the sexual domination of “anyone who can be perceived as at all feminine.”⁵ Transgender women “are regarded as female . . . and are thus automatic targets for sexual assault.”⁶ Thus, violence against transgender women in men’s prisons must be understood as a problem which arises specifically from the social and power dynamics at play in men’s facilities.

National statistics confirm these conclusions. The most recent data available on inmate-reported sexual assaults in prisons from the Department of Justice’s Bureau of Justice

⁴ See, e.g., 2009 Commission Report, *supra* note 1, at 73–74 (finding that male-to-female transgender individuals are at “extremely high risk” of sexual abuse in men’s prisons); *id.* at 148 (finding that “[t]ransgender girls are especially vulnerable” to sexual abuse in juvenile facilities).

⁵ Sharon Dolovich, *Strategic Segregation in the Modern Prison*, 48 Am. Crim. L. Rev. 1, 16 (2011).

⁶ *Id.* at 18.

Statistics indicates that transgender people who are incarcerated are about ten times more likely to be sexually assaulted than is the average incarcerated adult.⁷ Another study from the University of California, Irvine’s Center for Evidence-Based Corrections, cited in the NIC policy report, found that fifty-nine percent of transgender respondents surveyed reported having experienced sexual assault during their time in prison, a staggering number that is *thirteen* times greater than the general population sample.⁸ These statistics make clear that “[e]ven

⁷ See Bureau of Just. Stats., U.S. Dep’t of Just., *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12: Supplemental Tables*, at 2 tbl. 1 (2014), https://bjs.ojp.gov/content/pub/pdf/svpjri1112_st.pdf (stating that in a 2011–2012 survey of transgender adults housed in state and federal prisons, 39.9% were victims of sexual assault); Bureau of Just. Stats., U.S. Dep’t of Just., *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12*, at 8–9 (2013), <https://bjs.ojp.gov/content/pub/pdf/svpjri1112.pdf> (finding that the overall rate of sexual assault for the adult prison population during the same year was 4.0%).

⁸ See Nat’l Inst. of Corr., *supra* note 2, at 11; Valerie Jenness et al., *Violence In California Correctional Facilities: An Empirical Examination Of Sexual Assault*, Center for Evidence-Based Corrections, 27 (Apr. 27 2007), <https://bpb-us-e2>.

when compared to other relatively vulnerable populations, transgender people are perilously situated.”⁹

Particularly relevant to this case, it is common knowledge within the corrections profession that transgender women are at a substantial risk of harm in men’s prisons. As the National Institute of Corrections has recognized, “[c]orrections officials are aware” of the particular vulnerabilities transgender prisoners face, including that “transgender women housed with men are at extremely high risk for abuse.”¹⁰ In particular, the corrections community has specifically learned of the elevated risk of sexual assault for transgender prisoners through the Prison Rape Elimination Act of 2003 (“PREA”), 34 U.S.C. § 30301, *et seq.*, and its implementing regulations. PREA was passed unanimously after Congress found that prison rape had reached

wpmucdn.com/sites.uci.edu/dist/0/1149/files/2013/06/Jenness-et-al._PREA-Report.pdf.

⁹ Nat’l Inst. of Corr., *supra* note 2, at 11 (quotation marks omitted).

¹⁰ *Id.* at 12 (quotation marks omitted).

“epidemic” levels, causing grave and lasting harm to its victims and endangering the safety of other prisoners, staff, and the public. *See* 34 U.S.C. § 30301(7)–(15). Among other things, the statute was designed to “establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States,” 34 U.S.C. § 30302(1); mandate significant research of the issue, 34 U.S.C. § 30302(4)–(6); and require that the National Prison Rape Elimination Commission draft standards to prevent and eliminate prison rape, 34 U.S.C. §§ 30302(3), 30306(e).

