

Derrick D. Cephas, Acting Chair & Vice-Chair
NYC Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

March 13, 2018

Dear Members of the Board of Correction,

The Sylvia Rivera Law Project (“SRLP”) thanks the Board of Correction (“the Board”) for its necessary work assessing the Transgender Housing Unit (“THU”). The information reviewed in the assessment is unavailable at this scale to advocates, and the work of the Board in analyzing and drawing fact findings from the data is much appreciated. The assessment undeniably affirms the experiences our members have been voicing since the beginning of the THU in 2015 – that despite numerous policies through PREA, the Board’s Standards, and the Department’s own directives, the radical potential of the THU is lost due to it being massively mismanaged causing countless transgender and gender non-conforming people to suffer physical and mental harm while waiting to exercise their right to a trial.

What is clear from the Board’s findings is that the problems arising in the THU are not due to its existence, but the Department’s willful disregard of policies meant to keep transgender, gender non-conforming, and intersex people (“TGNCI people”) safe. This is demonstrated in the repeated case examples SRLP and other advocacy organizations have brought to the Board in addition to the Board’s own findings that transgender people are not being considered for or offered housing according to their gender identity.¹ It is understandable, then, that due to the horrible mismanagement of such a small unit and the seeming inability to see trans women and men as women and men, TGNCI individuals who have experiences in the city jails - and their advocates - can only conclude that the Department is not truly invested in reducing their experiences of sexual violence or treating them with anything approaching dignity and respect.

Due to the lack of individualized housing assessments, SRLP whole-heartedly agrees with the Board’s belief that there is a “heightened importance of the THU” and, as such, the Board must ensure the Department does not close the unit.² Instead, the Board should continue its work in vastly and swiftly improving the THU by enforcing the Department’s compliance with city, state, and national laws towards TGNCI people. SRLP would like to provide some additional recommendations and suggestions to add to the assessment’s findings.

If the Department is unwilling to take these steps then it must admit that it cannot safely house TGNCI people according to city, state, and national laws, and therefore must refuse to house all TGNCI people.

¹ N.Y.C. Board of Correction, An Assessment of the Transgender Housing Unit, pg. 13 (February, 2018). More astonishingly, on page 20, the Board reports that 3 individuals in the THU during a visit were identified as female by the Department yet were being housed in a male unit. This suggests that their placement was solely made on a physical basis and no individual case assessment was done.

² N.Y.C. Board of Correction, An Assessment of the Transgender Housing Unit, pg. 3 (February, 2018).

SRLP's Knowledge to Make These Comments

SRLP works with transgender, gender non-conforming, and intersex people (“TGNCI” people) who are people of color or low-income. We offer direct legal services to people in the New York City area, including those held by the NYC DOC and people incarcerated by New York State. Not only do we serve TGNCI people in the city jails broadly, SRLP also provides legal and cultural programming twice a month to individuals housed in the THU. Since August 2015, when we first began to offer these classes, SRLP has served roughly 85 TGNCI individuals in the NYC DOC. We are more consistently in contact with the individuals held in the THU than any other outside agency, and to our knowledge are the only trans-lead organization invited to be in contact.

In 2011 and 2014, SRLP provided a series of trainings to NYC DOC staff on working with TGNCI individuals. In May 2015, we submitted extensive comments to the Board concerning the proposed rules submitted by the Public Advocate. In August 2016, we provided a lengthy submission regarding the adoption of minimum standards in line with federal PREA Standards. This submission included the testimonies of 11 TGNCI individuals who had been through the NYC jail system. In October 2017, we again submitted testimony urging the Board to sanction the Department for its blatant failure to make any meaningful attempt to bring intake and processing forms in line with the Minimum Requirements and, by so doing, work to prevent sexual violence. We see the Board's Assessment as a necessary tool for putting into place the mechanisms of the Minimum Standards as well as ensuring that the governing THU Directive is followed.

RECCOMENDATIONS

Expand Access to Information Regarding the THU

The Board’s findings show a systematic failure of the Department to ensure incarcerated TGNCI people are informed of the existence of the THU. As the Board notes, despite the Department’s policies to inform people of the THU at intake, most people only learned of it through word of mouth. This is in line with what SRLP hears monthly from THU residents. The majority are not sure how they got to the THU, and a minority had to fight repeatedly and incredibly hard to get in at all.

