



Legislation Text

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Int. No. 625

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

By Council Members Powers, Cabán, Hudson, Ossé, Hanif, Avilés, Farías, Nurse, Bottcher, Abreu, Krishnan, Marte, Restler, Gutiérrez, Brewer, Narcisse, Rivera, Ung, Ayala, Feliz, De La Rosa, Williams, Joseph and the Public Advocate (Mr. Williams)

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 9-168 to read as follows:

§ 9-168 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 gender expression differs from gender stereotypes, norms, and expectations in a given culture or historical period., which may include a person who is transgender.

Intersex. The term “intersex” refers to a person whose sex characteristics including, but not limited to chromosomes, hormones, gonads, and genitalia, do not conform with a binary construction of sex as either male or female. This term may not be the same as a person’s gender identity and is not the same as a person’s sexual orientation.

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

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

b. Prior to arraignment, all persons shall be advised by the department that if they are charged to the care, custody, and control of the department they have the right to request be held in an intake facility that aligns with both their gender identity and personal sense of safety. The person shall further be advised that they have the right to inform their attorney about whether a men’s or women’s intake facility best matches their sense of safety and gender identity. The attorney shall inform their client that, once at the intake facility, the department will conduct further screening concerning housing placement. The attorney will state on the record their client’s determination as to which intake facility best matches their sense of safety and gender identity. An attorney’s representation shall be honored by the department unless the department issues a written determination that a person presents a clear danger of committing gender-based violence against others. The same must be provided upon return on a warrant, sentencing of an individual not yet in DOC custody, violation of a condition of release, or any other circumstance where a TGNCNBI person is entering DOC custody.

c. The attorney shall fill out a provided form indicating the intake facility most closely aligned with the individual’s sense of safety and gender identity. This shall be stapled to the Securing Order and travel with the individual to and from all court appearances and supercedes the sex marker on the Securing Order except where the department has issued a written determination that a person presents a clear danger of committing gender-based violence against others.

d. Once in an intake facility, and at any time upon transfer to another facility, 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, non-binary 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.

e. The department shall establish a process for transgender, intersex, non-binary and gender nonconforming individuals to self-identify as such and to use such self-identification to make housing and programming assignments on an individualized basis. The department shall house a person in a facility most closely aligned with their gender identity and in the manner most similar to a cisgender person facing similar security needs and shall not remove them from such housing unless (1) the person does not want to be so housed or (2) the department can overcome such a presumption by a determination in writing by the Commissioner or the Commissioner's designee that there is clear and convincing evidence that such person presents a current danger of committing gender-based violence against others. Such a denial cannot be based on unsubstantiated or unfounded allegations of misconduct or any discriminatory reasons including but not limited to:

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

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

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

g. The department shall establish a process for allowing transgender, intersex, non-binary and gender nonconforming individuals who have requested entrance into a type of housing facility due to identifying as transgender, intersex, non-binary 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:

11. The department shall have forty-eight hours to render a decision denying request as described in subsection (e) above. It must provide a denial of the requested placement in writing to the affected person within twenty-four hours of the Department's decision. The decision shall include a description of all evidence supporting the decision and an explanation as to why the evidence supports a determination that the individual presents a current danger of committing gender-based violence against others. All supporting documentation shall be attached to the written decision but may be redacted only to the extent necessary to protect any person's privacy or safety.

a. As pertaining to housing within a Special Considerations Unit, an individual may be moved out of such a unit pending conclusion of an investigation if the alleged perpetrator and alleged victim would otherwise

remain housed together on the unit. However, temporary removal from the unit shall never result in non-voluntary removal from gender-aligned housing.

12. 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.

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

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

15. 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, an appropriate member of correctional health services knowledgeable in medical and mental health issues specific to transgender, intersex, non-binary and gender nonconforming individuals, and the director or designee of LGBTQIA+ Initiatives, or any successor program designed to provide individuals in the LGBTQIA+ community programming, resources, and access to LGBTQIA+ affirming services to review the initial decision. The appellate review board shall not include individuals who made the initial housing determinations. The appellate review board shall consider the written opinion of the board of correction, if applicable, in making its determination.

16. The appellate review board shall issue a determination within 48 hours of receipt of any appeal.

17. 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 as well as the evidence relied upon, subject to redactions required by law. Upon request by the incarcerated individual or their counsel, the appellate review board shall provide a copy of the decision and

the evidence relied upon, subject to redactions required by law, to counsel.

18. 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. Subdivision b of Section 9-165 of the administrative code of the city of New York , is amended by adding a new paragraph 10 to read as follows:

10. The total number of people denied placement in an intake facility that most closely aligns with their gender identity after making a request for such housing at arraignment.

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

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