



New York City Council
Committee on Criminal Justice

Hearing on Proposed Legislation:
Int. No. 0152, No. 0625, & No.1027

September 27, 2024

Testimony of
The Legal Aid Society's LGBTQ+ Law and Policy Unit

The Legal Aid Society appreciates the opportunity to submit testimony concerning three bills addressing the rights of incarcerated transgender, gender nonconforming, nonbinary, and intersex (TGNCNBI) people in the custody of the Department of Correction (the Department or DOC) before the Criminal Justice Committee today. Specifically, we are in support of:

- **Int 625:** a bill that would ensure TGNCNBI people are housed as safely as possible while in the custody of the Department of Correction.

- **Int 152** (with suggested amendments): a bill extending the duration of the task force created to address policies related to the treatment and housing of TGNCNBI people in the custody of the Department of Correction. We urge the City Council to make several important amendments to ensure the task force has the information and authority to positively impact how the Department treats TGNCNBI people.

- **Int 1027** (with suggested amendments): a bill requiring the Department of Correction to provide access to gender-affirming items and medical devices. We urge the City Council to strengthen the language providing access to these items because of the Department's longstanding refusal to recognize their necessity for people in custody.

We commend the City Council members who have brought these bills and fought so long for the recognition and dignity of all people. These bills will save lives, provide vital resources, and take an important step towards bringing much needed transparency and humanity into our city jails.

Since 1876, The Legal Aid Society has been committed to providing quality legal representation to low-income New Yorkers. We are dedicated to ensuring that no New Yorker is denied access to justice because of poverty. The LGBTQ+ Law and Policy Unit daily advocates for TGNCNBI people incarcerated in the City jail system and in the State prison system and pursues legislation, policy changes, and litigation to fight for more humane treatment of TGNCNBI people. Mik Kinkead, a staff attorney with the LGBTQ+ Unit, and Dori Lewis, a retired supervising attorney with the Prisoners' Rights Project, have sat on the New York City Board of Correction's Task Force on Issues Faced by TGNCNBI People in Custody (the Task Force) since its creation in 2019. The LGBTQ+ Unit works closely with The Legal Aid Society's Criminal Defense Practice, which serves as the primary defender of low-income people in New York City prosecuted in the State court system. The Unit also frequently collaborates with The Legal Aid Society's Prisoners' Rights Project, which investigates and remedies unconstitutional and unlawful conditions in the City jails and NY State prisons and has continuously advocated for the rights of incarcerated TGNCNBI people.

I. The Department of Correction's Longstanding and Flagrant Disrespect for the Safety and Well-Being of TGNCNBI People in Its Custody

In May 2019, the New York City Council held an Oversight Hearing on the Experience of Transgender and Gender Non-Conforming Individuals in the New York City Jails. That

hearing produced the law ordering the Board of Correction (the Board or BOC) to form the Task Force on Issues Facing Transgender, Gender Non-Conforming, Non-Binary, and Intersex People in the New York City Jails (the Task Force), and it was the first public venue to hear the bill that is on the agenda today as Int. 625, a bill addressing the housing rights of TGNCNBI people. During the five years since, the Department has continuously stated that TGNCNBI people are protected in the jails, that it obeys all federal, state, and city laws as well as their own procedures and practices, and that it does not need any further legislation. But the Department is not following local or federal laws, it ignores its own policies, and it consistently leaves TGNCNBI people to fend for themselves in the city jails, with disastrous consequences.

Following the May 2019 hearing, the City Council called upon the Board to convene the Taskforce, an appointed volunteer group of legal, medical, and cultural experts on TGNCNBI identities and experiences with prison and jail systems, with the goal of creating a cooperative dialogue aimed at protecting TGNCNBI people in custody. But the Department has consistently stonewalled any suggestions, progress, or collaboration with the Task Force. The Department is so combative and at times overtly transphobic in these meetings that members have decided we cannot in good conscience recruit any more TGNCNBI-identifying members to the Task Force. Moreover, as recently as the September 2024 Task Force meeting, the Department affirmed that, despite two years passing since the first published Task Force Report, no steps have been taken to integrate the extensive recommendations into better systems for intake, housing, access to medical devices, or general cultural knowledge. In fact, initiatives such as the DOC Officers Pride Ambassadors and the wearing of pronoun pins have been ended.¹

One example clearly illustrates the Department's failure to work cooperatively with the Task Force, specifically the Department's refusal to modify its policy about how people are assigned to gender-specific intake units. DOC Directive 4498-R provides that a person must be housed at intake according to the sex marker on a form called the securing order. The securing order is a form produced by the Office of Court Administration compiled through reviewing the rap sheet of the individual and their files with the Office of Criminal Justice Statistics, the New York Police Department, and the criminal complaint. At § IV(B)(2)(e)(i), the Directive reads, "[i]nmates with securing orders that indicate male shall start their custody at a male housing facility." The Department, which has the authority to change this language, has had five years in which to change this provision and provide that transgender women misidentified as male do not need to undergo the intake process in a men's facility. Yet for five years they have not altered this Directive despite the Task Force identifying this as a key area of concern.

It is clear that the Task Force, in its current iteration, is not sufficiently empowered to make the necessary changes in the Department and that the Department will not voluntarily initiate the changes contemplated in the three bills on the agenda today. The City Council must directly act to protect TGNCNBI people in custody by passing Int. 625, Int. 152, and Int. 1027.

¹ The DOC still touts these programs on their website, yet they have informed the Task Force that these initiatives have stopped. See <https://www.nyc.gov/site/doc/media/doc-launches-new-lgbtqia-initiatives.page> (last visited September 25, 2024).

II. It is Beyond Time to Pass Int. 625 and Ensure Safe Housing and Due Process for TGNCNBI New Yorkers in Custody

The Legal Aid Society urges the immediate passage of Int. 625. This bill would finally clarify that TGNCNBI people have the right to be housed in jail consistent with their gender identity and align the law that applies to jails with existing human rights protections under New York City and State law. While the Department claims that it makes timely, individualized decisions about how to house people to maximize their safety, this claim is belied by the data and by the experiences of our clients. It is beyond time for New York City to enact this crucial bill.

The Legal Aid Society emphasizes that it is *beyond* time to pass Int. 625. This bill was originally heard in May 2019 at an Oversight Hearing on the Experience of Transgender and Gender Non-Conforming People in the New York City Jails², and The Legal Aid Society, as well as multiple other organizations across New York City, strongly endorsed the intent behind it.³ The bill was heard again in January 2023 at the Oversight Hearing on the Report of the Taskforce on Issues Facing TGNCNBI People in New York City Jails and a group of over 14 City and State organizations endorsed the bill with necessary amendments.⁴ All of those amendments have now been integrated and it should no longer be necessary for TGNCNBI community members and advocates to relive and repeat – yet again – their terrifying experiences while incarcerated, especially when the Department itself refuses to have the basic decency to listen. At both prior hearings, representatives of the Department left the hearings before any of the directly impacted people or their loved ones were able to testify. The Department did not stay to hear Legal Aid testify that in 2022 only 20% of Legal Aid’s clients who requested gender-aligned housing were allowed to transfer and remain in the Rose M. Singer Center (RMSC), where women in custody are housed. They did not stay and hear the in-person live testimony provided by a woman on her experience of being held in protective custody in a men’s jail where a cisgender man was able to open her cell door and come inside to assault her. They did not hear any of the testimony from currently incarcerated TGNCNBI people read by volunteers into the City Council record. The Department ignores these abuses; the City Council must act immediately to stop them from happening.

² The agenda and minutes for the May 1, 2019 Oversight Hearing on The Experience of Transgender and Gender Non-Conforming Individuals in New York City Jails is available at <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=690844&GUID=7852E69B-8E40-44B9-A974-72D4C6DC5A02&Options=info&Search=transgender>.

³ Testimony of The Legal Aid Society for the May 1, 2019 Oversight Hearing on The Experience of Transgender and Gender Non-Conforming Individuals in New York City Jails is attached as Exhibit 1.

