



April 22, 2019

New York City Board of Correction
1 Centre Street
Room 2213
New York, NY 10007

RE: Implementation and Compliance – PREA Standards

Dear Chair Cephas and Members of the Board,

On behalf of Brooklyn Defender Services (“BDS”) and thousands of directly impacted people that we represent, we write in support of the Board of Correction’s (“the Board”) efforts to protect transgender individuals and eliminate sexual abuse and harassment in Department of Correction (“Department” or “DOC”) facilities. We appreciate the Board’s ongoing attention and the opportunity to testify on this issue of profound importance at the April 23, 2019 hearing. We ask the Board to take additional steps—outlined below—to enhance accountability, clarity, and enforcement as it relates to transgender and gender non-conforming individuals within the Minimum Standards on the Elimination of Sexual Abuse and Harassment. We echo the detailed testimony by our colleagues at the Legal Aid Society Prisoners’ Rights Project submitted on March 26, 2019.

DOC Staff Discouraging Programs

Despite the Board’s mandate and the Department’s policies, people in DOC facilities face often-insurmountable hurdles accessing information and services targeted towards the transgender community. All too often, the very DOC staff responsible for providing these services are the ones who hinder their effectiveness. This problem is particularly pervasive when our clients seek access about specialty housing units including the Transgender Housing Unit (“THU”).

Ms. A

Like all other people entering DOC custody, Ms. A, a 25-year-old transgender woman, answered extensive, confidential, and sensitive questions during the intake process. Although it presented an emotional burden, Ms. A shared her gender identity, history of sexual abuse, and extensive personal trauma on the PREA intake form. After completing the process, Ms. A expected that the information she provided would be used to provide services and determine the most appropriate housing. However, neither the intake officer nor PREA staff followed up with Ms. A about the

housing options or provided information about the THU. When DOC placed Ms. A in general population in a male facility, despite the fact that she's a transgender women, she faced relentless harassment from incarcerated males and DOC staff. Shortly thereafter, without explanation, Ms. A was moved to the New Admission House, in a male facility, where she continued to be the target of harassment. In that house, Ms. A encountered a constant flow of new people coming into the unit, making the already traumatic experience even more distressing with Ms. A in a position of constantly navigating people's preconceived notions and her safety.

In the New Admission House she met four other transgender women. They informed Ms. A of the THU at the women's facility and other options beyond her current house. After considering her options, Ms. A requested an application for the THU. Not long after she expressed interest, she met with a PREA Compliance Manager. When Ms. A asked if the THU would be a better experience, the Compliance Manager responded, "No, it will be worse."

Our office has grave concerns with how DOC staff, charged with providing people with accurate information so people in custody can make informed decisions, dissuade individuals from even filling out the THU application. Ms. A took the official's word and decided to stay in the male New Admission House. Shortly after, Ms. A was physically assaulted in the bathroom where she sustained multiple serious injuries.

Situations like the one Ms. A was in should not exist, but yet they do, and with regularity – it's been our overwhelming experience that DOC staff regularly fails to provide incarcerated individuals with information about the THU and frequently ignore requests for information or for an application form from incarcerated individuals who know that the THU exists. When people learn of the THU through word-of-mouth, Department of Correction staff discourages individuals from even attempting to apply. These interactions are not only ethically problematic; they put lives in serious danger.

The Board should ask the Department:

- Why does the Department utilize intake units, including the New Admission House, as long term housing for transgender individuals instead of more stable housing units?
 - How often are transgender and gender non-conforming individuals housed in intake units inconsistent with their gender identity?
- Are there specific intake units for transgender and gender non-conforming individuals?
- How does the Department decide where to house transgender and gender non-conforming individuals?
- What unit within the Department of Correction conducts PREA intake?
 - Are there specific individuals assigned to the initial PREA intake?
- Where do PREA intake interviews take place e.g. DOC facility, criminal court?
 - Are these areas confidential?
 - How can people request a confidential setting to complete their PREA intake?
- What training protocols are provided to staff members conducting the PREA intakes?

