

**First Report of the Task Force on Issues
Faced by TGNCNBI People in Custody**

August 15, 2022

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The authors wish to thank all the formerly and currently incarcerated people who shared their stories in the hopes that what happened to them will never happen to any other person.

We also wish to thank Heather Burgess for advancing and finalizing this report, and to all those who reviewed and edited: Drew Haste, Kira Charles, and Natasha Mangham.

Current and former Task Force members include: Alana Sivin, Amanda Masters, Andrea Mufarreh, Ashe McGovern, Benjamin Farber, Bryan Ellicott, Briana Silberg, Chanel Lopez, Chanelle Sessoms, Chase Strangio, Dana Wax, Deborah Lolai, Dori Lewis, Elizabeth Munsky, Emily Turner, Faye Yelardy, Grace Detrevarah, Heather Burgess, Jeanette Merrill, Jin Kwak, JoAnn Kamuf Ward, John Blasco, Kandra Clark, Kate McMahon, Kelsey De Avila, Kimberly Mckenzie, Margaret Egan, Mik Kinkead, Nicole Levy, Prechelle Shannon, Ronald Porcelli, Saloni Sethi, Shéár Avory, Sophie Rose Cadle, Tabytha Gonzalez, Yao Chang, Zara Nasir, Zoey Chenitz and representatives from the City Council.

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Introduction and Executive Summary

Purpose of the Task Force

The Task Force on Issues Faced by Transgender, Gender Non-Conforming, Non-Binary, and Intersex (TGNCNBI) People in Custody (“the Task Force” or “the TGNCNBI Task Force”) is the first of its kind either locally or nationally.¹

Composed of TGNCNBI leaders with lived experiences, TGNCNBI advocates, and governmental representatives, the Task Force first met in October 2019 to address the crises facing TGNCNBI people in the New York City jails.

While the following Report details many specific ways that current policies and practices should be revised and improved to create positive change, the Task Force recognizes that the jails have proven themselves unable to safely and humanely house **all** people, and recommends the following to center us and all government actors in creating change:²

- 1) The City and State must release people and decarcerate the jails including all TGNCNBI people;
- 2) The City and State must provide accessible and affordable housing to all people released from custody, with a focus on TGNCNBI people and their needs, where people have both the dignity of personal space and the necessary assistance of case management;
- 3) The City and State must ensure adequate funding for community-based organizations that run alternative or diversionary programs, and that mental and medical healthcare and other services are provided for in each budget; and
- 4) All actors must treat people who remain in custody humanely and respectfully and ensure that they have access to community-standard health, housing, and other care while detained or incarcerated.

The Creation of the Task Force

Local Law 145, which was enacted in April 2019 and created this Task Force, was the result of years of advocacy including public testimonies before City Council and New York

¹ For a working, though not complete, definition of terms *see* Appendix A Section III “Definitions and Terms.”

² In reaching our conclusions we rely upon our own first hand experiences as well as the following reports: New York City Board of Correction, “The Death of Layleen Xtravaganza Cubilette-Polanco 1991-2019”, *available at* https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.06_Polanco/Final_Polanco_Public_Report_1.pdf; New York City Board of Correction, “An Assessment of the Transgender Housing Unit”, February 2018, *available at* <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/THU%20FINAL%20Feb%202018.pdf>; and the growing number of reports on the deaths and attempted suicides all available here <https://www1.nyc.gov/site/boc/reports/board-of-correction-reports.page>. In addition, we relied upon the filings in two major cases: *Nunez v. City of New York*, 11 Civ. 5845 (S. D. N. Y., 2011) and all related documents, and *Agnew v. New York City Department of Correction*, Index No. 21-813431 Bronx Co. (2021) and all related documents.

City's independent jail-oversight agency, the Board of Correction ("BOC" or "the Board"), on the current and historical treatment of TGNCNBI people in the New York City Department of Correction ("DOC" or "the Department") custody and under Correctional Health Services ("CHS") care. TGNCNBI people testified in person, currently incarcerated people testified by letters which were submitted and read at BOC hearings, and advocacy organizations participated in multiple rallies, raising awareness of the horrific treatment of all people in DOC custody and specifically naming the abuse of TGNCNBI peoples.

As a result of this activism, in 2018 the BOC investigated and published a 2018 Assessment of the Transgender Housing Unit ("THU") Report. This report recommended that trans-led and trans-focused organizations be brought in to collaborate with the Department in developing a trans-competent environment and that a Task Force should be established to develop short and long-term improvements to the management and operation of the THU. The THU is now known as the Special Considerations Unit ("SCU") and has been moved to the women's jail, Rose M. Singer Center ("RMSC").

Under Local Law 145 the Task Force was charged with evaluating and recommending policies related to the treatment of TGNCNBI individuals in the jails and producing an annual report outlining key concerns and recommendations for both DOC and CHS. BOC was charged with convening this Task Force.

On June 7, 2019, Layleen Xtravaganza Cubilette-Polanco died from complications of an untreated epileptic seizure she suffered while in punitive segregation. Video evidence revealed that from the time DOC learned of her condition, 47 minutes passed with no action to save her life.

With Ms. Polanco's death at the forefront, the TGNCNBI Task Force was formed. By law, it is mandated to convene for five years until 2024. The Task Force is now comprised of approximately 19 members representing 15 organizations.

Introduction to the First Report

The TGNCNBI Task Force identified five major areas to review: (1) Intake and New Admissions; (2) Housing; (3) Mental Health and Wellness; (4) Re-Entry; and (5) Staffing and Accountability. The Report is structured to first provide a summary of overarching issues with major recommendations for each area, followed by detailed chapters where the stories and experiences of individuals in custody are shared to support the need for these changes.

In drafting this Report, the Task Force faced multiple challenges, which contributed to this first Report being overdue:

- The Report has had to deal with constantly changing, and largely deteriorating, conditions of confinement for TGNCNBI individuals. It covers not only DOC's persistent failure to house persons safely, but also the heightened concerns due to COVID-19, a potentially life-threatening respiratory illness that is extremely contagious in congregate

settings and has therefore disproportionately impacted people in custody. Steps taken to reduce jail exposure, such as halting in-person visits and revoking all volunteer IDs and classes, further intensified the extreme isolation experienced within DOC facilities. Advocates could no longer see for themselves the conditions and realities in the city jails and contact with TGNCNBI people became very difficult. The dangerous conditions at Rikers which were already in a critical state, as acknowledged in multiple reports by the federal monitors in *Nunez*, only intensified.³

- COVID-19 had a devastating impact on members of the Task Force and their ability to engage in Task Force duties. After only two in-person meetings in October 2019 and February 2020, the Task Force was forced to move to virtual meetings. The logistics of meeting virtually, accessibility, maintaining their own organizations, and the physical and emotional toll of the pandemic greatly impacted the significant time and energy required of this report.
- Salient policies and procedures were not always provided to The Task Force. For example, the principal directive impacting the treatment and housing of TGNCNBI persons has reportedly been under revision since at least the summer of 2020, yet the Department has refused to provide a draft to the Task Force. More glaringly, though, in October 2021, Governor Hochul’s office announced that the entire population of people held at the RMSC would be moved out of DOC custody into prisons operated by the New York State Department of Corrections and Community Supervision (“DOCCS”). Government announcements continuously referred to “all women and transgender people” despite the fact that while RMSC housed many non-binary people and transgender men, the majority of transgender women were in men’s jails.⁴ Governor Hochul’s statements created the false impression that all transgender people in DOC custody were housed in RMSC. Despite the mission and City-commissioned directive of this Task Force, no input from Task Force members was sought, and indeed DOC staff were directed to keep Task Force members in the dark until after the Governor’s announcement. Task Force members wrote to Governor Kathy Hochul, then Mayor Bill de Blasio, City Council members, and other government officials demanding that the transfers be halted based on the dearth of planning and stakeholder involvement. Moving this population into a totally new jurisdiction without any assigned point-people on TGNCNBI issues at the receiving end was obviously dangerous, and the danger was realized. The move resulted in multiple complaints of sexual and physical violence, as well as denial of basic services to persons forced to move to DOCCS custody. No written policies or procedures regarding the transfer to Bedford Hills were provided to the Task

³ *Nunez* is the case name commonly associated with the lawsuit brought by The Legal Aid Society and Emery Celli challenging illegal use of force and falsified record keeping within the NYC jail systems. The parties entered into a consent judgment creating a monitoring team to advance the reforms set forth in the consent judgment.

⁴ As confirmed by BOC review of DOC housing data for TGNCNBI individuals in custody from January 1, 2021 - February 24, 2022. It should be noted that this data may include individuals who requested placement in gender-misaligned housing.

Force by DOC, CHS, or the Governor's Office, and the Task Force's requests to meet with representatives of the Governor's or Mayor's offices were ignored.

- The Department⁵ and CHS⁶ provided three basic policies relating to TGNCNBI persons to the Task Force. In addition, numerous other laws, Minimum Standards, and litigation impact how TGNCNBI persons are to be treated. Many of the policies that govern the treatment of TGNCNBI persons are policies that are generally applicable to all persons in custody. As a result, there was a steep learning curve for many Task Force members even to gain an understanding of how DOC and CHS are supposed to operate and provide services. Recognizing and understanding where ill-treatment results from the dichotomy between policy and practice presented yet another challenge.
- Data capturing multiple gender identities (i.e. an intersex man, a non-binary transgender woman) is simply non-existent at this time. Moreover, many people from historically marginalized groups may choose to code-switch, using language more commonly understood by cisgender people than language they would use to self-describe. Therefore, while we may have data stating "x number of transgender women are housed at RMSC," it is possible that within that data set there are intersex peoples, non-binary and gender non-conforming peoples, and any number of combinations of identities. Of course, it is everyone's right to reveal only as much of their identity as they wish to reveal, but we do still hope that going forward we can better reflect who is actually in the jails.
- Relations among Task Force members were often strained. Numerous TGNCNBI leaders, especially women of color and formerly incarcerated people, were named to The Task Force. Yet they received little emotional support when encountering instances of micro or macroaggressions from government agencies or non-profits. Individuals not affiliated with organizations were not compensated for any of their labor, while those affiliated with organizations still maintained the same workloads in addition to taking on the work of the Task Force. TGNCNBI and/or formerly incarcerated Task Force members spent significant time providing impromptu and unpaid "trans 101" lessons to many other Task Force members when disrespectful and dismissive actions occurred.
- Initially, the TGNCNBI Task Force consisted of 29 members representing 17 organizations. Some members and representative organizations never attended any meetings, while some have sent different people to each meeting without briefing them on the previous work. Only a small number of members and organizations have been diligently attending and working with the Task Force, despite not having been adequately supported or compensated for their time and efforts throughout.
- Finally, in writing and editing this first report, the Drafting Committee and other members relived either personal or secondary trauma. Many members remained uncompensated for their labor and uncompensated for any support they may have needed

⁵ See Appendix A.

⁶ See Appendix B.

in processing the trauma stewardship that was asked of them. The lack of support and acknowledgement of this trauma contributed to both the delay of the report, and for some, the decision to take breaks from the Task Force.

Drafts of this report were thus often deeply affected by sudden and unannounced changes in DOC policy and practice, conditions within DOC, and the conditions surrounding the Task Force itself. Therefore, the Task Force as a whole decided to make this report accurate as of March 11, 2022.

What We Need

During the creation of this report, Task Force members realized that we simply did not have adequate means to achieve our goals. In addition to the global pandemic's impact generally, it also caused numerous members to need to take leave or focus on emerging crises at their work. Many members left or were forced to leave their jobs and remaining members had to spend time onboarding new members to catch them up on the work. All of this was done without any compensation and without any budget for the Task Force itself.

In reflecting on the process for this report, the Task Force has made the following conclusions:

1. Given that the Task Force needs to have representatives on it who are most directly impacted by conditions in the jail and prisons, it is necessary that people be compensated for their labor.
2. The BOC has suffered budget cuts and staffing losses that have severely impacted its ability to regulate, monitor, and inspect the NYC jails. BOC requires increased staffing in order to meet the improved mandates and oversight requirements laid out in this Report.
3. Either the City Council or the BOC should be provided with sufficient funds to appoint a single staff member to assist the Task Force in both the technical and administrative aspects of the Task Force's duties. No one person appointed to serve has the capacity to assist at the level needed in order for the Task Force to be effective.

Materials Reviewed

In addition to the vital importance of first-hand lived accounts of treatment and survival, the Task Force asked for and then reviewed all the major documents concerning conditions of confinement for TGNCNBI people in custody.

The Task Force must highlight that we have never been given anything formally written by the Governor's office, CHS, DOC, or the BOC on the transfers from RMSC to DOCCS custody. The Task Force learned of the transfers at the same time as the general public and no member was consulted in any way prior to the transfers beginning.

DOC provided two major policies relating to TGNCNBI people in custody:

1. Directive 4498R-A Lesbian, Gay, Bisexual, Transgender, Intersex, Gender Non-Binary, and Gender Non-Conforming Inmates (effective 10/22/2019).⁷

- a. Directive 4498R-A created a housing determination process for TGNCNBI people and guidelines for the Special Considerations Unit.
- b. This Directive also outlined guidelines for searches of TGNCNBI people, as well as access to programs, services, commissary, toiletries, and clothing items.
- c. Finally, the Directive requires specific staff training and sets out how staff must respect gender identity, including the use of correct pronouns and names.
- d. It should be noted that DOC informed the Task Force that 4498R-A has been in the process of being updated for at least two years. However, DOC has not made this updated policy available to any members of the Task Force or BOC for review or comment. Additionally, this policy and the predecessor policy from 2014 have not been available to people in custody at any point in time, so the persons most affected are kept ignorant of the way they are supposed to be treated and the resources available to them.

2. Directive 5011R-A Elimination of Sexual Abuse and Sexual Harassment (effective 5/31/2019).⁸

- a. Directive 5011R-A established the Department's policies and procedures for preventing, detecting, reporting, and responding to incidents of sexual abuse and sexual harassment against people in DOC custody pursuant to the federal Prison Rape Elimination Act (PREA) of 2003.
- b. This Directive contains general guidelines on facility and unit placement, programming assignments, safety, and housing procedures.

Correctional Health provided the CHS policy on transgender care:

1. Med 24B Transgender Care (effective 10/21/2019).⁹

- a. This policy was established to ensure that all transgender patients receive appropriate care, education, therapy, and medical follow-up. This policy does continue to use some questionable language such as "transgender therapy" without explanation or definition.

⁷ See Appendix A. The Directive is being provided here after receiving clearance from the BOC allowing its publication.

⁸ See Appendix C.

⁹ See Appendix B.

b. Specifically, Med 24B was intended to remove barriers to care by assisting primary care providers in appropriately counseling, monitoring, and managing health.

Intake and New Admissions Summary

Key Takeaways

1. There must be multiple opportunities and methods for TGNCNBI people in custody to safely disclose their chosen name and gender identity.
2. Revision of forms and documentation by the police, the courts, CHS, and DOC that acknowledges and respects all gender identities is a crucial first step to reducing gender-based violence in the jail system.
3. Data on sexual orientation and gender identity must be inclusive to give an accurate picture of arrest, prosecution, and incarceration experiences.

It is telling that even up to the point of publishing this report, organizations represented on this Task Force continue to receive confusing and mixed reviews as to how TGNCNBI people can be brought through intake within DOC in the most affirming manner possible. Years into this Task Force, TGNCNBI peoples, particularly women of color, are routinely routed through men's intake and endure days to weeks in custody that is mis-aligned with their gender identity. This happens even to individuals who have been successfully housed in alignment with their gender identity upon previous custody holds.

The miscommunication between various City and State agencies regarding who is best positioned to clarify this process is indicative of the behavior towards TGNCNBI people in custody generally. Each agency passes along blame to another agency while TGNCNBI people—real people with lives beyond their time in jail—suffer. Without direction from the very top of City and State agencies there is no impetus to remedy this situation and it appears to be an ongoing crisis for any TGNCNBI person arrested and charged in New York City.

To improve the intake system, the TGNCNBI Task Force developed the following recommendations.

Summary Recommendations

1. Documentation and data systems for all involved agencies and organizations, including the NYPD, CHS, Public Defenders and 18B Defense Attorneys, OCA, and the DOC, should be revised to accurately capture all gender identities. While the Task Force recognizes that some of these organizations are outside the purview of the TGNCNBI Task Force's mandate, it is important to recognize the stakeholders and factors that contribute to misidentification, improper housing, and many of the problems that face

TGNCNBI people in custody. The incorrect housing of TGNCNBI people functions as a domino effect throughout the criminal legal system, and the first “domino,”—so to speak—is the NYPD officer who fills out the relevant police paperwork since this paperwork follows the individual throughout the system and may never get corrected.

2. CHS currently conducts a screening process immediately before the arraignment in order to determine if there are medical or mental health concerns that need to be noted. CHS should inquire about each person’s gender identity and notify defense counsel, the court, and district attorney’s office when the gender marker on the file is inconsistent with the person’s gender identity. This inquiry should happen in a confidential setting and occur prior to the arraignment. This will provide defense counsel with the opportunity to discuss it with their client and ensure that the gender marker on the complaint and securing order is correct. If defense counsel does not address the incorrect gender marker with the Court, the Court should have an off-the-record conference about it to ensure that defense counsel has addressed it with their client and done their due diligence in correcting the error with their client’s consent.
3. The Department should work with CHS, BOC, and the TGNCNBI Task Force to implement a safer, more comprehensive and effective plan of ensuring TGNCNBI individuals in custody are transferred to a gender-appropriate intake bus and gender-appropriate intake facility.
4. DOC should update the PREA Intake Questionnaire to include distinct questions about sexual orientation, gender identity, and gender expression (SOGIE). As it currently exists, the Questionnaire lumps sexual orientation, gender identity, and gender expression into one category. The Task Force recommends separating them into three distinct categories and tracking them in three separate fields. Within the gender identity section, the term gender non-binary must be included as well. In addition, intake officers must be re-trained on appropriate ways to ask these questions.
5. The Department must implement a confidential way for people in custody to fill out the PREA Intake Questionnaire form so they may discreetly identify as TGNCNBI. Suggestions include confidential computer terminals, tablets, and a physical drop box to disclose gender identity.
6. The TGNCNBI Task Force requests City Council pass legislation requiring all City agencies recognize “X” gender markers. This should be inclusive of DOC, NYPD, and the NYC Department of Probation. This is in alignment with the Gender Recognition Act and Part R of the Fiscal Year 2023 New York State Executive Budget.¹⁰
7. Likewise, we call upon the City Council to pass a resolution calling on the State Legislature to require the Office of Court Administration (OCA) to include gender

¹⁰ See New York State Division of the Budget. *FY 2023 New York State Executive Budget Transportation, Economic Development and Environmental Conservation Article VII Legislation*, 2023, Part R, pg. 75, (<https://www.budget.ny.gov/pubs/archive/fy23/ex/artvii/ted-bill.pdf>).

identities other than just Male/Female, including X gender markers¹¹ on securing orders. This is in alignment with the Gender Recognition Act¹² and Part R of the Fiscal Year 2023 New York State Executive Budget requiring the recognition and respect of defendants' names and pronouns regardless of legal name changes or gender marker changes. This legislation should not be subject to requests for extensions by OCA given the life altering nature of these documents and should give TGNCNBI people a cause of action if their rights are violated.

Housing Summary

Key Takeaways

1. Every TGNCNBI person should be housed in a facility and in a housing area consistent with their gender unless the individual believes they would be safer elsewhere.
2. TGNCNBI individuals in custody should not be housed or disciplined based on additional factors that would not be considered for cisgender people in custody.
3. TGNCNBI individuals in custody should have access to the same types of housing and program options as cisgender individuals.
4. DOC must honor people's self-identified gender identity and must not rely on discriminatory stereotypes about gender and gender identity when determining appropriate housing placements for people in custody. Concerns about appearance or the reactions of other people in custody to a housing determination must not enter into the decision-making process.
5. Policies and directives regarding housing by gender identity, including in the Special Consideration Unit ("SCU"), as well as how TGNCNBI persons can request and appeal such decisions, need to be made fully available to people in custody, their attorneys, their advocates, and the public.
6. Removal to non-gender-aligned housing should not be treated as a potential consequence for disciplinary actions, and no TGNCNBI person should be forced to sign any forms agreeing with potential removal in order to be housed according to gender.

As people in custody are shifted out of intake and new admissions, they will be housed in either a men's or women's facility. DOC is supposed to determine placement based on a variety of factors including safety, mental and physical health, and gender. In coming to these decisions, TGNCNBI people in custody withstand additional layers of scrutiny regarding gender identity

¹¹ See Bohm, Allie. "Providing an X gender marker lets nonbinary New Yorkers know that their state sees them and honors who they are," New York Civil Liberties Union, July 8, 2021, (<https://www.nyclu.org/en/news/new-york-will-offer-x-gender-markers-ids>).

¹² See New York Civil Liberties Union. *Changing Your Name or Gender Marker under the Gender Recognition Act*, (<https://www.nyclu.org/en/know-your-rights/changing-your-name-or-gender-marker-under-gender-recognition-act>).

and gender-appropriate facility placement. **Unlike cisgender populations, TGNCNBI people are the only population to face the risk of being placed in gender-misaligned housing by Department staff.**

People in custody are then transferred into a particular facility housing unit. It is in these units that the person in custody will spend the majority of their time. This is where the individual in custody will eat, sleep, and receive most of their services and programming. Placement into units can greatly impact an individual in custody's mental health, especially regarding feelings of safety and well-being-

Many individuals in custody will use their housing units as an opportunity to build community within DOC custody. This is particularly important for TGNCNBI populations in custody, who experience increased risks and instances of sexual violence, mental decompensation, and a lack of gender-affirming experiences within the correctional system. Having an environment where TGNCNBI persons with shared experiences can support each other led to the creation of the SCU.

Summary Recommendations

Housing Policy

1. Above all, DOC must weigh a person's affirmation of where they will be most safely housed when making housing determinations for TGNCNBI people.
2. DOC shall not consider a person's appearance, gender expression, genitalia, sexual orientation, or degree of medical or social transition either in isolation or in combination with other factors in the determination of housing for TGNCNBI people.
3. The City Council should endorse the Gender Identity Respect and Dignity in Safety Act ("GIRDS Act"), when it is re-introduced in the next legislative session.¹³

Criteria and Procedures Regarding Housing in A Gender-Aligned Facility

1. If DOC denies a TGNCNBI individual in custody entrance to gender-aligned housing or removes them from gender-aligned housing despite their affirmation that they will be the safest there, DOC must demonstrate in writing by clear and convincing evidence that a person presents a current danger of committing gender-based violence against others. DOC should house all people in alignment with gender identity, unless the person in custody voluntarily chooses to be housed elsewhere.

¹³ In the 2021/2022 Legislative Session GIRDS was proposed as S6677/A00691.

2. DOC must ensure there are no additional factors in determining safe, gender-aligned housing for TGNCNBI people in custody that would not be considered in the housing of cisgender people in custody.
3. All decisions denying requests for gender-aligned placement or removing someone from such a placement shall be provided to the person in custody in writing within 3 business days of the decision, shall state the evidence relied upon, and shall provide a detailed basis for the decision including whether cisgender persons with a similar history or background are housed in that facility. A copy of this decision shall be provided to BOC, to the person's attorney, and to any additional attorney and/or advocate chosen by the person.
4. DOC should never transfer anyone out of gender-aligned housing as a form of punitive discipline, or in response to complaints of other incarcerated persons or staff when those complaints are made on the basis of gender identity.

Criteria and Procedures for Housing in Special Considerations Units

1. To ensure that TGNCNBI persons are able to gain the benefits of supportive and respectful housing, all requests for housing in an SCU consistent with a person's gender identity should be granted, unless DOC demonstrates in writing a compelling security reason why SCU housing cannot be provided.
2. DOC should provide all denials of SCU applications to the BOC, to the person in custody, to the person's criminal defense attorney, and to any additional attorney and/or advocate chosen by the person.
3. Within 3 business days of a person in custody's removal from the SCU to another unit within a gender-aligned facility without the person's consent, DOC should provide a written justification for the removal to BOC, the person in custody, the person's criminal defense attorney, and to any additional attorney and/or advocate chosen by the person.
4. DOC should never transfer anyone out of the SCU as a form of punishment absent a guilty adjudication for an infraction and should return the person to the SCU as soon as possible, absent a compelling security justification as set forth above.
5. One or more full-time social workers should be assigned to the Special Considerations Housing Unit to help mediate conflict in the unit.

Procedures Applicable to Both Gender-Aligned and SCU Housing

1. Forms should be clearly named, written, and contain information making it clear that a person can request housing both in a gender-aligned facility generally and in a Special Considerations Unit within that facility. This includes renaming the current

“Special Considerations Housing Form,” which is used to request both gender-aligned housing and housing in an SCU, to “Request for Housing by a TGNCNBI Person.”

2. When a person is denied admission to or is removed from gender-aligned housing and/or the SCU, DOC shall have a conversation with the person within 24 hours of the decision regarding the reasons for the decision and alternate safe-housing options that are available to them.
3. DOC should never “voluntarily” transfer anyone out of the SCU or gender-aligned housing without their explicit, written, informed consent. DOC employees must video the individual in custody offering verbal or sign-interpreted consent to be removed from gender-aligned housing. Body-worn cameras may be used for this purpose.
4. With the involvement of the Task Force and impacted individuals, a script should be developed that DOC shall use to inform TGNCNBI individuals in custody of when and how they may apply or reapply for gender-aligned housing and that any TGNCNBI individual may move to a different housing unit within gender-aligned housing.
5. All decisions denying requests for admission to or removal from either gender-aligned housing or the SCU shall be automatically reviewed within 3 business days by DOC staff not involved in the original decision, including at least one member of the LGBTQ+ Initiatives staff and a DOC person above the rank of Associate Commissioner. This body has the authority to reverse or alter a decision.
6. Should an individual in custody be housed outside the SCU and/or in gender-misaligned housing without the person’s consent, they may apply for reconsideration at any time. Individuals shall be advised as to their rights as detailed in #4 above.
7. The body reviewing the form “Request for Housing by a TGNCNBI Person” must communicate their decision in writing and have a conversation with the individual within 5 business days after receipt of each re-application and must update its decision with any new information available to the Department.

Housing Outside the SCUs and/or Gender-Misaligned Facilities

1. Trans-feminine, trans-masculine, intersex, gender-nonconforming, and non-binary persons housed outside of the SCU or in a gender-misaligned facility must be housed safely in units with culturally competent and appropriately trained staff, and with access to affirming programs. With consent, these individuals must also be housed together to avoid isolation and attendant risk. This must be done in consideration with the previous recommendations that every TGNCNBI person be housed in a facility and in a housing area consistent with their gender, and that the same criteria for housing placements are used for transgender and cisgender people in custody.

2. There must be frequent and confidential follow-up assessments/check-ins to ensure that TGNCNBI people in custody have been placed in a unit where they feel most safe, with TGNCNBI people able to request a housing change at any time. Additional requests for transfers should not be used against the requestor.
3. Following an incident of reported sexual abuse, DOC must ensure that TGNCNBI people in custody have the right and are aware of their right to request that LGBTQ+ Initiative Team members may be present with PREA staff at post-report interviews and that LGBTQ+ Initiative Team members conduct regular and frequent private interviews with TGNCNBI persons in custody known to have reported sexual abuse.
4. The Department must immediately, and effectively, implement the Board's new Risk Management Accountability System ("RMAS") rule eliminating the use of solitary confinement, prioritizing the engagement and care of TGNCNBI people in custody. DOC should treat the Board's new rule as a baseline and strive for less restrictive housing.
5. DOC must stop using intake pens for longer than 24 hours.¹⁴ After 24 hours, every person must be housed in an area providing minimum housing requirements including a bed, a mattress, appropriate hygiene facilities, including a shower and a toilet, and access to meaningful medical care.

New Jail Facilities

1. In designing the new jails, the needs of TGNCNBI people must be specifically considered by experts on this population. At a minimum, we believe this requires both dormitory and individual housing, sufficient trained staff so that multiple SCUs can be implemented quickly, as needed, and with appropriate privacy.

Data and Reporting

1. DOC must accurately and timely update information about the gender identity of every person in its custody so that appropriate services and housing can be provided.
2. DOC must maintain the following data:

¹⁴ DOC Operations Order "Processing and Monitoring New Admissions. Effective Date 12/14/2007" mandates that "appropriate housing shall be provided for all new admission inmates within twenty-four (24) hours of placement in the custody" of DOC. However, BOC on-site monitoring and individual Task Members are aware of practices where intake units are used as temporary housing units and individuals in custody are held in intake for longer than 24-hours. BOC and Task Force members are also aware of a DOC practice whereby people in custody are temporarily moved out of intake, only to be moved back in, effectively restarting the 24-hour time limit. This recommendation is intended to close this loophole.

- a. Whether a TGNCNBI person in custody has been housed voluntarily or involuntarily in a gender or gender-misaligned facility.
 - b. Whether a person in custody is housed in the SCU.
 - c. The type of housing (i.e. general population, protective custody, etc.) in which TGNCNBI persons are held.
 - d. The number of TGNCNBI people who are housed involuntarily in a facility that is not aligned with their gender identity.
3. DOC shall provide BOC and the Task Force all of the reporting gathered from the above recommendation on a monthly basis and redacted as is necessary. In addition to this data DOC must include a detailed, anonymized explanation for such placements. City Council should pass legislation requiring that DOC provide BOC and the Task Force with this information on a monthly basis.
 4. BOC must be provided with all “Request for Housing by a TGNCNBI Person” forms, inclusive of those requesting gender-appropriate housing outside of the SCU and applications that do not result in movement, along with any decisions on the requests.
 5. One year after implementation of the new RMAS rule, DOC and BOC should investigate the outcomes regarding the elimination of solitary confinement and its impact on TGNCNBI people such as numbers of TGNCNBI people held in the RMAS, their lengths of stay, and infraction charges and dispositions.

Mental Health and Wellness Summary

Key Takeaways

1. Communication among Correctional Health Services, DOC, and people in custody is paramount to the successful provision of medical and mental health services within the jails; this includes transparency and accessibility of policies and an emphasis on verbal and written information.
2. DOC and CHS training should be updated to most accurately reflect the needs of all people in custody, with a particular focus on trauma-informed conflict resolution and the unique needs of incarcerated TGNCNBI populations.
3. DOC and CHS must prioritize the full continuum of care for all TGNCNBI people in custody and release planning should begin at intake. This includes linkages to medical and mental health providers who are explicitly TGNCNBI affirming. No one should leave CHS’s care without clear next steps as to where affirming medical and mental health treatment can continue, should the person be interested in such care.

Encounters with the carceral system are often traumatic to the physical wellbeing and mental health of people in custody. This is particularly true for the TGNCNBI population who

too often experience an added layer of transphobic and gender non-conforming mistreatment and violence while in custody. Due to confinement and an emphasis on punishment versus rehabilitative and trauma-informed policies and procedures, jails foster an environment where people in custody may easily mentally decompensate and physically deteriorate. Additionally, people with physical and mental disabilities and those with complex behavioral health needs are already over-represented in carceral settings.

In many cases, jails provide an individual's first or most recent meaningful encounter with the healthcare system. This sets jails in the unique position of providing opportunities to screen for and diagnose diseases and mental health issues for populations who traditionally may not have access to medical and behavioral health care, but in an environment the individual would not have otherwise chosen. While this presents an opportunity to connect individuals to care, there are many barriers to offering comprehensive medical and mental healthcare in jails, including the transient nature of the population, challenges around coordination and transfer to appointments, need for corrections escort staff and transportation, and scheduling conflicts, to name a few.¹⁵ Shared and crowded living spaces within the jails also increase the risk for spread of infectious diseases. This became especially apparent during the current COVID-19 crisis, despite the Department's and Correctional Health's significant mitigation efforts.

Recognizing the risks posed by incarceration and that many individuals entering custody have had limited access to formal medical and behavioral health care outside of jail systems, it is imperative that professionally accepted standards of care and services are provided while in custody, and that continuity of care is ensured and arranged prior to release. This care must be responsive to the unique needs of the TGNCNBI population in custody.

To improve medical and behavioral health outcomes for TGNCNBI people in custody, the TGNCNBI Task Force developed the following recommendations.

Summary Recommendations

Access to Care: Information and Policy

1. DOC and CHS must clarify and make more accessible the process for accessing sick call and medical and mental health care appointments. Access to care must be provided in a timely manner.
2. CHS must enhance mechanisms available to incarcerated people to directly report concerns to CHS, as well as ensure timely follow up and response to 311 complaint referrals. Additionally, the current CHS patient complaint policy must be updated to

¹⁵ See New York City Board of Correction. *Access to Health and Mental Health Care (July-December 2017)*, May 2018, (https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Access%20to%20Health%20July%20-%20December%20Final%20Draft_5_7_18.pdf); and New York City Board of Correction. *Access to Health and Mental Health Care (January-December 2018)*, June 2019, (https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Health_Access/4b_Access%20Report%202018%20Review_Final_June%202019.pdf).

ensure that appeal of care decisions and denials are informed by an independent medical review and opinion.

