

Police Scotland submission of 30 May 2023

PE1876/DD: Accurately record the sex of people charged or convicted of rape or attempted rape

I write in response to your letter dated 18th April 2023 to Police Scotland's Parliament and Government Liaison in relation to the above petition, for which the Citizen Participation and Public Petitions Committee seek further information, particularly:

- The process for updating the recording policy, whether this included wider consultation on the policy change, and if so, with whom.
- Committee Members would also appreciate any reflections or update Police Scotland may have on the previous response provided to the Committee, specifically around the statement: *"there are no known cases where a biological male has been charged with the physical crime of rape and has self-identified as a woman"*.

As you are aware, Police Scotland is currently undertaking a review of recording policy and I can confirm that this is progressing through our internal governance processes. Such a review involves the consideration and agreement of all relevant business areas within the organisation.

I can confirm that the outcome of the review will be presented at our next Professionalism, Strategy & Engagement Management Board (PSEMB). If approved, it will be subject to wider consultation and engagement with relevant stakeholders, with feedback provided to the PSEMB for consideration and progression to the Senior Leadership Board (SLB).

In respect of your second request, the gender identification of individuals who come into contact with the police will be based on how they present, unless an alternative gender is disclosed. This is the case for all offences. In the context of operational duties, officers do not routinely ask the sex or gender of people they interact with. Police Scotland requires no evidence or certification as proof of biological sex or gender identity.

There are circumstances where the issue of biological sex may require to be explored for a legitimate policing purpose, for example, sexual offences and, more specifically, contraventions of Sections 1 and 18 of the Sexual Offences (Scotland) Act 2009. The essential elements to allow the completion of these crimes is the *"penetration of the vagina, anus or*

mouth of the victim by a penis or surgically constructed penis”; therefore, in order to charge a person with rape, it is evidentially critical to ascertain if they have a penis or surgically constructed penis. Hence, self-identified gender is of no relevance to the charge and is not evidentially influential in proving the crime.

In order to be of assistance, I have requested a review of our recorded crime data, to determine whether our previous response outlined in your request is still valid. Please note that, due to recording practices, we are not in a position to provide information beyond 2020. The future implementation of a national crime reporting system should address these limitations.

In respect of females who are recorded on our systems as a suspect or accused for the crime of rape, please see the table below:-

Year	Suspect	Accused	Total
2016	1	1	2
2017	1	1	2
2018	0	0	0
2019	1	13	14
2020	4	6	10

All statistics are provisional and should be treated as management information.

All data have been extracted from Police Scotland internal systems and are correct as at 07/07/2021.

The data was extracted from crime management, UNIFI, IMAGE & Crime File using the crime's recorded date.

Unfortunately, our crime management systems do not record information on how many of the individuals above were born male or who were self-identifying as female at the time of the offence; however, a manual review of the above crimes has been carried out and I can confirm that none of the females recorded for the crime of rape were involved in the physical act itself i.e. the penetration of a vagina, anus or mouth with a penis or surgically constructed penis. In all cases, their involvement was art and part (aiding or abetting in the perpetration of the crime); therefore, the previous statement submitted to the Committee confirming that *“there are no known cases where a biological male has been charged with the physical crime of rape and has self-identified as a woman”* is still true and accurate.

For your information, a woman may be recorded as having committed rape in the following scenarios:

1. If a woman is art and part of the rape.
2. Where a person born male, obtains a full gender recognition certificate and then commits rape (providing they have a penis).
3. If the attending officer is satisfied the individual presents as a female and subsequently records them as such on our crime systems which, if the offender is a first time offender and having a new record created on Crime History System (CHS), will be created as female. If the offender already has a CHS record where they are recorded as male, this will only be changed to female if the individual has a full gender recognition certificate as described above.
4. Where a person born female transitions to male (who has a surgically constructed penis) commits rape but does not have a full gender recognition certificate and so remains legally female. Again, if the subject already has a CHS record where they are recorded as female, this will remain the case. If the individual presented as male based on the enquiry officer's assessment and a new record was being created, they would be created as male.

Police Scotland has recently reviewed the report and recommendation around sex and gender recording and is content that the policy approach still meets our legislative responsibilities and operational requirements.

I hope this response is beneficial to the Committee.