



# New York City Jails Still Can't Keep Trans Prisoners Safe

*One year after the Department of Correction said it was closing its Trans Housing Unit, advocates and inmates say conditions remain dangerous*

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DECEMBER 21, 2017





ILLUSTRATION BY ADAM MAIDA

Last November, the New York City Department of Correction announced it would be shuttering its Transgender Housing Unit (THU), which offers transgender women the option of being housed separately from the male jail population. Local LGBT advocacy groups reacted with dismay, saying that the move would eliminate an important, if imperfect, housing option for trans women and put them at increased risk of sexual assault and harassment.



One year later, though the THU is still in operation, advocates remain concerned about what they see as the department's continuing failure to keep transgender prisoners safe. They say that some trans women have been denied entry into the THU without explanation, while others have been transferred into male facilities after their external genitalia were observed in medical exams — in violation of national prison anti-rape standards.

“Trans and GNC [gender nonconforming] people are being harassed, denied gender-affirming clothing and products, placed in de facto isolation and in situations where we are knowingly at risk of sexual violence,” said Mik Kinkead, director of the Prisoner Justice Project at the Sylvia Rivera Law Project, a New York City-based

organization that provides support to low-income people and people of color who are trans or gender nonconforming, in a text message to the *Voice*. “This is all steeped in genuinely not seeing trans and GNC people as full people.”

The Department of Correction denies that the agency was putting trans women in harm’s way. “DOC is committed to preventing sexual abuse anywhere in the jails,” wrote Deputy Commissioner of Public Information Peter Thorne in an email to the *Voice*. “We will continue to make every effort to ensure that all individuals in our custody are protected from sexual abuse and harassment, and that includes having housing areas that appropriately meet the needs of transgender and other vulnerable populations.”

Trans women being housed in men’s facilities are still at constant risk of sexual and



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THU will also fail to keep trans women safe. They add that New York City’s jails have failed to adhere to federal anti-rape regulations, which mandate screenings for populations vulnerable to sexual violence and the opportunity for trans people to be housed in accordance with their gender identity — leading the independent oversight board that regulates the Department of Correction to intervene, though so far without a satisfactory resolution.

According to the Bureau of Justice Statistics, about 34 percent of transgender people held in prisons and jails report experiencing at least one incident of sexual violence while behind bars. That’s the highest reported incidence of sexual violence of any demographic group studied, more than eight times the rate for prisoners overall.



“I was harassed daily by officers/inmates due to being trans,” Merci Chrisette, a trans woman who was housed in general population with men on Rikers Island in late 2015 and early 2016, told the *Voice* via text. “The treatment of trans women on Rikers Island, from what I have seen and experienced, is very disheartening and sometimes even cruel.”

The THU was opened in 2014 in response to advocate complaints of high rates of sexual violence against trans women, as well as mistreatment at the hands of guards. At first located on Rikers Island, the THU was moved to the Manhattan Detention Complex in 2015, after the Rikers location was closed for renovations. The Department of Correction had previously opened a unit for gay and trans prisoners in the 1970s, but shuttered it in

2a005 after it became plagued with violence. Housing trans women separately from men, but not in isolation, is considered by advocates to be a crucial solution for keeping trans women safe while incarcerated.

Carey Smith spent time in the THU when she was first locked up in 2016, but was later transferred to a male protective custody unit after what she described as an interpersonal conflict on the THU. She said that due to inmate tensions, she didn't always feel safe on the THU, but was undoubtedly safer there than she would have been in the male general population. At the THU, at least most of the guards respected her pronouns, and she wasn't in constant fear of what danger the male prisoner population might pose. "Even though it's hard to stay on, I don't think they should shut [the THU]

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The THU's problems began in November 2016, when the Board of Correction, an independent oversight agency that regulates, monitors, and inspects New York City's correctional facilities, voted to bring the unit in line with national standards set by the Department of Justice in 2012 under the Prison Rape Elimination Act (PREA). (States that violate PREA rules can lose some federal funding.) One of the justice department's requirements at the time was that LGBT-specific units, even voluntary ones, would have to be shuttered unless they had been opened as a result of a consent decree or legal settlement, a provision meant to prevent discriminatory segregation of LGBT prisoners.