3. CHS must update its transgender care policy to clarify the process for accessing gender affirming surgery and necessary follow-up care and supports. The policy must include measures to ensure surgery is scheduled and conducted within a reasonable time period without undue delays. The process for accessing gender affirming surgery should be clearly explained to TGNCNBI people in custody by appropriately trained medical staff as part of individualized care provided in a confidential setting. This must be done orally and in writing.
4. CHS must share with and clarify for people in custody its procedure for handling denial of health care appeals and ensure that when care is denied or delayed, complaints are resolved in a timely manner. While the current appeal process is outlined in CHS Policy INT 16,¹⁶ it is not communicated to people in custody nor is it outlined in the Med 24B Transgender Care Policy.¹⁷
5. CHS should improve medical and mental health re-entry planning at intake. Re-entry planning must be comprehensive and well-rounded reflecting the specific needs of the individual. Making direct connections, providing referrals, and planning for release must be a regular consideration and part of the individualized medical and mental health planning that occurs throughout an individual's period of incarceration. DOC and CHS must ensure that all TGNCNBI people in custody are informed both verbally and in writing, at intake and throughout the duration of their time in jail, of how to access medical care and behavioral health treatment, including access to gender affirming surgery. This information must also be posted publicly and in all clinics and housing units.
6. CHS must create policies for gender-affirming medical devices, and it must be clear that DOC cannot systematically override a person's clearance to carry or wear these medical devices. This includes, and is particularly important when, a person might be on suicide watch or in any form of restrictive or regulated housing. Removal of medical devices, even for a 24-hour period, can cause significant distress and create a barrier to effective communication between a person in custody and DOC or CHS staff. Clear policies on binders or other sources of chest compression, gaffs or other sources of genital tucking, stand-to-pee devices, bras and padding for bras, and shapewear must be made in addition to any other needs as they might arise or be developed.

¹⁶ See N.Y.C Department of Health and Mental Hygiene, Corr. Health Serv., *Interdisciplinary Policies, Patient Complaints And Requests For Second Opinions*, Policy No. Int16 at 1 (revised Dec. 2007).

¹⁷ See Appendix B.

7. DOC must revise Directives 4498R-A and 4000R-A¹⁸ to make menstrual products readily available to all individuals in custody who menstruate, regardless of the facility in which they are housed or their gender identity.

Medical and Mental Health Recommendations Related to Staffing and Training

1. DOC should end the use of solitary confinement and immediately, and effectively, implement the Board's new RMAS rule eliminating the use of solitary confinement. DOC should treat the Board's new rule as a baseline and strive for less restrictive housing. DOC must no longer use protective custody as a proxy for true conflict resolution.
2. DOC and CHS staff should train all staff in trauma-informed conflict resolution. Such training should include the unique experiences of violence that TGNCNBI people experience within and outside of DOC facilities and how micro and macro-aggressions, such as deadnaming and refusal to recognize a person's gender identity, can contribute to gender dysphoria and psychological harm.
3. All training available to New York City Health and Hospitals ("H+H") regarding substance use/misuse must be included in the onboarding and training of the full-time conflict resolution manager (recommended in the Housing section) that serves as a neutral third party between the person or people in custody, DOC, and CHS.
4. CHS must adequately train all mental health social workers and all medical staff on the most up-to-date standards of care for TGNCNBI people. These standards should be consistent with the World Professional Association for Transgender Health (WPATH) Standards of Care to ensure that these standards of care are being met. It should not be the responsibility of the TGNCNBI persons in custody to educate or inform their medical provider or mental health provider; those providers must all be trained as part of their regular course of training.
5. CHS should hire full-time, TGNCNBI-affirming mental health professionals to work with TGNCNBI individuals in the Special Considerations Unit and across DOC to provide adequate, affirming mental health care to TGNCNBI people in custody. This staff should be responsible for initial assessment at and/or shortly following intake and for any additional mental health support as needed. CHS and DOC must prioritize hiring people for these new roles who have shared lived experience with those TGNCNBI people who are currently incarcerated, in an effort to ensure better care.
6. CHS should assign full-time TGNCNBI healthcare navigators to work with people in the Special Considerations Unit and other TGNCNBI people housed elsewhere in custody. CHS TGNCNBI healthcare navigators would make appropriate connections to medical

¹⁸ See N.Y.C Department of Correction. *Directive 4000-R-A* (effective 11/19/20), (<https://www1.nyc.gov/assets/doc/downloads/directives/4000R-A.pdf>).

care, create individualized care plans for TGNCNBI individuals while in custody, and facilitate re-entry care planning.

7. DOC and CHS should train medical, mental health, and health care navigator staff to make direct referrals to H+H Pride Centers and/or a person's preferred primary care provider.

New Jail Facilities

The recommendations outlined in this section shall also be applied in the creation and implementation of new borough-based jails.

Data and Reporting

1. CHS should work with DOHMH, the TGNCNBI Task Force, and TGNCNBI community service providers to conduct an impact study on the medical, mental, and emotional impacts of incarceration on TGNCNBI communities. The experiences of TGNCNBI people must be better documented and understood on a system-wide level so that inequities in policies and inadequacies within and across medical and behavioral health systems can be adequately addressed.
2. CHS and DOC must submit an annual report to the BOC and the Task Force detailing progress made to implement new training standards outlined in the above recommendations.

Re-Entry Summary

Key Takeaways

1. Information and services concerning re-entry and transfers to DOCCS should be provided at entry into DOC custody and made available at numerous points throughout the individual in custody's incarceration.
2. DOC's and CHS's re-entry processes and interagency coordination efforts should be codified into clear interagency policies and made available and regularly communicated to people in custody.
3. DOC and CHS should implement a system of checks, balances, and evaluation efforts to establish consistent, effective, and efficient utilization of re-entry policies, services, and appropriate follow-up.

The Task Force uses the term re-entry to refer to the process by which someone leaves DOC custody, be that into the free world or transfer to DOCCS custody, and planning plays a

vital role in the person in custody's carceral experience. Typically re-entry does not refer to a transfer to prison. However, for TGNCNBI people the move from DOC to DOCCS includes consideration and planning for housing, continuity of medical care, changes to available programs, and any administrative papers correctly identifying them. The Task Force sees DOC and CHS as being responsible for ensuring a smooth transition regardless of whether a person is leaving DOC for home or for DOCCS.

When individuals in custody are released into the public, productive and effective re-entry planning greatly impacts the individual's reintegration into society. Successful re-entry also results in reduced recidivism rates, and high-quality re-entry planning has positive effects on the medical and mental health of the person.. For TGNCNBI individuals who have been sentenced and are to be moved upstate, proper re-entry planning can impact gender-affirming housing, safety, living conditions, and access and continuity of medical and mental healthcare. As such, the Task Force chose to examine CHS' and DOC's re-entry processes and identify ways in which re-entry planning could be improved.

The re-entry process is complex and nonuniform across DOC largely due to the lack of a comprehensive re-entry policy and strategy, a lack of re-entry management, and the complexities introduced by varying lengths of stay, which can range from fewer than 24 hours to over a year. Currently, DOC's only re-entry requirements are for members of the *Brad-H.* class—a lawsuit requiring discharge planning for individuals with three or more interactions with mental health services—and for transition services for people under the age of 21 who under federal law require an Individualized Education Plans. The resources and staff that do exist and assist in the re-entry process for general populations in custody are limited, and friends, family, and the individual in custody are often left navigating re-entry planning without consistent support. CHS has informed the Task Force that they do evaluate their re-entry services, however the Task Force was not provided with any explanation of this process or with any of the collected results over the past years. We are unable to determine whether people leaving DOC are able to successfully connect to and continue care with HHC or other PORT providers and if the specific medical needs of TGNCNBI people are being addressed. We look forward to being able to evaluate this in our next report.

Recognizing these gaps in re-entry planning and in the information we were able to obtain about it, the Task Force developed the following recommendations:

Summary Recommendations

Re-Entry Policy and Practice Guidelines

1. DOC and CHS should make the following improvements, revisions, and implementations to re-entry planning:
 - a. Re-Entry planning must begin on the first day an individual is in DOC custody.

- b. DOC and CHS must assist in finding TGNCNBI-welcoming organizations and options for re-entry.
 - c. DOC and CHS must ensure that wrap-around services offered by culturally competent providers are available to all people in custody. Services should include but not be limited to continuation of medical and mental health care, services for those surviving sexual violence, stable housing, substance use services, job placement, any civil legal needs (e.g., name changes), LGBTQ+ centers, support groups, or other places for finding peer support and kinship.
 - d. The process of regaining property, especially IDs, from police precincts, DA custody, and DOC custody should be outlined beyond the limited information contained in the Inmate Handbook. The Handbook should also offer information on the process of obtaining gender-aligned identification that accurately reflects a person's name and gender marker. To help navigate this often-confusing process, DOC navigators should be offered to assist in the retrieval of property and to connect individuals with the free legal and medical services needed to obtain gender-aligned identification.
 - e. The New York Public Library (“NYPL”) publication *Connections*, as well as re-entry services information, should be downloaded on individual’s tablets upon arrival in DOC custody. Upon release, individuals should receive a hard copy of *Connections* and re-entry services information.
 - f. DOC and CHS must continue to work to improve collaborations with TGNCNBI-affirming outside providers so that successful referrals can be made.
 - g. Re-Entry Planning with CHS and DOC must become more hands-on with increased verbal assistance and facilitation with outside resources and support. While helpful for privacy and self-study, it is insufficient to hand out resource guides and lists without additional engagement.
2. The Task Force recommends the creation of a DOC/CHS interagency policy outlining the interagency coordination and re-entry process for all people in custody. There is currently no policy or procedure for DOC or CHS stating what is mandated or expected during the re-entry process.¹⁹ For what should be included in this policy, see the Task Force’s Proposed Interagency Policy at page 93.
3. There must be an interagency DOC and CHS re-entry review team to ensure that:
- a. The re-entry recommendations adopted by the Department are being implemented.

¹⁹ Although the Department has informed the Task Force that these processes are laid out in the “Handbook for Detained and Sentenced Individuals,” the handbook is not accessible to many individuals. The outdated 2007 version of the handbook has finally been replaced online with a version marked 12/2019. It is unclear if a physical copy exists or has been distributed to anyone in custody.

- b. A point-person or point-people for TGNCNBI re-entry issues has been identified and is being included on re-entry planning for all self-identified TGNCNBI people.
 - c. DOC and CHS have reviewed contracts with all re-entry service providers to ensure that:
 - i. Their staff are meeting basic minimums for training on TGNCNBI knowledge and are in compliance with NYC Human Rights Law concerning non-discrimination;
 - ii. Any DOC contract provider (such as Fortune Society, Osborne Foundation, etc.) for re-entry services has a TGNCNBI issue-area coordinator;
 - iii. A TGNCNBI person is assigned a re-entry service provider who maintains contact and follows them throughout their time in DOC even if the individual is transferred outside of their initial housing unit. This is needed in order to address the current practice of assigning in-dorm re-entry service providers by housing unit and not maintaining contact if transferred.
 - d. At least one member of the DOC LGBTQ+ Initiatives team must also be appointed to this Re-Entry Review team.
4. Individuals in DOC custody should have the opportunity to engage in re-entry planning meetings immediately after intake, upon learning their discharge date, and before upstate transfers.
5. The Task Force recommends the implementation of a “Re-Entry checklist” for *all people* within DOC and that this checklist be filled out regardless of how or why a person is leaving DOC custody. Participation in this checklist would be voluntary but offered to all individuals. There should be the option to indicate refusal, should a person in custody not wish to engage. For checklist specifications and requirements, see Task Force’s Proposed Re-Entry Checklist at page 95.
6. Any person in custody who has self-identified to DOC or CHS as TGNCNBI and who is facing an upstate sentence must receive assistance and information from qualified DOC staff who have demonstrated expertise on TGNCNBI identities, the law, and the agency practices of both DOC and DOCCS. Such staff must assist with and have accurate knowledge concerning:
- a. How to obtain gender-affirming and safe housing within DOCCS; for more information, see Task Force’s Proposed Policy on Transfer into DOCCS at page 97.

- b. What steps CHS takes to ensure continuity of medical care upon a move to DOCCS;
 - c. DOC/CHS re-entry coordinators should connect TGNCNBI people with community providers who can assist with bridging the culture differences and divides upon a move to DOCCS. For example, this could include differences in acceptable hair styles and hairpieces, how often an individual has access to a razor, or whether they can alter State-issued clothing;
 - d. Within 24 hours of DOC's becoming aware of whether a TGNCNBI individual will be transferred to a male or female facility for reception, DOC must inform both the TGNCNBI individual in custody and their attorney;
 - e. To ensure that TGNCNBI people in DOC/CHS custody are notified in a timely manner of which facility they will be transferred to, DOC/CHS should develop a TGNCNBI transfer checklist including, for example, what personal and legal property can be transferred.
7. For persons who will be released to the community rather than transferred to DOCCS, CHS should hire multiple post-release advocates to assist patients with ongoing medical care upon release. The establishment of a 24-hour helpline and trained staff to assist in directing patients to where they may receive ongoing care will not only assist many re-entry providers who do much of this work already, but also possibly save lives for people seeking immediate assistance with COVID meds, rescue inhalers, HIV meds, and more.
 8. People should be connected to jobs pre-release. Skills training and certification for people in custody should be provided that is not only accepted by employers following release, but also offers direct connections to employers upon release, ensuring a seamless transition to employment following a period of incarceration. Ensuring people impacted by the justice system, in particular the TGNCNBI population, have access to the supports needed to obtain and maintain employment is vital to their continued success and to reducing rates of recidivism.
 9. Refusals for re-entry planning must be recorded and stored for monthly reporting and review purposes. For more information, see the Data and Reporting section of Re-Entry.

Data and Reporting

1. Refusals to meet with specialists for re-entry planning must be video-recorded and interpreted. The Department should develop a script for such interactions.
2. The Department must also develop signage on re-entry planning that is easy to read and effectively communicated to be displayed in housing units, law library, and the Samuel L. Perry Center at minimum.

3. The Department must report to the BOC the number of face-to-face services held for newly incarcerated or detained people and the number of “re-entry checklist” forms that were completed and stored in individual files.
4. Occasional random sample viewing of the video should occur quarterly by Board staff to ensure that scripts are being followed, translation is being offered, and more.

New Jail Facilities

1. The Department must ensure that the community-based design requirements in the publicly released Request For Proposals (RFPs) for the new jail facilities are carried through in the design and construction phases and made a permanent part of DOC operations and programming.
2. The Department should work with community-based organizations and social services to identify current barriers and deterrents to facility access and strive to eliminate these obstacles in the development of the borough-based facilities. Community space must be open and inclusive to NGO’s, social services, community advocates, etc.

Staffing and Accountability Summary

Key Takeaways

1. DOC, BOC, CHS, and all affiliated carceral stakeholders must realign their policies and practices to reflect a system of restorative, transformative, and rehabilitative justice.
2. Training that promotes culture change for uniform and non-uniform staff must be informed by and developed in collaboration with those with pertinent lived experience, TGNCNBI community-based organizations, and/or TGNCNBI community-based leaders and consist of regular, effective and analyzable evaluation, data collection, and reporting efforts.
3. The Department and BOC must increase transparency and accountability measures to ensure appropriate application and monitoring of BOC Minimum Standards, identify systemic issues within the jails, and address gaps in care within and outside the TGNCNBI population.

The Department of Correction must realign itself with its own mission and set of values through a reconfiguration of staffing and accountability procedures. One way to achieve this culture change is through enhanced staff training. Improved trainings to educate DOC staff, volunteers, and contractors about issues of sexual orientation, gender identity, and gender expression, particularly for members of the LGBTQ+ and TGNCNBI community, would elevate staff competency levels, providing a number of benefits to both officers and people in custody.

Officers who feel educated about the TGNCNBI populations in DOC custody can provide greater care and a more gender-affirming environment. This also gives DOC staff the opportunity to serve as sources of accurate, uniform information for other staff members, people in custody, and civilians. Additionally, a more culturally competent environment would encourage open diversity and a feeling of safety amongst LGBTQ+ and TGNCNBI staff who may have previously felt unsupported and unsafe.

Current levels of safety within the Department would also benefit from a shift in staff practices and staffing structures. Mistreatment, harassment based on gender identity and/or expression, violence, and uses of force within DOC put both staff and people in custody at increased risk of committing and receiving harm. This is especially pertinent for TGNCNBI populations for whom incidents of misconduct are often responses to threats to safety and a non gender-affirming environment. A lack of adequate staffing by non-DOC personnel, such as healthcare workers and social workers, adds an additional layer of risk. This is exemplified by the death of Layleen Xtravaganza Cubilette-Polanco where, in the absence of any civilian or CHS staff being present, the onus of making medical decisions fell on unqualified correctional officers. For the health and wellness of all people in custody, there should be more non-uniform staff present in all housing units. These staff must be trained on de-escalation and conflict resolution protocols, trauma-informed interactions with people in custody, and issues facing TGNCNBI people in custody. Uniform staff should be encouraged to call upon CHS staff for de-escalation, mental health support, and medical emergencies more frequently. The default should be to assume help to prevent deadly and totally avoidable consequences.

Large-scale culture change cannot be implemented, however, without appropriate measures for holding people accountable. While the Department and CHS have their own set of accountability responses to staff misconduct, the BOC monitors DOC and CHS compliance with its Minimum Standards and encourages compliance. Providing BOC with increased resources, funding, and access to relevant data would not only allow the Board to more effectively monitor DOC and CHS in their care for TGNCNBI populations, but also allow BOC to hire more staff who reflect the populations they serve.

Finally, while current DOC operations still require a systemic overhaul, there is an opportunity to ensure that future reforms to the city's jails system, including borough-based facilities, build upon the lessons learned from the existing city correctional system and integrate policies, practices, and guiding principles that reflect the needs and experiences of TGNCNBI people. Building from the ground up with this approach in mind avoids many of the barriers that impede holistic change from within the criminal justice system.

Recognizing the need for significant culture change and improved staffing and accountability practices, the TGNCNBI Task Force developed the following recommendations:

Summary Recommendations

Systemic Change and New Jails

1. Invest in alternatives to detention and incarceration, including models that are proven to address the root causes of incarceration, reduce recidivism, and have a tremendous cost-savings benefit for NYC, in comparison to current costs of incarceration.²⁰
2. Incorporate the Import Model,²¹ which is a correctional model of providing people in custody with the same level of service inside correctional systems as they would have access to if they were not in custody and were living in their community.

Need for Culture Change

1. DOC must implement a stricter disciplinary structure to hold staff accountable for misconduct. This applies to both staff responsible for individual matters, as mentioned above, and staff who observe such matters and do not intervene.
2. Such stricter disciplinary measures should be implemented in connection with both experts in physical violence and sexual violence and should emphasize how seemingly small-scale events create the groundwork for larger and more disastrous events.
3. DOC should continue its work to improve the comprehensive implementation of PREA standards in all facilities. This includes community-led and approved training courses. In doing so, all DOC facilities should meet or exceed federal PREA standards by December 2023 as determined by official PREA auditors and BOC PREA standards by December 2023 as determined by BOC PREA staff.
4. Know Your Rights workshops should continue to be implemented for people who are currently detained/incarcerated; workshops should be facilitated in collaboration with local advocates and organizations.
5. Continue the Pride Officers and Ambassadors initiative emphasizing the promotion of a culture of learning and growth in the facilities. Connections must be made between respecting fellow officers and respecting non-uniform staff and detained people.
6. The Department has proposed the use of Pronoun Pins for DOC staff. Pronoun Pins indicating individuals' pronouns should be approved and staff should be strongly encouraged to wear their pronoun pins on their uniforms and to introduce themselves by

²⁰ In FY2021, the Full Annual Cost per Incarcerated Person was \$1,525 per day or \$556,539 to incarcerate one person for a full year. See N.Y.C Department of Correction. *FYs 2011-21 Operating Expenditures, Jail Population, Cost Per Incarcerated Person, Staffing Ratios, Performance Measure Outcomes, and Overtime*, December 6, 2021, (<https://comptroller.nyc.gov/reports/nyc-department-of-correction/#full-annual-cost-per-incarcerated-person-nearly-quadrupled-since-fy11>).

²¹ See Langelid, Torfinn. "The Sharing of Responsibility in the Rehabilitation of Prisoners in Norway: The Import-Model in Theory & Practice." *Journal of Correctional Education*, vol. 50, no. 2, 1999, pp. 52–61. JSTOR, (<http://www.jstor.org/stable/23292109>).

identifying their pronouns during all interactions. Staff should also respectfully ask all detained/incarcerated people their pronouns upon intake, during group interactions, and during individual interactions in housing units.

Hiring and Promotion Practices

1. Every action of DOC uniform staff members and civilians working in the jails, as well as the policies of DOC as a whole, should be guided by the principles outlined in DOC's value statement. This can be done by embedding these principles in staff job descriptions, in agency policies and procedures, in all training processes, and by including signage around the facility about how staff are to treat both other staff and people in custody.
2. BOC and DOC must investigate PREA response team times and report on concrete steps to increase efficiency and meaningful responses.
3. Hiring and placement of more civilian staff with social work, case management, and other credentials and related experiences should be prioritized.
4. The staffing structure (including leadership) of DOC should reflect the diversity of the population in custody and should be designed to address the root causes of incarceration. This can be achieved by increasing the number of culturally competent non-uniform staff and by reallocating DOC non-security responsibilities to the appropriate personnel, such as DOHMH, mental health workers, and social workers. The Department can look to youth housing as a blueprint, where these practices are currently implemented.
5. The TGNCNBI Task Force should work with DOC to create and revise job announcements for staff working with TGNCNBI people and the community-based organizations serving them, including non-uniformed counselors, housing specialists, social workers, credible messengers²² and case managers.
6. Staffing must be reimagined from a security job to a prevention and wellness job with social workers, nurse practitioners, and others providing necessary resources within each housing unit.
7. The Department's hiring and promotion structures should appropriately consider prior misconduct and strengthen hiring and promotion structures to facilitate the principles outlined in this report.

²² Credible Messengers are defined by the Credible Messenger Justice Center as "individuals who are able to connect with and motivate the most at-risk young people to successfully challenge and transform destructive thinking, attitudes and actions." Credible Messenger Justice Center (<https://cmjcenter.org/>).

DOC Training

1. Follow-up discussion-based models, more in-person trainings, and evaluations should be included for all trainings.
2. Trauma-informed training, facilitated by justice-impacted organizations/trauma-informed leaders, must be implemented in the training academy (at least two weeks in length), as well as provided on an on-going basis (35 hours of training annually) to all staff (uniform and non-uniform).
3. Conflict Resolution training must be provided to all staff (uniform and non-uniform) during the training academy, as well as on an on-going basis (certifications required annually); trainings should be co-facilitated by community-based organizations and leaders in the Cure Violence movement.
4. Overhaul of current DOC staff training with a replacement that mirrors (with improvements) the two-year Import Model training. DOC staff training should include social work courses and other courses that relate to the root causes of incarceration (racism, trauma, intergenerational poverty, substance use and mental illness), passing an ethics exam, with a specific section dedicated to TGNCNBI people, and community de-escalation training.
5. Update PREA trainings for DOC staff, volunteers and contractors. The current training was developed by the Department with assistance from the National Institute of Corrections and should be revamped to incorporate community-based organizations and people with lived experience in the curriculum design and training facilitation. All uniform and non-uniform staff should also receive trauma-informed interviewing training, designed and facilitated in collaboration with community-based organizations.
6. Sexual Orientation, Gender Identity and Expression (“SOGIE”) training—after being fully developed in collaboration with LGBTQ+ leaders/organizations—must be implemented in the training academy, as well as provided on an on-going basis (certifications required annually) to all staff, uniform and non-uniform.
7. Implement Sexual Orientation, Gender Identity and Expression (“SOGIE”) training—after being fully developed in collaboration with LGBTQ+ leaders/organizations—in the training academy, as well as provide it on an on-going basis (certifications required annually) to all staff, uniform and non-uniform.
8. The Department must work with community-led organizations to develop an experiential, reflective, and in-depth mandated TGNCNBI-specific training for all DOC employees (uniform and non-uniform) and volunteers working with people in custody. This training should be co-facilitated by TGNCNBI-focused, community-based organizations and/or leaders, provided at the training academy (at least two weeks in length), and require annual certification (35 hours of training annually). Additional collaboration is needed to determine topics covered, frequency of updating, etc. This training will be in addition to

the mandated training for all city employees and specific to the concerns and needs of the TGNCNBI population in custody.

9. Only staff who have received the specialized TGNCNBI-focused training should be posted in the SCUs.
10. Implement trainings and trauma-informed supervision practices for all social workers working with the TGNCNBI population by December 2023.

Searches of TGNCNBI People in Custody

1. Limit the use of “exigent circumstances” to justify cross-gender searches of TGNCNBI people in custody, as stated in Directive 4498R-A.²³ In instances where a cross-gender search is utilized, the Department will provide data and documentation supporting the use of “exigent circumstances” to the BOC. See Data and Reporting below for additional requirements.

Complaint Mechanisms

1. Current complaint mechanisms are ineffective and incomprehensible. BOC and DOC must review, update, and streamline Directive 3376R-A to be more effective, easier to use, and have immediate response mechanisms.
2. BOC and DOC must review contracts with third party operators including 311, sexual violence response lines, and more to ensure that they are in compliance with the values and mission of the DOC.

Data and Reporting

1. The Department must create a reporting process/procedure through collaboration with the BOC and TGNCNBI Task Force that provides the Task Force with the data needed to ensure accountability and transparency.
2. The Task Force should be provided with the number of sexual abuse and sexual harassment reports by TGNCNBI persons (as opposed to the current publicly available reports which are limited to reports by transgender women and by transgender men). Such numbers should be provided even if fewer than six such reports were lodged by people in a particular category.
3. The Task Force should be provided with non-identifiable information for each allegation of sexual abuse or sexual harassment filed by a TGNCNBI person.

²³ See Appendix A

4. The Task Force should work with the Department, the BOC grievance team, and TGNCNBI leaders/organizations to identify systemic issues within the grievance process as outlined in Directive 3376R-A.
5. DOC must update its data tracking systems to ensure that individuals' gender identities are captured in a safe and affirming manner, so that outcomes by gender identity can be analyzed and evaluated. This will allow the Department, the Board, and the Task Force to better understand housing decisions, grievances, programming and incidents (including uses of force), and discipline involving the TGNCNBI population and be better positioned to address systemic issues related to this population.
6. The Task Force should work with the Department, workforce development non-profit organizations that work with the TGNCNBI population, and 311 to create a special team that monitors and reports to BOC and the Task Force all complaints made by TGNCNBI people in custody to 311. This would include notes taken during the filing of the complaint that would help to identify complaints made by the TGNCNBI population, such as misgendering by staff or failure to provide hormone therapy.
7. Include a subsection in the BOC annual grievance report that focuses specifically on the grievances filed by TGNCNBI people.
8. The Department will update its 5-12 and 5-13 reporting to BOC to include the number of uniform and non-uniform staff who have received the SOGIE, LGBTQ+, and TGNCNBI training as well as the schedules, training curriculum, and credentials of the trainers.
9. The Department will report to the BOC any time a cross-gender search is conducted to ensure compliance with PREA and Minimum Standards. Reporting will include data that supports the need for a cross-gender search, ensures the person in custody received a timely search, and confirms the search was conducted in compliance with PREA and BOC Minimum Standards.

Chapter 1: Intake and New Admissions

I. Introduction

This chapter details the experiences of TGNCNBI people entering DOC custody, the ways in which the actions of multiple players from the city and state impact whether a TGNCNBI person will be sent to a men's jail or a women's jail, and where that person will be permanently housed once they are in DOC custody. There are multiple points in this process where, if an error is made, that error will have a devastating impact on a TGNCNBI person, and where if an error is corrected, that correction can be lifesaving for a TGNCNBI person. **It is crucial for stakeholders and system actors to fully comprehend every part of this section, because this is where a TGNCNBI individual's trajectory of safety in DOC custody is largely determined.**

II. Overview of Process and Timeline of an Arrest, Prosecution, and Incarceration and Impact on DOC Intake

Transport to the DOC intake facility relies heavily on practices by several additional players within the criminal legal system, including the NYPD, the District Attorney's office, criminal defense attorneys, court officers, and judges. Therefore, it is important to understand the processes that occur prior to a person being transported to a DOC intake facility. Below is an overview of each point in the process that we are aware of that impacts a TGNCNBI person's DOC intake experience.

A. NYPD Arrest

When a TGNCNBI individual is arrested by the NYPD, the NYPD Patrol Guide governs the way in which officers are to engage with the TGNCNBI person. According to the NYPD Patrol Guide section 208-02, "[f]or booking purposes, a member of the service shall write an arrestee's name and gender as it appears on a driver's license, permit, or non-driver photo identification. If the arrestee uses a Preferred Name²⁴, that name shall be listed in the "Preferred Name" section of the Prisoner Pedigree Card." This policy then goes on to say that regardless of whether the name of the identification coincides with the person's gender identity, the officer shall refer to the person by the preferred name and pronouns consistent with that name.

However, the majority of the paperwork filled out by the NYPD²⁵ is supposed to be consistent with the name and gender listed on the person's identification documents. This is

²⁴ The term "preferred name" has been criticized as offensive by many TGNCNBI people, because it implies that the name that affirms their identity is merely a preference for them, when in fact it can be incredibly harmful and traumatic for that name not to be used. We recommend updating the forms to replace "preferred name" with "chosen name," "used name," or "correct name."

²⁵ Paperwork includes but is not limited to the Complaint Report (PD313-152A), the Property Invoice (PD521-141A), the Lab Request (PD521-168), the DAT Investigation/DAT itself (PD360-081), the DAT arrest package

problematic because many TGNCNBI individuals have identification that does not reflect their true gender identity or their identification may include their deadname due to the difficult nature of obtaining new, correct identity documents for low-income TGNCNBI people.²⁶ Additionally, in the experiences of many Task Force members, NYPD paperwork that does require officers to indicate the “preferred name” of a person who has been arrested²⁷ has routinely been filled out incorrectly using a person’s deadname and incorrect gender marker.²⁸ This practice is consistent with the NYPD’s general lack of compliance with the entire Patrol Guide section, as reported by a DOI investigation in 2017²⁹ and observed by multiple public defenders across New York City.

After the NYPD fills out the necessary paperwork and concludes their own internal procedures, the person who has been arrested is typically transported from the precinct to the courthouse where the arraignment will take place. In cases where the person needs medical attention prior to being transported to the courthouse for the arraignment, they will be sent to the hospital for medical attention until they are cleared to leave. In some cases, people are not released from the hospital because they are not medically able to leave. In those cases, the arraignment happens virtually from the hospital.

B. District Attorney Drafting of Complaint

The Assistant District Attorney (“ADA”) who is in the “complaint room”³⁰ during that particular shift uses information from the NYPD paperwork and other information from the arresting officer to draft a “criminal complaint.”³¹ This information includes the person’s name, gender, and age, as well as additional legal information. There are no gender marker options for people who identify outside the “female” or “male” gender binary.

While drafting the criminal complaint, the DA's office relies on the police paperwork for the name and gender marker recorded in the criminal complaint, despite the fact that such

(PD260-123), the Juvenile arrest investigation/probation intake report (PD277-151A), and the Arrest document checklist (PD240-010).

²⁶ Due to the stigma and resulting poverty and homelessness many TGNC people face, especially TGNC people of color, medical diagnoses and gender-affirming identification is often very difficult or impossible to come by. Unfortunately, the most vulnerable TGNC people — homeless people, people of color, low-income people, and people with disabilities — are also the most likely to be incarcerated. See National Center for Transgender Equality. *National Transgender Discrimination Survey: Full Report*. September 11, 2012. (<https://transequality.org/issues/resources/national-transgender-discrimination-survey-full-report>).

²⁷ Paperwork includes the Activity log (PD112-145), Online Booking System Arrest Worksheet (PD244-159), and Prisoner Pedigree card (PD244-092).

²⁸ See N.Y.C Department of Investigation. *Review of NYPD’s Implementation of Patrol Guide Procedures Concerning Transgender and Gender Nonconforming People*, November 2017, pg. 15-19, (https://www1.nyc.gov/assets/doi/press-releases/2017/nov/31_LGBTQ_ReportRelease_112117.pdf).

²⁹ *Id.*

³⁰ The “complaint room” refers to the office space where the DA's office drafts criminal complaints.

³¹ The “criminal complaint” is the charging document in a criminal case with identifying information about the person who was arrested and is being prosecuted by the District Attorney’s office.

paperwork often reflects the incorrect name and gender marker for a TGNCNBI person. The criminal complaint is shared with the defense attorney and the judge (for the court file).

C. Office of Court Administration Procedures, Securing Orders, and Arraignment

Once the person in custody meets with their attorney, they are brought before a judge and arraigned. At the arraignment, the judge determines whether the person will have bail set, remanded, or released to the community (with or without release conditions). If bail is set, or the individual is remanded, the person will enter DOC custody immediately. As soon as the judge indicates that bail will be set or that the individual will be remanded, a court officer fills out a “securing order” sometimes referred to as the “blue card.” The securing order is a document that accompanies an incarcerated person as they are transported between facilities through the state and city criminal legal system. The securing order includes identifying information about the incarcerated person such as their name and sex/gender. It also includes notes from the court about specific requests, such as a request that the person be provided medical attention or placed in protective custody. These notes are typically made by the court officer, at the request of the judge. Court officers are to take instruction from judges on how to fill out the securing order. However, the only issue on which court officers have challenged judges in their instructions on filling out the securing order has been on the issue of correcting the gender marker for transgender individuals.

