

The Bronx
Defenders

The

GBTQ

DEFENSE
PROJECT



How **The Bronx Defenders** Redefines
LGBTQ Legal Representation

*“When I walked out of there, my client [said that] the most important part of that representation was the fact that I knew how to stand up to that discrimination. **That I defended, not just her case, but her as a person in that courtroom.**”*

Deborah Lolai, Director of the LGBTQ Defense Project



Executive Summary

The LGBTQ Defense Project is an innovative, client-centered program at The Bronx Defenders, providing holistic representation and advocacy tailored to the needs of LGBTQ community members. The LGBTQ Defense Project provides queer and trans residents of the Bronx with representation by specialized attorneys, social workers, and advocates:



Understand and honor their clients as people, attuned to their sexuality and gender identity



Understand the ways the legal systems pose threats beyond those faced by straight and cisgender people



Provide defense that responds to and mitigates those harms inside courtrooms, jails and prisons, and legislative chambers

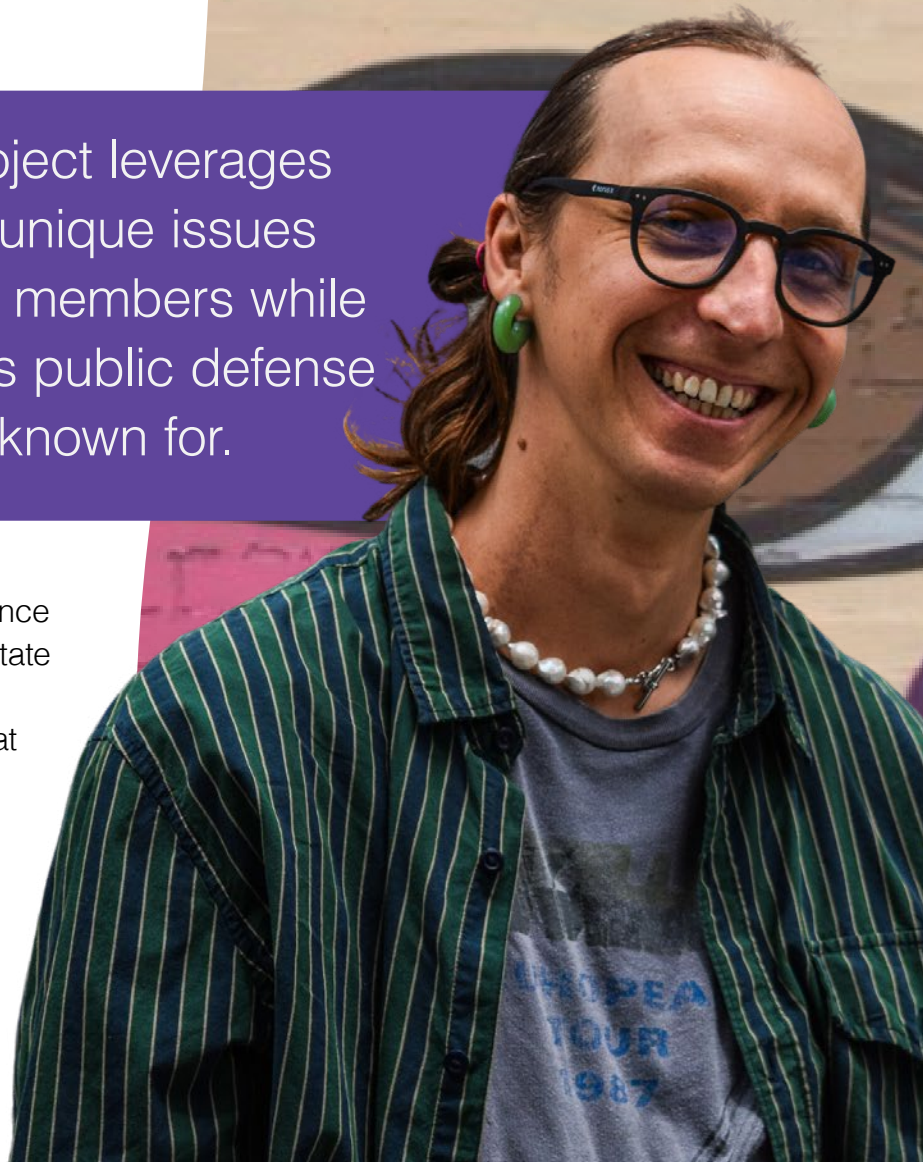
LGBTQ people are [twice](#) as likely to be arrested as non-LGBTQ clients, and [three times](#) as likely to be incarcerated. The overpolicing queer and trans people endure renders them more [vulnerable](#) to immigration actions, where the threat of detention and deportation can be especially dire. LGBTQ people, particularly TGNCNBI (transgender, gender non-confirming, non-binary and intersex) people, face [staggering levels of violence while incarcerated](#). They are also [more at risk](#) of eviction and [more likely](#) to have interacted with the foster care system.