⁴ Testimony of The Legal Aid Society for the January 25, 2023 Hearing on the Task Force Report Update and TGNCNBI Individuals in Rikers is attached as Exhibit 2. The testimony in support of Int. 625 in its current form submitted by nine members of the task force and Black and Pink NYC, The Bronx Defenders, Brooklyn Defender Services, Center for Alternative Sentencing and Employment Services (CASES), The EAC Network, Equality New York, Exodus Transitional Community, Exponents, The Fortune Society, Gender Equality New York, Inc. (GENY), The Lesbian, Gay, Bisexual, and Transgender Community Center, The Legal Aid Society, Neighborhood Defender Services of Harlem, New Alternatives for Homeless LGBT Youth, NEW Pride Agenda, New York County Defender Services, The Osborne Association, and Women’s Prison Association is attached as Exhibit 3.

Int. 625 is Necessary to Align the Behavior of the Department of Correction with Existing Human Rights and Constitutional Law

Throughout the state of New York, a transgender, nonbinary, or intersex person has the right to self-determine where they would feel safest in any sex-segregated space such as a gym locker room, a homeless shelter, or employee changing rooms.⁵ The law explicitly recognizes that TGNCNBI people have a right to be called by their affirming names whether they have had a legal name change or not, to be called by their affirming pronouns, to equitably access bathrooms that affirm who they are, and to self-determine where in a sex-segregated space they might be safest.⁶

New York State and New York City have publicized these laws and how proud they are to be sanctuary spaces for TGNCNBI people fleeing persecution from within the United States and abroad.⁷ New York City specifically capitalizes on being the site of Stonewall – a revolt and riot against corrupt police raids of gay and transgender bars during a time when both crossdressing and same sex sexuality were criminalized.⁸ Yet once a TGNCNBI person interacts with police, the court system, or the city jails, the City and the State continue to insist that these laws no longer apply, that human rights do, in fact, stop at the holding cell gates, and that any affirmation of New York as an LGBTQ+ affirming city is meant only to monetize and capitalize our identities, not to protect the community. This treatment is unacceptable. New York City has

⁵ Exec. Law § 296; N.Y.C. Admin. Code § 8-107; Mayor’s Exec. Order No. 16 (Mar. 7, 2016). These laws ensure that people can access gender-segregated spaces consistent with their gender identity or expression. *See* Guidance on Protections from Gender Identity Discrimination under New York State Human Rights Law (State Division of Human Rights, Jan. 29, 2020); Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression (City Commission on Human Rights, Feb. 15, 2019).

⁶ *Id.*

⁷ In June 2023, Mayor Adams released a press release regarding his executive order protecting access to gender-affirming care, noting that it “Reaffirms NYC as National Leader and Supporter of LGBTQ+ Rights During Pride Month.” *See* Press Release, Office of the Mayor, *Mayor Adams Signs Executive Order Protecting Access to Gender-Affirming Health Care in New York City* (June 12, 2023), available at <https://www.nyc.gov/office-of-the-mayor/news/407-23/mayor-adams-signs-executive-order-protecting-access-gender-affirming-health-care-new-york-city>. In June 2024, Governor Hochul stated that, “When’s there’s assaults on LGBTQ+ rights all across America, we are the vanguard. We are the fighters.” Press Release, Governor’s Office, *Governor Hochul Delivers Remarks at The Stonewall National Monument Visitor Center Grand Opening Ceremony* (June 28, 2024), available at <https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-governor-hochul-delivers-remarks-stonewall-national-0>; *see also* New York City Council, *Video Celebrating Stonewall’s 50th Anniversary* (June 24, 2019), available at <https://council.nyc.gov/news/2019/06/24/stonewall-50th-anniversary/>.

⁸ *See id.*

one of the highest populations of TGNCNBI people in the US⁹ and TGNCNBI people everywhere are policed and surveilled at alarming rates.¹⁰

The data demonstrates unequivocally that TGNCNBI people are denied their rights at the jailhouse door, despite the danger and violence rampant in DOC facilities and all carceral settings. The Legal Aid Society submitted a FOIL request in March 2023 for the Department's housing determinations when someone requested gender-aligned housing or the Special Considerations Unit (the SCU, a voluntary unit) in RMSC, the women's jail. While much data was redacted, we did receive information that, for the first seven months in 2024, 132 people identified as new applicants¹¹ have filled out the poorly named "Special Considerations Housing Unit" form – the form to request gender-aligned housing *and* housing within the SCU. We know that, of the 132 requests, 65 were denied and 3 individuals were discharged before a decision was made. Out of 129 individuals for whom a decision was made, 50% of new applicants were denied.¹² In almost all cases the denial reason listed is "a review of your current housing needs, infraction history, conviction history and incident history" or "a review of your current housing needs, classification and custody level." In other words, DOC is relying on a variety of non-specific and discriminatory bases to deny safe and appropriate housing to people without properly weighing the safety interests of the person.¹³

This transphobia and discrimination are also apparent because the Department frequently disciplines transgender people by involuntarily removing them from gender-aligned facilities. According to information from a recent FOIL request, DOC involuntarily moved six transgender women from women's to men's housing during the period of January to July 2024 because of "Person in Custody Behavior." In 2023, DOC moved twenty-four people from gender-aligned housing due to "Inmate/Inmate fight" or "[Person in custody] behavior." In effect, these numbers show that DOC disciplines transgender people by forcing them into a facility where they are daily misgendered and subject to high rates of sexual abuse and harassment. This fact is further confirmed by the Request for Reconsideration Form, which an individual can fill out 90 days

⁹ See generally *How Many Adults and Youth Identify as Transgender in the United States?* (Williams Institute June 2022), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>; *LGBT Adults in Large US Metropolitan Areas* (Williams Institute Mar. 2021), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/MSA-LGBT-Ranking-Mar-2021.pdf>.

¹⁰ *Unjust: How the Broken Criminal Justice System Fails Transgender People* (Movement Advancement Project & Center for American Progress May 2016), available at <https://www.lgbtmap.org/file/lgbt-criminal-justice-trans.pdf>.

¹¹ "New Applicants" may refer to people who have never filled out the SCU form ever, or people who have not completed it during a specific incarceration. While the terminology is not clear, we know from our clients that people previously determined to be approved for gender-aligned housing need to request this housing again upon each incarceration.

¹² We know that the Department counts as "approved" individuals who were approved prior to discharge but never moved before discharge, thus padding their already small approval numbers.

¹³ By making decisions on this basis, DOC is not only out of compliance with New York Human Rights Law, it is also not compliant with its own policies. See DOC Directive 4498R-A at IV(B)(1)(a) ("Persons shall be housed in the facility consistent with their gender identity, absent overriding concerns *for the detained person's safety*.").

after being removed from women's housing to request to move back. The form provides a section where the person is asked to expand on the following statement: "My behavioral issues have improved. I have not received an infraction or involved in an incident in ____ months."¹⁴ Clearly, the Department is relying on factors that have nothing to do with "concerns for the detained person's safety," the standard set forth in the applicable DOC directive.¹⁵ Such punishment would never be imposed on a cisgender person.

The Department similarly discriminates against nonbinary people.¹⁶ In its data for quarter three of fiscal year 2024, 100% of nonbinary people were denied housing in the SCU and 78% were denied applications for gender-aligned housing.¹⁷ In their most recent publication of data, nonbinary people had an 80% denial rate for gender-aligned housing and an 80% denial rate for the SCU.¹⁸ Clearly, the Department is not housing nonbinary people in the SCU or where they would feel safest.

DOC's treatment of TGNCNBI people is not only inconsistent with New York City and State Human Rights Law, it is also constitutionally impermissible. No cisgender woman would be forced to house with cisgender men because of her "current housing needs, classification, custody level, infraction history, conviction history, and incident history." This treatment of transgender women differently from cisgender women violates the Equal Protection Clause. As one federal court explained while rejecting the argument that a violent record should require a transgender woman to be housed in a men's jail, "female inmates can be equally aggressive and violent . . . [y]et, no one would suggest those women should be housed in the men's division."¹⁹ The United States Department of Justice has recognized that the Eighth Amendment, which prohibits cruel and unusual punishment, requires placement in a gender-aligned facility when necessary to provide reasonable safety.²⁰ Nevertheless, DOC wholly disregards our client's identities and experiences of sexual assault, violence, and discrimination in its assessments.

¹⁴ This form is attached as Exhibit 4.

¹⁵ See *supra* note 13.

¹⁶ The DOC reports are *available at*: <https://www.nyc.gov/site/doc/about/tgnbi-reports.page>.

