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TESTIMONY OF:

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Presented before

**The New York City Council
Committee on Criminal Justice**

Oversight Hearing on Mental Health in the City Jails and Int. 133

September 23, 2026

My name is Lucas Marquez (he/they) and I am the Director of Civil Rights & Law Reform at Brooklyn Defender Services (“BDS”). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of people and to change laws and systems that perpetuate injustice and inequality. Thousands of the people we represent are detained or incarcerated in the New York City jail system each year while fighting their cases in court or serving a sentence of a year or less upon conviction of a misdemeanor.

We want to thank the Committee on Criminal Justice and Chair Menin for inviting us to testify about Int. 133-2026, extending the duration of the Transgender, Gender Non-Conforming, Non-Binary, and Intersex Task Force (“the Task Force”), and to Council Member Caban for sponsoring the legislation. In addition, we write to strongly recommend that the City Council and the Committee on Criminal Justice hold a hearing and pass Int. 134-2026, a bill addressing the urgent issue of housing for Transgender, Gender Non-Conforming, Non-Binary, and Intersex (“TGNCNBI”) people incarcerated in Department of Correction (“DOC”) custody.

A. BDS Supports the TGNCNBI Task Force Amendments to Int. 133

BDS, along with the non-governmental members of the Task Force, is eager to work with DOC and Correctional Health Services (“CHS”) collaboratively, because we know doing so is crucial to reducing the risk of violence, indignity, and mental health crisis facing transgender, intersex, and gender non-conforming people that criminal courts put into the city’s custody. The Task Force produced fulsome and detailed reporting and made concrete and important recommendations; but it did so despite serious structural problems, and without the tools to obtain information or move its work forward.

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First, city agency participation in the Task Force has been uneven. Representatives who attend Task Force meetings frequently do not have the relevant expertise, authority to answer critical questions, or buy-in to push change within their agency. Such knowledge and expertise gaps are not only regarding TGNCNBI people, but also about the relevant carceral processes, medical standards, and Board of Correction requirements.

Second, DOC has not been transparent in providing key policies or providing updates on proposed revisions. For years, and as you heard today, DOC has said that the principal directive governing the treatment and housing of TGNCNBI people is under revision, but at no point has the Task Force been given details about that process (or advised or engaged to opine); the result, is that there have been no actual changes to the Directive.

Third, major decisions are made that seriously impact the TGNCNBI population without informing the Task Force. For example, people housed in various Rose M. Singer Center (“RMSC”) housing units were merged to move cisgender men into RMSC. The Task Force was not consulted, nor was it provided details after implementation, even though it created obvious risks for TGNCNBI people.

For these reasons, BDS supports the Task Force’s proposed amendments to Int. 133. The amendments, as follows, are practical safeguards drawn from the Task Force advocates’ experience:

- Give the Board of Correction clear responsibility for administering the Task Force.
- Require agencies to designate representatives with relevant expertise and sufficient authority to participate meaningfully.
- Require facility tours and meaningful opportunities to hear from TGNCNBI people in custody.
- Require agencies to provide relevant policies and written notice of changes.
- Improve reporting on transfer requests into and out of gender-aligned housing and the basis for corresponding DOC decisions.
- Require consultation with the Task Force about major changes affecting TGNCNBI people.

While the amendments will not guarantee that the Task Force recommendations will be adopted, it will be harder to sideline the Task Force or withhold the information it needs.

B. The City Council Should Hold a Hearing on and Pass Int. 134 To Ensure a Transparent and Competent Process for Housing People in Alignment with Their Gender

To reduce harm to TGNCNBI people in custody and bring city jails in line with City Human Rights Law, people incarcerated in DOC custody must be housed in alignment with their gender, unless the person incarcerated believes they would be safer elsewhere. Additionally, removal from gender-aligned housing cannot be a consequence for disciplinary actions. Establishing a transparent process by which TGNCNBI people can be housed in alignment with their gender is a

necessary step to hold DOC accountable for providing respect, dignity, and safety to TGNCNBI people in its custody.

BDS, as a member of the Task Force, has supported the advocates and people with lived experience who have shared the acute dangers that transgender people in NYC jails face. In our January 25, 2023 testimony before this Committee,¹ we urged action to address “[d]eep-rooted systems of violence, discrimination, and inaccessible medical care that TGNCNBI people face ... in the criminal legal system and jail environment,” and detailed some of the many ways that the TGNCNBI people that BDS represents have suffered, including by sexual abuse, suicide attempts, mental health deterioration, and medical care, and being forced to hide their true selves for safety.”

The lack of transparency around the housing application process and the haphazard decisions being made by DOC, puts people in danger and exacerbates mental health issues.