The LGBTQ Defense Project brings a queer lens to the legal system, identifying and responding to points of extreme vulnerability, potential for abuse, and patterns of mistreatment.

The team approaches each case by working to meet the client's immediate needs — housing, safety, and services — while shining a light on the ways queer people are criminalized and marginalized in our legal systems. This humanity-centered and client-driven framework results in uniquely strong relationships between clients and their advocacy teams and supports clients in safely sharing personal information that can be instrumental in resolving a case and advancing their goals. The team leaves no legal, factual, or procedural stone unturned, using creative and novel methods to fight for clients' freedom in criminal and immigration court, and advocating for their safety and dignity when detained.

The LGBTQ Defense Project leverages its understanding of the unique issues facing queer community members while providing the world-class public defense The Bronx Defenders is known for.

Legislators have taken notice of the importance of queer-informed advocacy, with city and state officials turning to BxD's LGBTQ Defense Project to shape and advance legislation that addresses abuses the LGBTQ community faces in the legal system. The team also shares its expertise with the broader defense community, offering training to public defenders citywide and at the federal level, with plans to disseminate its approach nationwide.



The LGBTQ Defense Project serves as a thought-leader and resource for other defenders and service providers who need support in their representation and work with LGBTQ community members. Each year, the Project receives hundreds of external referrals, itself a testament to the Project's penetration within the legal and justice communities. More urgently, however, the volume of requests demonstrates the broad and urgent need for additional support — LGBTQ community members require and deserve more advocates attuned to their needs and more service providers to which they can bring their whole selves.

That need is only growing across the country. At a time when some states and local legislative bodies are decriminalizing marijuana or diverting low-level charges away from incarceration, others are **expanding the ways in which queer and transgender people and bodies are criminalized**. [“Don't Say Gay”](#) bills ban discussion of queer identities. [Anti-trans laws](#) make seeking or providing gender-affirming care a criminal offense; **some criminalize simply existing as trans in public**. Those laws build on a [long, wretched history](#) of criminalizing queerness and gender expansiveness, from anti-sodomy laws to the persistent criminalization of sex work, which has been used to prosecute transgender women at elevated rates.

These laws, alongside the growing wave of LGBTQ discrimination, threaten more and more queer and trans people with entanglement in (and persecution by) the legal system. **Trans people and queer people are under state attack**; the LGBTQ Defense Project stands as an essential tool in the broader fight for LGBTQ justice and liberation. Its team shows what affirming, robust, and truly holistic defense looks like, and represents the best tool we have to guarantee and defend the rights of individuals who have historically and currently been pushed to the margins.



Standing Up to Discrimination

What the LGBTQ Defense Project Brings to Every Interaction

In the Bronx Criminal Courthouse, attorney Deborah Lolai stood beside her client, Ms. R., a transgender woman, as a judge unleashed a torrent of transphobic questions. The judge asked, Has your client done ‘the surgery’? He repeatedly misgendered Ms. R. in open court. He questioned Ms. R’s gender identity in a cruel and dismissive manner. As Ms. R. stood before this judge, utterly vulnerable to his decisions and biases, he shamelessly debased her.

It is this sort of dehumanization and discrimination that the LGBTQ Defense Project seeks to address.

A community drop-in center that provides services to queer and trans people had referred Ms. R. to the LGBTQ Defense Project. The director of the drop-in center who knew Lolai from years of working together called her for help. Before coming to the drop-in center, Ms. R. had been subject to anti-trans violence, and carried a taser for self-defense.

When Lolai appeared on behalf of Ms. R., she gave the judge the context for the case and asked him to dismiss it. The judge then began his tirade.

Had Ms. R. appeared without a lawyer, she would have been left to confront those degrading questions herself. Had she been represented by another public defender, the attorney likely would have lacked the expertise and familiarity with transphobia to respond in a way that affirmed Ms. R’s identity and insisted on her rights. But because Ms. R. was represented by BxD’s LGBTQ Defense Project, she had an attorney who knew the threat the judges’ questions posed and who could provide vocal, specialized, and effective support.

Lolai told the judge that his questions were discriminatory and unethical. He backed down and granted the dismissal.

