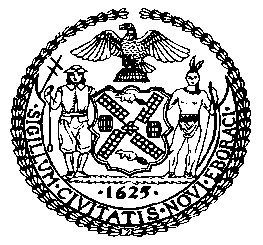
Committee on Criminal Justice

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**THE COUNCIL OF THE CITY OF NEW YORK**

**COMMITTEE REPORT AND BRIEFING PAPER OF THE**

**JUSTICE DIVISION**

**Jeffrey Baker, Legislative Director**

**Brian Crow, Deputy Director, Justice Division**

**COMMITTEE ON CRIMINAL JUSTICE**

**Hon. Keith Powers, Chair**

**May 1, 2019**

**Oversight: The Experience of Transgender and Gender Non-Conforming People in NYC Jails**

**INT. NO. 1513** By Council Member Ayala, Rosenthal, and Kallos

**TITLE** A Local Law to amend the administrative code of the city of New York, in relation to mental health treatment for transgender, gender nonconforming, non-binary, and intersex individuals

**ADMIN. CODE** Amends § 9-157

**INT. NO. 1514** By Council Member Ayala, Rosenthal, and Kallos

**TITLE** A Local Law to amend the New York City Administrative Code, in relation to requiring access to substance abuse treatment for transgender, gender non-conforming, non-binary, and intersex individuals

**ADMIN. CODE** Amends § 9-107

**INT. NO. 1530** By Council Member Moya, Kallos, and Rosenthal

**TITLE** A Local Law to amend the administrative code of the city of New York, in relation to reporting on housing decisions made for transgender, gender nonconforming, and intersex individuals

**ADMIN. CODE** Amends § 9-157

**INT. NO. 1532** By Council Member Powers, Kallos, and Rosenthal

**TITLE** A Local Law to amend the administrative code of the city of New York, in relation to housing decisions made for transgender, gender nonconforming, and intersex individuals

**ADMIN. CODE** Amends § 9-157

**INT. NO. 1535** By Council Member Rosenthal and Kallos

**TITLE** A Local Law requiring the board of correction to convene a task force to address polices related to the treatment of transgender, gender non-conforming, and non-binary individuals in the department of correction

**PROP. RES NO. 143A** By Council Member Dromm

**TITLE** Resolution calling on the New York State Legislature to pass and the Governor to sign the Humane Alternatives to Long-Term Solitary Confinement Act.

**RES NO. 829** By Council Member Powers

**TITLE** Resolution calling upon the New York State Legislature to pass, and the Governor to sign, S.1343/A.5493, which would reform revocation presumptive release, parole, conditional release, and post-release supervision.

1. **Introduction**

On May 1, 2019, the Committee on Criminal Justice, chaired by Council Member Powers, will hold an oversight hearing on the treatment of transgender and gender non-conforming individuals in New York City jails. The committee will also hear Introduction Number 1513, a local law to amend the administrative code of the city of New York, in relation to mental health treatment for transgender, gender nonconforming, non-binary, and intersex individuals; Introduction Number 1514; a local law to amend the New York City Administrative Code, in relation to requiring access to substance abuse treatment for transgender, gender non-conforming, non-binary, and intersex individuals; Introduction Number 1530, a local law to amend the administrative code of the city of New York, in relation to reporting on housing decisions made for transgender, gender nonconforming, and intersex individuals; Introduction Number 1532, a local law to amend the administrative code of the city of New York, in relation to housing decisions made for transgender, gender nonconforming, and intersex individuals; and Introduction Number 1535, a local law requiring the board of correction to convene a task force to address polices related to the treatment of transgender, gender non-conforming, and non-binary individuals in the department of correction.

The committee will also hear two resolutions related to state legislation. First, the Committee will hear Resolution Number 143, calling on the New York State legislature to pass and the Governor to sign the Humane Alternatives to Long Term (“HALT”) Solitary Confinement Act. Second, the Committee will hear Resolution Number 829, calling upon the New York State Legislature to pass, and the Governor to sign, S.1343/A.5493, also known as the “Less is More Act,” which would reform revocation presumptive release, parole, conditional release, and post-release supervision.

The Committee expects representatives from the New York City Department of Correction (DOC or “the Department”), the New York City Board of Correction (BOC or “the Board”), program providers, advocates, and other key stakeholders to testify.

1. **Background: Treatment of Incarcerated TGNC Individuals Nationwide**

Transgender and gender non-conforming (TGNC) people face high rates of incarceration, especially when compared with incarcerated cisgender people. According to a nationwide survey conducted by the National Center for Transgender Equality, almost one in six transgender people have experienced incarceration in their lifetime.[[1]](#footnote-2) Transgender people of color and transgender women are incarcerated at a higher rate. About one in two black transgender people and one in five of all transgender women in the study reported having been incarcerated.[[2]](#footnote-3) According to reports, the disproportionate rate of incarceration of transgender women, especially those of color, is due in large part to over-policing of low-income communities of color, over-policing of homeless populations, and the criminalization of sex work and drug trade, which serve as the primary line of work for many low-income transgender people, especially transgender women, who often face discrimination and exclusion from the traditional job market.[[3]](#footnote-4) Thirty percent of TGNC people reported experiencing harassment while incarcerated, and about 15% reported experiencing physical and sexual assault.[[4]](#footnote-5) Transgender people, especially those of color, are disproportionately victimized behind bars.[[5]](#footnote-6) About 38% of transgender people in the study report having experienced peer harassment while 19% experienced physical assault.[[6]](#footnote-7) For black TGNC people, about half of those surveyed reported instances of harassment, while a third reported having experienced instances of sexual assault while incarcerated.[[7]](#footnote-8) A federal review of data collected under the Prison Rape Elimination Act (PREA) also confirms that transgender individuals in custody experience high rates of victimization compared to other incarcerated people, while 40% of incarcerated transgender people experience sexual victimization compared to 4 percent of all incarcerated people.[[8]](#footnote-9)