The gender marker options on the securing order are currently only “M” for male and “F” for female. There are no non-binary gender marker options. **Court officers rely on the gender marker listed on the criminal complaint and NYPD paperwork to fill out the securing order. The gender marker on the securing order will be marked incorrectly for TGNCNBI people if the documents it relies on are marked incorrectly for TGNCNBI people.** DOC’s current policy is to send an incarcerated person to the intake facility that aligns with the gender marker on their securing order. Although Task Force members are aware of two instances where an officer working in the courts was able to intervene and divert a person to the facility that aligned with their gender identity, this is both against current policy and appears to be a random confluence of luck and not a means to ensure safer housing. In actuality, the majority of people whose securing orders are marked “M” will be transported to the male intake facility, and the majority of people whose securing orders are marked “F” will go to the female intake facility. If the gender marker on the securing order is marked incorrectly and/or does not reflect the gender with which the person's gender identity most closely aligns, the individual will be placed on a bus inconsistent with their gender identity, and they will be sent to a gender-misaligned intake facility.

Task Force members have also seen securing orders filled out with both the "M" and "F" boxes marked. This may happen for a variety of reasons including the RAP sheet indicating both "male" and "female," as it often does for TGNCNBI people, or confusion among court staff about whether someone identifies as a man or a woman and not allowing the person in custody to

self-identify. In 2021, for example, court officers checked off both the "male" and "female" boxes on a securing order for a lesbian woman who presents in a masculine manner but does not identify as a man. This woman was sent to the men's intake facility where she was in a cell with cisgender men for several days and sexually assaulted, until the mistake was corrected, and she was transferred to the women's jail.

As of the release of this report, the Task Force is aware of an official Office of Court Administration ("OCA") policy in the Bronx that requires the gender marker on the securing order be filled out consistently with the gender marker on the criminal complaint and NYPD paperwork—which, as mentioned above—is usually incorrect for TGNCNBI people. Under this policy, the securing order must include a notation that the person is transgender.³² It is unclear whether this is a city-wide policy, or specific to the Bronx. Additionally, this policy is in conflict with DOC's process. As mentioned above, DOC looks only to the gender marker on the securing order in determining whether a person in custody will be sent to the men's or women's intake facility. Even if there is a note on the securing order indicating that the person in custody is transgender, if that person's securing order is marked inconsistently with their gender identity, then they will be sent to the wrong intake facility. This situation is most dangerous for transgender and gender non-confirming cisgender women who will be sent to the men's intake facility in response to their securing order.

The Bronx Defenders worked with Ms. London Reynolds, a transgender woman who was arrested in 2020 and spent several months on Riker's Island. As Ms. Reynolds' securing order was marked as "male," she was sent to the men's jail for intake, and she remained at different men's facilities for her entire period of incarceration. During Ms. Reynolds' incarceration in the various men's jails, she survived multiple incidents of reported abuse. Shortly after being placed in custody, an incarcerated man came into her cell, raped her, and walked right out as if nothing happened. Ms. Reynolds reported the assault to officers but stated that the officers didn't want to fill out the paperwork, so nothing was done about it. Ms. Reynolds explained, "They [DOC] make you feel horrible after you just went through something horrible. When I walked down the hallways, people threw things at me, spit on me, yelled slurs at me. Jail is torture for transgender people." Ms. Reynolds also described a brutal assault against her by two incarcerated men in her housing unit who struck her with a cane. While assaulting her, the men were yelling "stupid gay mother fucker" and told her she "should die." Ms. Reynolds was so badly injured that she could not walk, and she had to be taken to receive medical treatment on a stretcher. Ms. Reynolds recounted another time in which she was sleeping in her cell and woke up to a man on top of her. This man raped her while holding a metal object to her, which he threatened to stab her with. Ms. Reynolds reported this to 311 and to her unit's captain. DOC's response was to move her to a different men's general population unit. In Ms. Reynolds' own words, "none of this would have happened if they just put 'F' on my paperwork."

³² See Appendix D.

There have been a handful of times when defense counsel has intervened at arraignments once it was made apparent that the gender marker on the criminal complaint was incorrect. In some of those instances, the attorneys succeeded in getting the judge presiding in arraignments to ask the court officer to fill out the securing order using the correct gender marker. In a few of those instances—where the judge was receptive to the defense attorneys’ request *and* the court officer was receptive to the judge’s request—the transgender person was sent to the correct facility which most closely aligned with their gender identity.

Unfortunately, however, Task Force members report that this practice is not consistent. For example, judges in the Bronx will usually decline the defense counsel’s request for the securing order to be corrected. While some judges may note that the client is transgender on the securing order, DOC has confirmed with the Task Force that including a note that someone is transgender has no bearing on which intake facility they are sent to. According to DOC, the *only* factor that determines which intake facility someone is sent to is the gender marker that is filled out.³³

In September 2021, The Bronx Defenders represented a transgender woman in arraignments who we can call “Ms. A” in an effort to maintain anonymity. The NYPD paperwork and criminal complaint identified Ms. A as "male." At the arraignment, defense counsel asked for Ms. A's securing order to be marked as "female" in order for her to be sent to RMSC for intake, the facility which aligned with her gender identity. The Judge initially granted defense counsel's request. However, following the arraignment, the court officer on duty informed the Judge that he would not be able to mark the securing order as female because it was against OCA policy. The Judge asked for time to look into it before deciding how to proceed. The Bronx Defenders worked tirelessly throughout the day to help the judge understand DOC's intake process. In fact, Elizabeth Munsky, DOC's Director of LGBTQ Initiatives, directly sent the Judge an email within hours explaining why Ms. A's securing order should be marked as female. Despite this official communication from DOC in writing, the Judge ultimately denied defense counsel's request to mark Ms. A's securing order as female, and instead instructed the court officer to mark her securing order as "male" and make a notation in the comment section that Ms. A is transgender. In making this decision, the Judge relied on OCA's current policy referenced above³⁴ and information from a new DOC employee who had evidently given the Judge false information because he was not yet familiar enough with the process. This happened during the "Rikers Island Crisis," where the level of neglect at facilities like OBCC continues to result in multiple deaths. In an effort to prevent Ms. A from being sent to OBCC for intake, Ms. Munsky was able to intervene and reroute Ms. A to RMSC. This is not something that typically occurs, but an exception was made given the circumstance. Had it not been for the emergency intervention that was a result of a full day's efforts by many advocates and Ms. Munsky, Ms. A would have been sent to OBCC, the men’s jail with the worst conditions at Rikers Island at the

³³ See Appendix E.

³⁴ See Appendix D.

time, where she would have languished for a prolonged period of time and would likely have suffered serious consequences.

Additionally, it has been reported that even in those cases where the gender marker on the police paperwork and criminal complaint is correct, court officers have taken it upon themselves to note the incorrect gender marker on the securing order. In May 2022, The Bronx Defenders represented a transgender woman, Ms. W. Ms. W's police paperwork and criminal complaint included the correct gender marker. However, Ms. W was sent to EMTC, the men's intake facility, from arraignment. Upon further inquiry, The Bronx Defenders learned that the court officer had not recorded the correct gender marker on Ms. W's securing order. This officer went against the standard protocol of replicating the gender marker on the criminal complaint onto the securing order, and therefore, placed Ms. W at risk of serious harm.

Prior to the COVID-19 pandemic, people were supposed to be held in the intake facility awaiting a housing determination for no more than three days, though many Task Force members are aware of TGNCNBI people in custody being held at intake for longer than three days. Since the COVID-19 pandemic, a quarantine protocol was implemented requiring incarcerated people to be left in new admission housing for a minimum of 10 days to prevent the spread of COVID-19 through the facility. This is important because it means that if an individual is sent to a new admission facility that does not align with their gender identity, or where they are the safest from gender-based violence, then they will be housed there for a minimum of 10 days. In these situations, an hour in the wrong facility can result in someone being assaulted, raped, or worse. Therefore, spending multiple days in the wrong intake facility should never happen. The Bronx Defenders represented one such case, Ms. E, in 2021. During a recent incarceration, Ms. E was sent to the men's intake facility, where she had been assaulted by three incarcerated men. Ms. E requested to be transferred to RMSC by filling out an SCU application and, given her history of being assaulted in the men's jail, her request was granted. However, Ms. E was forced to remain in a men's jail to quarantine for 14 days before being transferred to RMSC. She reports being locked in a cage with no access to a toilet and needing to beg for hours to be able to use the restroom.

III. Current DOC Intake Process

The following section is a description of how the DOC intake process is intended to function based on acting policies and directives. However, many TGNCNBI individuals who have entered DOC custody since October 2019, when Directive 4498R-A went into effect, have reported that these guidelines were not followed. Even if the Directive were fully complied with, they would still be insufficient to ensure that TGNCNBI individuals are kept safe.

Following an arraignment and the completion of the securing order, individuals who are in DOC custody are temporarily held in the courthouse holding cells. These holding cells must be consistent with the gender marked on the person in custody's securing order. The individuals in custody at the courthouse are then placed on a bus designated for either men or women and

driven to either the men's or women's intake facility. Per DOC written policy,³⁵ the bus and intake facility that someone is placed in *is solely determined* by the gender marker on the securing order, regardless of whether it is accurate or if there are notes on the securing order about the person being transgender, non-binary, and/or intersex. Because there is no housing specific to non-binary and gender non-conforming people, and as transgender men and intersex people don't have any specific housing units, RMSC has become the "catch all" when people seek gender-affirming housing.

When TGNCNBI people are placed on a bus or sent to an intake facility that is inconsistent with their gender identity, they become vulnerable to physical and sexual assault and harassment by other detained persons and officers in those spaces. The Bronx Defenders represented a transgender woman, Ms. B. When Ms. B was arraigned, the court officer marked "male" as her gender designation on her securing order despite her attorney requesting that it be marked as "female." She was sent to the men's jail for intake and was sexually assaulted on the bus on her way there. In February 2021, a transgender woman who has served multiple short sentences in the jails was re-arrested, charged as male, and brought to the men's intake at EMTC. She was forced to fill out a request to move to women's housing **despite being known to the Department as a transgender woman and having served all of her previous sentences in women's housing**. She spent between 24 and 72 hours in the men's intake before her transfer.

As mentioned above, this process is even more dangerous now for trans people who are sent to the incorrect intake facility because of mandatory COVID quarantine periods. Even a few hours in a jail not aligned with one's gender identity could be life-threatening. But DOC's quarantine protocols guarantee that a TGNCNBI person will remain in non-gender-aligned housing for a minimum period of 10 to 15 days if they are sent there from their arraignment.

Once a TGNCNBI person arrives at the intake facility, a PREA screening is supposed to be completed during the intake process. The PREA screening is a tool designed to determine if a person in custody is at risk of sexual assault, or at risk of perpetrating sexual assault. It includes a number of questions related to a person's history of risk factors for sexual assault, including gender identity. A uniformed correction officer conducts the screening, not a member of the PREA unit, or anyone with specific trauma-informed training. Sometimes—more often now than ever given the staffing shortage at DOC—a PREA screening is not completed within the BOC mandated 72-hours after admittance or at all.³⁶ This is done at the discretion of the officer.

In the event that a PREA screening is completed, and the incarcerated person identifies as a TGNCNBI person, this should result in the officer providing the individual with a Special Consideration Unit (SCU) form³⁷ to fill out. However, it has been reported to BOC and Task Force members that correction officers do not always provide an SCU form to an incarcerated

³⁵ See Appendix A.

³⁶ According to DOC's Data Warehouse, in 2021 approximately 38% of new admissions into DOC custody who received a PREA screening at intake were screened within the BOC mandated 72-hour limit.

³⁷ See Appendix A

TGNCNBI individual at intake. This is one of the main reasons why the number of TGNCNBI people in DOC custody is so severely underreported.

In the event that a PREA screening is completed, but the correction officer did not provide the TGNCNBI individual with an SCU form, their TGNCNBI identity is supposed to be input into DOC's online system with all of the other information collected during the intake process. This may take several days. When the information is submitted, the individual's name should appear onto an auto-populated list of all LGB and TGNCNBI people in custody, and the PREA team is charged with monitoring that list every day for any new admissions. If the PREA team identifies a new person on that list who is TGNCNBI identified, the PREA team is supposed to offer them an SCU form to fill out. Under the Directive 4498R-A,³⁸ after a TGNCNBI person submits an SCU form, the housing decision is supposed to be made within three business days. Supposing the application is granted in a timely manner (within three business days), the current position of the Deputy Commissioner is that an individual must complete their mandatory quarantine in the new admission unit before being transferred into gender-aligned housing. At this time, this means that a person might be approved for SCU housing or housing at RMSC, but they must complete their quarantine period at a men's jail.

When Ms. B, the person mentioned above, was at the men's jail for intake and new admissions, it was determined that she would remain in the men's jail. She was placed in a protective custody unit in the men's facility where she was sexually assaulted again, after being sexually assaulted on the bus ride to the facility. During the several weeks of her incarceration, her attorneys pleaded with DOC to transfer her to RMSC, but they refused to do so, accusing her of "pretending to be transgender." Her attorneys provided DOC with medical records documenting her years of hormone therapy and letters of support confirming her identity, yet she was never transferred to RMSC. Ms. B's criminal case was ultimately dismissed.

Recommendations

1. Documentation and data systems for all involved agencies and organizations, including the NYPD, CHS, Public Defenders and 18B Defense Attorneys, OCA, and the DOC, should be revised to accurately capture all gender identities. While the Task Force recognizes that some of these organizations are outside the purview of the TGNCNBI Task Force's mandate, it is important to recognize the stakeholders and factors that contribute to misidentification, improper housing, and many of the problems that face TGNCNBI people in custody. The incorrect housing of TGNCNBI people functions as a domino effect throughout the criminal legal system, and the first "domino,"—so to speak—is the NYPD officer who fills out the relevant police paperwork since this paperwork follows the individual throughout the system and may never get corrected.

³⁸ See Appendix A.

2. CHS currently conducts a screening process immediately before the arraignment in order to determine if there are medical or mental health concerns that need to be noted. CHS should inquire about each person’s gender identity and notify defense counsel, the court, and district attorney’s office when the gender marker on the file is inconsistent with the person’s gender identity. This inquiry should happen in a confidential setting and occur prior to the arraignment. This will provide defense counsel with the opportunity to discuss it with their client and ensure that the gender marker on the complaint and securing order is correct. If defense counsel does not address the incorrect gender marker with the Court, the Court should have an off-the-record conference about it to ensure that defense counsel has addressed it with their client and done their due diligence in correcting the error with their client’s consent.
3. The Department should work with CHS, BOC, and the TGNCNBI Task Force to implement a safer, more comprehensive and effective plan of ensuring TGNCNBI individuals in custody are transferred to a gender-appropriate intake bus and gender-appropriate intake facility.
4. DOC should update the PREA Intake Questionnaire to include distinct questions about sexual orientation, gender identity, and gender expression (“SOGIE”). As it currently exists, the Questionnaire lumps sexual orientation, gender identity, and gender expression into one category. The Task Force recommends separating them into three distinct categories and tracking them in three separate fields. Within the gender identity section, the term gender non-binary must be included as well. In addition, intake officers must be re-trained on appropriate ways to ask these questions.
5. The Department must implement a confidential way for people in custody to fill out the PREA Intake Questionnaire form so they may discreetly identify as TGNCNBI. Suggestions include confidential computer terminals, tablets, and a physical drop box to disclose gender identity.
6. The TGNCNBI Task Force requests City Council pass legislation requiring all City agencies recognize “X” gender markers. This should be inclusive of DOC, NYPD, and the NYC Department of Probation. This is in alignment with the Gender Recognition Act and Part R of the Fiscal Year 2023 New York State Executive Budget.³⁹
7. Likewise, we call upon the City Council to pass a resolution calling on the State Legislature to require the Office of Court Administration (“OCA”) to include gender identities other than just Male/Female, including X gender markers⁴⁰ on securing orders.

³⁹ See New York State Division of the Budget. *FY 2023 New York State Executive Budget Transportation, Economic Development and Environmental Conservation Article VII Legislation*, 2023, Part R, pg. 75, (<https://www.budget.ny.gov/pubs/archive/fy23/ex/artvii/ted-bill.pdf>).

⁴⁰ See Bohm, Allie. “Providing an X gender marker lets nonbinary New Yorkers know that their state sees them and honors who they are,” New York Civil Liberties Union, July 8, 2021, (<https://www.nyclu.org/en/news/new-york-will-offer-x-gender-markers-ids>).

This is in alignment with the Gender Recognition Act⁴¹ and Part R of the Fiscal Year 2023 New York State Executive Budget requiring the recognition and respect of defendants' names and pronouns regardless of legal name changes or gender marker changes. This legislation should not be subject to requests for extensions by OCA given the life altering nature of these documents and should give TGNCNBI people a cause of action if their rights are violated.

⁴¹ See New York Civil Liberties Union. *Changing Your Name or Gender Marker under the Gender Recognition Act*, (<https://www.nyclu.org/en/know-your-rights/changing-your-name-or-gender-marker-under-gender-recognition-act>).

Chapter 2: HOUSING

I. Introduction

When a person enters the custody of a jail, there is an implicit agreement that the county or city will provide shelter. Decades of cases on conditions of confinement inform us that such an individual must be provided with “shelter which does not cause his degeneration or threaten his mental and physical well-being.”⁴² The Task Force has found that housing TGNCNBI people in the NYC jail systems leads to a dangerous deterioration of their well-being.

II. Housing Options for TGNCNBI Persons in DOC Custody

In October 2019, the Department revised Directive 4498 (updated to Directive 4498R-A⁴³), which outlines how persons in custody can request gender-aligned housing, the criteria to be used for admission and removal, and the time frames within which housing decisions are to be made. The current Directive and its predecessor are not shared with people in custody. **This means that TGNCNBI people held by DOC are not made aware of all the rights and protections that DOC must provide.** For over two years, at the time of finalizing this Report, DOC has allegedly been in the process of revising this Directive, yet DOC has refused to share any version of the draft with the Task Force. Without input from the Task Force and our receipt of full and complete information about the Department’s processes and decision making, the problems addressed throughout this report below are likely to continue. For example, to the best of our knowledge, this third version of the Directive will still be classified and therefore not able to be shared with people in custody.

The current policy is vague and discriminatory, both on its face and in practice. DOC housing is arranged by binary male/female gender. Currently, there is one jail designated as a jail for women (RMSC) while all other jails are designated for men. As a result of this division, people who are intersex, gender non-conforming, or hold other non-binary identities must make a decision that cannot reflect their full gender identity. This division has created particular damages for this population.

According to data provided by BOC, the vast majority of people who have self-identified to DOC as TGNCNBI continue to be housed in gender-misaligned housing. As of March 11, 2022 49 individuals in DOC custody self-identified as TGNCNBI.⁴⁴ Of those 49 individuals:

- 36 identified as transgender women;
- 5 identified as transgender men; and

⁴² See, e.g. *Ramos v. Lamm*, 639 F.2d 559, 568 (10th Cir. 1980). (Use of gendered pronoun in original quote).

⁴³ See Appendix A.

⁴⁴ An additional 50th person was being held at Bellevue Hospital on this date and is not reflected in this data.

- 8 individuals reported identifying as non-binary and/or intersex but, due to the manner of record keeping and reporting, the data alone cannot tell us anything further about their identities.

Of the 41 individuals whose identity the Task Force could be reasonably certain of, 63% were in gender-misaligned housing. This breaks down as follows:

- 21 of the 36 known trans women were in gender-misaligned housing (58%);
- 5 of the 5 known trans men were in gender-misaligned housing (100%).

As mentioned throughout the Report, this data alone cannot tell us how many individuals requested gender-aligned housing and were denied placement, and how many “chose” misaligned housing after being fully informed of their right to request gender-aligned housing. In addition, for the 8 individuals who identified as non-binary and/or intersex, additional investigation is required to determine their requested housing.

When a person arrives in DOC custody and identifies as TGNCNBI, they are supposed to be provided with an application regarding housing. This application is called the Special Considerations Housing Unit form⁴⁵ and it is intended to provide TGNCNBI people with information and a formal mechanism for sharing how and where they would feel most safely housed. However, this form has multiple problems:

1. The form does not clearly explain all of the various housing options available to TGNCNBI people in custody.
2. There is no clear guidance on housing placement of anyone who does not identify along the male/female binary. Rather, it only states that if an individual “does not identify as either male or female, this form can be completed for purposes of identifying a search and housing preference” which provides no guidance as to the rights of a non-binary person.
3. The form has a confusing name. It is called a housing form for the SCU, but it also allows for gender-aligned housing outside of the SCU.
4. The form fails to state that SCU’s are available at RMSC and Anna M. Kross Center (“AMKC”).

In the often chaotic, confusing, and overwhelming process of DOC intake and housing, it is easy to see how an unclear differentiation between housing units could contribute to an inaccurate understanding of the application. For anyone not female identified, it is easy to see how this form would be almost impossible to fill out.

The criteria set out in Directive 4498R-A for placement in gender-aligned housing and/or the SCU, as well as removal from such housing, is vague. The rationales actually relied on by

⁴⁵ See Appendix A, Attachment A.

DOC are unclear, since advocates and their clients rarely receive written forms clarifying denials of requests for such housing or the reasons for removal.

A fundamental tenet of this Task Force is that all people should be housed safely in gender-aligned housing unless they object, or the Department can set forth compelling reasons why that cannot be accomplished safely because the person presents a current risk of gender-based violence. Subject to these caveats, TGNCNBI persons should be treated the same as cisgender persons in determining housing placements. This is in line with the GIRDS⁴⁶ Act and would bring the city into compliance with Human Rights Laws and Executive Order 16.⁴⁷ In April 2018, then Mayor Bill de Blasio announced that the DOC “will house [people] consistent with their gender identity” in line with Executive Order 16.⁴⁸ GIRDS follows this line of thought but would codify the process and the consequences for not following the process on a local and state level. Allowing people agency even to this extent in determining where they can safely—and respectfully—be housed is too often seen as a privilege when in fact it is critical.

III. Misinterpretation of PREA Standards in Housing Placement

The Federal Prison Rape Elimination Act (PREA) and Board Standards require the Department to consider a number of factors when determining the housing placement of all people in custody.

The relevant portions of PREA state the following:

“(d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:

- (1) Whether the inmate has a mental, physical, or developmental disability;
- (2) The age of the inmate;
- (3) The physical build of the inmate;

⁴⁶ The Task Force supports the immediate passage and implementation of the Gender Identity, Respect, Dignity, and Safety Act (GIRDS Act) which has been, and we hope will continue to be, under consideration in the New York Legislature. The processes outlined in GIRDS for the housing of TGNCNBI peoples would address the concerns and issues raised throughout this section with relative ease.

⁴⁷ See New York City Commission on Human Rights. *Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression: Local Law No. 3 (2002); NYC Admin. Code § 8-102(23)*, ([Gender Identity/Gender Expression - CCHR \(nyc.gov\)](https://www1.nyc.gov/assets/cchr/downloads/pdf/20180418_girds_guidance.pdf)). and *Id.* at 2, “Prohibiting a transgender person from using the single-gender program or facility most closely aligned with their gender identity. For example, a public university cannot prohibit a transgender man from using the men’s restroom.”

⁴⁸ See N.Y.C Office of the Mayor. *Mayor de Blasio Announces Department of Correction Will House Incarcerated Individuals According to Gender Identity, Working with City Human Rights Commission to Maintain Transgender Housing Unit*, April 16, 2018, (<https://www1.nyc.gov/office-of-the-mayor/news/193-18/mayor-de-blasio-department-correction-will-house-incarcerated-individuals-according-to>), “Today’s announcement follows recent efforts by CCHR to ensure that DOC’s housing policies are consistent with Executive Order No. 16, issued by Mayor Bill de Blasio in March 2016, which requires that City agencies permit people to use single sex facilities consistent with their gender identity, as well as applicable state and federal law.”

- (4) Whether the inmate has previously been incarcerated;
- (5) Whether the inmate's criminal history is exclusively nonviolent;
- (6) Whether the inmate has prior convictions for sex offenses against an adult or child;
- (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
- (8) Whether the inmate has previously experienced sexual victimization;
- (9) The inmate's own perception of vulnerability; and
- (10) Whether the inmate is detained solely for civil immigration purposes.”⁴⁹

Under PREA⁵⁰, the DOC is required to use this information in order to make housing, programming, and other determinations “with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive[.]”⁵¹ and to ensure that each intersex or transgender incarcerated person’s “own views with respect to his or her own safety shall be given serious consideration.”⁵² However, many of the complaints collected from Task Force members, including various city agencies, service providers, and the Board of Correction, appear to stem from the DOC’s misinterpretation and misapplication of these standards when applied to TGNCNBI people in custody.

Since the current housing policy was promulgated in November 2019, the major⁵³ reason that people are given for either their denial of placement or their removal from the SCU or even removal from gender-aligned housing is based on “security and management concerns.”⁵⁴ Yet DOC does not house cisgender people with comparable disciplinary or criminal histories or

⁴⁹ See United States Department of Justice (DOJ). *National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA)*, May 17, 2012, 28 CFR 115.41, pg. 19, (https://www.prearesourcecenter.org/sites/default/files/content/prisonsandjailsfinalstandards_0.pdf).

⁵⁰ To be clear, PREA requires that DOC use this information to make determinations but does not require that a PREA team or unit make these determinations. Currently, the Task Force believes that members of DOC PREA have an overdetermined role in making housing determinations for TGNCNBI people. However the Task Force lacks any representation by PREA so we have not had the opportunity to have these direct conversations.

⁵¹ See DOJ. *National Standards PREA*, May 17, 2012, 28 CFR 115.42, pg. 20, (https://www.prearesourcecenter.org/sites/default/files/content/prisonsandjailsfinalstandards_0.pdf).

⁵² *Id.*

⁵³ This information has been confirmed by DOC and is consistent with information received by advocates on the Task Force who represent people in custody. Past practice included people being denied gender-aligned housing due to multiple factors such as “inconsistency in their identity” as reasons for denial. While this practice may have lessened, it is still concerning and may not take into consideration all factors that contribute to conflict and inconsistency in identity, including trauma and the inherent risk of self-disclosure in a carceral setting.

⁵⁴ Misunderstandings of the risk of sexual violence are longstanding. For example, Bronx Defenders worked with a transgender woman who had a “sodomy” charge from a different state which was over 20 years old and which, at this point, would not be a criminal charge. This history of criminalizing perceived same sex activities was not taken into consideration when housing decisions were made. Despite repeated requests, Bronx Defenders was not able to get DOC to reconsider this historical charge against current standards.

complaints about them in facilities that are inconsistent with their gender identity. This practice is discriminatory and places TGNCNBI people at increased risk of physical and psychological harm. It is incumbent upon the Department to house all people safely, free from discrimination based on gender identity.

In 2019, the Bronx Defenders represented Ms. Rosario, a transgender woman who was housed in a men's jail for her entire incarceration, ranging from August 2019 to October 2019. When Ms. Rosario and her attorneys filled out the SCU application and requested that she be transferred to RMSC, the Department denied her request, citing "security concerns." Ms. Rosario, however, was the victim/survivor of her own "security concerns" as she endured daily harassment and threats from both officers and other incarcerated people. Upon further inquiries by the Bronx Defenders, the Department informed her attorneys that the "security concern" was due to her being classified as a "sexual assailant" on her PREA screening. Ms. Rosario does not have any arrests or convictions for sexual offenses. The department refused to provide the attorneys with any explanation as to why Ms. Rosario was classified as a "sexual assailant" and refused to re-consider her housing despite her ongoing experiences with abuse.

All cisgender people in the custody of the Department are housed by gender identity regardless of pending allegations of sexual abuse or harassment. The Department does not explain why they cannot safely house TGNCNBI people accused of such behavior in gender-aligned housing while protecting others in the same manner they would keep a cisgender person accused of similar actions. The Department appears to have taken the position that TGNCNBI people who pose threats of potential sexual violence no longer have the right to their gender identity.

DOC has also denied gender-aligned housing based on a history of so-called violent conduct. This fails to adequately account for contextual factors that contribute to TGNCNBI people's institutional or criminal history, including the fact that people who were previously housed inconsistently with their gender identity may have been acting out of self-defense in response to violence and discrimination received based on their gender identity.

Second, the Department has improperly relied on sex and gender stereotypes about a person's appearance and expression in deciding whether to credit the person in custody's self-identification as TGNCNBI. In other words, if a person does not appear or behave in a manner typically associated with a gender different from the one assigned to them at birth, DOC has often not recognized them as TGNCNBI or housed them in a manner consistent with their gender identity. Perhaps one of the most glaring examples occurred in 2018, when the Department advised The Bronx Defenders that their client, a transgender woman, could not be housed with women because of her "masculine appearance and build." This denial included an attachment of a photograph of the woman in question without any explanation as to what DOC hoped to accomplish by emailing a photo of a detained person. The Task Force can only assume that DOC believed there was a correlation in how they viewed this individual and this individual's gender identity, suggesting that DOC believed themselves better arbiters of a person's gender identity

than the person themselves. While this explicit rationale was stated in 2018, the client remains housed in a men’s jail pending trial.

This approach ignores the fact that a person’s gender identity is reflective of their internal sense of self, not their outward appearance. Moreover, general appearance is not listed anywhere in the Standards as a factor for housing placement; yet, DOC has repeatedly treated it as such. This practice is not only harmful to the dignity of TGNCNBI people, but arguably violates laws which prohibit discrimination based on sex stereotyping.⁵⁵ Poverty, social ostracism, violence, health complications, and individual choices about one’s body are all factors that contribute to TGNCNBI decisions about whether to obtain medical support in gender affirmation and to what extent.⁵⁶ The DOC’s reliance on considerations of general appearance leaves too much room for discrimination and stereotyping and should be expressly prohibited in DOC policies.

Third, Task Force members report that in determining housing placement DOC has considered whether a person previously identified themselves to department staff as TGNCNBI, or anything *other than* TGNCNBI during prior periods of incarceration. This is evident from the printed form DOC used to inform people of housing determination. This form listed “inconsistency in their identity” as a factor for consideration. Attached here is a redacted form provided to Legal Aid by a client, Legal Aid Individual #1, who was denied a transfer to RMSC from the men’s jail due to “inconsistency in their identity” among other reasons, some of which were illegible.⁵⁷ This practice ignores the reality that numerous factors, including fear of violence and harassment perpetrated by both staff and by other people in custody, often lead TGNCNBI people to remain quiet about their gender identity.

Additionally, many TGNCNBI people in custody are not made aware of their rights to gender-aligned housing and therefore do not see the value in outing themselves as TGNCNBI, since disclosing that information could place them in danger. This is in part due to DOC’s policy that the relevant directive cannot be shared with incarcerated people. It is also due to a failure of the NYPD, court system, service providers, and DOC to inform people of their rights during the early stages of an arrest, booking, arraignment, and DOC intake. TGNCNBI people are often

⁵⁵ See N.Y. State Division of Human Rights. *Guidance On Protections From Gender Identity Discrimination Under The New York Human Rights Law*, January 29, 2020, (<https://dhr.ny.gov/sites/default/files/pdf/nysdhr-GENDA-guidance-2020.pdf>), “Discrimination may occur because an individual has transitioned or intends to transition from one gender to another or because the person is thought not to conform to sex stereotypes. Sex stereotyping occurs when behavior is considered inappropriate or unacceptable because it differs from societal norms or expectations relative to a particular sex”; and NYC Comm’n on Human Rights. *Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression: Local Law No. 3 (2002); NYC Admin. Code § 8-102* February 15, 2019, (<https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/2019.2.15%20Gender%20Guidance-February%202019%20FINAL.pdf>) – example of violations of the New York City Human Rights Law “prohibiting a person from using a particular program or facility because they do not conform to gender stereotypes.”

⁵⁶ We want to note that individuals who are intersex or have disorders of sex development may also choose to have affirming surgeries. These are different than an affirming surgery for a transgender person and we want to be clear that there is no conflation. An excellent resource on intersex rights is available with InterACT: See InterAct. *Intersex Definitions*, February 19, 2021, (<https://interactadvocates.org/intersex-definitions/>).

⁵⁷ See Appendix F.

placed in a situation of navigating DOC rules without knowledge of what those rules are, making decisions regarding identifying themselves, educating DOC, CHS, and other incarcerated people, and bearing the harm should their actions and histories be misunderstood or judged against incorrect assumptions of who is a TGNCNBI person or what makes a person TGNCNBI.

Given the Department's long-standing misuse of PREA in making housing decisions, the DOC PREA Compliance Team's involvement in housing decisions should be substantially circumscribed. By adopting the GIRDS Act the vast majority of housing decisions would not need to be determined by any decision-making body. In the rare cases where housing may lead to discussion, the Task Force believes that the decision is best made by staff with clear and expressed knowledge on TGNCNBI identities, vulnerabilities, and cultures and the law. Housing people in accordance with their gender identity is in alignment with human rights law, dignity, and overall wellness.

PREA housing standards have been repeatedly misunderstood and misapplied and this Task Force believes that removing housing decisions from the purview of PREA staff, or any individual person or singular unit, will assist in a more consistent application. It is clear from the above examples that the PREA team does not have the knowledge and training in TGNCNBI people's identities and expressions necessary to carry out this work. PREA's central focus should be the elimination of rape and sexual violence for all people in custody. Although sexual violence is an enormous part of the experience of TGNCNBI people in custody, our hope is to move to a housing model where flourishing and change is the focus, not simply surviving with the least amount of harm. A TGNCNBI person should not be placed in a position where they fear rape before action is taken to correct their housing assignment. The Task Force intends to closely monitor these housing determinations.