In order to fix this issue, the Board recommends educating “DOC staff and people in custody about the THU including how to apply for placement in the unit” and ensuring “all people in custody are provided information at intake.”³ Education alone, however, is insufficient. The unit has been open for three years and no education has yet occurred. We urge the Board to require that the Department makes applications to the THU available:

- On all floors of every housing unit;
- In all Protective Custody and Administrative Segregation Units;

³ N.Y.C. Board of Correction, An Assessment of the Transgender Housing Unit, pg. 6 (February, 2018).

- At court intakes as well as facility intakes; and
- In the medical and mental health units;

The application form itself should be reviewed and revised. While the THU is an important unit for many individuals it must also be made clear to individuals that the THU is one option among many. We therefore suggest:

- That the form be revised to note that any individual who would prefer to be housed as their lived gender identity may request to be housed appropriately and such a request will be reviewed, and a determination made, within 48 hours of receipt. The individual will be informed 24 hours after the decision is made. This follows the same timeline as the THU application.

Further, while making applications readily available - particularly in areas where TGNCI people are more likely to be housed such as Protective Custody and medical units - will increase people's awareness of the THU's existence, SRLP urges the Board to make the Department's THU Directive public. Currently, the Directive governing the THU is marked as classified, meaning TGNCI people and their advocates are left to rely on the Department to be transparent about its policies. This is extremely problematic, however, as SRLP and other advocates have previously informed the Board that Department officials, including intake officers, prevent TGNCI people access to the THU by telling them false information such as that the unit has been closed or a person is not qualified for the unit due to their mental health diagnosis.

The majority of individuals SRLP encounters in the THU heard about the unit's existence from an outside source. Binding the hands of advocates from sharing the full directive (which includes the application form) keeps us from informing individuals of their rights. The Board noted the difficult situation this places potential residents in as they must sign that they agree to abide by all rules of the THU on their application. Yet the rules are not available anywhere - either the ones the residents must abide by or the rules the Department must abide by.⁴ Allowing the Directive to be public will also allow more advocates - such as public defenders - to use it persuasively when asking Judges to place their clients in the unit, or simply to inform clients of the unit's existence.

- The Board should issue a policy that forces public dissemination of Department directives so TGNCI people can access their rights and meaningfully agree to abide by rules

Improve Intake Forms

⁴ N.Y.C. Board of Correction, An Assessment of the Transgender Housing Unit, pg. 12 (February, 2018).

The Board recommends ensuring that the “questions on the PREA Intake Questionnaire trigger appropriate follow-up if an individual self-identifies or appears to be transgender.” SRLP has not been invited to attend any meetings with the Department concerning the PREA Intake Screening form since spring 2017. We are therefore unaware if any of our suggestions, or the suggestions of the other advocates, were incorporated. We therefore offer some of our suggestions again:

- That the Department follow Directive #5011 (Elimination of Sexual Abuse and Sexual Harassment) which requires that medical and mental health staff complete the “PREA Intake Questionnaire” and not uniformed staff;
- That the "PREA Intake Questionnaire" be completed within 72 hours of entry into custody;
- That a decision on housing be rendered, in writing, to the individual within 30 days of the "PREA Intake Questionnaire" interview;
- That the Department separate and not group together LGBTI identities (as noted by the Board in their assessment as well);⁵ and
- That the Department specifically add questions asking individuals at intake where they would be most safe and secure, and to let people know that housing in line with one's gender identity is available as an option under PREA.

Require Additional Board Oversight for Application and Appeals

The Board states in their findings that the Department "has received no appeals of its THU placement decisions." Yet SRLP submitted an appeal on behalf of a client and we worked with another agency in submitting their appeal on behalf of a client. At a minimum, two appeals have been submitted and not recorded by the Department. We therefore find the lack of any tracking mechanisms and the lackadaisical manner in which the THU Evaluation committee "meets" solely over email to be an inherent problem that contributes to the poor management of the unit.