¹⁷ It is not clear what the Department means by gender-aligned housing for nonbinary people. We presume this refers to nonbinary people being asked to choose between men's and women's housing, making a choice, and 75% of the time being denied that choice.

¹⁸ See *supra* note 16.

¹⁹ *Hampton v. Baldwin*, 2018 WL 5830730, at *12 (S.D. Ill. Nov. 7, 2018) (applying heightened scrutiny when corrections officials treat transgender women differently than cisgender women); see also *Doe v. Mass. Dep't of Corr.*, 2018 WL 2994403, at *9-10 (D. Mass. June 14, 2018) (same); *Tay v. Dennison*, 457 F. Supp. 3d 657, 680-81 (S.D. Ill. 2020) (same).

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

Int. 625 ensures TGNCNBI people retain their human right to have their gender identity respected by requiring the Department house people consistently with their gender identity except when there is clear and convincing evidence that such a person presents a current danger of committing gender-based violence against others. The Department retains the ability to make individualized determinations and deny housing for this reason, but it must do so in writing and afford ample due process to the individual by providing a written statement of its reasons and a meaningful appeal procedure. In addition to these due process protections, Int. 625 also adds in protections to ensure that people are sent to the correctly gendered intake facility upon initial detention by the Department rather than spending days in the wrong facility where they are likely to be subjected to extreme harassment and violence.

TGNCNBI People Experience Significant Physical and Mental Harm Because of DOC's Current Practices

Both the data and the experiences of our clients demonstrate the extraordinary risk of physical abuse and sexual assault faced by transgender people, in particular transgender women in men's units, while incarcerated.²¹ This treatment has long-term deleterious effects on a person's physical and emotional well-being.²²

A recent example demonstrates why Int. 625 is urgently needed. In February, The Legal Aid Society represented a 60+ year-old transgender woman who was living in a women's shelter for several months and was on parole. She experienced a warrant violation and, despite having been held at RMSC as recently as 2019, when she was returned to the Department on this violation, she was placed at EMTC, the men's intake jail.

²¹ See Allen J. Beck, *Sexual Victimization in Prisons and Jails Reported by Inmates 2011-12: Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates* (Bureau of Justice Statistics, Dec. 2014), available at https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf; see also Jaime M. Grant et al., *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey* 6 (2011), available at https://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf; Valerie Jenness et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault* 2 (University of California, Irvine, June 2007), available at <http://ucicorrections.seweb.uci.edu/files/2013/06/BulletinVol2Issue2.pdf> (finding that 59% 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 cisgender people in prison). A recent report on the treatment of TGNCI people in the New York State prison system found that 91% of the 44 respondents reported at least one form of physical assault while incarcerated and 75% of the 44 respondents reported at least one incident of sexual violence by corrections officers. The Sylvia Rivera Law Project & Take Root Justice, *It's Still War in Here: A Statewide Report on the Trans, Gender Non-Conforming, Intersex (TGNCI) Experience in New York Prisons and the Fight for Trans Liberation, Self-Determination, and Freedom* 25, 27 (2021), available at <https://takerootjustice.org/wp-content/uploads/2021/06/Its-Still-War-In-Here-1.pdf>.

²² See Leah Drakeford, *Correctional Policy and Attempted Suicide Among Transgender Individuals*, 24 *Journal of Correctional Health Care* 171, 172 (2018); Ethan Rogers et al., *The Disproportionate Mental Health Burden Among Incarcerated Transgender and Gender Diverse People*, 29 *Journal of Correctional Health Care* 39 (2023). A recent report on the treatment of TGNCI people in the New York State prison system found that 51% of the 44 respondents attempted to harm themselves while incarcerated and 34% had tried to actively take their own life. Respondents connected these efforts to treatment they received while in the New York State prison system. *It's Still War in Here*, *supra* note 20, at 41-42.

Her shelter support team and Legal Aid reached out to DOC multiple times over the course of the weekend attempting to secure her immediate transfer to RMSC. On the Tuesday of the following week, five days following her return to custody, we heard that she was approved for the transfer.²³ That same day, before she could be transferred, she was bailed out of the men's jail. This woman – whom DOC knew well and had previously been housed at RMSC, known to her parole officer as a woman, who lived in a women's shelter, who was over 60 and changed her birth certificate, benefits card, and more to reflect the correct gender identity and feminine name – was held for five days and four nights in the men's intake jail. She would be here in-person to testify today but she told Legal Aid that she did not want to give the Department any more of her time; they had already taken enough.

Even when a client is eventually approved for housing in RMSC, they experience physical and sexual assault during the days or even the hours they wait for DOC to make a decision on their placement and/or while they wait for DOC to effectuate an approved transfer. One Legal Aid client was approved to be moved from a men's jail to a women's jail. In blatant violation of her right to privacy, officers told her in a public area of a men's unit that she would be transferred to RMSC, but not until a COVID quarantine was over. She was subsequently raped in the shower of the men's unit before she was transferred.

Int 625 ensures this would not happen to other women. It specifically addresses the gap between the time a person is transferred into the Department's custody and when the Department makes a decision about an individual's gender-aligned housing request.²⁴ Presently, even if they or their attorney immediately requests a transfer, our clients are held in intake spaces often for several days and sometimes weeks before being interviewed relating to that request. Significantly, these intake units are *not* cells. They are shared spaces where people have no means of separating themselves from others. As recently as March 2023, it was widely reported that the Department was holding people over 24 hours in these shared unhygienic spaces without access to showers, toilets, or phones. Although the Department has publicly recognized that intake is a "crucial time" and that steps must be taken to rectify incorrect intake decisions,²⁵ as of August 2024, the Department has confirmed that "nothing has changed" in their practices.²⁶ It is clear we cannot wait for the Department to take action on this issue.

²³ We do not know, but assume, that her approval is counted as one of the "approvals" in the FOIL results. However, it should be noted that, though approved, she never set foot in the women's jail. Therefore, the number of "approvals" should be seen with some skepticism as to whether they in fact resulted in gender-aligned housing.

²⁴ In our 2023 testimony, Legal Aid mentions a woman who was approved for transfer yet the Department took *two weeks* to transfer her to RMSC. See The Legal Aid Society's January 25, 2023 testimony, *supra* note 4.

²⁵ NYC Department of Correction, *Response to TGNCNBI Task Force Report* (Nov. 14, 2022), available at <https://www.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/DOC-TGNCNBI-Task-Force-Report-Response-11-14-22.pdf>.

²⁶ This confirmation should be noted in the minutes of the August 2024 Task Force meeting when they are posted at <https://www.nyc.gov/site/boc/jail-regulations/task-force-on-issues-faced-by-tgncbi.page>. Those minutes were not posted by the date of the submission of this testimony.

What happened to these Legal Aid clients has happened again and again and again to transgender women in particular. Of our clients denied gender-aligned housing, all have reported sexual assaults, other forms of violence, and harassment while in men's units. This is nothing short of a crisis and demands immediate action.

Passage of Int. 625 Would Align New York City with Other States and NY Counties

Passage of Int. 625 would bring New York City into alignment with 17 New York State counties, 6 states and Washington D.C., as well as three other countries. The handout that the Trans Prisoner Rights Coalition, of which Legal Aid is a member, created for the similar state bill is attached to our testimony.²⁷ For instance, Steuben County (as a result of a lawsuit) adopted a policy requiring presumptive placement of people based on their gender identity and prohibiting a denial of presumptive placement because of the (i) anatomy or genitalia of the person, (ii) the sexual orientation of the person, (iii) the complaints of cisgender people who do not wish to be housed with a non-cisgender person, or (iv) a factor present among other people in the required housing unit, such as a violent criminal or disciplinary record.²⁸ By passing Int. 625, New York City will have practices consistent with those of other New York Counties and consistent with its purported values of respecting LGBTQ+ rights.

III. Without the Passage of Int. 152, with Important Proposed Amendments, the Task Force Cannot Fulfil its Obligations to TGNCNBI New Yorkers

The Legal Aid Society supports the passage of Int. 152, which will extend the Task Force and provide it with additional authority to request information from the Department. However, we urge the Council to adopt several important amendments to ensure that the Task Force can fulfil its obligations to TGNCNBI New Yorkers. These amendments, attached, include (i) additional support from the Board of Correction (BOC), (ii) the inclusion of TGNCNBI people who are currently incarcerated, (iii) routine tours of the facilities most commonly housing TGNCNBI people, (iv) increased provision of information and involvement in policy reform, and (v) a requirement that participants have a meaningful working knowledge on cultural, medical, and/or legal rights of TGNCNBI people.²⁹ As set forth in detail below, these amendments are necessary to counteract the stonewalling and disrespect the Task Force has been contending with from the Department.