To prevent assaults and harassment against TGNC people, many jurisdictions in the United States administratively segregate TGNC individuals from the general prison population.[[9]](#footnote-10) The use of administrative segregation, also known as protective custody, is controversial but permissible under PREA, a federal legislation enacted in 2003 to protect vulnerable incarcerated individuals from sexual abuse, under certain conditions.[[10]](#footnote-11) Both scholars and advocates contend that segregation causes more harm than good because it primarily punishes the victims instead of the perpetrators.[[11]](#footnote-12) When TGNC victims are placed in segregation, they have limited contact with others and reduced access to treatment programs or job opportunities.[[12]](#footnote-13) This is can cause serious psychological damages and deter other victims of sexual abuse from reporting incidents.[[13]](#footnote-14)

TGNC people in the United States are likely to enter the correctional system with a variety of health challenges. For example, the HIV infection rate for TGNC people is 2.64%, which is over four times the rate of the United States general adult population (0.6%).[[14]](#footnote-15) The HIV infection rate for black transgender persons and transgender women is even higher; black transgender people have an HIV infection rate of 24.90% while transgender women have a rate of 4.28%, which is seven times the rate of the United States adult population.[[15]](#footnote-16) Their risk of HIV acquisition and transmission increases where substance use is involved.[[16]](#footnote-17) In one study, a majority of transgender people reported having a history of substance use.[[17]](#footnote-18) According to the Center of American Progress, substance use in the gay and transgender population is high, in part because it helps them cope with the stress that comes from the social prejudices in their daily lives, and the lack of cultural competency in the healthcare system which dissuades them from seeking treatment for substance use and abuse.[[18]](#footnote-19)

A lack of cultural competent healthcare and social prejudices also exist in correctional systems across the country.[[19]](#footnote-20) In addition, transgender persons often struggle to access gender-affirming medical care in custody. For example, some jurisdictions do not provide transgender people hormonal therapy while others do on the condition that persons were on hormonal medication prior to incarceration.[[20]](#footnote-21) Moreover, 17% of incarcerated transgender in a nationwide study reported that they were denied hormones while incarcerated, and 12% reported denial of medical care because of bias.[[21]](#footnote-22) In addition, in jurisdictions where hormonal therapy is offered to incarcerated transgender persons, there is no guarantee that they are provided the appropriate level of treatment and support services.[[22]](#footnote-23) Similarly, transgender people who desire “to undergo sexual reassignment surgery to ‘live like’ the member of the sex they want to change to” face difficulty accessing such medical treatment while in custody.[[23]](#footnote-24)

1. **Laws and Agency Policies Regarding Transgender, Gender Non-Conforming, Gender Non-Binary, and Intersex (TGNCNBI) Individuals in City Jails**

This area of law is largely governed by PREA which established established a Commission to promulgate a comprehensive set of regulations in the field of eliminating sexual abuse in prisons and jails.[[24]](#footnote-25) The Commission’s regulations, which by law were issued by the United States Attorney General, were issued in 2012, have the force of law in federal detention facilities[[25]](#footnote-26) and apply to local jails.[[26]](#footnote-27) PREA regulations have also been codified in New York City by the BOC’s standards.[[27]](#footnote-28) Additionally, in April of 2018, Mayor de Blasio issued Executive Order No. 16, which requires city agencies to permit people to use single sex facilities consistent with their gender identity.[[28]](#footnote-29) Following efforts to ensure that DOCs housing policy was consistent with the Executive Order, on April 16, 2018, the Mayor announced that the DOC would house individuals in a manner that is consistent with gender-identity, and would work with the NYC Commission on Human Rights to maintain the Transgender Housing Unit (THU).[[29]](#footnote-30) While the THU is not codified in law, the DOC issued (and is in the process of updating) Directive No. 4498 in 2014, which sets DOC policy for admissions into the unit.[[30]](#footnote-31) Similarly, policies surrounding access to transgender healthcare are governed by Correctional Health Services Policy #MED 24B.

*Risk-Screenings*

PREA and the BOC require the New York City DOC to conduct screenings at intake to determine the risk of sexual victimization and abusiveness, and to use such screenings to make “individualized determinations about how to ensure the safety” of each incarcerated person.[[31]](#footnote-32) In such a process, the DOC is required to, at minimum, screen if a person “is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming,[[32]](#footnote-33) and to use such information to inform “housing, bed, work, education, and program assignments with the goal of keeping those [individuals] at high risk of being sexually victimized from those at high risk of being sexually abusive”[[33]](#footnote-34)