Recommendations

1. Above all, DOC must weigh a person's affirmation of where they will be most safely housed when making housing determinations for TGNCNBI people.
2. DOC shall not consider a person's appearance, gender expression, genitalia, sexual orientation, or degree of medical or social transition either in isolation or in combination with other factors in the determination of housing for TGNCNBI people. This was never the intent of the PREA standards, which instead permit that DOC may evaluate only "stature"⁵⁸ or "build" for the purposes of determining a person's vulnerability to sexual violence.⁵⁹

⁵⁸ See Appendix G.

⁵⁹ See DOJ. *National Standards PREA*, "Screening for risk of victimization and abusiveness," 28 CFR 115.41 (3), (https://www.prearesourcecenter.org/sites/default/files/content/prisonsandjailsfinalstandards_0.pdf); and BOC, "Chapter 5: Elimination of Sexual Abuse and Sexual Harassment in Correctional Facilities," § 5-17 Screening for Risk of Victimization and Abusiveness (d)(3), (<https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-80519>).

3. DOC must ensure there are no additional factors in determining safe, gender-aligned housing for TGNCNBI people in custody that would not be considered in the housing of cisgender people in custody.
4. If DOC denies a TGNCNBI individual in custody entrance to gender-aligned housing or removes them from gender-aligned housing despite their affirmation that they will be the safest there, DOC must demonstrate in writing by clear and convincing evidence that a person presents a current danger of committing gender-based violence against others. DOC should house all people in alignment with gender identity, unless the person in custody voluntarily chooses to be housed elsewhere.
5. All decisions denying requests for gender-aligned placement or removing someone from such a placement shall be provided to the person in custody in writing within 3 business days of the decision, shall state the evidence relied upon, and shall provide a detailed basis for the decision including whether cisgender persons with a similar history or background are housed in that facility. A copy of this decision shall be provided to BOC, to the person's attorney, and to any additional attorney and/or advocate chosen by the person.
6. DOC should never transfer anyone out of gender-aligned housing as a form of punishment, or in response to complaints of other incarcerated persons or staff when those complaints are made on the basis of gender identity.
7. The City Council should endorse the Gender Identity Respect and Dignity in Safety Act ("GIRDS Act"), when it is re-introduced in the next legislative session⁶⁰ and immediately pass a similar reflective measure on the local level requiring that *all* City agencies, inclusive of DOC, permit people to use single sex facilities consistent with their gender identity.

IV. The Special Considerations Housing Units

The first Special Considerations Housing Unit ("SCU") is a voluntary, application-based, housing area(s) in the women's jail⁶¹ that has been designated by the Department for the purpose of housing TGNCNBI people in custody. This housing area was previously called the Transgender Housing Unit but changed its title pursuant to a new DOC policy⁶² in October 2019.

The SCU can be an affirming place where people with shared identities can build community and find resources. Steady officers with more intensive, LGBTQ+ competent training work to make the SCU a more respectful housing unit. Members of the Task Force work

⁶⁰ In the 2021/2022 Legislative Session GIRDS was proposed as S6677/A00691.

⁶¹ As of March 5, 2022, the Department began reporting an additional SCU in AMKC intended for TGNCNBI individuals who feel safest in a male facility.

⁶² See Appendix A.

with many TGNCNBI people in custody who want to be housed in and feel safest when in the SCU.

But problems remain even within the SCU, some of which are due to the lack of a full panoply of housing options in which transgender women can be housed. When the only options communicated to transgender women are the SCU or men's housing, then DOC effectively "outs" transgender women by not making it clear that they can integrate with cisgender women in general population or specialty units. It must be made clear that the SCU is voluntary and that other gender-aligned options are available.

One transgender woman, Ms. L, who spent the vast majority of her time in the SCU, voluntarily left the unit for general population at RMSC only after staffing became increasingly unpredictable during the early months of the COVID-19 pandemic. When outside third-party volunteers and staff had to stop coming in and when steady officers were not consistently present, Ms. L chose to leave the unit she had been in for almost two years. Ms. L shared her thoughts with the Task Force as she hoped that her reporting on concerns within the SCU would help facilitate needed changes.

According to Ms. L, the SCU would function better, be safer, and seen as desirable if run as a "structured program environment" by clinicians or others with trans-specific expertise, and not by DOC staff. She shared that in terms of admissions, safety, and its day to day environment the SCU was a "free for all." Ms. L believed that the SCU would bloom if clinicians and other mental health professionals were involved in the day to day activities of the unit.

Ms. L questioned why DOC would start the SCU but not offer any consistent, integrated services in the unit. She felt as if Rikers Island and the Mayor's Office had created these units so that they could say they have a housing unit for transgender individuals but not take any additional measures to ensure that the units are safe. She noted that transgender people are often survivors of multiple types of violence, but the SCU did not provide any structure to work through trauma they may have or were experiencing. She suggested that the SCU could be run similarly to the Intensive Therapy Unit at RMSC, with tiered, structured activities in which individuals would be rewarded for participating in groups/programs. Ms. L said that even though many individuals in the SCU had different mental health needs, they were all housed together.

Speaking in the late summer of 2020, Ms. L shared she was worried that people in the SCU would be further victimized if things in the unit do not change, especially in regard to the idle down time that has increased immeasurably for everyone since the pandemic.

The Task Force also wishes to note that there appears to be no consistency in when and how individuals are moved into the SCU. In February 2022, a transgender woman represented by the Legal Aid Society ("LAS") successfully petitioned to be moved from men's housing to the SCU at RMSC.⁶³ She was approved on a Friday evening but was not moved to RMSC until exactly a week later, the following Friday, after LAS had escalated multiple complaints. Housing

⁶³ In any instance concerning a LAS client, LAS will, to the extent it is able, provide redacted emails and correspondence as requested by City Council or as needed by CHS/DOC to respond accordingly.

that is gender-aligned *or* the SCU should be treated as priority - as if the person was reporting a medical emergency or had been found fit for protective custody. These individuals in custody must be moved immediately. The additional week this woman spent within men's housing is unacceptable and dangerous.

V. Gender-Aligned Housing Outside of the SCU

Some people in custody request to be housed in general population or program-specific housing and not the SCU. There are many reasons why a TGNCNBI person in custody may need or prefer to be in a non-SCU housing unit that aligns with their gender identity. For some, the reason is simply a desire to be fully integrated into the lives that all women lead, and that need outweighs the support gained from housing with one's peers. Others are concerned about their safety or their privacy, given that the SCU has only dormitory style housing consisting of various beds in one open housing unit. Others may have specific medical or mental health needs which require them to be housed in an infirmary or mental health unit.

While dormitory housing is appropriate for some people in custody, other TGNCNBI persons in custody may need to be housed in individual living quarters for any number of reasons, such as PTSD, past sexual violence, asthma, or gender-affirming medical needs that require greater privacy.

That being said, dorm housing can be optimal for certain people in custody. Individuals concerned about monitoring of serious medical concerns, such as epilepsy, may find an increased element of safety in open housing. Following the death of Layleen Xtravaganza Cubilette-Polanco in the summer of 2019, Task Force members spoke to a transgender woman and a transgender man who both requested dormitory style settings due to their concerns about having unmonitored seizures. Dormitory settings can also allow for a greater ease in sharing resources, doing small group study, or providing Know Your Rights classes.

Corrections officials have long recognized that there are legitimate needs for both cell and dormitory housing. Recommendations of mental health officials, suicidality, self-harm, and medical care considerations can factor into housing considerations that are safe and respectful.

TGNCNBI people must be given equitable and wide-ranging access to housing areas as cisgender individuals in custody are given. When a dorm-style SCU is the only option, individuals in custody do not have the same freedom of movement to avoid conflict, have medical privacy, sleep without fear of assault, read and study privately and in quiet, and experience solitude when necessary.

In 2021, Task Force members became aware that sometimes, in response to conflict, transgender women were moved out of the SCU at RMSC to a housing unit where they were the only person confined there for days at a time. Ms. Rona Sugar Love found herself in this difficult situation for several days in March 2021. She remained housed in alignment with her gender at RMSC but was the only person in her unit and thus in effective isolation. Isolation in housing –

for disciplinary reasons, an alleged lack of clarity as to where a person can be housed, or low housing numbers – are all harmful acts of isolation. The Task Force does not believe confining people in such total isolation, with its deleterious effects on a person’s mental health or overall well-being, is appropriate.

VI. Removal from Gender-Aligned Housing as a Means of Control

While many transgender women have reported to Task Force members that they were never offered the option for gender-aligned housing, some are provided with it only to have it taken away when any allegation against them arises. Unlike their cisgender counterparts, transgender women are routinely removed from gender-aligned housing and placed in men’s facilities for behavior that cisgender women have also been accused of engaging in.

Once removed from gender-aligned housing and placed in men’s facilities, transgender women face horrific consequences. It is important to note that, to date, the Task Force is unaware of any transgender man who has requested men’s housing and been placed in it, so the following information is specific to transgender women.

In 2021, for example, Ms. Rona Sugar Love was moved from the SCU at RMSC to VCBC following a complaint against her. Ms. Love spent over 96 hours at VCBC before being transferred back to the SCU at RMSC. Ms. Love reported that, while housed in VCBC, she was sexually assaulted.

Because of the limited information provided to people in custody or their advocates, it is often difficult for people to understand the full basis for their removal. Take LAS Individual #5, who in March 2021 was removed from gender-aligned housing in RMSC after what she understood involved a false PREA allegation by a cisgender woman motivated by transphobia. Because PREA complaints are kept confidential, LAS Individual #5 was not aware of the scope of the complaint. When her advocates finally received the paperwork, months after the initial request, it contained no allegations of physical contact. Despite this, she was told that she may not have a “reconsideration hearing” regarding her removal from RMSC until the investigation into this allegation was concluded. After spending months in a men’s facility where she faced constant sexual advances and physical attacks, LAS Individual #5 was eventually returned to RMSC after she promised that she wouldn’t enter the shower facilities at the same time as any cisgender woman. A cisgender woman would never be asked to promise anything similar or be removed to men’s housing following such an allegation. This case illustrates that LAS Individual #5 could not have challenged her removal on her own as she was not apprised of the scope of the allegation against her; it also shows the bias faced by TGNCNBI people when encountering PREA complaints.

One individual, LAS Individual #7, was “allowed” to return to RMSC only if she signed a contract mandating specific behaviors and attitudes. The contract explicitly warned that failure to adhere could result in a transfer to a men’s jail. The use of this contract was confirmed by

DOC in October 2021 and a redacted version is attached here as Appendix H. Again, we know of no cisgender woman threatened with a move to a men's jail based upon perceptions of behavior.

The Bronx Defenders is currently representing a transgender woman, Ms. V., who was housed at RMSC for a brief period of time. She was abruptly transferred to one of the men's jails without any explanation. She reports that it was for a disciplinary purpose but was never told the exact reason why she was moved. Since she has been transferred out of RMSC, she has been moved around from one men's jail to another, due to being continually assaulted physically and sexually in every men's unit she has been placed, including multiple instances of rape. As a result of the torture Ms. V has had to endure in the various men's jails at DOC, she has attempted suicide on at least five separate occasions. Ms. V's defense attorneys have communicated with DOC that she is not safe physically or emotionally in the men's jails. Ms. V's lawyers have sent DOC several emails detailing the violence she has been experiencing. However, DOC has yet to respond to any of those emails and Ms. V remains in the men's jails as of July 2022.

While there may be a need to separate people in custody due to conflicts, housing a person consistent with their gender identity should be treated as a right and not a privilege and removing people from gender-aligned housing must never be used as a tool to punish TGNCNBI people. The Task Force sees no reason why an individual cannot be housed in safe and secure housing in a gender-aligned facility and not, as is current and historical practice, moved to a gender-misaligned facility.

Furthermore, those individuals who are expelled from gender-aligned housing are not permitted to re-apply until three months have passed, according to the Department's current Directive 4498R-A.⁶⁴ Likewise, people who voluntarily request to leave gender-aligned housing cannot ask to reconsider their decision until a waiting period has expired, as was the case for LAS Individual #3. LAS Individual #3 reported she had voluntarily signed out of RMSC following issues there, including an experience with a strip search. LAS Individual #3 was told she could not return until 30-90 days had expired and indeed was not returned to RMSC until that waiting period had elapsed, despite reports of harassment and assault while housed in men's jails. Considering that the average length of stay in custody is 90⁶⁵ days, this delay can make expulsion from gender-aligned housing permanent.

Recommendations on Criteria and Procedures for Housing in The Special Considerations Housing Units

1. To ensure that TGNCNBI persons are able to gain the benefits of supportive and respectful housing, all requests for housing in an SCU consistent with a person's gender

⁶⁴ See Appendix A.

⁶⁵ This data is impacted by the outliers who serve only a few days in custody before release. When stays under a week are excluded the average time increases. See NYC Mayor's Office. *Mayor's Management Report*, September 2020, (https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020_mmr.pdf).

identity should be granted, unless DOC demonstrates with overwhelming evidence, and in writing, a compelling security reason why SCU housing cannot be provided.

2. DOC should provide all denials of SCU applications to the BOC, to the person in custody, to the person's criminal defense attorney, and to any additional attorney and/or advocate chosen by the person.
3. Within 3 business days of a person in custody's removal from the SCU to another unit within a gender-aligned facility without the person's consent, DOC should provide to the individual a written justification for the removal stating the evidence relied upon, providing a detailed basis for the decision including whether cisgender persons with a similar history or background are housed in that facility. A copy shall be provided to BOC, the person's criminal defense attorney, and to any additional attorney and/or advocate chosen by the person.
4. DOC should never transfer anyone out of the SCU as a form of punishment absent a guilty adjudication for an infraction and should return the person to the SCU as soon as possible absent a compelling security justification as set forth above.
5. One or more full-time social workers should be assigned to the Special Considerations Housing Unit to help mediate conflict in the unit.

Recommendations on Procedures Applicable to Both Gender-Aligned and SCU Housing

1. Forms should be clearly named and written with information provided to make clear that a person can request housing in both a gender-aligned facility generally and in a Special Considerations Unit within that facility. This includes renaming the current "Special Considerations Housing Form" which is used to request both gender-aligned housing and housing on the SCU, which should instead be called a "Request for Housing by a TGNCNBI Person."
2. When a person is denied admission to or is removed from gender-aligned housing and/or the SCU, DOC shall also inform the person orally within 24 hours of the decision regarding the reasons for the decision and be available to discuss alternate safe-housing options and answer any questions the person might have.
3. DOC should never "voluntarily" transfer anyone out of the SCU or gender-aligned housing without the person in custody's explicit, written, informed consent. DOC employees must videotape the individual in custody offering verbal or sign-interpreted consent to be removed from gender-aligned housing. Body-worn cameras may be used for this purpose.
4. With the involvement of the Task Force and impacted individuals, a script should be developed that DOC shall use to inform TGNCNBI individuals in custody of when and

how they may apply or re-apply for gender-aligned housing and that any TGNCNBI individual may move to a different housing unit within gender-aligned housing.

5. All decisions denying requests for admission to or removal from either gender-aligned housing or the SCU shall be automatically reviewed within three business days by DOC staff not involved in the original decision including at least a member of the LGBTQ Initiatives staff and a DOC person above the rank of Associate Commissioner. This body has the authority to reverse or alter a decision.
6. Should an individual in custody be housed outside the SCU and/or in gender-misaligned housing without the person's consent, they may apply for reconsideration at any time. Individuals shall be advised as to their rights as detailed in #4 above.
7. The body reviewing the form "Request for Housing by a TGNCNBI Person," must communicate their decision in writing and have a conversation with the individual within five business days after receipt of each re-application and must update its decision with any new information available to the Department.

VII. Improving Treatment of People Who Are Housed Outside the SCU and Housed in Misalignment with Their Gender Identity

The Task Force asserts that every individual in custody should be in a housing unit that is in alignment with their gender identity unless they feel safer elsewhere. Unfortunately, there continue to be instances where TGNCNBI individuals have been involuntarily housed in units not aligned with their gender identity.⁶⁶ While the Task Force calls upon DOC to eliminate the practice of involuntarily housing people inconsistently with their gender identity, until that is done, DOC must also take steps to ensure that people who are not housed in gender-aligned facilities are treated justly and kept safe.

A. Housing of Transgender Men and Masculine Non-Binary Individuals

Many transgender men and masculine non-binary individuals in custody are placed in general population at RMSC. Transgender men and masculine non-binary people are almost never housed in the general population with cisgender men, even though DOC's own policy requires people to be housed in alignment with their gender identity unless they would be safer elsewhere. However, the Task force recognizes that this may be in accordance with the preference of the people in custody, who have a reasonable fear that they would not be protected from sexual or other physical violence in a unit with cisgender men.

⁶⁶ The Task Force is unable to quantify this population as the data is not kept by the DOC and is not systematically shared with the BOC. However, Task Force members know of multiple individual cases where TGNCNBI individuals in custody have been involuntarily placed in gender-misaligned facilities and that this practice continues to the date of this report's publication.

Transgender men and masculine non-binary individuals in custody are rarely housed in the SCU at RMSC.⁶⁷ Since 2019, both LAS and The Bronx Defenders have heard from multiple transgender men who requested the RMSC SCU but were denied entry due to it being unclear who was allowed in the SCU.

The problems experienced by transgender men are exemplified in what happened to Mr. Jamel Young, a transgender man who was held at VCBC overnight until he was able to make bail.⁶⁸ According to Mr. Young, he repeatedly told both NYPD and DOC officers that he was a transgender man, yet this only resulted in being “misgendered, assaulted, and sexualized” while dismissing his fears and failing to provide for his most basic needs. Mr. Young was handcuffed to a cisgender man while in the intake area of VCBC until he could pass a note to an officer explaining that he was a transgender man.

This, however, only led to further harm as he was then partially strip-searched and separated in a cell apart, but directly across from, other cisgender men. This flagged him as somehow different from the other men, drawing unwanted attention. This experience aligns with what transgender women held separate but across from cisgender women have shared – that it creates a marked difference and effectively “outs” individuals held in such a way.

Mr. Young told BuzzFeed News that his experiences made him feel worthless and that “all those triggers that trans people try so hard to manage throughout the transition, all of it just exploded.”

Additional information is needed to determine if an SCU in a male facility would garner housing applications from transgender men and masculine non-binary people in custody. Housing transgender men in a women’s facility without any further consideration, programming, training, or efforts to affirm their gender identity is clearly not sufficient to meet the responsibilities DOC has to the people it houses. Ultimately, there are no consistent and affirming housing options for transgender men and masculine people. As described above, the Task Force initially welcomed news that housing for transgender men and other vulnerable male-identified people was opening within AMKC. Yet as of March 11, 2022, the SCU at AMKC appears to house transgender women who have requested but been denied gender-affirming housing. There are no documents officially recognizing this new SCU or planning its governance but upon observation and self-reporting of those in the unit, it does not appear to be aimed at transgender men or masculine people. DOC continues to fail to plan for this population.

⁶⁷ As of March 5, 2022, the Department began reporting an additional SCU in AMKC intended for TGNCNBI individuals who feel safest in a male facility. However, Task Force members have repeatedly heard that this SCU is housing transgender women who have asked for but been denied gender-aligned housing rather than vulnerable male or masculine-identified people. Housing that is responsive to transgender men and masculine non-binary people remains un contemplated by DOC.

⁶⁸ Lim, Clarissa-Jan. “A Black Trans Man Is Suing The NYPD And Correction Department For How They “Dehumanized” Him In Custody,” BuzzFeed News, July 24, 2020, (<https://www.buzzfeednews.com/article/clarissajanlim/black-trans-man-sued-nypd-treatment-in-custody>).

B. Housing of Transgender Women Outside of RMSC

Task Force members are particularly concerned by the conditions that transgender women and feminine non-binary individuals face when they are housed in men's facilities. Several instances have been reported to Task Force members of individuals who have been moved to men's units, including protective custody units in men's facilities, where they have been subjected to sexual violence. This has occurred too often, even when advocates have made repeated requests for safer housing on their clients' behalf.

LAS Individual #6 identifies as a transgender woman. She spent a little over two years in men's facilities only being moved to RMSC days before her discharge from DOC custody in August 2021. For over a year she was subjected to multiple physical assaults and derogatory language in the general population of men's jails. LAS Individual #6 was finally moved into protective custody after a year of reporting these abuses, but still within a men's jail. She continued to struggle within protective custody, reporting that heterosexual cisgender men within the unit were constantly verbally and physically harassing her and other transgender women and gay men within the unit. She reported that she could not access Spanish-language TV or radio shows as she was not "allowed" by other incarcerated people to touch the equipment and that she spent the majority of time in her cell due to her fear of being assaulted, even while in a protective custody unit.

LAS Individual #6 further reported that officers assigned to protective custody treat the LGBTQ+ individuals differently, removing them from the unit if they spend too much time together, disciplining LGBTQ+ people when they defend themselves from a homophobic or transphobic attack, and allowing LGBTQ+ people in the protective custody unit to be mistreated by others. Since being moved to protective custody, this individual has been strip searched by male officers at least twice. Both times, LAS Individual #6 reported that she did not feel comfortable with men strip searching her. On one occasion in July 2020, LAS Individual #6 was told she needed to "spread her ass" and stop complaining, and in November 2020 the officer reportedly referred to her as a "f*cking f*ggot." Again, this all occurred while she was being held in protective custody. She has diligently documented and reported all such incidents to DOC and various agencies.

In 2019, Legal Aid Individual #2 went through intake at a men's facility and despite identifying herself as female and requesting SCU housing, she was placed into the protective custody unit of a men's jail. LAS Individual #2 called 311, submitted grievances, and requested SCU housing. LAS reached out to NYC DOC PREA on her behalf asking that she be moved to women's housing, preferably the SCU but also protective custody within women's housing if the SCU was for some reason unavailable.

Only a week after the last such request, this individual reported she was raped by another person in custody. LAS Individual #2 reported this assault to both 311 and DOC staff the night she was raped, told DOC staff that she wanted to leave the housing unit, pointed out her assailant to DOC staff, and filled out a statement regarding the incident. After reporting the first rape,

LAS Individual #2 asserted that she was never interviewed by PREA or investigative staff nor moved out of the unit where the rape allegedly occurred. In addition, LAS Individual #2 reported that NYC DOC refused to take her for medical care. This behavior by DOC signals to the housing unit, and all those who work there, that her well-being and dignity do not matter – leaving her vulnerable to attack. In a clearly preventable tragedy, her *exact same* assailant raped her again within days after the initial assault. Only after reporting this second rape was LAS Individual #2 taken to an outside hospital for a rape exam and moved to RMSC.

LAS Individual #2’s story from 2020 is a terrifying mirror to the story of another transgender woman who, in 2018, reported being raped twice in her housing unit in a male facility during a period of less than a week.⁶⁹

Despite this history, DOC continues to house people in gender-misaligned housing. As detailed in a previous section, Ms. Love was moved out of the SCU to a men’s jail in January 2021 due to unsubstantiated complaints against her. Ms. Love was moved back to RMSC only after she experienced and reported sexual abuse and multiple legal organizations advocated on her behalf. Similarly, LAS Individual #5 was not moved back to women’s housing for months despite multiple complaints of harassment raised by her and her legal team. Not every TGNCNBI person has a team of culturally competent advocates, nor should basic bodily autonomy and dignity rely on access to a legal team.

Throughout this report we have provided examples of incidents where TGNCNBI individuals face harm. We have found these incidents particularly occur when DOC does not place individuals in consistent safe housing. For example, the Board of Corrections’ investigation into the death of Layleen Xtravaganza Cubilette-Polanco, who was housed at RMSC, found the following:

“While visiting RMSC’s main clinic on May 6, Ms. Polanco had a physical altercation with someone from her former THU dorm. DOC charged her with a violation of its rules (an ‘infraction’) and held a disciplinary hearing on May 14. The Adjudication Captain sentenced Ms. Polanco to 20 days in punitive segregation (PSEG) (also known as solitary confinement), a form of discipline characterized by extended periods confined in a cell. An infraction hearing disposition does not specify when a sentence must be served, as that is determined by, among other things, the number of available PSEG cells at any given point in time. On the same day as the disciplinary hearing, Ms. Polanco was involved in another fight with someone in her dorm whereupon an officer referred her to Mental Health Services (“Mental Health”), noting that she was ‘showing radical changes in behavior.’ She was subsequently seen by Mental Health. DOC

⁶⁹ This completely preventable event was discussed in detail at the Board of Correction meeting held April 20, 2018; See Kinhead, Mik. Remarks to BOC, Sylvia Rivera Law Project, April 23, 2018, (<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/April-20-2018/SRLP%20Comments%20on%20PREA%20and%20placement%20of%20trans%20people.pdf>).

then transferred her to THU New Admissions, an unofficial celled housing area in RMSC generally used to hold people temporarily before they enter a THU.”⁷⁰

Intake units present challenges and unsafe aspects not found in housing units; most of them have a whole series of corridors and blind spots. There are no living spaces or proper beds and toilets, providing little to no privacy. Intake areas are not equipped for housing, yet they continue to be used as such.⁷¹

Not only are intake areas inappropriate for housing, they can be dangerous. LAS has heard from multiple transgender women who survived sexual and physical attacks after being transferred *out* of RMSC to the intake portion of a men’s jail. In all of these instances, DOC was aware that the person identified as female, had been in a women’s jail, and was vulnerable to attack. Yet these transgender women were placed with cisgender men at intake. LAS Individual #3 reported to LAS that she voluntarily signed herself out of RMSC after experiencing issues during a strip search. While at a men’s jail and awaiting her housing assignment, LAS Individual #3 was held in a bullpen with cisgender men. While held there, one man tried to assault her. After surviving this attempted assault, LAS Individual #3 was still placed in general population men’s housing where she was physically assaulted.

Due to the dangers facing people when housed out of accordance with their gender identity, the Task Force has developed the below recommendations.

Recommendations on Housing Outside the SCU and/or Gender-Misaligned Facilities

1. Trans-feminine, trans-masculine, intersex, gender-nonconforming and non-binary persons housed outside of the SCU or in a gender-misaligned facility must be housed safely in units with culturally competent and appropriately trained staff, and with access to affirming programs. With consent, these individuals must also be housed together to avoid isolation and attendant risk. This must be done in consideration with the previous recommendations that every TGNCNBI person be housed in a facility and in a housing area consistent with their gender and that the same criteria for housing placements are used for transgender and cisgender people in custody. Creation of gender-neutral or non-gendered areas should be considered.
2. There must be frequent and confidential follow-up assessments/check-ins to ensure that TGNCNBI people in custody have been placed in a unit where they feel most safe, with

⁷⁰ See NYC BOC. *The Death of Layleen Xtravaganza Cubilette-Polanco 1991-2019*, June 23, 2020, (https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.06_Polanco/Final_Polanco_Public_Report_1.pdf).

⁷¹ This became obvious during the recent crisis on Rikers’ Island. (See Fonrouge, Gabrielle. *Photos inside Rikers Island expose hellish, deadly conditions*, New York Post, October 21, 2021 ([Photos inside Rikers Island expose hellish, deadly conditions \(nypost.com\)](https://nypost.com/2021/10/21/photos-inside-rikers-island-expose-hellish-deadly-conditions/))). This resulted in an order from the federal court in *Nunez* requiring movement from intake within 24 hours.

TGNCNBI people able to request a housing change at any time. Additional requests for transfers should not be used against the requestor.

3. Following an incident of reported sexual abuse, DOC must ensure that TGNCNBI people in custody have the right and are aware of their right to request that LGBTQ+ Initiative Team members may be present with PREA staff at post-report interviews and that LGBTQ+ Initiative Team members conduct regular and frequent private interviews with TGNCNBI persons in custody known to have reported sexual abuse.
4. The Department must immediately, and effectively, implement the Board's new RMAS rule eliminating the use of solitary confinement, prioritizing the engagement and care of TGNCNBI people in custody. DOC should treat the Board's new rule as a baseline and strive for less restrictive housing.
5. DOC must stop using intake pens for longer than 24 hours.⁷² After 24 hours in DOC custody, every person must be housed in an area providing minimum housing requirements including a bed, a mattress, appropriate hygiene facilities including shower and toilet, and access to meaningful medical care. DOC must stop using intake pens for longer than 24 hours.

VIII. New Jail Facilities

The Task Force believes the City and other governmental actors should implement decarceration strategies while also improving conditions for people in custody.

Currently, many TGNCNBI individuals do not have access to housing facilities where they feel safe and affirmed because such units do not exist. While the SCU is an improved environment in terms of well-trained staff and being housed with others with a shared understanding of a TGNCNBI person's lived experience, this is not a solution for all TGNCNBI persons.

Recommendations: New Jail Facilities

1. In designing the new jails, the needs of TGNCNBI people must be specifically considered by experts with this population. At a minimum, this requires both dormitory and individual housing, sufficient trained staff so that multiple SCUs can be implemented quickly as needed, and appropriate privacy.

⁷² DOC Operations Order "Processing and Monitoring New Admissions. Effective Date 12/14/2007" mandates that "appropriate housing shall be provided for all new admission inmates within twenty-four (24) hours of placement in the custody" of DOC. However, BOC on-site monitoring and individual Task Members are aware of practices where intake units are used as temporary housing units and individuals in custody are held in intake for longer than 24-hours. BOC and Task Force members are also aware of a DOC practice whereby people in custody are temporarily moved out of intake, only to be moved back in, effectively restarting the 24-hour time limit. This recommendation is intended to close this loophole.

2. The full range of housing options available to cisgender persons should be available to all people in custody, i.e., cell housing, dormitory housing, general population or programmatic housing.

IX. Data and Reporting

In 2022, the Task Force was informed by DOC that the majority of the TGNCNBI people in custody were not housed according to their gender identities. We understand that reasons for this vary and may include people who are voluntarily choosing gender-misaligned housing for safety purposes. However, currently, there is no way for the Task Force and many individuals in custody and their advocates, to know why a person is housed out of accordance with their gender. Data and reporting recommendations reflect the need for greater access to information.

Current data available from DOC is based on tracking applications for gender-aligned/SCU housing. That data cannot tell the full story as there is no way to track what happens to a TGNCNBI person who does *not* fill out this housing form. In addition, the Task Force cannot tell from this data if TGNCNBI people were dissuaded from filling out such a form or whether such a form was made available.

Recommendations on Data and Reporting

1. DOC must accurately and timely update information about the gender identity of every person in its custody so that appropriate services and housing can be provided.
2. DOC must maintain the following data:
 - a. Whether a TGNCNBI person in custody has been housed voluntarily or involuntarily in a gender or gender-misaligned facility.
 - b. Whether a person in custody is housed in the SCU.
 - c. The type of housing (i.e. general population, protective custody, etc.) in which TGNCNBI persons are held.
 - d. The number of TGNCNBI people who are housed involuntarily in a facility that is not aligned with their gender identity.
3. DOC shall provide BOC and the Task Force all of the reporting gathered from the above recommendation on a monthly basis and redacted as is necessary. In addition to this data DOC must include a detailed, anonymized explanation for such placements. City Council should pass legislation requiring that DOC provide BOC and the Task Force with this information on a monthly basis.
4. This must include a detailed anonymized explanation for such placements. City Council should pass legislation requiring that DOC provide the Task Force with this information on a monthly basis.

5. BOC must be provided with all “Request for Housing by a TGNCNBI Person” forms, inclusive of those requesting gender-appropriate housing outside of the SCU and applications that do not result in movement, along with any decisions on the requests.
6. One year after implementation of the new RMAS rule, DOC and BOC should investigate the outcomes regarding the elimination of solitary confinement and its impact on TGNCNBI people such as numbers of TGNCNBI people held in the RMAS, their lengths of stay, and infraction charges and dispositions.
7. DOC must conduct re-screenings when new information about gender identity is brought to the Department’s attention.

Chapter 3: Mental Health and Wellness

I. Introduction

This section must begin with the acknowledgment that incarceration is inherently traumatic and dangerous to the mental and physical wellbeing of all people. This is particularly true for TGNCNBI people, especially Black, Indigenous, and/or People of Color (“BIPOC”), who experience unique and staggering rates of targeting and arrest by police, mistreatment at each stage of the criminal legal process, and transphobic violence while incarcerated and upon release from prison or jail. The Task Force also recognizes the limitations of this report regarding medical care for intersex people in custody. Globally, there is a lack of data, studies, and empirically tested best practices for intersex people in custody. Transparently, there is also inadequate representation of intersex individuals on the TGNCNBI Task Force. The latter is to be addressed in future Task Force recruitment efforts, while the Task Force recommends further study to address the former.

Reducing or eliminating experiences of incarceration entirely will always be the most effective way to reduce physical and mental health harm against TGNCNBI people. This section, while acknowledging these realities, also outlines key steps DOC, CHS, and other related entities must take to reduce harm to incarcerated TGNCNBI people. Without a reduction or total elimination of policing and incarceration of TGNCNBI communities however, mental and physical harm and violence will inevitably continue, even if each of these recommendations is fully implemented.