By way of background, the Task Force was formed following the May 2019 Oversight Hearing on the Experience of Transgender and Gender Non-Conforming Individuals in the New York City Jails. The Legal Aid Society was honored to receive two appointments to this Task

²⁷ This document is attached as Exhibit 5. "GIRDS," which is referenced at the top of the document, refers to the Gender Identity Respect, Dignity, and Safety Act (S2860/A709A), which is a state bill that would provide similar protections to those in Int. 625 to TGNCNBI people incarcerated in the State prisons and other local county jails.

²⁸ Settlement Agreement in *Faith v. Steuben County*, Index No. E2019-1208CV (N.Y. Sup. Ct.) (July 2020), available at https://www.nyclu.org/uploads/2020/08/2020-07-22_faith_final_settlement_agreement_redacted.pdf.

²⁹ The proposed amendments are attached as Exhibit 6.

Force and were co-authors on the August 2022 Report (the Report), a detailed report outlining the Task Force’s recommendations for addressing numerous concerns relating to incarcerated TGNCNBI people which both Legal Aid appointees spent significant time co-writing with others.

The Task Force initially had 22 experts, 9 of whom self-identified as TGNCNBI individuals. By August 2022, this had dropped to 13 members, only three of whom were TGNCNBI identified. At the moment, the Task Force has increased in numbers again, but we are crucially missing the knowledge and experiences of intersex individuals and TGNCNBI people with lived experiences in the NYC jail system.³⁰

Most significantly, the initial promise of the Task Force – the convening of experts in TGNCNBI identities and culture, medical care needs, and legal rights – has been thwarted at almost every turn by government agencies unwilling to conduct themselves in good faith. Interactions between Task Force members and the Department and Correctional Health Services (CHS) taken from the minutes of the meetings highlight the need for the passage of Int. 152 with amendments.³¹ These interactions are rife with transphobia and disrespect for the Task Force members volunteering their time and expertise and illustrate why the City Council must provide the Task Force with the strength and resources to make a positive difference.

DOC Refuses to Share Data and Information

It is essential that Int. 152 be amended to include stronger provisions requiring the Department to share information and data because the Department has repeatedly refused to share information with the Task Force, purposely hindering the Task Force from undertaking its duties. Specifically, in January 2022, the Department’s representative told the Task Force, “as I’ve stated before, we will not be sharing data with the Task Force.” Since that development, the Department has refused to volunteer any information, provide written answers to questions, or share relevant documents or policies.

Due to this consistent refusal to share any information, including redacted and un-identifiable numbers, the Public Advocate proposed legislation mandating reporting on housing determinations, which was passed into law in 2023 (Local Law 115-2023).³² Nevertheless,

³⁰ Notably, it was the efforts of non-governmental members of the Task Force that increased the staffing. Volunteer members unassociated with any agency independently identified experts and reached out to ask them to join the Task Force. Neither the Board nor any government agency assisted with this project.

³¹ Minutes are taken by volunteer members, circulated for corrections or redactions, and then published on the BOC’s website. Every member has ample opportunity to correct or redact the minutes, and we take a default position of respecting a correction or redaction rather than arguing against it. Despite this, the Department has never participated in editing the notes at any time. Since the loss of our permanent BOC appointee in the fall of 2023, the Board has also not participated in correcting or redacting the minutes. The failure to engage in this process is important because DOC has recently begun to refute the notes of the Task Force despite not participating in the correction process.

³² The overuse of redactions continues to be at issue even in this mandated reporting. Due to the allegedly lower numbers of transgender men, nonbinary masculine people, and intersex people of all gender identities, these

despite the City Council law requiring reporting, the first report was months late, not immediately published on the DOC's website, and, when the Task Force asked if it wanted to reflect at all on the process of this reporting, the Department replied that "the report that is out there is the report that is out there," and it had "nothing further to say about the report [...] it is what is outlined in the law." When the Task Force asked about the formula used to determine the Average Daily Population and how it had resulted in some percentage points instead of whole numbers, the Department responded that the formula used was "not required to be shared by law" and therefore would not be shared. In short, the number of TGNCNBI people in custody, where they are housed, if that housing is voluntary or involuntary, and other important questions critical to the Task Force performing its duties is only being shared due to the passage of a law and the combined efforts of Task Force members and City Council Compliance staff asking when this data would be produced. When it was finally produced, the Department's representatives did not even bring the report to the Task Force. Task Force members had to independently find this report and bring it to the meeting.

The Department's representative has repeatedly told Task Force members to use the Freedom of Information Law (FOIL) to request any Directives, guidance, teletypes, data points, or trainings. Having to use FOIL creates extensive delays in accessing needed information and defeats the very purpose of the Task Force. The Task Force has had to FOIL all the substantive documents and information it needs, including the trainings specific to LGBTQ+ identities and gender-responsive trauma-informed intervention, descriptions and job postings of the LGBTQIA+ Initiatives Unit, teletype instructions on binders, pronouns, and names, and all data concerning grievances, housing denials, housing reconsiderations, and involuntary housing reassignments. In short, there will not be a single piece of documentation in the upcoming 2024 Report that the Department voluntarily provided to us.

In addition, Correctional Health Services refused to provide the Task Force with their updated policy on providing gender-affirming care; once again, Task Force members had to FOIL it. Without having done this, the Task Force would not have learned that multiple pages of instructions had been removed from the policy, leaving it more vague and less helpful to any TGNCNBI person pursuing this care.

DOC Refuses to Share Updates or Collaborate in Good Faith

The Department not only refuses to provide any data or information, it also refuses to cooperate with the Task Force on any changes or reforms, including even positive steps that it decides to undertake. In June 2024, as a result of a FOIL request, the Task Force received a Teletype that DOC had twice-daily announcements and postings to all officers that the Department must use names and correct pronouns when known. This was first posted in August 2021, and yet in three years of monthly meetings the Department never shared this information with the Task Force. If The Legal Aid Society had not submitted a FOIL request for relevant documents on policies relating to TGNCNBI people, the Task Force would have never known of this actual positive and affirming step taken by the Department.

categories are fully redacted in all reporting. Therefore, we have almost no information as to the housing needs and treatment of this population.

Another example is when, in December 2023, the Task Force was told that, due to a City hiring freeze, no additional staff would join the LGBTQIA+ Initiatives Unit (formerly 4 people, but at the time consisting only of the Director). When the Task Force asked again in April 2023, the Department shared it was in the process of interviewing applicants. The Department never showed the Task Force the job descriptions nor shared that the hiring freeze had been lifted. When the Task Force asked to review the job descriptions, the Department replied with simple instruction: FOIL them.

These are just two examples of *positive* action the Department took that, had Task Force members not asked, would never have been shared. Again and again, the meeting minutes, available on the Board of Correction's website, reflect Task Force members saying, "if you do not communicate with us, we will not know." And the Department consistently does not respond to these statements nor change their practice.

The Department has also refused all offers by members of the Task Force to provide or connect the Department with free services to assist in the development of policies. Task Force members have repeatedly offered to have the Department meet with legal experts from around the nation on how jail and prisons systems from California to New Jersey, and the nearby counties of Broome and Steuben, have enacted policies that closely resemble those in Int. 625. The Task Force has offered these free legal consults multiple times and have consistently been told that New York City is "too unique" to speak to these other jurisdictions.

Likewise, when it was revealed that the Department was having internal discussions on whether gender-affirming medical devices including wigs, gaffs, and other items contemplated in Int. 1027 should be allowed in, Task Force members offered to share documentation, presentations, and expert opinion on these items. We were told that the DOC would not be "taking separate documents from [the Task Force] or considering separate presentations - everything should be put in the Report." In short, any request to collaborate or support the Department has been dismissed, despite these offers being made by TGNCNBI people who are not being compensated for this labor. The Task Force is volunteering to make the Department better, yet the Department refuses to engage in good faith.

