



**Statement before the
New York City Council**

**Committee on Criminal Justice Services
Keith Powers, Chairperson**

By Assistant Commissioner Faye Yelardy of PREA/ Office of Sexual Abuse and Sexual Harassment Prevention, Acting Bureau Chief of Security Kenneth Stukes, Acting Warden Bibi Suares and Prechelle Shannon, Senior Institution Administrator for PREA/Office of Sexual Abuse & Sexual Harassment

On Oversight – The Experience of Transgender and Gender Non-Conforming Individuals in New York City Jails.

May 1, 2019

Good morning, Chair Powers and members of the Committee on Criminal Justice. I am Faye Yelardy, the Assistant Commissioner for the Office of Sexual Abuse and Sexual Harassment Prevention for the New York City Department of Correction (DOC). Joining me at the table this morning are my colleagues who will assist me with answering questions today: Acting Bureau Chief of Security Kenneth Stukes, who has over twenty-eight years with DOC, Acting Warden Bibi Suares of Rose M. Singer Center (RMSC) and Prechelle Shannon, Senior Institution Administrator who previously served as a DOJ Certified Prison Rape Elimination Act (PREA) Auditor for four years. Thank you for this opportunity to discuss the Department's work and our efforts to provide safe housing and services to transgender, gender non-confirming, and intersex individuals within our custody.

Today, I am pleased to provide opening remarks about the groundbreaking work we have undertaken to afford individuals in our care housing by gender identify as well as our ongoing efforts to institutionalize policies and practices that support and sustain

sexual safety. I will also comment on Intro 1513, Intro 1514, Intro 1530, Intro 1532 and Intro 1535, the five bills being considered today.

A Commitment to Safe and Secure Housing

This Department is committed to ensuring the safety and security of everyone in our care. The population within DOC's facilities is as diverse as the population of New York City and the Department recognizes its responsibility to provide safe housing, responsive healthcare, and engaging programs to everyone who enters the facilities. In accordance with Executive Order 16, the Department now houses individuals in our custody by gender identity. We have become a national leader in this practice and are proud that jurisdictions across the country now look to NYC as model for the placement and housing of transgender, gender non-conforming, and intersex individuals. Our practices have been developed in close consultation with leaders in the LGBTQI policy and advocacy communities as well as through conversations with the City's Commission on Human Rights. We have also worked to provide our uniformed officers with sensitive and accurate training on the needs and rights of transgender, gender non-conforming, and intersex individuals in the Department's custody in order to ensure these individuals are treated with understanding and respect.

Risk Reduction, Housing by Gender Identity, and the THU Process

The Department's commitment to safe housing intake, where officers complete a security screening tool to assess an individual's risk of victimization. Categories that are assessed by an intake officer include but are not limited to whether an individual is small in stature, the nature of crime an individual is accused of, whether or not an individual has a history of violent crime or committing sexual abuse, whether or not an individual has been a victim of sexual abuse, and whether an individual identifies or presents as gender non-conforming, and whether the individual is LGBTQI. The affirmative items checked on the screening tool are scored and, in consideration of additional security information, a housing placement is reached. The Department takes special care to

separate those who may be at risk of abuse, potentially including those who are gender non-conforming, from those known to the Department to be abusers. In some cases, depending on their score on the risk assessment, it may make sense to house some gender non-conforming individuals in protective custody, in other cases, that may not be warranted.

In addition, everyone who is newly admitted into custody and identifies as transgender and/or intersex is offered the Transgender Intersex Housing (TIH) Form. The TIH form, which specifically asks if the individual identifies as transgender and/or intersex, is a critical piece of the Department's process of identifying individuals eligible for the Transgender Housing Unit, known as the THU. The TIH form also affords transgender and/or intersex individuals an opportunity to indicate if they would prefer to be housed within a male facility, a female facility, or in the THU.

The THU was created in 2015 and was initially housed in a male facility before moving to Rosie's in July 2018. Our THU model has set the national standard for transgender and intersex housing in jail facilities. The co-location of the THU within Rosie's has allowed transgender and intersex individuals who choose to reside in a female facility with the opportunity access the same programs, services, and health care as every other woman within the Department's custody. The move also provided an opportunity for certain transgender and intersex individuals to be housed within GP housing units at Rosie's if they so choose.

In addition to the THU unit itself, Rosie's is also home to a dedicated transgender intake unit and new admission housing. If an individual going through intake at a male facility self identifies as transgender or intersex, that individual will be transferred to Rosie's to complete the intake process. That is to say, the Department does not wait to assess an individual before transferring them to THU intake and new admission housing; safe housing takes a priority over paperwork.

Per PREA regulations and the Board of Correction's minimum standards, all THU admission decisions are made on a case by case basis. In every consideration, the Department considers both the health and safety of the individual applying to the THU unit, the safety and wellbeing of the individuals already in the THU unit, and overall

management and security operations. The transgender or intersex individual's view on placement with respect to his or her own safety is given serious consideration in this process.

From October, 2018 to March 2019, the Department received 115 applications for the THU. The breakdown of those applications is as follows

- Of the 115 forms applications received 29 individuals preferred to be housed in a male facility
- Of the remaining 86 individuals seeking admission to THU, 12 individuals were discharged before an assessment could take place
- Of the remaining 74 individuals, 62 were placed in THU and 12 were denied for security reasons.

In the same six month period, 3 transgender men were held in DOC's custody. Per their request, all three individuals were housed at Rosie's.

Just as any individual in DOC's custody can apply for placement in the THU, any individual can request to leave it. If an individual no longer wishes to be housed in the THU, or if a transgender or intersex individual no longer wishes to be housed in a GP unit within Rosie's, they are able to complete a voluntary discharge form.

Approvals and Denials

All THU requests are closely and thoroughly reviewed by the PREA Unit, which is comprised of a PREA Supervisor, a representative from CHS, RSMC facility supervisor, and the Warden or her designee. The review considers the individual's views with respect to his or her own safety, as well as information from the risk assessment tool. The Department then makes a case-by-case determination about how to ensure the safety for each transgender or intersex individual in our custody, as required by the Federal Standard and the Board of Correction Minimum Standards. An individual will either be approved or denied housing within the female facility if the individual imposes a safety and/or security concern.

Any individual denied placement into the THU is informed of the reasons for the denial and has the opportunity to have their request reconsidered with the understanding that a secondary review will be held if the individual has new information to present. At present the PREA unit handles these appeals. We are in the process of developing a more robust review process, however, and the details of this plan are still in development. We look forward to updating the Council on our appeals process as it comes to fruition.

PREA Standards at DOC

It would be impossible for me to speak about the progress the Department has made in its efforts to safely house transgender, gender non-confirming, and intersex individuals without discussing the great work we have done to adhere to increase our PREA compliance.

Since 2015, when the Department announced it would voluntarily implement PREA standards, we have worked tirelessly to implement staff wide PREA training and refresher courses and draft policies and operational practices in line with PREA guidelines. As part of a federal grant that assist correctional facilities in becoming PREA certified, the Department has enlisted the assistance of the Moss Group, a nationally recognized expert in PREA and LGBTQI issues, to outline a multi-year plan that will bring the department into full PREA compliance.

The Department has also successfully trained over 10,000 DOC staff on PREA, with training provided to all incoming recruits, and there are monthly scheduled trainings for all DOC non-uniform staff, contractors, and volunteers. Training is vital to remind staff of the importance of professional and respectful terminology and of their responsibility to protect vulnerable populations wherever they may be housed.

Legislation

Finally, I will now comment on Intro 1513, Intro 1514, Intro 1530, Intro 1532 and Intro 1535.

Introduction 1513 & 1514

Every individual in DOC's custody has equal access to health care and mental health care. The Department supports the spirit of Intro. 1513 and 1514 – in fact, the Department is home to the oldest methadone clinic in the country - and wants to impress upon the Council that providing these services to *everyone* is a responsibility the Department takes seriously. Whether legislated to or not, DOC will continue to ensure health care access is afforded to all individuals in our custody.

Introduction 1530

Regarding Intro. 1530, which we understand to be a companion bill to 1532, the Department supports the general premise of the bill but would like to work with the Council on the metrics and wording so as not to produce duplicative information as what is already reported to the Board of Correction.

Introduction 1532

As a national correctional leader in housing by gender identity, the Department shares the Council's interest in having a tool to assess an individual's risk of victimization, a fair and thoughtful process to make certain housing assignments on a case by case basis, and a process for an appeal of that assignment. The Department is in the process of designing has a robust secondary review process that allows for review by parties not involved in the original decision process. As bill negotiations continue, we'd appreciate the opportunity to talk through our existing process with Council more fully and work together to devise legislation that supports fairness and safe housing for all.

Introduction 1535

Intro 1535 requires the creation of a task force with mainly external parties to advise on DOC policies and security protocols. While we appreciate the spirit of collaboration of this bill, the Department cannot support this legislation. The Department has worked closely with advocates and LGBTQI policy experts to devise our existing policies and

programs. In fact, we already meet with advocates on a quarterly basis – and sometimes more frequently - to address ongoing issues. However, there is a difference from bringing in issue area experts to advise on policy creation and having issue area experts, who are not experts in corrections and security, make recommendations on security policy. The Department opposes individuals without a correctional services background advising on security and housing policies in transmissions to the Mayor and the Council. In addition, we have serious concerns about potentially sharing sensitive and confidential information with individuals who lack authority to possess access to this information. However, we remain open to additional conversations about avenues to integrate LGBTQI advocates into operational discussions as we have with advocates concerned with visiting practices, program offerings, and bail procedures.

Closing Remarks

As you can see the Department has worked hard to improve the safety and experience of transgender, gender non-confirming, and intersex individuals in our custody. The Department appreciates Council's interest and support in these matters and we look forward to continuing to work with you, the Board, and advocates to build upon the work we have already done and remain a national model for correctional institutions across the country for years to come. We would also extend an invitation to Council to visit our THU so you can see the good work we are doing for yourselves.

Thank you again for the opportunity to testify today and we are happy to answer any questions.

Testimony before the New York City Council Committee on Criminal Justice

Keith Powers, Chair

May 1st, 2019

Good afternoon, Chair Powers, and Council Members and staff of the Committee on Criminal Justice. My name is Charles Solidum and I'm here to talk about a series of introductions and resolutions around the treatment of transgender, gender non-conforming, and non-binary individuals in New York City jails.

I want to take this opportunity thank you for your advocacy for the TGNCNB community around these very sensitive issues. As part of the Trans Equity Coalition, we are seeking to improve the lives of all TGNCNB New Yorkers, who are disproportionately affected and involved with the criminal justice system.

My name is Charlie Solidum, and I serve as the Program Manager of HIV/STD Services at the LGBT Network in Long Island City, Queens. As a born-and-raised New Yorker who came out as transgender in 2006, I have had the opportunity to meet and organize with so many trans people from all walks of life. I want to tell you a little bit about my friend. I have a friend and client who was picked up by police in connection with a drug trade investigation into her former partner. She was living with him at the time, and was often called upon to participate in his business dealings. When she arrived at Rikers, she was assigned to stay in the male facilities, based on her gender assigned at birth. Once inside, she faced nearly constant harassment and threats of violence from her fellow inmates, as well as disrespect and ridicule from correctional officers. Additionally, throughout the course of her stay at Rikers, she was denied any sort of medication or treatment for her heroin withdrawal, and because of that, she suffered greatly in her first weeks on the inside.

Unfortunately, her story is not the exception, but the norm among transgender people on the inside. What's worse is that historically, prisons have dealt with trans people in jails by placing these inmates in solitary confinement, "for their own protection." However, I can't help but wonder why it is that trans people are being made to suffer a more severe and inhumane form of punishment for the "crime" of belonging to a particularly vulnerable population. There have to be better ways to support and protect transgender people that do not alienate them from the general prison population and subject them to unnecessary trauma. I believe that the proposed measures, particularly those focusing on access to substance use treatment, mental health services, and developing humane alternatives to solitary confinement, will dramatically improve the quality of life for transgender inmates, and thereby increase the rehabilitative capacity of their time spent incarcerated.

Thank you Chair Powers, Council Members and committee staff. I'm happy to answer any questions you have.

About the LGBT Network

The LGBT Network is a 501(c)(3) non-profit organization that is a home and a voice for the LGBT community, their families, and support systems. Our community centers, including our Q-Center in Long Island City, helps LGBT people to be themselves, stay healthy, and change the world. Since 1993, we have been pioneering advocacy and social change to create safe spaces where LGBT people live, learn, work, play, and pray.

About the LGBT Network's Q-Center in Long Island City

Opened in February 2018, the Q-Center is the only full-service LGBT center in Queens, open 5 days each week offering services and programs for LGBT youth, adults, families, and older adults. We are continuously expanding our programming to serve the LGBT community, and believe it is critical to have members of the group we are serving help create those services.



DESTINATION TOMORROW

THE BRONX LGBTQ CENTER

Good Day, Warm blessings & Hello to Chair Keith Powers, the NYC City Council Members, and the Committee on Criminal Justice. I would like to particularly extend gratitude and appreciation to Council Members Ayala, Dromm, Powers, Moya, and Rosenthal for their efforts with the proposed amendments and legislative improvements to policies that have the potential to affect TGNCNBQI (Transgender, non-conforming, non-binary, questioning, intersexed) individuals. As a licensed Social Worker and representing Destination Tomorrow, The Bronx LGBTQ Community Center, I come to support these revisions as well as provide insight and recommendations with the language used in the proposed policies. As such, I thank you for the opportunity to testify, allotting time to hear us out, and for allowing us to represent the TGNCNBQI community.

As I read the proposed amendments to the administrative code of the city of New York, in relation to the HALT Solitary Confinement, mental health treatment, and substance use treatment of TGNCNBQI inmates, I could not help but see an underlying theme with these amendments. While creating these programs and services to benefit everyone or the general population as whole, language MUST be included to remind people not to forget about TGNCNBQI people. Historically, TGNCNBQI inmates have been extremely maltreated, misgendered, and dehumanized in the criminal justice system that it has affected their mental health as well as the health of their transition.

HALT Solitary Confinement:

In their accounts I have learned as a Social Worker the misuse of solitary confinement because they did not know where to “house them”. And it is this misuse or lack of the appropriate gender pronouns which further contributes to the dehumanization of TGNCNBQI individuals. Once in this “protective setting” many TGNCNBQI individuals have reported being forgotten about. Not only are they reporting not being well fed, bathed, or given human interaction, but they are stripped of their dignity and their basic human rights. Some TGNCNBQI individuals have reported their medical and mental health care being compromised due to these settings not continuing their hormonal therapy. As such, it is important to include language that makes sure these rights are protected as well.

Being that solitary confinement has been overly misused for TGNCNBQI individuals we strongly agree and support measures providing a new Residential Rehabilitation Unit for meaningful human contact and therapeutic services and rehabilitative programs aimed at addressing the underlying causes of behaviors. We believe it is necessary for people to have meaningful human interaction or mental stimulation for the sake of rehabilitative services. As they create this with heteronormative standards, we ask that you are respectful when segregating people by their gender into these programs as some individuals do not identify with the male or female binary. It is best to ask if the individual identifies with

a binary and we recommend there to be a gender-neutral alternative to this Residential Rehabilitation Unit.

Substance Abuse/Mental Health

All major professional mental health organizations have affirmed that being TGNCNBQI is NOT a mental illness and does not imply any impairment in judgment, stability, reliability, or general social or vocational capabilities. Unfortunately, in this society some cisgender heterosexual people still view LGBTQI individuals as having a mental health disorder. As such they are maltreated and discriminated against. This maltreatment can affect one's mental health as they are made to not feel normal or human. As such, mental health rates indicate that LGBTQI individuals are 2.5 times more likely to experience depression, anxiety, and substance misuse compared with heterosexual individuals. (American Psychiatric Association, 2017) As stated before, for a Transgender individual not to be on their usually prescribed hormonal regimen, it can affect their mental health balance as well as it causes mood swings, depression, anxiety, and extreme dysphoria should undesired secondary sex characteristics emerge. A hormone regimen is not necessary for all TGNCNBQI individuals, but it is also important to be included in their mental health evaluation and treatment.

CONCLUSION

In closing, Destination Tomorrow supports these measures and request specific language that protects the TGNCNBQI individual's identity and health. We believe health should not stop with their substance use or mental health, but as well as their medical health. Destination Tomorrow would also like to extend support and collaborate with the criminal justice system by providing culturally sensitive and competent services to the staff at these Residential Rehabilitation Unit to be trained on how to work with TGNCNBQI individuals. To learn how to respectfully work with this population and not to continue the ignorance and perpetuate the stigma of being TGNCNBQI identified will help with the criminal justice system's rehabilitative efforts.

EXTRA STATS/CONTENT:

LGBTQ individuals are more than twice as likely as heterosexual men and women to have a mental health disorder in their lifetime.

Transgender individuals who identify as African American/black, Hispanic/Latino, American Indian/Alaska Native, or Multiracial/Mixed Race are at increased risk of suicide attempts than white transgender individuals.

LGBTQ individuals have higher rates of mental health service use than their heterosexual counterparts.

The rate of suicide attempts is four times greater for LGB youth and two times greater for questioning youth than that of heterosexual youth.

LGBTQ older adults face a number of unique challenges, including the combination of antiLGBTQ stigma and ageism.

Approximately 31% of LGBTQ older adults report depressive symptoms; 39% report serious thoughts of taking their own lives.

Stigma & Discrimination Health disparities among LGBTQ people are linked to stigma and discrimination. For example: Many LGBTQ people have reported experiencing stigma and discrimination when accessing health services, leading some individuals to delay necessary health care or forego it altogether. LGBTQ individuals may have less social support than heterosexual individuals.

Transgender individuals have higher rates of poverty and unemployment than nontransgender individuals. This is exacerbated by a lack of federal employment non-discrimination protections for LGBTQ individuals.

LGBTQ individuals are more likely to be victims of violence compared with their heterosexual peers. The risk of experiencing violence is even higher for undocumented and racial/ethnic minority LGBTQ.



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Testimony of Andrea Bowen
on behalf of the New York City Anti-Violence Project (AVP)
Committee on Criminal Justice
Chair Keith Powers
May 1, 2019

Thank you, Chair Powers, and Council Members and staff of the Committee on Criminal Justice.

A special thanks goes to Council Members Ayala, Dromm, Moya, Powers, and Rosenthal for their efforts with the bills and proposed resolutions under discussion today. My name is Andrea Bowen; I am a transgender woman, and I am speaking on behalf of the New York City Anti-Violence Project, or AVP, for which I am a consultant. I am also coordinator of the transgender, gender non-conforming, and non-binary, or TGNCNB Solutions Coalition. The TGNCNB Solutions Coalition works to address the needs of the TGNCNB community, in large part through working to improve City agency policy and budget actions relating to TGNCNB people. AVP is also a member of the Trans Equity Coalition, a coalition of organizations that work to attain funding for TGNCNB-led and –serving organizations.

AVP and the aforementioned coalitions are thankful for the attention that Council Members are paying toward the well-being of transgender, gender non-conforming, non-binary, and intersex people, especially those within the criminal justice system, and those who need treatment relating to substance abuse and mental health. While I offer technical recommendations on amending Intros 1513, 1514, 1530, 1532, and 1535 later in this testimony, I want to emphasize a few major points now:

- AVP believes that the protections for TGNCNB people within these intros are effectively already provided for in the City Commission on Human Rights (CCHR) guidance on its gender identity and expression protections;

- That said, statutes are more powerful than agency guidance, and thus, we absolutely support and applaud City Council for proposing statutory language that would *specifically support* trans, gender non-conforming, non-binary, and intersex people in any area of City life—in this instance, Department of Correction supports for substance abuse, mental health, and housing. While we offer some technical changes in language, we support these bills.
- We echo our colleagues in noting that we would seek mention of trans, gender non-conforming, non-binary, and intersex people in the proposed Res. 143-A and 829. We support these resolutions, while asking that they be amended to mention that TGNCNBI people, especially TGNCNBI people of color, are at risk of state violence, including incarceration. Finally, we also support the HALT Solitary Confinement Act as a step toward ending solitary confinement, and also support the aim of S.1343B/A5493 in pushing for parole reform. AVP, as a general position, and as my colleague Nala Toussaint from Callen-Lorde says, does “not advocate or support the overall expansion of the jail and prison industry.”