DOC and CHS must prioritize the full continuum of care for all TGNCNBI people, and release planning should begin at intake and include linkages to medical and mental health providers who are explicitly TGNCNBI affirming. No one should leave CHS care without clear next steps as to where affirming medical and mental health treatment can continue, should they be interested.

II. Client Illustrations

As we highlight throughout this report, there appears to be stark differences between the policies on paper and the experiences of people in custody. One young Black transgender woman, Ms. F, has given permission for us to share her name and experience in order to assist others. Ms. F and her LAS attorneys began requesting gender-affirming surgery in February 2019. Ms. F spent over a year pursuing this but had still not been provided it a year later, in March 2020, when the court released her from DOC custody.⁷³ Throughout this time, Ms. F’s criminal case was adjourned by the court explicitly so she could receive the necessary surgical

⁷³ Unfortunately, although released on her own recognizance due to the pandemic, Ms. F was taken from the women’s jail by DOCCS staff to Sing Sing, where she faced harassment until, with advocacy from LAS, she was transferred to a women’s prison where she continued to fight to receive gender-affirming surgery. Since coming home from DOCCS custody, Ms. F has received the majority of the surgeries she had requested.

care. In February and March 2019, Ms. F was sent to Elmhurst Hospital for preoperative evaluations; however, on her third visit in March 2019, she was told by a surgeon at Elmhurst that the hospital did not provide such surgeries. That was the last time Ms. F was sent by CHS to receive the surgery.

Instead, after repeated requests by Ms. F and her advocates, in January 2020 a high-ranking CHS staff member confirmed in an e-mail to LAS that the surgery had not been performed because “we did not have access to surgeons who performed it” and that the Gender Equity Team of CHS was in active negotiations with Metropolitan Hospital to provide such care. This staff member also wrote to Judge Kiesel, Ms. F’s sentencing judge, on January 16, 2020, that “the medical leadership are working diligently to provide access to gender-affirmation surgery for our transgender patients... specifically, we are in active discussions with Metropolitan Hospital where the procedure would take place. We are hopeful that treatment will soon be available to Ms. F, as we consider it medically necessary.”

On March 4, 2020, CHS again advised advocates for Ms. F that they “are coordinating only with Metropolitan since Elmhurst does not have a surgeon that’s trained according to WPATH Guidelines....We understand the emotional toll that this has taken on Ms. F...” CHS went on to explain that they were still “trying to negotiate a completely new work-flow between 3 different agencies” which they described as “challenging” and “does not represent a lack of motivation” but “an unfortunate reality.” CHS repeatedly shared that the goal remained to provide Ms. F with her medically necessary gender-affirming surgery. Unfortunately, the surgery remained unavailable as of the last week of March 2020, when she was released from DOC custody.

In September 2020, CHS informed the Task Force that there was “some miscommunication previously” but that they now “have circled back with all of our medical staff” so that “everyone is clear about policy.” This is a clear example of the shortfalls both DOC and CHS may experience, allowing TGNCNBI patients to fall through the cracks. Yet we find this experience repeating itself with another transgender woman.

Ms. Rona Sugar Love was arrested in October 2020. Before her incarceration she was working with doctors at Mt. Sinai’s Center for Transgender Medicine and Surgery. She was many steps into the pre-surgical clearance process for a medically necessary gender-affirming surgery. Upon her arrest, however, all progress was halted. Ms. Love and her LAS attorneys continued to advocate with DOC and CHS on the importance of her continuing forward with pre surgical readiness so that she would be able to access her surgery without delay.

Ms. Love and her LAS attorneys have experienced a general lack of preparation for her serious medical needs. Ms. Love and her attorneys were routinely told contradictory information regarding her health care, despite Ms. Love arriving in custody only a month after the Task Force was informed that policy had been clarified to all CHS staff. Ms. Love reported on multiple occasions that this made her feel that DOC and CHS did not take her needs seriously. Ms. Love

expressed frustration, depressive episodes, and hopelessness based upon constant miscommunications.

Despite coming into DOC custody in October 2020, Ms. Love has still not accessed her surgery. As is common in many surgeries, Ms. Love must have electronic or laser hair removal to insure that, post-surgery, there will be a lower risk of infection or formation of dangerous blockages.⁷⁴ Since her incarceration, CHS has encountered difficulties with finding licensed technicians who will both take payment via the City and work with an incarcerated person. We acknowledge that the lack of licensed technicians is not an issue CHS or DOC created. However, the failure to plan for and provide this necessary treatment lends credibility to TGNCNBI patients' consistently expressing that their medical and mental health care is not prioritized.

In Ms. Love's case this feeling has not decreased. As recently as Spring 2022, Ms. Love was told that, after finally contracting with a licensed technician, her hair removal appointments would be altered from once a week to once a month. After a flurry of calls from her attorneys and larger support network, it was reported to Ms. Love that her sessions would be returned to weekly appointments. LAS has not received clarification as to whether Ms. Love was simply misinformed or if her sessions were to truly be altered. This lack of clear communication and planning speaks to the need for clear policies and individual treatment plans communicated to clients both orally and in writing.

We must emphasize that delays in medical care are something that affect *every person in custody*. According to a February 1, 2022 article in *The New York Times*, "thousands of incarcerated people miss medical appointments every month" within the NYC jails.⁷⁵ Medical non-production reports are available online and the rates are astounding.⁷⁶ These reports detail when an incarcerated person is not produced for a medical appointment. They do not track issues such as Ms. Love and Ms. F where medical care wasn't made available even after production. But we believe these reports, which do not differentiate around gender identity and expression, show the sheer magnitude of the gap in comprehensive, meaningful TGNCNBI affirming care.

It is experiences like these that lead the Task Force to recommend that clear and explicit policies to ensure timely access to medically necessary care must be provided. CHS must work with knowledgeable providers of TGNCNBI-specific care to create realistic timelines so that patients do not experience the long delays experienced by Ms. F and Ms. Love. As the time of this report, the Task Force understands that there is still no contract between CHS and any hospital providing gender-affirming surgeries.

⁷⁴ See Zhang, William R., Garrett, Giorgia L., Arron, Sarah T., Garcia, Maurice M., *Laser hair removal for genital gender affirming surgery*, *Translational Andrology and Urology*, June 2016, 5(3):381-387, (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4893513/>).

⁷⁵ See Bromwich, Jonah E. "Medical Care at Rikers is Delayed for Thousands, Records Show," *New York Times*, February 1, 2022, (<https://www.nytimes.com/2022/02/01/nyregion/rikers-island-medical-care.html>).

⁷⁶ See NYC DOC. DOC Monthly Medical Non-Production Reports, (<https://www1.nyc.gov/site/doc/about/monthly-medical-reports.page>).

Recommendations

Access to Care: Information and Policy

1. DOC and CHS must clarify and make more accessible the process for accessing sick call and medical and mental health care appointments. Access to care must be provided in a timely manner.
2. CHS must enhance mechanisms available to incarcerated people to directly report concerns to CHS, as well as ensure timely follow up and response to 311 complaint referrals. Additionally, the current CHS patient complaint policy must be updated to ensure that appeal of care decisions and denials are informed by an independent medical review and opinion.
3. CHS must update its transgender care policy to clarify the process for accessing gender affirming surgery and necessary follow-up care and supports. The policy must include measures to ensure surgery is scheduled and conducted within a reasonable time period without undue delays. The process for accessing gender affirming surgery should be clearly explained to TGNCNBI people in custody by appropriately trained medical staff as part of individualized care provided in a confidential setting. This must be done orally and in writing.
4. CHS must share with and clarify for people in custody its procedure for handling denial of health care appeals and ensure that when care is denied or delayed, complaints are resolved in a timely manner. While the current appeal process is outlined in CHS Policy INT 16, it is not communicated to people in custody nor is it outlined in the Med 24B Transgender Care Policy.
5. CHS should improve medical and mental health re-entry planning at intake. Making direct connections, providing referrals, and planning for release must be a regular consideration and part of the individualized medical and mental health planning that occurs throughout the duration of their time in jail. DOC and CHS must ensure that all TGNCNBI people in custody are informed both verbally and in writing, at intake and throughout incarceration, of how to access medical care and behavioral health treatment, including access to gender affirming surgery. This information must also be posted publicly and in all clinics and housing units.
6. CHS must create policies for gender-affirming medical devices and it must be clear that DOC cannot systematically override a person's clearance to carry or wear these medical devices. This includes, and is particularly important when, a person might be on suicide watch or in any form of restrictive or regulated housing. Removal of medical devices, even for a 24-hour period, can cause significant distress and create a barrier to effective communication between a person in custody and DOC or CHS staff. Clear policies on binders or other sources of chest compression, gaffs or other sources of genital tucking, stand-to-pee devices, bras and padding for bras, and shapewear must be made in addition to any other needs as they might arise or be developed.

7. DOC must revise Directives 4498R-A and 4000R-A⁷⁷ to make menstrual products readily available to all individuals in custody who menstruate, regardless of the facility in which they are housed or their gender identity.

Medical and Mental Health Recommendations Related to Staffing and Training

1. DOC should end the use of solitary confinement and immediately, and effectively, implement the Board's new RMAS rule eliminating the use of solitary confinement. DOC should treat the Board's new rule as a baseline and strive for less restrictive housing. DOC must no longer use protective custody as a proxy for true conflict resolution.
2. DOC and CHS staff should train all staff in trauma-informed conflict resolution. Such training should include the unique experiences of violence that TGNCNBI people experience within and outside of DOC facilities and how micro and macro-aggressions, such as deadnaming and refusal to recognize a person's gender identity, can contribute to gender dysphoria and psychological harm.
3. All training available to H+H regarding substance use/misuse must be included in the onboarding and training of the full-time conflict resolution manager (recommended in the Housing section) that serves as a neutral third party between the person or people in custody, DOC, and CHS.
4. CHS must adequately train all mental health social workers and all medical staff on the most up-to-date standards of care for TGNCNBI people. These standards should be consistent with the World Professional Association for Transgender Health ("WPATH") Standards of Care to ensure that these standards of care are being met. It should not be the responsibility of the TGNCNBI persons in custody to educate or inform their medical provider or mental health provider—those providers must all be trained as part of their regular course of training.
5. CHS should hire full-time TGNCNBI-affirming mental health professionals to work with TGNCNBI individuals in the Special Considerations Unit and across DOC to provide adequate, affirming mental health care to TGNCNBI people in custody. This staff should be responsible for initial assessment at and/or shortly following intake and any additional mental health support as needed. CHS and DOC must prioritize hiring people for new roles who have shared lived experience as those TGNCNBI people who are currently incarcerated, in an effort to ensure better care.
6. CHS should assign full-time TGNCNBI healthcare navigators to work with people in the Special Considerations Unit and other TGNCNBI people housed elsewhere in custody. CHS TGNCNBI healthcare navigators would make appropriate connections to medical

⁷⁷ See N.Y.C Department of Correction. *Directive 4000-R-A* (effective 11/19/20), (<https://www1.nyc.gov/assets/doc/downloads/directives/4000R-A.pdf>).

care, create individualized care plans for TGNCNBI individuals while in custody, and facilitate re-entry care planning.

7. DOC and CHS should train medical, mental health, and healthcare navigator staff to make direct referrals to H+H Pride Centers and/or a person's preferred primary care provider.

New Jail Facilities

The recommendations outlined in this section shall also be applied in the creation and implementation of new borough-based jails.

Data and Reporting

1. CHS should work with DOHMH, the TGNCNBI Task Force, and TGNCNBI community service providers to conduct an impact study on the medical, mental, and emotional impacts of incarceration on TGNCNBI communities. The experiences of TGNCNBI people must be better documented and understood on a system-wide level so that inequities in policies and inadequacies within and across medical and behavioral health systems can be adequately addressed.
2. CHS and DOC must submit an annual report to the BOC and the Task Force detailing progress made to implement new training standards outlined in the above recommendations.

Chapter 4: Re-Entry

I. Introduction

Re-entry is defined as the process by which a person leaves DOC custody and transitions successfully to the next stage of their life. Currently, the Department has few written policies or procedures pertaining to re-entry. There are re-entry requirements for two classes of individuals in custody: people who have had three or more contacts with mental health services (referred to as the *Brad H* class⁷⁸), and transition services to people under the age of 21 who require Individualized Education Plans (“IEP”s⁷⁹). The Task Force recognizes from working with individuals leaving custody and collaboration with individual officers that the Department does exhibit many valuable re-entry practices. However these re-entry practices are often ascribable to dedicated staff and not the product of a written and easily replicated policy.

Re-entry resources include DOC-employee discharge planning workers, CHS discharge-planning social workers, third-party organizations that provide specific issue support, and contracts between outside organizations and the Department for overall re-entry support and for specific care that can ultimately assist re-entry. However, friends, family, and the impacted individual do a great deal of this planning work, leaving the burden of successful re-entry largely on the individual in custody.

II. Re-Entry Planning

Re-entry Planning refers to both CHS and DOC. The Task Force acknowledges that re-entry planning is complex as people enter and leave DOC in very different ways, and a person can spend less than 24 hours or over a year with DOC.⁸⁰ The Task Force also acknowledges that the following recommendations represent a large culture shift in imagining the role that re-entry planning has on discharge and therefore a person’s success in either coming home or re-integrating into the community upon discharge from their next facility. High quality re-entry planning can make the difference between success, re-incarceration, or even suicide.⁸¹

⁷⁸ See Urban Justice Center. “Brad H. v. City of New York,” (<https://mhp.urbanjustice.org/2019/11/25/brad-h-v-city-of-new-york/>).

⁷⁹ See Advocates for Children of New York. *Court-Involved Students Understanding The Education Rights Of New York City Students In & Coming Out Of The Juvenile Or Criminal Justice System*, February 2019, (https://www.advocatesforchildren.org/sites/default/files/library/court_involved_youth_guide.pdf?pt=1).

⁸⁰ The average length of stay for people in custody in fiscal year 2020 was 90 days. This data is impacted by the outliers who serve only a few days in custody before release. When stays under a week are excluded the average time increases; See NYC Mayor’s Office. *Mayor’s Management Report*, September 2020, (https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020_mmr.pdf).

⁸¹ See Brinkley-Rubinstein, Lauren, Rosen, David L., and Sivaraman, Josie. *Association of Restrictive Housing During Incarceration With Mortality After Release*, Jama Network. October 4, 2019, (<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350>). – Focusing on links between solitary confinement, and the consequence of re-entry without proper planning or adjustment periods.

Recommendations

1. Re-Entry planning must begin on the first day an individual is in DOC custody.
2. DOC and CHS must ensure that appropriate wrap-around services with culturally aware providers are available to all people in custody. Services should include but are not limited to continuation of medical and mental health care (with particular attention to any surviving sexual violence needs), stable housing, substance use services, job placement, LGBTQ+ centers, support groups, or other places for finding peer support and kinship, and any civil legal needs such as name changes.
3. TGNCNBI people face a lack of inclusive and culturally competent options for re-entry. Therefore, there is a high need for support and assistance in connecting.
4. TGNCNBI-competent organizations with individuals in custody. DOC and CHS assistance can make the difference between a TGNCNBI individual in custody being discharged to the street and a TGNCNBI individual being discharged to identity-affirming housing and programming.
5. Particular attention must be paid to services surrounding surviving sexual violence due to the high numbers that TGNCNBI people report for experiencing sexual violence *and* the lack of truly culturally competent services for this population nationally and in New York City.⁸² All survivors of sexual violence require individualized attention and care, and it can be challenging for TGNCNBI people to find culturally competent mental health care workers and medical providers as well as spaces where they are welcomed as who they are in groups, bathrooms, at reception, and more.
6. The ability to access almost all resources is linked to appropriate non-expired ID. Therefore, the often-confusing process of regaining property, especially IDs, should be outlined. This includes the processes for property held at police precincts, in DA custody, and in DOC custody.⁸³ As obtaining gender-aligned identification that accurately reflects a person's name and gender marker is especially challenging for TGNCNBI persons due to the multiple conflicting medical requirements, need for original court documents, and often high cost (NYC Birth certificates cost \$55 to correct) it is important that navigators

⁸² The Office for Victims of Crime, a division of the U.S. Justice Department, has reported that “one in two transgender individuals are sexually abused or assaulted some point in their life.” U.S. Department of Justice, Office for Victims of Crime, *Responding to Transgender Victims of Sexual Assault: The Numbers*, June 2014, available at: https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/forge/sexual_numbers.html. Likewise, the National Resource Center on Domestic Violence stated that “lesbian, gay, bisexual and transgender (LGBT) survivors have often been excluded from our work” in a 2009 publication. VAWnet.org, *Culturally Competent Service Provision to Lesbian, Gay, Bisexual and Transgender Survivors of Sexual Violence*, September 2009 available at: https://vawnet.org/sites/default/files/materials/files/2016-09/AR_LGBTSexualViolence.pdf.

⁸³ Although the Department informs the Task Force that these processes are laid out in the “Handbook for Detained and Sentenced Individuals” the handbook is not accessible to many individuals. The outdated 2007 version of the handbook has finally been replaced online with a version marked 12/2019. It is unclear if a physical copy exists or has been distributed to anyone in custody.

be offered to both assist in getting property back and connecting with free legal and medical services to assist with ID updates.

7. NYPL publication *Connections* should be made available upon request. Task Force members have heard repeated stories from both people in custody and civilian workers within the jails that there are not enough copies of *Connections* and that the Law Library, programming staff, and classrooms often do not have extra copies – or any copies at all.

III. Meaningful Community Connections

DOC and CHS must continue to work to improve collaborations with affirming outside providers so that successful referrals can be made.

IV. Hands-On and Facilitated Referrals

Re-Entry Planning with CHS and DOC must become more hands-on. While resource guides and lists distributed to people in custody are helpful for privacy and self-study, it is insufficient to rely on these as the only sources of information.

1. Offers must be made to assist people with connections to re-entry services. In addition to the concerns facing all people in custody, such as English-language literacy and undiagnosed reading disorders, TGNCNBI people face additional barriers unique to the TGNCNBI experience. There must be space for a conversation and for feedback should an individual have questions or concerns. Staff working with TGNCNBI individuals in custody on re-entry should be prepared to actively reach out to organizations in the community, as this is not a “one size fits all” population.
2. DOC and CHS staff must also actively ensure that any family members are involved to the extent they and the individual in custody are comfortable. The Task Force urges the Department to remember that attorneys, outside social workers, and family members often have resources or support to provide if they are invited into the process.

Recommendations

1. DOC and CHS should make the following revisions and implementations to re-entry planning:
 - a. Re-Entry planning must begin on the first day an individual is in DOC custody.
 - b. DOC and CHS must assist in finding TGNCNBI-welcoming organizations and options for re-entry.
 - c. DOC and CHS must ensure that wrap-around services offered by culturally competent providers are available to all people in custody. Services should

include but not be limited to continuation of medical and mental health care, services for those surviving sexual violence, stable housing, substance use services, job placement, any civil legal needs (e.g., name changes), LGBTQ+ centers, support groups, or other places for finding peer support and kinship.

- d. The process of regaining property, especially IDs, from police precincts, DA custody and DOC custody should be outlined beyond the Inmate Handbook. The handbook should also offer information on the process of obtaining gender-aligned identification that accurately reflects a person's name and gender marker. To help navigate this often-confusing process, DOC navigators should be offered to assist in the retrieval of property and to connect individuals with the free legal and medical services needed to obtain gender-aligned identification.
 - e. Due to limited access to physical copies of the NYPL publication *Connections*, *Connections* as well as re-entry services information should be downloaded on individual's tablets upon arrival in DOC custody. Upon release, individuals should receive a hard copy of *Connections* and re-entry services information.
 - f. DOC and CHS must continue to work to improve collaborations with TGNCNBI affirming outside providers so that successful referrals can be made.
 - g. Re-Entry Planning with CHS and DOC must become more hands-on with increased verbal assistance and facilitation with outside resources and support. While helpful for privacy and self-study, it is insufficient to hand out resource guides and lists without additional engagement.
2. The Task Force recommends the creation of a DOC/CHS interagency policy outlining the interagency coordination and re-entry process for all people in custody. There is currently no policy or procedure for DOC or CHS stating what is mandated or expected during the re-entry process.⁸⁴ For what should be included in this policy, see Proposed Policy Requirements and Updates: Task Force's Proposed Interagency Policy page 93.
 3. There must be an interagency DOC and CHS re-entry review team to ensure that:
 - a. The re-entry recommendations adopted by the Department are being implemented;
 - b. A point-person or point-people for TGNCNBI Re-Entry issues has been identified and is/are being included on Re-Entry planning for all self-identified TGNCNBI people;

⁸⁴ Although the Department informs the Task Force that these processes are laid out in the "Handbook for Detained and Sentenced Individuals" the handbook is not accessible to many individuals. The outdated 2007 version of the handbook has finally been replaced online with a version marked 12/2019. It is unclear if a physical copy exists or has been distributed to anyone in custody.

- c. DOC and CHS have reviewed contracts with all re-entry service providers to ensure that:
 - i. their staff are meeting basic minimums for training on TGNCNBI knowledge and are in compliance with NYC Human Rights Law concerning non-discrimination;
 - ii. any DOC contract provider (such as Fortune, Osborne, etc.) for re-entry services has a TGNCNBI issue-area coordinator;
 - iii. a TGNCNBI person is assigned a re-entry service provider who maintains contact and follows them throughout their time in DOC even if the individual is transferred outside of their initial housing unit. This is needed in order to address the current practice of assigning in-dorm re-entry service providers by housing unit and not maintaining contact if transferred; and
 - d. At least one member of the DOC LGBTQ+ Initiatives team must also be appointed to this Re-Entry Review team
4. Individuals in DOC custody should have the opportunity to engage in re-entry planning meetings immediately after intake, upon learning their discharge date, and before upstate transfers.
 5. The Task Force recommends the implementation of a “Re-Entry checklist” for *all people* within DOC and that this checklist be filled out regardless of how or why a person is leaving DOC custody. Participation in this checklist would be voluntary but offered to all individuals. There should be the option to indicate refusal, should a person in custody not wish to engage. For checklist specifications and requirements, see Proposed Policy Requirements and Updates: Recommendation for a Re-Entry Checklist page 96.
 6. Any person in custody who has self-identified to DOC or CHS as TGNCNBI, and who is facing an upstate sentence, must receive assistance and information from qualified DOC staff who have demonstrated expertise on TGNCNBI identities, the law, and the agency practices of both DOC and DOCCS. Such staff must assist with and have accurate knowledge concerning:
 - a. how to obtain gender-affirming and safe housing within DOCCS; for more information, see Proposed Policy Requirements and Updates: Task Force’s Proposed Policy on Transfer Into DOCCS page 97;
 - b. What steps CHS takes to ensure continuity of medical care;
 - c. DOC/CHS re-entry coordinators should connect TGNCNBI people with community providers who can assist with bridging the cultural differences and divides upon a move to DOCCS;

- d. Within 24 hours of DOC becoming aware of which DOCCS facility a TGNCNBI individual in custody will be transferred to for reception, DOC must inform both the TGNCNBI individual in custody, and their attorney, of which facility the individual will be transferred to, and if they will receive gender-aligned housing.
 - e. To ensure that TGNCNBI people in DOC/CHS custody are notified, in a timely manner, of which facility they will be transferred to, DOC/CHS should develop a TGNCNBI transfer checklist.
7. CHS should hire multiple post-release advocates to assist patients with ongoing medical care upon release. The establishment of a 24-hour helpline and trained staff to assist in directing patients to where they may receive ongoing care will not only assist many re-entry providers who do much of this work already, but also possibly save lives for people seeking immediate assistance with COVID medication, rescue inhalers, HIV medication, and more.
 8. People should be connected to jobs pre-release. Skills training and certification for people in custody should be provided that is not only accepted by employers following release, but also offers direct connections to employers upon release, ensuring a seamless transition to employment following a period of incarceration. Ensuring people impacted by the justice system, in particular the TGNCNBI population, have access to the supports needed to obtain and maintain employment is vital to their continued success and to reducing rates of recidivism.
 9. Refusals for re-entry planning must be recorded and stored for monthly reporting and review purposes. For more information, see Data and Reporting below.

V. Data and Reporting

Refusing Re-Entry Planning: Of course, people in custody should retain the right to refuse meetings with re-entry planning. The Task Force recommends that these refusals be recorded and stored for monthly reporting and review purposes. DOC employees must video-record the individual in custody's verbal or sign-interpreted refusal for a meeting. Body-worn cameras may be used for this process. The Department should develop a script where officers remind the individual in custody that re-entry planning offers free, culturally aware support for transferring to another facility, going home, or transfer to an ATI. The script should also state that re-entry planning can answer questions regarding retrieval of property, housing, keeping medical prescriptions filled, and more. Signage for posting must also be developed that is easy to read and effectively communicated. These signs should be displayed in housing units, law libraries, and the Samuel L Perry Center at minimum.

Video-recorded refusals must be reported monthly to the Board of Correction along with:

- the number of face-to-face service reviews held for newly incarcerated or detained people;

- the number of “re-entry checklist” forms that were completed and stored in individual files.

Occasional random sample viewing of the video should occur quarterly by Board staff to ensure that scripts are being followed, translation is being offered, etc.

Recommendations

1. Refusals to meet with specialists for re-entry planning must be video-recorded and interpreted. The Department should develop a script for such interactions.
2. The Department must also develop signage on re-entry planning that is easy to read and effectively communicated to be displayed in housing units, law library, and the Samuel L Perry Center at minimum.
3. The Department must report to the BOC the number of face-to-face services held for newly incarcerated or detained people and the number of “re-entry checklist” forms that were completed and stored in individual files.
4. Occasional random sample viewing of the video should occur quarterly by Board staff to ensure that scripts are being followed, translation is being offered and more.

VI. New Jail Facilities

Recommendations

1. The Department must ensure that the community-based design requirements in the publicly released RFPs for the new jail facilities are carried through in the design and construction phases and made a permanent part of DOC operations and programming.
2. The Department should work with community-based organizations and social services to identify current barriers and deterrents to facility access and strive to eliminate these obstacles in the development of the borough-based facilities. Community space must be open and inclusive to NGO’s, social services, community advocates, etc.

Chapter 5: Staffing and Accountability

I. Introduction

The Task Force asserts that the safest place for all people, and especially TGNCNBI individuals, is outside of the carceral system. Accordingly, the city should push to decarcerate while also improving conditions for people in custody. In order to reach systemic transformation, we must create a system of healing, restorative justice, education, community, and opportunity. People should not lose all agency when placed into custody. They should be treated with dignity and respect and provided with the tools and skills needed to be successful for themselves, their families, and their communities.

Other necessary overhauls include creating an environment where staff are encouraged to hold each other accountable. The NYC jails have some of the best staff-to-detained/incarcerated individual ratios in the US. This means that there is the unique opportunity to have staff hold each other accountable in real time in response to situations. If an officer uses a harmful de-escalation tactic, peers and leadership can step in, offer alternatives, and recommend additional trainings. In connection with this, staff should be encouraged to attend more trainings whether they are DOC held, NYC government held, or held by other providers such as TGNCNBI organizations. To ensure accountability and fair treatment of individuals encountering the NYC criminal justice system, systemic transformation guided by the following principles must be implemented: (1) Dignity; (2) Safety; (3) Empathy; (4) Integrity; (5) Respect; (6) Nonviolence; (7) Transparency; (8) Normalcy; and (9) Import Model.⁸⁵

The following recommendations should be implemented immediately to ensure the safety of all people in custody, in particular TGNCNBI individuals in custody, and to meet their holistic needs. Doing so will also allow the Department and the community, through collaborative efforts, to streamline procedures and opportunities in future borough-based facilities, with decarceration remaining the top priority.

Recommendations

1. Invest in alternatives to detention and incarceration, including models that are proven to address the root causes of incarceration, reduce recidivism, and have a tremendous cost-savings benefit for NYC, in comparison to current costs of incarceration.

⁸⁵ These nine principles are developed based on the Inter-American Commission on Human Rights' Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. See Inter-American Commission on Human Rights, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, March 3-14, 2008, (<http://www.cidh.org/basicos/english/basic21.a.principles%20and%20best%20practices%20pdl.html>); and United Nations Office on Drugs and Crimes. *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, (https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf), see definitions for these terms in Appendix K.

2. Incorporate the Import Model, which is a correctional model of providing people in custody with the same level of service inside correctional systems as they would have access to if they were not in custody and were living in their community.⁸⁶

II. Need for Culture Change

The need for transformative culture change within the Department of Correction is evident. According to the Eleventh Report by the *Nunez* Monitor, “The Department has not yet demonstrated progress in reducing the frequency of unnecessary and excessive force. In fact, this Monitoring Period reflected the highest rate of use of force since the Effective Date...compounded by lack of accountability due to both uniform leadership’s inability to identify and address the Staff misconduct and the backlog of investigations...The City and Department have established a record of non-compliance in the most fundamental goals of the Consent Judgment, most especially regarding the use of force and accountability for violations of these requirements. This history of non-compliance is longstanding and substantial.”⁸⁷

Data on experiences of physical violence and TGNCNBI people is not often gathered outside of physical violence that is also sexual in nature. We know that TGNCNBI people encounter sexually aggressive violence in custody at very high rates.⁸⁸ For example, transgender women housed in California state prisons designated for men are 13 times more likely than their cisgender counterparts to experience sexual abuse.⁸⁹

⁸⁶ See Langelid, Torfinn. “*The Sharing of Responsibility in the Rehabilitation of Prisoners in Norway: The Import-Model in Theory & Practice.*” *Journal of Correctional Education*, vol. 50, no. 2, 1999, pp. 52–61. JSTOR, (<http://www.jstor.org/stable/23292109>).

⁸⁷ *Nunez* is the common name known for the case brought by The Legal Aid Society and Emery Celli challenging illegal use of force and falsified record keeping within the NYC jail systems. The parties entered into a consent judgment creating a monitoring team to advance the reforms set forth in the consent judgment. The monitoring team has produced 11 reports as of February 9, 2022 with the latest being published in May 2021.

⁸⁸ See Brown, Michael, McCann, Edward. *Views and Experiences of LGBTQ+ People in Prison Regarding Their Psychosocial Needs: A Systemic Review of the Qualitative Research Evidence*, *International Journal of Environmental Research and Public Health*, September 2021, 18(17), (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8430972/>) – this article explores international research on experiences of LGBTQ people in prison, but does not conclude anything on rates of physical violence – sexual violence seems to be better researched and there is a lack of research in physical violence and LGBTQ+ identity. See also National Center for Transgender Equality. *LGBTQ People Behind Bars A Guide to Understanding the Issues Facing Transgender Prisoners and their Legal Rights*, (<https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>), Jones, Alexi. *Visualizing the unequal treatment of LGBTQ people in the criminal justice system*, Prison Policy Initiative, March 2, 2021, (<https://www.prisonpolicy.org/blog/2021/03/02/lgbtq/>), and Lambda Legal. *Abuse and Neglect of Transgender People in Prisons and Jails: A Lawyer’s Perspective*, November 25, 2020. (<https://www.lambdalegal.org/blog/20201125-transgender-people-prisons-jails>).

⁸⁹ Jenness, Valerie, et. al. *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*. University of California Irvine, Center for Evidence-Based Corrections, June 2007, (<https://cpb-us-e2.wpmucdn.com/sites.uci.edu/dist/0/1149/files/2013/06/BulletinVol2Issue2.pdf>).

Below is a series of examples describing experiences of TGNCNBI people represented by The Bronx Defenders in recent years demonstrating the violence that TGNCNBI people incarcerated at DOC regularly endure:

1. Ms. C is a transgender woman who was incarcerated at RMSC in 2021. Ms. C experienced homophobia and transphobia by officers on a regular basis. Most recently, she described a situation in which she was being called “a homo” by a correction officer. When Ms. C reported the officer’s use of slurs against her to the warden, the warden responded by saying “he’s entitled to his opinion.”
2. Ms. R is a transgender woman who was incarcerated at RMSC in 2021. Ms. R, like Ms. C, routinely experienced transphobia by officers and incarcerated cisgender women. On one occasion, several cisgender women in her housing area were challenging Ms. R’s gender identity. An officer decided to insert herself into the argument, siding with the cisgender women, and began verbally assaulting Ms. R. Among the many violent words said to Ms. R, the officer said “you’re a man,” “you people don’t belong here,” and “you’re a fake woman with a penis.” Ms. R was terribly traumatized by this particular experience and felt unsafe for the remainder of her incarceration.
3. Ms. B is a transgender woman who was incarcerated in both the women’s jail and the men’s jails during her incarceration in 2020-2021. Ms. B was transferred many times throughout her incarceration. In every facility she was in, officers refused to use correct pronouns for her. She was misgendered multiple times per day, even after correcting officers. On one occasion, when she asked an officer to use female pronouns in referring to her, the officer replied “lift up your bra and show me what’s under there.”
4. A transgender male client of both the Bronx Defenders and LAS detailed some of his experiences in a signed letter transcribed by a member of the Task Force and attached here as Appendix I. This individual was incarcerated in 2020 at RMSC after being sent to the men’s jail for intake. He endured repeated acts of verbal, emotional, and physical abuse by DOC staff.