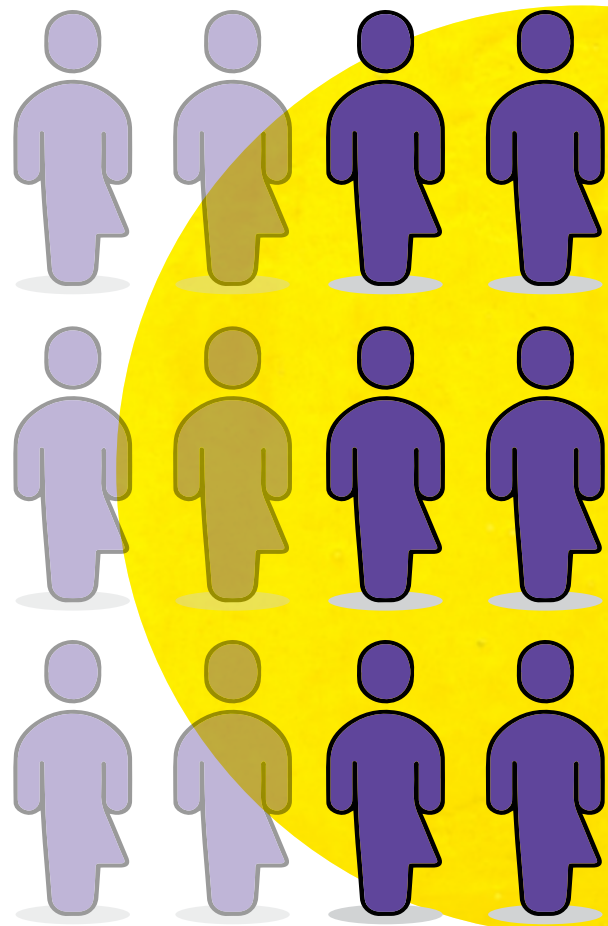
“When I walked out of there, my client [said that] the most important part of that representation was the fact that I knew how to stand up to that discrimination,” Lolai says. “That I defended, not just her case, but her as a person in that courtroom.”

Queer & Trans Bronx Residents Suffer From Overpolicing and Unjust Punishment

A deeply expert and comprehensive public defense, attuned to the degradation and trauma present at every level of the legal machinery, is critical in a system that ensnares LGBTQ people at alarming rates and inflicts unique harms on them at every turn.

As set forth above, LGBTQ+ people are more than [twice](#) as likely to be arrested than straight, cisgender individuals, and [three times as likely](#) to be incarcerated. Transgender people are particularly vulnerable to carceral punishments: [1 in every 6](#) trans people has been incarcerated at some point in their life. The cruel inequities baked into the system balloon when looking at those queer and trans clients of BxD, who are overwhelmingly low-income people of color.

Nearly half of Black trans people in the U.S. have been incarcerated, and far more have been targeted by police for harassment and arrest.



The elevated rate of criminal legal system involvement also leaves LGBTQ people [especially vulnerable](#) to enforcement of discriminatory immigration policies.

Within these systems, LGBTQ people face discrimination from judges, district attorneys, and sometimes even their own public defenders, who carry with them implicit biases that impact their ability to meaningfully defend their clients. This discrimination sometimes manifests as the kind of abusive questions and interactions the judge asked Ms. R., but is also borne out by outcomes data: judges [assign](#) LGBTQ people higher bail because they are perceived as “flight risks.” Members of LGBTQ community, particularly transgender people, face additional obstacles in accessing services that can present alternatives to incarceration. Many shelters and treatment programs are [insensitive](#) to the specific needs of transgender people or [do not offer services that align with their gender identity](#).

Unique mistreatment of LGBTQ clients extends to jail: [Most](#) trans people in New York City jails are held in housing units inconsistent with their gender identity. [Virtually all](#) transgender women endure abuse or harassment while incarcerated and are [far more likely](#) to experience sexual assault. Jail staff routinely discriminate against queer people: [85 percent](#) of incarcerated LGBTQ people report having spent time in solitary confinement, a figure that’s nearly twice as high as estimates of solitary confinement rates by [different studies](#).

“I saw the way people who work in these systems were interacting with queer and trans folks. I had met so many clients who had experienced extreme violence and discrimination while navigating these systems, and that discrimination and violence was rarely being acknowledged,” Lolai said.

Lolai worked as an organizer in LGBTQ community before joining Bronx Defenders in 2014. Bringing that queer lens to the courtroom allowed her to see ways that prosecutors, judges, court officers, correctional officers, police, and even defense attorneys themselves failed LGBTQ clients. She began consulting on colleagues’ cases, guiding them on how to ask important but sensitive questions about a client’s sexual orientation or gender identity, educating them on the unique challenges queer and trans people face, and training them on how to use this understanding to advocate for their clients in court.

This approach proved to be enormously effective, and attorneys from public defender offices across the city began to turn to BxD as a key source in defending queer clients. Between 2016 and 2018, BxD grew its LGBTQ defense from a single client specialist role into a formally established LGBTQ Defense Project consisting of two attorneys (specializing in criminal defense, prisoner rights, and immigration) and a social worker. Together they handle approximately 200 cases a year. It's an innovative investment that has resulted in significant benefits for clients.

“Holistic public defense is about seeing your clients as whole people and acting from that place of understanding,” said Justine Olderman, Executive Director of The Bronx Defenders. “With the LGBTQ Defense Project, we are able to bring a queer lens to the problems our clients face, see how the legal system works to harm them in particular ways, and insist on their freedom and dignity.”