Technical recommendations we have regarding the bills are thus, with additions to bill language in brackets:

Int. No 1530:

- In Sec 9-157(6), we (being AVP) recommend that, beyond posting aggregate information online, each incident’s details be made publicly available online, albeit without personally identifying information.

Int. No 1532:

- In Sec 9-157(c), we suggest amending the language to indicate both legal and medical transition—transition is more than just medical, and the law needs to reflect that. We recommend amending the language to say: “The department shall not prevent incarcerated individuals from identifying as transgender solely because of classification as a different gender while previously incarcerated or because of the absence of documents indicating medical [and/or legal] transition.”

Int. No 1535:

- Section 1(a):
 - The bill should be as explicit as possible that “people formerly and currently incarcerated in the transgender housing unit” have to be on the task force. We worry that the current text could be interpreted to say that the aforementioned category of people are among those who *could* be on the task force, but the text should make explicit that the category of people *must* be on the task force.
 - The bill should also include transgender, gender nonconforming, non-binary, and intersex people, regardless of where they were housed, in the task force. There should also be a specific mention that we want local providers who work on these issues, and having TGNCNBI-led orgs involved. Overall, we recommend amending language in the bill to say, “Such task force shall consist of, but not be limited to, a representative from the department of correction, a representative from correctional health services, a representative from the commission on human rights, and at least six representatives in the following categories: transgender, gender non-conforming, non-binary[, and intersex] individuals who have been within the department of correction’s custody,

including but not limited to people formerly and currently incarcerated in the transgender housing unit; [local] service providers that address transgender, gender non-conforming, ~~and~~ non-binary[, and intersex] individuals in custody[, which must include organizations led by transgender, gender non-conforming, non-binary people, and intersex people]; and local and national experts in issues related to transgender[, gender non-conforming, non-binary, and intersex] policy.”

- Section 1(f) and (g): The bill should state explicitly that the reports should be made public.

Thank you for your attention to these issues, and your hard work in providing policy and budgetary support to transgender, gender non-conforming, non-binary, and intersex people. Colleagues of mine from other organizations will provide other perspectives on these issues, and thank you for considering all of our recommendations. If you have further questions about my testimony, you can contact me at andy@bowenpublicaffairs.com, or 917-765-3014.

My name is Alejo Rodriguez and I was released 2 years ago from New York State Department of Corrections and Community Supervision after serving 32 years in prison. Today I am here on behalf of Exodus Transitional Community in East Harlem and we call on City Council, State Legislature and the Governor to pass the *Less Is More Bill* as the use of technical parole violations to place people back in custody is counterproductive to encouraging their successful reintegration into society. Any system that feels justified in punishing bad behavior, no matter how minor, and is reluctant to reward good behavior, no how significant, is an unjust system detached from the people and communities which they serve.

Additionally, locking people up for technical violations undermines the collective work of community based organizations whose missions are to provide reentry services and mentoring support to ensure successful reintegration into society. To keep people locked into an endless cycle of walking one tight rope after another only perpetuates further distrust of law enforcement and prevents individuals from feeling safe in seeking help when needed.

We call on the Governor, State Legislature and City Council to pass the *Less Is More Bill* to ensure the State's mission to support the successful reentry of all individuals returning from state custody.



Cristina Herrera

Testimony before the New York City Council Committee on Criminal Justice
Keith Powers, Chair
May 1st, 2019

Good afternoon, Chair Powers, and Council Members and staff of the Committee on Criminal Justice. My name is Cristina Herrera, and I am the CEO and Founder of Translatinx Network I'm here to talk about a series of introductions and resolutions around the treatment of transgender gender non conforming and non binary individuals in New York City jails.

I want to take this opportunity thank you for your advocacy for the TGNCNB community around these very sensitive issues.

As part of the Trans Equity Coalition and the Solutions Coalition we look to better the lives of Trans folks in New York City and especially to community members in the jails system.

I want to speak of the experience of TGNCNB clients at Translatinx Network and other community members. Significant work with them has been around their experiences in the NYC jail system and how important it is for these local pieces of legislation and the resolution calling the New York State Legislature to pass and the Governor to sign the Humane Alternatives to Long-Term Solitary Confinement Act is so important for the Trans community.

Our community needs mental health and substance abuse treatment in the jail system. As we have seen in research our peer struggle with multiples health issues.

As a transgender New Yorker and a community organizer who has been working with the TGNCNB community for the last 20 years, I have seen the many challenges that my community struggles with. One of the primary ones being mental health issues. There has been dozens of clients that I have worked with that have gone through the NYC jails and had experienced being ignored when they ask for mental health services.

In my work I have observed members at Translatinx Network who were sent to NYC jails and housed with peers regarding their sex assigned at birth instead of their gender identity and sometimes put in isolation. This is dangerous. Physically and mentally dangerous.

Translatinx Network supports the legislations being introduced today.

Thank you Chair Powers, Council Members and committee staff. I'm happy to answer any questions you have, and you can contact me at [provide contact info if you want to.]

Betsey Lindor

The less is more bill is an excellent opportunity that the city council, legislature and the Governor should be passed. The reason why the bill should be passed and be able to have compassion for people who are making chances in their lives for the better and not have deal with unnecessary technical violations When it comes to Rikers Island it needs to be closed because we all know that it's a place that has a bad reputation for everyone who was formally incarcerated.

Cecilia Gentili. Transgender Equity Consulting
Testimony before the New York City Council Committee on Criminal Justice
Keith Powers, Chair
May 1st, 2019

Good afternoon, Chair Powers, and Council Members and staff of the Committee on Criminal Justice. My name is Cecilia Gentili and I'm here to talk about a series of introductions and resolutions around the treatment of transgender gender non conforming and non binary individuals in New York City jails.

I want to take this opportunity thank you for your advocacy for the TGNCNB community around these very sensitive issues.

As part of the Trans Equity Coalition we look to better the lives of Trans folks in New York City and especially to community members in the jails system.

I am a transgender woman who was briefly detained at Rikers Island where I was housed with the male population. As a person with substance abuse issues at the time I was dealing with a terrible addiction to heroin. Once sent to Rikers I was not provided with any medication to help with my situation. My stay in there was not only terrible for the kind of harassment I experienced from the rest of the male identified individuals I had to live with but for a life threatening withdraw episode that lasted 5 days.

Needles to say I was not provided with any mental health support to help me adapt to such socking reality.

I believe making these changes in term of treatment available for TGNCNB individuals as well as revising the housing regulations and creating a task force to address polices related to the treatment of transgender, gender non-conforming, and non-binary individuals in the department of correction would make our stances in there more bearable and create an idea of recovery and mental health maintance to be kept after release.

After a short time in Rikers I was handled to ICE, who put me in deportation procedures. While waiting I was put in isolation. I do know how hard it is to live in this situation and I urge the New York State Legislature to pass and the Governor to sign the Humane Alternatives to Long-Term Solitary Confinement Act and I commend the Criminal Justice Committee for asking for these measurements to be taken.

Thank you Chair Powers, Council Members and committee staff. I'm happy to answer any questions you have, and you can contact me at Cecilia@transequityconsulting.com or 9173610065

To whom it may concern,

I am addressing this letter to you into regards why I am as a person feel that Rikers Island should be closed down:

1. Rikers Island is overcrowded a lot of people that's in Rikers Island has mental problems one form or another maybe drugs or some form of drugs or alcohol or broken homes also they do not have the proper counseling over there or mental health people over there to help them in their transition back out to the street
2. There are a lot of fights and things that goes on there. A lot of people that get hurt there just waiting to be transported back and forth to court; they have to get up at approximately 4'oclock in the morning or maybe earlier just to get transported to court; if they do not get to court in time, the case is put off until another date also when families come over there to visit it is very very hard for the family member to be able to see their loved ones because they have to travel very very far. If they had a correction facility or a jail in each borough it will make it a little bit easier for them to get to court and have visits.
3. There are four borough based jails already existing in the boroughs that transport people back and forth to court, they can be expanded to include those on Rikers Island. Rikers is overcrowded there are people waiting to go to court who cannot pay their bail because bail is too high.

Best,

Michael Verdel



Stanislao A. Germán, Executive Director
Carolyn P. Wilson, Director

Testimony of

Jen Doman

Supervising Forensic Social Worker

New York County Defender Services

Before the

Committee on Criminal Justice

Oversight Hearing: The Experience of Transgender and

Gender Non-Conforming Individuals

in New York City jails

May 1, 2019

My name is Jen Doman and I am the Supervising Forensic Social Worker at New York County Defender Services (NYCDS). We are a public defense office that represents more than 20,000 New Yorkers in Manhattan's criminal and Supreme Courts every year. Our team always strives to provide the "greatest good" for our clients. The greatest good may begin with our client being released without cash bail but may also include finding our client a bed in a residential program, reuniting a family, and of course skillfully and successfully exercising a client's constitutional right to challenge the prosecution at trial.

Thank you for the opportunity to testify today about the experiences of our incarcerated transgender and gender non-conforming (GNC) clients. As the Social Work Supervisor at NYCDS, I have personally represented and supervised the representation of dozens of transgender/GNC incarcerated clients. I urge you to pass Intros. 1513, 1514 and 1530 before this committee today, along with the two resolutions, 143 and 829, in support of statewide reform.

While I have seen some improvement in the treatment of our transgender and GNC clients over the past few years, there remains much that the City can improve in order to ensure that our

clients' rights are protected. First of all, the Council and the City should improve efforts to divert trans and GNC clients from the criminal legal system altogether and in particular, keeping them out of Department of Correction facilities. As the Council is aware, trans and GNC people are at a greater risk of violence while incarcerated. A California study found that transgender people were 13 times more likely to be sexually assaulted than non-transgender people in prison.¹ Our trans and GNC clients report to us that they continue to face harassment, mistreatment, violence and abuse while confined in NYC DOC facilities. However, we have seen improvements over the past year now that Executive Order 16 is in effect and DOC is allowing our clients to choose where they are housed based on their gender identity. While DOC still has a long way to go in terms of protecting the rights of our trans and GNC clients, this is an important step in the right direction.

One major problem that our clients continue to experience is a delay in receiving medically-necessary hormone therapy treatment, often for weeks after they are arrested and taken into custody. Trans people who are undergoing hormone therapy treatments need to take for the rest of their lives to maintain the feminizing effects of estrogen or the masculinizing effects of testosterone.² When our trans women clients suffer a delay in their treatments, they experience substantial physical changes, such as loss of breast tissue, growth of facial hair, or other changes that negatively impact their mental health and make an already traumatic situation – incarceration – much more traumatic.

The courts have made clear that people in jail or prison who are already undergoing hormone therapy for gender dysphoria cannot be abruptly taken off such treatment unless there is a clear medical reason to do so.³ Riverside Correctional Facility in Suffolk County, New York, recently was found by a jury to have violated a trans woman's constitutional rights by denying her physician-prescribed hormone treatment therapy, ordering significant money damages for her pain and suffering.⁴

While DOC generally provides our clients with their treatment eventually after significant advocacy by NYCDS social workers or attorneys, our clients suffer pain and humiliation while they experience body changes while they await their medication. It is critical that the Council work with DOC to ensure that trans people in DOC facilities receive their hormone treatment in a timely manner after they report the need for their medications at intake.

¹ Lambda Legal, "Transgender Incarcerated People in Crisis," available at <https://www.lambdalegal.org/know-your-rights/article/trans-incarcerated-people>.

² National Health Services, A guide to hormone therapy for trans people (2007), available at <http://www.teni.ie/attachments/9ea50d6e-1148-4c26-be0d-9def980047db.PDF>

³ See, e.g., *De'Lonta v. Angelone*, 330 F.3d 630, 635 (4th Cir. 2003); *Wolfe v. Horn*, 130 F. Supp. 2d 648, *Phillips v. Michigan Department of Corrections*, 731 F.Supp. 792, 799 (W.D. Mich. 1990).

⁴ Melissa Gira Grant, *In 'Amazing' Verdict, Jury Awards Transgender Woman Punitive Damages Against Suffolk County Jail*, *The Appeal*, Dec. 7, 2018, available at <https://theappeal.org/in-amazing-verdict-jury-awards-transgender-woman-punitive-damages-against-suffolk-county-jail/>.

Int. 1513 & 1514 – SUPPORT

New York County Defender Services supports Intros No 1513 and 1514, which would require all department facilities housing transgender, gender non-conforming, non-binary, and intersex individuals to have access to comprehensive mental health treatment (Int. 1513) and comprehensive substance abuse treatment (Int. 1514).

NYCDS believes strongly that people with mental health needs or substance use disorders should not be imprisoned in DOC jails, where they necessarily fail to receive the support and services they need to overcome these underlying issues. However, until that goal becomes a reality, it is imperative that trans and gender non-conforming people should have meaningful and substantive access to comprehensive mental health treatment and substance use disorder treatments.

Int. 1530 – SUPPORT

NYCDS supports Int. 1530, which would require DOC to report on the appeals process for transgender and intersex housing decisions. This measure will provide much-needed transparency and accountability into the appeals process.

Int. 1532 & 1535 – NO POSITION

Reso. 143 – SUPPORT

NYCDS strongly supports this resolution calling on the New York State Legislature to pass and the Governor to sign the Humane Alternatives to Long-Term Solitary Confinement Act. We have long supported this critical piece of legislation that would end the torture of solitary confinement and make New York a leader in terms of humane treatment of people in jails and prison.

Reso. 829 – SUPPORT

NYCDS strongly supports this resolution calling upon the New York State Legislature to pass, and the Governor to sign, S.1343B/A.5493 – the “Less is More Act” -- which would reform revocation, presumptive release, parole, conditional release, and post-release supervision.

New York sends more people on parole to jail for technical violations like missing an appointment with a parole officer, being late for curfew, or testing positive for alcohol than any state in the country except Illinois. Recent studies show that our existing policy does not make

our communities safer.⁵ It also magnifies existing racial disparities: Black men in New York City, for example, are jailed for technical parole violations at more than 12 times the rate of white people. The experiences of other jurisdictions now show that communities are in fact safer when periods of community supervision are more narrowly limited, with the benefit of reducing costs and making the criminal legal system more equitable.

The Less is More: Community Supervision Revocation Reform Act, S. 1343B/A.5493, would help the City to achieve its goal of closing Rikers Island by reducing the local jail population and ensuring that people on community supervision are treated more fairly and humanely. We strongly urge you to support this resolution.

Questions? Please contact Andrea Nieves, NYCDS Senior Policy Attorney, at anieves@nycds.org.

⁵ See, e.g., Michael P. Jacobson, Vincent Schiraldi, Reagan Daly, and Emily Hotez, *Less Is More: How Reducing Probation Populations Can Improve Outcomes* (Harvard Kennedy School, Aug. 2017), available at https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/less_is_more_final.pdf.

Nancy Sicardo, Katal member and Manhattan resident, said: "I've been incarcerated on Rikers and in state prisons, and I've seen enough of this system to know I don't trust it and it must be completely reformed. Rikers is an unjust facility that strips people-- people of color-- of their humanity. Why do we have such a place in our city when it's supposed to be progressive and fair? We need to close Rikers, and create a system that IS fair and brings safety and justice to all of our communities. A system that treats other Nancy's and young girls with the respect and dignity we deserve."



**New York City Council
Committee on Criminal Justice**

**Oversight Hearing:
The Department of Correction Grievance Process**

**Hearing on Proposed Legislation:
Int. No.1513, No. 1514, No. 1530, No. 1532 & No. 1535
Res. No. 143 & No. 829**

May 1, 2019

Testimony of The Legal Aid Society Prisoners' Rights Project

Presented by:

Kayla Simpson
Prisoners' Rights Project
The Legal Aid Society
199 Water Street
New York, NY 10038
212-577-3530

Testimony Before New York City Council
May 1, 2019

CHAIRMAN POWERS, MEMBERS AND STAFF OF THE COMMITTEE ON CRIMINAL JUSTICE:

My name is Kayla Simpson, and I am a Staff Attorney at The Legal Aid Society's Prisoners' Rights Project.

After years of pressure from City Council, the Board of Correction, the Human Rights Commission, and the advocate community, the Department of Correction has made substantial progress in housing people in custody according to gender identity. The THU is open, it is located in the women's jail, and the women in the THU have access to women's programming and property.

But there is more critical work to be done, and that is why we support the five bills under consideration today relating to the treatment of transgender and gender nonconforming people in City jails. We have submitted written comments to strengthen the bills and further their important goals.

Our testimony today focuses not on experiences within the THU, which we will leave to other advocates, but on an even more threshold problem: how DOC decides where to house our trans and gender nonconforming clients. DOC claims to house people according to gender identity and that they give people agency in deciding where they will be housed—the lynchpins of gender appropriate housing—and that they honor those requests unless there is a very good reason not to do so. In fact, DOC says that the majority of women housed in men's facilities want to be there.

Unfortunately, these claims do not reflect the reality experienced by our clients. We continue to hear from trans women who want to be in the THU, or have been removed after some "incident," often seemingly minor. Instead of being housed in RMSC, they languish in men's jails, where not surprisingly they tell us they are subject to often continual harassment and abuse. ~~We get call after call from trans women who want to be in the THU or in General Population at Rose M. Singer Center, but have been denied admission.~~

DOC's criteria about whether to house someone consistent with gender identity is not clear to the advocate community, nor is it clear to our clients. DOC has yet to produce written policies and procedures about these considerations, despite claiming for nearly a year that the policy would soon be finalized. We will allow our fellow advocates to address the complexity of assessing gender identity, but we want to raise concerns about how DOC assesses safety considerations.

The primary reason that DOC gives for denying our clients gender-consistent housing is a claim of dangerousness. But how does DOC assess this factor? We do not know if the Department takes into consideration how recent the concerning behavior was, or the fact that many trans people are often forced to defend themselves in City jails because of transphobic attacks. And though we certainly support the PREA Standards requiring screening for risk of victimizing or abusing other persons in custody, we are concerned that PREA is too often used as a sword to deny housing based on gender identity. As a security expert recently told us, there is no reason that a person cannot be housed consistent with their gender identity unless they present a clear

Testimony Before New York City Council
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risk to the safety of persons of the same gender identity—i.e. gender-based violence. When cisgender women have behavioral issues or act violently, the Department doesn't move them to men's facilities. It is unacceptable to treat trans women differently. That concern drives our suggestions on Int. 1532.

Finally, we want to express support of the two resolutions before the Committee today—Legal Aid staff was in Albany yesterday encouraging legislators to pass the HALT Solitary Confinement Act. We also particularly appreciate the focus on Medication Assisted Treatment in Int. 1514. MAT is the standard of care for opiate addiction, and it should be available to every person for whom it is medically appropriate—regardless of gender identity, and to every person in every correctional facility in the country. We strongly support the Council's leadership on this issue.

I am happy to answer any questions which the Committee may have.



TESTIMONY OF:

Kelsey De Avila, LMSW
BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council Committee on Criminal Justice

**Oversight Hearing on the Experience of Transgender and Gender Non-Conforming
Individuals in New York City Jails**

And

**Intro 1513-2019, Intro 1514-2019, Intro 1530-2019, Intro 1532-2019, Intro 1535-2019,
Res. 0143-2018, Res. 0829-2019**

May 1, 2019

My name is Kelsey De Avila and I am the Project Director of Jail Services at Brooklyn Defender Services. BDS provides comprehensive public defense services to nearly 30,000 people each year, thousands of whom are detained or incarcerated in the City jail system either while fighting their cases or upon conviction of a misdemeanor and a sentence of one year or less. Thank you for the opportunity to address the Council on an issue of profound importance. Our testimony below is guided by the stories of our transgender clients, with a heavy focus on safe housing for transgender individuals and the need for transparency to ensure safety and accountability in our city jails.

Although our testimony focuses primarily on transgender women, the Council must address and hold the Department accountable for safely housing and providing services for all transgender, gender non-conforming, non-binary and intersex (TGNCI) people incarcerated in our city jails. Far too often we hear harrowing stories from our incarcerated clients ranging from the Department of Correction's ("DOC" or "Department") misuse of gender pronouns, lack of information about housing alternatives for transgender people, to inhumane conditions where people experience physical and sexual abuse.