This is frustrating to say the very least. It is especially frustrating because this should not be an adversarial point. Unlike topics where there may be spirited debate or differences in opinions amongst reasonable people, refusal to share the positive is behavior more fitting for a playground than a City Council Task Force. For these reasons, it is essential that Int. 152 be amended to require that any reforms DOC plans to make with respect to its treatment of TGNCNBI people must be shared with the Task Force and it must be given an opportunity to provide feedback.

The Task Force Lacks Material Support Needed to Succeed and Lacks Experts from Key Government Agencies

Amongst the proposed edits to Int 152 are provisions requiring more robust material support for the Task Force, a need detailed in the Task Force's 2022 Report and its forthcoming 2024 Report. The City Council has called upon the Board of Correction to convene this Task

Force, yet the Board has not prioritized the Task Force nor supported it with staff or resources throughout the last year. While we acknowledge that the Board lacks adequate funding for its important work, its refusal to facilitate, take minutes, provide translators, assist with Report finalization, graphics, edits, or promotion has placed an undue burden on the volunteer Task Force members. The suggested amendments to Int. 152 would provide for all of these supports.

As an example of the Board's failure to support the Task Force, the Board has sent individuals to Task Force meetings who are unaware of decades old policies relating to TGNCNBI people. At a February 2024 meeting, the Board's representative stated that only people held at RMSC had access to bras and transgender women held in men's jails could not access bras. This has not been the case for close to a decade. In that same meeting, the BOC representative stated that any underwear specific to TGNCNBI people would have to be specifically added to the Minimum Standards in order to require that the Department pay for it. Since then, the BOC has sent a new representative who has unequivocally stated that it is the Board's position that binders and other gender-affirming underwear are underwear and the Department is required to buy them and make them available for people in custody. While the Board eventually corrected both of these errors, without other independent legal experts in the room, the very body that convenes the Task Force was at risk of providing inaccurate and harmful advice.

This type of harmful and disrespectful behavior has been repeated by many of the officials assigned to the Task Force by other government agencies. DOC representatives have refused to share whether they have professional qualifications for, or personal expertise on, TGNCNBI issues. To illustrate, lack of competent knowledge has meant that DOC representatives consistently deny that something such as immediate access to menstruation products is a TGNCNBI issue. CHS, for its part, has consistently stated that no medical provider has the resources to attend the Task Force meetings. Its lack of participation has created several issues. For instance, the Task Force asked CHS why it would not advocate for gender-aligned housing on behalf of its patients when the American Medical Association and World Professional Association for Transgender Health (WPATH) consider housing TGNCNBI people in alignment with their gender identities as part of the correct response to a Gender Dysphoria diagnosis.³³ CHS was unable to respond because they do not have a medical expert on the Task Force, but instead a Communications expert.

For these reasons, we urge the Council to amend Int. 152 to require appointees to the Task Force have "meaningful working knowledge on cultural, medical, and/or legal rights of

³³ Press Release, American Medical Association, AMA Urges Appropriate Placement of Transgender Prisoners (June 11, 2018) ("The AMA urges that housing policies be changed to allow transgender prisoners to be placed in correctional facilities that are reflective of their affirmed gender status."), available at [https://www.ama-assn.org/press-center/press-releases/ama-urges-appropriate-placement-transgender-prisoners#:~:text=The%20AMA%20urges%20that%20housing,administrative%20segregation%20or%20solitary%20confinement;E.Colman%20et%20al.,Standards%20of%20Care%20for%20the%20Health%20of%20Transgender%20and%20Gender%20Diverse%20People,Version%208,International%20Journal%20of%20Transgender%20Health%2023%20\(2022\),available%20at%20https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644](https://www.ama-assn.org/press-center/press-releases/ama-urges-appropriate-placement-transgender-prisoners#:~:text=The%20AMA%20urges%20that%20housing,administrative%20segregation%20or%20solitary%20confinement;E.Colman%20et%20al.,Standards%20of%20Care%20for%20the%20Health%20of%20Transgender%20and%20Gender%20Diverse%20People,Version%208,International%20Journal%20of%20Transgender%20Health%2023%20(2022),available%20at%20https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644) (WPATH Standards). Gender dysphoria refers to the psychological distress that results from an incongruence between a person's sex assigned at birth and their gender identity. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision* (2022).

transgender, nonbinary, gender nonconforming, and/or intersex individuals.” Without this amendment, those who have this expertise spend significant time during meetings explaining stereotypes and other disinformation about TGNCNBI individuals at significant cost to themselves and the work of the Task Force.

The Task Force Has No Clear Way to Communicate with TGNCNBI People in the New York City Jails

One of the most powerful and crucial parts of the Local Law that created the Task Force is the requirement that, when practicable, individuals who identify as TGNCNBI and who are currently held in the SCU be allowed to attend meetings. One representative attended meetings at the end of 2019. Since then, no person who is held within the NYC jails has attended these meetings. Despite meetings being held on a monthly basis that are scheduled in advance, neither the Department nor the Board has made an effort to bring in anyone for almost five years of meetings. Thus, since the beginning of 2020, the Task Force has operated without any direct reporting from TGNCNBI People in the NYC jails.

The Department has rejected all of the Task Force requests and ideas for including incarcerated people. For instance, it refused requests to place posters in the SCU informing individuals of the Task Force and to put information on the tablets available to incarcerated people informing them of the January 2023 City Council hearing on the experiences of TGNCNBI people in DOC custody and how they might participate. In a recent September 2024 meeting, when the Task Force asked what steps were being taken to ensure that currently incarcerated people could testify at upcoming City Council hearings, the response was there was no such plan being contemplated, and it was not practicable to do so. In short, between the data stonewalling and the participation stonewalling, the Task Force has been unable to hear directly from people on the inside except to the extent that members interact with such people in their own jobs. By amending Int 152 to require the Department take steps to include incarcerated TGNCNBI people and passing it, the Task Force takes a step closer to properly representing TGNCNBI people in the City jails.

The Task Force urges the City Council to pass Int. 152 with the suggested amendments to strengthen the ability of the appointed members to assist the City in making a meaningful difference. Without these important changes, we are simply a rainbow-colored rubber stamp.

IV. With Amendments to Strengthen the Right to Access, The Legal Aid Society Supports Int. 1027 Because Gender-Affirming Medical Devices Saves Lives

The Legal Aid Society was pleased to see that Int. 1027, recently introduced by Council Member Hudson, is included today in this hearing. The heart of the bill, ensuring that the gender-affirming items TGNCNBI people use every day to affirm identities and to mitigate feelings of dysphoria, anxiety, and depression, are allowed in the New York City jails for both workers and those held in custody is sensible, medically sound, and will improve not just the lives of people in custody and at work but the experiences of re-entry that help to lower recidivism and strengthen community ties.

Neither the Task Force nor The Legal Aid Society have had sufficient time to offer specific amendments to the language of Int. 1027, but we look forward to being able to do so and to continue to work with City Council to strengthen the bill. There are two areas of concern within the bill itself and an area of expected push-back from the Department that Legal Aid would like to briefly address.

DOC Must Not Be Allowed to Limit Access to Medical Devices or Limit Definitions of “Gender-Affirming”

The Legal Aid Society recommends that Int. 1027 be amended to strengthen the right to access gender-affirming items. Currently, under the language of the bill, the Department is only required to provide access “consistent with other requests for accommodations pursuant to medical need;” however, our long history of advocating with the Department demonstrates their lack of willingness to recognize that these items are medically necessary and treat them consistent with other types of medical devices.

In particular, access to wigs has been a hot topic of conversation for the Task Force. Despite offers to bring in experts on Gender Dysphoria (of which there are none in the government agencies represented on the Task Force), the Department has staunchly declared that wigs “will not be allowed” into DOC facilities. When questioned as to whether CHS would ever prescribe a wig as part of cancer or alopecia treatment, the Task Force was informed that prescription of a wig could be contemplated. This disparity between CHS and DOC’s understanding of medical devices is at the heart of our concern that, despite the bill, TGNCNBI people will continue to not have access to the items they need.

In addition, we would be remiss not to note that even cisgender people seeking more commonly known medical devices such as walkers or canes already wait overly long times to receive the “approved” versions that DOC allows into facilities. Individuals who rely on eyeglasses for sight often go months without DOC-approved glasses due to delays in orders and approvals. The Legal Aid Society expects that gender-affirming items might face similar waitlists, in addition to a high-number of denials, and urges the City Council to investigate the entire area of medical devices and the roles that both DOC and CHS play in prescribing such devices and allowing consistent access to them.

