

**Testimony before the
New York City Council
Committee on Criminal Justice
Chair Carlina Rivera
Committee on Women and Gender Equity
Chair Tiffany Cabán**

By

**Louis A. Molina, Commissioner
NYC Department of Correction**

January 25, 2023

Good morning, Chairs Rivera and Cabán and members of the Committees on Criminal Justice and on Women and Gender Equity. I am Louis Molina, Commissioner of the Department of Correction. I am joined today by the Department's General Counsel, Paul Shechtman. Thank you for affording me the opportunity to testify today on this important topic.

The New York City Department of Correction is committed to ensuring that transgender, gender non-binary, and intersex individuals – TGNBI individuals – in our custody are treated with dignity and respect and housed safely and appropriately. Historically, TGNBI individuals in prisons and jails have been mistreated and have experienced higher rates of physical and sexual assault than cisgender individuals, both from staff and others in custody. Victimizing a vulnerable population is cruel but, regrettably, throughout correctional history it has not been unusual.

I am proud that the Department has been a national leader in developing safe and progressive policies for the placement and care of TGNBI individuals. Because New York City often serves as a model for other jurisdictions, we engage frequently with experts and stakeholders to

ensure that our policies support the safety and well-being of TGNBI individuals in our custodial care. In 2018, the Department was one of the first correctional institutions to house individuals based upon their gender identity. Since that policy was enacted, gender identity has always been based on self-identification. Unlike other jurisdictions, we do not require a diagnosis of gender dysphoria, a medical examination, or gender-aligned identification documents. In 2019, the Department established an LGBTQ+ Affairs Unit to support LGBTQ+ individuals in our custody, especially TGNBI individuals. This unit and the wide-ranging support it offers is unique among correctional agencies in this country.

My testimony today is divided into three parts: First, I will begin by sharing some basic statistics regarding our TGNBI population. Second, I will set forth some principles that guide the Department in the housing and care of TGNBI individuals. Lastly, I will address the legislative proposals on the agenda today.

The TGNBI Population in New York City Jails

Let me start with some general information and statistics. Individuals who identify as transgender, gender non-binary, or intersex may apply to be housed in the Special Considerations Unit (SCU), a dormitory-style housing area located at the Rose M. Singer Center (RMSC); in a general population unit in RMSC; or in a male facility. Individuals receive access to programming and services that align with their stated gender identity regardless of where they are housed. Final housing determinations are made on a case-by-case basis and take into consideration where an individual states that they feel safest, as well as any management or security concerns.

There are some 50 self-identified TGNBI individuals known to the Department in our custody. As you undoubtedly know, not all individuals who identify as TGNBI choose to disclose their identity to the Department, so it is likely that our TGNBI population includes more than those 50 individuals. Currently, 38 of the 50 known TGNBI individuals are housed in their requested gendered facility. This means that they are housed in a female facility if they have requested to be housed there or in a male facility if they have requested to be housed there. The remaining TGNBI are in protective custody, mental observation housing, and other units as appropriate.

Guiding Principles for the Treatment and Housing of TGNBI Individuals

Now I will turn to the principles that guide the Department in the way we treat and house TGNBI individuals.

First, Department staff are expected to treat TGNBI individuals with respect and dignity. Staff may not use transphobic, homophobic, or otherwise derogatory language in addressing or discussing TGNBI individuals. They must respect an individual's pronoun choice and preferred name. Any staff member who disrespects or abuses a TGNBI individual will be subject to discipline. This is outlined in our policies and reinforced by Department leadership, myself included.

Second, TGNBI individuals should be processed through an intake facility that is aligned with their gender identity. That means trans women should be admitted to RMSC, where cisgender women are admitted. This is a subject on which we could use help from defense attorneys and the courts. Currently, the securing orders that we receive from the court have only

two gender identities: male and female. The result is that too often trans women are identified as males and transported to our male intake facility at the Eric M. Taylor Center (“EMTC”). That should not occur. Correctly identifying an individual’s gender at the outset assists us throughout an individual’s stay in our custody.

Third, individuals should be housed in a facility consistent with their gender identity, absent overriding security or management concerns. Living in gender-affirming housing with others who have shared experiences provides support, community, and affirmation, and makes incarceration less traumatic. Moreover, as history shows, TGNBI individuals face greater risk of assault, discrimination, and humiliation if placed in a housing unit that is misaligned with their gender. Simply stated, we recognize that sex assigned at birth cannot determine placement.

Fourth, we will continue to operate a Special Considerations Unit (“SCU”) to provide TGNBI individuals the opportunity to live with others with shared experiences. However, it is important to recognize that many TGNBI individuals prefer to reside in general population in RMSC, and others prefer to be housed in a male facility; their preference should be given great weight. TGNBI individuals are not a monolith – each individual has unique needs and challenges – and they differ in where they feel safest. In short, there is no one-size-fits all approach to housing determinations, and our placement policy must reflect that reality.

Fifth, as a presumptive rule, self-identified gender should determine placement, but it cannot be determinative. An inflexible policy of placement based on self-identified gender would present safety concerns for transgender males. They could be subject to sexual harassment, abuse, and violence if placed with cisgender men, and they typically prefer to be placed in a women’s facility.

Sixth, TGNBI individuals should not be transferred out of a facility aligned with their gender for conduct that would not cause a cisgender individual to be transferred. We must focused on treating all persons in custody equitably regardless of their gender.

Seventh, TGNBI individuals should have access to the same programming options as cisgender individuals. The Department provides unique and gender-affirming programs and service opportunities for TGNBI individuals regardless of where they are housed. We also provide TGNBI individuals with an extensive LGBTQ+ reentry resource guide and seek to connect individuals to a network of gender-affirming community providers that can be accessed upon release. And we actively work closely with Correctional Health Services (“CHS”) to ensure that TGNBI individuals can access gender-affirming health care and meet their mental health care needs.

Additionally, all TGNBI individuals have access to toiletry and clothing items that align with their gender identity and gender expression. This year, we have added chest binders to the list of available items so that trans men and gender non-binary individuals can appear more traditionally masculine if they choose. Proper clothes and undergarments can decrease feelings of gender dysphoria and reduce incidents of self-harm among those who wish to use them.

Proposed Legislation

Finally, I would like to take a moment to highlight a few of the legislative items on the agenda today. Intro. 728 would provide TGNBI individuals the right to appeal denials of preferred placement and require that CHS and the Board of Correction participate in the appeal process. Neither of those entities, however, has expertise in classification, security, or jail management.

Safe placement is the Department's job and must remain our responsibility. Moreover, the Department already has a housing reconsideration process that allows TGNBI individuals to seek review of their housing placement. Individuals can apply for reconsideration if they have been denied their preferred housing placement or removed from their preferred housing placement. The reconsideration process encourages individuals to provide additional information, including references and recommendations from community groups and our staff, which has not been previously considered and might support a different outcome. We must be open-minded enough to change our mind on placement when new information or changed circumstances call for it.

Intro. 831 would enhance a resource navigator program within the Mayor's Office of Criminal Justice to assist women and gender expansive persons in locating appropriate reentry programs. I support efforts to expand available resources for both women and TGNBI individuals who have experienced incarceration as reentry programs reduce the likelihood of recidivism. We look forward to working with the Council to ensure that appropriate reentry services are available.

Finally, Resolution 117 calls on the state legislature and the Governor to enact a bill that would require the Office of Court Administration to update the securing order form to include a gender X option. We support efforts to expand the gender identity options on securing orders as this will assist us in making appropriate housing placements for those coming into our custody.

Conclusion

As I stated at the outset, the Department has been a leader in the placement and care of transgender individuals, enacting groundbreaking policies that outpace other jurisdictions. That

said, it is incumbent on the Department to continuously evaluate and update our policies to meet the evolving needs of TGNBI individuals and all persons in our custodial care, which to date are almost 6,000; and strengthen policies and directives where necessary. Ensuring a safe and humane environment for everyone in our custodial care is our highest priority. Thank you for the opportunity to testify today on this important subject.

Correctional Health Services

Testimony to the New York City Council Committee on Criminal Justice and Committee on Women and Gender Equity

by **Jeanette Merrill, MPH, Director of Communications and Intergovernmental Affairs,
NYC Health + Hospitals/Correctional Health Services**

January 25, 2023, Oversight – The TGNCNBI Task Force Report Update and TGNCNBI Individuals in Rikers

Good morning Chairs Rivera and Cabán and members of the Committees on Criminal Justice and Women and Gender Equity. I am Jeanette Merrill, Director of Communications and Intergovernmental Affairs for NYC Health + Hospitals/Correctional Health Services, also known as “CHS.” I appreciate the opportunity to testify at today’s hearing about the Transgender, Gender Non-Conforming, Non-Binary, and Intersex (TGNCNBI) Task Force report and associated legislation. My testimony will provide an overview of the medical, mental health, and reentry services CHS provides to the TGNCNBI individuals in our care.

At CHS, we are unequivocal in our belief that all people in the city’s custody have a right to gender-affirming health care provided in a respectful and dignified manner. We know that many of our TGNCNBI patients have experienced adversity when accessing and receiving health care in the community, and we view every jail-based clinical encounter as an opportunity to provide the high-quality, affirming care our patients deserve. We also recognize that there are opportunities to improve, expand, and enhance our services for TGNCNBI individuals, and this work is ongoing throughout our services.

Transgender Care Policies

Shortly after becoming the independent health care provider in the city’s jails as a new division of NYC Health + Hospitals, CHS began updating our transgender care policies and procedures, using community, national, and international standards to promote gender-affirming care. We established a workgroup to ensure access to gender affirming treatment and to reduce barriers to care for our transgender patients. This includes building capacity to prescribe hormones within the service, so patients do not have to seek care from offsite specialists, and ensuring that mental health involvement focuses on supporting an individual’s treatment and care.

The current transgender care policy and its associated care templates incorporate guidance from the World Professional Association for Transgender Health; Fenway Health; and the University of California, San Francisco’s Gender-Affirming Health Program. Guidance such as these help to advise our clinicians on how to appropriately counsel and care for transgender patients – starting from the new admission process.

Health Services

As part of the medical intake, CHS clinicians ask all patients about their gender identity, as well as their preferred names and pronouns. The information is documented in the electronic health

record in order to inform the patient's clinical care, which may include the initiation or maintenance of hormone therapy. Like all of our patients, TGNCNBI individuals receive individualized medical and mental health services while in our care. Patients who identify as TGNCNBI during the new admission process, or during subsequent clinical encounters, are reviewed by our physician-leader for gender-affirming care, who may refer these individuals to CHS' special populations care team.

Interdisciplinary Care Team

While CHS has worked to build transgender care capacity within our primary care workforce and throughout all clinical and non-clinical disciplines, we have also recognized the need for more specialized services for our transgender patients. We recently established an interdisciplinary team of caseworkers, social workers, and physicians to provide additional in-jail support, discharge-planning services, and post-release follow up for vulnerable populations, including transgender individuals. This team conducts regular case conferencing in order to discuss and coordinate the care of these patients, who have unique clinical needs. This team is also in regular communication with the Department of Correction's LGBTQ+ Affairs Unit.

Transgender patients who are interested in pursuing gender-affirming surgery would likely be referred to this interdisciplinary team. As a part of NYC Health + Hospitals, CHS works to support, on an individual level, gender-affirming surgeries within the system. Because the challenges in accessing gender-affirming surgery in the community are compounded by the challenges of providing care in a carceral setting – particularly the unpredictable length of stay in pretrial detention – these surgeries may not occur as timely as our patients or our providers would like. We will continue to work diligently with our Health + Hospitals community partners and with the Department to ensure expeditious access to these surgeries.

Reentry Services

In addition to the medical and mental health needs of our patients, reentry services prove crucial to our patients' wellbeing. Starting at intake, CHS' re-entry and transitional services team helps patients plan for a successful return to the community. For TGNCNBI patients, this may include referrals to NYC Health + Hospital's Pride Health Centers and to other community-based organizations that specialize in serving this population. Transgender patients under the care of our mental health service receive additional discharge planning services, and patients under the care of our special populations care team will receive follow-up phone calls. We are actively working to develop more comprehensive, specialized reentry services for this population – especially since, in 2022, more than 38 percent of our TGNCNBI patients reported being homeless before incarceration or not having a place to go after jail.

Intro 355

I will now turn to the legislation. Intro 355 would permit incarcerated individuals in city jails to choose the gender of their doctor. We appreciate that patients need to feel comfortable with their health care providers, and for many individuals, their comfort is dependent on being treated by a doctor of the same gender – especially when receiving reproductive and sexual health services. Building trust between patients and providers is incredibly important – and proves particularly challenging in a carceral setting.

Access to health care in jail can, simultaneously, be more critical and more challenging. CHS works to accommodate patients who feel uncomfortable or dissatisfied with their health care providers, for whatever reason. Patients can contact CHS' Patient Relations department to file a

complaint or to seek a second opinion, and they can call our Health Triage Line to speak directly with a nurse about any health care concern.

However, we also should not create unrealistic expectations in the jail environment where health services run 24 hours a day, 7 days a week, and where certain evaluations occur at unpredictable times, such as injury evaluations or emergencies. It is not feasible, and may not even be possible, to staff each service in all of our clinics and therapeutic housing areas with female, male, and non-binary physicians at all times. We remain committed to supporting our patients through the provision of appropriate and timely care, just as we remain committed to recruiting a diverse workforce. However, it would be unfortunate for a patient to experience a delay in care or to forgo care because of a requirement for a provider of a particular gender who may not be available.

Before closing, I would like to thank the Task Force for the significant time and energy they have invested in creating the report. We look forward to continuing our work with them, particularly as we develop more educational materials for our TGNCNBI patients. I would also like to thank CHS' nurses, doctors, social workers, and other health professionals who care for our TGNCNBI patients. We are fortunate to have such dedicated clinicians to help us expand and improve our services.



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Jumaane D. Williams

**STATEMENT OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS
TO THE NEW YORK CITY COUNCIL COMMITTEE ON CRIMINAL JUSTICE
JANUARY 25, 2023**

Good morning,

My name is Jumaane D. Williams and I am the Public Advocate for the City of New York. I would like to thank Chairs Rivera and Cabán and the members of the Committees on Criminal Justice and Women and Gender Equity for holding this important hearing.

Nearly one in six transgender, gender non-conforming, non-binary, and intersex (TGNCNBI) people has been to prison.¹ Too often, departments of correction do not house TGNCNBI people in populations consistent with their gender identities, and instead isolate them or place them in housing units according to the sex they were assigned at birth, regardless of whether that aligns with their gender identity or if they have medically transitioned. While many assume that TGNCNBI people—transgender women in particular—pose a threat to their cisgender peers, they are far more likely to be victims of physical, sexual, and verbal abuse while incarcerated.

In 1979, the New York City Department of Correction (DOC) created a special unit within the men's jail on Rikers Island to house transgender women and gay men. At the time, this was the only such unit in the country. Eventually, however, the same problems that existed elsewhere in the jail plagued the unit, and it was shut down in 2005.

Perhaps the most well-known example of the abuse and disrespect experienced by TGNCNBI people incarcerated at Rikers is the tragic 2019 death of Layleen Polanco, a transgender woman whom DOC refused to house in general population with cisgender women, who died alone in solitary confinement despite her known history of seizures. It is possible Layleen would be alive today had DOC placed her in a housing unit consistent with her gender identity.

In the wake of Layleen's death, the City Council passed Local Law 145, which commissioned the Board of Correction to convene a task force, composed of government representatives and advocates, to examine issues faced by TGNCNBI incarcerated people. In August of last year, the task force published its first report, which detailed the astounding and devastating harms, abuses, and indignities that TGNCNBI people face while incarcerated in New York City jails.

The indignities that TGNCNBI people experience while incarcerated often start at arrest, when the arresting officer incorrectly lists a person's sex they were assigned at birth and their

¹ <https://www.lambdalegal.org/know-your-rights/article/trans-incarcerated-people>

deadname in the paperwork.² The inaccurate information is then repeated by the attorney drafting the criminal complaint. Additionally, there is no option for gender markers outside of the male/female binary. That is then passed to the court officer who writes the securing order, which determines which intake unit a person will be transported to after their hearing. It can then take days to correct the mistake and transfer the person to the unit that aligns with their gender identity, during which time the person can be assaulted, abused, and traumatized.

In a majority of the cases the task force studied, incarcerated TGNCNBI people were not housed in units consistent with their gender identity. Of the 41 people whose gender identities the task force knew, 63 percent were in housing misaligned with their gender identities, including 58 percent of trans women and 100 percent of trans men.³ Further, the task force found that DOC has relied on sex and gender stereotypes about a person's appearance when deciding to credit a person's self-identification as TGNCNBI. As is true with cisgender men and women, there is no one way to "look" like a certain gender identity, and it is extremely concerning that city jails are relying on stereotypes when deciding whether a person's identity—and by extension their safety—should be taken seriously.

The task force also found that multiple transgender women had been removed from their gender-aligned housing unit to the men's jail as a means of punishment and/or control. It cannot be overstated how dangerous this practice is; the women who had been moved reported repeated verbal, physical, and sexual attacks, sometimes by the same person despite the victim reporting the assault. DOC would never transfer a cisgender woman to the men's jail as a means of punishment, and this disregard for the safety of TGNCNBI people is absolutely unacceptable.

Yesterday, in an article published by The City, we learned the extent to which the Adams Administration and Commissioner Molina have walked back progress made in accurately and respectfully housing TGNCNBI people, particularly trans women, in city jails.⁴ Molina has fired or pushed out administrators that pushed for TGNCNBI people to be housed in the facilities that align with their gender identities, and effectively cut off any power or influence that the LGBTQ+ Affairs Unit had to fight for the dignity and safety of LGBTQ+ incarcerated people. The unit now only employs one person after the rest of the staff resigned in protest—one of whom had suicidal thoughts because they felt powerless to intervene in the abuse and assault experienced by numerous TGNCNBI people in the jail. I want to thank the courageous whistleblowers and incarcerated trans women who told their stories despite the risk of reprisal, and I hope this publication prompts DOC to seriously reevaluate their staffing decisions and processes for housing vulnerable people.

One challenge that the task force faced in their research was a lack of documentation on how

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<https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/FINAL-REPORT-of-the-TASK-FORCE-081522.pdf>

3

<https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/FINAL-REPORT-of-the-TASK-FORCE-081522.pdf>

4

https://www.thecity.nyc/2023/1/24/23567498/rikers-lgbtq-trans-eric-adams-corrections?oref=csny_firstread_nl

many TGNCNBI people are incarcerated in NYC jails, particularly non-binary and intersex people and people who have overlapping gender identities, for which no data was available at all. My bill, Int 0887-2023, would require DOC to report on a monthly basis information related to individuals in DOC custody whose gender identity is different from the sex they were assigned at birth, including TGNCNBI people. DOC would also be required to report information regarding such individuals' housing unit placements, denials and objections to current housing unit placements, and instances of violence against such individuals. Today the Council is also hearing Res 0117-2022, a resolution calling on the New York State Legislature to pass, and the Governor to sign, a bill that would mandate the Office of Court Administration to update the securing order form to include a gender X option. I thank the chairs for hearing these bills today, as this information is vital to the task force and to efforts to improve the living conditions for TGNCNBI incarcerated in city jails. Sadly, I would like to note that we cannot legislate empathy or respect for TGNCNBI people—that is the responsibility of those who work on and oversee the jail, and it is clear that that is sorely missing.

TGNCNBI people deserve the same respect and dignity as their cisgender peers, and this is not negated when they are incarcerated. Until DOC makes changes to ensure that city jails are safe for everyone, we will continue to lose valuable members of our communities.

Thank you.



**New York City Council
Committee on Criminal Justice and Committee on Women and Gender Equity
Re: The TGNCNBI Task Force Report Update, TGNCNBI Individuals in Rikers, and
Proposed Legislation Int. No. 355, Int. No. 728, Int. No. 831, Int. No. 887, Res. No. 117, and
Res. No. 458
January 25th, 2023
Testimony of Deborah Lolai, Esq.
Director of The LGBTQ Defense Project at The Bronx Defenders, and Task Force Member
and Co-Author of the Report**

Good morning Chair Rivera, Chair Cabán and Committee Members,

My name is Deborah Lolai and I have been a member of the New York City Task Force on Incarcerated Transgender, Gender Non-Conforming, Non-Binary, and Intersex (TGNCNBI) Individuals since it was created, and one of the lead authors of its first report. I am the Director of the LGBTQ Defense Project at The Bronx Defenders. A large portion of the work we do in the LGBTQ Defense Project includes representing gender expansive people in criminal cases and advocating for improved conditions of confinement for them during their incarceration in NYC jails.