Currently, the Department has several PREA-related forms that it uses at intake. One form, entitled the “arraignment and classification screening form” (**Appendix I)** screens whether incarcerated individuals feel that there is any reason why they “may be at risk or need special security or protection from the General Population” and offers examples of individuals who may need such protection such as those who have “been perceived as being gay, or transgender, a cross dresser, or visibly feminine (if housed in a male population).” [[34]](#footnote-35) Officers are then instructed to check “yes,” “no,” or “conflict.” Additionally, there is a space on the intake form where officers are asked to check whether a person is “male,” “female,” “transgender male,” or “transgender female.”[[35]](#footnote-36) When a person’s assigned sex is not known, officers are directed to “respectfully ask the [person], in private, his/her assigned sex at birth and any medical transition the [person] has undergone.”[[36]](#footnote-37)

**Issues and Concerns Surrounding Risk-Screenings**

The Committee is encouraged by the DOC’s implementation of BOC and PREA standards to screen incarcerated individuals who are high risk. However, the Committee is concerned that the Department does not give non-binary individuals, who do not identify as male or female, an opportunity to identify as such at screening, as such identification may influence programming and educational decisions. Additionally, the Committee is concerned that the directive asks officers to determine whether a person is transgender by asking their sex at birth and whether or not the person has undergone transition, as many transgender individuals choose not to medically transition. Furthermore, more information is also needed about when an officer would check “conflict” when filling out an intake form.

*Pat-Frisks*

According to testimony of DOC Deputy Commissioner Townsend, about 20% of sexual abuse allegations arise from what the department categorized as pat-frisks.[[37]](#footnote-38) Accordingly, it is important that the Department take appropriate steps to ensure that pat-frisks are conducted in a way that is respectful, particularly for those who are at a high risk of sexual victimization, such as transgender and intersex individuals. In making the determination of whether a person is transgender or intersex, the Department is prohibited from conducting strip searches for the sole purpose of examining genitalia, and instead allows such a determination to be made through conversations, medical records, or “if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.”[[38]](#footnote-39) PREA requires the DOC to train security staff to conduct cross-gender searches and searches of transgender and intersex individuals “in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.”[[39]](#footnote-40) The BOC adds to the PREA standard by requiring the Department to make best efforts to treat incarcerated individuals in accordance with their gender identity “unless exigent circumstances require otherwise.”[[40]](#footnote-41)

The PREA resource center gives guidance on conducting appropriate searches on transgender and intersex individuals, suggesting that the agency either ensure that searches are conducted by medical staff, or by female staff only,[[41]](#footnote-42) or that the agency ask each incarcerated individual to indicate a preference at intake.[[42]](#footnote-43) The Department has a policy to implement the third suggestion of asking incarcerated individuals to indicate a preference at intake,[[43]](#footnote-44) and it requires all applicants to the transgender housing unit to indicate a preferred gender for searches, and issued a directive prohibiting searches performed by officers of the opposite preferred gender absent exigent circumstances.[[44]](#footnote-45) The Moss Group and the Bureau of Justice Statistics have developed a training video on how to conduct appropriate and trauma-informed pat-frisks, and instructs correction officers to consider the high likelihood of trauma that transgender individuals experience both in and outside of jail, and to approach transgender searches with “sensitivity and caution.”[[45]](#footnote-46)

**Issues and Concerns Surrounding Pat-Frisks**

There is concern – based on observations of DOC trainings - that DOC employees are not exhibiting sensitivity towards transgender individuals, particularly when conducting pat-frisks. Accordingly, the DOC is strongly encouraged to utilize the PREA Resource Center training videos and seek trainings on transgender sensitivity trainings with transgender advocacy organizations. The Committee is also concerned that the THU application form appears to be the only form that asks transgender incarcerated individuals for their search preference, particularly when there are transgender individuals who have chosen not to be housed in the THU.

*Healthcare*

Correctional Health Service’s Policy entitled “MED 24B” requires correctional health services to give all transgender patients “appropriate care, education, therapy and medical follow-up.” CHS requires its staff to conduct a historical and physical examination and laboratory test to determine risks and contraindications; to enter a diagnosis of “transexualism,” or “gender dysphoria” and to provide informed consent prior to administering hormone replacement therapy (HRT).[[46]](#footnote-47)

**Issues and Concerns Surrounding Healthcare**

The Sylvia Rivera Law Project in a previous oversight hearing held by the Committee on Hospitals; Mental Health, Disabilities, and Addiction; and Criminal Justice expressed concern that CHS’s policy stated that one of its purposes is to “[m]inimize the use of non-standard or high dose regimens, which may be appropriate under the direct supervision of expert community providers, but also confer undue risk in the jail environment.”[[47]](#footnote-48) The Sylvia Rivera Project also expressed concern with the dosages distributed to transitioning incarcerated individuals, which were lower than recommended dosages from transgender health professionals.[[48]](#footnote-49) While CHS recently changed its directive to no longer include this purpose, and to allow for a wider range of dosages,[[49]](#footnote-50) there are still concerns regarding how such dosages are individualized. The policy also does not include standards addressing transgender transitional care other than HRT, such as surgical recovery.[[50]](#footnote-51)