According to reports from The Bronx Defenders and The Legal Aid Society, and direct words of formerly and currently detained/incarcerated TGNCNBI people, the following treatment towards TGNCNBI people continues: (1) Misgendering and improper pronoun use throughout the facilities; (2) Sexual abuse, harassment, and misconduct from correction officers and other people in custody; (3) Ineffective LGBTQ+ education leading to improper assessments of TGNCNBI people in custody, which contributes to unsafe housing; and, (4) discriminatory disciplinary actions resulting in losing gender affirming housing and/or discriminatory discipline tickets relating to actions for which cisgender individuals do not receive tickets.

Far fewer people are detained within DOC compared to historical averages, and DOC maintains a higher than national staff-to-detained/incarcerated person ratio of 5:3.⁹⁰ Multiple committees, coalitions and task forces dedicated to culture change have been created by DOC, BOC, and the City Council. Yet DOC remains unable to create a culture that reflects the dignity and safety of all people in custody, in particular for the TGNCNBI population. This Task Force is dedicated to working alongside BOC, DOC, nonprofit partners, and all other stakeholders to create culture change, a key part of which must be holding actors responsible for their behavior.

Recommendations

1. DOC must implement a stricter disciplinary structure to hold staff accountable for misconduct. This applies to both staff responsible for individual matters, as mentioned above, and staff who observe such matters and do not intervene.
2. Such stricter disciplinary measures should be implemented in connection with both experts in physical violence and sexual violence and should emphasize how seemingly small-scale events create the groundwork for larger and more disastrous events.
3. DOC should continue its work to improve the comprehensive implementation of PREA standards in all facilities. This includes community-led and approved training courses. In doing so, all DOC facilities should meet or exceed federal PREA standards by December 2023 as determined by official PREA auditors and BOC PREA standards by December 2023 as determined by BOC PREA staff.
4. Know Your Rights workshops should continue to be implemented for people who are currently detained/incarcerated. Workshops should be facilitated in collaboration with local advocates and organizations.
5. Continue the Pride Officers and Ambassadors initiative emphasizing the promotion of a culture of learning and growth in the facilities. Connections must be made between respecting fellow officers and respecting non-uniform staff and detained people.

The Department has proposed the use of Pronoun Pins for DOC staff. Pronoun Pins indicating individuals' pronouns should be approved and staff should be strongly encouraged to wear their pronoun pins on their uniforms and to introduce themselves by identifying their pronouns during all interactions. Staff should also respectfully ask all detained/incarcerated people their pronouns upon intake, during group interactions, and during individual interactions in housing units

⁹⁰ See Vera Institute of Justice. *A Look Inside the New York City Correction Budget*, May 2021, (<https://www.vera.org/downloads/publications/a-look-inside-the-new-york-city-correction-budget.pdf>).

III. Culture Change through Hiring, Promotion, and Reimagining:

If the Department is dedicated to culture change (as stated in several reports) then that change needs to be reflected in the responsibilities of all correctional staff, including officers. Countries with comparable economic and sociological systems to the United States and even states within the US have enacted culture change through developing and implementing a guiding set of principles that all staff must follow.

For example, the vision statement of the Department of Corrections North Dakota is: “Healthy and productive neighbors, a safe North Dakota.” Their website contains humanizing language throughout, reflecting that people held in North Dakota prisons and jails are neighbors and community members.⁹¹ The hiring emphasis is on communities, not security or discipline, and the inevitable return of people to their communities.

Culture change within DOC is dependent on hiring individuals who see detained and incarcerated people as their neighbors and community members first. But initial hiring is not the only place where culture change is needed. We must also look at who is promoted. The Eleventh Report of the Nunez Monitor described significant failures, for example, in the process for various facility leadership promotions in the face of potentially disqualifying disciplinary histories. The Monitor noted that multiple supervisory promotions had backgrounds that “raised concerns about [the Supervisor’s] ability to serve appropriately...their promotions could send a troubling message to subordinate staff about how prior misconduct is sometimes rewarded with promotion.”⁹²

Following the changes made in other countries, NYC should move towards more civilian staff being present in the jails. Staffing, including leadership, should reflect the diversity of the population served, and should be designed to address the root causes of incarceration. Staffing within DOC should reflect the importance of meeting the needs of the people being served, such as including social workers, nurse practitioners, or others skilled in addressing root causes of incarceration and co-existing harms.

Specifically, we note that PREA Compliance managers are not located in every facility and staff and people in custody report not knowing who their assigned PREA Ambassadors are. The Task Force has received a number of complaints on the lagging response time of the PREA team. As mentioned earlier, long lapses in response time from the moment of reporting consistently places TGNCNBI people at risk for additional and escalating assaults. The Department and BOC must evaluate allegation response times to determine what additional measures are needed to increase efficiency and safety.

⁹¹ See North Dakota Corrections and Rehabilitation. “Our Values,” (<https://www.docr.nd.gov/sites/www/files/documents/Home%20Page/VALUE%20STATEMENTS.pdf>).

⁹² See NYC DOC. *Eleventh Report of the Nunez Monitor*, pg. 261, (https://www1.nyc.gov/assets/doc/downloads/pdf/11th_Monitor_Report.pdf).

Having social workers, case managers, rape crisis specialists, art therapists, and others in the jails helps to deescalate conflict and create an investment in culture change. To this end, social workers should be included in every housing unit's staffing structure to ensure that no matter which housing unit a TGNCNBI person is placed in, they will have access to the care they need. Social workers should be culturally competent and reflect the demographics of the population they are serving. DOC should partner with nonprofit agencies to ensure that social workers who are hired and trained meet the holistic needs of TGNCNBI people. Nonprofits can also provide continued and expanded support in implementing Know-Your-Rights workshops to better ensure transparency between DOC and the detained/incarcerated population.

Recommendations

1. Every action of DOC uniform staff members and civilians working in the jails, as well as the policies of DOC as a whole, should be guided by the principles outlined in the value statement. This can be done by embedding these principles in staff job descriptions, in agency policies and procedures, in all training processes, and by including signage around the facility about how staff are to treat both other staff and people in custody.
2. BOC and DOC should investigate PREA response team times and report on concrete steps to increase efficiency and meaningful responses.
3. Hiring and placement of more civilian staff with social work, case management, and other credentials and related experiences should be prioritized.
4. The staffing structure (including leadership) of DOC should reflect the diversity of the population in custody and should be designed to address the root causes of incarceration. This can be achieved by increasing the number of culturally competent non-uniform staff and by reallocating DOC non-security responsibilities to the appropriate personnel, such as DOHMH, mental health workers, and social workers. The Department can look to youth housing as a blueprint, where these practices are currently implemented.
5. The TGNCNBI Task Force should work with DOC to create and revise job announcements for staff working with TGNCNBI people and the community-based organizations serving them, including non-uniformed counselors, housing specialists, social workers, credible messengers, and case managers.
6. Staffing must be reimagined from a security job to a prevention and wellness job with social workers, nurse practitioners, and others providing necessary resources within each housing unit.
7. The Department's hiring and promotion structures should appropriately consider prior misconduct and strengthen hiring and promotion structures to facilitate the principles outlined in this report.

IV. Training within the DOC is Ineffective and Does Not Reflect Collective Leadership

Despite efforts to develop TGNCNBI and other trainings in collaboration with DOC, several members of the Task Force report that DOC has not responded. This means that trainings, to the extent there are any, are developed internally and without transparency or collective leadership. Collective leadership is a term used in culture change work to describe a method of promoting group buy-in and increasing capacity for shared goals. According to one definition this method will “increase capacities for collaboration and provide conditions for group members to feel valued and motivated in contributing to collective goals.”⁹³

Collective leadership is needed to achieve training that is meaningful with information that is accurate and relevant. The content of the training should be created with input beginning at the start of the planning phase from TGNCNBI community leaders/organizations and/or Task Force members. Staff should be trained in conjunction with these leaders/organizations.

One of our Task Force members recounted a mandatory “safety” training he had to go through in order to gain his volunteer pass. During this training a video of a transgender woman on a subway was shown to illustrate “noticing when something is wrong.” Multiple participants – other civilians getting their volunteer passes too – viewed the video and yelled out transphobic comments such as “that’s a man.” These same participants would later go on to receive their volunteer passes and work in facilities alongside TGNCNBI individuals without any intervention into their comments or behavior during the training.

Additionally, the current PREA training is not adequate or effective in several ways. Based on the experiences of Task Force members who have attended PREA trainings, the following issues have been apparent:

- (1) The trainers providing the PREA training do not hold the content expertise to answer questions from the audience. Trainers consist of volunteer staff who may exhibit varying levels of expertise on individual PREA subjects, but not the overall subject area;
- (2) The section focused on LGBTQ+ and TGNCNBI people has routinely been breezed through as the trainers often do not have the comfort level to discuss the community. Emphasis is often placed on how individuals should remove themselves from contact with an LGBTQ+ person if they are uncomfortable, suggesting that discrimination, mistreatment, or lack of service provisions towards LGBTQ+ people is acceptable;⁹⁴
- (3) The LGBTQ+ section contains victim blaming language and examples and is outdated in its definitions/talking points by suggesting LGBTQ+ people are “hypersexual” or defined solely by sex;
- (4) Many Task Force members and BOC staff reported a lack of empathy from some trainers for TGNCNBI people’s experiences;

⁹³ See NYU Wagner. “Collective leadership,” (<https://wagner.nyu.edu/leadership/theory/collective>).

⁹⁴ As experienced by multiple Task Force members and BOC staff who attended PREA trainings.

- (5) There has been no study or collection of empirical evidence to demonstrate that the current PREA training has led to a decline in reports of sexual assault or abuse that TGNCNBI people experience while in custody;
- (6) There is currently no evaluation process in place to determine the training's efficiency and effectiveness;
- (7) There is no credentialing standard for PREA Trainers that is followed agency-wide; and
- (8) There is no large-scale TGNCNBI-specific training outside of DCAS Executive Order 2016 training and a small section of the PREA training.⁹⁵

According to Directive 4498R-A, "All staff shall be required to complete pre-developed LGBTI-GNC-GNB⁹⁶ training. Priority shall be given to training for staff assigned to a) Special Considerations Unit staff; b) Intake Staff; c) General Office staff; d) Escort staff; e) Programs staff; f) Transportation Division staff; and, g) Visit staff."

Despite this directive going into effect over two years ago in 2019, no training has been developed to date. The Task Force understands that an LGBTQ+ training is currently in development, but it has not been completed nor have there been any collaborative efforts on behalf of the department to ensure TGNCNBI leaders/organizations provided feedback with respect to content, implementation and facilitation.

Current Conflict Resolution training is not adequate, as clearly evident through the exceedingly high use of force rates described by the Eleventh *Nunez* Report.⁹⁷ In alignment with previous recommendations on culture change, the conflict resolution training should be guided by the principles outlined in this report. Nonprofit and other Cure Violence⁹⁸ staff (often credible messengers with lived experience) are able to curb street violence and do not practice use of force or solitary confinement, all while serving the same populations as NYC DOC.

Task Force members report several incidents within their own careers where they and others were able to successfully de-escalate conflict within the NYC jails, often through the use

⁹⁵ For limited information on this training, see NYC Department of City Administrative Services. "Sexual Harassment Prevention," DCAS Citywide Training Center Course Catalog Summer-Fall 2022, pg. 147, (https://www1.nyc.gov/assets/dcas/downloads/pdf/employment/ctc_courseofferings.pdf). – "This training will facilitate awareness as to the emotional impact of being a member of the LGBTQ community and provide best practices guidance for how to create/promote an open and inclusive environment for this community. Participants will also receive specific guidance as to the correct and inclusive terminology related to the transgender community, City agencies' responsibilities under the Mayor's Executive Order 16 (EO 16) regarding the legal right of transgender and gender non-conforming persons to freely access the single sex facilities owned/operated by the City that most closely aligns with their gender expression or identity, as well as examples of behaviors that may violate EO 16."

⁹⁶ Lesbian, Gay, Bisexual, Transgender, Intersex, Gender Non-Conforming, and Gender Non-Binary.

⁹⁷ See NYC DOC. *Eleventh Report of the Nunez Monitor*, pg. 25, (https://www1.nyc.gov/assets/doc/downloads/pdf/11th_Monitor_Report.pdf).

⁹⁸ The [Cure Violence model](#) is an evidence-based public health approach that seeks to stop the spread of violence by using...methods and strategies associated with disease control. See N.Y.C Health. "Cure Violence," (<https://www1.nyc.gov/site/doh/health/neighborhood-health/anti-violence.page>).

of collective leadership practices. Instead of using de-escalation techniques, DOC utilizes violence and use-of-force procedures, with “improper use of OC spray, force that is disproportionate to the actual threat...[and] violating the Use of Force Directive...[these methods] are antithetical to the reform effort and further deteriorate the culture” at DOC.⁹⁹ With the TGNCNBI population in custody often experiencing higher rates of violence compared to cisgender people in custody, uses of force and other mechanisms that further traumatize this population is unacceptable. Furthermore, chemical spray used within the jails causes major irritation to the eyes, mouth, throat, lungs, mucous membranes, and skin and can exacerbate health conditions and diseases of these areas, such as asthma.¹⁰⁰ Focusing on the health and well-being of all incarcerated individuals is vital to investing in a restorative and transformative justice system.

Recommendations

1. Follow-up discussion-based models, more in-person trainings, and evaluations should be included for all trainings.
2. Trauma-informed training, facilitated by justice-impacted organizations/trauma-informed leaders, must be implemented in the training academy (at least two weeks in length), as well as provided on an on-going basis (35 hours of training annually) to all staff (uniform and non-uniform).
3. Conflict Resolution training must be provided to all staff (uniform and non-uniform) during the training academy, as well as on an on-going basis (certifications required annually); trainings should be co-facilitated by community-based organizations and leaders in the Cure Violence movement.
4. Overhaul of current DOC staff training with a replacement that mirrors (with improvements) the two-year Import Model training. DOC staff training should include social work courses and other courses that relate to the root causes of incarceration (racism, trauma, intergenerational poverty, substance use and mental illness), passing an ethics exam, with a specific section dedicated to TGNCNBI people, and community de-escalation training.
5. Update PREA trainings for DOC staff, volunteers and contractors. The current training was developed by the Department with assistance from the National Institute of Corrections and should be revamped to incorporate community-based organizations and people with lived experience in the curriculum design and training facilitation. All

⁹⁹ See NYC DOC. *Eleventh Report of the Nunez Monitor*, pg. 25, (https://www1.nyc.gov/assets/doc/downloads/pdf/11th_Monitor_Report.pdf).

¹⁰⁰ See Centers for Disease Control and Prevention. “Facts About Riot Control Agents,” (<https://emergency.cdc.gov/agent/riotcontrol/factsheet.asp>).

uniform and non-uniform staff should also receive trauma-informed interviewing training, designed and facilitated in collaboration with community-based organizations.

6. Implement Sexual Orientation, Gender Identity and Expression (“SOGIE”) training—after being fully developed in collaboration with LGBTQ+ leaders/organizations—in the training academy, as well as provide it on an on-going basis (certifications required annually) to all staff, uniform and non-uniform.
7. The Department must work with community-led organizations to develop an experiential, reflective, and in-depth mandated TGNCNBI-specific training for all DOC employees (uniform and non-uniform) and volunteers working with people in custody. This training should be co-facilitated by TGNCNBI-focused, community-based organizations and/or leaders, provided at the training academy (at least two weeks in length), and require annual certification (35 hours of training annually). Additional collaboration is needed to determine topics covered, frequency of updating, etc. This training will be in addition to the mandated training for all city employees and specific to the concerns and needs of the TGNCNBI population in custody.
8. Only staff who have received the specialized TGNCNBI-focused training should be posted in the SCU.
9. Implement trainings and trauma-informed supervision practices for all social workers working with the TGNCNBI population by December 2023.

V. Searches of TGNCNBI People in Custody

Under Directive 4498R-A,¹⁰¹ TGNCNBI people may request to be searched by an officer of their gender preference, absent exigent circumstances. Several Task Force members have heard complaints from the TGNCNBI population in custody that officers have used the search process to examine their genitals in an effort to abuse and harass them. The Task Force is aware that Directive 4498R-A prohibits DOC staff from searching TGNCNBI people in order to examine their genitals. However, there is no clear reporting structure for people in custody to report that this has occurred, nor is there an accountability measure in place.

The Task Force is requesting information on the following: What happens after a report is made? How are officers held accountable? What determines that a report is unfounded? How does BOC get this data?

Recommendations

1. Limit the use of “exigent circumstances” to justify cross-gender searches of TGNCNBI people in custody, as stated in Directive 4498R-A. In instances where a cross-

¹⁰¹ See Appendix A.

gender search is utilized the Department will provide data and documentation supporting the use of “exigent circumstances” to the BOC. See Data and Reporting below for additional requirements.

VI. Complaint Mechanisms are Incomprehensible and Ineffective

As seen with the recent tragedy of Layleen Xtravaganza Cubilette-Polanco’s death, responses to emergent concerns for TGNCNBI people in custody are inadequate. The grievance and disciplinary process, the training of uniform and non-uniform staff, and the medical and mental health care provided for TGNCNBI people must all be overhauled. In particular, we note that Directive 3376R-A Inmate Grievance Procedures¹⁰² is not written to address immediate responses. Had the grievance process outlined in Directive 3376R-A contained an avenue for an immediate response, it is possible that Layleen Xtravaganza Cubilette-Polanco may have been able to receive medical attention after being initially denied by DOC staff, possibly saving her life. This is vital for TGNCNBI people who often have multiple medical and mental health care needs not properly understood by untrained individuals, but it would also positively affect all peoples.

Furthermore, the current system of detained/incarcerated people calling 311 to report neglect and/or abuse is inadequate. 311 operators do not receive specialized training in working with detained and/or incarcerated populations or with TGNCNBI people specifically.¹⁰³ There is no specialized team dedicated to receiving calls from DOC facilities that has been trained in TGNCNBI practices and is culturally competent. There are no reporting and accountability processes in place for any complaints made through 311. The Task Force would like to work with the Department and 311 to create a special team to monitor and report all complaints made to 311, including notes taken during the filing of the complaint that would help to identify complaints made by the TGNCNBI populations, such as misgendering by staff or failure to receive hormone therapy. Doing so will allow for a safer reporting system for TGNCNBI people.

Recommendations

1. Current complaint mechanisms are ineffective and incomprehensible. BOC and DOC must review, update, and streamline Directive 3376R-A¹⁰⁴ to be more effective, easier to use, and have immediate response mechanisms.
2. BOC and DOC must review contracts with third party operators including 311, sexual violence response lines, and more, to ensure that they are in compliance with the values and mission of the DOC.

¹⁰² See Appendix J.

¹⁰³ Task Force members have shared that, as non-incarcerated TGNCNBI people, they are repeatedly misgendered when calling 311 on other matters.

¹⁰⁴ See Appendix J.

VII. Data and Reporting

To ensure full transparency, DOC should implement electronic data monitoring systems and ensure that the data they collect reflects the entire population of TGNCNBI individuals in custody. Task Force members are not asking for names, book and case numbers, or any other identifying information, but only the data required to monitor effectively and in alignment with the principles outlined throughout this report. Through the BOC, the Task Force should review the following: trainings staff receive and conduct electronic evaluation surveys, reports of uses of force, 311 calls made by TGNCNBI people that involve violence (whether physical or emotional) based on their identities, lack of medical attention after request, and any and all other complaints filed by TGNCNBI individuals, which includes the grievances filed, , the complaint, and the staff (if any) involved. The Task Force should also review the collaborative efforts made on behalf of the department to ensure culture change takes a collective leadership approach in design, implementation, and sustainability.

Recommendations

1. The Department must create a reporting process through collaboration with the BOC and TGNCNBI Task Force that provides the Task Force with the data needed to ensure accountability and transparency.
2. The Task Force should be provided with the number of sexual abuse and sexual harassment reports made by TGNCNBI persons (as opposed to the current publicly available reports which are limited to reports by transgender women and by transgender men). Such numbers should be provided even if fewer than six such reports were lodged by people in a particular category.
3. The Task Force should be provided with non-identifiable information for each allegation of sexual abuse or sexual harassment filed by a TGNCNBI person.
4. The Task Force should work with the Department, the BOC grievance team, and TGNCNBI leaders/organizations to identify systemic issues and improve the grievance process outlined in Directive 3376R-A.
5. DOC must update its data tracking systems to ensure that individuals' gender identity is captured in a safe and affirming manner, so that outcomes by gender identity can be analyzed and evaluated. This will allow the Department, the Board, and the Task Force to better understand housing decisions, grievances, programming and incidents (including uses of force) and discipline involving the TGNCNBI population and be better positioned to address systemic issues related to this population.
6. The Task Force should work with the Department, workforce development non-profit organizations that work with the TGNCNBI population, and 311 to create a special team that monitors and reports all complaints made by TGNCNBI people in custody to 311. This would include notes taken during the filing of the complaint that would help to

identify complaints made by the TGNCNBI population, such as misgendering by staff or failure to receive hormone therapy.

7. Include a subsection in the BOC annual grievance report that focuses specifically on the grievances filed by TGNCNBI people.
8. The Department will update its 5-12 and 5-13 reporting to BOC to include the number of uniform and non-uniform staff who have received the SOGIE, LGBTQ+, and TGNCNBI training as well as the schedules, training curriculum, and credentials of the trainers.
9. The Department will report to the BOC any time a cross-gender search is conducted to ensure compliance with PREA and Minimum Standards. Reporting will include data that supports the need for a cross-gender search, ensures the person in custody received a timely search, and confirms the search was conducted in compliance with PREA and BOC Minimum Standards.

Proposed Policy Requirements and Updates

Task Force's Proposed Interagency Policy

This policy should include the following requirements:

1. The policy must state the belief that planning for re-entry begins on the first day a person makes contact with DOC, whether that is through intake, a hospital or via another route;
2. All discharge and re-entry planning employees must be trained on the rights of TGNCNBI people to access gender-affirming housing, shelter, employment, benefits, and more *and* be provided with the appropriate agency referral when needed (i.e. the contact information for the Director of LGBTQ+ Initiatives such as has been appointed for the DOC, HRA, and HHC)
3. While distribution of re-entry resources in the form of handouts or guides is helpful and allows for self-study and privacy, face-to-face services must also be offered. At these face-to-face services, re-entry materials must be reviewed by a DOC employee and person in custody in real time to ensure that people in custody know how to use them. These face-to-face services must be provided in person, either in a group or one-on-one unless the person in custody presents a serious risk of physical harm to staff or other persons in custody. In this case, such security concerns must be documented, and a comparable service must be offered over tablet, video call, or telephone.
4. All materials must state that re-entry planners and discharge planners are able to assist in facilitating outreach and this must be verbally stated during the face-to-face services review.
5. If requested, re-entry planning must facilitate direct referrals or “facilitated referrals” including calling organizations, emailing/faxing/or otherwise forwarding necessary information, and working with any outside supports the person in custody identifies (family, attorneys, etc.) to strengthen the re-entry plan.
 - a. To illustrate, the Legal Aid Society worked with an individual who was re-incarcerated multiple times during 2019-2021. This transgender man, with multiple serious mental health diagnosis, was repeatedly discharged to the street with instructions of how to locate an affirming shelter. Instead of going to the shelter, the individual instead would return to his childhood home, always leading to further issues with parole. Without reliable transfer support between DOC and the shelter system the individual continued to make the same mistake – when he was asked, he shared that he would be discharged at night, when it was dark, and he would panic, only able to remember how to get to his home from the city jails.
6. Any individual in custody who has alleged being a victim/survivor of sexual violence or harassment or who has received mental health services relating to sexual violence must,

upon request, be connected to culturally appropriate sexual violence support centers for medical and mental health care or any other needs specific to surviving sexual violence. Again, upon request, this must be a hands-on facilitated referral. Any handouts or information must state that support in making these referrals is available and it must be verbally stated during the face-to-face services review.

7. During PREA interviews, PREA officers must actively share that re-entry support is available to connect people to ongoing services.
 - a. As mentioned in other sections, Legal Aid Society previously worked with two transgender women, housed as men, who survived multiple rapes within NYC DOC. Both women were discharged from DOC custody without any information regarding their specific needs either as transgender women or as survivors of sexual violence. They were told about Health + Hospitals services in general for medication refills, but not what they might want to look out for as rape survivors from the medical (infections, bleeding, and more) to mental health (PTSD flashbacks, depression, anxiety in public spaces, etc.), nor were they linked to any long-term support resources specific to TGNCNBI peoples and sexual violence.
8. All individuals in custody should be informed that, should they have a pending PREA complaint or grievance, the complaint continues to be investigated even upon their discharge. Information on how to stay in contact with the Department and update their contact information should be provided to the person in custody in writing and verbally.
9. PREA Minimum Standard 5-32¹⁰⁵ requires certain follow-up with individuals in custody to inform them of the outcome of the investigation. This follow-up should include an effort to inform individuals released from DOC custody, including by mail to the person's last known address or, in the case of individuals in DOCCS custody, sent under legal mail to the DOCCS facility. Individuals must have a clear path to update or correct contact information.
10. The Department must ensure that access can be provided "door-to-door" from the site of discharge to the individual's destination.¹⁰⁶ MetroCards and waiting in the uncovered, exposed MTA bus stop, which is currently the only public access option for leaving Rikers Island, are not sufficient to ensure people get to their destinations safely. This is especially true with the large amounts of violence against TGNCNBI people, particularly women of color, after sunset.
11. Before discharge, a discharge officer should coordinate with any family or outside organization to facilitate transportation. The Task Force recognizes that this does not address the issue that cabs and ride shares are not allowed over the bridge and that an

¹⁰⁵ See The Rules of the City of New York. "Chapter 5: Elimination of Sexual Abuse and Sexual Harassment in Correctional Facilities," § 5-32 Reporting to Inmates.

¹⁰⁶ For example, the Emergency Relief Fund will often pay for rides from a facility to an address. Likewise, most defender organizations and drug and alcohol treatment facilities can coordinate pick-ups and drop-offs.

individual must still get over the bridge via MTA transit in front of the Samuel L. Perry Center in order to access their arranged transportation.

12. Individuals must be clearly informed both verbally and in signage that it is acceptable to wait inside the Samuel L. Perry Center building for the arrival of the MTA bus. Without clear signage, people wait in the exposed concrete area in front of the building. This exposes individuals to the elements and is unsafe, particularly for TGNCNBI folks, due to harassment and potential stalking.
 - a. A trans woman previously housed on Riker's Island shared with a Task Force member that upon her discharge she was sent to wait for the MTA bus in the outside, uncovered area of the Perry Center. While she waited, she experienced ongoing verbal harassment from others waiting for the bus which escalated to her being solicited for sex work. She could not leave the area or find an alternative way off of the island and so she was forced to endure this.
13. For sentenced individuals and any other people with clear re-entry dates whose housing depends on making intake by a certain time, the individual in custody must automatically be on morning discharge (before noon) so that they can complete their intake and have a safe place to stay that evening. The Task Forces understands that for many other people in custody, when re-entry is not known in advance, that this is not possible. But for individuals who have been sentenced there is sufficient time to plan ahead.
14. For anyone released on bail or court order that same day, all efforts must be made to ensure individuals in custody are released before 5pm. For any individual released after 5pm, DOC must indicate in writing to the BOC why an individual was released after 5pm. The Task Force hopes this will help address delays and create data for common reasons for delays.
 - a. A transgender woman held in the SCHU reported to Bronx Defenders and the Legal Aid Society that her parole warrant did not clear until midnight, meaning she was finally released after 2AM while a transgender man reported to the Legal Aid Society that he was released "after dark" which added to his general confusion about where to go upon discharge.

Recommendation for a Re-Entry Checklist

The Re-entry checklist must include a version of the following:

1. Asked the individual for the most up to date contact information:
_____ [address] yes no refused
_____ [phone] yes no refused
_____ [email] yes no refused
_____ [name to be used in communication] yes no refused
2. Informed the individual of how to check in on and update contact information for any pending grievance or PREA complaints: yes no refused interview
3. Asked if the individual has a copy of *LGBTQ+ Re-Entry Resource Guide*: yes no refused interview
 - a. Provided a copy if requested: yes no and why _____
4. Asked if the individual would like help going through the *LGBTQ+ Re-Entry Resource Guide* or better understanding it: yes no refused interview
5. Asked if the individual has a copy of *Connections*: yes no refused interview
 - a. Provided a copy if requested: yes no and why _____
6. Asked if the individual would like help going through *Connections* or better understanding it: yes no refused interview
7. Provided flier for the HHC PRIDE Center: yes no refused interview
8. Walked individual through the flier explaining services offered and locations of the Centers: yes no refused interview
9. Asked if they would like assistance making a follow-up appointment there upon re-entry: yes no refused interview.
 - a. If Yes, appointment information: _____
10. Ensure CHS has been contacted and that individual has their walking meds and/or prescriptions for any injections or medical devices needed in the community: yes no refused interview
11. Told individual and handed them written information on where to go to refill prescriptions and why they should go as soon as possible to avoid any delays: yes no refused interview

Task Force's Proposed Policy on Transfer Into DOCCS

1. All TGNCNBI individuals facing time within DOCCS should be informed that they may make an appointment with DOC PREA staff to discuss DOCCS housing.
2. Individuals must be provided with the contact information for DOCCS' Associate Commissioner and PREA Coordinator and informed of this position's role in determining gender-affirming placement.
3. The DOC LGBTQ+ Initiatives Team must generate a fact-based letter for all TGNCNBI people. This letter might include an individual's stay in gender-affirming housing including length of time, programs and jobs participated in, etc.
4. If requested, DOC PREA and/or other DOC staff may also write letters of individualized support as to why a person should be placed in gender-affirming housing.
5. If requested, DOC should assist a person in custody in framing their request for safe, gender-affirming housing in the most effective way possible. For example, explaining why a person felt the need to defend their self or why they chose to stay in gender-misaligned housing in order to complete a necessary program. TGNCNBI-affirming legal service providers should be contacted if additional support is needed by DOC.
6. These final letters must be sent to DOCCS PREA or relevant LGBTQ+ team along with any relevant releases allowing for the exchange of information between DOC and DOCCS.
7. DOC PREA and/or the LGBTQ+ Initiatives Team must also facilitate the sharing of relevant information between DOC and DOCCS so that DOCCS can evaluate the individual in custody for their purposes. This may include the sharing of records (after receiving signed HIPPA's or other releases) or the arrangement for Video Tele-Conference interviews.

Appendix and Supplemental Materials

- A. DOC Directive 4498R-A “Lesbian, Gay, Bisexual, Transgender, Intersex, Gender Non-Binary and Non-Conforming Inmates” with Attachments.

415R

		THE CITY OF NEW YORK DEPARTMENT OF CORRECTION			
DIRECTIVE					
[] NEW [] INTERIM [X] REVISED		SUBJECT			
EFFECTIVE DATE 10/22/19		TERMINATION DATE / /		LESBIAN, GAY, BISEXUAL, TRANSGENDER, INTERSEX, GENDER NON-BINARY AND GENDER NON-CONFORMING INMATES	
CLASSIFICATION # 4498R-A	SUPERSEDES 4498	DATED 12/03/14	APPROVED FOR WEB POSTING <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	DISTRIBUTION A	PAGE 1 OF 12 PAGES
RECOMMENDED FOR APPROVAL BY REVIEW BOARD MEMBER			AUTHORIZED BY THE COMMISSIONER		
					
HAZEL JENNINGS, CHIEF OF DEPARTMENT			SIGNATURE CYNTHIA BRANN		

I. PURPOSE

This policy is intended to provide a housing determination process that most closely aligns with an individual's gender identity and provide supplemental guidelines to staff on operational issues related to LGBTI-GNC-GNB inmates, including identification, searches, housing and programming decisions, and access to programs, services, commissary, toiletries, and clothing items. Staff are expected to treat inmates with respect and maintain professional positive interaction and effective communication with LGBTI-GNC-GNB inmates. Staff shall not use transphobic, racial, ethnic, homophobic or derogatory language towards an individual's gender, and should respect an individual's gender identity, pronoun and preferred name.

II. POLICY

It is the policy of the New York City Department of Correction (Department) to receive, evaluate, house and/or provide secure, safe and humane custody of all persons, including lesbian, gay, bisexual, transgender, intersex, gender non-conforming, and gender non-binary individuals who are lawfully committed or held for confinement by the Department until their lawful and appropriate release or transfer to another authority.

III. DEFINITIONS & TERMS

- A. **Gender Identity:** Refers to an individual's internal, personal sense of their own gender as male, female, both, or neither, regardless of the individual's sex assigned at birth.
- B. **Gender Expression:** Refers to external appearance, typically associated with one's gender identity and usually expressed through behavior which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine, or with expectations associated with the individual's gender identity.

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III. DEFINITIONS & TERMS (Cont.)