Last week, the NYC Board of Correction (“BOC” or “Board”) held a dedicated hearing on the Elimination of Sexual Abuse and Sexual Harassment Minimum Standards. During that hearing, the Department provided Board Members with inaccurate descriptions of our clients’ experiences. The City Council, and the Board, deserves more. We share our clients’ experiences in order to educate the Council. In turn, we ask that the Council hold the Department responsible and in order to do so, this Council must enhance accountability, clarity, and enforcement as it relates to transgender and gender non-conforming individuals in our city jails.

DOC Staff Discouraging Programs

Despite the Board’s mandate and the Department’s policies, people in DOC facilities face often-insurmountable hurdles accessing information and services targeted toward the transgender community. All too often, the very DOC staff responsible for providing these services are the ones who hinder their effectiveness. This problem is particularly pervasive when our clients seek access about specialty housing units including the Transgender Housing Unit (“THU”).

Ms. A

Like all other people entering DOC custody, Ms. A, a 25-year-old transgender woman, answered extensive, confidential, and sensitive questions during the intake process. Although it presented an emotional burden, Ms. A shared her gender identity, history of sexual abuse, and extensive personal trauma on the PREA intake form. After completing the process, Ms. A expected that the information she provided would be used to provide services and determine the most appropriate housing. However, neither the intake officer nor PREA staff followed up with Ms. A about the housing options or provided information about the THU. When DOC placed Ms. A in general population in a male facility, despite the fact that she is a transgender woman, she faced relentless harassment from incarcerated males and DOC staff. Shortly thereafter, without explanation, Ms. A was moved to the New Admission House, in a male facility, where she continued to be the target of harassment. In that house, Ms. A encountered a constant flow of new people coming into the unit, making the already traumatic experience even more distressing with Ms. A in a position of constantly navigating people’s preconceived notions and her safety.

In the New Admission House she met four other transgender women. They informed Ms. A of the THU at the women’s facility and other options beyond her current house. After considering her options, Ms. A requested an application for the THU. Not long after she expressed interest, she met with a PREA Compliance Manager. When Ms. A asked if the THU would be a better experience, the Compliance Manager responded, “No, it will be worse.”

Our office has grave concerns with how DOC staff, charged with providing accurate information so people in custody can make informed decisions, dissuade individuals from even filling out the THU application. Ms. A took the official’s word and decided to stay in the male New Admission House. Shortly after, Ms. A was physically assaulted in the bathroom where she sustained multiple serious injuries.

Situations like the one Ms. A was in should not exist, but they do with regularity. It has been our overwhelming experience that DOC staff regularly fail to inform incarcerated individuals about

the existence of the THU and frequently ignore requests for information or application forms from incarcerated individuals who know that the THU exists. When people learn of the THU through word-of-mouth, Department of Correction staff discourages individuals from even attempting to apply. These interactions are not only ethically problematic; they put lives in serious danger.

Lack of Available Information about THU Criteria and Eligibility

It is important for directly impacted people and the advocacy community that supports them to understand DOC's eligibility criteria for placing someone in THU. Incarcerated individuals often do not receive any response to their requests for placement in THU, or are provided with informal verbal decisions from DOC staff without explanation as to the basis of the decisions. In the cases when DOC does issue written decisions, they rarely issue within the timeframe prescribed by Directive 4498, sometimes providing decisions months after the incarcerated individual first requested to be placed in the THU.

DOC has an informal practice of reviewing THU placement requests in a manner that is inconsistent with its own directive. Though an Evaluation Committee and Advisory Committee are supposedly in place to decide an individual's placement in THU, Assistant Commissioner for Sexual Abuse and Harassment Prevention Faye Yelardy is primarily responsible for making THU placement determinations and has stated that she keeps no written documentation of her reasoning for determining placement.¹ When a client requests THU through our office, BDS contacts Assistant Commissioner Yelardy directly requesting staff to follow up with the individual for THU placement.

Ms. B

Although Ms. B identified herself as a transgender woman, she wasn't immediately placed into THU upon admission into DOC custody because the Department claimed they needed to conduct an assessment before Ms. B could be moved into the THU. She was subjected to physical abuse from incarcerated men in a male housing unit until she was ultimately accepted and transferred to the THU at MDC. Although the THU at MDC did not allow her the same access to programming that she would have had in general population, Ms. B felt safer in THU. Not long after she was in THU, she was sentenced to jail on her criminal case. When she returned to her housing unit from court, she was ordered to pack up her things because she would be moving, but with no explanation. She was briefly able to contact our Jail Services team to say she was moving, but she did not know where she was being transferred or why. She pleaded with the THU staff to let her stay, but to no avail.

Our office met with Ms. B the following morning at EMTC, the sentenced male facility. She hadn't slept; she couldn't stop crying and didn't know what she did to deserve the transfer. Our office reached out to Assistant Commissioner Yelardy asking for an explanation for the transfer and requesting that DOC immediately move Ms. B back to THU. Assistant Commissioner

¹ Assistant Commissioner of Sexual Abuse and Harassment Prevention Faye Yelardy made these comments during a meeting with advocates and Board of Correction in May 2017 at the Bulova Building in Queens.

Yelardy responded to our request days later and said that THU does not accept women who are sentenced. The purported policy prohibiting sentenced transgender women from accessing the THU was not written anywhere. BDS and other defender organizations are aware of sentenced women who are housed in THU. However, the Department indicated that Ms. B's "sentenced" status was the sole reason she was taken out of a unit where she was doing exceptionally well and moved to a male facility where she was harassed and later physically assaulted. Nowhere in the DOC Transgender Housing Unit Directive or the Board of Correction Minimum Standards does it prohibit sentenced individuals from accessing the Transgender Housing Unit, yet this was the only rational DOC provided in Ms. B's case.

It is our understanding that the THU at the women's jail is accepting sentenced women. Contrary to its stated policy and Ms. B's case, the DOC practice of allowing sentenced women in THU in most cases is appropriate. We need to ensure that arbitrary decision making like the one in Ms. B's case does not repeat itself. There needs to be meaningful oversight and transparency in how these decisions are made.

Ms. C

Ms. C is a young woman who was sent to a male facility on Rikers Island. She requested THU during intake, not because she was informed by DOC staff but because she was made aware of the unit through formerly incarcerated individuals prior to her arrest. Her request for THU went unanswered for approximately three months before our office got involved.

During a meeting with Ms. C at OBCC, a male facility, she had remnants of a bruised eye and cut lip. She had been in multiple fights defending herself from transphobic men after learning a transgender woman would be sleeping near them in the same house. They physically and sexually harassed her, tried pulling down her pants, all while DOC officers watched and misgendered her.

Our office advocated for an immediate transfer and reached out to Assistant Commissioner Yelardy for an explanation why DOC delayed providing Ms. C with a decision for her THU request. DOC responded that Ms. C was denied the THU due to her "behavior" while in custody. Nonetheless, DOC did not provide specifics or explain the actual basis for denying Ms. C. Worse, DOC never provided the explanation to Ms. C, only to our office. Although our office delivered the message to Ms. C, DOC demonstrated a total disregard for her health and safety. Had DOC, and the PREA staff, responded to Ms. C's initial application to the THU, she would not have been subjected to a male facility for the length of time she experienced. She would not have been forced to physically defend herself against adult men who were beating and harassing her daily. Had DOC asked the initial questions during intake and provided Ms. C with the appropriate information on housing options, Ms. C likely would never have been subjected to the horrendous abuse she experienced.

We advocated for Ms. C to appeal the decision. We also advocated with DOC in an effort to educate the Department that the allegedly problematic "behavior" used as grounds for denial was the result of DOC's actions. Ms. C would never have been forced to defend herself if DOC had adjudicated her application promptly rather than housing her in a male facility for a prolonged

period of time. Our pleas went unanswered, and no PREA staff member ever met Ms. C. The trauma became too much for Ms. C to endure. She decided to take a plea on her criminal case specifically knowing that by doing so, she would be given time served and released from DOC custody. DOC's inactions and inability to comply with their own policies and the Board's minimum standards dictated the outcome of Ms. C's criminal case.

Ms. D

Ms. D is a transgender woman who was placed in a male facility. DOC claimed that she was only eligible to transfer to the THU at MDC after she completely detoxed. Though she was accepted to the THU and expected to move after detox, DOC did not provide adequate justification for why she had to endure additional days in a male facility rather than continuing her treatment in the THU or Rose M. Singer Center, the women's facility on Rikers Island. Due to her history of abuse, our client suffered severe PTSD and verbal harassment while she awaited her transfer to the THU. DOC did not explain why Corrections and medical staff were unable to coordinate her treatment in a safer location where our client did not have to be housed with other incarcerated males.²

We applaud the Department's decision to move the THU to the women's facility on Rikers Island, but it's unclear to directly impacted individuals and advocates how accessing treatment can differ, if at all, now that the THU has been relocated.³ We urge the City Council to ensure treatment is not denied or that people are not forced to choose between their physical and medical safety. Treatment should never be barred simply based on location or be contingent on constant misgendering.

Housing Based on Gender Identity

The Department must address the need for both gender identity and safety to exist in tandem. We cannot, and should not, separate these critical needs when assessing the dynamics and added risks for people who are housed in facilities inconsistent with their gender identity. We applaud the City and the Department for keeping the THU open and for moving the unit to the women's jail on Rikers Island. We believe this to be the most appropriate decision on behalf of our incarcerated transgender women clients.

Ms. E

Ms. E is a transgender woman, and DOC records correctly reflect her sex as Female. Ms. E suffers from mental health issues and substance use issues, and while in the THU at the Rose M. Singer Center, she was doing fairly well and participating in programming.

² To the extent that methadone maintenance is not available in the THU, this presents potential violations of our clients' rights as they may be forced to decide between medically-necessary treatment (methadone maintenance) and safety and services offered in the THU. Further, even if DOC does not provide methadone maintenance in the THU, Ms. D should have been offered those services in a female facility – specifically RMSC, where it is already available to other incarcerated women – rather than being transferred to a male facility.

³ The NYC Department of Correction moved the Transgender Housing Unit from Manhattan Detention Complex to the Rose M. Singer Center in the summer of 2018.

Despite doing well, Ms. E had a physical altercation with another woman in her unit and, understandably, the two women were separated from each other. Unfortunately, Ms. E was not just moved out of THU, but moved to a male facility with no written notice, no explanation, and no rationale for why she was not placed in a non-THU unit within RMSC.⁴ The Department moved our client into a protective custody unit within a male facility, where she was the target of endless harassment, physical and sexual threats and constant misgendering by both incarcerated males and DOC staff.

During searches by the Special Search Team, she is forced to strip search in front of male officers, despite repeatedly identifying herself as a woman and despite requests for a female officer to conduct the search.

We respect the need for the two women to be separated, but Ms. E should have been placed in another housing unit within RMSC before she was moved to a male facility. It's essential that additional THUs for women are created in order to provide housing flexibility for the Department. Additionally, transgender women should be afforded the same right as cisgender women to be housed in general population within the women's facility.

The Department's actions to move Ms. E to a male facility for "behavior" is a transgender specific punishment, one that we would never – nor should be – imposed on cisgender women.

Intro 1513

Our office supports Intro. 1513, which would amend the Administrative Code of the City of New York, in relation to mental health treatment for transgender, gender nonconforming, non-binary, and intersex individuals, **and asks for the City to go further.** Based on the testimonies of our clients, several incarcerated TGNCI hesitate to access mental health treatment services in our jails due to clinician's lack of understanding or expertise in working with transgender, gender non-conforming, non-binary and intersex people. Everyone in our City jails should be able to access competent, affirming health and mental health. Correctional Health Services must employ clinicians with training, expertise, and experience in working with transgender, gender non-conforming, non-binary and intersex folks, and who can be sensitive and understand the range of specific needs and experiences.

Intro 1514

Our office supports Intro. 1514, which would require access to substance abuse treatment for transgender, gender non-conforming, non-binary, and intersex individuals. As stated earlier in our testimony, we support equal access to all treatment services for all transgender people in our jails. Transgender people should, with their consent, be housed in facilities consistent with their gender identity and should not be forced to choose between safer housing and specialty treatment, including substance use treatment. The Department must do everything in their ability to ensure this is priority at time of intake. This will greatly counter potential harm for those needing to access services in facilities inconsistent with their gender identity.

⁴ We understand there is only one women's facility in DOC but Ms. E's safety would be equally satisfied with a different women's facility if that's ever an option.

Intro 1530

Our office supports Intro. 1530, which would require the DOC to report on the appeals process for the THU. We also request that the Council require the Department to report these additional categories of information: the number of applications denied and DOC's reasoning for the denial; length of time between the date person applied for the THU to the date person received a decision to their application; additionally, length of time between the date person appealed DOC's THU decision to the date person received a response to their appeal. These data points will better equip the City, the Board, directly impacted people and advocates to effectively advocate for transgender persons in DOC custody.

Intro 1532

Our office cannot support Intro 1532 as it is currently written. We do support requiring the DOC to create a comprehensive appeals process for transgender, gender non-conforming, intersex, and non-binary individuals and requiring the BOC to establish an independent advisory committee to inform the process, all of which is necessary and willfully disregarded by the Department. Unfortunately, our office has deep concerns over the screening criteria, and we would appreciate the opportunity to work with the Council to ensure necessary changes are made to prevent the profiling of immigrants and to better assess safety concerns. We look forward to working together to pass this essential legislation on behalf of all our TGNCI clients.

Intro 1535

Our office supports Intro 1535 which would convene a taskforce related to the treatment of TGNCI people in DOC custody, but with reservations. We feel strongly that formerly and currently incarcerated people should be appropriately compensated for their time and expertise on this 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 these individuals' knowledge and experience and compensate them for using their time to build a humane alternative. The bill is well intentioned, and the benefits of having a yearly review will not only confirm the hundreds of stories already told, but will hopefully help expand the Council's understanding of the harsh treatment this City imposes on transgender people in our City jails.

We urge the Council to expand the language to include formerly and currently incarcerated people who identify as transgender, and not just those who have been housed in the THU. Many transgender women are denied access to the THU, but their experience in DOC custody are equally important to inform the process of improving the experience for transgender people. Additionally, people who do not seek admission to THU for various reasons also need to be heard and their concerns taken seriously. Lastly, the Council should work closely with the Board to ensure that the Board has the staff and resources to thoughtfully convene such a task force. If the Board is unable to allocate the resources, the Council should coordinate the task force under their own charge.

Res. 0143: Humane Alternatives to Long-Term Solitary Confinement (HALT) Act

Our office supports Res. 0143 calling on the New York State Legislature to pass and the Governor to sign the HALT Act, and so must the Committee. Solitary confinement, or by any

other name, has devastating psychological and physical implications for people who experience it firsthand. Public defenders and social work staff have a unique perspective on solitary confinement, as we see our clients in isolation decompensate in successive meetings and court appearances, losing the ability to participate in their own defense. At the very least, the extreme anguish only increases the pressure to plead guilty that is inherent to pre-trial detention, regardless of guilt or innocence.

Corrections officials across the country are recognizing what incarcerated people and their families have said for decades: Solitary confinement does not make us safer.⁵ It does not address the root causes of any problematic behavior and often exacerbates them, particularly for those with mental health issues. Moreover, because it is most often used for minor, non-violent infractions, time in solitary confinement can create violent behaviors where none previously existed. Crucially, reductions in solitary elsewhere have a direct impact on reducing violence. For example, Mississippi, working with the National Institute of Corrections, reduced its solitary population by more than 75%, resulting in a 50% reduction in prison violence.⁶ The President of the correction officers' union chapter in Huntsville, Texas told the New York Times that solitary confinement is ineffective, saying, "We really need to focus a lot more on behavior modification and giving officers more tools to manage these prison populations. When you take everything away from prisoners, you have nothing to manage them with. And they can become very dangerous when they have nothing to lose."⁷ Certainly, there are individuals who might need to be separated for a time, but that does not require them to be tortured, and that separation must have a reasonable expiration.

The HALT Solitary Confinement Act would address the racially discriminatory disciplinary system documented by the New York Times, end the torture of long-term solitary confinement beyond 15 days for all people, and create more humane and effective alternatives. HALT would require that any person separated from the general prison population for more than 15 consecutive days be placed in an alternative secure rehabilitative and therapeutic unit. HALT also restricts the criteria that can result in isolation, bars vulnerable populations from being placed in isolation for any period, enhances staff training, and provides for procedural protections and outside oversight. New York has the opportunity to become a model for humane and effective change, while making our prisons, jails, and communities safer. For all of these reasons, **Brooklyn Defender Services urges you to support Resolution 0143 and support the HALT Solitary Confinement Act.**

Res. 0829: Reform revocation presumptive release, parole, conditional release, and post-release supervision (Less is More Act, S.1343B/A.5493)

We thank City Council for this resolution; the Less is More Act would help reduce unnecessary incarceration and begin to address the revolving door of incarceration. Though the New York City jail population declined over the years, one population has increased: people held for technical parole violations. From 2014 to June of 2018, there was a 26% increase of the number

⁵ E.g., Rick Raemisch, My Night in Solitary, N.Y. TIMES, Feb. 20, 2014

⁶ U.S. Senator Dick Durbin, Durbin Statement on Federal Bureau of Prisons Assessment of Its Solitary Confinement Practices (2013).

⁷ Jacey Fortin, Report Compares Texas' Solitary Confinement Policies To Torture, N.Y. TIMES, April 26, 2017.

of people incarcerated on parole violations in New York City jails.⁸ Individuals on parole must comply with supervisory requirements such as reporting to a parole officer, having unannounced inspections of their home or place of employment, curfews, no encounters with police, and refraining from contact with people with criminal records, etc. Failure to comply with any of the conditions can result in re-incarceration, even for missing a visit or possessing low levels of marijuana (an offense that results in a summons for most and is on its way to being legalized).

We support the Less is More Act; however, we hope that NYS Legislature would consider removing a provision that excludes people who have been given a maximum term of life imprisonment from receiving earned time credits. In our experience, those who will be most impacted by this carve-out are elders who have had numerous demoralizing encounters with the Parole Board before being released. As we work to pass other parole justice legislation such as Fair and Timely Parole (S487/A4346) and Elder Parole (S2144/A4319), both bills would create mechanisms for people 55 years and older (many of which have a maximum sentence of life imprisonment) to appear before the parole board, we want to make sure that we do not unintentional hinder complete reintegration for certain groups of people.

Conclusion

The Department must account for the increased vulnerability of transgender people in our penal system. The Department's decision to move the Transgender Housing Unit to the Rose M. Singer Center, the sole women's facility on Rikers Island, earlier this year is a positive step. Nonetheless, implementation of this change presents serious concerns. It is vital that the Department recognizes transgender women as women – nothing less. All incarcerated women, including transgender women, should be held in a women's facility, regardless of their disciplinary history or treatment needs. When our clients are housed in a facility inconsistent with their gender identity, they face daily abuses ranging from inappropriate pronoun use and offensive name calling, to physical and sexual assault.

There is more work to be done. We need to ensure that the Department's leadership is not compromised by any personal biases relating to transgender and gender non-conforming people. We need to be mindful of how the Department creates and enacts policies meant to protect and safely house transgender and gender non-conforming people.

We request that the City Council hold the Department accountable for their failure to protect transgender and gender non-conforming people in their custody. We urge the Committee to continue visiting the jails, without giving prior notice to the Department. Speak not only to people in the THU, but throughout the jails to hear firsthand the experiences of people incarcerated under DOC custody.

Thank you for your time and consideration of my comments. If you have any questions, please feel free to reach out me at 718-254-0700 ext. 208 or kdeavila@bds.org.

⁸ New York City Mayor's Office of Criminal Justice, available at: <http://www.closerikers.org/wp-content/uploads/2018/07/MOCJ-Path-to-5K.pdf>.



Elisabeth Haub School of Law

**NEW YORK CITY COUNCIL
COMMITTEE ON CRIMINAL JUSTICE
COMMITTEE ROOM
CITY HALL
NEW YORK, NEW YORK 10007
Public Hearing
MAY 1, 2019
Testimony of Michael B. Mushlin
Professor of Law**

I am a Professor of Law at Elisabeth Haub School of Law at Pace University. I submit this testimony in support of Res. No. 143, A Resolution calling on the New York State Legislature to pass and the Governor to sign the Humane Alternatives to Long-Term Solitary Confinement Act introduced by Council Member Dromm.