*Transgender and Intersex Housing Determinations*

PREA requires the DOC to conduct a “case-by-case” analysis when making housing and programming assignments for transgender and intersex individuals. Such an analysis must determine “whether a placement would ensure the [incarcerated person’s] health and safety, and whether the placement would present management or security problems,[[51]](#footnote-52) and must give “serious consideration”[[52]](#footnote-53) to the person’s own views with respect to their safety. The DOC is prohibited from placing transgender and intersex individuals (who are deemed “high risk” for sexual victimization) in involuntary segregated housing “unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers.”[[53]](#footnote-54) When such a determination is made, the DOC is required to document the basis for the concern and the reason why no alternative means of separation can be arranged.[[54]](#footnote-55)The department is required to reassess transgender and intersex person’s housing and programming needs “at least twice each year” to review safety threats.[[55]](#footnote-56) The Department is also required to give incarcerated and intersex individuals the opportunity to shower separately from others.[[56]](#footnote-57)

**The Transgender Housing Unit (THU)**

DOC also maintains the Transgender Housing Unit (THU) as an additional housing option for transgender women in custody.[[57]](#footnote-58) The THU was created in 2015 and has been recently relocated to Rose M. Singer Center (RMSC), an all-female correctional facility at Rikers Island, from the Manhattan Detention Complex, all-male borough-based correctional facility. At a Board hearing on April 23, 2019, the DOC outlined its new process for making housing determinations for transgender and intersex women. According to the DOC, when a person is identified as a transgender woman, they are immediately moved to an intake area within RMSC to finish the intake process, even if the individual is ultimately not housed in a female facility. [[58]](#footnote-59)

While DOC has indicated that it intends to release a new directive, its most recent 2014 directive instructs staff to inform individuals in custody about the THU during the admission process and flag persons who self-identify as transgender females, or are perceived as transgender females, as potential candidates for THU based on several factors, including the person’s safety, concerns about being placed in general jail population, and gender non-conforming appearance.[[59]](#footnote-60) According to that same directive, such transgender women should then be offered the opportunity to complete an application form (see **Appendix II**), which is then forwarded to the commanding officer, who sends the application to the THU Evaluation Committee, which consists of the Department's PREA Coordinator, the THU Housing facility(s) Commanding Officer, the Bureau Chief of Custody Management or designee, and Department of Health and Mental Hygiene assigned representative of the contracted health care provider, to make a decision within 48 hours upon receipt of the application.[[60]](#footnote-61) If the tour commander determines that there is an immediate need to place an incarcerated individual in the THU, the PREA Coordinator, in consultation with the facility Warden, makes the final determination.[[61]](#footnote-62)

The directive also outlines the role of the “THU Advisory Committee,” which is intended to advise the evaluation committee when a person appeals the denial of an admission to the THU. The Advisory Committee consists of a “Department-approved volunteer from the LGBTQI advocacy group, Bureau Chief of Security, representative from Constituent Services, Deputy Commissioner of Strategic Planning and Programs, General Counsel, and the members of the THU Evaluation Committee.”[[62]](#footnote-63) While the Advisory Committee has no decision-making power, it is tasked with making a recommendation to the Evaluation Committee. The initial Evaluation Committee is then tasked with making a final decision on the appeal within 3 days of receipt of the recommendation from the Advisory Committee.[[63]](#footnote-64) To the Criminal Justice Committee’s knowledge, there have been no meetings convened with the Advisory Committee or the THU Evaluation Committee since issuance of the directive.

**Issues and Concerns Surrounding the THU**

In February 2018, the BOC issued its findings from its evaluation of the THU. BOC found that the system for managing applications and placements into the THU needed improvements.[[64]](#footnote-65) Over 80% of applications the Board reviewed in its assessment had no decisions recorded, and more than 70% of the placements into the THU had no application associated with them.[[65]](#footnote-66) Moreover, the Board found that DOC was not in compliance with its own policies related to the application process. Its report revealed that persons in the THU were not informed about the THU at intake; “most of them discovered it through word of mouth from other in custody or from [DOC] officers who are not part of the intake process.”[[66]](#footnote-67) The assessment also revealed that of those who applied to the THU, 80% of applicants preferred “she/her,” and were housed in male facilities including those people housed in the THU which at the time of the assessment was located at the Manhattan Detention Center, a male facility.[[67]](#footnote-68)

The Department’s decision to move the THU to a women’s facility, along with the new procedure implemented in October of 2018 to conduct all screenings of transgender individuals in RMSC - regardless of whether or not they are ultimately accepted into the THU – are noteworthy steps. However, various issues still pervade the process of entering the THU. On April 23, 2019, at a BOC hearing on sexual abuse, the DOC reported that of the transgender women in custody, 16 were housed in the THU, while 6 were housed in the general population at RMSC, and 1 was housed in new admission.[[68]](#footnote-69) The DOC reported that the remainder of the transgender women (24) were not housed in female facilities. According to the DOC, some of those individuals indicated a preference for being housed in male facilities. The DOC also testified that its current policies with regards to the THU only apply to transgender women; the three transgender men who were in custody as of April 23 were housed with cisgender women.

Defense and program providers have indicated to Committee staff that transgender women are still not made aware of the THU if they are not feminine presenting, do not self-advocate, or have not medically transitioned. Advocates have also expressed concern with the bases for denial into the THU. In most denials, advocates have expressed that applicants are not given a reason for not being accepted into the transgender housing unit. In other cases of denials, self-identifying transgender individuals have been told that they could not enter the unit due to previous identification as a different gender while in custody. Providers have also indicated that some transgender individuals have been denied entry into the transgender housing unit due to a lack of documentation indicating medical transition. Such issues are exacerbated, according to program providers, because providers are instructed by DOC not to teach clients how to advocate for their own placement in the THU in order to provide services within the jails.