The second area of concern for Legal Aid is that the definition and list of gender-affirming items listed in § 9-168(a) of the bill may grow as more products are created and more needs understood. Editing this list to include the action the item performs may help ensure that, as names for items change, they continue to be allowed into custody. While the bill states that “other similar items or medical devices” should be permitted even if they are not specifically listed, given the Department’s long refusal to permit such items altogether, more specificity will assist in ensuring the Department complies. Likewise, strengthening the definition of what it means to “affirm [] self-determined gender identity” may assist in limiting DOC denials.

CHS Must Take Responsibility for Administering Gender-Affirming Devices in the Jails

In the September 2024 Task Force meeting, CHS stated that it would not be weighing in on the housing determinations of TGNCNBI individuals due to a desire to not “medicalize” identity. CHS is taking this position despite the most recent WPATH standards – the well-established standards of care for the health of transgender and gender nonconforming people – encouraging gender-aligned housing as part of the treatment for Gender Dysphoria (GD).³⁴ Due to this recent interaction, The Legal Aid Society is concerned that CHS might similarly balk at ordering, prescribing, and advocating for gender-affirming devices in the jails.

The area of gender-affirming care is one that has only recently received the main-stream medical focus it deserves. For centuries, TGNCNBI people have been developing their own methods to assist in presenting the bodies they wish to present to the world. It is relatively new for medical professionals to include recommendations on binders (used to compress the chest) and gaffs (used to create flat genitalia) as part of their treatment for GD. Within TGNCNBI communities, individuals have known and shared how these devices alleviate symptoms of depression, anxiety, and gender dysphoria overall, and medical establishments are catching up. While they may not require a doctor’s prescription outside of jail, TGNCNBI people must rely on CHS to prescribe these devices should they enter a jail setting. In a place as highly regulated as the jail system, we cannot rely on cultural competency or “good will” to allow in gender-affirming devices as wide ranging as wigs and extensions to dilators, prosthetics, or binders. Without the participation of CHS, it is unlikely that these devices will be allowed into the jails.

Leading medical establishments have taken the position that full access to the wide spectrum of gender-affirming care *is* part of their ethical duties. Organizations including the American Medical Association have issued statements that gender-aligned housing is part of the GD treatment people in prisons and jails should receive.³⁵ It is fitting that the devices TGNCNBI people need to reduce symptoms of GD be a CHS consideration. No different than a mobility device or eyeglasses, gender-affirming devices improve the healthcare outcomes of TNGNCBI people and allow for navigating the world on their own terms. While CHS’s desire to not medicalize an identity is admirable, the reality is that failure to do so will almost certainly result in TGNCNBI people being unable to access life-saving products in the jail setting.

CONCLUSION

We urge the City Council to immediately act to protect the TGNCNBI community incarcerated in the City jails. By enacting Int. 625 and amended versions of Ints. 152 and 1027,

³⁴ See WPATH Standards, *supra* note 33.

³⁵ American Medical Association Policy H-430.982, *Appropriate Placement of Transgender Prisoners* (2018), available at <https://policysearch.ama-assn.org/policyfinder/detail/transgender%20housing?uri=%2FAMADoc%2FHOD.xml-H-430.982.xml>.

the City can live up to its reputation as the bastion of LGBTQ+ rights and provide to the community the rights and protections that it needs and deserves.

EXHIBIT 1



**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 policies 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/mP7oWLBrZ6Y>.

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 misconduct is 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/>.

EXHIBIT 2



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

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

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

January 25, 2023

Testimony of The Legal Aid Society

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

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

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

I. DOC Denies Most Requests for Gender-Aligned Housing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁷ See Section II.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit A

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

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

Be it enacted by the Council as follows:

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 men and women, of their gender, which may 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.

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

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

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

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

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

- 1 4. Whether the incarcerated individual has previously been incarcerated;
- 2 5. Whether the incarcerated individual's criminal history is exclusively nonviolent;
- 3 6. Whether the incarcerated individual has prior convictions for sex offenses against an
- 4 adult or child;
- 5 7. Whether the incarcerated individual is or is perceived to be gay, lesbian, bisexual,
- 6 transgender, intersex, ~~non-binary~~ or gender nonconforming;
- 7 8. Whether the incarcerated individual has previously experienced sexual victimization;
- 8 9. The incarcerated individual's own perception of vulnerability; and
- 9 10. Whether the incarcerated individual is detained solely for civil immigration purposes.
- 10 ~~ce. Subject to section 115 of title 28 of the code of federal regulations, t~~The department
- 11 shall establish a process for transgender, intersex, ~~non-binary~~ and gender nonconforming
- 12 individuals to self-identify as such ~~during intake~~ and to use such self-identification to make
- 13 housing and programming assignments on an individualized basis. ~~The department shall house a~~
- 14 ~~person in a facility most closely aligned with their gender identity and in the manner most similar~~
- 15 ~~to a cisgender person facing similar security needs unless (1) the person does not want to be so~~
- 16 ~~housed or (2) the department can overcome such a presumption by a determination in writing by~~
- 17 ~~the Commissioner or the Commissioner's designee that there is clear and convincing evidence that~~
- 18 ~~such person presents a current danger of committing gender-based violence against others. Such a~~
- 19 ~~denial cannot be based on any discriminatory reasons including but limited to:~~
- 20 ~~1. past or current sex characteristics including chromosomes, genitals, gonads, or~~
- 21 ~~any external reproductive anatomy, secondary sex characteristics, or hormone~~
- 22 ~~levels and functions of the person whose housing is at issue;~~
- 23 ~~2. the sexual orientation of the person whose housing is at issue~~

1 3. complaints of other incarcerated people who do not wish to be with a
2 transgender, gender nonconforming, non-binary, and/or intersex person due to
3 the person's gender identity or perceived gender identity or sexuality or
4 perceived sexuality;

5 4. a factor present among other people confined or previously confined in the
6 presumptive housing unit or facility;

7 5. classification as a different gender during a previous incarceration; or

8 6. absence of documentation or other evidence indicating medical transition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Session 12

AM

LS # 8279/10322

7/26/22

Session 11

AS

LS # 8238

Int. # 1532 - 2019

Exhibit B

May 11, 2022

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

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

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

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

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

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

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

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

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

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

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

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

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

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

² *Id.* at 18-21.

³ *Id.* at 27.

⁴ *Id.* at 24-25.

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

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

⁵ *Id.* at 27-29.

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

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

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

Sincerely,

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

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

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

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

¹⁰ Cal. Penal Code §§ 2605-06.

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

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

CC. Members of the Senate and Assembly

Experiences of TGNCNB People in New York prisons and jails¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 3

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

Hearing on Proposed Legislation: Int. 728,

January 25, 2023

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

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

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

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

Thank you,

TaskForce Members

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

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

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

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

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

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

Natalie Fiorenzo, Corrections Specialist, New York County Defender Services

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

Shéar Avory, Lead Statewide Community Organizer, NEW Pride Agenda

Organizational Support

Black and Pink NYC

The Bronx Defenders

Brooklyn Defender Services

Center for Alternative Sentencing and Employment Services (CASES)

The EAC Network

Equality New York

Exodus Transitional Community

Exponents

The Fortune Society

Gender Equality New York, Inc. (GENY)

The Lesbian, Gay, Bisexual, and Transgender Community Center

The Legal Aid Society

Neighborhood Defender Service of Harlem

New Alternatives for Homeless LGBT Youth

NEW Pride Agenda

New York County Defender Services

The Osborne Association

Women's Prison Association

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

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

Be it enacted by the Council as follows:

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

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

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

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

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

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

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

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

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

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

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

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

22 2. The age of the incarcerated individual;

23 3. The physical build of the incarcerated individual;