Those of us testifying today as members of the Task Force will be testifying about various chapters of the report, our process writing the report, and the proposed legislation. I will focus on the portion of the report that describes the inadequacies of DOC's current intake process and how it results in much harm to gender expansive incarcerated people.

As you know, the determination of whether a person is going to be incarcerated pre-trial is made by the judge at their arraignment - the first court appearance - usually hours or days after the arrest. There are so many important aspects of the arraignment that can determine the trajectory of a person's case, such as whether bail is set. One aspect of arraignments that is not as well known to most people working within these systems is that the paperwork filled out during the arraignment - specifically, the securing order, also known as the "blue card" - will determine whether a person will be sent to the women's jail or men's jail for intake.

The court officer at the arraignment is the one who fills out the gender designation on the blue card, and DOC sends every person in their custody from the courthouse to the male or female intake facility based solely on what gender designation is marked on the blue card. We - public defenders - for years have been advocating at arraignments for the gender designation on blue cards to be marked correctly for our gender expansive clients. My colleagues call me every time we have a transgender client in arraignments, and I can tell you that our advocacy is not always enough. Many judges refuse to do anything about it, and when they do ask court officers to mark the blue cards with the correct gender, court officers often ignore the judge's instruction. While this seems like an unimportant technical step in the process, it is a decision that often results in gender expansive people experiencing extreme violence.

You are going to hear many testimonies today by individuals on behalf of currently incarcerated gender expansive people. Many of the horrifying experiences you will hear about could have been prevented if DOC's intake process was changed to meet the safety needs of gender expansive people.

One of those clients, Ms. Regina, is a transgender woman, who has been incarcerated at least three times in the past few years. During one of her incarcerations a few years ago, she was housed in the men's jail. She begged for DOC to send her to RMSC, the women's jail, but they refused to. Only after she was attacked with boiling water and suffered from third degree burns was she moved to RMSC. Since that incident, she has been released and incarcerated twice more. Her blue card was marked "male," which meant that despite DOC having a record of the fact that she was previously physically assaulted in their custody for being a transgender woman and was previously transferred to RMSC, she was sent to the men's intake facility again. She spent about 10 days at the men's jail until she was moved to RMSC. She was physically assaulted during that time. DOC told her she had to remain there for the 10-day quarantine period. Weeks later, she was arrested again and the same thing happened once more, but this time she spent nearly a month in the men's jail before she was transferred to RMSC. Ms. Regina's case is a perfect example of violence against a transgender woman in DOC custody that could have been entirely prevented if DOC did not solely rely on the blue card's gender designation, but instead had a more meaningful and inclusive intake process in the courthouse before placing an individual on a bus to Rikers.

Each day that a gender expansive person is in a jail mis-aligned with their gender identity is a huge risk to their safety and life. To DOC, a 10-day quarantine period may not seem like a big deal in the long run, however, to the transgender person experiencing violence during that time, the trauma remains with them forever. We can prevent this from happening.

If the Office of Court Administration is not willing to take action to address this issue, we urge the City Council to address it. DOC should not solely rely on a gender marker on a piece of

paper to determine where a transgender person will be held. There should be a meaningful intake process conducted before people are placed on the bus to Rikers for intake. The Task Force has offered suggested amendments to improve Int. No. 728, and we hope that you will consider our proposal.

I'd also like to briefly comment on Res. No. 117. While state legislation amending securing orders to include a non-binary gender marker X is well-intentioned, and clearly an effort to be inclusive of people who identify outside of the male or female binary, it will not be helpful in ensuring that gender expansive people are sent to the correct intake facility. First, there are currently no jails for non-binary people, and we are certainly not advocating for more jails to be built. Second, there isn't currently an opportunity at arraignments for people to correct their gender marker on paperwork, unless their lawyer knows to ask about it and can convince court staff to change the gender marker on the paperwork.

My colleague, Mik Kinkead, will be addressing the remaining legislation on behalf of the Task Force, and I defer to his testimony on those. Thank you for the opportunity to testify before you on this matter, and I hope to continue this conversation with both committees and other members of City Council.



TESTIMONY OF:

**Lucas Marquez, Associate Director
Civil Rights and Law Reform
BROOKLYN DEFENDER SERVICES**

**Presented before
The New York City Council Committees on
Criminal Justice
and
Women and Gender Equity**

**Oversight Hearing on The TGNCNBI Task Force Report Update and
TGNCNBI Individuals in Rikers**

January 25, 2023

My name is Lucas Marquez (he/they) and I am the Associate Director of Civil Rights and Law Reform at Brooklyn Defender Services (“BDS”). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation, and other serious legal harms by the government. For more than 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. Thousands of the people we represent are detained or incarcerated in the New York City jail system each year while fighting their cases in court or serving a sentence of a year or less upon conviction of a misdemeanor.

We would like to thank the Committees on Criminal Justice and Women and Gender Equity and Chairs Rivera and Cabán for inviting us to testify about the Report of the Transgender, Gender Non-Conforming, Non-Binary, and Intersex Task Force (“the Report” or “the Task Force Report”), and more generally about the experiences of Transgender, Gender Non-Conforming, Non-Binary, and Intersex (“TGNCNBI”) people in New York City jails.

BDS is a member of the TGNCNBI Task Force¹ (“the Task Force”) and stands by the Report’s findings and recommendations.² We commend the Council for holding this hearing and for taking steps to enact more humane laws to protect TGNCNBI people incarcerated in Department of Correction (the “Department” or “DOC”) custody, and look forward to continuing our cooperation.

¹ BDS was a member of the TGNCNBI Task Force at its inception, formerly represented by Kelsey De Avila. I have been a member of the Task Force since December 2022.

² See generally, *First Report of the Task Force on Issues Faced by TGNCNBI People in Custody* (hereinafter “the Report” or “Task Force Report”), by Ashe McGovern, Deborah Lolai, Dori Lewis, Kandra Clark, Mik Kinkead, and Shéar Avory, Aug. 15, 2022.

The City Council and relevant stakeholders must recognize that the Department's entrenched resistance to improving the treatment of TGNCNBI people in custody means it is unable to safely and humanely house TGNCNBI people at all. The city must release people and decarcerate the jails, including all TGNCNBI people.

A. The Department Must Engage with the Task Force and Substantively Consider the Recommendations Made in the Task Force Report

The Task Force was created due to the persistent efforts of TGNCNBI people and formerly and currently incarcerated people who forced the Board of Correction ("BOC") and the City Council to address the systemic abuse and dehumanization that TGNCNBI people face in New York City's jails. The Task Force, which includes TGNCNBI leaders with lived experience in the city jails, TGNCNBI advocates, and public defenders, represents a substantial, specialized knowledge base for informing the Department's policies, processes, and competency for TGNCNBI people.

Deep-rooted systems of violence, discrimination, and inaccessible medical care that TGNCNBI people face generally are exacerbated in the criminal legal system and jail environment and take a significant toll on the mental and physical wellbeing of TGNCNBI people in custody. This is particularly the case for Black, Indigenous, and/or People of Color who are TGNCNBI, given the disproportionate rates of targeting, surveillance, and arrest by police and mistreatment within the criminal legal system. As detailed below, the TGNCNBI people BDS represents have suffered and continue to suffer myriad harms, including sexual abuse, suicide attempts, mental health deterioration, inaccessible hormone therapy and medical care, and being forced to hide their true selves for safety, to name a few. These harms are in addition to the inhumane conditions faced by all people in DOC custody. BDS previously submitted testimony to the Committee on Criminal Justice on May 1, 2019 and April 27, 2021, detailing stories of transgender women we represented who faced harassment and assault when housed in men's facilities due to the convoluted process for requesting housing alternatives and as punitive measures.³ That those stories remain relevant to today's hearing demonstrates that the Department is failing to address long-standing and urgent issues.

Nonetheless, the Department has affirmatively chosen not to engage with the extensive and detailed Report the Task Force produced or the sound and reasoned recommendations made therein.⁴ Instead, it appears the Department leaders are more interested in stemming the Task Force's ability to investigate conditions in the jails and to override its mandate.⁵ Despite the expertise of the Task Force, the mandate of Local Law 145 establishing the Task Force, and the BOC 2018 Assessment of the Transgender Housing Unit⁶ recommending the creation of the Task Force, the Department is now relying on an "internal committee"

³ "BDS Testimony before the New York City Council on Criminal Justice and Committee on Women and Gender Equity on Women's Experiences in City Jails," Apr. 27, 2021, <https://bds.org/latest/bds-testimony-before-the-new-york-city-council-on-criminal-justice-and-committee-on-women-and-gender-equity-on-womens-experiences-in-city-jails>.

⁴ See generally, "NYC Dep't of Corr. Response to TGNCNBI Task Force Report," Nov. 14, 2022, <https://www.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/DOC-TGNCNBI-Task-Force-Report-Response-11-14-22.pdf>.

⁵ See "Under Eric Adams, a Rikers Island Unit That Protected Trans Women Has Collapsed," by George Joseph. The City, Jan. 24, 2023 (hereinafter, "The City Article"), <https://www.thecity.nyc/2023/1/24/23567498/rikers-lgbtq-trans-eric-adams-corrections> ("[I]n the aftermath of the report, the department effectively cut off the task force's ability to investigate conditions in the jails.").

⁶ NYC BOC, *An Assessment of the Transgender Housing Unit*, Feb. 2018, <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/THU FINAL Feb 2018.pdf>.

to review and update policies.⁷ In its recent statement regarding TGNCNBI people to *The City*, the Department focused on fixing “derogatory behavior,” rather than acknowledging the systemic harms in its control that must be remedied—just one example of how out of touch DOC is with the concerns facing the TGNCNBI people in its custody.⁸ The Department must not waste the opportunity to engage with the Task Force, provide the Task Force with the necessary access to data, policies, and housing areas, and substantively consider the Task Force’s recommendations. It is, in fact, mandated to do so.

Additionally, we strongly feel that formerly and currently incarcerated people should be appropriately compensated for their time and expertise on the Task Force. Incorporating these voices into the discussion is critical, but far too often we take for granted that people with lived experiences are willing to share their trauma when requested. For those who are willing to come forward and be part of a government initiative, we must do better. We must respect their knowledge, experience, and time and compensate them for role on the Task Force and advocacy on behalf of TGNCNBI people in custody.

B. The Department Must Provide a Transparent and Competent Process for Housing People in Alignment with Their Gender

People must be able to be housed aligned with their gender unless they believe they would be safer elsewhere, and removal from gender-aligned housing should not be a consequence for disciplinary actions. For years, BDS has been advocating that directly impacted people and the advocacy community that supports them must understand the Department’s eligibility criteria for TGNCNBI housing placement, and people should receive a timely response and explanation as to the basis of the housing decision. However, the Department has failed to revise the policies surrounding how TGNCNBI persons in custody request housing that aligns with their gender, specifically Directive 4498, and refused to share any draft version with the Task Force despite a draft being fully vetted in 2021.⁹ Furthermore, decisions on housing are made without guidance by trans-competent civilian staff, but rather by DOC officials and officers employing subjective physical criteria or the tired transphobic trope that transgender women “were really just cis men eager to access cis women.”¹⁰

BDS has seen firsthand how the lack of transparency around the housing application process and the haphazard decisions being made put people in danger and exacerbate mental health issues. The appeal process is also difficult, as it can raise old infractions and tickets, even from prior to transition, that have no bearing on where a person can safely be housed at present. These factors combine to make it incredibly difficult for people in custody and their defense teams to advocate for safe and humane housing and services.

One example, recently highlighted in *The City*,¹¹ is that of Ms. Harrison, a transgender woman that BDS represents. After twice being assaulted and groped in men’s jails, she requested a housing transfer. While waiting for the Department’s housing determination, she continued to face harassment and threats, such that the correction officers locked her in her cell for her safety for several days and she struggled to get enough food and water; she felt like she was being punished. The stress and isolation lead her to begin

⁷ The City Article, *supra* n.5 (citing comments by Mayor Adams, stating that DOC Commissioner Molina’s efforts on behalf of “TGNBI individuals” includes the launch of “an internal committee to review and update policies so we continue to meet the needs of everyone in [our] custody”).

⁸ *Id.*

⁹ Task Force Report at 46.

¹⁰ The City Article, *supra* n.5.

¹¹ *Id.*

cutting herself with the blade of her shaving razor. She was put on suicide watch, but was not transferred units. Ms. Harrison and her BDS attorney repeatedly requested a transfer into West Facility, a medical unit, and DOC's LGBTQ+ Affairs Unit sought to advocate on her behalf. Nonetheless, 12 days after the self-harm occurred, Ms. Harrison was told DOC had denied her transfer request—the next day, desperate to get out of the men's jail, she ingested a handful of batteries. In response, the Department moved her around various men's jails, causing her mental health to worsen: "Thinking about everything I had been going through when I was in the walls here this time around, was kind of taking a toll on me." Ms. Harrison applied for housing at RMSC. Three weeks later without being moved, Ms. Harrison attempted suicide with the blade of another shaving razor:

*"I kept telling them, 'I feel more safer at Rosie's,' but they keep putting me through hell, putting me on these tiers where these men are mistreating me, abusing me, sexually assaulting me," she remembers thinking as she drove in the blade.*¹²

After multiple incidents of self-harm, a suicide attempt, clear indications of mental health issues, and months of abuse and assaults, Ms. Harrison was moved to RMSC and she felt like "a heavy load" was lifted. She felt safer and, importantly, she expressed "I'm being respected as a woman."¹³

Gender-aligned housing is crucial not only for safety, but also for the mental health, emotional well-being, and human connection people need. The Department must provide transparency for how people can apply for gender-aligned housing, how housing decisions are made, and how people can quickly be moved to housing that is aligned with their gender identity. For these reasons, BDS is in support of Res 0458-2023, urging the Council to support passage of the Gender Identity, Respect, Dignity, and Safety Act (GIRDS Act), which addresses the concerns and issues raised by the Report and the lived experiences of many of the people we represent. BDS is also in support of Intro 887-2023, which would impose an important reporting requirement on the Department regarding gender-aligned housing necessary to provide oversight and data on a flawed and hidden process.

With regards to Proposed Legislation Int. 728-22, BDS is a signatory to the recommended revisions made on January 23, 2023 by public defenders, re-entry organizations, and civil rights attorneys working with TGNCNBI people as they navigate the criminal system. While Int. 728, as written, seeks to underscore the continuing need for full implementation and enforcement of protections enshrined in federal legislation under Prison Rape Elimination Act ("PREA") and resulting regulatory requirements, the revisions we support are more comprehensive, following the recommendations of the Task Force. They specify, for example, that people must be afforded opportunities to self-identify as TGNCNBI confidentially and with confidentiality, that the Department must presumptively respect people's gender identity in making housing assignment decisions, and that the personal appraisals of a TGNCNBI person's appearance, along with other irrelevant factors, must not be used to deny that person housing in accordance with their gender identity.

Lastly, TGNCNBI people must have access to regular and dedicated programming in their housing units. In the last two years, the hotline to access the DOC LGBTQ+ Affairs Unit was disabled and people feel abandoned by the failure of the Department to provide specialized and tailored programs, and to ensure check-ins with trans-competent civilian staff.¹⁴

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* (a uniformed staff member, speaking about the LGBTQ+-specific programming stated "Those services and all of the support for staff and persons in custody no longer exist").

C. The Department Consistently Fails to Provide TGNCNBI People in Custody with Access to Medical Care

The Department has consistently demonstrated an inability to effectively manage its own staff,¹⁵ to enforce its own rules including those implementing the federal standards established by Congress through PREA and subsequently promulgated by the U.S. Department of Justice in corresponding Federal regulations,¹⁶ and generally to provide a minimum level of safety and security for individuals in DOC custody.¹⁷ DOC's failure to meet its mandatory duty to provide people with access to medical care is the subject of ongoing litigation brought by BDS and its co-counsel The Legal Aid Society and the law firm Milbank in *Matter of Agnew, et al. v. New York City Dep't of Corr.*¹⁸ DOC's failure to provide access to medical care has already led to one finding of contempt against the Department.¹⁹ This lack of access to medical and mental health care is coming at a time of continued deterioration of conditions in DOC facilities, the inability of DOC to ensure the safety of people in its custody, and record-breaking loss of life, particularly by suicide.²⁰ There is a dire urgency now for concrete change.

Given this backdrop, TGNCNBI people in DOC custody continually struggle to access necessary gender-affirming medical and mental health care.²¹ For example, people we represent who need hormone therapy

¹⁵ See, e.g., "Rikers Island staff, cars to undergo drug searches by NYPD, Department of Correction," by Graham Rayman and Elizabeth Keogh, *New York Daily News*, Jan. 18, 2023, <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-island-staff-cars-search-20230119-jjiuw4f6a5dgtaqwln04i4lshu-story.html>; "3 Rikers officers accused of covering up inmate assault," by Joseph Konig, *Spectrum News*, Jan. 18, 2023, <https://www.nyl.com/nyc/all-boroughs/public-safety/2023/01/17/3-rikers-officers-charged-in-alleged-inmate-assault-cover-up>; "At Rikers, Piling Up Sick Days While Investigating Sick-Leave Abuse," by Jan Ransom and William K. Rashbaum, *The New York Times*, Jan. 16, 2023, <https://www.nytimes.com/2023/01/16/nyregion/rikers-guard-sick-leave.html>; "Rikers Island officers working 100-plus hours weekly, stuck sleeping in jail's parking lot," by Rich Calder and Matthew Sedacca, *New York Post*, Dec. 24, 2022, <https://nypost.com/2022/12/24/rikers-island-correction-officers-routinely-working-100-plus-hours-a-week/>; "Rikers Has a Deadly Contraband Problem. Are Cargo Pants to Blame?", by Gina Bellafante, *The New York Times*, Dec. 17, 2022, <https://www.nytimes.com/2022/12/17/nyregion/rikers-drug-crisis.html>; "Correction Department fails to manage staffers and how they respond to jail incidents: federal report," by Chelsia Rose Marcus, *New York Daily News*, May 11, 2021, <https://www.nydailynews.com/new-york/ny-correction-department-nyc-jails-federal-monitor-report-20210511-pdwko5mscjea7jajoksivejj3y-story.html>.

¹⁶ See generally, Task Force Report.

¹⁷ See *Nunez v. City of New York*, 11 Civ. 5845 (LTS) (S.D.N.Y. 2011) and all related documents; see also, "Twelfth Report of the *Nunez* Independent Monitor," filed December 6, 2021 ("The findings in this report bring into sharp focus that despite six years of striving to implement the required practices, the Department's efforts have been unsuccessful in remediating the serious problems that gave rise to the Consent Judgment. Instead, conditions have progressively and substantially worsened.").

¹⁸ See, e.g., *Agnew v. New York City Dep't of Corr.*, Index No. 21-813431 Bronx Co. (2021), Judgment/Order, May 17, 2022 (finding the DOC, by clear and convincing evidence, to be in civil contempt of prior court order dated December 3, 2021, requiring, *inter alia*, that the Department "comply with its duties to provide [incarcerated individuals] with access to sick call and not prohibit or delay them from health services").

¹⁹ *Id.*

²⁰ See "Second Report and Recommendations on 2022 Deaths in New York City Department of Correction Custody," Board of Correction, Nov. 16, 2022; "Report and Recommendations on 2021 Suicides and Drug-Related Deaths in New York City Department of Correction Custody," Board of Correction, Sept. 12, 2022.

²¹ See, e.g., Task Force Report, at 67-69 (Illustrating that, "while delays in medical care are something that affect every person in custody," particularly with respect to non-production by DOC staff to medical appointments, in the case of at least some TGNCNBI individuals, "medical care [is not necessarily] made available even after

regularly report that they miss several weeks of hormone treatment at a time and are delayed in receiving their hormones upon intake. This is not only dangerous and extremely dehumanizing, but takes a toll on a person's mental health and exacerbates safety concerns. For example, a trans woman we represent was initially housed at RMSC, but was uncomfortable remaining there because DOC's failure to provide her regular access her hormone treatments meant that her physical presentation was increasingly at odds with her gender. The physical changes caused by her lack of regular access to treatment made her feel unsafe at RMSC, and because she could not access hormone therapy, she ultimately sought a transfer to a male housing unit, despite the harm to her mental health that she understood would result. This is just one of the many ways in which TGNCNBI people in custody are forced to hide themselves and choose between safety and their mental health.

