



Legislation Text

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Proposed Int. No. 625-A

By Council Members Powers, Cabán, Hudson, Ossé, Hanif, Avilés, Fariás, Nurse, Bottcher, Abreu, Krishnan, Marte, Restler, Gutiérrez, Brewer, Narcisse, Ung, Ayala, Feliz, De La Rosa, Williams, Joseph, Louis, Banks, Won, Sanchez, Brannan, Brooks-Powers, Riley, Schulman, Lee, Epstein and the Public Advocate (Mr. Williams) (in conjunction with the Brooklyn Borough President)

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

Be it enacted by the Council as follows:

Section 1. The section heading of section 9-157 of the administrative code of the city of New York, as added by local law number 144 for the year 2019, is amended to read as follows:

[Housing] Report on housing requests related to gender identity.

§ 2. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding a new section 9-157.1 to read as follows:

§ 9-157.1 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 non-binary. The term “gender non-binary” means a person whose gender identity is not exclusively male or female, which may include a person who is transgender or gender nonconforming.

Intersex. The term “intersex” means 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.

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

b. In consultation with criminal defense attorneys who represent indigent persons as determined by the department and the task force established pursuant to local law number 145 for the year 2019, the department shall develop a form that will provide an option for an incarcerated individual to indicate the receiving facility of the department that most closely aligns with such individual’s sense of safety and gender identity. Such form shall provide an option for such an individual to indicate a non gender-aligned facility. The department shall use an individual’s representation as indicated on such form to determine the receiving facility at which such individual will undergo new admission processing. The department shall utilize such form where a transgender, intersex, or gender non-binary individual may enter the department’s custody.

c. The department shall establish a process to enable an incarcerated individual who identifies as transgender, intersex, or gender non-binary to request to be housed in a housing unit that most closely aligns with such incarcerated individual’s stated gender identity. The department shall place such an individual in a unit most closely aligned with such individual’s gender identity unless such individual does not want to be so housed or the department issues a written determination that, based on a specific and articulable safety or security concern, such placement would create a risk of violence, including, but not limited to, gender-based violence, committed by or against such individual. Except pursuant to the process established pursuant to this subdivision, the department’s determination to remove an incarcerated individual who identifies as transgender, intersex, or gender non-binary from a particular housing unit shall not result in placement of such incarcerated individual in a housing unit that does not align with such individual’s gender identity.

d. Notwithstanding any provision of this section to the contrary, the department shall not deny a request submitted in accordance with the process established pursuant to subdivision c of this section, or remove an incarcerated individual who the department has placed in a housing unit pursuant to such process from such

unit, based on:

1. Failure by the incarcerated individual who submitted such request to obtain a legal name change or government-issued identification that reflects such individual's stated gender identity;

2. Allegations of misconduct by such individual that have been determined to be unsubstantiated or unfounded;

3. Past or current sex characteristics of such individual, such as chromosomes, genitals, gonads, or any external reproductive anatomy; secondary sex characteristics; or hormone levels and functions;

4. Sexual orientation of such individual;

5. Identification by such individual during a previous incarceration as a gender other than the gender such individual identifies pursuant to this section;

6. The absence of any documentation or other evidence demonstrating that such individual has transitioned to a gender other than the gender aligned with the sex assigned to such individual at birth;

7. Any reason that, if applied to an incarcerated individual who is cisgender, would not cause the department to remove such cisgender individual from a gender aligned housing unit; or

8. Complaints from an incarcerated individual about housing with an individual due to such individual's gender identity, perceived gender identity, sexual orientation, or perceived sexual orientation.

e. The department shall render a determination regarding a request submitted pursuant to subdivision c of this section within 3 business days of such request. The department shall provide any such determination denying a request submitted pursuant to subdivision c to the incarcerated individual who submitted such request within 1 business day of the department rendering such determination. Any such determination denying a request shall include as an attachment all evidence supporting such denial, provided such evidence may be redacted to protect any individual's privacy or safety, and shall provide notice that the incarcerated individual may request reconsideration of such denial in accordance with subdivision f of this section. Such notice shall be available in English and the designated citywide languages as defined in section 23-1101. Upon request by the

incarcerated individual, the department shall provide a copy of such determination and any supporting evidence to counsel for such individual, provided the department shall redact information from such determination and evidence as required by law.

f. The department shall establish a process to enable an incarcerated individual who identifies as transgender, intersex, or gender non-binary incarcerated individual for whom the department denies a request submitted pursuant to subdivision c of this section to request reconsideration of such denial. The department shall maintain formal written procedures for such process consistent with this subdivision.

1. The department shall immediately forward a request for reconsideration to the board of correction. The board of correction may issue a written opinion within 24 hours of receipt of a request for reconsideration.

2. The department shall establish a reconsideration review board consisting of the commissioner of correction or their designee; an employee of the department, as determined by the commissioner, who is knowledgeable about the determination of housing classifications by the department; the director or designee of the LGBTQIA+ initiatives or, an employee of the department who is knowledgeable about the provision to incarcerated individuals in the LGBTQIA+ community of relevant programming and resources; and a member of correctional health services who is knowledgeable about medical and mental health issues specific to transgender, intersex, and non-binary individuals. Such board shall not include any employee of the department who rendered an initial determination on a request pursuant to subdivision e of this section. The reconsideration review board shall consider the written opinion of the board of correction, if applicable, in making its determination.

3. The reconsideration review board shall issue a determination regarding a request for reconsideration submitted pursuant to this subdivision within 48 hours of receipt of such request. The department may deny such a request by issuing a written determination that sets forth all evidence supporting the determination and an explanation as to how such evidence supports the determination that, based on a specific and articulable safety or security concern, such placement would create a risk of violence, including, but not limited to, gender-

based violence, committed by or against such individual. The written determination of the reconsideration review board shall not be subject to the department's grievance process and shall be considered a final determination.

4. Within 1 business day of issuing a determination on a request for reconsideration pursuant to paragraph 2 of this subdivision, the reconsideration review board shall provide any such determination denying such request to the incarcerated individual who submitted such request. Any such determination shall include as an attachment all evidence supporting such denial, provided such evidence may be redacted to protect any person's privacy or safety. Upon request by the incarcerated individual, the reconsideration review board shall provide a copy of such determination and any supporting evidence to counsel for such individual, provided the department shall redact information from such determination and evidence as required by law.

5. The department shall provide all written materials regarding the reconsideration process established pursuant to this subdivision in English and the designated citywide languages as defined in section 23-1101, and, upon request, shall provide an incarcerated individual with verbal assistance to understand such process.

6. Notwithstanding any provision of this section to the contrary, an incarcerated individual for whom the department denies a request submitted pursuant to subdivision c of this section may submit a new request for gender-aligned housing pursuant to subdivision c provided the incarcerated individual submits information not included as part of such individual's initial request.

§ 3. 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 individuals who were denied placement in a receiving facility that most closely aligns with their gender identity after making a request for such a receiving facility.

§ 4. This local law takes effect 180 days after it becomes law.

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