The LGBTQ Defense Project has changed how LGBTQ clients experience their relationships with BxD advocates, from intake through public advocacy, and in turn has tremendously improved outcomes at an individual and community level.

The BxD LGBTQ Defense Project:

Provides direct client representation in every practice area of The Bronx Defenders, with a particular focus on LGBTQ clients in **criminal court, immigration proceedings, family court, housing court**, and in cases involving issues related to **conditions of confinement**.

Trains other public defenders on specific techniques that the LGBTQ Defense Project uses to provide the best representation to its clients.

Engages in political advocacy designed to meet the needs of their clients and of the broader Bronx queer and trans communities.



“They don’t take your life story as a joke”

LGBTQ Public Defense Built on Relationships

When a public defender meets their client for the first time, they have two primary responsibilities: **build** a relationship and **gather** information that can help build the best possible defense. Achieving both of those objectives depends on an approach that is inviting and supportive—and for LGBTQ clients, affirming of all sexualities and gender identities.

Yajaira Gual, a LGBTQ Defense Project client, says that is exactly why she felt comfortable sharing critical information about her case with the team when she met them.

“It’s all about the approach. It’s the way they speak to you. They don’t dehumanize you. They speak with you with respect,” Gual said. “They don’t take your life story as a joke.”

That relationship-building starts immediately for the LGBTQ Defense Project, by assessing the immediate needs of a client. A lack of resources often brings clients into contact with the legal system in the first place, and incarceration only compounds that lack. The Defense Project starts by asking: what services can they connect a client with or provide directly?



“Holistic public defense is about seeing your clients as whole people and acting from that place of understanding. With the LGBTQ Defense Project, we are able to bring a queer lens to the problems our clients face, see how the legal system works to harm them in particular ways, and insist on their freedom and dignity.” Justine Olderman, Executive Director of The Bronx Defenders

The LGBTQ Defense Project's advocates have the experience and expertise needed to **ask trauma-informed questions about these sensitive experiences**, which can so often unlock the client's case. Clients are more likely to share sensitive information about their sexuality with **someone who understands the nuances of their experience and can use language that conveys that understanding.**

"Knowing the language of queer and gender non-conforming communities is really important," said Laura Rolston, a social worker at The Bronx Defenders who interned with the LGBTQ Defense Project. "Clients might not know the wording for what they feel, and having that knowledge is separate from general public defense knowledge."

"The reality is that we need to ask those questions. And nine out of 10 times the answer is going to be: 'Yes, that was my experience,'" Deborah Lolai said. "When we see these patterns, and when we understand how our clients' experiences have resulted in them being here, it allows us to advocate for them in a more powerful way, because we can use that information as mitigation."

The Bronx Defenders updated its arraignment process because of the success of the LGBTQ Defense Project's approach. If a client is identified as transgender at arraignment, and their charge is bail eligible, their attorney consults with the LGBTQ Defense Project before the client is arraigned. That change is a reflection of the extreme risk a client faces if they are jailed in housing that does not align with their gender. Having an expert from the LGBTQ Defense Project's team has allows defenders to better advocate for clients' freedom pretrial and, failing that, to ensure they receive gender-aligned housing and support during detention.

Dima Khalidi, an immigration client, said, "It's a space where you can reveal your nature and not feel like you're going to be judged. It was just astonishing. Suddenly I have a social worker who I can really share with."

The LGBTQ Defense Project uses those relationships built during intake at every step of a client's case, across all corners of the legal system.



Specialized Advocacy: Conditions of Jail and Detention Confinement

In recent years, the Department of Correction eliminated a policy designed to allow more transgender, gender non-conforming, nonbinary, and intersex (TGNCNBI) people to be housed consistently with their gender identity. The decision undermined what little LGBTQ programming exists in NYC DOC. This decision reflects a reality that extends beyond New York: incarcerated LGBTQ people have precious few resources available to them, despite experiencing more violence, sexual assaults, sexual harassment, and punitive action than straight and cisgender people held in jails and prisons.

With limited resources for LGBTQ people in jails and prisons, they depend on their legal teams to advocate for their **conditions of confinement**—that is, ensuring they are in housing that aligns with their genders, that they are receiving medical care (including gender-affirming care), and that their safety concerns are taken seriously.

“It is extremely important to have people who either have experience [defending LGBTQ people] or are specialized because they know the ins and outs,” said Heather Burgess, Senior Prison Rape Elimination Act Research Associate at New York City’s Board of Corrections (BOC), which oversees DOC. “And they have a better idea of the challenges that these individuals face that we can all recognize are very different from your standard cisgender person in jail.”

Thus, the LGBT Defense Project team’s work begins immediately upon arraignment, **ensuring that if any client of The Bronx Defenders is detained, that they are jailed in housing in alignment with their gender.** That’s especially important because being jailed in misaligned housing places someone at [increased risk](#) for physical and sexual abuse while making it more difficult to access gender-affirming care and other services. It is also incredibly difficult to correct a misaligned housing assignment after someone has been processed in DOC custody.