**IV. Legislation – Analysis**

**INTRODUCTION NO. 1513**

Section 1 of this bill amends section 9-107 of the administrative code of the city of New York to ensure that transgender, gender nonconforming, non-binary, and intersex individuals have access to the same quality of mental health treatment as cisgender and gender binary individuals. This legislation will ensure that such populations will not have to choose between receiving mental health treatment and being housed in an environment that is more appropriate and safe for their needs. Section 2 will make it take effect 90 days after becoming law.

**INTRODUCTION NO. 1514**

Section 1 of this bill amends Chapter 1 of title 9 of the administrative code of the city of New York by adding a new section 9-158 to ensure that individuals who are transgender, gender nonconforming, gender non-binary, and intersex have access to the same quality of substance abuse treatment as do cisgender and gender binary individuals, whether those individuals are housed in protective custody, special housing, or the THU. Prior to moving the THU from the Manhattan Detention Center to Rose M. Singer, transgender women did not have access to medicated assisted treatment. This legislation will ensure that transgender women in the transgender housing unit do not have to choose between receiving substance abuse treatment and being housed in an environment that is more appropriate and safe for their needs. Section 2 will make it take effect 90 days after becoming law.

**INTRODUCTION NO. 1530**

Section 1 of this bill amends subdivision c of Section 9-157 of the administrative code of the city of New York by adding a new paragraph 6 to require the DOC to report on housing decisions made for transgender, gender nonconforming, and intersex individuals. It will require the department to issue an incident-level report to the Council and to the Board of Correction on housing requests made related to gender-identity on a biannual basis, and to issue an aggregate report to the public on an annual basis. This legislation will bring greater transparency into the application and appeals process for those who seek housing within the DOC that is responsive to their gender identity. Section 2 makes it so that this local law takes effect on the same date that a local law for the year 2019 amending the administrative code of the city of New York, relating to housing decisions made for transgender, gender non-conforming, and intersex individuals, takes effect.

**INTRODUCTION NO. 1532**

Section 1 of this bill would amend chapter 1 of title 9 of the administrative code of the city of New York by adding a new section 9-157 to codify PREA requirements for screening whether an individual is at risk of sexual victimization, including whether an incarcerated individual is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender non-conforming. It would also require the DOC to establish a process for transgender and intersex individuals to self-identify at intake, and use such self-identification to make housing and programming assignments on a case-by case basis. This section would also require the Department to create an appellate review board to review denials of requests made by transgender and intersex individuals for special housing. Section 2 would require the Board to issue advisory opinions regarding appeals of housing requests related to gender identity. Section 3 makes the law take effect 90 days after becoming law.

**INTRODUCTION NO. 1535**

Section 1 of this bill would require the Board of Correction to convene a task force to address polices related to the treatment of transgender, gender non-conforming, and non-binary individuals in the department of correction. The taskforce would consist of a representative from the department of correction, a representative from correctional health services, a representative from the commission on human rights, and at least six representatives in the following categories: people formerly and currently incarcerated in the transgender housing unit, service providers that address transgender, gender non-conforming, and non-binary individuals in custody, and local and national experts in issues related to transgender policy. Section 2 would make it take effect immediately after becoming law.

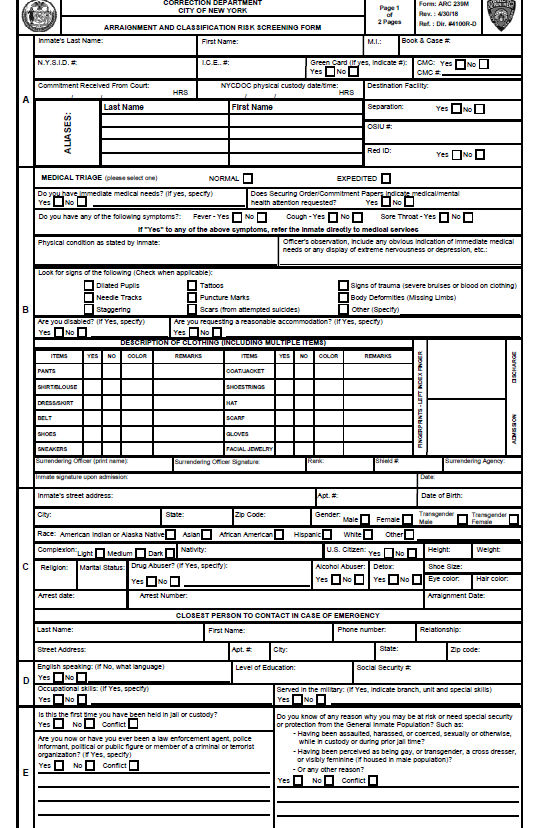
**PROPOSED RESOLUTION NO. 143-A**

This resolution would call on the New York State Legislature to pass and the Governor to sign the Humane Alternatives to Long-Term (HALT) Solitary Confinement Act, A3080/S.478. This resolution would support legislation that seeks to amend the New York State Correction Law by limiting the amount of time an incarcerated individuals spends in segregated confinement to a maximum of 15 consecutive days and a total of 20 days during a 60 day period. Furthermore, the legislation would restrict the use of segregated confinement and create alternative therapeutic and rehabilitative treatment options.