Since PREA’s passage two decades ago, the national standards that Congress mandated the National Prison Rape Elimination Commission to develop after extensive study have been implemented as regulations. *See* 28 C.F.R. Part 115. These include standards regarding the training of corrections staff and screening of prisoners for risk of victimization or abuse. PREA’s implementing regulations (“PREA National Standards”) are followed by correctional agencies nationwide, including the Washington DOC, which must comply with the PREA National

Standards to receive federal funding. *See* 28 C.F.R. § 115.5 (defining “Agency” to include corrections agencies of states); Suppl. Resp. Br. at 4 (stating that the “DOC complies with PREA’s requirement that agencies receiving federal funds make case-by-case decisions about transgender inmates’ housing” following the PREA National Standards set forth in 28 C.F.R. § 115.42). As the National PREA Resource Center notes, the purpose of the PREA National Standards is to “reduce the risk of inmate-on-inmate sexual abuse and sexual harassment,” including by “[p]roviding additional protections for transgender . . . inmates, based on the unique risks these populations face[.]”¹¹

¹¹ Nat’l PREA Res. Ctr., *PREA Standards: § 115.42 Use of screening information and Placement of residents*, <https://www.prearesourcecenter.org/standard/115-42> (last visited May 14, 2026). The National PREA Resource Center, which is managed through a cooperative arrangement with the Bureau of Justice Assistance within the Department of Justice, provides information, training, support, and guidance to corrections facilities nationwide. Nat’l PREA Res. Ctr., National PREA Resource Center Fact Sheet (May 2014), available at <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/PRC-FS.pdf>.

The PREA National Standards specifically recognize the dangers to transgender people who are incarcerated. Thus, when screening individuals for their risk status upon entering a facility, officers are required by the PREA National Standards to determine “[w]hether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming.” 28 C.F.R. § 115.41(d)(7). Further, with respect to housing assignments, the PREA National Standards require that the decision “whether to assign a transgender . . . inmate to a facility for male or female inmates” be made on a “case-by-case basis” to “ensure the inmate’s health and safety.” 28 C.F.R. § 115.42(c). This housing placement must be reassessed at least twice a year “to review any threats to safety experienced by the inmate.” *Id.* § 115.42(d). Critically, the PREA National Standards also require that a “transgender or intersex inmate’s own views with respect to his or her safety shall be given serious consideration.” *Id.* § 115.42(e).

Publications of professional corrections organizations also reflect the consensus among corrections officials that incarcerated transgender individuals face an elevated risk of harm. For example, the American Correctional Association, the oldest and largest trade association and accrediting body for the corrections industry, has published articles and made presentations highlighting the vulnerability of the transgender prison population. These presentations note that transgender prisoners are “statistically at an increased risk of sexual victimization”¹² and describe strategies for officers to keep transgender individuals safe in their housing.¹³ Similarly, the National Commission on Correctional Health Care has issued a position statement on transgender and gender non-conforming

¹² David Radziewicz & Carole A. Mattis, *A Best Practice Approach: Providing Support Services to Transgender Inmates*, Am. Corr. Assoc., *Corrections Today* (July/Aug. 2018), <https://perma.cc/D4JW-93VW>.

¹³ Am. Corr. Assoc., Off. of Corr. Health Res. Ctr., *A Special Session Webinar, Transgender Care In Corrections: Where We Are And Where We’re Going* (2018), <https://perma.cc/C8W7-K263>.

individuals acknowledging that members of these groups are “common targets for violence” and that staff should therefore “periodically assess the safety of transgender patients,” including by taking “appropriate safety measures regarding housing[.]”¹⁴

In men’s prisons, characterized as they are by the prevalence of aggressive behaviors designed to control other prisoners,¹⁵ transgender women are often subjected to derogatory

¹⁴ Nat’l Comm’n on Corr. Health Care, *Position Statement: Transgender And Gender Diverse Health Care in Correctional Settings* 4–5 (2020), <https://www.ncchc.org/wp-content/uploads/Transgender-and-Gender-Diverse-Health-Care-in-Correctional-Settings-2020.pdf>.