By way of background, I am the author of *Rights of Prisoners*,¹ a four volume treatise published by Thomson Reuters. I was a member of the American Bar Association's Task Force on the Legal Status of Prisoners. The Task Force drafted the ABA's Standards on the Treatment of Prisoners which was adopted by the House of Delegates in 2010. See American Bar Association, *Standards for Criminal Justice, Treatment of Prisoners* (2010). I am also a co-chair of the American Bar Association, Subcommittee on Implementation of the ABA Resolution on Prison Oversight,² and have served as chair of the Committee on Correction of the New York City Bar Association, I also served on the boards of the Correctional Association of New York

¹ MICHAEL B. MUSHLIN, *RIGHTS OF PRISONERS* (5th ed. 2017).

² I co-chair that committee with Prof. Michele Deitch of the University of Texas.

and the Osborne Association, (an organization that provides training and support programs for people in jail and prison or who are being diverted from imprisonment).

With colleagues, including Prof. Michele Deitch of the University of Texas, I participated in the organization of two national conferences on prison reform, the first *Prison Reform Revisited: The Unfinished Agenda* held at Pace Law School and the second, *Opening Up a Closed World: What Constitutes Effective Prison Oversight* held at the University of Texas. Both conferences drew together professionals from all segments of the criminal justice and corrections fields to discuss improvement to the operation and oversight of the American prison system. For seven years, I was staff counsel and then the Project Director of the Prisoners' Rights Project of the Legal Aid Society. I also served as staff counsel with Harlem Assertion of Rights Inc., and was the Associate Director of the Children's Rights Project of the American Civil Liberties Union.

Solitary Confinement

I first confronted conditions in solitary confinement units over four decades ago when I served as trial counsel in a federal civil rights case involving Unit 14, the solitary confinement unit at Clinton prison in upstate New York close to the Canadian border. What I saw there was deeply disturbing. Inmates were locked for 23 hours each day into small windowless cages for months and years on end. No programs or activities were provided to them. Without access to any meaningful activity, they were separated from one another spending almost all of their time entirely by themselves. During that one precious hour per day when a Unit 14 inmate could leave his cell there was only one place to go: a small space directly behind his cell called a "tiger cage." The tiger cage was a small empty space with a barren floor surrounded on all sides by high concrete walls which were not covered by a roof. An inmate could walk only a few steps in one direction before turning. If he looked up he could glimpse a bit of the sky but nothing else of the outside world.³

Working on that case I witnessed firsthand the awful consequences of subjecting human beings to solitary confinement. I will never forget looking into the eyes of those inmates struggling to maintain a foothold on reality and sanity. Afterwards, when visiting other solitary confinement units, no matter where, I see that same pained, desperate stare. I have seen it so

³ See *Frazier v. Ward*, 426 F. Supp. 1354 (N.D.N.Y. 1977).

often, and in so many different places, that I have come to recognize it instantly as the gaze of a tortured person.

In the years since the Unit 14 case I have witnessed the growth and expansion of solitary confinement in prisons, in New York and nationally, through the emergence of “supermax” confinement and the expanded use of “administrative segregation units.” I have watched what I saw in Unit 14 decades ago repeated throughout the nation as massive numbers of people—many of whom are mentally ill, young, and those deemed too dangerous or vulnerable to be placed in the general prison population even though they have not violated any prison rules—have been placed into solitary confinement. Even teenagers have been thrown into solitary. The best available estimate is that some 80,000 to 100,000 people are held in “restricted housing (however termed) in U.S. prisons ~~about 100,000 people~~.”⁴ But the truth is no one really knows how many people are held in these units. I suspect that the true number of confined souls is higher than even the highest reported figures.

Solitary units provide fertile soil for mistreatment and abuse of prisoners. As one observer put it, “[b]ecause of the absence of witnesses, solitary confinement increases the risk of acts of torture or other cruel, inhuman or degrading treatment or punishment.”⁵

In solitary confinement units across the nation, abuses occur daily.⁶ Where but in a fictionalized horror story would one learn of places where “bodies are smeared with one's own excrement; arms are mutilated; suicides attempted and some completed; objects inserted in the penis; stitches repeatedly ripped from recent surgery; a shoulder partly eaten away.”⁷

⁴ Yale Law School Liman Center & Association of State Correctional Administrators *Aiming to Reduce Time in Cell, Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reform*, 5 (November 2016) available at <https://www.law.yale.edu/system/files/area/center/liman/document/aimingtoeducetic.pdf>.

⁵ SPECIAL RAPPORTEUR OF THE HUMAN RIGHTS COUNCIL, INTERIM REPORT ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, U.N. Doc. A/66/268, 19 (Aug. 5, 2011) (by Juan E. Méndez); See also, Lena Kurki & Norval Morris, *The Purposes, Practices and Problems of Supermax Prisons*, 28 CRIME AND JUSTICE, A REVIEW OF RESEARCH 385, 385 (Michael Tonry ed., 2001); See COMM’N ON SAFETY & ABUSE IN AMERICA’S PRISONS, CONFRONTING CONFINEMENT 14 (2006) (“There is troubling evidence that the distress of living and working in this environment actually causes violence between staff and prisoner.”).

⁶ These abuses, which include subjecting inmates to degrading, humiliating and unnecessary suffering, often do not cause physical injury. Even though constitutional rights are violated by these acts, federal courts have often failed to provide relief to victims of these abuses. The reason is that the Prison Litigation Reform Act (PLRA) deprives federal courts of the ability to provide relief from degrading and even torturous behavior if there is not physical injury.

⁷ Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the S. Jud. Subcomm., 112th Cong. 3 (June 13, 2012) (Statement of Fred Cohen, LL.B., LL.M.).

Fourteen years ago, commenting on solitary confinement, I said in a *New York Times* Op-Ed that, “there is never justification for prison conditions that cause mental torture.”⁸ I went on in that Op-Ed to observe that since most inmates will someday return to our communities, “it is a mistake to think that these kinds of conditions do not directly affect us.”⁹ A conversation with a correction officer I had several years ago during a visit to Southport prison in upstate New York near Elmira drove this point home for me. Southport prison at the time of my visit housed hundreds of men, all in solitary confinement. The officer told me of his concern for law-abiding people whenever a Southport prisoner is released from solitary directly back on to the streets. He recalled the times he saw inmates, most of whom are from the New York City metropolitan areas and have been in solitary confinement for months or even years, released from the prison front gate with a suit of clothes, \$40 and a bus ticket to the Port Authority Bus Station in midtown Manhattan. Last year in an Op-Ed published in *The New York Times* my colleague Michele Deitch and I wrote that it is an “outrage” that in America solitary confinement continues to be inflicted on “thousands of prisoners . . . in some cases for years, and often for minor rule violations at great cost their mental health and potential for rehabilitation.”¹⁰

Prisons must be safe and humane and they can be without solitary confinement. Indeed, with solitary they can be neither safe nor humane. There are alternatives to solitary confinement for everyone, not just the mentally ill, pregnant women and juveniles for whom solitary confinement is especially hazardous. Because solitary is so inhumane and so unnecessary, the American Bar Association in its standards prohibit any isolation of the mentally ill or juveniles,¹¹ and even for those who must be isolated the standards absolutely prohibit “[c]onditions of extreme isolation . . . regardless of the reasons for a prisoner’s separation from the general population.”¹² The animating idea behind these standards is the one that my colleague Fred Cohen put so well in his testimony to Congress on the issue of solitary confinement several years ago:

⁸ Michael B. Mushlin, *Breeding Psychotics*, N.Y. TIMES, March 27, 2005, available at <http://query.nytimes.com/gst/fullpage.html?res=9802E6DE173FF934A15750C0A9639C8B63>.

⁹ *Id.*

¹⁰ Michele Deitch & Michael B. Mushlin, *What’s Going on in our Prisons?*, N.Y. TIMES, January 3, 2016 available at <https://www.nytimes.com/2016/01/04/opinion/whats-going-on-in-our-prisons.html>.

¹¹ ABA, CRIMINAL JUSTICE SECTION STANDARDS, STANDARDS ON TREATMENT OF PRISONERS (2010); ABA STANDARDS FOR CRIMINAL JUSTICE: TREATMENT OF PRISONERS at Standard 23-2.8 (3rd ed. 2011).

¹² *Id.* at Standard 23-3.8.

Inmates may need to be insulated from each other, and for a variety of valid reasons, but insulation (separation) and contemporary penal isolation are quite different concepts and operations. The process of insulation need not lead ineluctably to conditions of extreme social and sensory deprivation.¹³

Two years ago I was privileged to be among a group of invited experts at a national gathering to consider whether there is now a consensus among correctional administrators, advocates and academics about whether there are achievable ways of systematically reforming the use of solitary confinement. The colloquium, which was held at John Jay College of Criminal Justice in New York City, included 15 corrections agency heads¹⁴ The report of those deliberations of that gathering demonstrates that there has now emerged a strong consensus among experts in the field that “the United States can do better to both limit how it employs extreme social isolation and to ameliorate many of the most damaging results from its overuse.”¹⁵

The Halt Bill

Currently large numbers of people are held in New York State prisons and local jails in solitary confinement. Solitary confinement is torture and is condemned as such by international law when it exceeds 15 days. Yet in New York thousands of people, disproportionately people of color, remain in solitary in New York prisons and jails each day, and tens of thousands each year: 22 to 24 hours a day in a cell without any meaningful human contact or programs. People spend months, years, and decades in solitary (including upwards of 30+ years) in New York prisons. These conditions cause devastating physical, mental, and behavioral impacts.

While there have been some reductions in the use of solitary, New York still has a higher percentage of people in solitary (5.5% in Special Housing Units and another 2% or more not moved to special units but locked in their cells each day) than the national average (4.4%) and much higher than states that have significantly limited solitary (less than 1%).

The HALT Solitary Confinement Act, S. 1623/A.2500 support will end the torture of solitary confinement. With it thousands of New Yorkers will no longer be subjected to solitary

¹³ Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the S. Jud. Subcomm., 112th Cong. 3 (June 13, 2012) (Statement of Fred Cohen, LL.B., LL.M.) (emphasis in original).

¹⁴ Martin Horn & Ann Jacobs, *Report on a Colloquium to Further a National Consensus On Ending the Over-Use of Extreme Isolation in Prisons, Solitary Confinement: Ending the Over-Use of Extreme Isolation in Prison and Jail* (2016).

¹⁵ *Id.* at 1.

confinement for months, years, and decades. I believe that the time has come for the prisons and jails of New York to be free of scourge of solitary confinement. That's why I urge the City Council to overwhelmingly pass Res. No. 143 calling on the New York State Legislature to pass and the Governor to sign the Humane Alternatives to Long-Term Solitary Confinement Act.



**TESTIMONY BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON CRIMINAL JUSTICE**

May 1, 2019

Submitted by Rye Blum

Adult Nurse Practitioner at Callen-Lorde Community Health Center

Good afternoon, Chair Powers, and Council Members and staff of the Committee on Criminal Justice. I'm here to talk about a series of introductions and resolutions around the treatment of transgender, gender non-conforming, non-binary, and intersex individuals in New York City jails.

My name is Rye Blum, ANP and I am a medical provider and a transgender man who has experience as a part of and working with the communities affected by these laws. At Callen-Lorde Community Health Center where I work, we seek to provide quality health care services to New York's lesbian, gay, bisexual, and transgender communities.

In this role, I am privileged and enriched to learn about many the experiences in peoples' lives that weave the fabric of their existence. I have also learned about many experiences that my transgender, non-binary, and non-conforming patients and community members have shared about their time in NYC jails that unfortunately share a common thread of dehumanization in housing and seeking mental health treatment.

I work with teens and young adults at Callen-Lorde Community Health Center in the Adolescent Medicine program. Every single one of my transgender, non-binary, and non-conforming adolescent patients who has been incarcerated in NYC jails has been housed against their preference with inmates who have the same sex assigned at birth but different gender identities.

Their experiences too often include rape and coercion while incarcerated in NYC jails due to presenting a gender expression or identity different than the people they were housed with. I would like to share some of their stories with you today.

50 YEARS CALLEN-LORDE

One youth, a transgender female, shared with me that when she was sent to a NYC jail, she had never been sexually active before. Imagine: an adolescent, your niece or nephew, who has never shared a romantic kiss or had a sexual encounter with another body. Housed in a men's jail, her sexual debut was being raped multiple times per week in order to survive, in order to have the costly protection by one co-dwelling inmate from other inmates.

Another non-binary transgender youth shared with me that while she tried to access psychiatric care during her incarceration at Rikers Island, the psychiatrist who met with the patient consistently wrongly gendered her and actively advised that patient that discussing mental health matters related to the patient's transgender identity was outside of that provider's scope of practice. Being incarcerated, this patient had no other options. After being advised that discussing this youth's gendered existence was outside of her psychiatrist's comfort zone, this sent a clear message to the patient that this psychiatrist was not safe or qualified to provide mental health treatment for this patient. The patient was then unable to receive adequate treatment for her PTSD and alcohol use disorder while incarcerated. This adolescent's gendered self and her exploration of self is a part of her fabric, and into that fabric is also woven the experiences that have shaped her PTSD and alcohol use disorder. A person cannot heal and create their own idea of recovery without being allowed to bring their full self to the room. This healing opportunity was missed due to unequal treatment.

I believe making the changes proposed today in terms of treatment available for TGNCNB individuals, as well as revising the housing regulations and creating a task force to address policies related to the treatment of transgender, gender non-conforming, non-binary, and intersex individuals in the department of correction is necessary to offer equal treatment of transgender, gender non-conforming, non-binary, and intersex individuals in New York City jails.

Thank you, Chair Powers, Council Members and committee staff, for time and for your advocacy for the TGNCNB community around these very sensitive issues. I'm happy to answer any questions you have, and you can contact me at ryblum@callen-lorde.org.



Correctional Association of New York

Testimony of Phil Miller before the New York City Council's Criminal Justice Committee

Re: CANY's Support of HALT and Community Supervision Reform Bills

May 1, 2019

Good morning, Chair and Councilmembers:

My name is Phil Miller, and I represent the Correctional Association of New York. We are an independent, non-profit organization that was established in 1844 and is legislatively authorized to conduct oversight on all 54 of New York State's prisons.

I appreciate the opportunity to speak here today, and I thank you all for listening.

The Correctional Association of New York supports New York City Council Resolution 143, which urges the NYS legislature to pass the HALT bill (Humane Alternatives to Long-term Solitary Confinement). We also support New York City Council Resolution 829, which urges the legislature to pass a bill that reforms the various types of community supervision.

I'll speak briefly about both resolutions, starting with HALT (S1623/A2500).

On April 1st of this year, DOCCS reported that there were 2,377 people in solitary or segregated confinement cells. That number fluctuates slightly each day, and although it is lower than in years past, it still indicates that far too many people continue to experience the inhumane practice of isolated confinement.

Part of the Correctional Association's mission is to help preserve the dignity of incarcerated people, and the HALT bill would embody that mission by prohibiting vulnerable populations (e.g., people with serious mental health disorders, pregnant women, etc.) from placement in any solitary confinement at all, limiting most cases of segregated confinement to no more than 15 days, and requiring at least 4 to 6 hours of out-of-cell activity, among other things. If it is



passed by the legislature, the Correctional Association is fully committed to utilizing its oversight mandate to ensure that DOCCS correctly implements the provisions of HALT to their fullest extent.

We also applaud the City Council for passing Resolution 829, which urges the legislature to pass a community supervision reform bill (S1343A/A5493). In his Sponsor Memo for that bill, Senator Brian A. Benjamin states that in 2016 over 6,300 people were reincarcerated in NY State for technical parole violations, such as missing a curfew or not reporting a change in address quickly enough. Additionally, the NYC Mayor's Office found that from 2013 to 2018 reincarceration for technical parole violations had increased by 8%. Technical parole violations are really minor things, but reincarceration is frequently used as a penalty, even though it completely *disrupts* rehabilitation, *disrupts* reintegration, *disrupts* family relations, *disrupts* employment opportunities and *disrupts* housing, etc.

This community supervision reform bill is a small but much needed step in the right direction. It would allow a 30-day reduction in supervision periods for every 30 days completed; it would also prohibit reincarceration for technical violations; and it would even place caps on how long reincarceration can be for parole violations. Although the Correctional Association's primary focus is prison oversight, we support any positive efforts to reduce the amount of incarcerated people so that more people remain free to establish connections with their families and otherwise continue moving forward with their lives in a productive manner.

In closing, we support both the HALT and community supervision reform bills, and we really applaud the City Council for urging the legislature to pass them.

Thank you,

Correctional Association of New York



**NYCAIC #HALTsolitary CAMPAIGN
TESTIMONY FOR NYC CITY COUNCIL HEARING
IN SUPPORT OF RESOLUTION 143
Urging the NYS Legislature to Pass and the Governor to Sign
the HALT Solitary Confinement Act, S1623/A2500
May 1, 2019**

The Campaign for Alternatives to Isolated Confinement (CAIC) is a community of people who have survived solitary, family members of people incarcerated, concerned community members, advocates, health/mental health professionals, and people in the human rights, faith, and social justice communities across New York State. CAIC's #HALTsolitary campaign aims to end the torture of solitary confinement for all people through passage of the Humane Alternatives to Long-Term (HALT) Solitary Confinement Act, S.1623 (Sepúlveda) / A.2500 (Aubry).

We therefore are testifying today in support of Resolution 143, which calls upon the New York State Legislature to pass, and the Governor to sign, the HALT Solitary Confinement Act. We thank Council Member Dromm for introducing this resolution, and thank Committee Chair Powers and all Committee members for considering the resolution. We urge the City Council to adopt Resolution 143.

The HALT Solitary Confinement Act Is Needed to End Torture in NY

New York State must finally pass the Humane Alternatives to Long Term (HALT) Solitary Confinement Act, S.1623/A.2500 and thereby end the torture of solitary confinement for all people and create more humane and effective alternatives. Among other changes, HALT would: 1) end the torture of solitary for all people by imposing a limit of 15 consecutive days; 2) create more humane and effective alternatives to solitary that involve meaningful out-of-cell human contact and programs; 3) restrict the criteria that can result in solitary or alternative separation to the most egregious conduct in need of an intensive intervention; 4) ban certain groups of people from spending even one day in solitary and ending solitary confinement in protective custody units; 5) enhance procedural protections, staff capabilities, and transparency and accountability through mandatory reporting and outside oversight.

- 1) End the torture of solitary confinement for all people by imposing a limit of 15 consecutive days in solitary, and 20 days total in a 60 day period**

Solitary confinement is torture. The entire United Nations General Assembly – consisting of every nation of the world, including with support and a vote by the United States – passed the Mandela Rules, which prohibit any person from being in solitary confinement beyond 15 consecutive days. These rules follow the standards articulated by the United Nations Special

Rapporteur on Torture, who determined that any amount of time beyond 15 days in solitary for any person amounted to torture, or cruel, inhuman, or degrading treatment.

New York State should not be subjecting people in its prisons and jails to torture. People held 22-24 hours a day without any meaningful human contact or programs has long been demonstrated to cause devastating physical, psychological, and emotional harm.¹ Yet thousands of people each day in New York prisons and jails spend 22 to 24 hours a day locked in a cell the size of an elevator, alone or with one other person. They may be permitted 1-2 hours to exercise alone in a cage; they do not receive any meaningful programs or therapy, and often cannot make phone calls. The sensory deprivation, lack of normal human interaction, and extreme idleness can lead to intense suffering and severe damage. Isolated confinement fails to address, and often exacerbates, underlying causes of difficult behavior as people deteriorate psychologically, physically, and socially. In turn, solitary confinement also decreases institutional and community safety. States that have reduced solitary have seen a positive impact on safety for both incarcerated people and correction officers.

Despite the 15 day prohibition in the Mandela Rules, people sent to solitary in New York State prisons and jails regularly spend months or years there; some individuals have been in solitary confinement in New York's prisons for more than two decades (upwards of 30+ years).² New York currently places no limit on the total time a person can spend in solitary confinement. Other states have dramatically reduced the number of people in solitary including by implementing effective time limits. For example Colorado prisons – while they have not gone far enough and still have challenges – have implemented a 15-day time limit in line with the Mandela Rules, reduced the number of people in solitary from 1,500 (almost 7% of the prison population) to 18, and have seen positive outcomes, so much so that “corrections officers who had initially opposed [the changes] changed their minds after they began to see positive results.”³

New York must end the torture of solitary for all people. In addition to the 15 day limit for all people, HALT would include a total limit of 20 days in any 60 day period in order to ensure people are not just cycled in and out of solitary (ie in solitary 15 days, out for one day, in again).