- DOC staff repeatedly enquires about an incarcerated person's assigned sex at birth and transition-related medical history. Why is this sensitive information being gathered by corrections officers and not trained medical providers?
- What is the current system to ensure trained DOC staff are consistently assigned to THU?
- If a person identifies as transgender or gender non-conforming, what information and options are provided to the individual by DOC? And how?
- How does the Department track compliance amongst their staff conducting PREA intake interviews?

Lack of Available Information about THU Criteria and Eligibility

It's important for directly impacted people and the advocacy community that supports them to understand DOC's eligibility criteria for placing someone in THU. Incarcerated individuals often do not receive any response to their requests for placement in THU, or are provided with informal verbal decisions from DOC staff without information as to the basis of the decisions. In the cases when DOC does issue written decisions, they rarely issue within the timeframe prescribed by Directive 4498, sometimes providing decisions months after the incarcerated individual first requested to be placed in the THU.

DOC has an informal practice of reviewing THU placement requests in a manner that is inconsistent with its own directive. Though an Evaluation Committee and Advisory Committee are supposedly in place to decide an individual's placement in THU, Assistant Commissioner for Sexual Abuse and Harassment Prevention Faye Yelardy is primarily responsible for making THU placement determinations and has stated that she keeps no written documentation of her reasoning for determining placement.¹ When a client requests THU through our office, BDS contacts Assistant Commissioner Yelardy directly requesting staff to follow up with the individual for THU placement.

Ms. B

Although Ms. B identified herself as a transgender woman, she wasn't immediately placed into THU upon admission into DOC custody because the Department claimed they needed to conduct an assessment before Ms. B could be moved into the THU. She was subjected to physical abuse from incarcerated men in a male housing unit until she was ultimately accepted and transferred to the THU at MDC. Although the THU at MDC didn't allow her the same access to programming that she would have had in general population, Ms. B felt safer in THU. Not long after she was in THU, she was sentenced to jail on her criminal case. When she returned to her housing unit, she was ordered to pack up her things because she would be moving, but with no explanation. She was briefly able to contact her social worker to say she was moving, but she did not know where she was being transferred or why. She pleaded with the THU staff to let her stay, but to no avail.

¹ Assistant Commissioner of Sexual Abuse and Harassment Prevention Faye Yelardy made these comments during a meeting with advocates and Board of Correction in May 2017 at the Bulova Building in Queens.

Our office met with Ms. B the following morning at EMTC, the sentenced male facility. She hadn't slept; she couldn't stop crying and didn't know what she did to deserve the transfer. Our office reached out to Assistant Commissioner Yelardy asking for an explanation for the transfer and requesting that DOC immediately move Ms. B back to THU. Assistant Commissioner Yelardy responded to our request days later, and said that THU does not accept women who are sentenced. The purported policy prohibiting sentenced transgender women from accessing the THU was not written anywhere. Yet, known sentenced women were in the THU, and other defenders working with transgender individuals also reported their sentenced clients were accepted into the THU. Confusingly, the Department stated this to be the sole reason Ms. B was taken out of a unit where she was doing exceptionally well and dumped in a male facility where she was harassed and later physically assaulted. Nowhere in the DOC Transgender Housing Unit Directive or the Board of Correction Minimum Standards does it prohibit sentenced individuals from accessing the Transgender Housing Unit, yet this was the excuse DOC provided in Ms. B's case.

It's our understanding that the THU at the women's jail is accepting sentenced women. Contrary to its stated policy, DOC's practice of allowing sentenced women in THU in most cases is appropriate. But we need to ensure that arbitrary decision making like the one in Ms. B's case does not repeat itself. There needs to be meaningful oversight and transparency in how these decisions are made.

Ms. C

Ms. C is a young woman who was sent to a male facility on Rikers Island. She requested THU during intake, not because she was informed by DOC staff but because she was made aware of the unit through formerly incarcerated individuals prior to her arrest. Her request for THU went unanswered for approximately three months before our office got involved.

During a meeting with Ms. C at OBCC, a male facility, she had remnants of a bruised eye and cut lip. She had been in multiple fights defending herself from transphobic men after learning a transgender woman would be sleeping near them in the same house. They physically and sexually harassed her, tried pulling down her pants, all while DOC officers watched and misgendered her.