¹⁵ See, e.g., 2009 Commission Report, *supra* note 1, at 73 (“Men’s correctional facilities tend to have very rigid cultures that reward extreme masculinity and aggression and perpetuate negative stereotypes about men who act or appear different. In this environment, gay, bisexual, and gender-nonconforming individuals are often the targets of sexual abuse precisely because the dominant ‘straight’ males expect and demand submission.”); Rebecca Mann, *The Treatment of Transgender Prisoners, Not Just an American Problem – A Comparative Analysis of American, Australian, and Canadian Prison Policies Concerning the Treatment of Transgender Prisoners and a “Universal” Recommendation to Improve Treatment*, 15 Tul. J.L. & Sexuality 91, 105 (2006) (explaining how “[t]he nature of the prison hierarchy in a male facility ranks prisoners based on their fighting ability and manliness” which “places male-to-

slurs due to their perceived effeminacy.¹⁶ Nor is this harassment limited to verbal abuse: “[i]n the prison context . . . verbal sexual harassment is often used in a strategic way, to alert the target that [she] has been singled out for more serious sexual victimization and may soon face a forcible rape.” Dolovich, *supra* note 5, at 12 (citation omitted). These behavioral patterns reflect the prison power dynamic discussed above, which make transgender

female transgender inmates at special risk for physical injury, sexual harassment, sexual battery, rape, and death, because the prison hierarchy subjugates the weak to the strong and equates femininity with weakness.” (quotation marks omitted)).

¹⁶ See, e.g., Valerie Jenness et al., *Sexual victimization against transgender women in prison: Consent and coercion in context*, 57 *Criminology* 603, 617 (2020), https://www.researchgate.net/publication/335350919_Sexual_victimization_against_transgender_women_in_prison_Consent_and_coercion_in_context (detailing that transgender prisoners “report[ed] routinely being called a ‘faggot,’ ‘punk,’ and ‘bitch’”); Sylvia Rivera Law Project, *It’s War In Here: A Report On The Treatment Of Transgender And Intersex People In New York State Men’s Prisons* 17–33 (2007), <https://srlp.org/wp-content/uploads/2007/04/Its-War-In-Here-full-version.pdf> (detailing through personal stories the humiliation, harassment and violence transgender women in men’s prisons face on a daily basis).

women particularly vulnerable to victimization by virtue of being seen as female. *See generally id.*

There is no question, then, that, in the setting of men’s prisons, transgender women experience daily harassment and abuse, and that they also face a statistically documented, objectively serious risk of physical and sexual harm. That reality applies to this case, where Ms. Kim’s account of her time in men’s prisons earlier in her gender transition reflects the typical harassment and victimization of transgender women in men’s prisons.¹⁷ She reports that, when she was last held at a men’s prison before her transfer to a women’s prison in 2021, she “survived two attempted sexual assaults . . . because of [her]

¹⁷ Ms. Kim’s supplemental brief notes that, more recently, she has undergone gender affirming surgeries that further feminize her appearance, including breast augmentation. Suppl. Pet. Br. at 4 n.1. Those changes make her even more susceptible to abuse now than she was during her prior time in a men’s prison. *See* 2009 Commission Report, *supra* note 1, at 74 (describing how the “obvious gender nonconformity” of transgender women who have “undergone surgery or hormone therapies to develop overtly feminine traits” puts them at “extremely high risk for abuse”).

effeminate appearance, and that “had [she] not fought back, [she] would have been raped.” Kim Decl. ¶ 25. She faced a daily barrage of verbal abuse and threats that made her unsafe, being “heckled, cat-called, . . . and stalked by men” and propositioned for sex through anonymous notes that stated the author would be waiting for her in the shower at a specified time. *Id.* ¶¶ 43–46.

For all of these reasons, it was appropriate to transfer Ms. Kim to a women’s facility, as the DOC did in 2021. That decision undoubtedly took into account the “objectively significant risk of serious harm” she faced in men’s prisons, of which corrections officials are well aware. *Williams*, 198 Wn.2d at 370. And it appears to have also “given serious consideration” to Ms. Kim’s own subjective fears for her safety, as the DOC was required to do, and claims to have done. 28 C.F.R. § 115.42(e); *see* Suppl. Resp. Br. at 4 (stating that the “DOC complies with PREA’s requirement[s]” set forth in 28 C.F.R. § 115.42, including this one).