Last spring, the Department of Correction announced plans instead to open several special units that would house transgender women alongside male populations known to be vulnerable to prison sexual violence, including short men, non-English speakers, and those with disabilities. Though this had been one option suggested by the Department of Justice, LGBT experts worried that placing trans women on the same unit as male prisoners, however vulnerable, would do little to keep trans women safe.

Both advocates and the Board of Correction have pressed the Department of Correction to bring its other facilities into compliance with PREA standards before closing the THU, such as by establishing rules on how pat-down or cavity searches are conducted



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also require facilities to create and follow protocols for investigation into allegations of sexual assault and abuse, including offering rape kits to all victims and ensuring all allegations are investigated through either criminal or administrative avenues.

Advocates have also complained that the board has not established clear and specific criteria for who can stay on the THU. “People are frequently denied admission without any reasons given, and while we have no way of knowing the grounds for DOC decisions, they often appear arbitrary and baseless,” wrote Legal Aid Society supervising attorney Dori Lewis in an August letter to the board. Lewis argued that the Department of Correction was failing to follow its own directive for trans housing, which requires the department to maintain written documentation for the basis of its decisions, as well as records of who has applied.

In a September letter to the board, Lewis recalled the case of one Legal Aid client, a nearly sixty-year-old transgender woman, small in stature and traditionally feminine, who has been living as a woman for about forty years. According to Legal Aid, she was not screened for vulnerability to sexual assault, and although she was initially

designated for housing at a women's facility, after she was examined by medical staff, she was sent to a male facility instead.

Determining housing solely on the basis of external genital anatomy is a violation of the PREA standards. "She thought she just had to deal with the fear, the harassment, and the risk of abuse" of being in a male facility, Lewis told the *Voice* about this client, who was eventually transferred to the THU after her attorney intervened. "It was only because she mentioned her situation to her Legal Aid Society criminal defense lawyer, [who] was stunned that she was housed in such an obviously threatening environment, that we were able to intercede."

In an October 2017 letter to the board, Mik Kinkead mentioned the case of another trans



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any Department of Correction officers, civilians, or even her legal team. "She spent her entire time without accessing her medically necessary hormones for fear that she would be moved to a men's facility," Kinkead wrote.





PREA standards also mandate that trans and intersex prisoners be evaluated for housing on a case-by-case basis, and that placements take into consideration the prisoner's own sense of where he or she would be safest. Policies that house trans or intersex people solely on the basis of their external genital anatomy are strictly prohibited, yet advocates said they are aware of no instance in which the DOC knowingly housed a transgender woman in accordance with her gender identity.

Not all jurisdictions have struggled to properly house transgender people. In Washington County, Oregon, just west of Portland, jail staff say they have made great strides in implementing the PREA standards, improvements that have been applauded by LGBT prisoner advocates across the country.

“We have had a couple trans males that simply did not feel safe being housed with other males, but were also not comfortable being housed with females as their appearance was male,” explained Deputy Jeff Talbot, Washington County Sheriff’s Office public information officer, in an email. “In this case, their preference was to stay in the medical unit for the duration of their time in our facility.”

Asked how she felt about trans women being housed with women, Smith told the *Voice*, “That would be much safer, better.”

According to recent data, about half of transgender persons admitted to Department of Correction custody end up in the THU. The board, which provided Department of Correction data to the *Voice*, said that between October 15 and November 18 of this year



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placed in the transgender housing unit, three were placed in protective custody, and one was released from DOC custody prior to placement.

In October, the board passed a resolution to press for compliance with PREA standards, including submitting a detailed plan about how it intends to comply with the screening requirement, and notifying the board about the placement of each transgender or intersex person, along with all information considered in making such a determination. “To date, DOC has largely complied with the resolution,” the board wrote in an email to the *Voice*.

Asked whether he thought conditions for trans people in jails might improve if the city complied with the board, Kinkead expressed ambivalence. “I am happy to see the BOC make full use of the power the people give to it to enforce the law,” he said. “But I don’t think there is any way the jails actually become better. They can just be slightly less harmful.”

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