Access to consistent mental health care is particularly important for TGNCNBI people in custody as not only must they deal with the inherently traumatic nature of incarceration, but they are also forced to navigate a hostile system not designed for them. For Ms. Harrison, the compounding factors of being in a men's jail as a transgender woman, being held in isolation, and denied any agency in the housing process led to self-harm and attempted suicide.²² Her self-harm was not seen as a serious injury, despite the clear mental health implications. Even as her mental health worsened as the Department transferred her around various men's jails and she felt she was starting to have a mental breakdown, she missed appointments for her psych medications and meetings with social workers. She also missed various appointments for her hormone therapy. This all culminated in a suicide attempt.

D. Task Force Recommendations Demonstrate the Need for Meaningful Reform Across the Criminal Legal System, from Arrest through Reentry

Improving the process of housing classification and access to TGNCNBI-affirming medical and mental health care represent only part of the broader raft of needed reforms. Those improvements, once made, will only be truly effective when combined with a thorough and thoughtful review of pre-arraignment, arraignment, and reentry processes.

Often, issues with gender-aligned housing start at arraignment. Specifically, the Report suggests that even before a prosecutor drafts a criminal complaint information provided by the arresting officer may undermine any hope for that individual with respect to gender-aligned classification and housing.²³ And even if the arresting officer's own assessment of an individual's gender does not undermine that person's self-identification, because there are no gender marker options for people who identify outside of the "female" or "male" gender binary, the pre-arraignment process presents multiple opportunities for misalignment.²⁴ The Court will generally rely on the gender marker listed on the criminal complaint and the arresting officer's paperwork, rather than at least giving "serious consideration"²⁵ to the self-identification of the individual being arraigned, as is required under PREA standards.²⁶ BDS attorneys have observed that, despite an effort on the part of judges and court staff to be sensitive to pronouns, it is

production," and concluding that the DOC's reporting on the numbers of individuals subject to non-production, "which do not differentiate around gender identity and expression, show the sheer magnitude of the gap in comprehensive, meaningful TGNCNBI affirming care.").

²² The City Article, *supra* n.5.

²³ See Task Force Report at 37.

²⁴ *Id.*

²⁵ See, e.g., PREA Standard Section 115.42(e) ("A transgender or intersex [person's] own views with respect to his or her own safety shall be given serious consideration").

²⁶ *Id.*

nevertheless a frequent occurrence that a person's birth name, which may be attached to the case even in situations where they no longer use that name, is the name by which the case is called, and the name that will then follow that person as they proceed in the system.

In addition, TGNCNBI people suffer greater obstacles in accessing alternative housing and treatment programs making it more difficult to be placed in an alternative to detention. The recommendations in the Task Force Report, which importantly call for an overhauling of every system from arraignment through reentry, generally seek to bring humanity to all individuals as they move through the criminal legal system and DOC custody. There are myriad ways in which the systems currently in place fail to account for the lived realities of TGNCNBI people.

To that end, in addition to those discussed in Section B above, BDS supports two additional bills on today's agenda that flow directly from Task Force recommendations:

- Resolution 117-2022 represents an important effort to eliminate strict gender binary options that exclude non-binary and gender non-confirming New Yorkers.
- Intro 831-2022 establishes a citywide resource navigator for women and gender-expansive persons, including in the context of reentry services pivotal to TGNCNBI people.

Conclusion

BDS is grateful to the Committees on Criminal Justice and Women and Gender Equity for hosting this important hearing and continuing to call attention to the horrifying realities that TGNCNBI people in custody face in New York City jails. We ask City Council to hold the Department accountable for its failure to protect TGNCNBI people in its custody and its resistance to meaningful change. We urge councilmembers to continue visiting the jails, without giving prior notice to the Department, and to speak with people throughout the jails to hear firsthand the experiences of TGNCNBI and queer people incarcerated in DOC custody.

Thank you for your time and consideration of our comments. We look forward to continuing to discuss these and other issues that impact people we represent.

If you have any additional questions, please feel free to contact me at slmarquez@bds.org.

Testimony of Marianna Chrysiliou, Assistant Director, Behavioral Health Services
Center for Community Alternatives (CCA)
New York City Council
Committee on Criminal Justice jointly with the Committee on Women and Gender Equity

Good morning, Chairpersons, and esteemed members of the Committee on Criminal Justice, and the Committee on Women and Gender Equity . My name is Marianna Chrysiliou and I am the Assistant Director of Behavioral Health Services at the Center for Community Alternatives, Inc. (CCA).

CCA is a not-for-profit agency that promotes reintegrative justice and a reduced reliance on incarceration through advocacy, services, and public policy development in pursuit of civil and human rights. We operate several alternative to detention and incarceration programs, including the Crossroads to Recovery for Women program that provides comprehensive treatment services for women with substance use challenges.

Crossroads to Recovery for Women is CCA's OASAS-licensed outpatient substance use treatment program. Our treatment interventions are trauma-informed, gender specific and client-centered. We serve women from all walks of life, including returning citizens from local, state and federal facilities, women who are engaging in work release programming at the Edgecombe Residential Treatment Facility, participants with pending cases in family court, criminal court, supreme court and federal court, and community members seeking Medication Assisted Treatment (MAT) services.

We offer a wide range of comprehensive and holistic services, including individual and group counseling, mental health counseling, cognitive behavioral interventions, employment services, drug testing, health education, HIV and HEP C testing, court advocacy services as well

medication-assisted treatment (MAT). Our MAT services are offered in combination with comprehensive opioid use disorder psychosocial services, including evidence-based behavioral therapies, recovery supports and other wraparound services.

Our approach is tailored to meet the unique needs of participants and support each individual as they strive to improve their health and wellness, live self-directed lives and recognize their full potential. Specific program offerings include domestic violence prevention, relapse prevention, mindfulness, art therapy, opioid overdose prevention training and Narcan kits, emotional regulation, and workplace readiness. We offer employment readiness sessions and provide participants with access to business attire through our on-site business boutique and linkages with other community-based agencies. In addition, we offer evidence-based programming, such as Seeking Safety and various cognitive behavioral interventions (such as Thinking for a Change 4.0, Interactive Journaling and Moral Reconciliation therapy), which have been found to decrease recidivism rates, enhance decision-making processes and promote positive self-change.

The women in our program often express that they feel supported by the services, noting that they benefit from a safe environment to connect with one another, to discuss coping skills, to process emotions, and to be empowered in their recovery. They find that they benefit by exploring what it means to be in recovery, discussing triggers and effective means of navigating them, and implement coping and communication skills in group formats. Many of our women voice new understandings of changes they experience while in recovery, including post-traumatic growth, increased self-awareness, and higher attunement to their own emotions, as well as a sense of renewed agency over their lives.

Of particular significance, our women voice that they have found increased safety in relationships, both within our program and in their personal lives, as they advance in their recovery and seek to further build upon their successes. They continuously show great resilience, reflection, and perseverance, and we as providers are honored to bear witness to and empower their hard-won growth and transformation.

In addition, women in our program also note that the work readiness support they receive on site at CCA, inclusive of resume and cover letter development, mock interview exercises, engagement in skills and interests inventories, and time management tasks, help them develop their professional portfolio and secure gainful employment opportunities. An on-site library provides women with a selection of publications, which they are welcome to take home, in addition to a range of other food and sanitary items that are available to them when they visit the premises.

Thank you for this opportunity to testify today. We look forward to continuing to provide programs and services that for women in our community, which emphasize mental health and wellbeing, treatment services and community connection.



New York City Council
Committee on Criminal Justice and Committee
on Women and Gender Equity

Hearing: The TGNCNBI Task Force Report
Update and TGNCNBI Individuals in Rikers

Hearing on Proposed Legislation: Int. 355, Int.
728, Int. 831, Int. 887, Res 117, Res 458

January 25, 2023

Testimony of The Legal Aid Society

The Legal Aid Society is grateful for this opportunity to testify about the experience of transgender, gender non-conforming, non-binary, and intersex (“TGNCNBI”) people incarcerated in the City jails. As the largest public defender in New York City with specialized units dedicated to the rights of incarcerated and LGBTQ+ people, we speak frequently with TGNCNBI clients and their loved ones. It is because of their willingness to share their experiences that we can speak to some of the systemic issues impacting incarcerated TGNCNBI people. But it is imperative that this Council and the Department of Correction (“DOC” or “the Department”) take direction from TGNCNBI people and join us in supporting the recommendations in the August 2022 Report of the Task Force on Issues Faced by TGNCNBI People in Custody (“Task Force Report”), the subject of today’s hearing, and the testimony of incarcerated and formerly incarcerated TGNCNBI people testifying before you today.

The treatment of Legal Aid’s TGNCNBI clients by the Department is inhumane, unlawful, and wholly inconsistent with New York City’s dedication to LGBTQ+ rights. The Department’s claim that it houses people based on gender identity is simply untrue. Only 20% of Legal Aid’s clients who requested gender-aligned housing were allowed to transfer and remain in the Rose M. Singer Center (“RMSC”), where women in custody are housed. Our female clients housed in men’s jails are physically and sexually assaulted and suffer from the serious mental harms caused by having their identity denied and denigrated on a constant basis. The City Council must take immediate action by adopting and implementing the recommendations of the Task Force Report and passing a strengthened version of Int. 728.

Since 1876, The Legal Aid Society has been committed to providing quality legal representation to low-income New Yorkers. We are dedicated to ensuring that no New Yorker is denied access to justice because of poverty. The Legal Aid Society’s Criminal Defense Practice, which serves as the primary defender of low-income people in New York City prosecuted in the State court system, hears daily from incarcerated people and their families about their experiences in DOC custody. The LGBTQ+ Law and Policy Unit daily advocates for TGNCNBI people incarcerated in the City jail system and in the State prison system and pursues legislative, policy, and litigation to fight for more humane treatment of TGNCNBI people. Since its inception 50 years ago, the Prisoners’ Rights Project has investigated and remedied unconstitutional and unlawful conditions in the City jails and has continuously been advocating for the rights of incarcerated TGNCNBI people.

I. DOC Denies Most Requests for Gender-Aligned Housing

As the largest public defender in New York City, we can confidently report that DOC does not house most transgender women in gender-aligned housing, despite its claims to the contrary. *See* November 14 Response to the Task Force Report at 1 (“Since 2018, the Department has housed individuals in custody based upon gender identity.”) (hereafter “DOC Response”). In 2022, Legal Aid’s LGBTQ+ Unit and Prisoners’ Rights Project worked with twenty-four transgender women and non-binary people who requested to be placed at RMSC. Of these requests, only ten were approved. Furthermore, of those approved, half were forced to return to a men’s jail involuntarily as a form of discipline. Thus, only 5 (20%) of the people requesting gender-aligned and safe housing were transferred to and remained in gender-aligned housing. Of the clients denied gender-aligned housing, all have reported sexual assaults, other

forms of violence, and harassment while in men’s units. This is nothing short of a crisis and demands immediate action.

Through our clients, Legal Aid has had an opportunity to review some of the reasons people are denied gender-aligned housing.¹ These denials are rife with discriminatory and transphobic reasons ranging from the person’s sexual orientation and disciplinary or criminal history to DOC’s own perception of their gender identity. DOC’s own policy and applicable regulations make clear that it is the impacted person’s safety needs that should determine housing placement, but these are not even mentioned.² DOC’s reasons for denials are also constitutionally impermissible. As one federal court explained while rejecting the argument that a violent record should require a transgender woman to be housed in a men’s jail, “female inmates can be equally aggressive and violent . . . [y]et, no one would suggest those women should be housed in the men’s division.”³ The United States Department of Justice has recently recognized that the Eighth Amendment, which prohibits cruel and unusual punishment, requires placement in a gender-aligned jail when necessary to provide reasonable safety.⁴ Nevertheless, DOC wholly disregards our client’s identities and experiences of sexual assault, violence, and discrimination in its assessments.

One Legal Aid client survived a brutal sexual assault while housed in a men’s jail. Despite this experience and numerous requests to be transferred to RMSC, this client spent almost three years in a men’s jail experiencing daily harassment, misgendering, and physical and sexual threats. Ignoring the recommendations of her medical and mental health providers, DOC repeatedly refused to move her for discriminatory and unlawful reasons, including the fact that she at one point disclosed she was bisexual and had unsubstantiated, transphobic allegations made against her. This client, like many of our TGNCNBI clients, was accused of misbehavior when in fact she was defending herself against violence by others. She was ultimately transferred

¹ Often, we receive these decisions through the FOIL process long after our clients leave DOC custody because the Department refuses to provide them to us, even when we have executed client releases. As explained in Section II, this effectively stonewalls efforts to dispute DOC’s reasoning for a denial. Our clients often never receive a written decision and, even if they do and are able to retain the paperwork through sweeps and transfers, there are substantial logistical barriers to getting a copy from them directly.

² DOC Directive 4498R-A at IV(B)(1)(a) (“Persons shall be housed in the facility consistent with their gender identity, absent overriding concerns *for the detained person’s safety*.”) (emphasis added); New York City Board of Correction Minimum Standard 5-18(f) (requiring that the focus of any housing reassessment be on “threats to safety *experienced by the inmate*”); *see also* 47 N.Y.C.R.R. § 2-06(b) (providing that it is discriminatory under the NYC Human Rights Law to refuse people access to single-gender facilities or programs consistent with their gender identity); Letter from NYC Commission on Human Rights to Department of Correction (Apr. 13, 2018) (“DOC must house [incarcerated people] consistent with their gender identity” unless the person expresses otherwise or there is an individualized assessment focused on the incarcerated person’s health and safety).

³ *Hampton v. Baldwin*, 2018 WL 5830730, at *12 (S.D. Ill. Nov. 7, 2018) (applying heightened scrutiny when corrections officials treat transgender women differently than cisgender women); *see also Doe v. Mass. Dep’t of Corr.*, 2018 WL 2994403, at *9-10 (D. Mass. June 14, 2018) (same); *Tay v. Dennison*, 457 F. Supp. 3d 657, 680-81 (S.D. Ill. 2020) (same).

⁴ United States Department of Justice Statement of Interest in *Diamond v. Ward*, 20-cv-00453 (M.D. Ga. Apr. 22, 2021) (Doc. No. 65).

to DOCCS custody, where DOC's refusal to house her in RMSC likely influenced DOCCS' decision to house her in a men's prison. Another Legal Aid client has involuntarily been housed in a men's jail for over two years. She faces regular harassment and threats of physical violence, has been slashed by other incarcerated people, and suffered a sexual assault by an officer in a transport vehicle. Nevertheless, the Department has repeatedly denied her requests for gender-aligned housing, citing to unproven charges brought against her over two decades ago and disciplinary infractions where she, herself, was the victim of violence.

Significantly, even when a client is eventually approved for housing in RMSC, they experience physical and sexual assault during the days or even the hours they wait for DOC to make a decision on their placement or while they wait for DOC to effectuate an approved transfer. One Legal Aid client was approved to be moved from a men's jail to a women's jail. In blatant violation of her right to privacy, officers told her in a public area of a men's unit that she would be transferred to RMSC, but not until a COVID quarantine was over. She was subsequently raped in the shower of the men's unit. Shockingly, although she was later transferred to RMSC, she was involuntarily transferred back to a men's jail after an altercation, even though DOC determined that she was the victim in the incident. She spent the rest of her time in DOC custody in a men's jail despite repeated pleas by herself and her advocates to have her moved back to RMSC for her safety.

The intake process is also grossly inadequate to ensure people's safety. Although she was housed in RMSC during a prior incarceration, one Legal Aid client was brought to a men's jail when she returned to DOC custody despite telling DOC upon intake that she was a woman and needed to be housed at RMSC for her safety. She was subsequently attacked in her cell when her cell door was maliciously left open. It took one week for DOC to give her the required form to ask for a transfer and two weeks after that before she was actually moved. We are aware of at least two other people who were sent to men's intake upon re-entry to DOC custody, despite having recently been in RMSC during a previous period of detention. One current client has spent twenty-two days in a men's jail despite having previously been in RMSC; DOC did not transfer her to RMSC until *two weeks* after she was approved.

While the physical damage done to women in men's jails is well-documented, there is also serious psychological damage when someone's gender identity is constantly questioned, denied or denigrated. One woman, housed in a men's jail and denied aligned placement several times, was previously living at a women's shelter in Brooklyn. There – consistent with law and basic principles of human respect and decency – she was called by her female name and pronouns and given equal access to programs and services received by other women. Upon her arrest, however, that treatment abruptly ceased. Instead, she was constantly misnamed, misgendered, and forced to live in a men's unit at great risk to her physical safety and emotional well-being. As a result of this treatment, she has been in and out of mental health observation housing. She has survived multiple depressive episodes with inclinations towards self-harm. This is just one of the many stories our clients tell us of their lives as women – as being respected and seen as women in this city – contrasted with how they are treated the moment they enter DOC custody.

II. As A Practice, The Placement Process is Neither Fair Nor Transparent

In its response to the Task Force Report, the Department asserts “it is our goal to make the placement process fair and transparent.” DOC Response at 6. It is neither. For years, the Department has refused to provide its LGBTQ+ policy not only to the public, but to the very people who are subject to its terms. Legal Aid has worked with at least forty-five TGNCNBI people over the last year. These clients often do not know about their right to safe, gender-aligned housing and, if they do know and make such a request, they do not receive the required form for days if not weeks. When they are finally provided the form, it is often not in a confidential or private setting. One client reported that an officer filled out the form for her, despite the private nature of the information requested. Clients are also frequently not informed when DOC decides their placement and are not provided with any meaningful way to challenge a denial, many of which contain factual inaccuracies. Finally, DOC refuses to provide decisions to advocates, including defense attorneys with executed releases, effectively blockading attempts by advocates to timely and fairly challenge these decisions. *See* DOC Response at 4 (“It is not our intention, however, to provide a copy of the notice to third parties.”).⁵ The seriousness of these decisions require meaningful communication with impacted TGNCNBI people and due process protections.

Compounding the lack of clarity and fair treatment under DOC’s current policy and practice, *for over three years* Legal Aid and the other participants on the Task Force have been told that a new directive on the housing of TGNCNBI people is “forthcoming” and will address some of the serious problems with the existing policy, such as the fact that placement decisions are not informed by legal, medical, and cultural experts in TGNCNBI care and identity. But, despite numerous requests, a draft directive has not been shared with stakeholders, including the Task Force which was created for the very purpose of reviewing and providing input on such policies.

III. The LGBTQ+ Affairs Unit Is Severely Understaffed, Has Insufficient Authority to Make Appropriate Housing Decisions, and Is No Longer Providing Support to TGNCNBI Clients

During the de Blasio Administration, the Department made some significant strides towards increasing support and implementing affirming services for TGNCNBI people in custody. For instance, DOC established the LGBTQ+ Affairs Unit in 2019. Although transphobia and homophobia continued to persist in DOC facilities, from approximately mid-2020 through late 2021, Legal Aid attorneys and staff were able to reach out to members of the Unit to ask them to meet with incarcerated TGNCNBI people with safety concerns and to ensure the housing requests of clients were being timely reviewed. Members of the LGBTQ+ Affairs Unit actively worked to connect clients with affirming jail-based and community-based providers and organized affirming resources and services within the jails. Many of our clients

⁵ No rationale is provided justifying this approach, particularly as applied to defense attorneys with executed releases, belying the Department’s claim that it “is committed to ensuring that transgender, gender non-conforming, gender non-binary, and intersex (TGNCNBI) individuals in custody are treated with dignity and respect and housed safely and appropriately while in city jails.” DOC Response at 1.

reported feeling safe and affirmed with LGBTQ+ Affairs Unit staff, marking a small but significant culture shift in the Department.