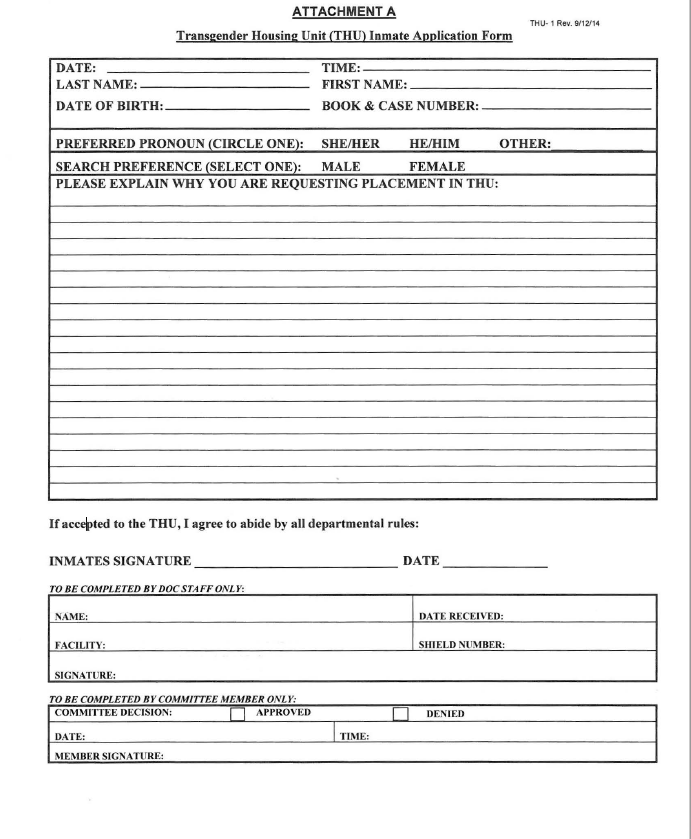
**RESOLUTION NO. 829**

This resolution calls on the New York State Legislature to pass, and the Governor to sign, S.1343/A.5493, which would reform revocation presumptive release, parole, conditional release, and post-release supervision. This resolution supports legislation intended to grant “earned time credits” to those on parole to encourage positive behavior and accelerate discharge from supervision, and ensure those on parole who are alleged to have violated the terms of their release receive a hearing in a local criminal court to ascertain whether they should be detained in jail pending adjudication of the alleged violation.

**Appendix I**



**Appendix II**

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Int. No. 1513

By Council Member Ayala

..Title

A Local Law to amend the administrative code of the city of New York, in relation to mental health treatment for transgender, gender nonconforming, non-binary, and intersex individuals

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding a new section 9-158 to read as follows:

§ 9-158 Mental health treatment. The department shall ensure that any housing unit where transgender, gender non-conforming, non-binary, and intersex individuals reside has available the same mental health treatment available to incarcerated individuals outside such unit.

§ 2. This local law takes effect 90 days after it becomes law.

AS

LS 10,261

3/23/2019

Int. No. 1514

By Council Members Ayala and Rosenthal

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring access to substance abuse treatment for transgender, gender non-conforming, non-binary, and intersex individuals

..Body

Be it enacted by the Council as follows:

Section 1. Section 9-107 of the administrative code of the city of New York, as added by local law 47 for the year of 1969, is amended to read as follows:

  a.   The commissioner of correction shall establish a program for the treatment of [heroin addicts] substance abuse through the use of [methadone hydrochloride therapy] medicated assisted treatment, including the administration of methadone, buprenorphine, and naltrexone. The program shall be available on a voluntary basis only to such [inmates] incarcerated individuals as apply, subject to a medical evaluation, before acceptance, of their need for such treatment.

b. The commissioner shall ensure that any housing unit where transgender, intersex, non-binary, and gender non-conforming individuals are housed has available the same substance abuse treatment available to individuals outside such unit.

   [b] c. The commissioner of correction shall provide for the continuance of such treatment by establishing parole procedures and after-care evaluation and implementation after the incarceration has terminated, during the period of parole.

§ 2. This local law takes effect 90 days after it becomes law.

AS

LS # 8248, 10,250

4/11/19

Int. No. 1530

By Council Member Moya

..Title

A Local Law to amend the administrative code of the city of New York, in relation to reporting on housing decisions made for transgender, gender nonconforming, and intersex individuals

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision c of Section 9-157 of the administrative code of the city of New York is amended by adding a new paragraph 6 to read as follows:

6. Starting on January 1, 2020, the department shall issue an incident-level report to the council and to the board of correction on housing requests made related to gender-identity on a biannual basis. Such an incident-level report shall include (a) whether the request was to be placed in specialized housing, to be housed in accordance with gender-identity, or another request; (b) the outcome of the request; (c) whether the request was appealed; and (d) the outcome of the appeal. Starting on July 1, 2020, the department shall issue a report on its website of such information in the aggregate.

§ 2. This local law takes effect on the same date that a local law for the year 2019 amending the administrative code of the city of New York, relating to housing decisions made for transgender, gender non-conforming, and intersex individuals, takes effect.

AS

LS 8,238-a

4/15/19

Int. No. 1532

By Council Member Powers

..Title

A Local Law to amend the administrative code of the city of New York, in relation to housing decisions made for transgender, gender nonconforming, and intersex individuals

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding a new section 9-157 to read as follows:

§ 9-157 Housing requests related to gender identity. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Gender-identity. The term “gender-identity” refers to a person’s sense of identifying with a certain gender.