B. Corrections Officials Have a Fundamental Responsibility to Protect Particularly Vulnerable Prisoners.

Corrections officials have a responsibility to take appropriate and proactive measures to protect vulnerable people in their facilities from harm, including serious risks of sexual violence and harassment that transgender women face in men’s prisons. Doing so is not merely a matter of best practices—it is a fundamental and constitutionally mandated requirement of the job.

The United States Supreme Court has long made clear that where corrections officials are aware of the risk of harm to a particular incarcerated person, but act in a way that is deliberately indifferent to such risk of harm, they violate the person’s Eighth Amendment rights. *See Farmer v. Brennan*, 511 U.S. 825, 833–34 (1994) (“[P]rison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners.”)

(citation omitted)).¹⁸ This includes preventing transgender individuals from the risk of sexual assault. *Id.* at 848–49 (describing evidence of prison officials’ knowledge that transgender women was at risk of sexual assault in a men’s prison). And corrections officials in Washington are held to an even higher standard: Article I, section 14 of the Washington State Constitution is a “ban on cruel punishment . . . more protective than the Eighth Amendment.” *Williams*, 198 Wn.2d at 354.

In the context of housing assignments, the PREA National Standards require corrections officials to protect prisoners who may be vulnerable to sexual abuse. As noted above, the

¹⁸ *See also Pitre v. Cain*, 562 U.S. 992 (2010) (holding that a claim of deliberate indifference was sufficiently stated where the plaintiff alleged that he was subjected to prison labor that posed a substantial risk of serious harm to his health); *Hope v. Pelzer*, 536 U.S. 730 (2002) (holding that an official violated the rights of an incarcerated person by acting with deliberate indifference to a substantial risk of physical harm); *Helling v. McKinney*, 509 U.S. 25 (1993) (establishing that contemporary standards of decency require that the State provide for individuals’ reasonable safety when it has incarcerated them).

Washington DOC is bound to comply with the PREA National Standards even if its own policy, DOC Policy 490.700, affords less robust protection for transgender individuals. *See* Leavitt Decl. ¶ 3, Ex. A (DOC Policy 490.700). Under the PREA National Standards, prison officials must select a transgender person’s housing placement based not upon their sex assigned at birth, but upon which placement would effectively protect their “health and safety.” 28 C.F.R. § 115.42(c). That decision must take into account the person’s “risk of being sexually abused,” 28 C.F.R. § 115.41(a), which requires consideration of factors including their gender identity, their “physical build,” their “own perception of vulnerability,” and their “own views with respect to [their] safety.” 28 C.F.R. §§ 115.41(d)(3)–(9), 115.42(e).

Corrections officials must take each of these risk factors seriously because, as one scholar aptly put it, “[t]o force prisoners to live in constant fear of violent assault, under conditions in which many of the most vulnerable among them can expect that fear to be realized, is to inflict a form of physical

and psychological suffering akin to torture.” Sharon Dolovich, *Cruelty, Prisons, and the Eighth Amendment*, 84 N.Y.U. L. Rev. 881, 915 (2009) (citations omitted).

C. Transferring Petitioner to a Men’s Prison Based on Misconduct is Not Necessary to Achieve a Penological Goal and Makes Prisons Less Safe for Everyone.

For the reasons described above, Petitioner—like other transgender women—faces a significant risk of harm in a men’s prison. DOC officials recognized Petitioner’s circumstances and fulfilled their obligations to protect her from that known risk of harm by moving her to a women’s prison in 2021. *See* Leavitt Decl. ¶ 9, Ex. E (January 19, 2021 Housing Review Form). As the record before this Court demonstrates, that decision was appropriately based on the standards that govern treatment of incarcerated transgender women. This decision was made by a multidisciplinary team that included medical and mental health providers, as well as prison officials, including a PREA Specialist. *See* DOC Policy 490.700(III)(A)–(B). And Ms. Kim’s own views about safety were taken into account. *See id.*

at (III)(C); 28 C.F.R. § 115.42(e). Specifically, Ms. Kim had reported that she “would feel much safer in a women’s facility” and that she had previously been stalked by another individual. January 19, 2021 Housing Review Form at 3–4.