Geraldine Baker is a transgender client whom the LGBTQ Defense Project represented in 2021. She had been incarcerated before being represented by The Bronx Defenders and says that the team’s housing advocacy made it less traumatic. “Normally I wouldn’t even go to Rosie’s [the women’s jail on Rikers], I would be placed elsewhere. But they brought me into the system and they took me there and that was a difference,” Baker said. “Prison gets crazy ugly no matter what, [but being in gender-aligned housing] makes a difference in how you’re treated.”

The LGBTQ Defense Project will work to ensure clients stay in gender-aligned housing, too. “[**Transgender women**] are always living with the threat of having to be moved to a male facility,” Burgess says. The team advocates for clients when DOC threatens to move them into gender-misaligned housing, which requires specialized knowledge of how LGBTQ clients are treated by jail staff.

Beyond housing concerns, the LGBTQ Defense Project also advocates for its clients to receive services and medical care throughout their incarceration. The team also receives referrals from service providers, clients’ families, or other attorneys who don’t have the same institutional resource.

The LGBTQ Defense Project team’s expertise allows them to identify and raise urgent issues that another attorney might miss. For instance, if a transgender person reports not receiving hormones for two weeks, the LGBTQ Defense Project has a full grasp of the extraordinary impact that withholding medical services can have on a client’s transition and their mental health, and knows to sound the alarm with DOC and demand immediate action. The Project is also able to recognize when incarceration is [pressuring](#) people to plead guilty to crimes in

order to relieve themselves from dangerous conditions in jails. “There’s a hugely coercive effect when you are being sexually assaulted and harassed,” Lolai said.

The LGBTQ Defense Project directly advocates to the DOC on behalf of clients, and among the most important advocacy relationships that the Project maintains is with service providers working one-on-one with incarcerated people in DOC. Elizabeth Munsky is the Executive Director of LGBTQ+ Affairs within DOC, and works with Lolai and the LGBTQ Defense Project to mitigate the harms of incarceration.

“Anytime I meet with a queer person in custody, I ask them if their attorney is affirming. I ask: ‘Do they see you for who you are, do they understand how that might impact your case?’” Munsky says. “A lot of times you get an attorney who is transphobic or is bringing identity into the case in a really inappropriate and harmful manner. And [the LGBTQ Defense Project] can reach out and provide some education around the LGBTQ community.”





Beyond jail advocacy efforts, the LGBTQ Defense Project supports referrals to bail funds. Often, a bail fund will be willing to provide a partially secured bond, but doing so requires the client having a family member or friend who is willing to post that bond. The LGBTQ Defense Project will work to coordinate between the client, their community, and the bail fund to make sure the client is released. This work was particularly important during the early days of the COVID pandemic. Lolai estimates the Defense Project's work with bail funds like the [Emergency Release Fund](#) has secured the release of approximately 100 queer and trans people.

Unlike traditional public defenders, the LGBTQ Defense Project also continues its advocacy for its clients beyond sentencing — because as inhumane as jail can be for transgender people, state prisons are often worse. In New York, the prison system has even fewer supports in place for transgender people than the jail system, consistently places them in gender misaligned housing, and subjects them to solitary confinement for “protection” more frequently. As Lolai explains: “We have never represented a transgender client who was housed consistently with their gender identity in [state] custody, or who wasn’t severely harmed.”

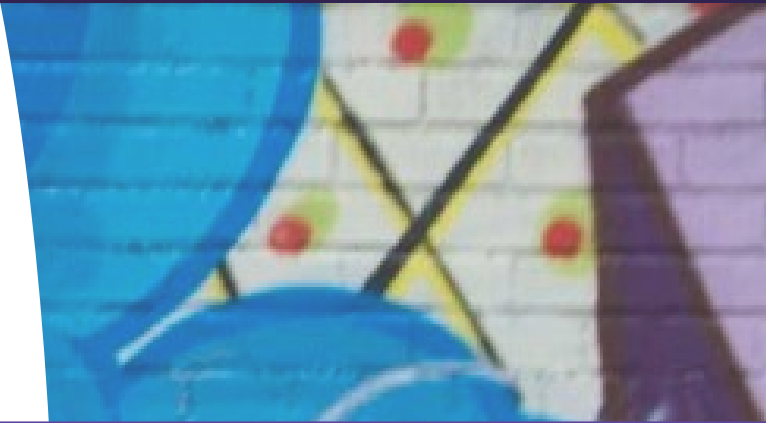
“When you’re working with LGBTQ clients who are incarcerated, you can’t just take the traditional path,” says Klevis Baholli, a social worker on the LGBTQ Defense Project. “There’s always one more step that you have to take. Like: okay, our client’s being sentenced, they’re about to do time upstate. Now we actually have to do more work than we would do with any other client.”