This is crystalized in the stark fact that of the 118 applications the Board reviewed there was no decision recorded on 99 of the applications. Despite there being a strict timeline of 72 hours from the Committee receiving the application to the individual receiving the determination, there is no way to tell if the decision was made in the appropriate time without it being recorded. Conceivably, 99 individuals were never informed of the decision regarding their application. There is also then, no written decision from which those 99 individuals could appeal.

While there is no data from which we can analyze the wait time of when an individual applies to when they receive an average determination, SRLP can share that our clients suffer the very real repercussions of this lack of accountability. Numerous times our clients have taken plea deals rather than stay and endure the conditions of the city jails outside of the THU. As the Board knows all too well, TGNCI individuals face extraordinarily high levels of sexual violence,

⁵ N.Y.C. Board of Correction, An Assessment of the Transgender Housing Unit, pgs. 7-8 (February, 2018).

harassment, and general negligence. When Department employees are not encouraged to treat TGNCI people as full human beings it is easy for the mistreatment of TGNCI people to become generally accepted. TGNCI people pay the real-world consequences of the Department's mismanagement of the THU - whether that is through surviving sexual violence or through taking a disastrous plea deal in order to more quickly leave the other city jails. We would then add to the Board's recommendations the following:

- Actively address the average wait time of 85 days before individuals are placed in the THU by providing all written determinations of whether an applicant will or will not be placed in the THU to the Board along with any appeals and the determinations of the appeals for the same accountability reasons that require that the placement of all transgender individuals to be shared with the Board;
- The THU Evaluation Committee must physically meet at least occasionally to ensure comprehensive understanding of the criteria for denying or accepting an applicant, to ensure actual knowledge of TGNCI identities, and to discuss any trends; and
- The Department must make public what it means by the "LGBTQI advocacy group" that assists with appeals.

Ensure the Directive is Followed for Staffing and Training

Throughout the assessment, the Board mentions that officers readily admit to a lack of training for the unit and that this lack of training is evident to those held in the THU. This is consistent with what SRLP has been witnessing and reporting to the Board for three years.

With almost every visit from SRLP, the women in the unit will identify a few officers who they say are respectful, use the right names and pronouns, and who they would like to have in the unit as steady officers. SRLP has also encountered a number of officers who have volunteered that they would either like additional training or like to be in the unit.

This is also important because the women report that when officers who are respectful of their identities escort them they are less likely to encounter issues outside the unit, whether on the way to court or in line for medical or elsewhere. By setting a respectful tone, other individuals understand there will be consequences to disrespectful actions. The Board should:

- Request to see and review the transgender-specific PREA training (or how transgender issues are being incorporated into any existing trainings);
- Ensure that 20% of all employees were in fact trained on effective communication with transgender people by December 31, 2017 and, if not, sanction the Department accordingly; and
- Direct the Department to begin to offer steady positions in the THU after successful completion of trainings on effective communication with transgender people.

Improve the Transgender Housing Unit Overall

Programming

This summer, SRLP met with a woman who attempted to live in general population and then protective custody rather than go to the THU. While in the men's jails, she survived incidents of sexual violence including having other incarcerated people expose themselves to her, having officers grope and fondle her breasts on her way to and from her cell, and being asked on numerous occasions to provide sexual acts in exchange for "not being written up." When SRLP asked her why she had not wanted the THU as a potential placement, she replied that she didn't want to go somewhere where she could not engage in programming. The sexual violence she endured - that no person in the City's custody should endure - was for her worth the opportunity to show her criminal court Judge that she was engaged, participatory, and eager to proceed with any treatment options the Judge might offer.

No person should have to make decisions concerning their criminal case that weigh whether or not to live free from sexual violence. Our client, however, was right that judges often take into account and seriously weigh any work that incarcerated people have done towards improving themselves. People who are able to produce certificates indicating that they have completed some sort of course while incarcerated are often viewed more favorably by the court. If the women in the THU have so few opportunities to engage in this kind of programming, it puts them at a disadvantage in their cases.

The Board states as a recommendation that the Department should “add additional and consistent gender-responsive programming to the unit based on feedback from individuals in custody and individualized assessments.” SRLP wants to take this moment to acknowledge the work of Ms. Keziah Eaddy, a social work staff member at the Department who has brought some dynamic programming to the unit. Nevertheless, SRLP still faces difficulties in being let into the unit. Too often we are told no escort is available or that we must wait for our escort - sometimes up to an hour. When this clashes with count, it can result in us sitting in the unit for the hour of our class while all the women are locked in their cells.

