

**NYC Department of Correction
Response to TGNCNBI Task Force Report
November 14, 2022**

Introduction

The New York City Department of Correction (the Department) is committed to ensuring that transgender, gender non-conforming, gender non-binary, and intersex (TGNCNBI) individuals in custody are treated with dignity and respect and housed safely and appropriately while in city jails. Since 2018, the Department has housed individuals in custody based upon gender identity. We are a national leader in this practice and are proud that jurisdictions across the country look to us as a model for safe and progressive policies related to the placement and treatment of TGNCNBI individuals. To further this commitment, the Department established an LGBTQ+ Affairs Unit in 2019 with the goal of supporting LGBTQ+ individuals in custody, building relationships with LGBTQ+ affirming jail-based and community-based providers, developing and implementing LGBTQ+ affirming services for those in custody, and raising awareness for LGBTQ+ issues Department-wide. We continue to review our policies regularly to support the evolving needs of the TGNCNBI population.

We thank the Task Force on Issues Faced by TGNCNBI People in Custody (the Task Force) for its first report, issued August 15, 2022. The Report is lengthy and includes a considerable number of recommendations, some of which do not apply directly to the Department. All the recommendations, however, have received careful consideration. Below is a summary of areas of agreement and disagreement with the Task Force's recommendations.

Areas of Agreement

1. The Departments agrees that, to the fullest extent practicable, TGNCNBI individuals should not be processed for intake at male facilities or spend significant time in a custodial setting that is mis-aligned with their gender identity (Rpt. 13-14). We have reached out to the court system

**NYC Department of Correction
Response to TGNCNBI Task Force Report
November 14, 2022**

and defense providers urging them to take steps to ensure that the gender marker on each securing order is correctly noted. Additionally, we agree that securing orders should be revised such that gender identifiers other than male and female are available. If this were to occur, individuals placed in the Department's custody at the courthouses would be transported to Rikers for new admission processing on a gender-appropriate bus in alignment with their securing order. Such a practice would assist in assigning individuals to appropriate gender-aligned housing.

2. We agree that TGNCNBI individuals should be housed in a facility consistent with their gender identity absent overriding security or management concerns. Assigned sex at birth or genitalia should not determine placement. However, the recommendation that the Department "must honor people's self-identified gender identity...when determining appropriate housing placements" (Rpt. 15) is too restrictive. Individuals placed in the Department's custody are housed based on number of factors, including classification, PREA guidelines, and security considerations. Moreover, some individuals falsely identify themselves as TGNCNBI in order to seek a change in their housing placement when that option would not otherwise be available to them. Often, this is done to avoid inter-personal conflict within a housing unit. Thus, while discriminatory stereotypes about gender identity are plainly improper, it is not prudent to honor every statement regarding gender identity outright. Although our presumption is that an individual's self-identified gender is truthful and accurate, we will continue to consider self-identified gender on a case-by-case basis when making housing determinations.
3. A policy that relies inflexibly on self-identified gender would also present safety concerns related to the placement of transgender males. Placement of such individuals in a male facility would not be safe. They can be subject to sexual harassment, abuse, and violence if placed

NYC Department of Correction
Response to TGNCNBI Task Force Report
November 14, 2022

with cisgender men. Placement in a woman’s facility is generally considered the safest option, not only by the Department but by the individual.

4. We agree that TGNCNBI individuals should have access to the same programming options as cisgender individuals (Rpt. 15). In addition, we will continue to provide gender-affirming and gender-aligned programs to TGNCNBI individuals and seek to expand those opportunities.
5. As a general rule, TGNCNBI individuals who request placement in the Special Considerations Unit (SCU) and are eligible for placement there should be placed there (Rpt. 17). We understand that placement with others who have shared experiences and can provide support, community, and affirmation can make an individual’s incarceration less traumatic. We also recognize that TGNCNBI individuals face greater risk of assault, discrimination, and humiliation if placed in general population with cisgender individuals. That said, we cannot agree that “all requests for housing in an SCU consistent with a person’s gender identity should be granted” (Rpt. 17, emphasis added). Categorical placement policies are inconsistent with managing a safe and humane jail system.
6. We agree that it is important to discuss specialized housing options for TGNCNBI individuals – e.g., SCU, general population in a woman’s facility, protective custody – during intake. Individuals who identify as TGNCNBI during intake – or at any other time – are provided with an SCU application form, which lists housing options available to them. The Department intends to further explore how best to incorporate more information related to housing options for TGNCNBI individuals into the new admission process.
7. We recognize that jail may be a TGNCNBI person’s “first or most recent encounter with the healthcare system,” and that TGNCNBI people should have expeditious access to medical care (Rpt. 21). Individuals in custody may call the Health Triage Line from their housing area to

NYC Department of Correction
Response to TGNCNBI Task Force Report
November 14, 2022

speak with Correctional Health Services (“CHS”), the independent medical provider, and CHS will schedule clinic appointments as necessary. The Department has taken significant steps this year to ensure that those in our custody are escorted to the clinic, and it reports monthly on this matter. We are committed to ensuring everyone in our custody has access to medical care and will continue to improve our processes where applicable.