- C. Cisgender or Cis: Describes an individual whose gender identity conforms to the sex assigned at birth. For example, a person who was assigned male at birth and currently identifies as a man. Typically, this person will identify as a "cisgender man" or just as a "man."
- D. Transgender or Trans: Describes an individual whose gender identity is different from the individual's sex assigned at birth. For example, a person who was assigned male at birth, but currently identifies as a woman. Typically, this person will identify as a "transgender woman" or just as a "woman."
- E. Exigent circumstances: Any set of temporary unforeseen circumstances that require immediate action in order to combat a threat to security or institutional order.
- F. Gender Non-Binary (GNB): Describes an individual whose gender identity exists outside of the categories of male or female (i.e. outside of "binary" gender identity).
- G. Gender Non-conforming (GNC): Describes a person whose gender expression is outside of societal assumptions for how they should look or behave based on their gender identity.
- H. Sexual Orientation: Refers to an individual's enduring physical, romantic and/or emotional attraction to members of the same gender or different genders.
- I. Gay: Describes men who are physically, romantically, and/or emotionally attracted to men.
- J. Bisexual: Describes people of any gender who are physically, romantically, and/or emotionally attracted to people of their own gender and people of different gender identities.
- K. Intersex: A general term used to describe a variety of conditions in which an individual is born with a reproductive or sexual anatomy that doesn't align with anatomy typically assigned to female or male individuals.
- L. Lesbian: Describes women who are physically, romantically, and/or emotionally attracted to women.
- M. LGBTQI: This acronym is used to refer to individuals who are lesbian, gay, bisexual, transgender, questioning and intersex. It is often used as an umbrella term to identify the full LGBTQI community.

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III. DEFINITIONS & TERMS (Cont.)

- N. **Queer:** An umbrella term to describe individuals who don't identify as straight and/or cisgender. Due to its varying meanings and historical use as a derogatory term, this word should only be used when self-identifying or quoting someone who self-identifies as queer.
- O. **Questioning:** A term used to describe those individuals who are in the process of discovery and exploration about their sexual orientation, gender identity, and/or gender expression.
- P. **Review Board for Reconsiderations:** Shall consist of the Department's PREA Coordinator or designee; Chief of Department or designee; the Department's Health Affairs representative; Commanding Officer of the Female Facility or Designee; and the Director of LGBTQI Initiatives or designee.
- Q. **Special Considerations Unit (SCU):** Housing area(s) designated by the Department for the purpose of housing transgender, intersex, and GNB inmates.
- R. **Special Considerations Determination Unit (SCDU):** Refers to a unit that makes housing and, when appropriate, programming assessments and determinations for transgender, intersex and gender non-binary individuals known to the Department. The unit shall determine the inmate's housing assignment after a review of all of the inmate's records and any relevant information that would help make a determination, including information from the Health Care provider and the Director of LGBTQI Initiatives. This unit shall consist of the PREA Coordinator or designee; and Warden or designee.
- S. **Transition:** This is a term that is often used to describe the time period when transgender people start publicly living their lives in accordance with their gender identity.
- T. **Sex Assigned at Birth:** The assignment and classification of a person as male, female, intersex, or another sex assigned at birth often based on physical anatomy at birth.

IV. PROCEDURES

A. STAFF RESPONSIBILITIES:

1. All staff shall comply with the provisions of this policy and ensure it is followed.
2. Department staff who are found to engage in inmate abuse or do not follow the guidelines addressed in this policy may be subject to disciplinary action.

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IV. PROCEDURES (Cont.)

3. All staff interactions with lesbian, gay, bisexual, transgender, intersex, gender non-conforming, and gender-non-binary (LGBTI-GNC-GNB) inmates shall be conducted in a confidential, professional and respectable manner, and in the least intrusive manner possible, consistent with security needs.
4. Staff shall address transgender inmates using the inmate's last name or preferred names and pronouns as indicated on the "Special Consideration Housing Form" (Attachment - A). An inmate's stated gender identity and pronoun (i.e. he/him/his, she/her/hers, they/them/theirs) should be respected at all times.
5. All staff shall be required to complete pre-developed LGBTI-GNC-GNB training. Priority shall be given to training for staff assigned to:
 - a. Special Considerations Unit staff;
 - b. Intake staff;
 - c. General Office staff;
 - d. Escort staff;
 - e. Programs staff;
 - f. Transportation Division staff; and
 - g. Visit staff.

B. GUIDELINES:

1. Facility Determination
 - a. In deciding housing placement for a transgender, intersex, or gender non-binary inmate, the Department shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security concerns. Persons shall be housed in the facility consistent with their gender identity, absent overriding concerns for the detained person's safety.
 - b. The SCDU is responsible for making case-by-case decisions about the housing placement of a transgender/intersex inmate and gender non-binary inmates.

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IV. PROCEDURES (Cont.)

- c. Decisions are based on, but not limited to, the following, when determining risk of vulnerability and safe placement of each transgender, intersex and gender non-binary individual:
 - d. The inmate's own views of where they feel safest, as documented on the SCH form, shall be given serious consideration. If an inmate changes their mind of where they feel safest, a new form must be completed and submitted to the SCDU;
 - e. The inmate's prior institutional history (to include incidents and grievances);
 - f. The inmate's prior violent or sexual crime history;
 - g. Whether the inmate is at risk because the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, gender non-conforming, or gender non-binary.
 - h. The inmate's gender identity including any designation from the PREA Intake Questionnaire (Form PREA-2);
 - i. Whether the inmate has previously experienced sexual victimization;
 - j. The inmate's physical appearance, age, and physical build;
 - k. Any relevant information obtained about the inmate from the PREA unit, security staff or medical and mental health staff, including information received since arrival;
 - l. Whether the placement would present management or security problems;
 - m. Separation orders or requests between inmates and/or staff; and
 - n. Any other relevant information about the inmate, including information that would present management or security problems.
- o. A final determination shall be made by the SCDU. The SCDU will provide its determination for appropriate housing within three (3) business days excluding holidays, unless extenuating factors exist which would require an extension of such time limit. Extenuating factors must be documented and verifiable. The SCDU must retain records concerning all housing applications and determination for no less than three (3) years.

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IV. PROCEDURES (Cont.)

- p. LGBTI-GNC and GNB inmates will be processed identified by themselves or by facility staff (at any time while in custody), and processed according to defined procedures. The Department will implement this policy using the following guidelines:
2. Identifying LGBTI-GNC and GNB Inmates
- a. When identifying LGBTI-GNC and GNB inmates the following should be taken into consideration:
- i. Inmate self-reports.
 - ii. Information provided by the PREA Unit.
 - iii. Information provided by the Health Care provider.
 - iv. Information contained in the Securing Order.
- b. Inmates who are known to the Department to identify as transgender, intersex, or non-binary, or who have self-identified as such, shall be given the opportunity to complete the "Special Considerations Housing Form" (Attachment - A) during intake, booking or at any time while in the Department's custody. This is an ongoing obligation.
- c. Inmates may request the Special Considerations Housing Form from the Department any time after intake, while in the Department's custody.
- d. The Department shall consider all Health Care provider referrals for placement in the SCU.
- e. Process for Transgender, Intersex and Non-Binary Individuals
- i. Inmates with securing orders that indicate male shall start their custody at a male housing facility. Those inmates who identify as transgender, intersex or non-binary during their PREA screening and meet the guidelines for facility level determinations set forth in paragraph III.B.1.c. shall be transferred to a female housing facility for intake and transgender/intersex new admission processing to await determination of the SCU.
 - ii. Those individuals whose securing order indicate male; and who identify as gender non-binary during their PREA screening, shall continue through the intake and new admission process at the male housing facility to await a determination from the SCU.

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IV. PROCEDURES (Cont.)

- iii. Inmates with securing orders that indicate female or transgender female shall start custody at a female housing facility. Inmates who identify as transgender, intersex or gender non-binary during PREA screening and meet the guidelines for facility determinations set forth in paragraph III.B.1.c shall remain at the female housing facility, complete the intake and transgender/intersex new admission process and await determination from the SCDU.
- iv. All inmates who identify or have been identified as a transgender, gender non-binary or intersex must complete the SCH form (Attachment - A) during the intake process.
- v. The facility, command, or division accepting an inmate's written SCH form shall immediately forward the form to the SCDU for processing via email SCDUCommittee@doc.nyc.gov.
- f. The Special Considerations Determination Unit will provide its written determination for appropriate housing within three (3) business days excluding holidays, unless extenuating factors exist, which would require an extension of such time limit. Extenuating factors must be verifiable, and the reason must be documented.
- g. An inmate's self-identification as transgender, intersex, and gender non-binary shall be sufficient for consideration for housing by gender identity absent evidence that the inmate is requesting admission for reasons unrelated to identifying as such, or if there are security or management concerns preventing placement within SCU and/or female facility.
3. Inmates who qualify will be housed based on their gender identity in a facility determined by SCDU.
 - a. Inmates who have indicated a preference for a female facility will be housed either in SCU or considered for placement in an otherwise appropriate housing unit in the female facility (i.e., General Population Unit).
 - i. Admission to SCU will be on a voluntary basis.
 - ii. Inmates who do not qualify to be housed at a female housing facility and/or SCU or who have listed a preference to be housed at a male facility that is determined to be appropriate will be transferred to a male housing facility for processing.

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IV. PROCEDURES (Cont.)

- iii. Such inmates should be interviewed for Protective Custody (PC).
 - b. Justification for denial to housing in the inmate's requested housing facility must be documented in writing and notice of the determination and their right to reconsideration provided to the inmate.
4. Removal from SCU or Female Housing Facility
 - a. All removal of inmates housed in SCU must be approved by SCDU, unless the removal is based on a staff or inmate assault or sexual misconduct or sexual assault allegation.
 - b. In the event of an assault or sexual misconduct or sexual assault allegation:
 - i. Both parties are to be removed from the SCU unless it can be determined immediately who the aggressor is.
 - ii. If both inmates are removed, they must await a determination by the facility or Investigation Division (ID) regarding who the aggressor was and who can be placed back into the unit, if anyone at all.
 - iii. If it is determined that an inmate cannot be placed back in the unit, an assessment of the appropriate location to house the inmate shall be conducted as provided for in B (1) of this directive.
 - c. The inmate can request to leave the SCU or female housing facility at any time by completing a voluntary discharge form and submitting it to a housing facility captain. The Captain shall scan and submit the Voluntary Discharge form to the PREA coordinator, Director of LGBTI Initiatives, and facility Warden by the end of his/her shift.
 - d. Inmates removed from SCU for any reason shall have the ability to re-apply by submitting a SCH form. Absent exigent circumstances, inmates must wait three (3) months before they can reapply.
 - e. An inmate can be removed or denied placement in an SCU and/or female housing facility for reasons including, but not limited to, factors referred to in section (B)(1)(c) above.

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IV. PROCEDURES (Cont.)

- f. Placement and programming assignments for each transgender, non-binary or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.
5. Reconsideration Process
 - a. Inmates who identify as transgender, intersex or gender non-binary who were previously denied admission into their requested facility, as indicated on the SCH Form, during the new admission process, may submit a form for reconsideration (See Appendix B) to the Reconsideration Review Board ("Review Board") within thirty days of notice of the initial denial.
 - b. Inmates who submit a form for reconsideration may submit any relevant information and/or material to the Review Board for its consideration so that the Review Board can make a determination.
 - c. The Review Board shall provide its final determination within ten (10) business days excluding holidays. The review board must articulate their decision in writing and send their written justification to the inmate within three (3) business days of their final determination absent extenuating circumstances. The Review Board must retain records concerning all housing applications and determinations for no less than 3 years.
 - d. Inmates who qualify for housing placement in a female housing facility, will be housed either in an SCU or considered for placement in an otherwise appropriate housing unit in a female housing facility, i.e., General Population housing.
 - e. Inmates who do not qualify to be housed at a female housing facility shall be transferred or remain at the male housing facility.
 1. Such inmates shall be interviewed for PC housing.
 - C. Searches of Transgender, Intersex or Non-Binary Inmates
 1. All searches will be conducted and documented according to this Directive, Directive 5011R-A, "Elimination of Sexual Abuse and Sexual Harassment" and Directive 4508R-E, "Control of and Search for Contraband."
 2. Transgender, intersex, or gender non-binary inmates shall be asked to indicate on their Special Consideration Housing Form (Attachment - A) their gender preference of the staff who searches them.

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IV. PROCEDURES (Cont.)

3. Absent exigent circumstances, all strip and pat searches of transgender, intersex, and gender non-binary inmates are to be performed by officers of the gender requested and documented in writing on the "Special Consideration Housing Form" (Attachment - A), or, if not possible, by an officer of the same perceived gender identity as the inmate.
 4. Cross-gender inmate pat/frisk searches of female inmates by male employees are prohibited, except in exigent circumstances.
 5. If exigent circumstances exist; and a cross-gender pat/frisk search of a female inmate; or cross-gender strip search; or body cavity search of any inmate does occur, the search must be documented using "Random Search Form" (Attachment C), in accordance with Directive 4508R-E, "Control of and Search for Contraband." A copy of the completed form shall be forwarded to all persons designated on the distribution in accordance with Directive 4508R-E, as well as, the PCM and the PREA Coordinator.
 6. No search shall be conducted for the sole purpose of observing a transgender or intersex inmate's genital characteristics.
 7. As in all facilities, an inmate may not refuse a search.
- D. Programming Assignments for Transgender or Intersex Inmates
1. The Department shall provide an opportunity to participate in additional programming for transgender and intersex inmates specific to the needs of the population in all facilities to which such individuals are assigned.
 2. Programming assignments for transgender, gender non-binary, or intersex inmates shall be made on an individualized basis and after considering the criteria set forth in III B.1.c. Whenever programming assignments for transgender, gender non-binary and intersex inmates are being considered the SCU shall be consulted.
 3. SCU staff shall be steady assigned to the SCU housing area, absent extenuating circumstances.

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IV. PROCEDURES (Cont.)

- a. Intra-facility movement of transgender, intersex and gender non-binary inmates shall be escorted by a steady escort as follows:
 - i. All movement to and from housing areas; and
 - ii. Attendance at program or service locations within the facility.
 - iii. Staff assigned to supervise, escort and transport our transgender, intersex and gender non-binary inmates must be trained on all provisions of this policy and must have completed pre-developed LGBTI-GNC-GNB training.
 4. Programs and recreation services available to inmates assigned to a housing facility, shall also be afforded to transgender, intersex, and gender non-binary inmates. They shall be permitted to comeingle with other facility populations for the purposes of access to mandated services, work assignments, programs and recreation.
 5. A shower logbook shall be instituted for any general population housing unit that houses both transgender/intersex and cisgender inmates at the female housing facility, as well as within the transgender/intersex new admission unit. Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
 6. LGBTI-GNC-GNB inmates shall not be denied access to programs or services based solely on their LGBTI-GNC-GNB status.
 7. If placement in a program presents an articulable security risk that cannot be mitigated, such risk must be documented in writing.
- E. Toiletry Items and Clothing
1. Transgender and intersex inmates shall have access to toiletries (e.g. face cream, cleaners, sanitary supplies, razor, etc.) appropriate to their gender identity and gender expression, regardless of the facility to which they are assigned.
 2. Transgender and intersex inmates shall have the ability to order clothing that accords with their gender identity and gender expression (e.g. female men) regardless of the facility to which they are assigned. All inmates have to abide by the rules and regulations, for purposes of this section, as pertains to clothing.

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IV. ATTACHMENTS

- A. [Special Consideration Housing Form](#)
- B. [Special Consideration Housing Reconsideration Form](#)
- C. [Inmate Voluntary Discharge Form](#)

V. REFERENCES

- A. [Directive 4508R-E, entitled "Control of and Search for Contraband," dated May 15, 2009.](#)
- B. [Directive 5011R-A, entitled "Elimination of Sexual Abuse and Sexual Harassment," dated 5/31/19.](#)
- C. [Board of Correction Minimum Standards on the Elimination of Sexual Abuse and Sexual Harassment & Prison Rape Elimination Act.](#)

VI. SUPERSEDES

- A. Directive 4498, entitled "Transgender Housing Unit", dated 12/3/14.
- B. Any other Directive, Operations Order, Teletype, Memorandum, etc., that may be in conflict with the policies and procedures outlined herein.

VII. SPECIAL INSTRUCTIONS

- A. Within ten (10) days of the effective date of this order Commanding Officers of Facilities and Divisions shall promulgate a Command Level Order to ensure strict compliance with the provisions outlined herein.
- B. Copies of all Command Level Orders shall be forwarded to the office of the respective Supervising Warden.
- C. Commanding Officers of Facilities and Divisions shall ensure that the provisions of this Operations Order are strictly complied with.



NYC DEPARTMENT OF CORRECTION

Special Considerations Housing Form

Please note: Some inmates do not identify as either male or female. If an inmate does not identify as either male or female, this form can be completed for purposes of identifying a search and housing preference. However, a determination will still be made on a case-by-case basis.

INMATE INFORMATION

DATE	NAME (LAST NAME, FIRST NAME) & ALIAS	
DATE OF BIRTH	GENDER IDENTITY	PREFERRED PRONOUN
	Transgender Male: <input type="checkbox"/> Transgender Female: <input type="checkbox"/> Intersex: <input type="checkbox"/> Gender Non-Binary: <input type="checkbox"/>	(e.g.: he, she, they, other)
BOOK & CASE #	NYSD #	CURRENT FACILITY

HOUSING PREFERENCE

While in custody I would prefer to be housed at:

a female facility: the Special Considerations Unit: a male facility:

SEARCH PREFERENCE

While in custody I would prefer to be searched by:

Women: Men: No Preference:

REASON FOR HOUSING REQUEST

INMATE ACKNOWLEDGEMENT

If accepted to the facility of my preference, I agree that to abide by all departmental rules. Inmates who identify as transgender, intersex or gender non-binary who are denied admission into their preferred facility, as indicated on this Special Consideration Housing Form, may submit a form, "Special Considerations Housing Reconsideration Form" for reconsideration to a Reconsideration Review Board ("Review Board") within seven days of their initial denial. Inmates who submit a form for reconsideration may submit any relevant information and/or material to the Review Board for its consideration.

Inmate Signature: _____ Date: _____

TO BE COMPLETED BY DOC STAFF COMPLETING THE FORM ONLY

RANK, NAME, SHIELD NUMBER	DATE RECEIVED:	FACILITY

Staff Signature: _____ Date: _____

TO BE COMPLETED BY PREA TEAM COMMITTEE MEMBER ONLY:		
SPECIAL CONSIDERATIONS HOUSING FINAL DECISION		
Approved <input type="checkbox"/> Denied <input type="checkbox"/> If denied, check the appropriate denial category that applies below		
OHS ASSESSMENT RESULTED IN RECOMMENDATION TO BE PLACED IN A MEDICAL/THERAPEUTIC UNIT <input type="checkbox"/>		
HISTORY OF UNRESOLVED CONFLICT WITH AN INDIVIDUAL(S) CURRENTLY HOUSED IN THE UNIT <input type="checkbox"/>		
INCONSISTENCY IN THEIR IDENTITY (IN PLACE OF LACK OF MEDICAL/Legal REASONS) <input type="checkbox"/>		
OTHER SECURITY CONCERNS: <input type="checkbox"/> Please provide an explanation of security concern:		
ADDITIONAL COMMENTS:		
RANK, NAME, SHIELD NUMBER	MEMBER SIGNATURE	Date:

REVIEW BOARD MEMBER DETERMINATIONS			
REQUIRED MEMBERS	NAME		RANK OR TITLE
PREA COORDINATOR OR DESIGNEE	Print:	Signature:	Rank or Title:
Date of Determination:	Approved <input type="checkbox"/> Denied <input type="checkbox"/>		Comments:
CHIEF OF DEPARTMENT OR DESIGNEE	Print:	Signature:	Rank or Title:
Date of Determination:	Approved <input type="checkbox"/> Denied <input type="checkbox"/>		Comments:
HEALTH AFFAIRS REPRESENTATIVE	Print:	Signature:	Rank or Title:
Date of Determination:	Approved <input type="checkbox"/> Denied <input type="checkbox"/>		Comments:
COMMANDING OFFICER	Print:	Signature:	Rank or Title:
Date of Determination:	Approved <input type="checkbox"/> Denied <input type="checkbox"/>		Comments:
DIRECTOR OF LGBTI INITIATIVES	Print:	Signature:	Rank or Title:
Date of Determination:	Approved <input type="checkbox"/> Denied <input type="checkbox"/>		Comments:
SPECIAL CONSIDERATIONS HOUSING FINAL DECISION			
Approved <input type="checkbox"/> Denied <input type="checkbox"/> If denied, check the appropriate denial category that applies below			
CDS ASSESSMENT RESULTED IN RECOMMENDATION TO BE PLACED IN A MEDICAL/THERAPEUTIC UNIT <input type="checkbox"/>			
HISTORY OF UNRESOLVED CONFLICT WITH AN INDIVIDUAL(s) CURRENTLY HOUSED IN THE UNIT <input type="checkbox"/>			
INCONSISTENCY IN THEIR IDENTITY ON PLACE OF LACK OF MEDICAL/LEGAL REASONS <input type="checkbox"/>			
OTHER SECURITY CONCERNS: <input type="checkbox"/>			
Please provide an explanation of security concerns:			

ATTACHMENT C

SCU-2 Rev. 10/22/19

THE CITY OF NEW YORK
DEPARTMENT OF CORRECTION

INMATE VOLUNTARY DISCHARGE FORM

Inmate's Name: _____ Date: _____
Book & Case #: _____
Date of Birth: _____ Age: _____ Housing Area: _____

I am requesting to be removed from the SCU Female Facility for the following reasons:

I hereby acknowledge that the above written statement was made VOLUNTARILY of my own free will without promise of reward, or under any threat of physical harm or fear of physical harm.

INMATES SIGNATURE _____ DATE _____

WITNESSED BY: _____
Print Name Signature Rank Shield

B. CHS Policy on Transgender Care Med 24B with Attachments

SUBJECT: TRANSGENDER CARE

POLICY #: MED 24B

POLICY:

All transgender patients will receive appropriate care, education, therapy, and medical follow-up as described in this policy.

PURPOSE:

The purpose of this policy is to:

- Remove barriers to transgender therapy by providing an appropriate regimen, which, in many cases, can be initiated by primary care providers.
- Assist primary care providers to appropriately counsel, monitor, and manage the care of transgender patients.
- Provide clear guidance for providers on how to initiate, and when and how to safely titrate and individualize, therapy.
- Improve patient understanding of the risks and benefits associated with transgender hormone and anti-androgen therapy and support therapeutic partnerships for care whenever possible.

PROCEDURE:

In all cases, practice gender-affirming care by demonstrating respect for patients by utilizing their preferred name and pronoun (ask which pronoun they prefer) and avoiding judgment and editorializing during medical encounters. Note that physical examinations can be traumatizing to patients and should be limited to what is relevant to an acute complaint.

I. Patients who wish to CONTINUE hormone therapy (either previously prescribed in the community or self-administered “on the street”)

The goal of maintenance therapy is to obtain the desired physical changes while keeping hormone levels in the physiologic range for the desired gender and minimizing adverse effects. For this reason, certain laboratory monitoring is required periodically. Patients must be screened for conditions that may worsen with hormone therapy and counseled on the adverse effects of medications.

A. Counseling Acknowledgement (see attached forms)

Carefully review patient education information on the appropriate counseling form with the patient:

1. Read and review with patient each sub-section;
2. Have patient initial each section indicating they understand;

SUBJECT: TRANSGENDER CARE

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- 3. Answer any questions the patient may have; and
 - 4. Have patient sign form, provide a copy to the patient, and submit to medical records for scanning.
- B. Enter ICD-10 diagnosis code F64.0 “Transsexualism” or F64.1 “Gender Dysphoria.” Z87.890 “Transgender identity” may be added to charts and may be most consistent with the patient’s identity; however, Z codes may cause insurance challenges for prescriptions sent to the community at the patient’s discharge.
- C. Complete Medical Evaluation (follow procedure below for feminizing/estrogen or masculinizing/testosterone)

1. ESTROGEN therapy

- a. History - Obtain information regarding:
 - i. Prior use of hormones and any prior prescribers or street use and confirmed doses, last dose;
 - ii. Tobacco smoking (counsel cessation);
 - iii. Cardiovascular disease, including myocardial infarction and stroke;
 - iv. Autoimmune disease (may worsen or improve with estrogen);
 - v. Migraine headache (may worsen with estrogen therapy).
 - vi. Active hormone-sensitive cancers (pituitary, breast) – This is an ABSOLUTE CONTRAINDICATION to estrogen therapy.

b. Laboratory testing for feminizing hormone therapy:

Test	Comments	Initial	3 mos	6 mos	12 mos	Yearly	PRN
BUN/Cr/K+	Only if aldactone used	X	X	X	X	X	X
Lipids	No evidence to support monitoring at any time; use discretion						X
A1c or glucose	No evidence to support monitoring at any time; use discretion						X
Estradiol		X	X	X			X
Total Testosterone		X	X	X	X		X
Prolactin	Only if symptoms of prolactinoma						X

- i. Order basic metabolic panel to assess baseline levels of BUN/Cr/K+.
 - ii. Obtain serum total testosterone and serum total estradiol levels (goal is physiologic female level of estradiol, testosterone <55 ng/dl).
 - iii. Only if patient reports visual disturbance or galactorrhea, order prolactin level.
 - iv. Order other laboratory tests only as indicated for the management of other medical conditions or in accordance with USPTF screening guidelines.
- c. Therapy typically consists of a testosterone blocker and an estrogen hormone. In the jail, the most practical and safest combination for initial therapy is:
- i. Micronized oral estradiol 3 mg PO BID (MAX 8mg/daily)
-or-
Estradiol Valerate 20mg IM Q2 Weeks (MAX 40mg/Q2 weeks)
(Patients may choose one formulation)
 - ii. Spironolactone 50 mg PO BID (MAX 200mg BID)
If a history of hyperkalemia or renal disease, finasteride 5mg PO daily can be used in place of spironolactone. No testosterone blocker is needed in patients who have had orchiectomy (removal of the testes).
 - iii. Patients may be continued on community doses of medications that do not exceed maximum doses if the dose can be confirmed with the community pharmacy.
- d. Schedule patient for a follow-up visit in 3 months and order future labs to be drawn in 3 months:
- i. Total serum testosterone
 - ii. Total serum estrogen
 - iii. Basic Metabolic Panel (BUN/Cr/K+)
- e. Follow-up Visit:
- i. Review labs and adjust or substitute medication as indicated (refer to Transgender template for guidance);
 - ii. Monitor for hyperkalemia;
 - iii. Testosterone suppression has a greater effect on secondary sex characteristics than estrogen. The goal for suppression is <55ng/dl.
 - iv. Estrogen goal is to achieve desired feminization without exceeding the upper limit of normal physiologic range for pre-menopausal women. Many patients achieve desired results at lower measured levels (within the mid-range); there is no evidence that higher levels increase feminization and may only increase risks.

BioReference Lab Ranges for Pre-menopausal Women

E1 Estrone(pg/mL)	E2 Estradiol(pg/mL)	Total Calculation Estrogens(pg/mL)
17.0 - 200	15.0 - 350	32 – 550

2. TESTOSTERONE Therapy

a. History - Obtain information regarding:

- i. Prior use of hormones and any prior prescribers or street use, confirmed doses, and last dose;
- ii. Autoimmune disease (may worsen or improve with testosterone);
- iii. Active or prior history of hormone-sensitive cancer (active cancer is an absolute contraindication); and
- iv. Presence of PCOS (may warrant additional monitoring for hyperlipidemia and diabetes).

b. Laboratory Testing for Masculinizing therapy:

Test	Comments	Initial	3 mos	6 mos	12 mos	Yearly	PRN
<i>Lipids</i>	No evidence to support monitoring at any time; use discretion						X
<i>A1c or fasting glucose</i>	No evidence to support monitoring at any time; use discretion						X
<i>Estradiol</i>							X
<i>Total Testosterone</i>			X	X	X		X
<i>Hemoglobin & Hematocrit</i>		X	X	X	X	X	X

- i. Order CBC (monitor for erythrocytosis) and total serum testosterone level (achieve desired masculinization within safe range).
 - ii. Order other laboratory tests only as indicated for the management of other medical conditions (such as PCOS or metabolic syndrome) or in accordance with USPTF screening guidelines.
- c. Therapy: Goal of therapy is to attain masculinizing effects while maintaining H/H in a safe range and testosterone level within normal male physiologic range. Initial safe therapy in the jail is:
- i. Testosterone Ethanoate 50mg SubQ weekly (Subcutaneous dose should be given using 25-gauge 5/8-inch needle.) MAXIMUM: 100mg weekly.

- ii. Patients may be continued on community doses of medications that do not exceed maximum doses if the dose can be confirmed with the community pharmacy.
- d. Schedule patient for a follow-up visit in 3 months and order future labs to be drawn in 3 months:
 - i. Total serum testosterone; and
 - ii. CBC (H/H).
- 3. Follow-up Visit:
 - a. Review labs and adjust testosterone dosing as indicated based on H/H and clinical response (expect cessation of menses by 6 months after initiating therapy).
 - b. Testosterone goal is to achieve desired masculinization without adverse effect on H/H and without exceeding the upper limit of normal male physiologic range.

Testosterone Normal Male Physiologic Range – BioReference

Testosterone, Total Serum	249.0-836.0 (ng/dL)
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II. Patients who wish to INITIATE hormone therapy

- A. Initiation of hormone therapy in hormone-naïve patients requires:
 - 1. Clear documentation of the indication for therapy is required as outlined in Part A of this policy. This includes obtaining a full history and providing an indication for therapy. Some primary care physicians may be comfortable diagnosing patients with gender dysphoria or another indication for initiating hormone therapy. If unable or uncomfortable with making an appropriate diagnosis, seek expert help by notifying the SMD of the need for the patient to be evaluated by an appropriate on-island practitioner with experience in this area. Consultation with mental health is available, but not required.
 - 2. Determination of absence of any medical contraindications to therapy:
 - a. There are few contraindications to therapy, but an active hormone-sensitive cancer is an ABSOLUTE contraindication and should be managed by an oncologist. A history of such cancer should also be referred to the management of a specialist.
 - b. Relative contraindications as outlined in the counseling documents (see attachments) should be discussed in detail with the patient and monitored accordingly, with specialist input as indicated.

3. Determination that the patient has the capacity to accept hormone treatment:
 - a. Medical providers must engage the patient in a discussion of the risks and benefit of therapy and document this conversation in the medical record. In addition, they should determine that the patient possesses the capacity to engage in the informed consent process regarding this intervention before initiating therapy.
 - b. Evidence that the patient is experiencing active symptoms of a psychiatric condition that could be influencing decision-making capacity (including psychosis, depression, mania, or an underlying neurocognitive disorder) should prompt consultation with mental health (the senior psychiatrist or clinical supervisor assigned to the housing area) prior to initiating hormone therapy. Some mental health conditions may improve when hormone therapy is initiated, as the therapy may treat an underlying gender dysphoria, so consultation and a team approach is best.
- B. After establishing diagnosis and determining no medical or mental health contraindication to therapy, therapy may proceed as outlined in section I, above.
- C. Follow up timeframe for hormone naïve patients should be:
 - a. 1 month when initiating hormone therapy
 - b. 1-2 weeks if not initiating hormone therapy (due to complexity arising from diagnosis or contraindications, as above). SMD should be notified in all such cases.

III. Post-surgical Care

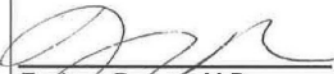
Patients who have undergone gender confirmation surgery may have specific post-surgical care needs that should be accommodated (e.g., arranging access to vaginal dilators). Any such case should be conferenced with the Site Medical Director and Director of Nursing to coordinate procurement of necessary supplies and any needed specialty consultation. Requests from patients for gender reassignment surgery should be directed to the Site Medical Director to further investigate logistical coordination of such procedures.

ATTACHMENTS:

1. Counseling for Feminizing Therapy
2. Counseling for Masculinizing Therapy

SUBJECT: TRANSGENDER CARE

POLICY #: MED 24B

Approved by:	Original Issue Date	Date(s) of Revision
 Zachary Rosner, M.D. Chief of Service, Medicine Correctional Health Services	May 11, 1994	April 1, 2000 March 19, 2008 June 2012 March 27, 2015 July 1, 2015 November 5, 2018 May 8, 2019 October 21, 2019

Although hormone therapy for gender affirmation is based on many years of experience, and ongoing research is providing more information on safety and efficacy, all the long-term consequences and effects are not fully known and understood. This information is being provided to you so that you can decide, in consultation with a healthcare provider, if hormone therapy is right for you. Everyone responds to hormone therapy differently, and it is difficult to predict how you will respond. Taking more hormone than recommended increases the risk of undesired side effects and does not increase feminization.

Expected Effects of Estrogen Hormone Therapy

Feminine changes in the body may take several months to become noticeable, and usually take up to 3 to 5 years to be complete.

Initials

_____ **PERMANENT Body Changes** - *will not go away even if hormone therapy is stopped*

- Breast growth & size varies in all women.
- Smaller, softer testicles.
- Less sperm.
- Infertility: how long this takes to become permanent varies greatly. You are advised to use birth control to prevent unwanted pregnancy.

_____ **REVERSIBLE Body Changes** - *will likely reverse if hormone therapy is stopped*

- Muscle & fat changes: loss of muscle mass, less strength in the upper body; weight gain in the buttocks, hips and thighs.
- Skin: softer skin, possibly less acne.
- Hair: softer, lighter, grows slower. However hormone therapy usually doesn't get rid of all unwanted hair (consider hair removal treatments). Male pattern baldness may slow down or stop, but hair generally does not regrow.
- Sex: reduced sex drive, erectile dysfunction. Ejaculate becomes thinner, watery, in a smaller amount.
- Possible changes in mood or thinking.

_____ **Hormone therapy will NOT change:**

- Bone structure of the face or body (the Adam's apple will not shrink).
- The pitch of your voice will not automatically change.

