



April 23, 2019

The Bronx Defenders  
LGBTQ Defense Project  
360 East 161st Street  
Bronx, N.Y. 10451

Members of the Board of the Correction  
1 Centre Street  
Room 2213  
New York, N.Y. 10007

**Re: Treatment and Housing of Incarcerated Transgender People**

Dear Members of the Board of Correction:

My name is Deborah Lolai and I am the LGBTQ Client Specialist at The Bronx Defenders. The Bronx Defenders provides holistic public defense in the Bronx. Our LGBTQ Defense Project represents LGBTQ people who have criminal cases in the Bronx and related legal matters. A significant amount of our time and resources of the Project are spent advocating on behalf of our incarcerated transgender and gender non-conforming clients who experience abuse and harassment while they are in the custody of the New York City Department of Corrections (DOC).

First, I would like to thank you for your continued attention to this important topic, about which I have testified before the Board in the past. I would also like to acknowledge that since this past summer, when the Transgender Housing Unit (THU) was moved to a women's jail, the conditions have improved significantly for our clients who are accepted into the THU. The overall consensus from women who are housed in the THU is that it is much safer and more affirming than when the THU was housed in a men's jail.

However, because of the limitations on THU eligibility, many transgender women are housed in men's jails. Whether in protective custody, general population, or solitary confinement, they all face the same mistreatment: they are misgendered, harassed, and are often the victims of sexual violence and assault. Today I would like to discuss the ways in which the THU should continue to improve, but I'd also like to highlight the experiences of incarcerated transgender women who are not in the THU.

## **Fear of Reporting Sexual Harassment and Abuse in the THU**

Despite the improvements of the THU, there are still many unresolved concerns. One of the issues that we have observed is the way DOC handles reports of sexual harassment or abuse in the THU.

When a woman in the THU reports being sexually harassed, she is removed from the THU and transferred to a men's jail. The policy of removing a victim of violence from the environment where they experienced that violence might make sense in other contexts. However, this policy is extremely harmful when enforced in this context because when transgender women report being a victim of violence in the THU, they are removed from the unit and placed in men's jails, where their safety is at risk. Essentially, women are being punished for reporting sexual harassment and abuse in the THU. This practice has already had a chilling effect on the women in the THU as many of them are now afraid to report incidents of sexual harassment or abuse because they have seen what has happened to other women who have made reports.

## **Lack of Access to Specialized Care in the THU**

The THU is not equipped to house women who require higher levels of care such as serious medical treatment, detox and drug treatment, or mental health treatment. For transgender women who require this level of care, the THU is not an option. Transgender women who require this level of care are always housed in men's jails because they cannot access the care they require in the THU, and DOC is not willing to house them in women's facilities where access to these services exist.

## **Most Transgender Women in DOC Custody are in Men's Jails**

While the THU is an incredibly important unit, the main reason I am here today is to address the safety risks to our clients who are *not* in the THU.

The reality is that when a transgender woman is not in the THU, she is in a men's jail. Some of those women are in protective custody, some are in general population, and some are in solitary confinement, but they are *all* in men's jails.

Most of the women who are in men's jails are not there by choice. They are there because DOC did not accept them into the THU; they did not know the THU was an option; they were discouraged from requesting to be placed in the THU by corrections officers; or because they were removed from the THU.

## **Transgender Women Are Often Not Accepted Into the THU**

When transgender women enter into DOC custody, they are supposed to be given the option of applying to be housed in the THU. However, most of the transgender women we represent who apply to be housed in the THU are not accepted into the unit.

There continues to be a lack of transparency about the process that determines who is accepted into the THU and who is not. The two most common explanations that the Department has provided for not accepting my clients into the THU are (1) a history of violence, and (2) DOC's assertion that they are not actually transgender.

1. The Department has often cited to the criminal record or disciplinary record of women who they reject from the THU as a justification for their rejection. It is important to acknowledge the fact that because of the disproportionate attacks and violence against transgender women, they are often placed in a position where they need to defend themselves from violence. As a result of that, they are often the ones who are criminalized for their own self defense. For example, if a transgender woman was previously incarcerated, and defended herself while being assaulted by another inmate, she may be the subject of disciplinary action and that disciplinary record will likely be used against her in her application to the THU.
2. Another extremely common way that DOC attempts to justify rejecting transgender women from the THU is by asserting that they are "pretending to be transgender." The Department often expects us to prove to them that our clients are transgender by digging into their medical records to find evidence of transgender related medical treatment, and sharing our client's personal information and medical history with DOC. What the Department fails to recognize in requiring this type of "proof" is that not all transgender people transition in the same way, and that doesn't make them any less transgender. Being accepted into the THU should not depend on how a person medically transitions, how long or whether they are on hormones, or how femininely they express their gender. Furthermore, by telling a transgender person that they are "pretending to be who they say they are" one actually perpetuates the harm that is at the root of much suffering experienced by transgender people: others telling them that they aren't actually who they are and invalidating their identity.

## **Conclusion**

Many of these issues would be resolved if the Department housed transgender women with other women, outside of the THU. When a transgender woman is not accepted into the THU, she should have the option of being housed with other cisgender women at Rose M. Singer Center, but our clients are never given this option.

Until the Department starts to treat transgender women as women, and until it actually makes general population, protective custody, and housing units other than the THU in the women's jails accessible to transgender women, transgender women will not be safe in DOC custody and they will continue to experience extreme levels of harassment and violence.

Thank you for allowing me the time and opportunity to testify about this important issue, on behalf of all my clients who have survived such violence in the custody of the Department of Corrections.