Redefining Criminal Defense for Queer & Trans Clients

Yajaira Gual's experience as a client of The Bronx Defenders underlines just how critical those relationships are in securing a positive outcome for LGBTQ clients facing criminal charges. Gual came out as transgender as a child and was placed in foster care because her parents were not accepting of her gender identity. She experienced homelessness as an adult, and engaged in sex work to survive. Police arrested her for robbery after accusing her of stealing from a client who refused to pay her for her services. Prior to this most recent arrest, she had been held on Rikers Island, housed in the men's jail. During that time she experienced repeated instances of sexual assault and harrassment.

"When I met her for the first time, I couldn't even have a meaningful conversation with her because the deterioration of her mental health made communication very difficult, and she didn't have any stability in her life," Lolai says. "She was homeless, she was traumatized, she had PTSD, and she was not getting the services she needed. She had lost touch with the service providers she had previously worked with and was just so terrified of going back to jail because of the trauma she had experienced."

But the intake process built the relationship between Gual and Lolai, and made Gual feel like she could talk to her team in a way she had not been able to with previous attorneys.



"Other attorneys really didn't care. They would just want to get you out of jail, and say good luck [with the rest of your life]," Gual says. "I had felt very abandoned by most social workers and clinicians... versus at The Bronx Defenders, it's: 'Wait a minute, what are the core barriers that this person is going through? What are the challenges? What is it that we can do for them? What service could help them?'"

Once the team had listened to Gual's story, the LGBTQ Defense Project immediately got to work answering those questions alongside her. Service provision for transgender New Yorkers is particularly tricky, as many programs will insist their program does not meet the client's needs, a slippery answer that simply attempts to conceal transphobia.

But the LGBTQ Defense Project is keenly aware of the dynamic and finds ways to counter it. Working closely with Gual, the LGBTQ Defense team proposed an Alternative to Incarceration proposal with services tailored to her identity and needs as a transgender woman. The team knew each service provider in the proposal was sensitive to the needs of transgender clients because they had previously worked with those providers.

"Part of the reason that our project exists is to make note of our clients' experiences and to create a database of programs that work," Baholli says. "We move clients towards programs that are explicitly affirming to trans people and gender non-conforming people."

By leaning on that knowledge, the team provided Gual with a suite of programs that affirmed her as a transgender woman while meeting her needs. They got her into supportive housing, a drug treatment program, a therapy program and more, and presented the proposal to both the judge and District Attorney (DA) as an option instead of incarceration. They argued that this suite of services would stabilize Gual's life, while jail would only set her back. The judge and DA agreed, and once again, it was the LGBTQ Defense Project's extensive experience serving the LGBTQ community that made the difference.

"I don't have nightmares [anymore]. I don't have flashbacks. I used to suffer all of that before I met [the LGBTQ Defense Project]. I don't suffer from anxiety about going back to jail," Gual says. "I'm now more emotionally stable. I can tell you I'm happy now. I'm in a better place. I'm not where I want to be but I'm where I need to be. And I'm working towards my degree now."



Defending Queer & Trans Clients Trapped in the Immigration Enforcement System

The Bronx Defenders is one of three organizations representing low-income New Yorkers in deportation [proceedings](#) through the New York Immigrant Family Unity Project (NYFIUP). The LGBTQ Defense Project team either consults or directly represents in all of those cases where the clients identify as LGBTQ.

Immigration court functions differently than criminal courts: criminal cases usually involve multiple witnesses from both sides and are contained to a single alleged incident or fact pattern. Immigration cases, in contrast, typically involve just one witness – the client – and are sprawling in scope. There’s no jury, so the outcome of the case rests on the judge’s decision, and they want to know all about a person’s life, their childhood, and their fears.

“You are often putting somebody’s whole life on display in the courtroom,” says Whitney Braunsteinn, the immigration attorney on the LGBTQ Defense Project. “For queer and trans clients, you’re almost always going to have to talk extensively about what you were like as a child or your coming-out process: when that occurred, what kind of impact coming out had upon your life. Often, it’s related to why you’re afraid to go back to your country.”

Talking in this level of detail about sexual or gender identity in a courtroom requires a legal team that is able to: 1) make a client comfortable and 2) is adept at framing the client’s experience and identity for the judge. Braunstein and the LGBTQ Defense Project are uniquely equipped on both fronts.

The Bronx Defenders immigration team is trained to assert a clients’ identity at the earliest possible moment in a case, starting with their name. The LGBTQ Defense Project staff have trained immigration attorneys to ask how a client would like to be addressed throughout the case upon intake. That’s critical, because immigration courts assign a client a number and a name early in the process, and that name will stick with them throughout. It can be very challenging to change that name, but using someone’s “dead name” in court can be traumatic to TGNCNBI clients.