The Board has already shared that people in the unit informed them that “programming such as yoga, art therapy, and weekly community meetings aid in creating a supportive environment.”⁶ This is important as individuals in the THU are almost twenty percent more likely to have mental health needs, and active creative engagement can support positive mental health outcomes.⁷ Yet such programming is only the beginning of what is needed in the unit. Without access to the programming offered elsewhere such as drug and alcohol counseling, group mental health meetings, re-entry focused programs such as I-CAN, or anger management, individuals are often underserved compared to those in general population. In addition, the women are not being offered the programming available at Rose M. Singer which is often specific to opportunities for women. We therefore recommend that:

⁶ N.Y.C. Board of Correction, An Assessment of the Transgender Housing Unit, pg. 22 (February, 2018).

⁷ N.Y.C. Board of Correction, An Assessment of the Transgender Housing Unit, pg. 21 (February, 2018) (THU reported 59% while the general population reported 42%).

- An assessment of what programs individuals in the THU would like to receive should be carried out, and efforts should be made to expand programs already offered in MDC and Rose M. Singer to the population of the THU; and
- a full-time Social Worker should be assigned to the Unit for specialized programming, de-escalation skill-sharing, and more.

Gender-Affirming Material Resources

The assessment did not touch on the physical space of the THU itself. Yet this is important. While located in the NIC on Rikers, the unit had GRE books, DVDs on trans identity, memoirs by transgender writers, and other resources. Since the move to MDC, the unit has had a broken checkers board, a dozen Bibles, and a handful of mystery novels with their covers removed. From May-August 2016 all the tables and chairs were removed from the unit with no explanation. We taught classes sitting on the concrete in a circle and women ate their meals standing up or perched on the stairs. Upon our last visit in early March there were no more books, checker board, or other communal items. All that can be done in the unit itself is watch TV or talk.

The Directive states that residents of the THU will have access to the same commissary list as is available at Rose M. Singer. This is not now, and to our knowledge has never been, followed. While commissary may be a small point amongst so many glaring areas of work, having gender-affirming items can act as a daily affirmation of your identity. The women in the THU are already housed in a men's jail and are consistently misgendered. To have access to a more diverse array of hair styling products or to have loved ones send in skirts and dresses for court appearances can make a profound difference. It is therefore recommended that:

- Commissary available at Rose M. Singer should also be made available to individuals in the THU; and
- The packages rules should be updated to ensure that individuals in the THU can receive gender-affirming clothing for court and significant family events

In the "Key Findings" the Board notes a constant theme, that staff in the unit do not know how to handle disagreements between the women in the unit. Providing them with stimulation - books, programming, consistent recreation and religious services, and more will drastically reduce these disagreements.

- As part of their specialized trainings, officers must be educated in what disagreements merit intervention, and what kind of intervention is merited.⁸

⁸ N.Y.C. Board of Correction, An Assessment of the Transgender Housing Unit, pg. 5 (February, 2018).

CONCLUSION

There can be no doubt that the THU is an incredibly valuable resource to many TGNCI people in the Department's custody. SRLP deeply appreciated the visible effort of the Board in putting together this assessment. People housed there "expressed the importance of the unit" to the Board.⁹ Not only do individuals feel safer, statistics from multiple organizations suggest that they *are* safer. Yet when we keep the THU a secret by not informing people about it, maintain the Directive as classified, have divergent and inaccurate information on the criteria to get in, fail to follow promulgated standards on how to record applications and appeals, and seriously under-resource, under-train, and under-staff the facility, the potential of the THU as a meaningful way to decrease sexual violence and increase the safety of TGNCI people completely fails. There can be no doubt that the unit has extraordinary potential, but in its current state, the Department must either invest in an enormous cultural shift or admit that it cannot safely house TGNCI people according to city, state, and national laws, and must therefore refuse to house all TGNCI people.

Respectfully submitted,



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⁹ N.Y.C. Board of Correction, An Assessment of the Transgender Housing Unit, pg. 22 (February, 2018).