Ms. Kim described her fears and reasons for wanting to be housed with women in prior housing reviews, as well. For example, in an April 2020 housing review, she reported that she felt unsafe in a male facility due to the “distinct and real risk of sexual victimization” and the “staff and inmates who are extremely transphobic.” *See* Leavitt Decl. ¶ 8, Ex. D (April 16, 2020 Housing Review Form) at 3–4. She reported that she had “experienced inappropriate sexual comments from both incarcerated people and staff” and that male corrections officers had “touch[ed] [her] breast area during pat searches.” *Id.* at 2. She “worried about being victimized in the showers” and was especially concerned about being victimized due to “her small stature and feminine gender expression.” *Id.* at 2, 4.

The DOC's 2021 decision to transfer Ms. Kim to a women's prison was also subject to appropriate biannual housing reviews thereafter. *See* 28 C.F.R. § 115.42(d); *See* Rule Decl. ¶ 6, Attach. O (Feb. 14, 2022 Housing Review Form), Attach. P (Sept. 1, 2022 Housing Review Form); Leavitt Decl. ¶¶ 11–12, Ex. F (July 13, 2021 Housing Review Form), Ex. G (Mar. 28, 2023 Housing Review Form), Ex. H (Apr. 2, 2024 Housing Review Form). Those reviews reaffirmed the appropriateness of Ms. Kim's placement in a women's prison because they reflected that she felt safe there, her mental health had improved, and she had not abused any other women. *See* July 13, 2021 Housing Review Form at 2 (reporting that she previously felt like "giving up on life" but "no longer feels that way since she has been at [the women's prison]").

Particularly in light of the DOC's careful consideration in moving Ms. Kim to a women's prison to protect her from harm, this record does not support the DOC's conclusion that moving Ms. Kim back to a men's prison, which it had repeatedly found

to be inappropriate, was “reasonably necessary” to accomplish a “legitimate penological goal.” *Williams*, 198 Wn.2d at 370. Both Ms. Kim and her cellmate were charged with a “504” infraction, in violation of the DOC’s prohibition on sexual activity, encompassing consensual sexual activity. Both were punished for that infraction with loss of privileges and temporary placement in a more restrictive housing unit. Leavitt Decl, Ex. I at 3–4; Kim Decl. ¶¶ 60–62. Ms. Kim was not charged with or found guilty of sexual assault or sexual abuse. *See* WAC § 137-25-030 (listing separately the offenses of “sexual assault against another incarcerated individual” and “sexual abuse against another incarcerated individual,” as well as sexual contact with staff, and defining a 504 infraction as “[e]ngaging in a sex act with another person(s) that is not otherwise included in these rules”). Thus, the only safety concern posed by Ms. Kim is the same one posed by her cellmate—that she engages in sexual activity, in violation of the rules. Yet the DOC transferred only Ms. Kim to a men’s prison in response to this infraction, while

allowing her cellmate to remain where she was. Indeed, the DOC's April 2, 2024 Housing Review Form noted the infraction, but also identified "no known instances of abuse," and recommended continuing her housing placement at the Washington Corrections Center for Women.

There is no reason why the DOC could not achieve its penological objectives by imposing the same consequences on Ms. Kim as it imposed on her cellmate.¹⁹ The decision to transfer Ms. Kim to a men's prison after a single infraction also violates principles of progressive discipline, given that Ms. Kim has no history of sexually abusing others.²⁰

¹⁹ See Am. Bar Ass'n, *ABA Standards for Criminal Justice: Treatment of Prisoners* Standard 23-1.1(a), (c) (3d ed. 2011), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/treatment_ofprisoners.pdf (stating that correctional facilities "should be run in a fair and lawful manner" with restrictions on prisoners "necessary and proportionate to the legitimate objectives for which those restrictions are imposed").