“I think some immigration attorneys have felt hesitant to challenge judges where you get into court and you’re immediately saying: ‘Actually judge you’re incorrect,’” says Braunstein. “That’s been one basic thing that we as a practice have implemented: making sure that everybody in the practice now feels comfortable knowing how to address that issue, and that they feel comfortable understanding what the issue is.”

Dima Khalidi, a client of the LGBTQ Defense Project, came out as non-binary while in custody. Khalidi was facing discrimination in custody both from the men they were housed with and jail staff, who placed Khalidi in solitary confinement because of their identity. In this context, conversations with the LGBTQ Defense Project became especially important.

“They gave me the space where I can really come out and have time and space to realize for myself,” Khalidi says. “At the moment [in detention], it was hugely comforting because people knew what’s going on, and they knew how I felt.”

Creating that space proved to be not just important to Khalidi’s personal wellbeing, but critical in their defense. Because they came out as non-binary while in custody, it opened up a new legal avenue in arguing for asylum eligibility, as they faced increased risks as a non-binary person and because it changed the time in which they were legally eligible to seek asylum.

Khalidi worked closely with Braunstein and LGBTQ Defense Project staff in crafting their arguments before the judge. Ultimately, the court granted Khalidi asylum. The moment the judge announced they could stay in the country was incredibly meaningful to them.

“It was like you were hiding somewhere...and in one day, you got healed,” they say. “The court system represents the power in society, and it’s the sort of body that has trouble accepting us for who we are. For a lot of LGBTQ folks, it’s a double anxiety [to be in court].” Winning a court battle centered around a queer identity carries extra weight.

Beyond making clients open to sharing intimate details about their lives, a thorough understanding of LGBTQ issues allows an immigration attorney to quickly push back on discrimination in the

courtroom. That can be the difference between a client staying in the country or being deported, because judges in immigration courts are often extremely uninformed about LGBTQ issues. Braunstein defended one client in immigration court who is bisexual, but not out to their family. That became a legal problem when the judge insisted that Braunstein’s client “prove” his bisexuality by producing a loved one who knew about his sexuality.

When the client could not produce anyone who knew he was bisexual, the judge asked inappropriate questions about his sexual history and even about the sexual positions he used. The judge ultimately denied this client’s asylum claim because she did not believe the client was bisexual. BxD appealed the case immediately using their knowledge of LGBTQ discrimination and will continue to fight for this client. Clients take note of that sort of responsiveness in the face of discrimination.

“Clients often will say that they feel more comfortable talking to the judge knowing that they feel very supported, either by me or by the Bronx Defenders generally, now that we have the Project and added support that it provides to all of our colleagues,” Braunstein says. “They feel like they are understood and affirmed by The Bronx Defenders and that if the judge does something disrespectful, we will back them up and be in their corner.”

Beyond Direct Representation:

The LGBTQ Defense Project's Training and Legislative Advocacy

Trainings and Consultation

The outreach from other public defenders citywide to the LGBTQ Defense Project is a strong indicator that its mission is filling a gap. A gap that traps queer clients in cycles of policing and incarceration.

"I'm on the phone with a public defender from another office in New York City almost every day counseling them," Lolai says. "They call with a question and I often end up helping a lot of other people's clients."

Those calls are not contained to New York City. This year, the LGBTQ Defense Project received a call from an attorney in another state who had heard about its innovative approach to LGBTQ defense, and asked for help on a case in which his client, a trans woman, was charged with homicide. She wanted to know how to keep transphobic people off the jury.

"How do you write a voir dire for that? That wasn't a huge lift for us, because [transphobia] is something we think about all the time, but it's not something that comes naturally to most [cis] defense attorneys," Lolai says. "Because what you need to do is to pull that transphobia out of people. How do you ask questions in a way that would make people feel safe enough to put their hatred on the table?"

The LGBTQ Defense Project consults on approximately 200 cases a year, a testament to both impact and need. The team responds to that need as best it can, while working to design training modules that can share its knowledge with the other service providers. It's doing that work both internally within The Bronx Defenders and externally with the rest of the defense bar.

The LGBTQ Defense Project has offered similar training modules to The Bronx Defenders criminal defense team, and hopes to grow those offerings city-wide and beyond. It has already offered general criminal defense training to other public defender organizations in the city including state and federal defenders, reviewing best practices for representing LGBTQ people.

"It's what you can do to systematically change your broader practice to better represent and affirm LGBTQ clients. It's: what are the little things you can do to change your personal practice? What are ways that you might not be aware that you're causing harm?" Lolai says. "There are a lot of requests for trainings to advocate for transgender clients who are incarcerated. Those trainings are valuable because people not only take information from those trainings, but they become connected with us so we can offer ongoing support."