- 1 4. Whether the incarcerated individual has previously been incarcerated;
- 2 5. Whether the incarcerated individual's criminal history is exclusively nonviolent;
- 3 6. Whether the incarcerated individual has prior convictions for sex offenses against an
4 adult or child;
- 5 7. Whether the incarcerated individual is or is perceived to be gay, lesbian, bisexual,
6 transgender, intersex, non-binary or gender nonconforming;
- 7 8. Whether the incarcerated individual has previously experienced sexual victimization;
- 8 9. The incarcerated individual's own perception of vulnerability; and
- 9 10. Whether the incarcerated individual is detained solely for civil immigration purposes.
- 10 ~~ee. Subject to section 115 of title 28 of the code of federal regulations, †~~The department
11 shall establish a process for transgender, intersex, non-binary and gender nonconforming
12 individuals to self-identify as such during intake and to use such self-identification to make
13 housing and programming assignments on an individualized basis. The department shall house a
14 person in a facility most closely aligned with their gender identity and in the manner most similar
15 to a cisgender person facing similar security needs unless (1) the person does not want to be so
16 housed or (2) the department can overcome such a presumption by a determination in writing by
17 the Commissioner or the Commissioner's designee that there is clear and convincing evidence that
18 such person presents a current danger of committing gender-based violence against others. Such a
19 denial cannot be based on any discriminatory reasons including but limited to:
- 20 1. past or current sex characteristics including chromosomes, genitals, gonads, or
21 any external reproductive anatomy, secondary sex characteristics, or hormone
22 levels and functions of the person whose housing is at issue;
- 23 2. the sexual orientation of the person whose housing is at issue

1 3. complaints of other incarcerated people who do not wish to be with a
2 transgender, gender nonconforming, non-binary, and/or intersex person due to
3 the person's gender identity or perceived gender identity or sexuality or
4 perceived sexuality;

5 4. a factor present among other people confined or previously confined in the
6 presumptive housing unit or facility;

7 5. classification as a different gender during a previous incarceration; or

8 6. absence of documentation or other evidence indicating medical transition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 § 2. Section 626 of the New York city charter, as amended by local law number 133 for
2 the year 2019, is amended by adding a new subsection i to read as follows:
3 i. The board shall issue opinions to the department regarding appeals of housing requests
4 related to gender identity.
5 § 3. This local law takes effect 90 days after it becomes law.

Session 12

AM

LS # 8279/10322

7/26/22

Session 11

AS

LS # 8238

Int. # 1532 - 2019

EXHIBIT 4



**CORRECTION DEPARTMENT
CITY OF NEW YORK**



SCU REQUEST FOR RECONSIDERATION FORM

FORM NO. XXXX
DIR XXXX

Date:

Requester's Name:

NYSID Number:

Book and Case Number:

Gender Identity:

Preferred Housing:

Search Preference:

Reason for Reconsideration:

Separation Order: YES ☐ N/A ☐ (If YES - Write persons information below who is no longer incarcerated)

Name:

NYSID:

Book and Case Number:

2. My behavioral issues have improved. I have not received an infraction or involved in an incident in _____ months.

3. I am supplying additional documentation that will support my placement in SCU.
(Note: Additional documentation could be staff support, medical documentation, MH documentation)

Staff Members

☐

Staff Support:

☐

Medical support:

☐

MH Support

☐

Other Support

4. Other

Incarcerated Individual's Signature _____

EXHIBIT 5

Passing GIRDS Brings New York State into alignment with...

at least 17 New York Counties

Broome County – After public litigation, **in 2023**, Broome County agreed to a wide-sweeping policy that affirms the rights of transgender people with respect to housing placement, access to medical care, searches, and freedom from harassment and discrimination. This settlement also resulted in a damages payment of \$160,000 to the survivor of the mistreatment and has encouraged multiple counties across New York to voluntarily rectify their own policies. However this piecemeal access to justice is not enough. Transgender, non-binary, and intersex New Yorkers deserve access to consistent and clear rights across the entire state.

Steuben County – **in 2020**, a landmark settlement was reached requiring Steuben County to adopt policies affirming the rights of transgender, non-binary, and intersex people with respect to housing placement, access to medical care, searches, and freedom from harassment and discrimination. This policy was approved by the New York State Sheriffs' Association and has served as a model for jails across New York state and the country.

Cayuga, Fulton, and Yates Counties – **in 2023**, the counties voluntarily implemented policies that are nearly identical to Steuben County's.

Chemung and Schoharie Counties – **in 2023**, the counties voluntarily implemented policies that are identical to Steuben County's.

Herkimer and Putnam Counties – **in 2023**, the counties voluntarily implemented policies that are identical to Broome County's.

Lewis County – **in 2024**, the county voluntarily implemented a policy that is nearly identical to Broome County's.

Montgomery County – **in 2023**, the county voluntarily adopted a policy that is a mix of the Broome and Steuben County policies.

Ontario County – **in 2021**, the county voluntarily adopted a policy that is similar to Steuben County's.

Schuyler County – **in 2024**, the county voluntarily adopted a policy that is identical to Steuben County's.

St. Lawrence County – in 2024, the county voluntarily adopted a policy requiring that housing be “consistent with gender identity or within the unit. . . the inmate believes is safest for them.” The policy also affirms the rights of transgender, non-binary, and intersex people with respect to names and pronouns, access to medical care, searches, and access to clothing and toiletry items.

And, **Erie, Madison, and Warren Counties** have all voluntarily adopted policies that are similar or identical to Broome and/or Steuben County’s policies. Additional counties have reported that they are in the process of developing Broome and Steuben-like policies.

U.S. States

California – passed SB 132, The Transgender Respect, Agency, and Dignity Act, which “requires [California Department of Corrections and Rehabilitation] to ask each individual entering into its custody to specify gender identity, pronoun, honorific, and search preference. It also requires that individuals be housed according to gender identity and individual preference.” This follows extensive individual litigation by transgender people against the state resulting in hundred-thousand dollar settlements. This law has been in place **since 2020**.

Colorado – after extensive litigation, Colorado entered into a settlement in **early 2024** creating a new path to gender-affirming housing for individuals in state facilities. This follows extensive individual litigation by transgender people against the state resulting in hundred-thousand dollar settlements.

Connecticut – passed SB 13, An Act Concerning the Fair Treatment of Incarcerated Persons, which ensures “all individuals are treated consistent with their gender identity including with regard to strip searches and access to clothing, commissary items and educational materials, as well as housing based on their recognized gender.” This has been law **since 2018**.

New Jersey – following prolonged litigation, New Jersey agreed to a settlement “to make it customary for prisoners who identify as transgender, intersex or nonbinary to be assigned a prison stay in line with their gender identity — not with the sex they were assigned at birth.” This settlement has been in place **since 2021**.

Rhode Island – after listening to intense public pressure and advocacy, the Rhode Island Department of Corrections implemented a new policy that allows for the transfer of individuals to gender affirming prisons, and implements additional housing, search, medical, and other rights. This policy was implemented **in 2022**.

Massachusetts – passed the law known as Prisoner Gender Identity, which modified housing decisions so that individuals who are transgender, non-binary, or intersex “shall be housed in a correctional facility with inmates with the same gender identity ... consistent with the prisoner’s request”. This law has been in effect **since late 2018**.

Washington D.C. – after extensive litigation, the DC Metropolitan Police Department agreed to create a new policy for housing transgender detainees in closer alignment with their gender identities. The policy has been in place **since 2018**.

...and around the world!

Canada – the entire country of Canada adopted a correctional policy giving Two Spirit, transgender, intersex, and non-binary individuals the ability to choose whether a men’s or women’s prison would be safer for their incarceration. This has been the law **since 2017**.

England and Wales – England and Wales have maintained laws allowing for individuals to be located in the prison of their gender as recognized by the United Kingdom government **since 2011**.