²⁰ See WAC § 137-28-350 (endorsing the view that sanctions for an incarcerated individual's violation of a DOC rule should account for prior behavior and "infraction history"); WAC § 137-28-240(2)(c) (similarly reflecting a policy of progressive

The DOC's decision to transfer Ms. Kim to a women's prison in 2021 not only protected her from a known risk of sexual abuse; it also had broader penological benefits. When corrections officers listen to the concerns of vulnerable groups and take precautions to protect them, such as monitoring their safety, they increase their legitimacy as authority figures. *See* Benjamin Steiner & John Wooldredge, *Examining the Sources of Correctional Officer Legitimacy*, 105 J. Crim. L. & Criminology 679, 683–84 (2015) (explaining that “correctional officer legitimacy [is] a multidimensional concept involving . . . inmates’ general perceptions of officers’ procedural fairness, distributive fairness, and effectiveness”). This signals to both predators and vulnerable individuals that abuse will not be tolerated, and thus increases the safety of the facility for prisoners and officers alike.

discipline, with limits on punishment based on whether the individual committed prior violations).

On the other hand, when corrections officials do not protect vulnerable groups in their care, they lose some of their legitimacy as authority figures. *See id.* at 701 (“Inmates who felt more vulnerable as a result of experiencing victimization may have lost faith in the correctional officers’ abilities and/or willingness to keep them safe.”). And as *Amici* also know from their extensive experience working in prisons, where correctional officers’ legitimacy in a prison is questioned, that prison is less safe for prisoners and officers alike. *See id.* at 684 (noting that correctional officer legitimacy is linked to increased order and safety, as well as increased likelihood of reform); *see also* Lawrence W. Sherman, *Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Sanction*, 30 *J. Res. Crime & Delinq.* 445, 460–61 (1993) (describing that a perceived lack of legitimacy of a sanctioning agent, such as a prison official, is likely to inspire defiance of the law).

In sum, for the reasons stated above, *Amici* support Petitioner’s claims for several reasons. First, her transfer to a

women's prison appropriately recognized the severe risk of harm she would face in a men's prison and fulfilled the DOC's constitutional obligation to protect her from such harm. Second, transferring her back to a men's prison as a punishment for her infraction was not reasonably necessary to achieve the DOC's penological goals; instead, the DOC could have imposed the same punishment as it gave Ms. Kim's cellmate and otherwise engaged in progressive discipline. And third, the transfer actually countermands the DOC's ability to maintain a safe and effective prison environment by undermining the legitimacy of DOC officials. *Amici* accordingly urge the Court to hold that transferring Ms. Kim to a men's prison under the circumstances here violated Article I, section 14 of the Washington State Constitution.

V. CONCLUSION

As the United States Supreme Court has recognized, sexual abuse of prisoners "serves absolutely no penological purpose." *Farmer*, 511 U.S. at 852. Through their training and

on-the-job experiences, *Amici* and other corrections officials know that transgender women experience significantly higher risks of sexual violence and other harms in men’s prisons. The Eighth Amendment; Article I, section 14 of the Washington State Constitution; the Prison Rape Elimination Act and its implementing regulations; and sound correctional practice all require corrections officials to protect vulnerable prisoners, including transgender women, from sexual abuse and other harm.

In this case, corrections officials decided in 2021—after considering her risk of sexual victimization in a men’s prison, as required by PREA—that Ms. Kim should be housed in a women’s facility. By reversing course years later and placing Ms. Kim in harm’s way, they have jeopardized not only her safety but also the legitimacy of their own authority, which in turn makes prisons less safe and threatens the integrity of *Amici*’s profession. For all of these reasons, the Court should grant Ms.

Kim's Personal Restraint Petition and order her returned to a women's prison.

RAP 18.17 Certification

Undersigned counsel certifies that, pursuant to RAP 18.17(b), the document contains 4,733 words, exclusive of words contained in the appendices, title sheet, table of contents, table of authorities, and certificates of compliance and signature blocks, and therefore does not exceed the limitation of 5,000 words for amicus briefs as required by RAP 18.17(c)(6).

RESPECTFULLY SUBMITTED this 15th day of May, 2026.

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