Advocating for Better Than “Less Bad”

In June 2023, New York City Council passed legislation that requires city jails to fund reentry services for TGNCNBI clients upon release from Rikers. It was a [reversal](#) of some of the cuts that the Adams administration had made to the LGBTQ+ Affairs Unit, and was the first of a number of bills that the New York City Council is considering that could directly address the lives of queer people incarcerated in New York City. One proposed law would [require](#) the DOC to report on the housing assignments of transgender people in its custody. Another would [require](#) the department to assess people’s risk for sexual victimization upon intake, and create an appeals process for TGNCNBI people who request specific housing.

In each instance, the LGBTQ Defense Project helped make this legislation possible. It worked directly with councilmembers to shape the bill language, talked to the councilmembers about the needs of their client, and testified before the council on their importance.

The LGBTQ Defense Project’s work on the bill reflects the trust the team has built with progressive legislators throughout the city and state, which they use to advocate for their clients’ needs and those of the broader queer community. Lolai is a fixture at City Council hearings, testifying on issues ranging from [services](#) for incarcerated TGNCNBI New Yorkers to [sexual abuse](#) in city jails.



“New York is ahead of a lot of states in regards to how trans people are treated in the city, but I want to be clear that that does not mean that it’s good,” says Burgess, the BOC research associate.

The LGBTQ Defense Project is also working on [legislation](#) at the state level that would require jails and prisons to provide TGNCNBI people in their custody with housing, clothing, commissary access and more that is consistent with their gender identity. The bill, called the [Gender Identity Respect, Dignity and Safety \(GIRDS\) Act](#), is sponsored by State Senator Julia Salazar, who says the LGBTQ Defense Project’s work laid the groundwork for the bill’s introduction.

“The LGBTQ Defense Project brought the idea to my office and worked with us to draft the legislation so that I can introduce it,” Salazar says. “Since then, they have continued to play a critical role. We work in lockstep with them to advance the bill.”

Salazar also pointed to Lolai’s [testimony](#) about sexual violence in jails and prisons to the New York State Senate Committee on Crime and Correction as a key form of advocacy.

“It’s compelling to legislators when directly impacted people express their support for a policy. I know their testimony during the public hearing was compelling to legislators and members of the committee,” Salazar says. “They played an indispensable role.”

Beyond advocating for specific legislation, the LGBTQ Defense Project was also part of the landmark [Task Force on Issues Faced by TGNCNBI People in Custody](#). The Task Force was [created](#) by a City Council Resolution in 2019, about one month after the [death](#) of transgender woman, Layleen Polanco in solitary confinement. Lolai was a co-author of the report published last year, and her work on the LGBTQ Defense Project allowed her to make recommendations to the City Council tailored to the needs of her clients.

The report urges the city to implement a host of changes that would make jails less tortuous for TGNCNBI people, [including](#):

- reducing the jail population
- confirming gender identities before arraignments
- implementing stricter policies around DOC staff mistreatment or insensitivity
- expanding funding for community-based organizations

“I think the most powerful piece of this report is the numerous stories we shared of TGNCNBI clients’ experience in jail. Unless you are working directly with this population, you can’t begin to imagine the torture TGNCNBI incarcerated people endure,” Lolai says. “Those stories needed to be told, and that is ultimately what we did with this report.”

The LGBTQ Defense Project responds to new and emerging crises. In 2021, the Rikers crisis was at perhaps its [most acute](#), with 15 people dying. Jails were overcrowded; DOC was unable to provide food, water, and medical care; huge portions of DOC staff had [stopped showing up](#) to work; and intake facilities were a disaster, with people forced to sleep in shower cells surrounded by waste.

The state’s response to this crisis was not immediate decarceration, as public defenders, advocates, and legislators called for. Instead, DOC sought to move 230 people from the women’s facility – a large number of whom were transgender women – to an upstate prison. The plan would have made it more difficult to receive medical care, access their lawyers, see their family, and raise safety concerns. Lolai and the LGBTQ Defense team [rang](#) the alarm bell, highlighting the plan’s danger in the press and drawing attention to the dangers LGBTQ people face in incarceration. The team also helped gather the support of 17 legislators to sign onto a [letter](#) condemning the plan, and critically they used their strong relationships with clients held inside Rikers to surface a [petition](#) from the incarcerated women themselves against the plan.

While the women were ultimately moved over the loud objections, the mobilization was unprecedented for a jail move. [Every major outlet](#) in the city covered the move, shifting the public discussion around incarceration of transwomen and, critically, making sure clients themselves had the floor.

“The crisis is ongoing. The majority of transgender women continue to be housed in men’s jails and subjected to brutal sexual and physical violence. All transgender men are housed in women’s jails and subjected to daily harassment. Anyone who identifies outside of the gender binary is ignored,” Lolai says. “People are not getting gender affirming care. The abuse remains unchecked. We need more advocates doing this work to address the dire needs of all TGNCNBI people in custody, and getting the media to pay attention to these issues is one of our most effective tools.”



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