In sharp contrast, in 2022, many of the LGBTQ+ Affairs Unit staff left the Department and, to our knowledge, those positions have not been filled. Now, our clients do not know who they can safely reach out to when there are threats to their safety and well-being or when they need assistance on transferring to gender-aligned housing. They rightfully fear that any request for help will require interactions with officials who will misname and misgender them and put them further at risk. For instance, in contrast to their experiences with the LGBTQ+ Affairs Unit, our client's interactions with security and Prison Rape Elimination Act (PREA) staff are deeply concerning. Our clients regularly inform us that PREA and security interviews emphasize the safety and security of cisgender people and not the mental health, legal rights, and personal dignity of TGNCNBI people. Not only are these interviews occurring within the housing units, providing individuals with no privacy and increasing the likelihood of disclosure of information that may place them in harms' way, the questions focus on whether our transgender women clients will be threatening to cisgender women rather than their own safety needs. While Legal Aid and other organizations have sought clarification from Commissioner Molina on the status and role of the LGBTQ Affairs Unit, these requests have been ignored.

IV. The Council Should Pass A Strengthened Version of Int. 728 to Redress These Human Rights Violations

Int. 728, proposed by Councilmember Powers, is an important step to address DOC's disregard for TGNCNBI people in its custody. Most significantly, it addresses some of the serious deficiencies in the procedure that applies to housing decisions by requiring formal written procedures that must, at a minimum, provide written notice to an individual denied gender-aligned housing on how to appeal and involving the Board of Corrections in the appeals process.

However, without several key revisions, the current version of the bill will not ensure TGNCNBI are as safe as possible in DOC custody and establish fairness and transparency in how housing decisions are made. Legal Aid supports the proposed revisions attached to the Task Force's testimony, also attached as Exhibit A to this testimony, for the reasons set forth here.

First and foremost, consistent with the New York City Human Rights Law, constitutional requirements, and the goals of PREA, the law must provide that housing will be based on gender identity unless (1) the individual does not wish to be housed based on gender identity or (2) DOC can demonstrate *by clear and convincing evidence* that the person poses a current danger of committing gender-based violence.⁶ Corrections officials must be prohibited from using discriminatory reasons to deny appropriate housing, such as genital status, sexual orientation, or

⁶ PREA should have marked a momentous change in how housing placements for TGNCNBI people are made. The PREA regulations made clear that (i) housing determinations must not be based on a person's anatomy, (ii) the single most important factor in placement is the "[individual's] health and safety," and (iii) TGNCNBI people's "own views with respect to . . . safety shall be given serious consideration." 28 C.F.R. § 115.42. As DOC's placement determinations show, it is not fairly balancing these considerations, resulting in serious harm to TGNCNBI people's safety and well-being.

transphobic complaints while at the same time taking the steps necessary to ensure all people in custody, including those who are TGNCNBI, are protected from sexual violence.

This proposed language is not only consistent with controlling law, it provides clear and enforceable guidelines for making housing determinations. Such guidelines are necessary because the Department has demonstrated time and time again that it will allow transphobia to guide its decisions if permitted to consider simply “management and security concerns” without a clearer statement both of what that means and the evidentiary standard to be used. As explained in Section I above, the department’s decisions are rife with discriminatory rationales and inaccurate readings of disciplinary and criminal records. This language will clarify once and for all that the determining factor is safety by ensuring gender-aligned housing unless the person would feel safer in a facility aligned with their sex assigned at birth, for instance a transgender man who wishes to be in a women’s prison, or if they pose a real, demonstrated threat to people housed in women’s facilities.

Second, stronger due process protections must be included to ensure fairness and transparency in the decision-making process, protections that are lacking in DOC’s current practices.⁷ The revised version of the bill provides (i) immediate notice to all people of the right to be housed according to gender identity and personal sense of safety, (ii) strict time limitations for DOC to make a housing decision, (iii) provision of a written decision with supporting documentation to the impacted person and their counsel, and (iv) an appellate process involving an independent agency, the NYC Board of Correction, as well as staff with a demonstrated knowledge of mental and medical health issues specific to TGNCNBI people. By requiring the Department to share their written determinations with counsel, advocates will be able to meaningfully participate in the appeals process and seek safety for their clients. In short, the revised version of the bill includes all the hallmarks of requisite procedural due process for decisions that impact the physical safety and well-being of incarcerated people.

Third, the proposed revisions to the law address the serious physical and mental harm that can occur in the days or weeks before transfer to a gender-aligned jail is made. As outlined in Section I, even when the Department approves transgender women for housing in RMSC, it can take weeks to move a person despite the constant safety risks in a men’s jail. And, under current practice, the gender marker on the securing order determines initial placement rather than the person’s safety requirements. The proposed revisions address this issue by providing for confidential space prior to transportation out of the courthouse where a person can disclose which intake facility is appropriate to a trained and affirming DOC staff member.

With these changes, Legal Aid wholeheartedly supports Int. 728 and urges its immediate passage. The TGNCNBI community deserves quick and decisive action on this human rights issue.

⁷ See Section II.

V. Legal Aid Supports A Revised Version of Int. 887, Calling for Mandatory Monthly Reporting on DOC's Treatment of TGNCNBI People

Legal Aid agrees that additional public reporting on DOC's treatment of TGNCNBI people in custody is important to hold DOC accountable to the public and to governing laws and policies. Int. 887 serves this important purpose by broadening the categories of reported information currently required by NYC Admin Code Section 9-157. Section 9-157 requires reports on number of requests for housing in the Special Considerations Unit and number of denials, but the information is not specific enough to present a clear picture of DOC's housing determinations. For instance, current reporting does not provide information about the total number of TGNCNBI people in DOC custody, which facilities they are housed in, or the number of incidents of violence they experience. Int. 887 would fill that gap. The importance of such a measure is particularly important given the Department's recent refusal to provide data to the Task Force, hampering its ability to fulfill its mission.

There are however several revisions that Legal Aid believes would strengthen the bill, some of which are outlined below. Legal Aid would welcome the opportunity to work with the bill's sponsors to ensure reporting of the most useful information.

First, to understand whether people are being housed based on gender identity, the bill should more clearly require reporting on how many TGNCNBI people are housed in gender-misaligned housing against their wishes and for how long they are required to live in those circumstances. The current version of the bill captures who objects to their current housing placement, but that would also include, for instance, transgender women who feel safer in men's housing but wish to transfer from one's men's jail to another men's jail for any number of reasons that may not relate to their gender identity. Second, the reported data should differentiate specifically between the Special Consideration Unit at RMSC and general population at RMSC, as many of our clients have specific requests for one or the other based on their safety needs. Third, the reported data should capture the number of people who were originally approved for gender-aligned housing, but were then involuntarily removed from that placement and the reasons for that removal. Many of our clients have been involuntarily transferred out of RMSC to a men's jail for disciplinary reasons or because of an altercation, even when they are not at fault. Fourth, because many of our clients are forced into involuntary protective custody in RMSC (and elsewhere), DOC should report how many TGNCNBI people are in involuntary protective custody and for how long, disaggregated by facility. Finally, information on how many people have their security classification changed prior to being transferred to gender-aligned housing will help determine if DOC is subjecting TGNCNBI people to inequitable treatment based on their sex and gender.

VI. Legal Aid Supports Resolution 458 Calling for the Passage of the Gender Identity Respect, Dignity, and Safety Act

The Gender Identity Respect, Dignity, and Safety Act (GIRDS) is an important and essential step to protect TGNCNBI incarcerated people in all county jails and in New York State prisons and is widely supported by LGBTQ+ and criminal law reform advocates. Many of its provisions are incorporated into the proposed revisions to Int. 728. A May 2022 letter to the

leaders of the New York State legislature supporting GIRDS and explaining why it is important is attached as Exhibit B to this testimony.⁸

VII. Legal Aid Supports Resolution 117 Calling for the Addition of An X Marker to the Securing Order, Although It Would Not Resolve DOC’s Current Dangerous Intake Practices for TGNCNBI People

Legal Aid supports Resolution 117, which calls for the Office of Administration (OCA) to update the securing order form throughout New York State to include an X marker option. The Gender Recognition Act (“GRA”), signed into law on June 24, 2021, permits people to select an X gender marker on state-issued identification documents. The inclusion of the X marker under state law is an important recognition that the markers “M” and “F” do not accurately reflect many people’s gender identity. Although OCA should be changing the forms to reflect this change, to our knowledge the forms remain outdated.⁹

Nevertheless, it may be important to (i) add additional gender identity categories to the state-wide securing order form and (ii) allow people to correct the name and gender identification on the order before it is issued. Legal Aid does not have sufficient information about how the securing order form is used throughout the state to determine the scope of changes that should be made. However, in New York City, DOC’s current policy and practice is to send people to intake facilities based on the marker on the securing order, even though this marker is often inaccurate for TGNCNBI people. Resolution 117 on its own will not resolve the fact that many TGNCNBI people are sent to an incorrect – and dangerous – gendered intake facility without giving people an opportunity to review and correct the securing order. As part of its proposed edits to Int. 728, Legal Aid proposes that people remanded to DOC custody have an opportunity to safely self-identify and be sent to intake based on that self-identification.

VIII. While Well-Intentioned, Legal Aid Believes Int. 355 In Its Current Form Does Not Help Address the Current Healthcare Crisis in DOC Jails And May Exacerbate It

Legal Aid strongly agrees that incarcerated people have a right to affirming healthcare providers with whom they are comfortable and acknowledges that the gender of the provider may be relevant to that assessment. However, based on Legal Aid’s experience, the current healthcare crisis at Rikers relates to a dearth of competent and affirming providers (of any gender) and lack of access to healthcare in the first instance, not the inability to choose a doctor of the client’s own gender. In November, 2022, the most recent month for which we have data, DOC failed to produce almost 10,000 persons to their medical and mental health appointments. DOC claims that almost 7,000 of those were due to refusals, but we have reason to believe that the number of people marked as refusing their appointments is significantly inflated. If DOC implements Int. 355 with its current staffing and inadequate response rates to requests for care, incarcerated people may experience even greater delays accessing care. DOC may claim, for instance, that a TGNCNBI person refused to be taken to their appointment because of their dissatisfaction with their escort or their provider. In addition, if the goal of Int. 355 is to ensure

⁸ To date, GIRDS has not received bill numbers for the 2023 legislative session.

⁹ As part of the 2022 budget process, Governor Hochul required all state agencies to change their forms and systems to recognize the “X” marker.

people have access to healthcare providers with whom they feel comfortable and affirmed, the law should allow people to request a doctor of a specific gender rather than only a doctor of their own gender identity. Finally, as much of this testimony demonstrates, DOC simply does not respect people's gender identity. Further explicit protections ensuring TGNCNBI people have access to their preferred doctor would need to be added into the bill.

Exhibit A

By Council Members Powers, Cabán, Rivera, Hanif, Brewer, Restler, Hudson, Ung, Joseph, Abreu, Avilés, Ossé and Sanchez

A Local Law to amend the administrative code of the city of New York, in relation to housing decisions for transgender, gender nonconforming and intersex individuals

Be it enacted by the Council as follows:

1 Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended
2 by adding a new section 9-163 to read as follows:

3 § 9-163 Housing requests related to gender identity. a. Definitions. For the purposes of this
4 section, the following terms have the following meanings:

5 Gender identity. The term “gender identity” means a person’s sense of their own gender
6 which may be the same as or different from their sex assigned at birth

7 Gender nonconforming. The term “gender nonconforming” means a person whose
8 behavior or appearance does not conform to the traditional expectations of men and women, of
9 their gender, which may includes a person who is transgender.

10 Intersex. The term “intersex” refers to a person whose physical sex characteristics do not
11 conform to a binary construction of sex as either male or female.

12 Non-binary. The term “non-binary” refers to a person whose gender identity is not
13 exclusively male or female, which may include a person who is transgender.

14 Transgender. The term “transgender” refers to a person whose gender identity does not
15 conform to the sex assigned at birth.

16 b. At arraignments each person charged to the care, custody and control of the department
17 shall be advised on the record that they have the right to be held in an intake facility that aligns
18 with both their gender identity and personal sense of safety. The person shall further be advised

1 that following the arraignment appearance the department will ask them in a confidential space
2 about whether a men's or women's intake facility best matches their sense of safety and gender
3 identity and that, once at the intake facility, the department will conduct further screening
4 concerning housing placement. The department must honor the individual's choice regarding
5 intake facility.

6 c. Upon the department being ordered to take custody of an individual immediately
7 following arraignment or return on any warrant or parole violation, any individual identifying as
8 transgender, gender nonconforming, non-binary and/or intersex shall have access to a confidential
9 space within the courthouse and prior to transportation to any jail facility in which to disclose
10 whether a men's or women's intake facility is best for their personal sense of identity and safety.
11 This interview shall be conducted by a department staff member who has received training from
12 the LGBTQIA+ Initiatives unit within the department. The decision by the detained or otherwise
13 held individual as to whether a men's or women's intake facility is appropriate shall be followed
14 in every instance and supersedes any other documents used to determine intake placement.

15 d. Once in an intake facility, and at any time upon transfer to another facility, the
16 department ~~Subject to section 115 of title 28 of the code of federal regulations, the department~~
17 shall assess all incarcerated individuals during an intake screening and upon transfer to another
18 facility for their risk of being sexually abused by other incarcerated individuals or sexually abusive
19 toward other incarcerated individuals. The department shall consider, at minimum, the following
20 criteria to assess incarcerated individuals for risk of sexual victimization:

- 21 1. Whether the incarcerated individual has a mental, physical or developmental disability;
- 22 2. The age of the incarcerated individual;
- 23 3. The physical build of the incarcerated individual;

1 4. Whether the incarcerated individual has previously been incarcerated;

2 5. Whether the incarcerated individual's criminal history is exclusively nonviolent;

3 6. Whether the incarcerated individual has prior convictions for sex offenses against an
4 adult or child;

5 7. Whether the incarcerated individual is or is perceived to be gay, lesbian, bisexual,
6 transgender, intersex, non-binary or gender nonconforming;

7 8. Whether the incarcerated individual has previously experienced sexual victimization;

8 9. The incarcerated individual's own perception of vulnerability; and

9 10. Whether the incarcerated individual is detained solely for civil immigration purposes.

10 ~~ce. Subject to section 115 of title 28 of the code of federal regulations, †~~The department
11 shall establish a process for transgender, intersex, non-binary and gender nonconforming
12 individuals to self-identify as such ~~during intake~~ and to use such self-identification to make
13 housing and programming assignments on an individualized basis. ~~The department shall house a~~
14 ~~person in a facility most closely aligned with their gender identity and in the manner most similar~~
15 ~~to a cisgender person facing similar security needs unless (1) the person does not want to be so~~
16 ~~housed or (2) the department can overcome such a presumption by a determination in writing by~~
17 ~~the Commissioner or the Commissioner's designee that there is clear and convincing evidence that~~
18 ~~such person presents a current danger of committing gender-based violence against others. Such a~~
19 ~~denial cannot be based on any discriminatory reasons including but limited to:~~

20 1. past or current sex characteristics including chromosomes, genitals, gonads, or
21 any external reproductive anatomy, secondary sex characteristics, or hormone
22 levels and functions of the person whose housing is at issue;

23 2. the sexual orientation of the person whose housing is at issue

- 1 3. complaints of other incarcerated people who do not wish to be with a
- 2 transgender, gender nonconforming, non-binary, and/or intersex person due to
- 3 the person's gender identity or perceived gender identity or sexuality or
- 4 perceived sexuality;
- 5 4. a factor present among other people confined or previously confined in the
- 6 presumptive housing unit or facility;
- 7 5. classification as a different gender during a previous incarceration; or
- 8 6. absence of documentation or other evidence indicating medical transition.

9 f. At a minimum in any facility designated by the department as housing women, the
10 department shall maintain a voluntary unit known as the Special Considerations Unit which houses
11 transgender, intersex, non-binary, and gender nonconforming individuals and other vulnerable
12 people. Such a unit shall be staffed by persons trained and knowledgeable in the particular
13 experiences and needs of such persons.

14 g. ~~In determining such housing and programming assignments, the department shall~~
15 ~~consider whether a placement would ensure the incarcerated individual's health and safety and~~
16 ~~whether the placement would present management or security problems. The department shall not~~
17 ~~prevent incarcerated individuals from identifying as transgender, intersex or gender~~
18 ~~nonconforming solely because of classification as a different gender while previously incarcerated~~
19 ~~or because of the absence of documents indicating medical transition.~~

20 d. Subject to section 115 of title 28 of the code of federal regulations, †The department shall
21 establish a process for allowing transgender, intersex, non-binary and gender nonconforming
22 individuals who have requested entrance into a type of housing facility due to identifying as
23 transgender, intersex, non-binary or gender nonconforming to appeal denials of such requests. The

1 department shall maintain formal written procedures consistent with this policy and with the
2 following provisions:

3 1. The department shall have forty-eight hours to render a decision denying request as
4 described in subsection (e) above. It must provide a denial of the requested placement in writing
5 to the affected person within twenty-four hours of the Department's decision. The decision shall
6 include a description of all evidence supporting the decision and an explanation as to why the
7 evidence supports a determination that the individual presents a current danger of committing
8 gender-based violence against others. All supporting documentation shall be attached to the written
9 decision but may be redacted as necessary to protect any person's privacy or safety.
10 Unsubstantiated allegations shall not be considered clear and convincing evidence.

11 2. The department shall provide written notice to such individuals that such a determination
12 may be appealed and shall describe the appeals process in plain and simple language. The
13 department shall ensure that such written notice is available in English and the designated citywide
14 languages as defined in section 23-1101.

15 3. Any individual denied gender-aligned or Special Considerations Unit housing has the
16 right to re-apply for such housing at any time when there is information that was not previously
17 submitted or if previous information was not properly weighed.

18 4.2. The department shall create an appellate review board consisting of the commissioner
19 of correction or their designee, the deputy commissioner responsible for determining housing
20 classifications or their designee, an appropriate member of correctional health services
21 knowledgeable in medical and mental health issues specific to transgender, intersex, non-binary
22 and gender nonconforming individuals, and the director of LGBTQIA+ Initiatives or their designee
23 to review the initial decision. and the vice president of correctional health services or their designee

1 ~~to review the initial decision.~~ The appellate review board shall not include individuals who made
2 the initial housing determinations.

3 ~~5.3.~~ The department shall immediately forward all appeals to the board of correction. The
4 board of correction shall issue a written opinion within 24 hours of receipt of an appeal.

5 ~~46.~~ The appellate review board shall issue a determination within 48 hours of receipt of
6 any appeal and shall consider the written opinion of the board of correction in making its
7 determination.

8 ~~57.~~ Within 24 hours of making its determination, the appellate review board shall provide
9 the incarcerated individual with a written copy of the determination specifying the facts and
10 reasons underlying such determination as well as the evidence relied upon, subject to redactions
11 required by law. Whenever the appellate review board's decision differs from the written opinion
12 of the board of correction, the appellate review board shall explain why it did not follow the
13 recommendation of the board of correction. Upon request by the incarcerated individual or their
14 counsel, the appellate review board shall provide a copy of the decision and the evidence relied
15 upon, subject to redactions required by law, to counsel.

16 ~~68.~~ The department shall provide all written materials regarding the appeals process in
17 English and the designated citywide languages as defined in section 23-1101 and shall ensure that
18 incarcerated individuals are given any verbal assistance necessary to meaningfully understand such
19 procedures.

20 ~~9.~~ All materials detailed above in paragraphs 1, 6, 7, and 8 shall also be provided, with
21 necessary privacy redactions, to the City Council Taskforce on Issues Affecting TGNCNBI People
22 in the City Jails (see Local Law 145 of 2019) for review in a timely manner before each monthly
23 meeting.

1 § 2. Section 626 of the New York city charter, as amended by local law number 133 for
2 the year 2019, is amended by adding a new subsection i to read as follows:

3 i. The board shall issue opinions to the department regarding appeals of housing requests
4 related to gender identity.

5 § 3. This local law takes effect 90 days after it becomes law.