Our office advocated for an immediate transfer and reached out to Assistant Commissioner Yelardy for an explanation why DOC delayed providing Ms. C a decision for her THU request. DOC responded that Ms. C was denied the THU due to her 'behavior' while in custody. Nonetheless, DOC did not provide specifics or explain the actual basis for denying Ms. C. Worse, DOC never provided the explanation to Ms. C, only to our office. Although our office delivered the message to Ms. C, DOC demonstrated a total disregard for her health or safety. Had DOC, and the PREA staff, responded to Ms. C's initial application to the THU, she would not have been subjected to a male facility for the length of time she experienced. She would not have been forced to physically defend herself from adult men who were beating and harassing her daily. Had DOC asked the initial questions during intake and provided Ms. C with the appropriate information on housing options, Ms. C likely would never have been subjected to the horrendous abuse she experienced.

We advocated for Ms. C to appeal the decision. We also advocated with DOC in an effort to educate the Department that the allegedly problematic ‘behavior’ used as grounds for denial was the result of DOC’s actions. Ms. C would never have been forced to defend herself if DOC had adjudicated her application promptly rather than housing her in a male facility for a prolonged period of time. Our pleas went unanswered, and no PREA staff member ever met Ms. C. The trauma became too much for Ms. C to endure. She decided to take a plea on her criminal case specifically knowing that by doing so, she would be given time served and released from DOC custody. DOC’s inactions and inability to comply with their own policies and the Board’s minimum standards dictated the outcome of Ms. C’s criminal case.

Ms. D

Ms. D is a transgender woman who was placed in a male facility. DOC claimed that she was only eligible to transfer to the THU at MDC after she completely detoxed. Though she was accepted to the THU and expected to move after detox, DOC did not provide adequate justification for why she had to endure additional days in a male facility rather than continuing her treatment in the THU or Rose M. Singer Center, the women’s facility on Rikers Island. Due to her history of abuse, our client suffered severe PTSD and verbal harassment while she awaited her transfer to the THU. DOC did not explain why Corrections and medical staff were unable to coordinate her treatment in a safer location where our client did not have to be housed with other incarcerated males.²

We applaud the Department’s decision to move the THU to the women’s facility on Rikers Island, but it’s unclear to directly impacted individual and advocates how accessing treatment can differ, if at all, now that the THU has been relocated.³

The Board should ask the Department:

- How are applications to the THU tracked and documented, and in what timeframe?
 - What kind of database is used to track and document THU applications?
- What is the protocol for informing an individual of the decision on their THU application?
- What mechanisms, if any, exist for ensuring the DOC is reviewing THU Applications and issuing decisions in a timely manner?
- If an individual doesn’t agree with the decision, what is the appeals process?
- Who is on the THU Evaluation Committee?

² To the extent that methadone maintenance is not available in the THU, this presents potential violations of our clients’ rights as they may be forced to decide between medically-necessary treatment (methadone maintenance) and safety and services offered in the THU. Further, even if DOC does not provide methadone maintenance in the THU, Ms. D should have been offered those services in a female facility – specifically RMSC, where it is already available to other incarcerated women – rather than being transferred to a male facility.

³ The NYC Department of Correction moved the Transgender Housing Unit from Manhattan Detention Complex to the Rose M. Singer Center in the summer of 2018.

- How are these committee members appointed?
- What are the eligibility criteria to be appointed to the THU Evaluation Committee?
- Who is on the THU Advisory Committee?
 - How are these committee members appointed?
 - What are the eligibility criteria to be appointed to the THU Advisory Committee?
- How does the Department ensure that a person who identifies as transgender or gender non-conforming, and has additional specialized needs (i.e. methadone maintenance, specialized medical care; serious mental illness; intellectual or developmental disability) receives all necessary services?
- Where does the Department house young adults (18 y/o – 21 y/o) who identify as transgender or gender non-conforming?

Housing based on Gender Identity

The Board's minimum standards should reflect and incorporate the need for both gender identity and safety to exist in concert. We cannot, and should not separate these critical needs when assessing the dynamics and added risks for people who are housed in facilities inconsistent with their gender identity. We applaud the City and the Department for keeping the THU open and for moving the unit to the women's jail on Rikers Island. We believe this to be the most appropriate decision on behalf of our incarcerated transgender women clients.