BDS previously submitted testimony to the Committee on Criminal Justice on May 1, 2019, April 27, 2021, and January 25, 2023, detailing stories of transgender women represented by BDS who faced harassment and assault when housed in men’s facilities due to the convoluted and punitive process for requesting housing alternatives.² Those stories remain relevant today, as the testimony of impacted people read aloud at today’s hearing. These inhumane conditions continue and we continue to ask the City of New York, the City Council, and Department of Correction to take action to prevent known and serious harms occurring in their jails.

As we previously raised in our January 25, 2023 Testimony, issues with gender-aligned housing start at arraignment. Based on findings from the Task Force Report:

even before a prosecutor drafts a criminal complaint information provided by the arresting officer may undermine any hope for that individual with respect to gender-aligned classification and housing.³ And even if the arresting officer’s own assessment of an individual’s gender does not undermine that person’s self-identification, because there are no gender marker options for people who identify outside of the “female” or “male” gender binary, the pre-arraignment process presents multiple opportunities for misalignment.⁴ The Court will generally rely on the gender marker listed on the criminal complaint and the arresting officer’s paperwork, rather than at least giving “serious consideration”⁵ to the self-identification of the individual being arraigned, as is required under PREA standards.⁶ BDS attorneys have observed that, despite an effort on the part of

¹ Available online at <https://bds.org/assets/files/2023-01-25-BDS-Testimony-on-TGNCNBI-Task-Force.pdf>

² “BDS Testimony before the New York City Council on Criminal Justice and Committee on Women and Gender Equity on Women’s Experiences in City Jails,” Apr. 27, 2021, <https://bds.org/latest/bds-testimony-before-the-new-york-city-council-on-criminal-justice-and-committee-on-women-and-gender-equity-on-womens-experiences-in-city-jails>.

³ See Task Force Report at 37.

⁴ *Id.*

⁵ See, e.g., PREA Standard Section 115.42(e) (“A transgender or intersex [person’s] own views with respect to his or her own safety shall be given serious consideration”).

⁶ *Id.*

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judges and court staff to be sensitive to pronouns, it is nevertheless a frequent occurrence that a person's birth name, which may be attached to the case even in situations where they no longer use that name, is the name by which the case is called, and the name that will then follow that person as they proceed in the system.⁷

Once in DOC custody, the DOC housing application process lacks transparency, and DOC makes arbitrary decisions without explaining their eligibility criteria nor do people receive timely responses and explanations as to the basis of the housing decision. While some these decisions are justified by DOC as prioritizing "safety" above all else, DOC is still failing to provide even a minimum level of due process with their disastrously unorganized and unequal housing process. And distressingly, their determinations in the name of "safety" have the opposite effect, imperiling the safety of transgender women placed in male facilities who are subject to physical danger and assault, and worsening mental health issues. Additionally, these decisions on housing are made DOC officials and officers employing subjective physical criteria or the offensive transphobic trope that transgender women "were really just cis men eager to access cis women."⁸ These decisions are also being made without guidance by trans-competent civilian staff.

Finally, the appeals process is no less challenging and convoluted. It can often elevate old infractions and tickets in a person's history, including events from before they transitioned. These incidents have no bearing on where a person can safely be housed at present. Even people with defense teams capable of advocating for their safe and humane housing struggle to navigate the process, meaning people who are self-advocating are left to traverse this confusing system and keep themselves safe while incarcerated. This is simply not an efficient, humane, or legally defensible process.

As stated above, BDS and allied organizations continue to hear from transgender women that we represent, that they are denied or transferred out of gender-aligned housing and are struggling to navigate the Department's opaque TGNCNBI housing process. The City Council and relevant stakeholders must recognize that the Department's entrenched resistance to improving the treatment of TGNCNBI people in custody means City Council must step in and take action to set legislative standards by which DOC will be required to follow. Therefore, while we support Int. 133-2026, the City Council should pass Int. 134-2026.

* * *

BDS is grateful to the Committees on Criminal Justice for hosting this hearing and continuing to call attention to the horrifying realities that TGNCNBI people in custody face in New York City jails. We are also grateful to Councilmember Caban for sponsoring bills 133 and 134. We ask City Council to hold the Department accountable for its failure to protect TGNCNBI people in its custody and its resistance to meaningful change. We urge councilmembers to continue visiting the jails, without giving prior notice to the Department, and to speak with people throughout the jails to hear firsthand the experiences of TGNCNBI and queer people incarcerated in DOC custody.

⁷ BDS, January 25, 2023 Testimony.

⁸ The City Article, *supra* n.5.

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We support Int. 133-2026, to continue the important work of the Task Force and encourage the Council to consider amendments that both strengthen the mandate of the taskforce and enforce DOC's cooperation. Finally, we strongly urge the City Council to hold a hearing and pass Int. 134-2026, to ensure a fair process for receiving gender-aligned, safe housing for TGNCNBI people incarcerated in DOC custody.

Thank you for your time and consideration of our comments. We look forward to continuing to discuss these and other issues that impact people we represent. If you have any additional questions, please feel free to contact me at lmartinez@bds.org.