Session 12
AM
LS # 8279/10322
7/26/22

Session 11
AS
LS # 8238
Int. # 1532 - 2019

Exhibit B

May 11, 2022

Senate Majority Leader Andrea Stewart-Cousins
Legislative Office Building Room 907
Albany, NY 12247

Senator Julia Salazar
Chair, Senate Committee on Crime Victims,
Crime and Correction
State Capitol Building Room 514
Albany, NY 12247

Speaker of the Assembly Carl Heastie
Legislative Office Building Room 932
Albany, NY 12248

Assembly Member Jeffrey Dinowitz
Chair, Assembly Standing Committee on Codes
Legislative Office Building 632
Albany, NY 12248

Re: Support the Gender Identity Respect, Dignity, and Safety Act (A.7001-B/S.6677-A)

Dear Majority Leader Stewart-Cousins, Speaker Heastie, Senator Salazar, and Assembly Member Dinowitz:

We represent numerous LGBTQ+ groups and allied organizations in New York State and write to express our strong support for the Gender Identity Respect, Dignity, and Safety Act (A.7001-B/S.6677-A) (GIRDS). This law is urgently needed to protect transgender, non-conforming, non-binary and intersex (TGNCNBI) people who are incarcerated in New York's prisons and jails. We ask that you make every effort to pass this bill this session.

New York has always prided itself on being a safe and welcoming place for the TGNCNBI community, but it has not done enough for our community members experiencing incarceration. Most incarcerated transgender women continue to be housed in men's prisons and jails and incarcerated TGNCNBI people, regardless of where they are housed, are subjected to daily misgendering, abuse, and other inhumane treatment. Sylvia Rivera Law Project and TakeRoot Justice recently conducted a survey of TGNCNBI people incarcerated in New York State prisons and found that *all* women-identified TGNC respondents, the majority of whom were people of color, were housed in men's prisons.¹ Two-thirds of TGNC respondents requested transfers to gender-

¹ Sylvia Rivera Law Project & TakeRoot Justice, *It's Still War in Here: A Statewide Report on the Trans, Gender Non-Conforming, Intersex (TGNCI) Experience in New York Prisons and the Fight for Trans Liberation, Self-Determination, and Freedom* 17 (2021), available at <https://takerootjustice.org/wp-content/uploads/2021/06/Its-Still-War-In-Here-1.pdf>.

aligned housing due to safety issues and most were denied, often with cruel and inhumane language.² 75% of TGNC respondents experienced sexual violence by correctional officers.³ 95% of TGNC respondents reported being verbally harassed and called derogatory names by corrections staff.⁴ In the NYC Department of Correction (DOC), sixteen transgender women were housed in men's jails as of January 21. The impact of misaligned housing and constant misgendering and harassment on people's health, safety, and well-being is devastating. As described by one person,

For too many years, I had suffered years of abuse and indignities while housed with men in jails and prisons. Officers would often call me "it." Or, for example, when I was housed in a dorm with almost 50 men in Rikers Island in the summer of 2017, I was repeatedly verbally and physically harassed. I never felt safe; it was almost impossible to sleep. At no other time in my life have I experienced the deep hurt and pain I felt while housed with men in jails and prisons.

We urge you to read the experiences of other people subjected to these harmful practices, attached to this letter.

To finally help end this violence, fear, and inhumane treatment, New York must enact GIRDS. The bill creates a presumption of housing consistent with one's gender identity unless the person opts out of such placement or if there is *clear and convincing* evidence that a person presents a current danger of committing gender-based violence. Corrections officials will be prohibited from using discriminatory reasons to deny appropriate housing, such as a person's genital status or sexual orientation. In addition to the housing provisions, GIRDS includes the following important protections:

- Due Process Protections. Currently, in the state prison system, people wait for months and sometimes years for a written response to requests for gender-aligned housing and those responses provide little to no reasoning justifying a denial. GIRDS requires a written determination in two days with a detailed explanation for the decision. This will enable people who are denied to challenge wrongful or discriminatory denials.

² *Id.* at 18-21.

³ *Id.* at 27.

⁴ *Id.* at 24-25.

- Requires Affirming Treatment, Including Access to Affirming Items and Programming. GIRDS requires that TGNCNBI people are referred to by their names and pronouns and have access to gender-affirming commissary, programming, and medical care. It also provides a right to be searched by an officer or staff member most closely associated with their gender identity unless the person requests otherwise or there are exigent circumstances.
- Reporting and Training Obligations. GIRDS provides for annual training and reporting on compliance with the bill's provisions to ensure correctional agencies are held accountable.
- Intersex Inclusion. The GIRDS coalition includes intersex advocates who ensured the bill is inclusive of the needs of the intersex community and responsive to the specific discrimination they face in prisons and jails.
- Prohibits Transfer as a Form of Discipline. In NYC DOC, TGNCNBI people have been transferred from women's housing to men's housing as a form of discipline. To end this cruel and inhumane practice, GIRDS prohibits denying placement based on gender identity or transferring someone out of gender-aligned housing as a form of discipline. It would be unthinkable for a prison or jail to transfer a cisgender person out of gender-aligned housing as a form of discipline.
- Limits Involuntary Protective Custody. Many TGNCNBI people are placed in involuntary protective custody when they report an assault or other threat to their safety.⁵ Involuntary protective custody is solitary confinement, a form of torture.⁶ For these reasons, GIRDS limits the use of involuntary protective custody to 14 days.

The protections provided by GIRDS are consistent with other jurisdictions, including in the tri-state area. In New York, Steuben County, as the result of a lawsuit brought by a transgender woman, adopted a policy that prohibits denial of gender-aligned housing on the basis of discriminatory reasons, including "(i) the anatomy or genitalia of the person whose housing

⁵ *Id.* at 27-29.

⁶ United Nations Standard Minimum Rules for the Treatment of Prisoners, Rules 44-45 (2015).

placement is at issue, (ii) the sexual orientation of the person whose housing placement is at issue, (iii) the complaints of cisgender people who do not wish to be housed with a non-cisgender person due to that person's gender identity, or (iv) a factor present among the other people in the requested housing unit."⁷ Notably, the New York State Sheriffs' Association signed off on the Steuben County policy.⁸ Pursuant to a settlement, New Jersey recently adopted a policy whereby TGNCNBI people are presumptively housed according to their gender identity.⁹ In September 2020, California enacted a law that permits TGNCNBI people to assess where they will be safest and choose where they would like to be housed.¹⁰ New York should follow the lead of these and other¹¹ jurisdictions and enact the Gender Identity Respect, Dignity, and Safety Act.

We urge you to co-sponsor GIRDS and ensure that it move expeditiously through the relevant committees and to final passage.

Sincerely,

Adirondack North Country Gender Alliance
Albany Damien Center
Center for Community Alternatives
College & Community Fellowship
Correctional Association of New York
Decriminalize Sex Work
Drug Policy Alliance
Empire Justice Center
Envision Freedom Fund
Equality NY
Exponents
Free the People WNY
Gender Equality New York, Inc.
#HALTsolitary Campaign

⁷ https://www.nyclu.org/sites/default/files/field_documents/2020-07-22_faith_final_settlement_agreement_redacted.pdf.

⁸ See Press Release, New York Civil Liberties Union, Agreement Follows Lawsuit on Behalf of Woman Subjected to Harassment and Discrimination in Steuben County, N.Y. Jail (Aug. 5, 2020), *available at* <https://www.nyclu.org/en/press-releases/landmark-settlement-yields-one-nations-strongest-jail-policies-protecting-transgender>.

⁹ N.J. Department of Corrections Internal Management Procedure, PCS.001.TGI01 at 3 (2021), *available at* https://www.aclu-nj.org/files/6516/3000/3727/2021.08.26_ACLIU-NJ_GSE_Letter_to_Passaic_County.pdf.

¹⁰ Cal. Penal Code §§ 2605-06.

¹¹ E.g. Conn. Gen. Stat. § 18-81ii; M.G.L.A. ch.127 § 32A.

Hour Children
Innocence Project
Jim Owles Liberal Democratic Club
Lambda Legal
Legal Action Center
Long Island Social Justice Action Network (LISJAN)
Make the Road New York
New Hour for Women & Children – LI
New Pride Agenda
New York Civil Liberties Union
New York Communities for Change
New York County Defender Services
Osborne Association
Partnership for the Public Good
Phyllis B. Frank Pride Center of Rockland County
Princess Janae Place
Release Aging People in Prison (RAPP) Campaign
Small Town Pride – Malone NY
Sylvia Rivera Law Project
The Bronx Defenders
The Legal Aid Society
The LGBT Bar Association of Greater New York (LeGal)
The Lesbian, Gay, Bisexual & Transgender Community Center
Transgender Legal Defense and Education Fund
VOCAL-NY
Women’s Prison Association
Youth Represent

CC. Members of the Senate and Assembly

Experiences of TGNCNB People in New York prisons and jails¹

Experiences of Ms. A: Ms. A has been in DOCCS custody for over twenty years, always in a men's prison. During that time, DOCCS has delayed and at times denied access to gender-affirming care and failed to protect her from repeated instances of sexual abuse and harassment. Around 2014, Ms. A started asking for hormone therapy; it took more than a year and repeated requests for DOCCS to send her for an evaluation and even longer to provide her with treatment. Ms. A asked for gender-affirming surgery, but after more than a year, she still has not received it.

Ms. A has a long history of sexual abuse and victimization during her incarceration, including a gang rape by other persons in custody. She tells us she requested housing in a women's prison in accordance with the DOCCS policy but her request was denied with no reason given. Although DOCCS has placed her in a number of purportedly "trans-friendly" prisons, she has continued to experience serious abuse, including abusive searches, too frequently conducted by male officers, who have grabbed her breasts or genitals and made derogatory comments. Other prisoners have "hit on her," exposed themselves to her, and have touched her without her consent. When she has resisted their advances, her property has been taken and she has been assaulted. While her situation has at times improved when she has been transferred to prisons where there are with a number of other transgender women, this improvement has often been short-lived as other women are transferred, released, or even die by suicide.

In other words, Ms. A has faced continuing abuse as a result of her gender identity and the refusal of DOCCS to house her safely.

Experiences of Ms. B: Ms. B was released from DOCCS in the summer of 2019. She is in her fifties and is a woman. This incarceration was her first. When she was arrested in summer 2017, she had government issued identification that identified her as female. She was first taken to intake in the NYC Department of Correction (DOC) in the women's jail where she was kept isolated from others for approximately three days. When she revealed to a doctor that she was a transgender woman and needed female hormone medications, she was forced to move to a male facility. She was terrified and dumbfounded; she did not understand why she could not remain in the women's jail, particularly since the government had acknowledged her gender identity as female. She was moved to the Transgender Housing Unit (THU), which although located in a men's jail, felt safer than being housed with men in a general population unit. When the THU was moved to the women's jail, ironically she felt less safe because the THU then offered only dormitory housing. She could not retreat to a safe space if there were fights or if officers, as too frequently occurred, used pepper spray, aggravating her asthma and making it extremely difficult for her to breathe. She therefore asked to be moved to individual cell housing with solid doors. Instead, she was moved to a cell with bars in a men's jail where she experienced two horrific attempted sexual assaults, including one involving an incarcerated man pulling her hair through the bars of her cell to force his penis into her mouth. Only then was she moved to cell housing with a solid door in a different male jail, but even there she was subject to unrelenting sexual harassment.

¹ These client experiences are also included in The Legal Aid Society's Memorandum of Support for the Gender Identity Respect, Dignity, and Safety Act. The clients have chosen to share their experiences anonymously.

When she was sentenced to DOCCS she was put in general population at reception, despite our notifying DOCCS of her serious risk in custody. She tells us this period in population was the most frightening experience of her life, with other people in custody masturbating in front of her and demanding sexual favors. Officers varied from indifferent to hostile, saying things like “are you trying to make yourself pretty?” when she pulled her hair back in an effort to comply with their rules. She was then placed in protective custody.

After our intervention, she was moved to a “trans-friendly” prison where she told us she was safe while she remained on the unit, and where she was housed with other transgender women, some gay men, and some older persons. However, she also told us that she was terrified to leave the unit for medical care or programs or for any other reason, because of the substantial risk she faced from the men at the prison who would continually harass her. She also told us that officers would on occasion harass her due to her gender identity, telling her to take a certain route that was in fact not allowed or asking her if she performed massages. During her incarceration in DOCCS she was not provided with a bra that fit or with any female underpants. When she needed an evaluation for her hormone treatment, she was sent in handcuffs attached to a waist chain and ankle shackles for an appointment that lasted two minutes, even though the onerous and humiliating process took all day involving transport on a bus without seatbelts. Although there was a bathroom stop on the trip, the restraints were not loosened or removed so that she could use the bathroom. She was informed that if she refused the trip, she would receive a disciplinary infraction.

DOCCS and the Institutional Parole Officer had no idea how to help her find housing for women upon her release, because to their understanding they only worked with men since it was a men’s prison. As a result, she was released to a men’s shelter. Thankfully, she was able to find transitional housing for women immediately because of the efforts of advocates, but not because of any steps taken by DOCCS or the Division of Parole.

Experiences of Ms. C: Ms. C was housed in a women’s jail at Rikers Island from the summer of 2018 until spring 2020, and then in both a men’s prison and a women’s prison in NYS DOCCS custody until her release in early 2021. From virtually the moment she arrived in custody, she asked both NYC DOC and NYS DOCCS for gender affirming surgeries. Neither provided it. NYC DOC told us for months that they were trying to arrange it, but during this time she was never even referred for an evaluation. While in NYS DOCCS, because Ms. C suffered from a bilateral testicular cyst, she was provided with a bilateral orchiectomy, but DOCCS refused to provide her with the additional requested treatment, a vaginoplasty, even though she had spoken with her surgeon about it and he expressed willingness to perform the procedure.

Although Ms. C was housed in a women's jail safely in NYC DOC custody, when she was released on her own recognizance because of the risks facing her due to the pandemic, a warrant fell and DOCCS took custody of her. Instead of housing her in a women's prison, she was taken to Sing Sing, where she faced harassment and abuse. Only after our advocacy was she moved to a women's prison in DOCCS.

Experiences of Ms. D: Ms. D is a 62-year-old transgender woman who was just released from DOCCS custody at the end of 2020. Ms. D has lived as a woman for more than 40 years, since

she moved to the United States. Despite spending much of her life in custody, she has never been convicted or disciplined for any act of violence; she has been sentenced to prison for what amounts to repeated shoplifting charges. She was housed in men's prisons and jails for years, where she was harassed and threatened: objects were thrown at her, transphobic comments made, and attempts were made to touch her including while she showered. She lived in constant fear.

Following Legal Aid's demand, the NYC DOC housed her in its THU, first when it was located in one of the city's jails for men. It was not until the THU was moved to the women's jail that she felt safe, could fully program, and could obtain the basic necessities that she needed. Following our demand to NYS DOCCS that she be housed safely and respectfully, she was housed in a women's prison where she studied cosmetology, took business classes, and completed ASAT (Alcohol and Substance Abuse courses). She stayed calm, including during the pandemic, by knitting in her cell. She showered separately and met no hostility from staff or other incarcerated individuals (except for one time when a female officer refused to search her saying she didn't feel "comfortable" around transgender people).

In the fall of 2020, Ms. D was released from DOCCS custody. She is now living in her own apartment, is pursuing vocational training, and is successfully transitioning to her life in the community. As she now describes her experiences:

Being acknowledged by DOCCS as a woman, after years of having this denied, has meant the world to me. It helped immeasurably with my gaining the strength and self-respect I needed to transition to the community.

For too many years, I had suffered years of abuse and indignities while housed with men in jails and prisons. Officers would often call me "it." Or, for example, when I was housed in a dorm with almost 50 men in Rikers Island in the summer of 2017, I was repeatedly verbally and physically harassed. I never felt safe; it was almost impossible to sleep. At no other time in my life have I experienced the deep hurt and pain I felt while housed with men in jail and prison.

Because of advocacy by LAS I was finally housed with women, both in NYC DOC and NY DOCCS custody.

When I arrived in Bedford Hills in [] 2019, I was told by DOCCS that I was the only transgender woman housed in a women's prison. When I was released [at the end of] 2020, I was still one of only a handful of people housed by DOCCS consistent with their gender identity. Yet throughout--other than a small number of staff who initially did not want to search me--I was treated with respect and dignity by everyone I dealt with, including all other staff and other incarcerated people.

I was the exception; it is time that housing people in all jails and prisons consistently with their lived experience and gender identity becomes the norm. I pray to God no other transgender woman ever has to go through what I have experienced.

Alan Levine
President

Twyla Carter
Attorney-in-Chief

Adriene L. Holder
Chief Attorney
Civil Practice

TESTIMONY OF THE LEGAL AID SOCIETY

Committee on Housing and Buildings

Hearing on Accessory Dwelling Units and a Pathway to Basement Legalization

January 24, 2023

Thank you, Chairperson Sanchez and members of the above Committee for holding this important hearing. My name is Jishian Ravinthiran (pronouns: he/him), and I thank you for the opportunity to submit testimony on behalf of the Legal Aid Society. Many of our clients, particularly immigrants and people of color, live in the basement units at the heart of this Resolution, which seeks to support the state legislative proposal, A1075, allowing the City to establish a program to safely legalize these units. We believe A1075 is a step forward for ensuring tenants have a right to live somewhere with security, peace, and dignity.¹ However, we also have concerns about its lack of protections for tenants to meaningfully exercise those rights.

A1075 Advances Tenant Safety

Too often, our clients face devastating consequences as a result of the unsafe conditions in these illegal apartments. To name just one example, in one of my cases, the ceiling collapsed on my client and her three-year-old daughter. A1075 will prevent these unacceptable harms from occurring in the first place.

A1075 Lacks Protections to Ensure Tenants Can Remain in Their Homes

However, while A1075 provides landlords with amnesty from prosecution for creating these illegal apartments, gives landlords an additional revenue stream, and even provides for a loan program to help landlords legalize units, A1075 lacks sufficient countervailing protections for tenants.

It guarantees tenants only an option to return to the unit after necessary alterations. Since these apartments are unregulated, there is nothing to stop a landlord from giving tenants their right to return, but also hiking the price of the unit or even terminating their unregulated tenancy as currently allowed by law to make them leave. This is common now and will get worse as landlords seek to justify rent increases based on these alterations. For example, in the case in which the ceiling

¹ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, THE RIGHT TO ADEQUATE HOUSING 3 (2014).

collapsed on my client and her daughter, the landlord had tried to hike their rent from 1000 to 1700 per month.

Ultimately, A1075 needs to empower the City to enact good cause eviction protections, so the City can cap rent hikes and guarantee tenants in these basement homes a right to lease renewals. The City must enact good cause eviction protections for basement units, particularly because the NY State Legislature's Good Cause Eviction Proposal will leave out protections for these units, which are typically a part of the owner-occupied buildings currently excluded from the proposal's protections. Enacting these safeguards will ensure that tenants can meaningfully exercise their right to return to these units, without fear of radical rent hikes or the termination of their tenancy that would force them to leave. Otherwise, the right to return will be empty of meaning.

Lastly, there's nothing in A1075 to address the displacement of tenants for these necessary alterations. I don't know where I would have told my previously mentioned client to go, as a single mother with two minor kids, if she needed to vacate her home temporarily for the required modifications. Therefore, A1075 should address resources and temporary housing for clients in these circumstances, just as it already takes into consideration the financial circumstances of landlords with the aforementioned loan programs.

Conclusion

A1075 is a significant step forward for providing safe, secure housing for all. However, without good cause eviction protections and resources to address the displacement of tenants, it will be challenging for tenants to benefit from the proposal. We urge the Committee and Council to work with their colleagues in Albany to provide essential protections and resources for displaced tenants as A1075 advances.

Respectfully Submitted:

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Testimony of

Natalie Fiorenza
Corrections Specialist
New York County Defender Services

Before the

Committee on Women and Gender Equity

and

Committee on Criminal Justice

Oversight Hearing – The TGNCNBI Task Force Report Update and TGNCNBI Individuals in Rikers

January 25, 2023

My name is Natalie Fiorenza. I am a Corrections Specialist at New York County Defender Services and a member of the TGNCNBI Task Force. NYCDS is an indigent defense office that every year represents tens of thousands of New Yorkers in Manhattan’s criminal and Supreme Courts. The NYCDS Corrections Specialist Team provides a direct channel of communication with and advocacy for our incarcerated clients. When our clients express concerns relating to their health or living conditions in the jails, we intervene and advocate on their behalf to address underlying issues and unmet needs. My testimony today is grounded in our advocacy work for our incarcerated clients. Thank you to Chairs Cabán and Rivera for holding today’s hearing and to all of the Council Members who have sponsored the bills on today’s agenda seeking to expand protections for TGNCNBI people in our city jails and state prisons.