Intersex. The term “intersex” means a person who has sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.

Transgender. The term “transgender” means a person who has a gender identity that is different from the person’s assigned sex at birth.

b. Subject to section 115 of title 28 of the code of federal regulations, all incarcerated individuals shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other incarcerated individuals. The intake screening shall consider, at a minimum, the following criteria to assess incarcerated individuals for risk of sexual victimization:

1. Whether the incarcerated individual has a mental, physical, or developmental disability;

2. The age of the incarcerated individual;

3. The physical build of the incarcerated individual;

4. Whether the incarcerated individual has previously been incarcerated;

5. Whether the incarcerated individual’s criminal history is exclusively nonviolent;

6. Whether the incarcerated individual has prior convictions for sex offenses against an adult or child;

7. Whether the incarcerated individual is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;

8. Whether the incarcerated individual has previously experienced sexual victimization;

9. The incarcerated individual’s own perception of vulnerability; and

10.Whether the incarcerated individual is detained solely for civil immigration purposes.

c. Subject to section 115 of title 28 of the code of federal regulations, the department shall establish a process for transgender and intersex individuals to self-identify as such at intake, and use such self-identification to make housing and programming assignments on a case-by-case basis. In determining such housing and programming assignments, the department shall consider whether a placement would ensure the incarcerated individual’s health and safety, and whether the placement would present management or security problems. The department shall not prevent incarcerated individuals from identifying as transgender solely because of classification as a different gender while previously incarcerated or because of the absence of documents indicating medical transition.

d. Subject to section 115 of title 28 of the code of federal regulations, the department shall establish a process for allowing transgender and intersex individuals who have requested entrance into a type of housing facility due to such identification and have been denied such request to appeal such denial. The department shall maintain formal written procedures consistent with this policy and with the following provisions:

1. The department shall provide written notice to such individuals that such a determination may be appealed, and describe the appeals process in plain and simple language. The department shall ensure that such written notice is available in multiple languages.

2. The department shall create an appellate review board consisting of the chief of correction or their designee, the commissioner of correction or their designee, and the vice president of correctional health services or their designee to review the initial decision. The appellate review board shall not consist of the same decision-makers responsible for making initial housing determinations.

3. The appellate review board shall issue a determination within 48 hours of receipt of any appeal and shall consider the written opinion of the board of correction in making its determination.

4. Within 24 hours of making its determination, the appellate review board shall provide the incarcerated individual with a written copy of the determination specifying the facts and reasons underlying such determination. Where the appellate review board reaches a decision against the advice of the advisory committee, the appellate review board shall explain the discrepancy.

5. The department shall provide all written materials having to do with the appeals process in multiple languages, and shall ensure that incarcerated individuals are given any verbal assistance necessary to meaningfully understand such procedures.

§ 2. Section 626 of the New York city charter, as amended by local law number 102 for the year 1977, is amended by adding a new subsection h to read as follows:

h. The board shall issue opinions to the department regarding appeals of housing requests related to gender-identity.

§ 3. This local law takes effect 90 days after it becomes law.

AS

LS 8,238

4/17/19

Int. No. 1535

By Council Member Rosenthal

..Title

A Local Law requiring the board of correction to convene a task force to address polices related to the treatment of transgender, gender non-conforming, and non-binary individuals in the department of correction

..Body

Be it enacted by the Council as follows:

Section 1. a. The board of correction shall convene a task force to review the department of correction’s policies related to the treatment and housing of transgender, gender non-conforming, and non-binary individuals in the department of correction’s custody.

b. Such task force shall consist of, but not be limited to, a representative from the department of correction, a representative from correctional health services, a representative from the commission on human rights, and at least six representatives in the following categories: people formerly and currently incarcerated in the transgender housing unit, service providers that address transgender, gender non-conforming, and non-binary individuals in custody, and local and national experts in issues related to transgender policy.

c. Each member shall serve for a term of eight years to commence after the final member of the task force is appointed. Any vacancies in the membership of the task force shall be filled in the same manner as the original appointment. A person filling such vacancy shall serve the unexpired portion of the term of the succeeded member. All members shall be appointed to the task force within 60 days of the enactment of this local law.

d. No member shall be removed from the task force except for cause and upon notice and hearing by the appropriate appointing official.

e. Members of the task force shall serve without compensation and shall meet no less often than on a quarterly basis.

f. Within one year of the formation of the task force, such task force shall submit a report containing recommendations to improve policies related to the treatment and housing of transgender, gender non-conforming, and non-binary individuals in the department of correction’s custody, and a summary of key findings to the mayor and the speaker of the council. The task force shall continue to submit yearly reports thereafter until its termination.

g. The task force shall terminate upon issuance of a final yearly report, to be submitted in the year 2027.

§ 2. This local law takes effect immediately.

AS

LS 8236

4/11/19

Proposed Res. No. 143-A

..Title

Resolution calling on the New York State Legislature to pass and the Governor to sign the Humane Alternatives to Long-Term Solitary Confinement Act.