¹ See, e.g., <http://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>; James Gilligan and Bandy Lee, *Report to the New York City Board of Correction*, p. 3, Sept. 5, 2013, available at: <http://solitarywatch.com/wp-content/uploads/2013/11/Gilligan-Report.-Final.pdf>; Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, *Journal of Law & Policy*, Vol. 22:325 (2006), available at: <http://law.wustl.edu/journal/22/p325grassian.pdf> (“*Psychiatric Effects of Solitary*”); Craig Haney, *Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement*, 49 *Crime & Delinq.* 124 (Jan. 2003), available at: <http://www.supermaxed.com/NewSupermaxMaterials/Haney-MentalHealthIssues.pdf>; Stuart Grassian and Terry Kupers, *The Colorado Study vs. the Reality of Supermax Confinement*, *Correctional Mental Health Report*, Vol. 13, No. 1 (May/June 2011); Sruthi Ravindran, *Twilight in the Box: The suicide statistics, squalor & recidivism haven’t ended solitary confinement. Maybe the brain studies will*, *Aeon Magazine*, Feb. 27, 2014, available at: <http://aeon.co/magazine/living-together/what-solitary-confinement-does-to-the-brain/>; Joseph Stromberg, *The Science of Solitary Confinement*, *Smithsonian Magazine*. Feb. 19, 2014, available at: <http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/#.Uwoq5RsSWaO.email>.

² See, e.g., William Blake, *Voices from Solitary: A Sentence Worse than Death*, *Solitary Watch*, Dec. 24, 2014, available at: <http://solitarywatch.com/2014/12/25/voices-from-solitary-a-sentence-worse-than-death-2/>.

³ Rick Raemisch, *Why We Ended Long-Term Solitary Confinement in Colorado*, Oct. 12, 2017, available at: <https://www.nytimes.com/2017/10/12/opinion/solitary-confinement-colorado-prison.html>.

- 2) **Create more humane and effective alternatives, by expanding the amount of out-of-cell time** guaranteed to all people who are separated to at least seven hours daily and ensuring that out-of-cell time involves **meaningful human contact and programs**

Solitary confinement is not only inhumane but also counterproductive. If people have to be separated from the general prison or jail population because they pose a serious risk of harm to the safety of others, there is no logical reason that they should be subjected to the extreme isolation of solitary confinement that will not only cause intense suffering and damage but also likely exacerbate what led the person to being separated. Instead, appropriate treatment and access to programs and recreation must be provided. Specifically, people must be given many hours of out-of-cell time per day, as well as access to meaningful programs and services aimed at addressing their underlying needs and the causes of their behaviors. What is needed is a fundamental transformation from a focus on punishment, isolation, and deprivation, to a focus on accountability, rehabilitation, and treatment.

Other states and countries have implemented program-based alternatives to solitary that have proven both more humane and more effective. For example, the Resolve to Stop the Violence Project (RSVP) in San Francisco jails immersed residents in an intensive program including most of the day out-of-cell, group discussions, classes, counseling, and meetings with victims of violence. RSVP resulted in a 25-fold reduction in violent incidents, five-fold reduction in rearrests for violent crimes, six-fold reduction in jail time, and cost savings. European countries rarely, if ever, utilize solitary confinement and instead have an intense focus on programming, connections to family and community, granting people autonomy and responsibility, creating conditions akin to life outside of incarceration, and preparation for returning home.

New York itself has had very positive examples in both prisons and jails. The Clinical Alternatives to Punitive Segregation (CAPS) unit on Rikers Island is a much more program-intensive, treatment supported, and empowerment-based alternative to solitary confinement that has large amounts of out-of-cell time, utilizes de-escalation of difficult situations, and has greatly reduced the amount of violence and self-harm. The Merle Cooper program in New York prisons – now closed purportedly due to resource constraints – also provided a successful program-intensive, empowerment-based unit that involved complete separation from the rest of the prison population but no isolation of individual people. For people deemed at high risk of recidivism, the Merle Cooper program provided group sessions, intensive programming, peer-led initiatives, increased autonomy and responsibility, most of the day out of cell, and the ability to earn unlocked cells. Even though Clinton Correctional Facility is considered one of the most violent prisons in NY, while it was open (1977 to 2013) Merle Cooper had high levels of reported safety, and near universal praise from correction officers, participants, and administrators.

- 3) **Restrict the criteria that can result in a person being placed in solitary or otherwise separated to the most egregious conduct**

The majority of sentences that result in solitary confinement in NYS are for non-violent conduct. People who engage in such conduct should never be isolated and also do not require an intensive rehabilitative and therapeutic intervention. Only those who truly pose a risk of harm to others should be separated so that resources can be focused on providing support to individuals who would actually benefit from such an intensive programmatic and therapeutic intervention.

In addition, restricting the criteria would help to limit the amount of discretion given to correction officers and other staff for imposing solitary confinement, and in turn would limit the amount of racial discrimination that infuses the process of sending people to solitary. Black people represent about 18% of all people in NYS, but nearly 50% of those incarcerated in NYS, and nearly 60% of people held in long-term solitary confinement units in NY. The *New York Times* documented in 2016 what people who have been inside have long known, solitary confinement is fueled by racism and imposed disproportionately against Black and Latinx people.⁴

- 4) **Ban certain groups of people from spending even one day in solitary confinement,** by expanding the type of protected categories of people and ensuring that the protections for those groups provide meaningful support

Countless people are in solitary confinement who are particularly vulnerable either to the effects of isolation itself or to additional abuse while in isolation. Young people, elderly people, people with disabilities, people with mental health or addiction needs, pregnant women, new mothers, and members of the LGBTQI community are subjected to solitary confinement. While solitary confinement is torture for all people, it can have particularly devastating effects on some of these categories of people, including a young person whose brain is still developing or a person with mental health needs that are exacerbated by being alone in a box.

Some people are put in solitary confinement not as punishment but presumably “for their own protection” but they are not then protected. For instance, young people or transgender women who are housed in prisons or jails for men are often put in solitary for their own protection and then instead face additional abuse while inside. The conditions in protective custody generally resemble conditions in solitary confinement, with people spending 22 to 24 hours a day alone in a cell without any meaningful human contact or programs. One’s identity - whether sex, race, sexual orientation, age, religion, gender identity or expression - is not a justification for the torture of solitary confinement. And people shouldn’t have to choose between their safety and their mental, emotional, and physical well-being.

HALT would bar people with mental health needs, elderly people, young people aged 21 and younger, pregnant women and new mothers, and people with physical disabilities from being

⁴ Michael Schwartz, Michael Winerip and Robert Gebeloff, *The Scourge of Racial Bias in New York State’s Prisons*, The New York Times, Dec. 3, 2016, available at: https://www.nytimes.com/2016/12/03/nyregion/new-york-state-prisons-inmates-racial-bias.html?_r=0.

held in solitary for any length of time, since all of these groups face particularly devastating harm in solitary.

5) Enhance **procedural protections, staff qualifications and capabilities, and transparency and accountability**

The processes resulting in solitary confinement are often arbitrary and unfair, involve under-equipped staff, and take place with little transparency or accountability. As noted above, correction officers or other staff can often write disciplinary tickets for the most minor of reasons, for false reasons, or due to racial or other bias. Jails and prisons across the state are laden with staff brutality and other abuses. As one element of that, staff are not equipped to work with people with serious needs or who engage in challenging behavior, and so brute force and disciplinary sanctions as punishment become the only ways staff have of responding.

At the next level, the hearings or administrative procedures that result in placement in solitary confinement are not conducted by judges or other supposedly non-biased neutral decision-makers, but rather by corrections staff. In New York prisons, approximately 95% of the people who are charged with the most serious rule violations that can result in solitary confinement are found guilty.

Further, what takes place to lead people to solitary confinement or what happens to people while in solitary confinement often takes place essentially secretly, cut off from the outside world. Such a situation further creates an environment in which there is little oversight and no accountability and more opportunity for abuse.

Currently it is very difficult to even know how many people are in solitary confinement in jails across the state. Similarly the state prisons do not even report the number of people in keeplock in their own cells – one form of solitary – and so again the public doesn't even know how many people are in solitary on a given day, let alone why people are in solitary, for how long people have been in solitary, how many people are subjected to solitary in a given year, the demographic breakdown of who is in solitary, etc. This type of information should be readily and easily available to all members of the public as a way to shed light on what these public institutions are doing in our name and with our taxpayer dollars.

Also, HALT would ensure that its protections would apply to anyone in solitary, regardless of how the person or their confinement is classified. Currently, for example in state prisons, there are various forms of solitary including disciplinary confinement in a Special Housing Unit (SHU), longterm keeplock, keeplock in a SHU, keeplock *in one's own cell* (rather than in SHU or a longterm keeplock unit), administrative segregation, or protective custody. The protections of HALT would apply to all of these types of confinement, which all amount to solitary and involve being isolated up to 24 hours a day without any meaningful human contact or congregate programs. Moreover, in order to avoid people being warehoused in the alternative-to-solitary units, HALT has various mechanisms for people to be released from the units, including the expiration of a disciplinary sanction, periodic reviews, and an outer limit of one year barring specified extraordinary circumstances.

Conclusion: Adopt Resolution 143 to Urge New York State to Pass HALT

The use and abuse of solitary confinement in New York State must end. New York can no longer use the inhumane and counterproductive practice of solitary confinement for the lengths and reasons that is currently being practiced. Instead New York must pass the HALT Solitary Confinement, S.1623/A.2500, this session and finally end the torture of solitary and create alternatives that are more humane and effective.

Across New York State, nationwide, and internationally there is a growing recognition⁵ of the need to severely curtail or end solitary confinement, including from President Obama,⁶ the Pope,⁷ Supreme Court Justice Kennedy (conurrence starts on p. 33),⁸ the Texas prison guards union,⁹ NJ Legislature,¹⁰ the NY Catholic Conference (endorsing HALT),¹¹ NY Bishop Sharfenberger (endorsing HALT),¹² the UN Special Rapporteur on Torture (endorsing HALT),¹³ and the NY Association of Psychiatric Rehabilitation Services (endorsing HALT)¹⁴, Rochester Democrat and Chronicle Editorial Board,¹⁵ Buffalo News Editorial Board,¹⁶ and countless others. Over 200 organizations across New York State support CAIC/HALT, including over a dozen mental health organizations around the state.¹⁷ Recent press coverage shows the urgent need for the passage of HALT, including from AMny,¹⁸ City Limits,¹⁹ and the Gothamist.²⁰

⁵<https://www.vox.com/future-perfect/2019/4/17/18305109/solitary-confinement-prison-criminal-justice-reform>

⁶https://www.washingtonpost.com/opinions/my-jail-stopped-using-solitary-confinement-it-should-be-eliminated-everywhere/2019/04/04/f06da502-5230-11e9-88a1-ed346f0ec94f_story.htmlhttps://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html.

⁷<http://solitarywatch.com/2014/10/26/pope-francis-denounces-solitary-confinement-calls-for-prison-conditions-that-respect-human-dignity/>.

⁸ https://www.supremecourt.gov/opinions/14pdf/13-1428_1a7d.pdf.

⁹ <https://www.texasobserver.org/texas-prison-guard-union-calls-curtailment-solitary-confinement-death-row/>.

¹⁰http://www.slate.com/blogs/xx_factor/2016/10/24/new_jersey_legislature_passes_bill_limiting_solitary_confinement.html.

¹¹

<http://www.nyscatholic.org/wp-content/uploads/2016/02/2016-LEGISLATIVE-AGENDA-HALT-Act-FINAL.pdf>.

¹²

<http://www.timesunion.com/tuplus-opinion/article/Albany-bishop-Solitary-confinement-needs-reform-7238837.php>.

¹³

<http://nycaic.org/wp-content/uploads/2013/02/UN-Special-Rapporteur-on-Tortures-Statement-on-Solitary-in-NY-State.pdf>.

¹⁴ <http://www.nyaprs.org/e-news-bulletins/2017/015454.cfm>.

¹⁵<https://www.democratandchronicle.com/story/opinion/editorials/2019/02/16/editorial-end-long-term-solitary-confinement-new-york/2869439002/>.

¹⁶https://buffalonews.com/2019/03/16/editorial-6/?fbclid=IwAR1RcedddsRICXNRHN0H6L5PgpS5Gpp5iqaQ-jcmX1YqAuvgyKT_IHxiLsE

¹⁷ <http://nycaic.org/campaign-members/>.

¹⁸<https://www.amny.com/opinion/columnists/mark-chiusano/solitary-confinement-mark-chiusano-amny-1.27371866>

Tompkins County passed a resolution²¹ in support of HALT similar to Resolution 143 in 2015. HALT passed the New York Assembly and there is now majority support in both the Assembly and Senate. Over 130 New York legislators also now support HALT, including 99 New York Assembly Members who voted to pass HALT in 2018 and a majority of New York Senators (HALT currently has 33 Senate cosponsors and other Senators who have committed to vote for the bill; a majority needed for passage is 32). HALT is the only bill that will end the torture of solitary for all people in New York prisons and jails. From Colorado²² to North Dakota²³ to Washington²⁴ to Chicago to Connecticut to Maine to Mississippi to North Carolina, other jurisdictions – while still having challenges and needing greater change – have dramatically reduced the use of solitary confinement in a manner far surpassing the limited changes made in New York, while other countries rarely if ever use this inhumane and counter-productive practice²⁵. Now is the moment to end this torture.

We urge the City Council to lend its voice to this effort, to say no to torture, and to call upon the state legislators and Governor to finally enact the HALT Solitary Confinement Act. Please adopt Resolution 143 to help promote the health, safety, and well-being of all of our fellow New Yorkers.

¹⁹<https://citylimits.org/2019/02/12/cityviews-crisis-at-federal-jail-highlights-ongoing-crime-of-solitary-confinement/>

²⁰ <http://gothamist.com/2019/02/21/new-yorks-state-prisons-are-brutal.php>

²¹https://www.ithaca.com/news/county-acts-on-anti-solitary-resolution/article_41e09f04-cf48-11e4-a633-cb26708db4e7.html

²² Rick Raemisch, *Why We Ended Long-Term Solitary Confinement in Colorado*, Oct. 12, 2017, available at: <https://www.nytimes.com/2017/10/12/opinion/solitary-confinement-colorado-prison.html>.

²³ Dashka Slater, *North Dakota's Norway Experiment*, Mother Jones, July/Aug. 2017, available at: <http://www.motherjones.com/crime-justice/2017/07/north-dakota-norway-prisons-experiment/>.

²⁴ *More Than Emptying Beds: A Systems Approach to Segregation Reform (Washington State)* (2016), available at: <https://www.bja.gov/publications/MorethanEmptyingBeds.pdf>

²⁵ See, e.g., <http://archive.vera.org/sites/default/files/resources/downloads/european-american-prison-report-v2.pdf>; <http://solitaryconfinement.org/uploads/DeepCustodyShalevAndEdgar.pdf>.



Testimony

Supporting Resolution 829, *Less is More: Community Supervision Revocation Reform Act* (S.1343B – Benjamin / A.5493A – Mosley)

Presented By

Ekeythia Dunston, Katal Center Member

for

NEW YORK CITY COUNCIL
COMMITTEE ON CRIMINAL JUSTICE

May 1, 2019 10:00 AM
New York City

I thoroughly support the Less Is More Community Supervision Revocation Reform Act. I am a former New York City Police Officer and a formally incarcerated woman, paroled on July 5th, 2018. It can be stressful just having a technical violation as a lingering thought, even though I have been successful while on parole.

A technical violation is noncompliance with conditions of community supervision and includes not reporting to a parole officer, missing curfew, or testing positive for drugs. These are not crimes in and of themselves. We can utilize our resources in a more efficient, effective, and comprehensive way that will empower and build successful communities.

In addition to aiding the effort to shutter Rikers Island due to the significant amount of people that would be released from county and State jails and prisons if this legislation is passed, the *Less is More: Community Supervision Revocation Reform Act* would:

- Shorten parole and probation terms overall. Studies show that most re-offenses occur within the first year or two of supervision.¹
- Cap the amount of time people can spend in jail for technical violations before they must be released.
- Incentivize good behavior by allowing people to earn accelerated discharge, such as mandating 30 days off of probation or parole for every 30 days a person spends violation-free in the community.
- Require a robust hearing, with lawyers for the accused, before a judicial officer before jailing someone accused of a technical violation.
- Create a high legal threshold for jailing people on parole for minor offenses and expedite their hearings.
- Reallocate savings from these reforms to community programs that support reentry efforts for formerly incarcerated people.

There should be no more delays in passing this bill which will help with the closure of Rikers Island. Experiencing the unsavory conditions and inhumane treatment on Rikers Island would leave a bad taste in anyone's mouth. So today I call on you, New York City Council, to pass this Resolution. I call on the Legislature and the Governor to pass the Less Is More Act, which would further decarcerate Rikers, and jails and prisons across New York State, and help people like myself to successfully reintegrate back into their communities with their families. The City must take swift action to close Rikers because everyone deserves a quality of life, whether you are from anywhere from Park Avenue to Park Bench.

A MORE JUST NYC

Testimony of Zachary Katznelson, Policy Director, Independent Commission on New York City Criminal Justice and Incarceration Reform

May 1, 2019

I am Zachary Katznelson, Policy Director at the Independent Commission on New York City Criminal Justice and Incarceration Reform, sometimes known as the Lippman Commission after our chairperson Judge Jonathan Lippman. Thank you for the opportunity to testify.

The number of people who are jailed in New York City because of parole warrants is a major obstacle to the efforts to put an end to the dysfunctional jail complex on Rikers Island.

Today, roughly 630 people are locked up on Rikers Island because they have been accused of a technical parole violation.¹ 89% are people of color.² In the past two and a half years, the overall number of people in New York City jails has dropped by 22%, a remarkable achievement. But during that time **the number of people in jail accused of technical parole violations has increased 9%.³**

More than 500 other people in City jails stand charged with misdemeanors and non-violent felonies, but are ineligible for bail or other form of release because they are also accused of a parole violation.⁴ Under the new bail law, most of these people would be ineligible for

¹ New York City Department of Correction data via NYC Open Data (visited April 30, 2019).

² New York City Department of Correction data via NYC Open Data (visited April 30, 2019).

³ Lippman, Jonathan et al. (April 2017) *A More Just New York City*, available at <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5b96c6f81ae6cf5e9c5f186d/1536607993842/Lippman%2BCommission%2BReport%2BFINAL%2BSingles.pdf>; New York City Department of Correction data via NYC Open Data (visited April 30, 2019; 628 people incarcerated for technical parole violations).

⁴ Lippman, Jonathan et al. (December 2018) *A More Just New York City Progress Report and Legislative Agenda*, available at

detention at all based on the crimes with which they are charged. Yet, because of the parole warrants, they would remain incarcerated, ineligible even for bail.

Combined, 20% of the people jailed in New York City are there because of alleged parole violations, automatically locked up for weeks and months no matter how minor the allegation.

This is the only population at Rikers that is growing.

People on parole, already faced with enormous challenges when they leave prison, are being locked up in almost unparalleled numbers across New York State. In 2016, the most recent data available, New York State returned over 6,300 people on parole to prison for technical parole violations, 29% of all admissions to New York State prisons.⁵ Another 2,000 people were returned to prison for treatment programs. Added together, nearly 40 percent of new admissions to New York State prisons in 2016 were for non-criminal parole violations. In contrast, just over 1,300 people on parole were returned to prison that year for new criminal convictions.⁶

These numbers are a warning sign that New York's parole system is failing in many critical respects. The allegations published yesterday in *Gothamist* suggest that parole officers and administrative law judges face pressure to jail people for technical parole violations. There is scant evidence that incarcerating people for such violations increases public safety. But there

<https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5c198f9af950b7863cd60bac/1545179066057/Progress+Report.pdf>.

⁵ U.S. Department of Justice, Bureau of Justice Statistics, *Probation and Parole in the United States*, 2016, 22, available at <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>; New York State Department of Corrections and Community Supervision, *Admissions and Releases Calendar Year 2016*, available at

http://www.doccs.ny.gov/Research/Reports/2017/Admissions_and_Releases_2016.pdf.