I. Background on the TGNCNBI Task Force

LGBTQI people are overrepresented at every stage of the criminal legal system. As the Prison Policy Institute notes, “They are arrested, incarcerated, and subjected to community

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supervision at significantly higher rates than straight and cisgender people. This is especially true for trans people and queer women. And while incarcerated, LGBTQ individuals are subject to particularly inhumane conditions and treatment.”¹

The TGNCNBI Task Force was convened by the City Board of Correction in response to legislation passed and signed into law in 2019 after the tragic death of Layleen Polanco and in response to years of advocacy before City Council and the Board of Correction.² The Task Force and its members identify and address issues faced by transgender, gender non-conforming, non-binary, and/or intersex people in city custody. Members attend quarterly meetings and prepare an annual report and serve one-year terms.

Last year the task force published its first report that found that corrections officials routinely failed TGNCNBI incarcerated people at every step of their journey through city jails.³ Shortly after the first report was released, the city cut off our ability to investigate conditions in the jails. *The City* published an article this week about the termination of LGBTQIA+ services available on Rikers since Commissioner Molina took the helm of DOC.⁴

II. NYCDS LGBTQIA+ Client Experiences on Rikers

In my experience speaking with our transgender women clients, 100% of them who were placed in a male facility upon intake were assaulted either physically, sexually, or both. Some of those clients are at a male facility to this day suffering ongoing brutal attacks despite exhaustive efforts to transfer them out. One of our clients explained to me that she informed officers at the police station, told the courtroom staff, and DOC that she is a trans woman, and was still placed in a male facility. Clearly, the current procedures in place to facilitate gender-appropriate placement is failing dramatically to keep our LGBTQIA+ clients safe. Male facilities are not safe and are not a viable option for anyone who says they need to be housed at a female facility. Housing detainees according to their gender identity is the only way to prevent attacks on TGNCNBI people in male facilities from happening going forward.

III. Legislation

NYCDS supports all of the bills on today’s agenda. I address each bill separately below.

¹ Alexi Jones, “Visualizing the unequal treatment of LGBTQ people in the criminal justice system,” *Prison Policy Institute*, March 2, 2021, available at <https://www.prisonpolicy.org/blog/2021/03/02/lgbtq/>.

² New York City Local Law 2019-145, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3923931&GUID=94F7EE69-D9E4-45D2-8A98-A67C055EAE20&Options=ID|Text|&Search=1535>.

³ *First Report of the Task Force on Issues Faced by TGNCNBI People in Custody* (Aug. 15, 2022), available at <https://www.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/FINAL-REPORT-of-the-TASK-FORCE-081522.pdf>.

⁴ George Joseph, “Under Eric Adams, a Rikers Island Unit that Protected Trans Women has Collapsed,” *The City*, Jan. 24, 2023, available at <https://www.thecity.nyc/2023/1/24/23567498/rikers-lgbtq-trans-eric-adams-corrections>.

a. Int. 728 – Housing Decisions

Int. 728-2022 amends the administrative code of the city of New York, in relation to housing decisions for TGNCNBI people in city custody. *NYCDS supports this legislation with amendments as recommended by the Task Force.*

The Task Force proposes amending Int. 728 to fundamentally change the process for assignment of housing for accused people who self-identify as TGNCNBI. The task force is made up of many people who are transgender, non-binary, or gender non-conforming themselves, and their edits are informed by folks on Rikers who are facing this extreme, preventable violence first-hand. If you want a real solution, and increased support for this community, this is it.

However, NYCDS deviates from the Task Force’s recommendation in one way – we do not believe that the Council has the authority to legislate what happens on the record in criminal courtrooms in our city. This power lies with the state legislature. However, we would be happy to work with the Task Force and the Council to brainstorm other ways that we could achieve our goal of ensuring that TGNCNBI people are informed at arraignments that they have the right to make autonomous decisions about housing in relation to their TGNCNBI identity and for their protection.

b. Int. 355-2022 – Choose the Gender of their Doctor

NYCDS supports legislation that would require the DOC to provide an incarcerated individual with a doctor of the same gender upon request, absent any substantial safety risk.

c. Int. 831-2022 – Citywide resource navigator for women and gender-expansive persons

NYCDS supports Int. 831 which would create a resource navigator program with the aim to create a centralized program to assist women and gender expansive people in DOC custody, as well as other relevant actors, in locating available and appropriate reentry services.

In addition to the passage of Int. 831, NYCDS urges the Council to dramatically increase investments into reentry services for this population as well as all people leaving city jails and upstate prisons, including supportive housing, reentry hotels and other services that have been chronically underfunded for decades. We cannot continue to pour money into DOC as the death toll continues to climb – if we are going to close Rikers by 2027 we must start significantly shifting resources back into our communities.

d. Int. 887-2023 – Reporting on gender identity of people in DOC custody

NYCDS supports Int. 887 which would require DOC to report monthly on people in DOC custody whose gender identity is different from the sex assigned to the individual at birth, including TGN-CNBI people. This legislation is crucial for the work of the Task Force and for holding DOC accountable in protecting the rights of TGNCNBI people in city jails.

e. Res. 117-2022 – Mandate OCA update the securing order form to include a gender X option

NYCDS supports Res. 117 which calls on the legislature to sign a bill to mandate the state Office of Court Administration to update the securing order form to include a gender X option.

While this is one way to get OCA to update the form, legislation is not required to have OCA change its form. The Chief Judge can order this change to the form without legislation. Thus, NYCDS recommends that the Council not only pass this legislation but advocate directly with the future Chief Judge and OCA officials to move quickly to make this change a reality, with or without the action of the state legislature.

f. Res. 458-2023 – In favor of the Gender Identity Respect, Dignity and Safety Act

NYCDS urges the Council to take action to pass this resolution before the end of this year's state legislative session.⁵ The Gender Identity Respect, Dignity and Safety Act is sorely needed to protect our TGNCNBI clients who are sentenced to prison terms upstate. Indeed, we represent a female trans client who was denied housing consistent with her gender identity for reasons that were completely non-sensical. The City should lead the way in protecting trans rights by updating Int. 728 but also by passing Res. 458 and urging the state to follow the City's lead. No client should be made unsafe by being forced to serve a prison term in a facility that does not match their gender identity. The state rules are dangerous and harmful and must be changed.

Thank you for considering my testimony today. If you have any questions, please contact me at nfiorenzo@nycds.org.

⁵ Please note, the bill numbers on Reso 458 will need to be updated. The new 2023 Assembly bill version is A.709. As of the date of this hearing a new Senate bill number has not been assigned. See <https://www.nysenate.gov/legislation/bills/2023/A709>.



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**Testimony of Allie Bohm
On Behalf of the New York Civil Liberties Union
Before the New York City Council Committees on Criminal Justice and
Women and Gender Equity on Oversight – The TGNCNBI Task Force Report
Update and TGNCNBI Individuals in Rikers**

January 25, 2023

The New York Civil Liberties Union (NYCLU) is grateful for the opportunity to submit the following testimony regarding Oversight – The TGNCNBI Task Force Report Update and TGNCNBI Individuals in Rikers. The NYCLU, the New York state affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices across the state and over 180,000 members and supporters. The NYCLU defends and promotes the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution through an integrated program of litigation, legislative advocacy, public education, and community organizing.

The NYCLU is deeply grateful to the members of the Task Force on Issues Faced by TGNCNBI People in Custody for the critical work they undertook to document a crisis at Rikers, often at the expense of their own wellbeing, and for their thoughtful recommendations, which the NYCLU supports.

Because the NYCLU represents or has represented several transgender individuals who are or have been incarcerated in New York State, Task Force members asked us to share our experience and lessons to be learned from outside of the City.

In 2018, the NYCLU's client (in a case brought jointly by co-counsel the NYCLU, the Transgender Legal Defense & Education Fund, and the law firm BakerHostetler), Jena Faith, a transgender woman, was incarcerated for four weeks in a men's general population unit in Steuben County, New York. Throughout her time in the men's unit, guards persistently misgendered Jena and refused to administer her prescribed hormone therapy medication, although they ensured that she received all of her other prescribed medications. As soon as she arrived in the unit, a cisgender man who was also incarcerated in the unit began to sexually harass and proposition Jena. He rubbed his feet on her legs, tried to hold her hand, and blew kisses at her. He told her that he wanted to marry her and wrote her love letters. When Jena complained to guards about the harassment, they told her that she could not file a written grievance. Eventually, they transferred her to another section of the men's

general population unit. This did not stem the harassment from either the cisgender men who were incarcerated in that unit or from guards.¹ Fearing for her safety, Jena hid in her cell, leaving only for meals and to shower; she spent approximately twenty hours of every day in her cell and was unable to fully access the physical facilities and programming generally available to men who were incarcerated in the unit. Jena did not bother to complain to staff this time, because she learned from prior experience that they would not protect her. Jena's ordeal did not end with her release. As a result of the mistreatment and harassment she suffered, Jena has been unable to sleep and experiences night terrors.²

Jena also had the experience of being housed in a female jail for several days before she was suddenly transferred to the male facility. When Jena was housed in the female facility, she did not face the same epithets, threats, or torment she faced in the men's unit; she did not feel as harassed, uncomfortable, or unsafe; she was not the subject of any discipline; and she was able to avail herself of the physical facilities and programming generally made available to the women housed in that unit.³

In 2020, Jena settled with Steuben County, and the jail agreed to:

- Presumptively house people consistently with their gender identities, with a list of reasons that cannot be used as the basis for a denial.
- Ensure that staff at the jail respect a person's self-identified gender identity in all other contexts, including name and pronoun use, and searches.
- Ensure access to clothing, toiletry items, and grooming standards consistent with a person's gender identity.
- Ensure access to medical care consistent with a person's gender identity.⁴

There is every reason to believe that these protections will be effective and workable in New York City. The New York State Sheriffs' Association was involved in negotiating the settlement in Jena's case and ultimately signed off on the Steuben County policy.⁵ Moreover, Connecticut, Massachusetts, and California⁶ have all enacted similar protections legislatively, and New Jersey agreed to a similar policy in a settlement to litigation.⁷

¹ Amended Complaint, *Faith v. Steuben County*, No. E2019-1208CV (Supp. Ct., Steuben County 2019).

² *Id.*

³ *Id.*

⁴ Settlement Agreement and Release of Claims, *Faith v. Steuben County*, No. E2019-1208CV (Supp. Ct., Steuben County 2019).

⁵ See *Faith v. Steuben County*, NYCLU, <https://www.nyclu.org/en/cases/faith-v-steuben-county> (last visited Jan. 24, 2023).

⁶ Conn. Gen. Stat. § 18-81ii (West 2018); M.G.L.A. ch.127 § 39A(c) (West 2018); Cal. Penal Code §§ 2605-06 (West 2021).

⁷ N.J. Department of Corrections Internal Management Procedure, PCS.001.TGI01 at 3 (2021), available at https://www.aclu-nj.org/files/6516/3000/3727/2021.08.26_ACLIU-NJ_GSE_Letter_to_Passaic_County.pdf.

What is more, these protections are required by Eighth Amendment to the U.S. Constitution, which prohibits cruel and unusual punishment,⁸ as well as the New York State Human Rights Law and other state civil rights laws. Indeed, the U.S. Department of Justice has interpreted the Eighth Amendment to require that transgender, gender nonconforming, nonbinary, and intersex people who are incarcerated be housed in facilities that align with their gender identities where necessary to provide reasonable safety.⁹ Furthermore, the Equal Protection Clause of the U.S. Constitution prohibits treating transgender people differently than cisgender people without a compelling state justification, and courts have applied this rule in the context of housing in prisons and jails.¹⁰

For these reasons, the NYCLU strongly supports Res. 0458, calling on the New York State Legislature to pass and the Governor to sign the Gender Identity Respect, Dignity, and Safety Act, which would codify statewide the critical protections Jena’s lawsuit secured in Steuben County, as well as put limits on involuntary protective custody, because involuntary protective custody is functionally identical to solitary confinement. We note that because 2023 is the start of a new legislative session, the resolution should be updated to reflect the legislation’s new bill numbers. We also note that the resolution text credits the NYCLU for research done by other organizations that we cite in our testimony and support memo on the bill; we encourage the Council to amend the resolution to credit the organizations that are responsible for that research.

The NYCLU also supports the Task Force’s edits to Int. 0355. While we are grateful for the spirit of the introduction, we are deeply concerned that the resolution as drafted would fail to result in meaningful change to DOC’s practices and, in doing so, would fail to keep transgender, gender nonconforming, nonbinary, and intersex people who are incarcerated safe. Indeed, the text of the introduction as drafted is at odds with the Gender Identity Respect, Dignity, and Safety Act, which Res. 0458 supports. We are grateful to the Task Force for proposing revisions to Int. 0355 that would ensure that transgender, gender nonconforming, nonbinary, and intersex people are presumptively housed according to their gender identities and treated with respect. We urge the Council to accept those revisions and further to amend the definition of intersex to reflect both the consensus of the intersex community as well as a more accurate explanation of intersex traits. The Council can do that by importing the definition of intersex already found in the City’s administrative code:

⁸ *Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (Prison officials may be liable for sexual assault by another incarcerated person where “the official knows of and disregards an excessive risk to inmate health or safety.”).

⁹ *Diamond v. Ward*, 20-cv-00453, at *9 (M.D. Ga. Apr. 22, 2021) (Doc. No. 65).

¹⁰ *Hampton v. Baldwin*, 2018 WL 5830730, at *11 (S.D. Ill. Nov. 7, 2018) (applying heightened scrutiny where the majority of transgender people are housed based on genitalia or sex assigned at birth); *Monroe v. Jeffries*, 19-cv-1060, at 18-19 (C.D. Ill. Apr. 9, 2020) (Doc. No. 41); *see also Doe v. Mass. Dep’t of Corr.*, 2018 WL 2994403, at *9 (D. Mass. June 14, 2018) (applying heightened scrutiny to classifications based on transgender status); *Tay v. Dennison*, 2020 WL 2100761, at *2 (S.D. Ill. May 1, 2020) (finding transgender incarcerated women are similarly situated with incarcerated cisgender women).

The term 'intersex traits or variations in sex characteristics' means the umbrella term for differences in reproductive or sex anatomy that may appear in an individual's chromosomes, genitals, secondary sex characteristics, or internal organs such as testes or ovaries, and may be identified at birth, or may not be discovered until puberty or later in life.

NYC Admin. Code sec. 17-119.16(a).

Finally, the NYCLU supports the spirit of Res. 0117 calling on the New York State Legislature to pass, and the Governor to sign, a bill that would mandate the Office of Court Administration (OCA) to update the securing order form to include a gender X option.¹¹ It is our understanding that Part R of the FY2023 Transportation, Economic Development, and Environmental Conservation (TED) Article VII legislation already imposed this requirement.¹² We encourage the Council to instead pass a resolution urging OCA to comply with this existing requirement.

The NYCLU thanks the Committees for the opportunity to provide testimony and for their consideration of this critically important issue.

¹¹ While we acknowledge that because there are only male and female jails, implementing X gender markers on securing orders will not impact where individuals are housed while in City custody, this change is important as a measure of respect. Indeed, the World Professional Association for Transgender Health (WPATH) specifically addresses the importance of not only obtaining accurate “gender marker[s] on key documents” but also of ensuring that organizations and institutions respect a person’s gender identity. WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH, STANDARDS OF CARE FOR THE HEALTH OF TRANSGENDER AND GENDER DIVERSE PEOPLE (8th ed. 2022).

¹² N.Y. Civ. Rights Law § 79-q (McKinney) (All New York state agencies that collect demographic information about a person's gender or sex shall make available to the person at the point of data collection an option to mark their gender or sex as “x”); S.8008-C/A.9008-C Part R, 2021-2022 Reg. Sess. (N.Y. 2022).

**New York City Council
Committee on Criminal Justice & Committee on Women and Gender Equity**

Hearing on Proposed Legislation: Int. 728,

January 25, 2023

The undersigned organizations are grateful for the opportunity to participate in this creation of safer, more humane laws to protect transgender, gender non-conforming, non-binary, and intersex (“TGNCNBI”) people incarcerated in the New York City jails.

We represent those at the forefront of this work as public defenders, re-entry organizations, and civil rights attorneys working with TGNCNB people as they navigate the criminal system. Our knowledge, including some direct lived experiences, informs our suggested recommendations for changes to the Proposed Legislation Int. 728-22. As experts on the actual experiences of people as they navigate from arrest, through arraignments, DOC custody, and coming home we have multiple specific and practical suggestions that we believe will support the heart and intent of the proposed legislation.

We take this time to note that there are no specialists in intersex identity and culture, medical care, and/or legal rights on the TaskForce. As such we also ask for more time to ensure that both the definition of “intersex” and the rights afforded people with intersex traits and/or identities are sufficient.

Attached please find a redlined version of the proposed legislation. We look forward to this being the beginning of a larger conversation with the goal of making the most effective and meaningful version of this bill.

Thank you,

TaskForce Members

Deborah Lolai, Director of the LGBTQ Defense Project, The Bronx Defenders

Grace DeTrevarah, LGBTQ Liaison and Senior Peer Educator, The Osborne A Association

Jennifer Lambert, Staff Attorney, Criminal Defense Practice, Neighborhood Defender Service of Harlem

Kandra Clark, Vice President of Policy & Strategy, Exodus Transitional Community

Lucas Marquez, Associate Director/Interim Acting Director, Civil Rights & Law Reform, Brooklyn Defender Services

Mik Kinkead, Staff Attorney, LGBTQ+ Law & Policy Unit, The Legal Aid Society

Natalie Fiorenzo, Corrections Specialist, New York County Defender Services

Rachel Lynn Golden, Ph.D., Founder and Director, Golden Psychology PLLC

Shéár Avory, Lead Statewide Community Organizer, NEW Pride Agenda

Organizational Support

Black and Pink NYC

The Bronx Defenders

Brooklyn Defender Services

Center for Alternative Sentencing and Employment Services (CASES)

The EAC Network

Equality New York

Exodus Transitional Community

Exponents

The Fortune Society

Gender Equality New York, Inc. (GENY)

The Lesbian, Gay, Bisexual, and Transgender Community Center

The Legal Aid Society

Neighborhood Defender Service of Harlem

New Alternatives for Homeless LGBT Youth

NEW Pride Agenda

New York County Defender Services

The Osborne Association

Women's Prison Association

By Council Members Powers, Cabán, Rivera, Hanif, Brewer, Restler, Hudson, Ung, Joseph, Abreu, Avilés, Ossé and Sanchez

A Local Law to amend the administrative code of the city of New York, in relation to housing decisions for transgender, gender nonconforming and intersex individuals

Be it enacted by the Council as follows:

1 Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended
2 by adding a new section 9-163 to read as follows:

3 § 9-163 Housing requests related to gender identity. a. Definitions. For the purposes of this
4 section, the following terms have the following meanings:

5 Gender identity. The term “gender identity” means a person’s sense of their own gender
6 which may be the same as or different from their sex assigned at birth

7 Gender nonconforming. The term “gender nonconforming” means a person whose
8 behavior or appearance does not conform to the traditional expectations of men and women, of
9 their gender, which may includes a person who is transgender.

10 Intersex. The term “intersex” refers to a person whose physical sex characteristics do not
11 conform to a binary construction of sex as either male or female.

12 Non-binary. The term “non-binary” refers to a person whose gender identity is not
13 exclusively male or female, which may include a person who is transgender.

14 Transgender. The term “transgender” refers to a person whose gender identity does not
15 conform to the sex assigned at birth.

16 b. At arraignments each person charged to the care, custody and control of the department
17 shall be advised on the record that they have the right to be held in an intake facility that aligns
18 with both their gender identity and personal sense of safety. The person shall further be advised

1 that following the arraignment appearance the department will ask them in a confidential space
2 about whether a men's or women's intake facility best matches their sense of safety and gender
3 identity and that, once at the intake facility, the department will conduct further screening
4 concerning housing placement. The department must honor the individual's choice regarding
5 intake facility.