..Body

By Council Member Dromm

Whereas, Solitary confinement typically constitutes a special form of imprisonment by segregating an incarcerated person for 23 hours a day and disallowing any contact with the outside world; and

Whereas, According to various sources, an increasing number of jurists throughout the world have concluded that solitary confinement constitutes cruel and unusual punishment and view solitary confinement as a form torture; and

Whereas, Thousands of incarcerated individuals are housed in solitary confinement each day in New York prisons and jails, according to various source; and

Whereas, Incarcerated people in solitary confinement are generally deprived of all meaningful human interaction or mental stimulation, confined to small barren cells; and

Whereas, New York State must take a more proactive approach to not only properly protect incarcerated people in New York prisons and jails, but must adopt better standards that reaffirm the State's commitment to respect inmates' human dignity; and

Whereas, A.2500, sponsored by Assembly Member Jeffrion L. Aubry and currently pending in the New York State Assembly, and companion bill S.1623, sponsored by State Senator Luis R. Sepulveda and pending in the New York State Senate, seek to amend the New York State Correction Law by restricting the use of segregated confinement and creating alternative therapeutic and rehabilitative confinement options; and

Whereas, A.2500/S.1623 is also known as the Humane Alternatives to Long-Term Solitary Confinement Act or "HALT Solitary Confinement Act"; and

Whereas, The HALT Solitary Confinement Act would amend the New York State Correction Law by limiting the time an incarcerated individual spends in segregated confinement to a maximum of 15 consecutive days and a total of 20 days during a 60-day period; and

Whereas, The HALT Solitary Confinement Act would end the segregated confinement of vulnerable people, including, but not limited to, individuals with physical or mental disabilities; and

Whereas, Furthermore, the HALT Solitary Confinement Act would create alternatives to isolated confinement by providing a new Residential Rehabilitation Unit for meaningful human contact and therapeutic services and rehabilitative programs aimed at addressing underlying causes of behavior; and

Whereas, New York State should establish parameters on who can and cannot be placed in solitary confinement and provide appropriate therapeutic services to individuals who are in need; now, therefore, be it

Resolved, That the Council of the City of New York calls on the New York State Legislature to pass and the Governor to sign the Humane Alternatives to Long-Term Solitary Confinement Act.

WJH

LS 490/ Res. 53 - 2014

1/4/18

LS 1116

KMD

Rev. 4/11/19

LS116/Reso 143 - 2018

Res. No. 829

Resolution calling upon the New York State Legislature to pass, and the Governor to sign, S.1343/A.5493, which would reform revocation presumptive release, parole, conditional release, and post-release supervision.

By Council Member Powers

Whereas, In 2017, about sixteen percent of New York City’s jail population were parole violators, according to the Mayor’s Office of Criminal Justice; and

 Whereas, In 2016, about sixty-five percent of parole violators in New York State were incarcerated for technical violations, meaning the person broke conditions of their release, such as missing curfew or a parole appointment, or testing positive for marijuana; and

                     Whereas, In New York City, the number of people detained on technical parole violations has grown significantly since 2014, accounting for forty-eight percent of the incarcerated parole population in 2017, according to Columbia Justice Lab report; and

                     Whereas, Of people on parole whom New York officials sent back to prison in 2016, over 6,300, or 65%, were re-incarcerated for technical parole violations, as opposed to new crimes; and

Whereas, According to Criminal Justice Lab, black people are detained in New York City’s jails for technical parole violations at more than 12 times the rate of white people, making parole reform a racial justice issue; and

                     Whereas, In a recent *New York Daily News*opinion piece, New York and Kings County District Attorneys acknowledged that parole is a significant contributor to mass incarceration and must be reformed to be less punitive and more rehabilitative; and

Whereas, Governor Cuomo has stated, “New York jails and prisons should not be filled with people who may have violated the conditions of their parole, but present no danger to our communities;” and

Whereas, This has occurred while the number of people released from state prison into city homeless shelters nearly doubled from 2014 to 2018; and

Whereas, the increasing number of persons detained for state parole violations in New York City’s jails not only overuses incarceration for crimeless, technical violations but is also slowing the closure of the city’s jails on Rikers Island and increasing the estimated size of replacement, borough-based facilities; and

Whereas, S.1343, introduced by State Senator Brian Benjamin, and companion bill A.5493, introduced by State Assembly member Walter Mosely, would reform parole: conditional release, revocation presumptive release, and post-release supervision to reduce the number of people held in jails and prisons in New York State; and

Whereas, S.1343/A5493 grant “earned time credits” to parolees to encourage positive behavior and accelerate discharge from supervision and ensures parolees who are alleged to have violated the terms of their release receive a hearing in a local criminal court to ascertain whether they should be detained in jail pending adjudication of the alleged violation; and

Whereas, S.1343/A5493 also shortens the timeframe for adjudicatory hearings and limits technical violation terms and jail time for such terms to ensure people on parole are not needlessly re-incarcerated; and

Whereas, Other states, such as Arizona, South Carolina, Utah, Arkansas, Georgia, Idaho, Louisiana, and Mississippi, have implemented similar reforms proposed in S.1343/A5493 and, as a result, have experienced a decline in recidivism and compliance revocations; and

Whereas, New York County, Bronx County, and King County District Attorneys have expressed their support for S.1343/A.5493, asserting that it would increase public safety and reduce unnecessary incarceration; and

Whereas, Without parole reform, the growing number of technical parole violators in New York City’s jails could potentially hamstring the city's efforts to reduce the city jail population and close Rikers Island; and, now, therefore be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass, and Governor to sign, S.1343/A5493, which would reform revocation presumptive release, parole, conditional release, and post-release supervision

LS 10247

3/22/19

KMD

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