⁶ NYS DOCCS, *Admissions and Releases Calendar Year 2016*.

is clear evidence that incarcerating for technical violations ruptures the very connections that are key to success.

Furthermore, jailing people on parole warrants has tremendous fiscal costs. New York City pays over \$350 million per year to jail people accused of technical parole violations and people on parole charged with misdemeanors and non-violent felonies who but for parole warrants would likely be released.⁷

Our Commission has outlined straightforward, common-sense principles for transformative parole reform: good time credits to reduce the number of people on parole and incentive positive behavior, an end to automatic detention on parole warrants, and strict caps on the amount of time someone can be imprisoned for a parole violation. States throughout the country have adopted these steps with success, resulting in fewer violations, fewer revocations, and no rise in recidivism.

Each of these reform principles are part of the *Less Is More Act* sponsored by Senator Benjamin and Assemblyman Mosley. Chair Powers, as you have recognized, now is the time to make sure people on parole are supported in their efforts when they come home, and the *Less Is More Act* would do just that. Parole reform, including passage of the *Less Is More Act*, would also result in many fewer people in NYC jails, bringing the City closer to the goal of closing Rikers.

Thank you for your attention to this crucial issue.

⁷ New York City Comptroller, Press Release, *Comptroller Stringer: Despite a Decline in Incarceration, Correction Spending, Violence, and Use of Force Continued to Rise in FY 2018* (Jan. 22, 2019), available at <https://comptroller.nyc.gov/newsroom/comptroller-stringer-despite-a-decline-in-incarceration-correction-spending-violence-and-use-of-force-continued-to-rise-in-fy-2018/> (finding NYC DOC spends \$828 per incarcerated person per day); New York City Department of Correction data via NYC Open Data (visited Feb. 20, 2019).

**The Bronx
Defenders**

**Redefining
public
defense**

**New York City Council
Committee on Criminal Justice, Committee on Justice System & Committee on Women
Joint Oversight Hearing on the Experience of Transgender and Gender Non-Conforming
Individuals in New York City Jails
May 1, 2019
Testimony of The Bronx Defenders
By Deborah Lolai**

My name is Deborah Lolai and I am a criminal defense attorney and the LGBTQ client specialist at The Bronx Defenders. Thank you for the opportunity to testify before you today on this important matter.

The Bronx Defenders is a community-based and nationally recognized holistic public defender office dedicated to serving the people of the Bronx. The Bronx Defenders provides innovative, holistic, client-centered criminal defense, family defense, immigration representation, civil legal services, social work support, and other advocacy to indigent people of the Bronx. Our staff of over 300 represents approximately 28,000 individuals each year. In the Bronx and beyond, The Bronx Defenders promotes criminal justice reform to dismantle the culture of mass incarceration. In my role as the LGBTQ Client Specialist, each year I represent hundreds of transgender people who are facing criminal charges, many of whom are or have been incarcerated pre-trial.

Introduction

I am here today to speak about the current conditions of incarceration for transgender people in NYC jails. I testified before some of you at the oversight hearing on sexual abuse and harassment in NYC jails on September 6th, 2018. Since that hearing, there has been some noticeable improvement in the treatment of incarcerated transgender people in NYC jails. We have a long way to go, however, to ensure the safety of all incarcerated transgender people, not only the people who are housed in the Transgender Housing Unit (THU).

The Mayor announced on April 16th, 2018 that by October 16th, 2018 all people in DOC custody would be housed in accordance with their gender identity.¹ We were hoping for a dramatic change in the way DOC housed transgender people, but unfortunately this has not been the case since October 16th. The majority of transgender women who are incarcerated in NYC jails continue to be housed in men's jails where they are still experiencing extreme violence and harassment.

I would like to acknowledge that since last summer, when the THU was moved to Rose M. Singer Center, a women's jail, conditions have improved significantly for our clients who are accepted into the THU. The overall consensus from women who are housed in the THU is that it is safer and more affirming than when the THU was housed in a men's jail.

Because of the significant limitations on THU eligibility and the lack of transparency in the acceptance process, however, which were noted in the Board of Corrections assessment of the THU,² many transgender women are still housed in men's jails. Whether in protective custody, general population, or solitary confinement, women in men's jails all face the same mistreatment: they are misgendered, harassed, and are often the victims of sexual violence and assault. Today I would like to discuss the ways in which the THU should continue to improve, but I'd also like to highlight the experiences of incarcerated transgender women who are not in the THU.

I. Fear of Reporting Sexual Harassment and Abuse in the THU

Despite the improvements of the THU, there are still many unresolved concerns. One of the issues that we have observed is the way DOC handles reports of sexual harassment or abuse in the THU.

When a woman in the THU reports being sexually harassed, she is removed from the THU and transferred to a men's jail. The policy of removing a victim of violence from the environment where they experienced that violence might make sense in other contexts. However, this policy is extremely harmful when enforced in this context because when transgender women report being a victim of violence in the THU, they are removed from the unit and placed in men's jails, where their safety is at risk. Essentially, women are punished for reporting sexual harassment and abuse in the THU. This practice has already had a chilling effect on the women in the THU as many of

¹

<https://www1.nyc.gov/office-of-the-mayor/news/193-18/mayor-de-blasio-department-correction-will-house-incarcerated-individuals-according-to>

² *An Assessment of the Transgender Housing Unit*. Board of Corrections, February 2018, <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/THU%20FINAL%20Feb%202018.pdf>

them are now afraid to report incidents of sexual harassment or abuse because they have seen what has happened to other women who have made reports.

For example, one of my clients who was housed in the THU was experiencing sexual harassment there. She was instructed by DOC to file a complaint, and she did so while following all of the procedures. Shortly thereafter, officers came to escort her out of the unit. When she told the officers she didn't want to go to a men's facility, they pepper sprayed her, causing her burns which she is still recovering from, and dragged her to a men's jail. When she was housed in the men's jail she was placed in protective custody, where she was assaulted by another inmate multiple times because she refused to give him oral sex. She requested to be moved back to the THU or anywhere in a women's jail, but DOC never moved her back and she remained incarcerated in a men's jail for many months.

II. Lack of Access to Specialized Care in the THU

The THU is not equipped to house women who require more specialized care such as medical treatment for serious physical health issues, detox and drug treatment, or mental health treatment. For transgender women who require this level of care, the THU is not an option. Transgender women who need those services are always housed in men's jails because they cannot access the care they require in the THU, and DOC is not willing to house them in other units in women's facilities, where these services exist for women.

For example, I have a client who is a transgender woman. She was sent to the men's jail because she needed to be monitored for a medical condition, therefore, she was not able to be housed in the THU. Because DOC refuses to house transgender women in any other women's unit other than the THU, she was sent to the medical unit in a men's jail. After she was released from the medical unit, she asked to be moved to the THU, where she had been housed in the past, but DOC denied her application.

III. Most Transgender Women in DOC Custody are in Men's Jails

While the THU is an incredibly important unit, most transgender women in DOC custody are not in the THU. I am often most concerned with the safety risks to our clients who are *not* in the THU.

The reality is that when a transgender woman is not in the THU, she is in a men's jail. Some of those women are in protective custody, some are in general population, and some are in solitary confinement, but they are *all* in men's jails.

Most of the women who are in men's jails are not there by choice. They are there because DOC did not accept them into the THU; they did not know the THU was an option; they were discouraged from requesting to be placed in the THU by corrections officers; or because they were removed from the THU.

IV. Transgender Women Are Often Not Accepted Into the THU

When transgender women enter DOC custody, they are supposed to be sent to Rose M. Singer Center for intake, and given the option of applying to be housed in the THU. This is not consistently happening. Furthermore, most of the transgender women we represent who apply to be housed in the THU are not accepted into the unit.

There continues to be a lack of transparency about the process that determines who is accepted into the THU and who is not. The two most common explanations that the Department has provided for not accepting my clients into the THU are (1) a history of violence, and (2) DOC's assertion that they are not actually transgender.

- 1) The Department has often cited to the criminal record or disciplinary record of women who they reject from the THU as a justification for their rejection. It is important to acknowledge the fact that because of the disproportionate attacks and violence against transgender women, they are often placed in a position where they need to defend themselves from violence. As a result of that, they are often the ones who are punished for their acting in self defense. For example, if a transgender woman was previously incarcerated defends herself while being assaulted by another inmate, she may be the subject of disciplinary action and that disciplinary record will likely be used against her in her application to the THU.
- 2) Another extremely common way that DOC attempts to justify rejecting transgender women from the THU is by asserting that they are "pretending to be transgender." The Department often expects clients to prove they are transgender with records to find evidence of transgender related medical treatment and sharing personal information and medical history with DOC. What the Department fails to recognize in requiring this type of "proof" is that not all transgender people transition in the same way, and that doesn't make them any less transgender. Furthermore, many poor transgender people do not have access to transition related medical treatment. Medicaid only started covering transition related treatment in 2014. Prior to that, when a transgender person on medicaid went to the doctor for transition related treatment, they were turned away by their doctors. For this reason, for years most transgender people received transition related treatment - such as hormone therapy - on the black market, and many continue to do so till this day

because of a lack of trust in doctors or a lack of knowledge that medicaid now covers this type of treatment. Being accepted into the THU should not depend on how a person medically transitions, for how long or whether they are on hormones, or how femininely they express their gender. Furthermore, by telling a transgender person that they are “pretending to be who they say they are” one actually perpetuates the harm that is at the root of much suffering experienced by transgender people: others telling them that they aren’t actually who they are and invalidating their identity.

Conclusion

Many of these issues would be resolved if the Department housed transgender women with other women, outside of the THU. When a transgender woman is not accepted into the THU, she should have the option of being housed with cisgender women at Rose M. Singer Center.

Until the Department starts to treat transgender women as women, and until it actually makes general population, protective custody, and housing units other than the THU in the women’s jails accessible to transgender women, transgender women will not be safe in DOC custody and they will continue to experience extreme levels of harassment and violence.

The bills before your Committees today -- requiring all department facilities housing transgender, gender non-conforming, non-binary, and intersex individuals to have access to comprehensive substance abuse treatment and mental health treatment. -- are a small but important step toward increased transparency in this crucial area long overdue for reform. The Bronx Defenders strongly supports each of these bills. Additionally, we ask that another oversight hearing be scheduled before the end of this year to continue to closely monitor the conditions of transgender, gender non-conforming, and non-binary people in NYC jails.

Thank you,

Deborah Lolai, Esq
LGBTQ Client Specialist
The Bronx Defenders

TESTIMONY OF THE LEGAL ACTION CENTER

Committee on Criminal Justice
Oversight

The Experience of Transgender and Gender Non-Conforming
Individuals in New York City Jails
Wednesday May 1, 2019

Presented by

Tracie M. Gardner
Vice President for Policy Advocacy
Legal Action Center

Good Morning. My name is Tracie M. Gardner. I am Vice President for Policy Advocacy for the Legal Action Center. I appreciate the opportunity to address you today.

The Legal Action Center is the only public interest law and policy organization in New York City and the United States whose sole mission is to fight discrimination against and protect the privacy of people in recovery from drug dependence or alcoholism, individuals living with HIV/AIDS, and people with criminal records. The Center works to combat the stigma and prejudice that keep these individuals out of the mainstream of society. The Legal Action Center helps people reclaim their lives, maintain their dignity, and participate fully in society as productive, responsible citizens.

In New York City, we coordinate the ATI and Reentry Coalition (alternative to incarceration, reentry and related programs (pre-trial services, defender based advocacy, client specific planning, community service sentencing, drug treatment diversion programs, TASC, legal and employment assistance). known to many of you as the ATI Initiative. Thanks to the Council's annual support, members of the Coalition have been working together for over two decades to provide direct services for populations in need and to advocate for criminal justice reforms.

The Coalition has developed a deep collective understanding of the City's criminal justice reforms and systems and demonstrated its ability to provide trusted, effective and fiscally sound community based services. These include education, employment, housing, family, legal, mental health, substance use treatment, women's and youth services. While New York City has the strongest network of effective programs providing alternatives to incarceration in the nation, many eligible people who need these services still lack access. Certain populations are particularly underserved by ATI and reentry services including women, young people, LGBTQ and people with mental illness.

Thanks to Council funding last year, Legal Action Center and the Coalition were able to focus in on the LGBTQI population that is involved in the City’s criminal justice system. We are coordinating an effort to improve and better coordinate alternatives to incarceration (ATI) and reentry services for LGBTQI individuals in our City. A number of organizations in our Coalition have noted that this population is disproportionately represented in the criminal justice system and has long-unaddressed and distinct needs.

There are members of the Coalition such as the Osborne Association, the Center for Community Alternatives and the Women’s Prison Association who have dedicated programs to serve this community. There are supportive services being provided for justice-involved LGBTQI around the city that notably include.

- The Osborne Association has peer support for transgender clients.
- Sylvia Rivera Law Project provides know-your-rights classes for transgender and gender non-conforming people on Rikers Island.
- A job readiness program for transgender women at the LGBT Center’s Career Program.
- The Women’s Prison Association has a person working with transgender women at Rikers Island.
- The Realization Center has LGBTQI sensitive addiction services.
- The Friends of Island Academy coordinates a Youth Reentry Network which is likely to include LGBTQI youth.

Legal Action Center did a wide call out for an advisory group of LGBTQI and criminal justice stakeholders to advise us as we examine current diversion, reentry and social service programs that are already working with this population and identify gaps in services or service coordination. We also hope to share final findings and recommendations of this work before we submit a white paper to the Council. We have hired a consultant to coordinate the information gathering process which

involves in depth expert interviews and researching various city, state and national databases, literature review and inventory of what exists in the city.

Thus far in our work since December we have seen that though this is NYC and you would expect that the City would have a well-resourced, well-coordinated, culturally competent network for justice involved LGBTQI people, it does not. Discrete programs DO exist BUT, there are:

- No Best practices
- No Places for people to network
- No Repositories of data or analysis—

The city seems to have a patchwork of services and programs not coordinated under any one agency and many programs seem to be embedded and only known through informal channels. There is an acute need to collect data while acknowledging the risks to LGBTQI folks when self- disclosure can be unsafe, especially in a jail or prison setting. It will be critical to identify ways to assemble data on LGBTQI individuals and their needs in a way that is grounded in safety and confidentiality. We learned about potential sources for embedded data such as Black and Pink national survey membership data for NY, court and legal services provider data (LGBTQI clients served), NYC Anti Violence Project hotline, hate violence and employment discrimination incidents reports, NYC Department of Correction LGBTQI correctional programming and administrative data and NY Prison Rape Elimination Act (PREA) data, to name a few.

We have also inventoried a number of providers and resources for the LGBTQI community that encompass the array of services that fall under the criminal justice umbrella: in pre-trial diversion, conditions of confinement support, discharge planning, post discharge/transition to home, criminal legal services and court assistance and civil rights, impact litigation.

Not surprisingly the criminal justice ATI and reentry services folks and LGBTQI services folks operate in different universes and could benefit from learning more about each other and being better networked.

It is important to build community and support for the work. Not too long ago Ryan White HIV CARE Networks were a bi-monthly gathering for outreach and resources so that anyone working with HIV+ folks knew that there was a reliable venue to make face to face connections and to learn about new services and programs. This was a consistent theme in the expert interviews: a need for pace for conversation, information exchange and networking (one to one and organizationally).

There was an acknowledgement that LGBTQI youth services (including justice involved youth are probably the best networked of those under the LGBTQI umbrella and cultural competency may be better than for the adults. Gay and bisexual men (persons and needs) are the most invisible due to the inability to safely self-disclose, and, therefore, most invisible in conversations about reentry. Lesbian and bisexual women are likely accessing general women's reentry services where it is unclear whether their unique needs are being addressed

There are enough justice-involved LGBTQI in NYC (although we need data to illuminate the numbers returning from incarceration to the community) and initiatives for justice-involved LGBTQI people to catalyze a collective effort to improve the quantity and quality of services for this population.

We expect the advisory group's recommendations for filling these gaps to inform future pilot projects with New York City funding. We look forward to sharing this with the Council in the very near future.

**Submitted Written Testimony of Vincent N. Schiraldi, Co-Director,
Columbia University Justice Lab
New York City Council, Committee on Criminal Justice
Wednesday, May 1, 2019**

Last year, Governor Cuomo said in his state of the state address, “New York jails and prisons should not be filled with people who may have violated the conditions of their parole, but present no danger to our communities.” As a former Commissioner of New York City Probation, I am strongly in support of this assertion, and I urge the Council to pass the resolution before you by Council Member Keith Powers in support of the bill commonly known as the “Less is More Act.” Introduced in the Senate as S1343B by State Senator Brian Benjamin, and as A5493A by State Assembly member Walter Mosley, the Act would reform multiple facets of parole in New York State.¹ Before getting into the details of Less is More and its many benefits to those on parole, I will describe the how we have arrived at this particular point in history and attest to the urgent need for parole reform in New York State.

Parole was created in the 1800s as a mechanism to reduce the number of people incarcerated, and also served as a back-end reward for good behavior and signs of rehabilitation while incarcerated. While the dominant ethos of parole revolved around reform and rehabilitation through much of the 19th and 20th centuries, beginning around the 1970s parole became more focused on punishment, deterrence, and surveillance, much like the rest of the criminal justice system as a whole (Clear and Frost 2013). Accordingly, the number of rules that

¹ Throughout this testimony, I will use the term “parole” to describe the condition of being supervised by state parole officials following release from prison. In fact, most people who are supervised after being released from prison in New York State are on “conditional release” – release from prison not by the parole board, but after serving a definite, or determinate, prison sentence minus whatever good time they may have accrued. Persons released on “parole” in New York State are those released by the state’s parole board after serving an indefinite, or indeterminate, period of imprisonment and being found suitable for release by the board. Since parole is the much more common parlance for those under community supervision following release from imprisonment, I will use that term to describe both those under parole supervision and those on conditional release.

individuals under community supervision must abide by has ballooned. Recent reviews of supervision conditions have found that most jurisdictions have around fifteen “standard” conditions, with the possibility of additional “special” conditions besides (Corbett 2015; Doherty 2016). New York State has 13 standard conditions, and additional individualized conditions may be added by either the parole board or a parole supervision officer. The proliferation of conditions has in effect created a rule structure that can be nearly impossible to abide by 100% of the time (Klinge 2013; Childress 2014).

In addition to its shift in focus, the criminal justice system also changed by massively expanding throughout the latter part of the 20th century. Community corrections was not immune to this shift, but rather expanded right alongside the numbers of those incarcerated, which grew five-fold between 1980 and 2009. At the same time, the number of people in community corrections has grown four-fold since 1980. The number peaked in 2007 at 5.1 million Americans, and in 2016 it still included 4.5 million people—about double the number of those incarcerated in jails and prisons (Columbia University Justice Lab 2018a).

Thankfully, New York State has seen a downward trend in recent years in the number of those incarcerated and those involved with community corrections. There was a 31% reduction in the number of people in our state’s prisons between 1999 and 2017 (New York State Department of Corrections and Community Supervision 2017a). Since 2011, the state has closed thirteen prisons and eliminated over 6,000 prison beds, saving over \$160 million annually (New York State Office of the Governor 2018; New York State Department of Corrections and Community Supervision 2017a). The community corrections population in New York State has also been shrinking, experiencing a longer and more significant decline than the nation as a whole (Bureau of Justice Statistics n.d.). At the end of 2016, there were 918 people on either

probation or parole in New York State for every 100,000 adults, roughly half the community supervision rate for the U.S. overall (Kaeble and Cowhig 2018).

However, while these numbers reflect hopeful downward trends occurring both state- and nationwide, the number of people incarcerated on parole violations in New York State Department of Corrections and Community Supervision (DOCCS) facilities and in city and county jails remains alarmingly high. For every ten people who successfully completed their parole in New York in 2016, nine people ended their parole supervision by being incarcerated (Kaeble and Cowhig 2018). This amounts to a parole failure rate of 47%, almost twice as bad as the national average of 28%. Notably, these sanctions fall even more heavily on African-American people than on white people. African-Americans on parole are more than twelve times more likely to be detained for a parole violation than white people on parole in New York City (New York City Open Data 2018).