6 c. Upon the department being ordered to take custody of an individual immediately
7 following arraignment or return on any warrant or parole violation, any individual identifying as
8 transgender, gender nonconforming, non-binary and/or intersex shall have access to a confidential
9 space within the courthouse and prior to transportation to any jail facility in which to disclose
10 whether a men's or women's intake facility is best for their personal sense of identity and safety.
11 This interview shall be conducted by a department staff member who has received training from
12 the LGBTQIA+ Initiatives unit within the department. The decision by the detained or otherwise
13 held individual as to whether a men's or women's intake facility is appropriate shall be followed
14 in every instance and supersedes any other documents used to determine intake placement.

15 d. Once in an intake facility, and at any time upon transfer to another facility, the
16 department ~~Subject to section 115 of title 28 of the code of federal regulations, the department~~
17 shall assess all incarcerated individuals during an intake screening and upon transfer to another
18 facility for their risk of being sexually abused by other incarcerated individuals or sexually abusive
19 toward other incarcerated individuals. The department shall consider, at minimum, the following
20 criteria to assess incarcerated individuals for risk of sexual victimization:

21 1. Whether the incarcerated individual has a mental, physical or developmental disability;

22 2. The age of the incarcerated individual;

23 3. The physical build of the incarcerated individual;

1 4. Whether the incarcerated individual has previously been incarcerated;

2 5. Whether the incarcerated individual's criminal history is exclusively nonviolent;

3 6. Whether the incarcerated individual has prior convictions for sex offenses against an
4 adult or child;

5 7. Whether the incarcerated individual is or is perceived to be gay, lesbian, bisexual,
6 transgender, intersex, non-binary or gender nonconforming;

7 8. Whether the incarcerated individual has previously experienced sexual victimization;

8 9. The incarcerated individual's own perception of vulnerability; and

9 10. Whether the incarcerated individual is detained solely for civil immigration purposes.

10 ~~ee. Subject to section 115 of title 28 of the code of federal regulations,~~ †The department
11 shall establish a process for transgender, intersex, non-binary and gender nonconforming
12 individuals to self-identify as such ~~during intake~~ and to use such self-identification to make
13 housing and programming assignments on an individualized basis. The department shall house a
14 person in a facility most closely aligned with their gender identity and in the manner most similar
15 to a cisgender person facing similar security needs unless (1) the person does not want to be so
16 housed or (2) the department can overcome such a presumption by a determination in writing by
17 the Commissioner or the Commissioner's designee that there is clear and convincing evidence that
18 such person presents a current danger of committing gender-based violence against others. Such a
19 denial cannot be based on any discriminatory reasons including but limited to:

20 1. past or current sex characteristics including chromosomes, genitals, gonads, or
21 any external reproductive anatomy, secondary sex characteristics, or hormone
22 levels and functions of the person whose housing is at issue;

23 2. the sexual orientation of the person whose housing is at issue

- 1 3. complaints of other incarcerated people who do not wish to be with a
- 2 transgender, gender nonconforming, non-binary, and/or intersex person due to
- 3 the person's gender identity or perceived gender identity or sexuality or
- 4 perceived sexuality;
- 5 4. a factor present among other people confined or previously confined in the
- 6 presumptive housing unit or facility;
- 7 5. classification as a different gender during a previous incarceration; or
- 8 6. absence of documentation or other evidence indicating medical transition.

9 f. At a minimum in any facility designated by the department as housing women, the
10 department shall maintain a voluntary unit known as the Special Considerations Unit which houses
11 transgender, intersex, non-binary, and gender nonconforming individuals and other vulnerable
12 people. Such a unit shall be staffed by persons trained and knowledgeable in the particular
13 experiences and needs of such persons.

14 g. ~~In determining such housing and programming assignments, the department shall~~
15 ~~consider whether a placement would ensure the incarcerated individual's health and safety and~~
16 ~~whether the placement would present management or security problems. The department shall not~~
17 ~~prevent incarcerated individuals from identifying as transgender, intersex or gender~~
18 ~~nonconforming solely because of classification as a different gender while previously incarcerated~~
19 ~~or because of the absence of documents indicating medical transition.~~

20 d. Subject to section 115 of title 28 of the code of federal regulations, †The department shall
21 establish a process for allowing transgender, intersex, non-binary and gender nonconforming
22 individuals who have requested entrance into a type of housing facility due to identifying as
23 transgender, intersex, non-binary or gender nonconforming to appeal denials of such requests. The

1 department shall maintain formal written procedures consistent with this policy and with the
2 following provisions:

3 1. The department shall have forty-eight hours to render a decision denying request as
4 described in subsection (e) above. It must provide a denial of the requested placement in writing
5 to the affected person within twenty-four hours of the Department's decision. The decision shall
6 include a description of all evidence supporting the decision and an explanation as to why the
7 evidence supports a determination that the individual presents a current danger of committing
8 gender-based violence against others. All supporting documentation shall be attached to the written
9 decision but may be redacted as necessary to protect any person's privacy or safety.
10 Unsubstantiated allegations shall not be considered clear and convincing evidence.

11 2. The department shall provide written notice to such individuals that such a determination
12 may be appealed and shall describe the appeals process in plain and simple language. The
13 department shall ensure that such written notice is available in English and the designated citywide
14 languages as defined in section 23-1101.

15 3. Any individual denied gender-aligned or Special Considerations Unit housing has the
16 right to re-apply for such housing at any time when there is information that was not previously
17 submitted or if previous information was not properly weighed.

18 4.2. The department shall create an appellate review board consisting of the commissioner
19 of correction or their designee, the deputy commissioner responsible for determining housing
20 classifications or their designee, an appropriate member of correctional health services
21 knowledgeable in medical and mental health issues specific to transgender, intersex, non-binary
22 and gender nonconforming individuals, and the director of LGBTQIA+ Initiatives or their designee
23 to review the initial decision. and the vice president of correctional health services or their designee

1 to review the initial decision. The appellate review board shall not include individuals who made
2 the initial housing determinations.

3 5.3. The department shall immediately forward all appeals to the board of correction. The
4 board of correction shall issue a written opinion within 24 hours of receipt of an appeal.

5 46. The appellate review board shall issue a determination within 48 hours of receipt of
6 any appeal and shall consider the written opinion of the board of correction in making its
7 determination.

8 57. Within 24 hours of making its determination, the appellate review board shall provide
9 the incarcerated individual with a written copy of the determination specifying the facts and
10 reasons underlying such determination as well as the evidence relied upon, subject to redactions
11 required by law. Whenever the appellate review board's decision differs from the written opinion
12 of the board of correction, the appellate review board shall explain why it did not follow the
13 recommendation of the board of correction. Upon request by the incarcerated individual or their
14 counsel, the appellate review board shall provide a copy of the decision and the evidence relied
15 upon, subject to redactions required by law, to counsel.

16 68. The department shall provide all written materials regarding the appeals process in
17 English and the designated citywide languages as defined in section 23-1101 and shall ensure that
18 incarcerated individuals are given any verbal assistance necessary to meaningfully understand such
19 procedures.

20 9. All materials detailed above in paragraphs 1, 6, 7, and 8 shall also be provided, with
21 necessary privacy redactions, to the City Council Taskforce on Issues Affecting TGNCNBI People
22 in the City Jails (see Local Law 145 of 2019) for review in a timely manner before each monthly
23 meeting.

1 § 2. Section 626 of the New York city charter, as amended by local law number 133 for
2 the year 2019, is amended by adding a new subsection i to read as follows:

3 i. The board shall issue opinions to the department regarding appeals of housing requests
4 related to gender identity.

5 § 3. This local law takes effect 90 days after it becomes law.

Session 12
AM
LS # 8279/10322
7/26/22

Session 11
AS
LS # 8238
Int. # 1532 - 2019

**Testimony of Angel, incarcerated client of The Bronx Defenders
Written on January 18th, 2023
Read by Daiana Griffith, Prisoners' Rights Advocate at The Bronx
Defenders**

My name is Angel. I am a non-binary person currently incarcerated in a men's jail at DOC. I spent a few months at the female facility, Rosie's. Before I was transferred to Rosie's, I was in a male facility originally. I asked to be transferred to Rosie's to avoid being discriminated against as a non-binary person.

I thought it would be safer there, but upon moving to Rosie's, I experienced even more discrimination. The staff at Rosie's would call me inappropriate names, such as "hairy tranny." They would tell me and trans women that we were men, and made other statements that were harmful to my mental health. The staff at Rosie's made it very clear to us that they didn't want trans people there. Every day seemed like an uphill battle. One of the COs wanted to get me off the facility, so she made up a lie that I threatened her. The lie was proven to be untrue, but the deputy removed me from Rosie's anyway.

If there are going to be staff at DOC working with trans people, they should be trained on how to do so respectfully. Being in jail is already hard enough for anyone, but being a non-binary person in jail feels impossible to survive. I hope that future inmates don't have to experience the trauma I and so many others went through.

My name is Maritza Henriquez, I am with the LGBTQ+ Law and Policy Unit at the Legal Aid society and am here to submit the testimony of Cathy, a 66-year-old transgender woman who was assaulted on Rikers Island on November 7th, 2022. This was transcribed from an audio interview conducted on January 23rd, 2023. Ms. Cathy wanted to come and testify in person, but ongoing medical concerns resulting from her assault make it impossible.

“I was on Rikers Island for five months and I was there because I failed to go to court- I missed my court date- and I was remanded to Rikers. And to think back on why I got there is crazy to me. I completely forgot I had court. But I came back and apologized profusely for missing my court date. The judge simply looked at me and said “it’s okay. To ensure it doesn’t happen again we will set a bail of \$50,000...” and at that point I couldn’t hear anything else. I knew I was going to Rikers. I just broke down. I haven’t committed any violent crimes so it’s crazy that my punishment is to live in violence.

When I got there, they sent me to North Infirmery Command (NIC) because of my diabetes and heart disease. When I got to the dorm there were several inmates at the gate, and they were yelling and telling the guard ‘They can’t come in here! We don’t want any f*ggots in the dorm- this mother f*cker has tits, and we don’t want him here.’ The guard replied ‘you cannot tell us what to do, she is coming in the dorm’ - so they let me in. While I was making my bed, one of the inmates hit me so hard on the back of my head with a cane - the part that you hold - that it broke in half and yet he continued to beat me over the head so badly that I had a lump here (*gestures to top left quadrant of skull*), a big lump here (*gestures to back of head, bottom right quadrant*) that looked like a softball. They brought me to an outside hospital - Bellevue - took x-rays, and said everything was ‘alright’, but I have had headaches, dizziness and my ears have been ringing since November 7th when the attack happened.

I was at the Infirmery for medical care and instead I was assaulted.

The inmates there were also there for medical care - people on crutches, in wheelchairs etc. But lo and behold in a hospital setting I was still assaulted because I am transgender. There is women’s housing at Rosie’s, but I was not granted that and instead housed with the men, leading to my assault.

When I came back from the hospital, officers in squad gear escorted me to my new dorm. I was still at NIC, still with men. The officers announced that I would be staying there despite opposing opinions and that if anything happened to me, the inmates would be punished. I immediately began to cry - I was so humiliated. All the inmates felt threatened, and they all had me to blame.

Close Rikers island- it is a bad place- not just for trans people, for people in general. I have seen young kids come in get cut, stabbed, I knew one that lost an eye. I met a man who was assaulted

with hot water from the coffee pot where it looked like his skin was melting in real time – and all of these happened at NIC, in the hospital!

I believe since the last time I was incarcerated; things have gotten worse. It is even violent for female corrections officers who are verbally and physically assaulted by male corrections officers. I saw one walk up behind a women CO, grab her behind and grope her, and press his genitals onto her backside. She looked in shock, like she didn't know what to do. I am no angel and have been incarcerated, but Rikers Island is like Hotel Hell. If you are sent there you need to be careful. As a trans woman, I have not seen any positive changes. It has gotten so much scarier in the last few years and not only for transgender people- but for women and anyone feminine and seen as weak or vulnerable, it's very dangerous.

Last week I went to court, and a guard was harassing me because I was wearing a hat in court. Women are allowed hats in court. He was very nasty and told me I needed to take it off. I replied I am a trans woman and will keep it on. He insisted and then went to escalate the issue, but the judge affirmed me. The court officer glowered at me, but I would not let myself be bullied even though I have been punished for standing up for myself.

When I served time in Attica, there was a guard to harassed me and other inmates all the time screaming “you f*cking f*ggots”. So humiliating and so depressing. I wrote a complaint and sent it to the attorney general. But after I filed the complaint, I was harassed endlessly by prison staff. They would come into my cell and nit-pick and tell me I was breaking rules when I wasn't, they would take my things away. And if you try to stand up for yourself, as is your human right, you are met with more punishment since you aren't going against one officer, but a fraternity. They label you a troublemaker if you complain against any of them and punish you for it by harassment and putting you in the box. But after I got parole and came home, after all that, I received a letter that they suspended that officer because he was on social media saying he “bullies the f*ggots in Attica”.

I called it the department of corruption- they didn't correct anything. There was never any support for me. We were there for one reason- to be punished for things we have done in the past. There was nothing rehabilitating me to ensure I would not act as I had to get me in there. I even brought this up to a judge. And the charges just make it harder to get work and move on with my life.

And it's so lonely in there.

They make it sound so simple when you arrive and explain the procedures and then there, I am with a cracked head. A female captain walked in and saw me after the attack and hollered “omg what happened to you” because my head was so swollen - it looked like a softball. She took photos of me and the broken cane. I did not press charges. If you do that it can open doors for more violence.

But when I got to the CHS doctor he took one look at me and said "oh it's just a lump no big deal" I said make sure you write down what happened and all the details. My neck still hurts and pops and my ears still ring. I still remember hearing people laughing while I was getting beaten and someone half-heartedly asking my assailant to stop.

Rikers needs to close, and the box needs to be abolished- it is the cruelest thing you can do to someone. I used to be put in the box allegedly for my protection as a trans woman and I felt like a caged animal- not a human being."

My name is Jane. I was incarcerated from 2017-2020.

When I first went through the system I was placed in a women's jail. When I disclosed that I am a transgender woman I was moved to the Transgender Housing Unit which at the time was at MDC, a men's jail.

When the unit moved to Rose, the women's jail, I couldn't stay. The unit was a dorm and I have asthma. When the officers would spray chemical spray I couldn't breathe. So I had to be moved out and they placed me in general population at Brooklyn House with men.

I stayed there until about March 2020 when I finished my time at Ulster and then Woodbourne, both men's prisons.

I was fine in the women's unit. In fact, if I hadn't asked for my hormones, they would have never moved me out of the women's housing. But the moment they knew I was trans they said "no, you can't be here." All my documents said female, I am female.

At Brooklyn House I was in my own cell, but the door was a gate and could be open. I was far from the officer's bubble, they couldn't directly see me. That was where I was assaulted. The man who assaulted me knew what he was doing. He waited until lockdown time and picked the locks of 4 gates to get to me. I yelled for help and no one came. I don't know what the officer was doing during this time. But it was all on camera.

When they harass you and ask you for sex it's not just "no" – if you say "no" they will plant something on you, a weapon or drugs. So then you get an additional year added on. Because you said "no" to the harassment. I reported everything that happened because I was so scared. But the response was to put me in the box – they said to protect me.

My Legal Aid attorney, Dori Lewis, saved me from that box. She made a call and got me transferred from Ulster to Woodbourne where there was a transgender housing unit. I was still in a men's facility but it was so much safer. But I couldn't get myself transferred there despite my own advocacy, I had to have my attorney call.

It's important for everyone to know that transgender, in general, is a spectrum. It doesn't mean a singular identity. Before I went to jail or prison I was so scared that people would find out that I was transgender. I was so private.

Even if there is a separate housing for transgender people – who come in a rainbow of identity – each cell should have their own solid door. It cannot be a dorm style. At MDC the transgender housing unit had solid doors and I felt so much safer. If there was a fight or if I was tired, I could just lay down and have peace.

For me in my case, I totally identify as a woman. But it's a rainbow of identity. And people should have a right to be housed with the gender they identify with.

Testimony of Kirby Hiciano, incarcerated client of The Bronx Defenders
Written on January 17th, 2023
Read by Laura Rolston, social worker at The Bronx Defenders

Dear City Council,

My name is Kirby Hiciano. I have unfortunately been in DOC custody for two years as a transgender female. I identify as a woman, but for most of my incarceration, I have been housed in the men's jails at DOC. I have been at EMTC, VCBC, AMKC, and RMSC. DOC continues to move me around all the time, placing me in situations where I faced harm, and even danger due to my transgender identity. I have always followed the rules and DOC protocol in reporting such situations, but I have never received a permanent solution to keep me safe.

Most recently, I was forced into protective custody in the men's jail allegedly because there was no room in the LGBTQ designaed housing unit at AMKC. Protective custody, to me, is not a healthy or safer environment because I am placed there with gang members seeking separation from general population, which results in them harassing and trying to control those of us in the LGBTQ community. For example, they force us to wash their clothes for free, and engage in sexual acts in order to be able to stay there safely. Other transgender people have fought their way out, and have been thrown out due to refusing to engage in sexual act. I have avoided these confrontations by isolating myself in my cell, and thanks to God, not needing to depend on others for support because I have my family's support. Most transgender people don't have this kind of family support.

DOC officers are aware of what is going on and the harassment that the transgender community faces on a daily basis, however, due to their own fear of confrontation with the inmates, there is no one we can go to for help. There is not much Mental Health services can do to help us, and now inmate movement has been left to a department that is not aware of what is happening inside the housing units. If the movement department knew what was going on, maybe they wouldn't force me into dangerous situations, such as being moved to protective custody at VCBC or AMKC. Even when I was transferred to RMSC, a women's jail, I experienced discrimination by female captains and officers when they reminded me every day that I "was born a

male." When I was transferred from AMKC to RMSC, DOC officers forcibly removed my wig at intake, which was the one item I had in here that allowed me to express my gender and feel at peace amongst other women. This one act that seemed so unimportant to them, made my stay at RMSC uncomfortable and caused me to be ostracized.

I have always felt oppressed, bullied, and targeted by DOC. All of this discrimination and harassment for the past two years has affected my mental health significantly. I've had to start taking anti-depressant and anti-anxiety medications just to cope with my environment on a daily basis. The different incidents I've experienced here have resulted in me being diagnosed with Post Traumatic Stress Disorder. Sadly, I have attempted suicide twice in the past two years. Nevertheless, I wake up each morning looking forward to the day that I will be released and return to the community and my family. It is that which motivates me and keeps me strong during everything that I face while in here. If I could help change DOC and alleviate my problems here, I would, and that's why I'm speaking out about it.

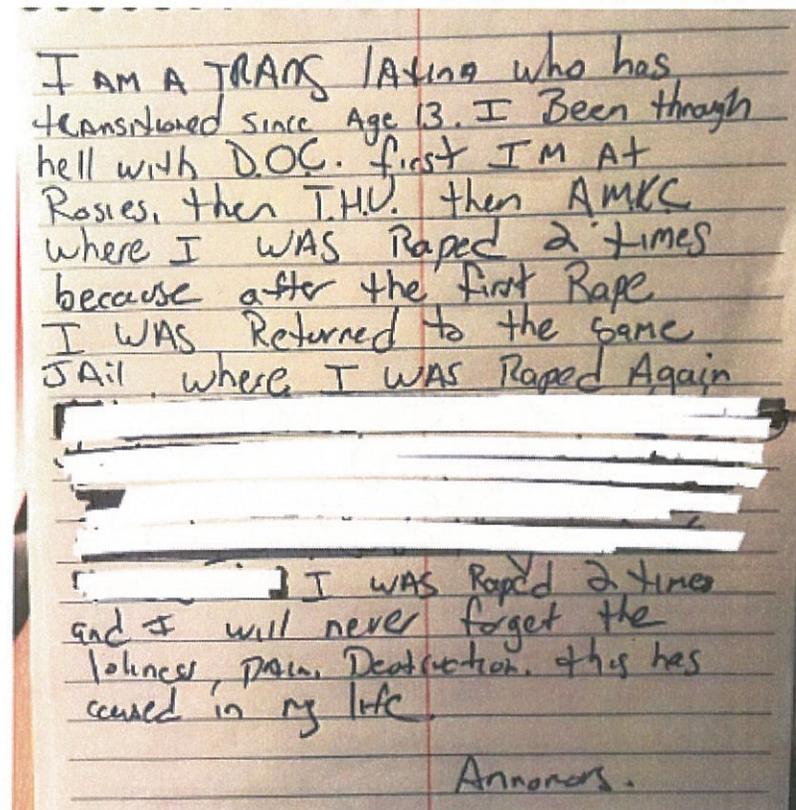
I hope this testimony brings change to me and people in my community soon. Thank you for listening.