8. We agree that TGNCNBI individuals should not be disciplined based on factors that would not be considered for cisgender individuals (Rpt. 15). Discipline should be based on conduct and applied impartially.
9. We agree that requests for gender-aligned placement should be resolved promptly and the individual should be notified within three business days of the decision and the reason for it (Rpt. 17). That is currently the Department’s policy. It is not our intention, however, to provide a copy of the notice to third parties. The individual may do so if they choose.
10. The Report correctly observes that the data systems of all criminal justice agencies – NYPD, CHS, NYC Public Defenders, Office of Court Administration, and the Department – “should be revised to accurately capture all gender identities” (Rpt. 13). At present, the Department’s data system, like most others, is binary with options for only male and female. We will continue to explore ways to modify the system to capture all gender identities. Such a change would have several advantages, including enabling the Department to track the gender identities of individuals previously in our custody and facilitating more accurate reporting on population demographics.
11. Similarly, we intend to modify the PREA Intake Questionnaire to include distinct questions about sexual orientation and gender identity (Rpt. 14).

NYC Department of Correction
Response to TGNCNBI Task Force Report
November 14, 2022

12. Subject to security concerns, the Department is committed to providing gender-affirming clothing, including undergarments (Rpt. 22). However, clothing cannot have adhesives that might be misused to construct contraband weapons, disable locking mechanisms, or otherwise disrupt facility operations. The Department already provides menstrual products and other gender-aligned and gender-affirming items free of charge.
13. We agree on the importance of targeted, gender-affirming reentry planning for TGNCNBI individuals to ensure a smooth transition to New York State DOCCS or the community. This planning should begin well before discharge. As the Report states, “[s]uccessful re-entry [can] result in reduced recidivism rates...and has positive effects on the medical and mental health of the person” (Rpt. 25). For that reason, the Department distributes a 90-page resource guide that identifies TGNCNBI-welcoming organizations and community-based resources; it has distributed this guide for years. In 2021, the Department launched the Gabby Foster TGNCNBI Reentry Network and will continue to expand the network’s ability to assist with reentry planning. We also intend to seek grant funds to bolster our efforts.

Areas of Disagreement

1. The Task Force recommends that the Department “immediately and effectively implement the Board [of Correction’s] new Risk Management Accountability System (“RMAS”)” (Rpt. 19). This recommendation is outside the Task Force’s mandate. Moreover, the Federal Monitor recommended against the implementation of RMAS and directed the Department to design a new restrictive housing system that is aligned with correctional best-practices. The Department is working with a consultant to develop and implement a new restrictive housing program, subject to the Monitor’s review and approval.

NYC Department of Correction
Response to TGNCNBI Task Force Report
November 14, 2022

2. Similarly, the Report recommends that the Department “should never transfer anyone out of the SCU as a form of punishment absent a guilty adjudication for an infraction” (Rpt. 17). This, too, is not in line with best correctional practices. Our experience shows that TGNCNBI individuals are responsible for a very small percentage of violence in our jails. However, should a TGNCNBI individual stab or slash another individual, pre-hearing removal is often necessary to maintain the safety and security of those who live and work in the facility, including the alleged perpetrator. The safety of all the individuals in our custody must be our priority.
3. The Report recommends that if an individual is housed without their consent in what they believe is gender-misaligned housing, “they [should be permitted to] apply for reconsideration at any time” (Rpt. 18). It is our goal to make the placement process fair and transparent, so that outcomes are credible and mutually understood. Absent new information, requests for reconsideration serve no one’s interest.
4. The Report recommends that the Department assign “one or more full-time social workers to the Special Consideration Unit to help mediate conflict in the unit” (Rpt. 17). Conflict is not limited to those in the SCU, and conflict resolution is not limited to the purview of social workers. There will be times in a carceral setting, indeed in any community setting, in which conflict arises among individuals or groups. It is not reasonable to expect that all non-violent conflict can be mediated.
5. The Report recommends that the Department “shall not consider a person’s appearance... in the determination of housing for TGNCNBI people” (Rpt. 16). Under PREA, however, the Department is mandated to consider an individual’s appearance to determine whether there is a risk of sexual victimization. We agree that TGNCNBI individuals should receive the same

**NYC Department of Correction
Response to TGNCNBI Task Force Report
November 14, 2022**

consideration as cisgender individuals and that appearance should not be used to determine gender-identity.

6. The Report recommends that “LGBTQ+ [Affairs] Team members be present with PREA staff at post-report interviews” (Rpt. 19). PREA guidelines do not permit such involvement. The guidelines do allow for the presence of a sexual assault victim advocate from a rape crisis center, and one is made available.
7. The Report calls on the Department to “encourage [staff] to wear their pronoun pins on their uniforms and introduce themselves by identifying their pronouns during all interactions” (Rpt. 31-32). We believe that this should be a matter of individual choice and not compulsory. Our policy does not discourage such conduct and instructs staff to be respectful of personal pronouns that are disclosed.

Conclusion

Because New York City policies often serve as a model for other jurisdictions, the Department frequently engages with stakeholders and experts to evaluate current policies and identify areas that warrant change. That is how it should be. It is our goal to ensure that programs, services, and housing determinations support the safety and wellbeing of all those who live and work in our facilities, especially those at heightened risk of violence. TGNCNBI individuals fall into that category and deserve our solicitude. For that reason, we thank the Task Force for its insights and for bringing these issues to our attention.