_____ **Risks and Possible Side Effects of Estrogen**

- Nausea and vomiting (like morning sickness), especially when starting estrogen therapy.
- Loss of fertility (unable to get someone pregnant), even if you stop taking hormones (see above).
- If you smoke, there is an increased risk of blood clots. Blood clots can occur in the legs/arms, lungs, heart, and brain; blood clots can lead to death. You are encouraged to stop smoking. Some smokers choose to take aspirin 81mg if there are no history of GI bleeds, but there is no strong evidence for its use. Risk of blood clots is lessened in NON-SMOKERS, particularly with the micronized form of oral estrogen used at normal doses (estradiol).
- MAY increase risk for cardiovascular disease (heart attack and stroke). The risk is higher if you are over 45, have high blood pressure or cholesterol, have relatives with cardiovascular disease, have diabetes, are overweight/obese, use tobacco, are physically inactive, or have an unhealthy diet.
- MAY increase risk for diabetes. Maintaining a healthy weight, being physically active, and eating a healthy diet may help to lessen the risk.
- May cause or worsen headaches and migraines.

Counseling for Feminizing Therapy

B/C: _____

- May worsen or improve autoimmune conditions. If you have an autoimmune condition, your provider should be made aware.
- Estrogen therapy is considered an unacceptable risk if you have active estrogen-sensitive cancer. If in remission, hormone therapy should be (re)started under the guidance of your oncologist.

_____ **Risks and Possible Side Effects of Androgen Blockers (Spironolactone)**

- Increased urination and thirst.
- A drop in blood pressure or feeling lightheaded. See a medical provider if this occurs.
- Possible changes in kidney function. Kidney labs should be monitored while on therapy.
- Increased potassium in the blood and in your body can lead to muscle weakness, nerve problems, and dangerous, irregular heart rhythms. Electrolytes should be monitored while on therapy.

Understanding of Therapy

Treatment with estrogen is expected to be long-term; suddenly stopping estrogen treatment may have negative health effects. You may choose to stop taking hormones at any time for any reason. You are encouraged to discuss this decision with your medical provider. Hormone therapy is not the only way to appear more feminine and live as a female. If interested, please discuss other options with your provider(s).

_____ I understand that smoking greatly increases the risks of taking hormone therapy, especially the risk of blood clots and cardiovascular disease.

_____ I agree to take hormone therapy only at the dosages prescribed, in the form prescribed, and to discuss treatment with a medical provider before making any changes.

_____ I will inform providers if I start any new prescription drugs, dietary supplements, herbal remedies, or street drugs to discuss interactions and the effects on hormone treatment. I understand this information is confidential.

_____ Regular follow-up and screenings (blood tests, mammograms, DEXA scans or prostate exams) monitor for potential harmful effects and help to ensure that hormone therapy is safe and effective.

Patient's preferred name _____ Patient's name in medical record, if different _____

Patient signature _____ Date _____

Provider Name _____ Provider Title _____

Provider signature _____ Date _____

Although hormone therapy for gender affirmation is based on many years of experience, and ongoing research is providing more information on safety and efficacy, all the long-term consequences and effects are not fully known and understood. This information is being provided to you so that you can decide, in consultation with a healthcare provider, if hormone therapy is right for you. Everyone responds to hormone therapy differently, and it is difficult to predict how you will respond. Taking more hormone than recommended increases the risk of undesired side effects.

Expected Effects of Testosterone Hormone Therapy

Masculine changes in the body may take several months to become noticeable, and usually take up to 3 to 5 years to be reach maximum effect.

Initials

_____ **PERMANENT Body Changes** - *will not go away even if hormone therapy is stopped*

- Deeper voice
- Hair growth: thicker and darker on face & body.
- Hair loss: depends on family patterns, is unpredictable, can occur soon after beginning testosterone. Male pattern baldness occurs at the temples or crown and can progress to complete baldness.
- Bigger clitoris/phallus
- Possible Infertility: how long this takes to become permanent varies greatly. Some people choose to harvest and bank eggs before starting meds (not covered by health insurance).

_____ **REVERSIBLE Body Changes** - *will likely reverse if hormone therapy is stopped*

- Menstrual periods will stop, usually within a few (6) months of starting testosterone, but can take a year. Contraception such as Depo-provera, Nexplanon, and Mirena IUD also help decrease periods.
- Weight gain in the mid-section
- Increased muscle mass and upper body strength
- Skin changes, including acne that can be severe
- Increased libido or sex drive
- Possible changes in mood or thinking

_____ **Risks and Possible Side Effects of Testosterone**

- Loss of fertility (unable to become pregnant), even if you stop taking hormones. You can still get pregnant on testosterone and testosterone is harmful to the fetus. Testosterone is NOT birth control.
- Fetus with birth defects or non-viability if you do get pregnant.
- Increased red blood cells can cause problems with circulation, blood clots, strokes, and heart attacks. If this happens, the testosterone levels should be checked and dosage adjusted accordingly. Smoking cigarettes also increases red blood cell counts and thus a plan to quit should be strongly considered.
- Acne on face and body tends to be worst in the first year of testosterone therapy, then gets better.
- Hair loss is unpredictable, depends on family patterns, and can occur soon after beginning testosterone. Treatment with finasteride (propecia) can reverse other masculine traits and cause reduced libido or sexual dysfunction.

- May cause pelvic pain. The vaginal lining often becomes more dry and fragile, which can cause irritation and discomfort (especially after penetration or orgasm), and is more prone to sexually transmitted infection, irritation inside the vagina and urinary infections. Prior surgery and sexual trauma can worsen pain. Treatment can include lubricants, moisturizers, or a short course of vaginal estrogen (minimal systemic absorption will not decrease the desired effects of testosterone), NSAIDs or anti-depressants.
- May cause or worsen headaches and migraines.
- May worsen or improve autoimmune conditions. If you have an autoimmune condition, please loop your specialist into your care.
- Testosterone therapy is considered an **UNACCEPTABLE RISK** if you have active sex hormone-sensitive cancer. If in remission, hormone therapy should be (re)started under the guidance of your oncologist.

Understanding of Therapy

Treatment with testosterone is expected to be long-term. You may choose to stop taking hormones at any time for any reason. You are encouraged to discuss this decision with your medical provider. Hormone therapy is not the only way to appear more masculine and live as a male. If interested, please discuss other options with your provider(s).

- _____ I understand that smoking greatly increases the risks of taking hormone therapy, especially the risk of blood clots through increased red blood cell count.
- _____ I agree to take hormone therapy only at the dosages prescribed, in the form prescribed, and to discuss treatment with a medical provider before making any changes.
- _____ I will inform providers if I start any new prescription drugs, dietary supplements, herbal remedies, or street drugs to discuss interactions and the effects on hormone treatment. I understand this information is confidential.
- _____ Regular follow-up and screenings (blood tests, pap smears, DEXA scans, mammograms) monitor for potential harmful effects and help to ensure that hormone therapy is safe and effective.

Patient's preferred name	Patient's name in database, if different
Patient signature	Date
Provider Name	Provider Title
Provider signature	Date



C. DOC Directive 5011R-A Elimination of Sexual Abuse and Sexual Harassment (Excerpt)

“The purpose of this Directive is to establish New York City Department of Correction (Department) policies and procedures for preventing, detecting, reporting, and responding to incidents of sexual abuse and sexual harassment against inmates in Department custody pursuant to the Prison Rape Elimination Act (PREA) of 2003.”

The entirety of the Department’s Directive 5011R-A is not included in this report’s appendix due to its considerable length. The policy can be found posted online at the Department’s website at:

https://www1.nyc.gov/assets/doc/downloads/directives/5011R-A-Elimination_Sexual_Assault_Sexual_Harassment.pdf

The 5011R-A sections pertaining to housing LGBTI people in custody and the PREA Intake Questionnaire are included below:

	EFFECTIVE DATE 5/31/19	SUBJECT ELIMINATION OF SEXUAL ABUSE AND SEXUAL HARASSMENT		
	CLASSIFICATION # 5011R-A			
	DISTRIBUTION A	APPROVED FOR WEB POSTING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	PAGE 17 OF 44 PAGES	

V. GUIDELINES (Cont.)

placed in the Inmate Information System (IIS) to prevent these inmates from being housed in the same housing area.



- f. The Department shall use information from the inmate's risk screening to make informed decisions regarding housing, work, education, and program assignments with the goal of keeping separate those at high risk of being victimized from those at high risk of being sexually abusive.

4. REASSESSMENT

- a. Within a set time period, not to exceed thirty (30) days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness.
- b. An inmate's risk level shall be reassessed when warranted and/or as needed due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness using Form PREA-3, "PREA Safety Check - Reassessment" (Attachment D) (Revised).
- c. Inmates may not be disciplined for refusing to answer or for not disclosing complete information in response to screening questions.
- d. The Department shall use information from the inmate's reassessment to reevaluate current housing, work, education, and programs assignments with the goal of keeping separate those at high risk of being sexually victimized from those at high risk of being sexually abusive.

5. HOUSING LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX INMATES

- a. In deciding whether to assign a transgender or intersex inmate to a male or female facility and in making other housing and programming assignments, the Department shall consider on a case-by-case basis whether a placement would ensure the health and safety of the inmate and whether the placement would present management or security problems.
- b. Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

	EFFECTIVE DATE 5/31/19	SUBJECT ELIMINATION OF SEXUAL ABUSE AND SEXUAL HARASSMENT		
	CLASSIFICATION # 5011R-A			
	DISTRIBUTION A	APPROVED FOR WEB POSTING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	PAGE 18 OF 44 PAGES	

V. GUIDELINES (Cont.)

- c. A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.
- d. Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
- e. The Department shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings based solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.
- f. For more information as it pertains to lesbian, gay, bisexual, transgender, intersex, gender non-binary and gender non-conforming inmates, see Directive 4498, "Lesbian, Gay, Bisexual, Transgender, Intersex and Gender Non-Forming Inmates."

6. YOUTHFUL INMATES

- a. A youthful inmate shall not be placed in a housing unit in which the youth will have sight, sound, or physical contact with any adult inmate through the use of shared dayroom or other common space, shower area, or sleeping quarters.
- b. In areas outside of housing units, the Department shall maintain sight and sound separation between youthful inmates and adult inmates or provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.
- c. Exigent circumstances may require removal to a special housing unit to ensure youthful inmates are not in an environment where they will have sight, sound, or physical contact with an adult inmate. In these cases, the facility shall make its best efforts not to place youthful inmates in isolation cells. If required to be isolated due to exigent circumstances, these inmates will have access to large-muscle exercise and all legally required special education services. They will also have access to programs and work opportunities to the extent possible. All decisions and reasons for those decisions shall be clearly documented.

ATTACHMENT - B

CORRECTION DEPARTMENT CITY OF NEW YORK			
PREA INTAKE QUESTIONNAIRE		Form: PREA-2 Rev.: 6/3/19 Ref.: Dir. 6011R-A	
Form Instructions: Intake Staff shall initiate this form upon intake of each inmate. Upon completion of the required sections (shaded), Intake Staff shall sign and date this form. Classification Staff shall complete the remainder of the form. Classification Staff shall also sign and date this form upon completion. Question and Scoring instructions are below.			
Inmate's Last Name:	Inmate's First Name:	Book & Case Number:	NYSID Number:
AT RISK OF VICTIMIZATION		INTAKE	CLASSIFICATION
1. "Do you have any mental, physical or developmental disabilities?"			
2. (INTAKE STAFF: Does the inmate require interpreter services due to a language barrier?)			
3. "How old are you?"			
4. <i>(Is the inmate small in stature?)</i>			
5. "Is this your first time being incarcerated?"			
6. <i>(Does inmate have a non-violent offense history only?)</i>			
7. "Do you have any prior convictions for sex offenses against an adult or child?" <i>(INTAKE STAFF: if NO, does the inmate appear lesbian, gay, bisexual, transgender, intersex, or gender non-conforming? If YES, check the Documentation Reflects box to the right)</i>	Inmate	Staff	
8. "Have you ever experienced prior sexual abuse, been molested, or been sexually assaulted?"			
9. "Do you have any concerns for your own safety while you are here?" <i>(INTAKE STAFF: if YES, note what the inmate says in the NOTES below.)</i>			
10. <i>(Is the inmate here only for civil immigration purposes? The answer is typically NO.)</i>			
AT RISK OF ABUSIVENESS		INTAKE	CLASSIFICATION
11. "Have you ever committed sexual abuse or a sex crime such as rape or a sex offense?" <i>(INTAKE STAFF: Tell inmate this does not include Prostitution.)</i>			
12. "Have you committed a violent act or a sexual act while in jail or prison before?"			
13. "Do you have convictions for a violent crime (such as Robbery, Murder, Rape, Carjacking, or any type of Assault)?"			
INTAKE NOTES			
Inmate Staff Preparing:	Signature:	Rank/Title:	Shield/ID: Date:
CLASSIFICATION NOTES			
Classification Staff Preparing:	Signature:	Rank/Title:	Shield/ID: Date:

QUESTION AND SCORING INSTRUCTIONS:

- 1) Intake Staff shall ask the inmate each question and record the inmate's answers in the "Intake" column. For questions 3, and 10, Intake Staff shall provide the required information, NOT ask the inmate these questions. For question 7, Intake Staff shall ask the required question and provide a personal evaluation.
- 2) Classification Staff shall provide answers for each question based on knowledge gained via prior documentation in the "Classification" column.
- 3) A YES answer in any row (horizontal) is considered a YES for the purposes of this screening.
- 4) Two (2) or more YES answers to Questions 1-10 indicates the inmate may be prone to sexual victimization. **FOR WOMEN'S JAIL: three (3) or more YES answers to Questions 1-10 indicates the inmate may be prone to sexual victimization. However, any concerns about the inmate's safety, even if no "YES" answers are given, should be shared with and reported to your supervisor.**
- 5) **FOR WOMEN'S JAIL: A YES to Questions 3, 5, 7, and 8 shall be considered in making safe housing, bed, and program decisions but their weight may not be as indicative for risk of victimization for women.**
- 6) Any combination of two (2) or more YES answer to Questions 6, 11, and 12 indicate inmate may be prone to sexual aggression or abusiveness.
- 7) A YES answer to Question 8 by any inmate requires Medical or Mental Health to offer a meeting with a clinician within fourteen (14) days of intake.
- 8) Question 2: Any inmate who is under twenty-one (21) years old should have the totality of their responses and known history weighed to make appropriate bed, housing, and programming decisions to ensure safety (including ensuring inmates under eighteen (18) years old are always under direct staff supervision until housed with other youthful inmates).
- 9) A YES answer to Question 13 should be weighed along with the inmate's known history and used to make appropriate bed, housing, and programming decisions to ensure safety.

Distribution: White Copy – PCM

Yellow Copy – Inmate Folder

Pink Copy – Medical

D. Bronx Criminal Court Memorandum



**BRONX CRIMINAL COURT
OPERATIONS OFFICE**



MEMORANDUM

DATE: September 13, 2019
TO: All Uniformed Staff
FROM: Major Clemont Mack *cmack*
SUBJECT: Transgender Notification for Securing Order/Sentence and Commitment

Effective immediately, when Defense Counsel is representing a transgender defendant that identifies as female, counsel may bring this to the attention of the Presiding Arraignment Judge on the record. The Court may then direct the Court Officer, on the record, to make a notation in the remarks section of the Securing Order/Sentence and Commitment (i.e. Transgender identifies as female). This will provide the Department of Correction, notification to aid in housing the defendant. The "sex" caption on the Securing Order/Sentence and Commitment will continue to be marked as indicated on the "rap sheet".

The Criminal Court Commit Sheet should also reflect the transgender notation. A notification will be made to the Major's Office and will be forwarded to Citywide Operations, in addition to a UOR being submitted.

BXCC # 24

E. Letter from DOC's Director of LGBTQ+ Affairs Addressed to
Head Judges of all Courts and Court Officers re: Securing
Orders and Housing of TGNCNBI People in Custody



NEW YORK CITY DEPARTMENT OF
CORRECTION
Vincent Shiraldi, Commissioner

Elizabeth Munsky, Director
LGBTQ Affairs
75-20 Astoria Boulevard, Suite 110

October 6, 2021

Dear Honorable Judges and Court Officers,

I am the Director of the LGBTQ+ Affairs Unit at the NYC Department of Correction. The Department has made it a priority to ensure the safety of transgender women in custody, particularly by housing individuals in alignment with their gender identity whenever possible. I am writing this letter to provide clarity on DOC's housing policies, so that we can all work together to ensure that transgender women are housed in female facilities, and as such, at a lower the risk of physical and sexual assault.

The Department's current policy is to place a person in an intake facility solely based on the sex marked on the person's securing order. As such, when the "Male" box is checked on a person's securing order, they will be brought to one of the male facilities for intake, and when the "Female" box is checked on a person's securing order, they will be brought to the female facility for intake. Notations, such as "transgender," on other areas of the securing order will not be considered when determining a client's intake placement by the Department. The person will be held in the original intake facility for 10 days due to the Department's mandatory COVID quarantine policy. During intake, the person will be screened by PREA to determine later appropriate facility placement based on gender identity. However, this transfer will not occur until after the mandatory 10-day quarantine period. See NYC Department of Correction Directive.¹

It is important that we work together to prevent transgender women from being placed in a male intake facility for the 10-day intake period, where they face a tremendously high risk of physical and sexual assault. As such, we ask that upon the request of Defense Counsel, judges and OCA court staff ensure the "Female" box on the securing order is checked for any person that identifies as a transgender woman. We ask that the court ensure the "Female" box is checked regardless of what gender marker is on the NYPD paperwork or RAP sheet, as such documents are often incorrect for transgender people.

It has come to the Department's attention that OCA distributed a memorandum which does not align with the practice described above. The memorandum instructs Court Officers to mark the sex on the securing order consistently with the RAP sheet and make a written notation that the person identifies as transgender. See the attached Memorandum issued on September 13, 2019. To be clear, a notation that a person is a transgender woman is not enough to ensure that they will be placed in a female facility for intake. The only information that will be used to determine where a person is sent for intake is the sex marked on the securing order, and as such, it is vital that when requested "female" is marked for transgender women. To clarify and correct this practice, I am requesting that OCA update its memorandum to inform all judges and court staff of this practice.

If you have any questions please do not hesitate to reach out. You can contact me by email (Elizabeth.Munsky@doc.nyc.gov) or by phone (917-952-2089).

¹ The Department's Directive 4498 R-A currently states; "Inmates with securing orders that indicate male shall start their custody at a male housing facility. Those inmates who identify as transgender, intersex or non-binary during their PREA screening and meet the guidelines for facility level determinations set forth in paragraph IV.B.1.c shall be transferred to a female housing facility..."

Visit NEW YORK'S BOLDEST on the Web at: www.nyc.gov/boldest

Thank you for your time,

Elizabeth Munsky
Director of LGBTQ+ Affairs
Department of Correction

F. Documentation of DOC's Housing Request Denial submitted by Legal Aid (Redacted)



NEW YORK CITY DEPARTMENT OF CORRECTION
Cynthia Brann, Commissioner

Faye Yelardy
Assistant Commissioner, PREA/
Office of Sexual Abuse and Sexual Harassment Prevention

75-20 Astoria Blvd, Suite 110
East Elmhurst, New York 11370

718 • 546 • 0913
Fax 718 • 278 • 6426

July 2020

Assistant Commissioner/PREA Coordinator
75-20 Astoria Boulevard
East Elmhurst, New York 11370

[Redacted]

Dear [Redacted]:

The Special Consideration Determination Unit received your application. However, we are unable to house you in the female facility / Special Considerations Unit for the following reason(s):

- CHS assessment resulted in recommendation to remain in current in a medical/therapeutic unit
- History of unresolved conflict with an individual(s) currently housed in the unit
- Inconsistency in their identity
- Other security concerns (Current charge: Sexual Abuse 1st Degree: Contact By Forcible Touching and [Redacted] history)

You may submit a form for reconsideration to the PREA Compliance Manager and/or PREA Ambassador within your facility, within thirty days of this initial denial (August 2020). You may submit any relevant information and/or material to be reviewed and used for reconsideration.

If you have any questions or concerns, please let your area captain know or speak to someone from social services that can contact someone from the PREA unit.

Sincerely,

Faye Yelardy



Assistant Commissioner/PREA Coordinator

cc: Richard Bush, Assistant Commissioner of Health Affairs
Elizabeth Munsky, Director of LGBTQ Initiatives

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G. PREA Intake Questionnaire

ATTACHMENT - B

	CORRECTION DEPARTMENT CITY OF NEW YORK	
PREA INTAKE QUESTIONNAIRE		Form: PREA-2 Rev.: 6/31/19 Ref.: Dir. 5011R-A
Form Instructions: Intake Staff shall initiate this form upon intake of each inmate. Upon completion of the required sections (shaded), Intake Staff shall sign and date this form. Classification Staff shall complete the remainder of the form. Classification Staff shall also sign and date this form upon completion. Question and Scoring instructions are below.		
Inmate's Last Name:	Inmate's First Name:	Book & Case Number:
		NYSID Number:

AT RISK OF VICTIMIZATION	INTAKE	CLASSIFICATION
1. "Do you have any mental, physical or developmental disabilities?"		
2. (INTAKE STAFF: Does the inmate require interpreter services due to language barrier?)		
3. "How old are you?"		
4. (Is the inmate small in stature?)		
5. "Is this your first time being incarcerated?"		
6. (Does inmate have a <u>non-violent</u> offense history only?)		
7. "Do you consider yourself to be lesbian, gay, bisexual, transgender, intersex, or gender non-conforming?" <i>(INTAKE STAFF: if NO, does the inmate appear lesbian, gay, bisexual, transgender, or gender non-conforming? If YES, check the Documentation Reflects box to the right)</i>		
8. "Have you ever experienced prior sexual abuse, been molested, or been sexually assaulted?"		
9. "Do you have any concerns for your own safety while you are here?" (INTAKE STAFF: if YES, note what the inmate says in the NOTES below.)		
10. (Is the inmate here <u>only</u> for civil immigration purposes? The answer is typically NO.)		

AT RISK OF ABUSIVENESS	INTAKE	CLASSIFICATION
11. "Have you ever committed sexual abuse or a sex crime such as rape or a sex offense?" <i>(INTAKE STAFF: Tell inmate this does not include Prostitution.)</i>		
12. "Have you committed a violent act or a sexual act while in jail or prison before?"		
13. "Do you have convictions for a <u>violent</u> crime (such as Robbery, Murder, Rape, Carjacking, or any type of Assault)?"		

INTAKE NOTES
Intake Staff Preparing: _____ Signature: _____ Rank/Title: _____ Shield/ID: _____ Date: _____

CLASSIFICATION NOTES
Classification Staff Preparing: _____ Signature: _____ Rank/Title: _____ Shield/ID: _____ Date: _____

- QUESTION AND SCORING INSTRUCTIONS:**
- 1) Intake Staff shall ask the inmate each question and record the inmate's answers in the "Intake" column. For questions 3, and 10, Intake Staff shall provide the required information, NOT ask the inmate these questions. For question 7, Intake Staff shall ask the required question and provide a personal evaluation.
 - 2) Classification Staff shall provide answers for each question based on knowledge gained via prior documentation in the "Classification" column.
 - 3) A YES answer in any row (horizontal) is considered a YES for the purposes of this screening.
 - 4) Two (2) or more YES answers to Questions 1-10 indicates the inmate may be prone to sexual victimization. **FOR WOMEN'S JAIL: three (3) or more YES answers to Questions 1-10 indicates the inmate may be prone to sexual victimization. However, any concerns about the inmate's safety, even if no 'YES' answers are given, should be shared with and reported to your supervisor.**
 - 5) **FOR WOMEN'S JAIL: A YES to Questions 3, 5, 7, and 8 shall be considered in making safe housing, bed, and program decisions but their weight may not be as indicative for risk of victimization for women.**
 - 6) Any combination of two (2) or more YES answer to Questions 6, 11, and 12 indicate inmate may be prone to sexual aggression or abusiveness.
 - 7) A YES answer to Question 8 by any inmate requires Medical or Mental Health to offer a meeting with a clinician within fourteen (14) days of intake.
 - 8) Question 2: Any inmate who is under twenty-one (21) years old should have the totality of their responses and known history weighed to make appropriate bed, housing, and programming decisions to ensure safety (including ensuring inmates under eighteen (18) years old are always under direct staff supervision until housed with other youthful inmates).
 - 9) A YES answer to Question 13 should be weighed along with the inmate's known history and used to make appropriate bed, housing, and programming decisions to ensure safety.

Distribution: White Copy – PCM Yellow Copy – Inmate Folder Pink Copy – Medical

H. Contract Provided to Person in Custody Requesting SCU Housing

06/ /2021

Name:

Booking Case:

NYSID:

Current Facility: RMSC

- BEHAVIORAL EXPECTATIONS AGREEMENT:

I, agree to always speak in a respectful tone to other staff, other inmates, and volunteers. Yelling or using profanity when addressing someone (staff, inmate, volunteer, etc....) is considered disrespectful and will not be tolerated.

Agree _____

Any behavior which actively disrupts the orderly operation of the unit / and or facility and I will be subject to removal from RMSC and re-housed in a male facility.

Agree _____

I, agree that if I assault a staff member, inmate or volunteer, I will be subject to removal from RMSC and re-housed in a male facility.

Agree _____

I, agree that while at RMSC I will only be housed in a celled GP unit.

Agree _____

Staff witness signature _____

Date: _____

Staff witness ID#/Badge# _____

I. Statement from an Incarcerated Transgender Man (Redacted)

Statement from [REDACTED]

Date: Jan. 6th, 2020

My name is [REDACTED] My Book and case number is [REDACTED]. My NYSID is [REDACTED]. I am 31 years old. My birthday is [REDACTED]. I am a transgender man. My legal name is [REDACTED]. I am writing this statement because I want people to know what the NYC Department of Correction did to me and all the pain and suffering they caused me. I want people to know that the Department of Correction thinks that the way they target people like me is normal. It's not just the inmates; the Department of Correction also mistreats their transgender staff. I heard that there was a CO who was a transgender woman and was cuted by a male CO, which forced her to quit.

① I want to start by telling you what happened the moment ①

I entered into DOC custody. I was remanded on [REDACTED] 2019 from court. I was being processed at the male intake because it said "male" on my court paperwork. No one knew that I was transgender at that point. There was an officer there who recognized me from a previous incarceration. As soon as she recognized me she told the other officers, with several other inmates around that she knew who I was and that I was born a female. The officers started saying that I am a female, and the other inmates were asking them why they were calling me a female because I present as male. I told the officers that I had already been through gender reassignment surgery. Then the captain and several officers were fighting about where to place me. They called Rosie's to see if Rosie's would take me and they said no because my court papers said I'm male. They then sent me to the doctor's clinic (2)

When I was waiting at the clinic, my escorting officer was talking about my gender identity to the officer in the clinic, in front of even more inmates, which caused a different uproar, because the inmates who were passing me started calling me "faggot" and other derogatory words. When I finally saw the doctor, she refused to see me and told the officers that I was supposed to be housed consistently with however I identify. So they brought me back upstairs and rewrote my court papers to change them to say "female." Then they said I was being sent to Rosie's. When I asked why they said its to prevent me from getting raped or beat up. If it weren't for the officers outing me in the neglect way they did, I could have safely been housed consistently with my gender identity in the male facility. But they made a big deal out of it in front of everyone and

(3)

(3)

they put a target on my back.

When I was moved to Rosie's, that's when all the misgendering, and deadnaming, and transphobic disrespect started. Officers were constantly using the wrong names and pronouns, and calling me "Ms." When I would try to correct them, they got angry at me and it got worse. A few days after I got there, I asked an officer to stop calling me "Miss" and she said "You do know you're in a female facility, and in order to be here, you need to be a female." So I said "I was born a female, but I had a sex change." And then she said "No, you didn't because you wouldn't be here." I got really upset and said something to her along the lines of "I know what I got." Then she said "I'll prove it to you," and she forcibly pulled my pants down.

(4)

They housed me in general

(4)

Population with about 20 cisgender women, who were constantly harassing me. Some made sexual remarks, and repeatedly "accidentally" brushing up against my genital area, and they wouldn't even allow me to take a shower at peace. I was allowed to take private showers because I am transgender, but the officers allowed them in the bathroom when I was in there. They were only coming into the bathroom to see me in the shower. This was all on camera.

I was asking to be moved to a different housing area and was repeatedly told "No." I applied to the THV/SCU multiple times and they kept rejecting my applications because they "didn't want me to get pregnant." I told several captains multiple times that I was being harassed, but no one helped me including PREA. I told PREA that I felt unsafe because of a captain who kept harassing me and they

(5)

told me that she could say or do whatever she wants to me. Her name was Captain Black, and I used to see her every day on my way to and from work, and sometimes in the housing unit when she was our floor Captain. She was extremely transphobic. Everytime I saw her, she would maliciously call me "Miss" after I corrected her multiple times. Sometimes if a respectful officer was referring to me as "he", she would say "she ain't a he." She was always trying to hurt me, On [REDACTED] 2019 between 2:00pm and 2:30pm, I was at work and had to be escorted to see my counselor. The metal detector on the East gate was broken, but we still had to walk through the metal detector. When I walked through, it rung, because it was broken. Anyone who walked through would make it ring. Because it rung, she said I had to be searched. I asked her for a female officer to search me or for her

(6)

to search me because I was not comfortable with a male officer searching me. She told me "No, you're a man, right? So a male officer will search you." The male officer who was there declined to search me because he knew I am transgender and that I have a choice of the gender of the officer who will search me. Then Captain Black threatened both of ~~us~~ us. She said if we didn't comply, she would write up the male officer and send me to the brig. So he complied and searched me. All of this is on camera.

I was not allowed to have any male items such as boxers, tank tops, and durags. I have the right to use these items because I am transgender, and they are permitted in the male facilities. On multiple occasions, my girlfriend, who was visiting me, tried to bring me these items, but officers told her that she could not give them

(7)

to me because they were male items and were not permitted in the female facility. The officers also harassed my girlfriend when she tried to visit me by telling her clothes were inappropriate. In these situations, they are supposed to give her a t-shirt to wear over her clothes, but they never gave her that option and just told her to go home. She was also trying to bring me my legal paperwork, but they didn't let her give it to me because they read it and saw that it was a CCRB complaint against the Police.

All these experiences ~~caused~~ caused me a lot of emotional turmoil. I didn't come this far in my transition, just to be back tracked. Throughout my incarceration, all of these experiences caused me severe dysphoria and deep depression. I didn't come to jail to experience the transition. I experience everyday on the outside. I came to jail to correct my


⑧

mistakes and become a better person, not to become a target, which is exactly what Doc has made me - a target. Its bad enough what they do to the female inmates, They do whatever they want to them.


But they treat the transgender inmates so much worse. Its terrible that people get paid to make human beings miserable.

I hope this statement can bring awareness to what happens behind closed doors; what they choose to ignore. There should be CARE, custody, and control for everybody, not only for who they choose. I take it the way that I take it, but the next person might not be as strong as I am. The next person might commit suicide because they experienced what I went through and then you'll have blood on your hands.

Date: 1/6/2020

Name: 

(9)

Signature: 

J. DOC Directive 3376R-A Inmate Grievance Procedures

“The purpose of this Directive is to outline New York City Department of Correction (Department) policy and procedures for the administration of the Inmate Grievance Resolution Program (IGRP) within the Office of Constituent and Grievance Services (OCGS).”

The entirety of the Department’s Directive 3376R-A is not included in this report’s appendix due to its considerable length. The policy can be found posted online at the Department’s website at:

https://www1.nyc.gov/assets/doc/downloads/directives/Directive_3376R-A.pdf

K. Definitions from Staffing and Accountability

Dignity: We treat everyone with dignity, as all human beings have the inherent right to be valued and respected for their own sake, and to be treated ethically.

Safety: We will create a safe environment, where all people will experience physical, social, moral and psychological safety. That is, they will feel that their body and soul are cared for and that they have access to the supportive services they need to feel safe.

Empathy: We will understand what detained/incarcerated people are experiencing from within their frame of reference and ensure that they receive the tools and opportunities needed to successfully re-enter their communities.

Integrity: We will be honest and maintain strong moral principles at all times. The holistic needs of the people we serve (i.e. detained/incarcerated people) will always be put first.

Respect: We will honor all human beings by exhibiting care, concern, or consideration for their needs and feelings. When providing care, we will maintain the highest level of respect regardless of whether or not we are receiving respect in return.

Nonviolence: We work collectively to create a safe space where we all experience safety from physical and emotional harm. We also work together from a motivation of love and passion, which is expressed through fairness, generosity, and hospitality.

Transparency: We encourage public participation, are open to new ideas and the opinions of others, and share our knowledge, outcomes, challenges, and data with all stakeholders.

Normalcy: For those in jail, the restriction of liberty is the punishment. No other rights have been removed. Therefore, life inside jail must resemble life outside jail as much as possible. Deviation from this principle requires a compelling reason; justification is required to deny a detained/incarcerated person his/her rights, not to grant them.

Import Model: We will provide as many critical non-security services to detained/incarcerated people using local and municipal – non-correctional – service providers. This includes medical, education, employment, clergy or library services; allowing oversight by local municipalities and/or service providers improves community re-entry and reintegration. Incarcerated people have normal contact with community members and continuation of care and services after release is ensured. Incarcerated people enjoy community-standard services, while communities adopt improved views of jails and incarcerated people.