Testimony about Alyssa Rodriguez, former client of The Bronx Defenders
Written on January 24, 2023
Read by Morgan Everhart, Attorney at The Bronx Defenders

Good afternoon,

My name is Morgan Everhart, I am a criminal defense attorney who represented Alyssa Rodriguez. I wish that Alyssa could be here with us today to tell her own story, but sadly, she died before she got the chance to do that. Alyssa described some of her experience in written testimony before she died, so I'm going to read her words. She wrote:

"I am a trans latina who has transitioned since age 13. I been through hell with D.O.C. first I'm at Rosies, then T.H.U. then AMKC where I was raped 2 times because after the first rape I was returned to the same jail where I was raped again. I was raped 2 times and I will never forget the loneliness, pain, destruction this has caused in my life."



I can only describe what Alyssa experienced inside of Rikers as hell. Alyssa had an army of people advocating for her, and even then, she was repeatedly assaulted and harassed. She was moved from the trans housing unit to AMKC where she was placed in an open dormitory with cis-men. She was sexually assaulted in the showers of that dorm. She took the risk of reporting the rape immediately. She was taken to Bellevue and she got a rape kit.

Once she was discharged back to the island, they placed her back into a men's facility at AMKC. As her lawyers, we rang every alarm bell we could, PREA, MOCJ, DOC counsel, everyone was on high alert. And still, they placed her back into a men's unit in "protective custody." Less than a week after the first assault she was raped inside of her cell on the protective custody unit. Again, she reported it immediately. She went back to Bellevue, she got another rape kit.

The rape, the harassment, the trauma that she experienced was entirely preventable. She filed a lawsuit against DOC, and her lawyers won one of the largest settlements on record for victims of sexual assault on Rikers, 1.4 million dollars. But Alyssa didn't live to see that.

The horror of what she experienced did not end when she was released. Alyssa had previously entered into what we call a "treatment plea" where she was promised a lesser sentence if she successfully completed substance abuse programming. However, if she was unsuccessful, a huge prison sentence hung over her head. While everyone in the courtroom was very apologetic about what had happened to her in Rikers, the judges and the DAs did not hesitate to threaten her with more prison time if she didn't complete treatment in the way they wanted her to.

Every court date she faced the daunting possibility of being sent back to the place where she was repeatedly sexually abused. The stress took a toll. Before one court appearance she had a seizure in the hallway, and I came out of the courtroom to find her collapsed on the floor. Before another court appearance, my colleague, Deb Lolai, held her hair back as she vomited in the bathroom because she was terrified of going back to jail.



Morgan Everhart and Alyssa Rodriguez celebrating Alyssa's last day in treatment court

Alyssa was thrilled when she finally finished her treatment mandate. I included a photo of us celebrating her last day in treatment court. Unfortunately, Alyssa died only a few months later.

I'm sharing Alyssa's story because I know she would do anything to prevent what happened to her from happening to someone else. If she were still alive, she would be here, telling you herself. She would be charming and funny, but she would also want you to remember 'the loneliness, the pain, and the destruction' that she felt on Rikers.

Testimony of Ms. Regina, incarcerated client of The Bronx Defenders
Written on January 23rd, 2023
Read by Robyn Mar, Chief Practice Officer at The Bronx Defenders

Dear City Council,

My name is Ms. Regina. I identify as a transgender woman. I have experienced a lot of discrimination that is systematic because I am a transgender woman. I'm currently incarcerated at Rosie's, but before being transferred to Rosie's, I was at EMTC for several weeks. This is the second time in a few months I have been incarcerated. Each time, DOC knew that I am transgender, but made me wait in the men's jails for a long time before transferring me to Rosie's.

A few years ago, I was incarcerated at DOC in the men's jail, and was being harassed on a regular basis. I requested to be moved to RMSC, but no one listened to me. One of the other inmates threw boiling hot water on me because of my transgender identity, and I suffered from severe third degree burns. It was only then that they agreed to move me to Rosie's, where I was much safer as a transgender woman.

On October 24th 2022, I was arrested, and sent to EMTC, a men's jail at Rikers Island, even though I requested to be sent to Rosie's. I was at EMTC for over a week before I was transferred to Rosie's. I was told I needed to complete my 10-day quarantine before they could move me. During the time I was at EMTC, I was abused, harassed, and targeted by other inmates because of my gender identity. I was physically assaulted by a male inmate and threatened with violence every day. I was released after spending some time at Rosie's.

On December 29th 2022, I was arrested again and the same thing happened all over again. DOC knew I am a transgender woman, but they did not send me to Rosie's. They sent me to EMTC again. I had to wait several weeks this time for them to move me to Rosie's. I kept asking them to move me to Rosie's over and over again, but it took them so long. During that time I suffered very much. The entire dorm found out I am transgender and teased me all the time. That really affected my mental health. Even though I am at Rosie's now, I am still suffering mentally from all the trauma.

Testimony of anonymous incarcerated client of The Bronx Defenders
Written on January 23rd, 2023
Read by Shaity Molina, Investigator at The Bronx Defenders

Hello,

I am a transgender man currently incarcerated at the female jail at DOC, Rosie's. I want to share with you how I have been treated here as a transgender man. There is very little understanding of our community here at Rikers Island.

I use he/him pronouns, but most captains, and individuals I come across continue to call me "she" even though I am not a "she." I am a "he." The constant misgendering results in conflicts and altercations because even though they are aware of my gender, they continue to misgender me. Every time that happens on a daily basis, I get very emotional because when you identify as a male, why would someone keep referring to you as a female? That is disrespectful, ostracizing, and excluding me from myself.

I also want to share that it's not right that there is a unit for transgender women, but not for transgender men. There is nowhere for us to feel safe and like we belong here.

Client #2 Experience in NYC DOC

This testimony was provided by the client to a staff attorney with Legal Aid over a series of meetings.

I am a transgender woman. In 2021 I got arrested and was held in the New York City jails. I told everyone that I needed to be housed safely in the women's jail, and eventually the Department moved me to RMSC. I served my time at RMSC and came home.

In the spring of 2022, I was arrested again. I told everyone that I am a transgender woman and need to be housed in a women's jail. But instead of being brought back to RMSC, I was brought to EMTC for men's intake, and then eventually placed in men's housing.

I kept telling everyone that this wasn't safe. In June of 2022 I was attacked in my cell. It was the morning, and I was still in bed, under my covers and asleep. The door to my cell had been opened and a man in the unit entered and cut my leg with something sharp. They knew I was different, and they didn't want me there.

I had been requesting women's housing – so many times! But I never heard anything back. After the attack I called Legal Aid's Prisoner's Rights Project and asked them to help me. I didn't think I needed to do that earlier because I thought the Department would correct this. They knew I was housed as a woman before; I was asking to be housed as a woman again. Nothing had changed. But when I was attacked, I knew I needed help. I was so tired. To survive in the men's jail I was covering up who I was – trying to act tough – but it hurt me to do this, it's not who I am. I called Legal Aid and told them I needed help; I couldn't do this alone.

It took Legal Aid a week of advocacy before the Department sent someone to come to the men's jail. When they came, all they did was give me an application for gender affirming housing. I was pretty upset. I was cut in my sleep by someone who hated me for being me, and all the Department did was give me paperwork. I told them they had housed me as female before, I was told it didn't matter and I needed to fill out the paperwork again.

I filled out my application and turned it in. After another two weeks they finally moved me to RMSC. This was now three weeks after I was attacked. But even then they got it wrong.

When they moved me, they put me into the Special Considerations Unit. That's supposed to be a voluntary unit, you have to choose to go there. I hadn't chosen it or asked for it. Last time I was at RMSC I was in general population like any other woman. I knew I could do it.

It was another week of my attorneys advocating before I was finally moved to general population. I'm still there now but I know that none of this is certain. I worry every day that I might be moved again.

Testimony from LAS Client #1

This testimony was provided by the client to a staff attorney with Legal Aid over a series of meetings.

I am a transgender woman. I was moved from another state to NYC to clear a warrant. The other state housed me as a man, so DOC put me in men's intake too.

I told DOC that I'm a woman and that I need female housing and I need my hormones. I told them I was so scared in the men's jail. I didn't tell any of the people I was with that I am a woman, I was scared of what they would do to me.

On August 5th I was told that I was approved to go to women's housing. I was so relieved. I was told to pack up all my things and get ready to move.

I was all ready to go. And then – in front of everyone in my unit - the officer said I couldn't be moved because my unit was on COVID quarantine. The officer said I couldn't go to Rose anymore. couldn't be moved to women's housing because I needed to stay in COVID quarantine in the men's housing. But he said this in front of everyone in my unit. Everyone suddenly knew who I was and what was happening.

That evening, a group of men assaulted me in the shower. They were saying awful derogatory things. They didn't know who I was before, they assaulted me because I was outed. It was terrible.

I filed a PREA complaint and I called my lawyer. I went to the medical clinic and they told me not to worry, they wouldn't send me back to the same unit where I was assaulted.

I was sent back to the same unit where I was assaulted. I slept in that same unit that night, in the same room as the men who assaulted me. DOC said because of COVID I couldn't be moved at all. I had to stay there with these men.

From Legal Aid: this client eventually got to RMSC and women's housing. In the course of our representation, we reached out to DOC on multiple occasions concerning her safety and DOC did not once send a reply, acknowledge the harm done to her, or suggest that anyone involved in these incidents would face repercussions.

This testimony comes from a transgender woman who was housed at RMSC, then removed to a men's jail where she stayed for the rest of her time while within DOC custody. She is currently in a men's prison. We have edited her written testimony for readability but the full unedited testimony was submitted to the council.

Rikers Island has not only robbed me of my right to my body it has robbed me of my right to be treated like a lady. I am denied women's housing because of acts of violence by people who hate me for no reason, attack me for no reason, want to kill my kind off the earth for no reason.

Please listen to me. They even placed me back at the same housing where I was raped in the shower!! Can you imagine being made to take a shower in the same stall where you were raped? For months? And they wonder why I act violent. Please. My voice should be heard.

Let me say this. Being a trans female inside of a men's jail is the most tremendous thing a human soul can endure. We get discriminated against, verbally abused, and assaulted. People are taught that being friends with, talking, living with - even standing next to - an LGBTQ+ member is forbidden. I have one ask of the city council. Go to a men's housing unit and tell them that you plan to house an LGBTQ+ person in the unit and watch in horror at the protest and threats that will surely come.

And as for officers, they have no LGBTQ+ awareness. They have only 2 housing areas for us, but they they have 100 different options for gang members. They get mad at us when we cannot all be housed together and they become verbally abusive, like it's our fault that people hate, despise, and outcast us.

I was on suicide watch and my officer was supposed to watch me in my cell but he left. When he left I was sexually assaulted. They kept me in a holding pen for 7 days. I did not shower, I had no blankets, nothing to cover me. I did not brush my teeth and sometimes I didn't even eat. The person bringing food didn't want "a f*ggot" or "the thing" to eat. Those are not even half of the names he called me. You would think 7 days of this treatment was bad enough. But on the seventh day they let a man into my cell and he sexually assaulted me. This was on camera. But they didn't do anything. DOC said I "wanted" it and got mad that I made them do paperwork because I wanted to go to the hospital for an HIV prevention pill. When I said I wanted to go they said "can you not?"

They deny me going to the women's jail because they say I'm too violent. I'm violent because I was raped. I'm violent because I'm in housing with 20 other weight-lifting push-up doing men with no floor CO to protect me. I deal with hate, unjustified hate. I deal with antagonism at its max. I deal with wanting to kill myself because I want to rob the satisfaction from the people who want to kill me. I could have died multiple times and the sad and honest part is that I am grateful that I was *only* raped and attacked during my time at Rikers

The Legal Aid Society asked me what the most important rule change would be. My answer is that any rule that will not have a person feel grateful that they were sexually assaulted and not killed will work for starters. I fear that asking for anything more is too much to ask, so for now that will do.

From: ~~XXXXXXXXXX~~

To: City TGNCNB task Force

Riker Island has not only robb me of ~~private~~
my right to my Body it had robb me of my right
to be treated like A lady after the Fact, I Am
denied woman housing Because of Acts of violent's on
People who hate me For no reason, Attack me For no
reason, want to kill my kind off the earth For no reason,
~~and~~ please listen to me, they even place me Back at
The same housing I was Rape in the Shower in!!
Can u inmagine every single time taking A Shower
you are Raped, I was Back For months. And u Ask
why I'm violent? please my voice Should Be heard,
dont let my story go untold.

~~XXXXXXXXXX~~

12-19-22

Din: ~~XXXXXXXXXX~~

From: ~~XXXXXXXXXX~~

To: City Council members

The legal Aid Society and the LGBTQ+ Law and Policy unit has Ask me 2 Question 1) what is one thing that the City Council members should know About Being A transgender, non-binary, gender non conforming or Inter Sex persons in NYC Jails. 2) what is one thing that the City Council members should know About the NYC Jails. let me say this, Being A trans Female inside of A mens Jail is Far most the tremendous thing the human soul can indure mentally. From inmates we get discriminated against, VerBally ABuse and ASSaulted all Because of the wrongly taught Morals coming From A Urban Community. it is thought that Being Friends, talking, living with or even the smallest thing as standing next to A member of the L.G.B.T.Q+ community is ForBidden. And If the ACuse is A gangmember he can even get ASSaulted by his own kind. I only have one wish For the city Council members, it is to go to A housing Area and say we want to place A L.G.B.T.Q+ member in the house and watch in Horrow the protest and threats that will Surely come. And AS For the officer, they have no L.G.B.T.Q+ Awareness. They have only 2 housing For us but a 100 For gangmember, they get mad at us when we cannot get house and Become verBally ABusive also like it is our fault that people hate, dispise and outcast us.

There care For Safty is the lowest. I was on suicide watch and my officer was sopose to watch me in my cell but he left and I was sexually assaulted. I was inside of A holding pen there For 7 days. I did not Shower, I had no Blanket or cover. I did not Brush my teeth and Sometime I did not eat Because The inmate doing the Food did not want to feed a faggot, a nigger Bitch, that shit, and "the thing", it is not even half the names he said when Ask why I didn't eat. u would think Seven days of this is Bad but on the seventh they let a male in my cell and I was sexually ASSaulted Again on Camer. even thow they see it on Camer they do nothing. they say I wanted it and is mad that they have to do paper work Because I want to go to the hospital For Hiv prevention pill. they ask can I not go. they deny me to go to the female Jail Because they say Im to violent, violent Because I was rape. Im violent Because Im in a housing with 20 other weight lifting push up doing men with no floor c.o to protect me. I deal with hate, unJustify hate. I deal with antignizing at it's max. I deal with wanting to kill myself Because I want to rob the saterfaction From the people who want to kill me. I could of died mutipul times and the said and honest part is that I Am gratefull that I was only raped and Attacked my time there. oh Yeah I Forgot a question. they Ask what rule change would most help you keep your dignity in prison or Jail. my Answer is this " Any rule that will not A person feel gratefull that they was sexually assaulted and not killed will work For starter. For I ^{have} ~~feel~~ ^{fear} Asking For Anything more is too much to Ask, so for now that will do.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. 831 Res. No. _____

in favor in opposition

Date: 1/25/2022

(PLEASE PRINT)

Name: Kelly Briem

Address: Charoller Ave

I represent: WCTA

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. 831 Res. No. _____

in favor in opposition

Date: 1/25/23

(PLEASE PRINT)

Name: Leah Faria

Address: East 24th St.

I represent: WCTA

Address: 315 Linwood St.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. 831 Res. No. _____

in favor in opposition

Date: 1/05/23

(PLEASE PRINT)

Name: Roslyn Smith

Address: Bklyn N.Y 11226

I represent: WCTA

Address: 315 Linwood St Bklyn N.Y

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. all Res. No. _____

in favor in opposition

Date: 1/25/2023

(PLEASE PRINT)

Name: Jane Doe

Address: _____

I represent: myself

Address: anonymous

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1/25/2023

(PLEASE PRINT)

Name: Raul Rivera

Address: Raul Rivera

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1/25/23

(PLEASE PRINT)

Name: Elisa Crespo

Address: _____

I represent: incarcerated person

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1/25/23

(PLEASE PRINT)

Name: ELISA CRISTO

Address: _____

I represent: New Pride Agenda

Address: 8 W 126th St

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1/25/23

(PLEASE PRINT)

Name: Morgan Everhart on behalf of Alyssa Rodriguez

Address: 380 East 161st St

I represent: The Bronx Defenders

Address: 260 East 161st St

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1/25/23

(PLEASE PRINT)

Name: Shear Ivory

Address: _____

I represent: NEW Pride Agenda

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Chadain Dr. Victoria a Phillips

Address: 99 Wall St ste 813 NY NY 10005

I represent: Justice 4 Women Task Force

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 708 Res. No. _____
 in favor in opposition

Date: 1/25/23

(PLEASE PRINT)

Name: Maritza Henriques

Address: 199 Water St. NY NY

I represent: Legal Aid / Catmy critco

Address: 199 Water St

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. all Res. No. _____
 in favor in opposition

Date: w/commnts

(PLEASE PRINT)

Name: Mik Kinkead

Address: 199 Water St. NY NY 10038

I represent: Task Force

Address: same

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 728, 831, 887 Res. No. 117, 458

in favor in opposition

Date: 1/25/2023

(PLEASE PRINT)

Name: Lucas Marquez

Address: 177 Livingston Street #7, Brooklyn NY 11201

I represent: Brooklyn Defender Services

Address: 177 Livingston Street #7 Brooklyn NY 11201

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1/25/23

(PLEASE PRINT)

Name: Robyn Mar on behalf of Ms. Regina

Address: The Bronx Defenders, 360 E. 161st St, Bx, NY 10457

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 01/25/23

(PLEASE PRINT)

Name: Mariana Chyslian

Address: Astoria NY 11103

I represent: Center for Community Alternatives

Address: 25 Chapel Street, Brooklyn NY 11201

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: HATTY MOLINA (Bronx DEFENDERS TASK FORCE)

Address: Bronx NY 10457

I represent: Anonymous

Address: Bronx NY 10457

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 728 Res. No. 458
 in favor in opposition

Date: 1/25/2023

(PLEASE PRINT)

Name: Sarah DeVita

Address: 199 Water Street, W.H. Fr. NY, NY 10038

I represent: The Legal Aid Society

Address: Same

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 9958
 in favor in opposition

Date: 1/25/23

(PLEASE PRINT)

Name: Deborah Lolai, Task force member

Address: 360 East 161st Street, Bronx NY 10457

I represent: The Task force

Address: 360 East 161st St. Bronx NY 10457

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Grace Detrevarah

Address: TASK Force Member, Osborne

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1/25/2023

(PLEASE PRINT)

Name: Laura Rolston, MSW

Address: 360 E 161st St. Bronx, NY 10451

I represent: Kirby Hiciano

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 01/25/23

(PLEASE PRINT)

Name: Daviana Guffin

Address: 260 E 161st St, Bronx, NY

I represent: Angel

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 1/25/23

(PLEASE PRINT)

Name: Natalie Fiorenzo

Address: _____

I represent: NYCDS

Address: 100 William Street, 10038

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 0458
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Allie Pohn

Address: _____

I represent: NYCLU

Address: 125 Broad St., 19th floor, NYC

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 335, 788, 831 Res. No. 458-117
 in favor in opposition

Date: 1/25/23

(PLEASE PRINT)

Name: General Counsel Paul Shectman

Address: City Hall

I represent: Dept. of corrections

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. ^{335, 128, 831} 887 Res. No. 458 + 117

in favor in opposition

Date: 2/25/23

(PLEASE PRINT)

Name: Commissioner Molina

Address: City Hall

I represent: Dept. of Corrections

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. ^{335, 128, 831} 887 Res. No. 488 + 117

in favor in opposition

Date: 1/25/23

(PLEASE PRINT)

Name: Sideeja Sherman

Address: CITY HALL

I represent: Mayor's office of Equity

Address: _____

Please complete this card and return to the Sergeant-at-Arms