EXHIBIT 6

By Council Members Cabán, Hudson and Hanif

A Local Law in relation to extending the minimum duration of and updating other requirements pertaining to the task force created to address policies related to the treatment and housing of transgender, gender nonconforming, non-binary, and intersex individuals in the custody of the department of correction

Be it enacted by the Council as follows:

Section 1. Section 1 of local law number 145 for the year 2019 is amended to read as follows:

Section 1. a. Definitions. For purposes of this local law, the term “correctional health services” means any health care entity designated by the city of New York as the agency or agencies responsible for health services for incarcerated individuals in the care and custody of the department of correction. When the responsibility is contractually shared with an outside provider, this term shall also apply.

b. The board of correction shall convene a task force to review the department of correction’s policies related to the treatment and housing of transgender, gender nonconforming, non-binary, and intersex (TGNCNBI) individuals in the department of correction’s custody. In so convening the board of correction will provide for the following:

- i. translation support at all meetings
- ii. arrange for transcripts of minutes of meetings
- iii. provide tangible support in the publication of the Report mentioned below in (h),
- iv. maintain a library of documents provided to the Task Force that is accessible to all Task Force members; and
- v. other administrative support commonly made available to city agencies

1 [b.] c. Such task force shall consist of a representative appointed by the speaker of the
2 council or upon leaving the representative's designee and a representative from each of the
3 following who shall serve at the pleasure of the appointing [agency] officer: the department of
4 correction, correctional health services, the commission on human rights, the mayor's office to
5 end domestic and gender-based violence, and the [nyc] NYC unity project within the office of the
6 mayor or similar organization[, and the council]. Such appointees shall have meaningful working
7 knowledge on cultural, medical, and/or legal rights of transgender, non-binary, gender non-
8 conforming, and/or intersex individuals. Such task force shall also include at least one
9 representative from each of the following categories, appointed by the board of correction: (i)
10 formerly incarcerated individuals; (ii) individuals formerly or currently incarcerated in the special
11 consideration unit(s) or any subsequent voluntary housing for transgender individuals, to the extent
12 practicable; (iii) service providers that address transgender, gender nonconforming, non-binary,
13 and intersex individuals in the custody of the department of correction; and (iv) local and national
14 organizations that address issues related to transgender, gender nonconforming, non-binary, and
15 intersex individuals Members of such task force shall elect a chair from among such members.

16 x. To the extent that (c)(i) might not be "practicable" the department of correction and the
17 board of correction will work with the task force to create methods for currently incarcerated
18 people to send information to the task force.

19 i. The board of correction will work to forward any/all messages left by TGNCNBI
20 people or mentioning TGNCNBI issues to the task force in advance of the twice-monthly
21 meetings. Such messages shall include the name and book and case number when
22 applicable and the message. Information on how to reach the board of correction for
23 complaints involving TGNCNBI concerns will be posted both in housing units and law

1 libraries as well as within the “LGBTQ” folder of the tablets provided to incarcerated
2 people. The wording of the signage will be determined by the board of correction, the
3 department of correction, and task force members but, at a minimum, it will be available
4 in Spanish and English.

5 ii. The department of correction will send staff members from the LGBTQIA+
6 Initiatives Unit to the special considerations housing unit in advance of the twice-monthly
7 task force meeting and ask if any member or members wish to participate via video or
8 audio call, which the department will then arrange.

9 iii. The board of correction website, including the page on this task force inclusive
10 of reports and minutes, will be made accessible to individuals in custody via their tablets.

11 [c.] d. Any vacancies in the membership of [the] such task force shall be filled in the same
12 manner as the original appointment. All members shall be appointed to [the] such task force within
13 60 days of the effective date of this local law.

14 [d.] e. Members of [the] such task force shall serve without compensation and at a
15 minimum shall meet every two months .

16 x. The department of correction shall work with task force members to provide tours of the
17 facilities most commonly housing TGNCNBI individuals. Such tours shall consist of intake cells,
18 housing units (inclusive of shower and bathroom areas), program areas and recreational areas. Law
19 library and general library resources will be made available for review. These tours will be
20 inclusive of the Special Considerations Unit and any similar such units. For these purposes any
21 unit with two or more TGNCNBI identified individuals should be included on the tours.

22 i. These tours shall be arranged at a minimum twice per year.

1 ii. Incarcerated individuals will be allowed to speak to task force members who are
2 touring and provide their name and book and case number for follow-up conversations;
3 likewise task force members will be allowed to provide their contact information in writing,
4 including by providing their business cards.

5 ii. Notice of these tours shall be shared seven (7) days in advance so that individuals
6 who wish to talk to task force members can make these arrangements.

7 [e.] f. Prior to each meeting of such task force, the members of such task force appointed
8 by the board of correction may set an agenda for such meeting and may prepare a list of questions
9 for the representatives from the department of correction and correctional health services
10 appointed pursuant to subdivision c of this section, which agenda and list shall be delivered to all
11 members of such task force within 7 days prior to such meeting except to the extent urgent or
12 unexpected circumstances arise. The representatives from the department of correction and
13 correctional health services appointed pursuant to subdivision c of this section shall present at such
14 meeting information on transgender, gender nonconforming, non-binary, and intersex individuals
15 in the custody of the department of correction that is responsive to the questions prepared pursuant
16 to this subdivision. If representatives with meaningful working knowledge needed to respond to
17 the questions cannot attend, then answers will be provided in writing on the day of the meeting.

18 x. The Department of Correction and Correctional Health Services will provide the Task
19 Force membership with current policies impacting the treatment of TGNCNBI people in custody.

20 g. In addition to presenting the information required pursuant to subdivision f and x of this
21 section, representatives from the department of correction and correctional health services
22 appointed pursuant to subdivision c of this section shall provide updates at each meeting of such
23 task force on:

1 1. Any changes to the rules or policies of the department of correction or correctional health
2 services related to the treatment or housing of TGNCNBI individuals in the custody of the
3 department of correction or will disproportionately affect TGNCNBI people in custody must be
4 provided in writing;

5 2. Each instance in which a transgender, gender nonconforming, non-binary, or intersex
6 individual in the custody of the department of correction was moved from one housing unit within
7 such department to another since the last meeting of such task force. Such information will include
8 whether the move was voluntary or involuntary and whether the person was transferred from
9 gender aligned housing to gender mis-aligned housing, whether the person was transferred but the
10 gender alignment remains the same, or whether the person was transferred from gender mis-
11 aligned to gender-aligned housing and the reason(s) for such transfer as well as the type of housing
12 the individual is now in;

13 x. Any time changes to how TGNCNBI individuals will be housed are contemplated – such
14 as the opening of a new housing unit, the move of more than four individuals in a housing unit, or
15 the closing of a housing unit - the department shall inform the task force thirty (30) days in advance
16 in order to receive feedback; and

17 3. Any opportunities for the task force to provide opinions or feedback on any potential
18 policy changes or partnerships that DOC is considering implementing prior to finalization. If the
19 Department or CHS are contemplating updates to policy or changes to ongoing partnerships the
20 Task Force must be informed at least in broad strokes of what is being considered so that they may
21 lend their expertise on the subject.

22 h. Within one year of the formation of [the] such task force, such task force shall submit a
23 report containing recommendations regarding policies related to the treatment and housing of

1 transgender, gender nonconforming, non-binary, and intersex individuals in the department of
2 correction's custody, and a summary of key findings to the department of correction, mayor and
3 the speaker of the council. Within 90 days of receiving such report, the department of correction
4 shall provide a written response to the board of correction, the mayor, and the council. Each such
5 written report shall be posted on the department of [correction] correction's and the board of
6 correction's websites in a format that is searchable and downloadable and that facilitates printing
7 no later than 10 days after it is delivered to the mayor and the council.

8 i. [The] Such task force shall continue to submit reports, including in 2024 and as
9 needed but no less than every two years. Each subsequent report shall be submitted to the
10 department of correction, mayor and the speaker of the council. Within 90 days of receiving such
11 report, the department of correction shall provide a written response to the board of correction, the
12 mayor, and the council. Each such written report shall be posted on the department of [correction]
13 correction's and the board of correction's websites in a format that is searchable and downloadable
14 and that facilitates printing no later than 10 days after it is delivered to the mayor and the council.
15 Within 60 days of receipt of the written response the city council shall hold a hearing which
16 representatives of the board of correction, department of correction, and correctional health
17 services must attend and must remain until the meeting is adjourned. Notice of such hearing shall
18 be posted at least 30 days before the hearing in all housing units, medical areas and law libraries
19 of all facilities operated by the department of correction and procedures must be implemented to
20 permit all incarcerated individuals who wish to testify to do so.

21 [f. The] i. Such task force shall terminate by determination of the board of correction, but
22 no earlier than one year after the issuance of a [final] fifth report[, to be submitted in the year
23 2031]. Any time a new correctional facility is built, the board of correction shall have the option

1 to reconvene [the taskforce] such task force for the purpose of reviewing implementation of
2 policies related to the treatment of transgender, gender nonconforming, non-binary, and intersex
3 individuals in such facilities.

§ 2. This local law takes effect immediately. The task force established pursuant to local law number 145 for the year 2019 shall meet within 90 days of such effective date to elect a chair as required by section one of this local law and at such meeting may conduct such other business as such task force deems necessary.

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