



Legislation Text

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Int. No. 728

By Council Members Powers, Cabán, Rivera, Hanif, Brewer, Restler, Hudson, Ung, Joseph, Abreu, Avilés, Ossé, Sanchez, Williams, Nurse, Gutiérrez and Richardson Jordan

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

Be it enacted by the Council as follows:

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

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

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

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

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

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

b. Subject to section 115 of title 28 of the code of federal regulations, the department shall assess all incarcerated individuals during an intake screening and upon transfer to another facility for their risk of being

sexually abused by other incarcerated individuals or sexually abusive toward other incarcerated individuals.

The department shall consider, at minimum, the following criteria to assess incarcerated individuals for risk of sexual victimization:

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

2. The age of the incarcerated individual;

3. The physical build of the incarcerated individual;

4. Whether the incarcerated individual has previously been incarcerated;

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

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

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

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

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

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

c. Subject to section 115 of title 28 of the code of federal regulations, the department shall establish a process for transgender, intersex and gender nonconforming individuals to self-identify as such during intake and to use such self-identification to make housing and programming assignments on an individualized basis. 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 problems. The department shall not prevent incarcerated individuals from identifying as transgender, intersex or gender nonconforming solely because of classification as a different gender while previously incarcerated or because of the absence of documents indicating medical transition.

d. Subject to section 115 of title 28 of the code of federal regulations, the department shall establish a process for allowing transgender, intersex and gender nonconforming individuals who have requested entrance

into a type of housing facility due to identifying as transgender, intersex or gender nonconforming to appeal denials of such requests. The department shall maintain formal written procedures consistent with this policy and with the following provisions:

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

2. The department shall create an appellate review board consisting of the commissioner of correction or their designee, the deputy commissioner responsible for determining housing classifications or their designee, and the vice president of correctional health services or their designee to review the initial decision. The appellate review board shall not include individuals who made the initial housing determinations.

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

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

5. Within 24 hours of making its determination, the appellate review board shall provide the incarcerated individual with a written copy of the determination specifying the facts and reasons underlying such determination. Whenever the appellate review board's decision differs from the written opinion of the board of correction, the appellate review board shall explain why it did not follow the recommendation of the board of correction.

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

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

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

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

Session 12

AM

LS # 8279/10322

7/26/22

Session 11

AS

LS # 8238

Int. # 1532 - 2019