Ms. E

Ms. E is a transgender woman, and DOC records correctly reflect her sex as Female. Ms. E suffers from mental health issues and substance use issues, and while in the THU at the Rose M. Singer Center, she was doing fairly well and participating in programming.

Despite doing well, Ms. E had a physical altercation with another woman in her unit and, understandably, the two women were separated from each other. Unfortunately, Ms. E was not just moved out of THU, but moved to a male facility with no written notice, no explanation, and no rationale for why she was not placed in a non-THU unit within RMSC.⁴ The Department moved our client into a protective custody unit within a male facility, where she was the target of endless harassment, physical and sexual threats and constant misgendering by both incarcerated males and DOC staff.

We respect the need for the two women to be separated, but Ms. E should have been placed in another housing unit with RMSC before she was moved to a male facility. It's essential that additional THUs for women are created in order to provide housing flexibility for the Department. Additionally, transgender women should be afforded the same right as cisgendered women to be housed in general population within the women's facility.

⁴ We understand there is only one women's facility in DOC but Ms. E's safety would be equally satisfied with a different women's facility if that's ever an option.

The Department's actions to move Ms. E to a male facility for 'behavior' is a transgender specific punishment, one that we would never, nor should it, be imposed on cisgender women.

The Board should ask the Department:

- Is the Department compliant with the NYC Commission on Human Rights' reporting instructions stated in their letter to Heidi Grossman on April 13, 2018?⁵
- Advocates are aware of three THU's in DOC. All three are at RMSC. One is dedicated as an intake unit, a second is a general population unit and the third is a mix unit with transgender women and cisgender women over the age of 50.
 - How many THU's are there in DOC facilities?
 - Are there any other THUs dedicated to transgender men?
 - If more than one, do these units serve different functions or different populations?
 - What is the rationale to create a third mixed THU with cis-gender women over the age of 50?
 - What is preventing the Department from creating additional THUs at RMSC so that women who cannot be housed together, have the option to be housed in a different THU?
 - Are transgender women being housed with women at RMSC outside of the THU?
 - What types of housing?
- Advocates were informed by the Department to not share the DOC THU Directive with incarcerated people.
 - What is the rationale to deny people the opportunity to read the directive?
 - What are the purported security concerns?
 - What part of the directive is the Department concerned with sharing?
 - Can a redacted version be made to directly affected people?
 - Are transgender women provided the policies and guidelines in a different format, particularly stated in the THU Directive?
- Who is the Department consulting to ensure the needs and safety of transgender and gender non-conforming individuals are protected?
- How does the Department respond to court ordered placements in the THU?

⁵ In the April 13, 2018 letter from the New York City Commission on Human Rights to Heidi Grossman, General Council at New York City Department of Correction, modifying the Department's exemption pursuant to NYC Administrative Code §8-107(4) states, "DOC shall provide a letter to the Commission, due January 15, 2019 and each January 15 thereafter, summarizing: (i) the status of DOC's compliance with this exemption; procedures and policies, if any, adopted since the prior year's submission; and (iii) for the prior year, the number of applications made by or on behalf of inmates seeking to be housed consistent with their gender identity, the number of requests granted, and a summary of the bases for any denials."

Conclusion

Our office is encouraged by the Board's efforts to hold a special hearing to discuss the Department's implementation and compliance with Minimum Standards to Eliminate Sexual Abuse and Sexual Harassment. We urge the Board to take additional steps—outlined above—to enhance accountability, clarity, and enforcement as it relates to transgender and gender non-conforming individuals. When our clients are housed in a facility inconsistent with their gender identity, they face daily abuses ranging from inappropriate pronoun use and offensive name calling, to physical and sexual assault.

Nonetheless, there is more work to be done. We need to ensure that the Department's leadership is not compromised by any personal biases relating to transgender and gender non-conforming people. We need to be mindful of how the Department creates and enacts policies meant to protect and safely house transgender and gender non-conforming people.

We request that the Board hold the Department accountable for their failure to protect transgender and gender non-conforming people in their custody.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kelsey De Avila', with a long horizontal flourish extending to the right.

Kelsey De Avila, LMSW