Parole failures are not only returning New Yorkers to state prison—they are also driving up the number of people locked up in New York City jails. As the number of people incarcerated pretrial for misdemeanors, non-violent and violent felonies, as well as the city sentenced population, have all declined by double-digits over the past four years, only one population in jail has increased, also by double digits: people held in city jails for state parole violations (New York City Mayor’s Office of Criminal Justice 2017; New York State Division of Criminal Justice Services 2018). On any given day on Rikers Island, nearly 20% of the detainees are jailed on parole warrants (Independent Commission on NYC Criminal Justice and Incarceration Reform 2018). People with parole warrants also stay incarcerated much longer than people with similar charges – the average jail stay for someone detained pretrial on a misdemeanor charge is 11.7 days (Mayor’s Office of Criminal Justice 2018). For someone detained pretrial on a

misdemeanor charge who also has a parole warrant, their expected jail stay is 9 times longer, at 99.6 days. The discrepancies are smaller but still significant for people detained pretrial on felony charges – those without a parole warrant stay in City jails an average of 36.2 days, whereas people with a parole warrant stay an average of 169.3 days, nearly 5 times as long.

Importantly though, it is worth noting that each year, many of the people sent to prisons and jails in New York are not incarcerated for new criminal convictions, but for breaching parole restrictions. Across the state, people released on parole are four and a half times as likely to return to incarceration for violating the conditions of their release (37.4%) as they are to return for new convictions (8.2%) (New York State Department of Corrections and Community Supervision 2017a). Known as “technical violations,” meaning that the person broke a rule imposed as a condition of their supervision, these can range from missing an appointment to failing a drug test. For example, missing a meeting or being in the company of someone with a criminal record can land people under community supervision back behind bars (Doherty 2016; New York State Department of Corrections and Community Supervision 2017b).

New York sends more people to prison for technical parole violations than any other state but Illinois (Kaeble 2018). Of all people on parole whom New York officials sent back to prison in 2016, over 6,300, or 65%, were re-incarcerated for technical parole violations, as opposed to new crimes (New York State Department of Corrections and Community Supervision 2016). The number of people held in New York City jails on technical violations grew by 30% between over the last five years, complicating the City’s ongoing efforts to close the Rikers Island jail complex (Mayor’s Office of Criminal Justice 2018).

Furthermore, an article published yesterday in *The Gothamist* raises alarming concerns about possible violations of due process and judicial independence during adjudicatory hearings

for people facing parole violations (Nicholas 2019). Specifically, the article documents that administrative law judges (“ALJs”) employed by the New York State Department of Corrections and Community Supervision to adjudicate parole matters on Rikers Island are being pressured by their supervisors to revoke parole and imprison people accused of technical, non-criminal rule violations instead of returning them to the community. The article further demonstrates that ALJs face a double standard in their adjudication that improperly favors re-incarceration: ALJs are permitted to re-incarcerate people whose cases they are adjudicating with no scrutiny by or explanations to the supervising ALJs of their decisions. However, if those same administrative law judges decide to return people found in violation of parole to the community, they must justify those decisions to their supervisor with much lengthier written decisions. The article also reports that even if the parole prosecutor agrees to a return to the community for the accused person, some ALJ’s are required to ask permission in a private consultation with their supervisor off the record and away from the presence of the accused and parties before releasing the person on parole.

What was designed as a project to assist people in the process of reintegrating into their communities has become a trip-wire for being sent back to City jails or state prison. Why is this? To begin with, leaving prison is extremely hard. Returning citizens face huge obstacles finding housing and employment, navigating the complexities of life on the outside and reconnecting with family and supportive peers. There are approximately 35,000 people on parole in New York (New York State Department of Corrections and Community Supervision 2018). At almost any time, they can see their efforts to successfully rejoin the workforce and reunite with their families disrupted by reincarceration for a technical violation. Operating in a risk-averse environment

without sufficient resources, parole officers often find reincarceration to be the easiest answer when someone runs afoul of the rules.

Parole has grown significantly in both scope and consequence across the U.S., with multiplying conditions that make compliance difficult even for the most dedicated individual. Revocations from community supervision continue to exert an upward pressure on incarceration in both our City and our State, despite significant reductions in prison and community supervision populations over the past two decades. There are many who would like to change this. In 2017, every major community corrections association in the U.S., along with 45 elected or appointed prosecutors and 35 probation and parole officials as well as myself wrote in a statement: “Designed originally as an alternative to incarceration, community corrections has become a significant contributor to mass incarceration” that should be downsized while reinvesting the savings in “improving community based services and supports for people under supervision” (Columbia University Justice Lab 2018b).

Thankfully, our elected officials seem to be listening, as evidenced by the Less is More Act. This will implement good-time credits, require due process before a person is jailed for an alleged parole violation, put restrictions on sending people back to prison for technical violations. Savings generated from imprisoning fewer people should then be reinvested in communities, to pay for housing and services that support community cohesion and successful reentry and desistance from crime. These changes will reduce the unnecessary incarceration of people for crimeless parole violations and incentivize their efforts at rehabilitation.

As evidence of the effectiveness of these reforms, other states, such as Arizona, South Carolina, Utah, Arkansas, Georgia, Idaho, Louisiana, and Mississippi, have implemented similar

reforms proposed in S1343B/A5493A and, as a result, have experienced a decline in recidivism and compliance revocations (Gelb and Utada 2017).

New York has the opportunity to join the states that have made these commonsense changes. Reincarceration not only harms individuals and families without commensurate public safety gains, but also drives up the population in state prisons and local jails, thwarting our City's efforts to close the Rikers Island jail complex. For the sake of those on parole as well as their families and communities. I urge the Council to do your part to advance these reforms, by passing the Resolution in favor of the Less is More Act without delay.

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**New York City Council
Committee on Criminal Justice**

**Oversight Hearing: The Experience of Transgender and Gender
Non-Conforming Individuals in New York City Jails**

**Hearing on Proposed Legislation:
Int. No.1513, No. 1514, No. 1530, No. 1532 & No. 1535
Res. No. 143 & No. 829**

May 1, 2019

Testimony of The Legal Aid Society

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The Legal Aid Society Criminal Defense Practice appreciates the opportunity to submit testimony concerning the experience of transgender and gender non-conforming individuals in New York City jails” and in support of the following bills and resolutions:

Int 1513 - By Council Members Ayala and Kallos - A Local Law to amend the administrative code of the city of New York, in relation to mental health treatment for transgender, gender nonconforming, non-binary, and intersex individuals.

Int 1514 - By Council Members Ayala, Rosenthal and Kallos - A Local Law to amend the administrative code of the city of New York, in relation to requiring access to substance abuse treatment for transgender, gender non-conforming, non-binary, and intersex individuals.

Int 1530 - By Council Members Moya and Kallos - A Local Law to amend the administrative code of the city of New York, in relation to reporting on housing decisions made for transgender, gender nonconforming, and intersex individuals.

Int 1532 - By Council Members Powers and Kallos - A Local Law to amend the administrative code of the city of New York, in relation to housing decisions made for transgender, gender nonconforming, and intersex individuals.

Int 1535 - By Council Members Rosenthal and Kallos - A Local Law requiring the board of correction to convene a task force to address polices related to the treatment of transgender, gender non-conforming, and non-binary individuals in the department of correction.

Res. No. 143 – By Council Member Dromm – A Resolution calling on the New York State Legislature to pass and the Governor to sign the Humane Alternatives to Long-Term Solitary Confinement Act.

Res. No. 829 – By Council Member Powers – A Resolution calling upon the New York State Legislature to pass, and the Governor to sign, S.1343/A.5493, which would reform revocation presumptive release, parole, conditional release, and post-release supervision.

We commend Chair Powers for holding this hearing and providing such vigilant oversight. The timing is apt: last week, DOC gave public testimony to the Board of Correction on the topics addressed in the legislation being considered by the Council today.¹ That testimony shows the Department should fully support these bills, as the legislation simply codifies practices they testified they already follow.

This hearing arises out of the long history of the New York City jails denying individuals safe and appropriate housing consistent with their gender identity. Despite the universal acknowledgement that transgender women in particular are at extraordinary risk of physical and

¹ See Testimony of DOC Commissioner Cynthia Brann and DOC Assistant Commissioner Faye Yelardy, BOC Meeting April 23, 2019, *passim*, available at <https://youtu.be/mP7oWLBz6Y>.

sexual abuse and harassment when confined in male facilities,² for years such housing was the only option.

Following persistent pressure from the advocacy community, the New York City Department of Correction (“DOC” or “the Department”) finally opened the Transgender Housing Unit (“THU”) for transgender women confined in male jails. But their commitment to this reform was shaky: although it is undisputed that THU housing was safer than general population in male facilities, two years ago, DOC threatened to shut down it down. In its stead, the Department proposed opening “vulnerable population” units, but provided no information on what that meant: who would be housed on these units, how people would be screened for housing on them, how they would be staffed, or what would make them different from any other protective custody unit.

Now, after substantial work by the City Council in its oversight role, the Board of Correction (“BOC”), the New York City Human Rights Commission (“HRC”), The Legal Aid Society, and the advocacy community, substantial progress has been made in securing THU housing. The Department has not only retained the THU, but has moved it to the women’s jail, Rose M. Singer Center, last summer. With this move, transgender women can now benefit from programs and property available to cisgender women. The excuses that transgender women could never be housed in a women’s jail without the sky falling were proven wrong. Indeed, the THU at Rose is generally staffed with officers who are respectful in their interactions with incarcerated persons. We receive very few complaints from women housed there. Nonetheless, significant problems in treatment of transgender individuals in the City jails persist, and we are grateful the Council has turned its attention to these issues today.

Current Housing Placements for Transgender and Gender Non-Conforming Individuals

On April 23, 2019, at the BOC Special Hearing about PREA compliance, DOC—for the first time in years—provided some basic information to the public about its transgender housing policies.³

At the hearing, DOC testified that it houses incarcerated people consistently with Mayor’s Executive Order 16, which creates a presumption of housing by gender identity. DOC officials

² See ALLEN J. BECK, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES 2011-12, BUREAU OF JUSTICE STATISTICS 2 (2014), available at https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf; see also JAMIE M. GRANT ET AL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, NATIONAL LGBTQ TASK FORCE 6 (2011) (reporting that 16% of respondents who had been to jail or prison reported being physically assaulted and 15% reported being sexually assaulted), available at http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf; and VALERIE JENNESS, ET AL., VIOLENCE IN CALIFORNIA CORRECTIONAL FACILITIES: AN EMPIRICAL EXAMINATION OF SEXUAL ASSAULT, Irvine: Center for Evidence-Based Corrections, University of California (2007) 3, available at <http://ucicorrections.seweb.uci.edu/files/2013/06/BulletinVol2Issue2.pdf> (finding that 59 percent of transgender women housed in men’s prisons had been sexually abused while incarcerated and that transgender people were 13 times more likely to be sexually assaulted than non-transgender people in prison).

³ See Testimony of DOC Commissioner Cynthia Brann and DOC Assistant Commissioner Faye Yelardy, BOC Meeting April 23, 2019, *passim*, available at <https://youtu.be/mP7oWLBz6Y>.

also stated that they give incarcerated people agency in deciding where they can be safely housed, meaning that transgender men and women are housed in a gender-consistent facility only if they request it, but such requests are honored unless there is a very good reason not to do so. This describes the lynchpin of gender appropriate housing. Unfortunately, they do not reflect the reality experienced by our clients, as we describe below.

At the BOC hearing, DOC testified about the current housing placements for transgender people. These assertions puzzled us. DOC stated that as of April 21, 2019, RMSC housed 16 transgender women in the THU; six transgender women in general population; one transgender woman in new admission housing; and three transgender men in some other non-THU units. DOC indicated that they were willing to house transgender men in male facilities consistently with gender identity, but none had made a request. DOC also stated that its male facilities hold an additional 24 transgender women, 15 of whom had not requested housing in a female facility.

When questioned by Board members, DOC repeatedly asserted that these numbers meant that the majority of transgender women were housed consistent with their gender identity at RMSC. That is flat out incorrect: according to these numbers, the majority of transgender women (24) are housed in male facilities, with the remainder (23) housed in RMSC. DOC's assertions about these numbers is indicative of their pervasive misunderstanding of issues surrounding gender identity; their representation only makes sense if DOC lumps together in their calculations both transgender women and transgender men. While housing a transgender man in RMSC may be appropriate if the person does not want to be housed in a male facility, it is certainly not housing someone consistently with their gender identity and DOC's testimony did nothing to allay our concerns that the Department systematically ignores and misgenders transgender men.

DOC's depiction of where transgender women are housed is not consistent with our experience. Transgender women in custody and other advocates tell us there are now two THUs at RMSC, with the second THU being an integrated "vulnerable persons unit" that houses transgender women with cisgender women over fifty years old. Is it possible that DOC is referring to this second hybrid THU as "general population" housing? We ask because we are not aware of transgender women actually housed in *general population* at RMSC, as DOC testified they were, and would be surprised if this were indeed the case.

More broadly, whatever the current range of gender-consistent housing in DOC, we have no real understanding of the criteria DOC uses for admission to any of them. At the hearing, DOC maintained that housing in the THU as opposed to general population is based on a person's choice. Since we are not aware of any people being asked if they want general population housing, we have no idea what this means. If there are two THUs, how is it determined who will be housed in one THU versus another? Are there different safety considerations for the people who are housed in a unit with cisgender women over fifty, and if so, what? DOC still has not promulgated a written policy about this, despite telling the Human Rights Commission and advocates months ago that a written policy would be forthcoming in short order. Transgender individuals thus have little clarity about how they will be safely housed in the City jails, and the public has little understanding of its own public policy on the issue.

Transgender people are excluded from gender-consistent housing.

Despite DOC's claim that its policy is to afford gender-based housing upon request, the reality is that most transgender women we have spoken to have been excluded from such housing. They are turned down or removed from this housing for a variety of vague and often disturbing reasons, to the extent that we are able to obtain any explanation from DOC for their actions.

DOC rejects people for admission to the THU because of their lack of understanding about the spectrum of gender identity, with too many preconceived notions about how a "woman" is supposed to present. If a person does not present in that manner, there is an assumption that she does not belong in the THU. Similarly, DOC seems to assume that a medical transition is a necessary element of transgender status, not recognizing that not all transgender people want to medically transition.

The major reason DOC invokes to reject or remove our clients from gender-consistent housing is a claim that the individuals are dangerous because of their criminal or disciplinary conduct. But DOC appears to have no criteria to guide its claim that of what defines "assaultive behavior," and what acts in the distant past are relevant to current housing determinations. Why should a person be denied admission because of an act from years ago? Similarly, no guidance is given on what alleged misconducts sufficiently probative of dangerousness to result in the denial of a housing placement consistent with gender. Too often, DOC seems to assume that if a person has engaged in any act that can be characterized as "violent," even defending themselves, that they do not belong in gender consistent housing. This not only is illogical, but results in that person being sent to unsuitable alternative housing that too often is extremely violent and dangerous.

We strongly support implementation of the Prison Rape Elimination Act's Standards relating to the screening of persons in custody so that the Department can better determine who is at risk of sexual victimization and who is at risk for engaging in abusive conduct.⁴ But this information should not be used as a sword to deny housing based on gender identity. The only legitimate reason for denying a person gender-based housing, as we were recently told by an expert in security, is when a person has a genuine history of gender-based sexual violence towards members of the gender with whom they request housing. In other words, we do not accept the predicate that a transgender woman, even with a history of assaultive behavior, cannot be safely managed in the same manner as cisgender women, some of whom have violent histories themselves, particularly since such assaultive behavior has so often stemmed from a need to protect oneself in a dangerous and unwelcoming environment.

DOC has also claimed that transgender women housed in RMSC obtain the medical, mental health and programmatic services they need in that facility. Again, that is the opposite of the experience of our clients. For example, one of our transgender female clients went through detox at a male facility before she was moved to the THU—whereas cisgender women would have done so in a female facility. We are not aware of any transgender woman who has been allowed to be housed in mental health or infirmary housing at RMSC.

⁴ See BOC Minimum Standards, 40 R.C.N.Y. at Chapter 5, §§ 5-17 - 5-18.

DOC also refuses to house an individual consistent with that person's gender identity if the person reports sexual abuse or harassment in gender-aligned housing. For example, only a few months ago we repeatedly advocated, albeit unsuccessfully, for DOC to return a transgender woman to the THU after they removed her for reporting two people in the shower engaged in a sexual act. An investigator told her that she had to be moved off the unit for her own safety. While we do understand that it can be reasonable to change the housing area of a person who has reported an incident in order to protect them from any retaliation, they should be moved to a safe area that is consistent with their gender identity. Otherwise, the result is that people are moved to a men's facility where, like this person, they face harassment or worse. It also chills people from coming forward with complaints, making the THU a more dangerous place.

People are not informed of their gender-aligned housing options in custody.

At the BOC hearing, DOC maintained that people are told how to apply for the THU or gender-consistent housing at admission. They testified that at admission, a screening form is filled out, and anyone who is identified or self-reports as a transgender woman is then taken to RMSC intake. DOC also claimed that a person can request admission to the THU or general population housing at any time during their stay in custody. Again, this is not the experience our clients report. They tell us there is no consistent time, place, or manner in which they learn their gender-congruent housing options. None have ever reported being told that there is any option for gender-congruent housing apart from the THU. Our clients who have applied to the THU were not told who makes the decision to grant or deny their request. And they certainly have no idea of any mechanism for appeal, even though the THU directive contemplates there should be an appeal.

At the hearing, DOC maintained—as they have for years—that they are working on a new Directive about these issues. But even if this promise does materialize, it may not fill the information void: DOC refuses to allow the current THU Directive to be provided to people in custody, and we have no idea if they will change their course with a revised directive,

DOC also said that many transgender women *choose* to be housed in male facilities. If that is true, we have serious concerns about how that choice is informed. For example, one woman asked to be removed from the THU when it was moved to RMSC because she wanted cell housing, and not the dormitory environment of the THU. At no time was she told that she had the option to be housed in a general population cell area at RMSC like ciswomen. Instead, she moved “voluntarily” to a male facility, where she experienced two serious incidents of sexual abuse. Other transgender women may have declined the THU because they are afraid of an unwelcoming environment if housed among cisgender women and the staff who guard them. But from the accounts we have heard, that fear is actively reinforced by members of DOC staff outside the THU.

Protective custody does not protect.

A core security problem is that DOC fails to provide sufficient safe housing alternatives to the THU, even in its protective custody units. Transgender men and women who are not placed in the THU report misgendering and repeated harassment and even abuse by other persons in

custody and staff. Transgender men in particular have long been ignored, presumably because of an incorrect and unjust assumption that they can pass as women.

Many transgender women who are not housed in the THU are housed in a protective custody unit in the male jails. But protective custody does not seem any safer than general population. Within protective custody units, violence happens much too frequently, with appalling incidents of sexual violence against transgender women reported during the past year. Unfortunately, this should surprise no one. The Department conceded at the BOC hearing that *no* additional staff is regularly assigned to protective custody units. As a result, it is no surprise that there have been repeated incidents of sexual violence and even rape in these units directed at transgender individuals.

The Council should examine how DOC facilitates discrimination in NYS DOCCS custody

Even as DOC has made strides in housing at least a substantial percentage of transgender women in a women's jail, the New York State Department of Corrections and Community Supervision ("NYS DOCCS") has lagged behind, with no THU, and virtually no transgender women housed in a women's prison. This has resulted in the anomaly that transgender and cisgender women housed in RMSC are treated wholly differently when it comes to transport to an upstate prison. Right now, cisgender women are sent from RMSC to Bedford Hills for reception, while transgender women confined in the THU are uniformly sent to a male facility. (Since we are not aware of any transgender women confined in general population at RMSC, we cannot say where they are sent.)

The Council needs to determine if DOC colludes with DOCCS in enabling this discriminatory conduct to continue. It should also determine if steps could be taken by DOC to facilitate DOCCS' ability to conducting assessment for gender-appropriate housing while people remain in DOC custody.

The proposed legislation should be passed to redress these human rights violations.

The proposed legislation address many of these longstanding issues, and will lead to critically important reforms. We therefore enthusiastically endorse their enactment.

Int 1532, proposed by Chair Powers and Council Member Kallos, addresses some of the most significant obstacles to housing consistent with gender identity. It wisely removes the requirement that people must have identified in their current gender identity during a prior incarceration or present documentation reflecting medical transition. Many incarcerated persons have not "come out" during prior incarcerations; understandably, many people have been afraid of danger by doing so, either from staff or from other incarcerated people. Moreover, as acknowledged by the legislation, people can become aware of their gender identity differently over time. The legislation also recognizes that not all persons who are transgender choose to medically transition. Even those who have chosen medical intervention may not have documentation of it, since many people—particularly among the incarcerated population—have obtained hormones and other treatment from friends or others, and not from licensed medical providers.

The proposed legislation also confronts some of the most intractable problems for housing in DOC by requiring formal written procedures on housing that must, at a minimum, provide notice to an individual who has been denied housing about how to appeal, set up an appeals process, and require a timely written decision to the incarcerated person.

However, based on our experience, we suggest the following revisions to improve the proposed legislation and make the admission criteria less ambiguous:

1. It should explicitly require that people in custody be given written notice of how they can apply for housing consistent with their gender identity at any time during their incarceration, from intake until discharge, not just how they can appeal an adverse decision. Based on our experience, a clear mandate requiring that this notice be *provided to* incarcerated persons is essential to ensuring they benefit from the procedural protections the legislation contemplates.
2. As required by the Mayor's Executive Order 16, there should be a presumption that people will be confined consistent with their gender identity. This presumption should not be overcome unless 1) the person does not wish to be so housed or 2) DOC can demonstrate that the person presents by clear and compelling evidence a present danger of committing gender-based violence against others. As the past two years have shown, it is simply not enough for the Council to reiterate the language of the Board of Correction's PREA Standards.

We therefore suggest the following revision to the proposed legislation (in red italics).

Section 9-157(c) would read as follows:

Subject to section 115 of title 28 of the code of federal regulations, the department shall establish a process for transgender and intersex individuals to self-identify as such at intake, and use such self-identification to make housing and programming assignments on a case-by-case basis. *There shall be a presumption that housing assignments will be based on gender identity, unless 1) the person does not want to be so housed or 2) the department can overcome such a presumption by a clear and compelling evidence that the person presents a present danger of committing gender-based violence against others.* ~~In determining such housing and programming assignments, the department shall consider whether a placement would ensure the incarcerated individual's health and safety and whether the placement would present management or security concerns, *In*~~

making this determination, the department shall further consider whether the person can safely be housed in a facility most closely aligned with the person's gender in a manner comparable to cisgender persons housed in such a facility with a similar history. The department shall not prevent incarcerated individuals from identifying as transgender solely because of classification as a different gender while previously incarcerated or because of the absence of documents indicating medical transition.

Int 1530 is an important companion piece of legislation which would require DOC to report whether it honors requests to be housed based on gender identity. This will provide critical information about the scope of the issue, from how many people request such housing to how often DOC determines they can or cannot have it.

We suggest two amendments to improve the proposed legislation. At § 9-157(6), the legislation states that the data being reported should include whether the request was to be placed “in specialized housing, to be housed in accordance with gender-identity; or another request.” We believe we understand the distinctions being made, but we suggest that some clarifications might help. We also believe that the reason for any denial should be provided.

We therefore suggest the following revision to the proposed legislation (in red):

Section 9-157, paragraph 6 would read as follows:

Such an incident level report shall include (a) whether the request was to be placed in specialized housing (*e.g., a “Transgender Housing Unit”*), to be housed in a *in a facility that is* in accordance with gender identity; or another request; (b) the outcome of the request;(c) whether the request was appealed; and (d) the outcome of such request. *The reasons for any denials shall be included.*

Int 1513 and Int 1514 recognize that transgender, intersex, non-binary and gender non-conforming persons should never have to choose between housing consistent with their gender identity and obtaining needed services. For that reason, we heartily endorse this proposed legislation. Persons should be able to receive mental health and medication assisted treatment regardless of their gender identity and regardless of where they are housed.

Int 1535 sets up a task force to review DOC's policies related to the housing and treatment of transgender persons in custody. The task force importantly includes not just representatives from DOC and CHS, as well as the Human Rights Commission, but has a majority of members who

either were or are currently incarcerated in the THU, service providers, and national experts. Annual reports and recommendations for change are required.

We fully support this legislation, and hope that DOC and CHS participate openly and fully; without that commitment—which we have not seen from DOC in years—this task force will not be as useful and successful as it otherwise could be.

Int 1514 appropriately expands medication-assisted treatment to include buprenorphine, naltrexone (vivitrol), and methadone. We suggest that this section of the administrative code should be further revised to address the reality that incarcerated people in DOC custody are forced to engage in a painful detoxification process simply because they are sentenced to NYS DOCCS custody, where this essential medical treatment is not provided. DOC should not collaborate in DOCCS' failings and so we suggest the following revisions (as noted in red):

Section 1. Section 9-107 of the administrative code of the city of New York, as added by local law 47 for the year of 1969, is amended to read as follows:

a. The commissioner of correction shall establish a program for the treatment of [heroin addicts] substance abuse through the use of [methadone hydrochloride therapy] medicated assisted treatment, including the administration of methadone, buprenorphine, and naltrexone. The program shall be available **[ONLY]** on a voluntary basis ~~only~~ to **ALL** such [inmates] incarcerated individuals as apply, subject to a medical evaluation, before acceptance, of their need for such treatment. *The decision on which medication is appropriate shall be based solely on the exercise of medical judgment, following consultation between the medical provider and the incarcerated person, and shall be available as needed and requested throughout an incarcerated individual's stay in DOC custody.*

We Support the Resolutions To Be Considered At the Hearing

Res. 143-2019. The Legal Aid Society has long been a supporter of the HALT Solitary Confinement Act, and encourages the New York State legislature to enact S.1623/A.2500 as currently drafted. Solitary confinement is torture. To quote the New York Campaign for Alternatives to Isolated Confinement:

“Thousands of people, disproportionately Black and Latinx people, remain in solitary in NY each day, and tens of thousands each year: 22 to 24 hours a day in

a cell without any meaningful human contact or programs. People continue to spend months, years, and decades in solitary (including upwards of 30+ years) in NY. These conditions cause devastating physical, mental, and behavioral impacts. The entire United Nations, including the US, passed rules prohibiting solitary beyond 15 days for any person, because it otherwise would amount to torture. Colorado has implemented a 15-day limit in its prisons and reduced the number of people in solitary from 1,500 to 18. HALT would similarly include a 15-day limit on solitary, and would create more humane and effective alternatives. States that have reduced the use of solitary have seen a positive impact on safety for both incarcerated people and correction officers.”⁵

Ending the use of prolonged solitary confinement in New York State will make correctional facilities more humane and safer for both incarcerated people and staff. The Legal Aid Society joins the New York City Council’s call for state legislators to immediately pass, and for Governor Cuomo to immediately sign, the HALT Solitary Confinement Act as it is written.

Res. No. 829 – The Legal Aid Society wholeheartedly supports Res. No. 829 which calls upon the New York State Legislature to pass, and the Governor to sign, S.1343/A.5493, also known as the “Less is More” bill. This bill is the first of its kind to offer comprehensive reform to eliminate the unnecessary and disruptive incarceration that thousands of NYC residents face every year for technical violations of parole.

For too many years, enforcement of technical parole conditions through incarceration has disrupted the positive reentry of those on supervision and their families, and undermined the goals of supervision. With the current law allowing for automatic remand for those accused of purely technical violations with only a chance to be released, parole violators are often sent back to prison not because their violations of conditions represent a threat to the community, but as a punishment for punishment’s sake. Instead, the proposed bill rewards those on supervision to earn time off their sentence by abiding by conditions of parole, which creates rational incentives for those on parole to follow their supervision requirements. The bill also substantially reduces the type and amount of prison time that can be imposed on violations for purely technical parole conditions which research has shown bear little connection to public safety and are drivers of incarceration. Most importantly, the bill provides much needed due process for accused parole violators by ensuring an immediate criminal court recognizance hearing with an opportunity for release before incarceration occurs, providing those accused the opportunity to preserve their employment and housing while they wait for the outcome of their final parole hearing.

In sum, the “Less is More” bill is an important first step in reducing the amount of unnecessary incarceration of those who are serving supervision so that successful reentry and public safety are truly accomplished.

⁵ “NEWS: #HALTsolitary Commends Legislature for Rejecting Cuomo’s Flawed Proposal on Solitary Confinement,” New York Campaign for Alternatives to Isolated Confinement, March 15, 2019. Access at <http://nycaic.org/2019/03/15/news-haltsolitary-commends-legislature-for-rejecting-cuomos-flawed-proposal-on-solitary-confinement/>.

THE CENTER

**Committee on Criminal Justice
Jointly with Commes on Civic Rights and Education**

*Oversight - The experience of transgender and gender non-conforming individuals in New York
City jails*
May 1, 2019

**Testimony of Juana Peralta
The Lesbian, Gay, Bisexual & Transgender Community Center
New York, NY**

**THE LESBIAN, GAY, BISEXUAL &
TRANSGENDER COMMUNITY CENTER**
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Hello, my name is Juana Peralta, and I am the Director of Economic Justice Initiatives at The Lesbian, Gay, Bisexual & Transgender Community Center, commonly referred to as The Center, located in the West Village.

New York City's LGBTQ community formed The Center in 1983 in response to the AIDS epidemic, ensuring a place for LGBTQ people to access the information, care, and support they were not receiving elsewhere. Today, The Center has become the largest LGBTQ community center on the East Coast, where we host over 400 community group meetings each month and welcome over 6,000 individuals each week. We offer services to New Yorkers across the 5 boroughs.

Transgender and gender-nonconforming (TGNC) community members face unique challenges concerning their healthcare and safety within the criminal justice system. These problems are only magnified in jails, where corrections officials argue that the temporary nature of the system provides an excuse to overlook severe, harmful, and dehumanizing practices.

For example, gender transition-related healthcare within City jails is inconsistent and difficult to access. Often times, individuals are unable to continue existing treatments or unable to receive the individualized care they may need. This is further compounded given the disproportionately high rates of incarceration of TGNC individuals: Sixteen percent of TGNC respondents to the National Transgender Discrimination Survey indicated they had spent time in jail or prison. The often continuous tremendous stress dissuades individuals from requesting and accessing the healthcare they desperately need.

Consistent and sometimes intentional misgendering also increasingly harms a community that is already vulnerable within this space and creates undue harm. Many incarcerated people face humiliation and degradation from both staff and prisoners alike. Inconsistent policies and practices across staff members about how to interact with TGNC-identified individuals--sometimes within a single facility--lead to unnecessary fear and emotional trauma of the incarcerated individual.

Further, TGNC community members, compared to their cisgender (or non-transgender) counterparts, are disproportionately victims of sexual violence and abuse while incarcerated. According to the 2015 U.S. Transgender Survey, transgender people are 10 times more likely to be abused by fellow inmates while incarcerated and five times as likely to be abused by prison staff.¹ Within New York State, a majority of TGNC individuals surveyed, or 58%, would not feel comfortable going to the police to ask for help.² Given this overall distrust of traditional authority figures, if a TGNC individual's medical needs and/or human rights are violated within the system, they are unlikely to feel comfortable reporting these violations. One potential solution is to identify new efforts to ensure inmates are made aware of their rights and how to

¹ <http://www.ustranssurvey.org/>

² <http://www.transequality.org/sites/default/files/USTS%20NY%20State%20Report%20%281017%29.pdf>

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report any violations, as well as to identify new processes that ensure the grievances and reports of abuse from incarcerated TGNC people are taken seriously.

In addition, those incarcerated are legally entitled to self-select their gender and corresponding placement within City jails. Unfortunately, this policy is not applied consistently across facilities or consistently for TGNC incarcerated people.

Finally, all staff members need to receive consistent culturally competent training that reflects the spectrum of identities held by New Yorkers. This training must include staff members at all levels and be regularly measured to ensure its effectiveness.

Lastly, The Center supports the package of bills being heard today (Int 1513-2019, Int 1514-2019, Int 1530-2019, Int 1532-2019, Int 1535-2019, Res 0413-2018, and Res 0829-2019), which address many of the concerns I previously outlined, and I commend the bill sponsors for taking action on behalf of the TGNC community.

While the challenges faced by the TGNC community within criminal justice system are significant, I am confident we can work together to identify solutions moving forward, and I thank the committee for convening a hearing on such an important topic.

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May 1, 2019

**Testimony to the City Council Committee on Criminal Justice
Submitted by Sarita Daftary, Senior Organizer, JLUSA**

Dear Chairperson Powers and Committee Members,

Thank you for the opportunity to submit testimony today and for your attention to the issues on today's agenda. JustLeadershipUSA supports all of the measures being considered today - Intros 1513, 1514, 1530, 1532 and 1535 as well as Res 0143 and 0829. We are deeply committed to both drastically reducing the numbers of people who are incarcerated, as Res 0829 would address, and to improving conditions and reducing the harms of incarceration for anyone who is still detained.

We support the leadership organizations representing the transgender, gender non-conforming, non-binary and intersex community, and the self-determination of those individuals, in articulating how the City can and must alter the conditions of their confinement to respect their human rights, while also working to incarcerate far fewer people.

We also support the passage of the HALT Solitary Act, and the leadership of people with lived experience in crafting the bill and pushing for its passage. As the City plans for borough based facilities to enable the closure of Rikers, we have continually voiced the need to ensure that these facilities will be operated entirely differently. The HALT Solitary Act could provide a firm assurance that the use of solitary confinement will be drastically curtailed not only in NYC jails but across the state. As advocates have noted and the City Council has recognized, solitary confinement is torturous and traumatic, and as such, undermines safety in jails, rather than improving it.

Lastly but certainly not least, we strongly support the Less is More Act, developed and advanced under the leadership of our partners and directly impacted people. We applaud the Council's resolution to support this bill and to pressure the State, in every way possible, to end the harassment and hyper-criminalization of people on parole. We see on a regular basis that ways in which the harsh conditions of parole threaten the stability and well-being of our members, rather than supporting their reintegration into society. New York City can send a strong message to New York State that these reforms, and the liberty of formerly incarcerated NYC residents, are urgent.

Sincerely,

Sarita Daftary
Senior Organizer
JustLeadershipUSA
sarita@justleadershipusa.org

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 143A Res. No. ~~829~~
143A
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Five Muslimimak

Address: 2271 3rd Ave NY NY 10035

I represent: Exodus Community

Address: 2271 3rd Ave NY NY 10035

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 0829-2019
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Dyjuan Tatro

Address: 186 5th Ave

I represent: BPI

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

Date: _____

(PLEASE PRINT)

Name: Juana Peralta

Address: _____

I represent: LGBT center

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Bibi Suarez

Address: _____

I represent: DOC Sheppard

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Heidi Grossman

Address: _____

I represent: DOC

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: _____

(PLEASE PRINT)

Name: Faye Yelardy

Address: _____

I represent: DOC

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. 0829

in favor in opposition

Date: 5/11

(PLEASE PRINT)

Name: Zachery Katznelson

Address: _____

I represent: The Independent Commission on NYC Crim Justice and

Address: Incorporation Reform

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 0829

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Misael Sylator

Address: _____

I represent: The Independent Commission on NYC Crim Justice and

Address: Incorporation Reform

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 829 Res. No. _____

in favor in opposition

Date: 5-1-14

(PLEASE PRINT)

Name: MARCUS CAMPBELL

Address: 4124 Kings Highway

I represent: EXODUS

Address: _____

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Prechelle Shannon

Address: _____

I represent: DOC

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. 14ACT Res. No. _____

in favor in opposition

Date: 9/1/15

(PLEASE PRINT)

Name: Robert L. Cohen, MD

Address: 130 Barrow St

I represent: NY NY

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. 143-A

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Scott PalHrowitz

Address: 422 Carlton Ave #3

I represent: NYCAIC #HALT solitary campaign

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. all Res. No. _____
 in favor in opposition

Date: May 1, 2019

(PLEASE PRINT)

Name: Hannah Miller

Address: 182 E. 95th St NY, NY 10128

I represent: YAFFED - Young Advocates for Fair Educat

Address: PO Box 1796 New City, NY 10956

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ~~143~~ Res. No. 143
 in favor in opposition

Date: 5/1/19

(PLEASE PRINT)

Name: MICHAEL HOSHUR

Address: PALC Law School

I represent: Myself

Address: 78 N Broadway White Plains, NY

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: Jan Doman

Address: _____

I represent: New York County Defender Services

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: 5.1.19

(PLEASE PRINT)

Name: Dr. Ross Macdonald

Address: Chief Medical Officer

I represent: H + H / Correctional Health Services

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: 5.1.19

(PLEASE PRINT)

Name: Dr. Patsy Yang

Address: Senior Vice President

I represent: H + H / Correctional Health Services

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: KAYLA SIMPSON

Address: 199 WATER ST. NEW YORK, NY 10038

I represent: THE LEGAL AID SOCIETY

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: EKENTHIA DUNSTON

Address: 147 Prince St

I represent: KATAL CENTER

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 829

in favor in opposition

Date: 5/1/19

(PLEASE PRINT)

Name: Vincent Schiavelli

Address: 465 2nd St Brooklyn NY

I represent: Columbia University

Address: 475 Riverside Dr, NY, NY

**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: 5/1/19

(PLEASE PRINT)

Name: DONNA HYLTON

Address: KATAL CENTER

I represent: 147 Prince St

Address: BKLYN NY

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: 5/1/19

(PLEASE PRINT)

Name: ALEJO RODRIGUEZ

Address: _____

I represent: EXODUS TRANSITIONAL

Address: 2271 3rd AVE NYC

**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: 5/1/19

(PLEASE PRINT)

Name: Betsy Lindsay

Address: 1217 Prince St

I represent: Bklyn NY

Address: Katal Center

**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: 5/1/19

(PLEASE PRINT)

Name: Curis Bellon

Address: 147 Prince St

I represent: Bklyn NY

Address: Katal Center

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: 5/1/19

(PLEASE PRINT)

Name: Nancy Sicard

Address: Katal Center

I represent: 147 Prince St

Address: BRUNY, NY

**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: 5/1/19

(PLEASE PRINT)

Name: MICHAELA VERDOLY

Address: 147 Prince St

I represent: KATAL CENTER

Address: 147 Prince Street

**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: Mariah Lopez

Address: _____

I represent: STARR

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Deborah Lolai

Address: 360 East 161st St. Bronx NY

I represent: The Bronx Deafers

Address: 360 East 161st St, Bronx NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 143A

in favor in opposition

Date: 5/1/19 829

(PLEASE PRINT)

Name: Phil Miller

Address: 237 W. 135th St. - SE, New York, NY

I represent: Correctional Association of New York

Address: P.O. Box 793, Brooklyn NY 11207

**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: 5/1/2019

(PLEASE PRINT)

Name: Cecilia Gentili

Address: _____

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: 5/1/2019

(PLEASE PRINT)

Name: Cristina Herrera

Address: _____

I represent: TranslatiNX Network

Address: _____

Please complete **THE COUNCIL** *Sergeant-at-Arms*
THE CITY OF NEW YORK

Appearance Card

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

in favor in opposition

Date: 5/1/2019

(PLEASE PRINT)

Name: Mik Kinkead

Address: _____

I represent: Sylvia Rivera Law Project

Address: _____

Please complete **THE COUNCIL** *Sergeant-at-Arms*
THE CITY OF NEW YORK

Appearance Card

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

in favor in opposition

Date: 5/1/2019

(PLEASE PRINT)

Name: Charlie Solidum

Address: _____

I represent: LGBT Network

Address: CITIZEN HOUSE COMMUNITY CENTER

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: 5/11/2019

(PLEASE PRINT)

Name: Nabat Nouissaint

Address: _____

I represent: Calvert-Lorde Community Center

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: 5/11/2019

(PLEASE PRINT)

Name: Jasmine Perez

Address: _____

I represent: Destination Tomorrow

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: 5/11/2019

(PLEASE PRINT)

Name: Audrey Peraltan

Address: _____

I represent: The Center

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: 5/11/2019

(PLEASE PRINT)

Name: Andrea Bonanno

Address: _____

I represent: Antiviolence Project

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: _____

(PLEASE PRINT)

Name: Kelsey De Avila

Address: _____

I represent: Brooklyn Defender Services

Address: 177 Livingston Brooklyn NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 143

in favor in opposition

Date: 5-1-19

(PLEASE PRINT)

Name: Samuel N. Cahassa

Address: 3077 Hull Ave Bronx NY 10467

I represent: NY CAIC

Address: _____

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