

Testimony of the Children's Defense Fund – New York  
Before the New York City Board of Correction  
July 26, 2016

Charlotte Pope  
Youth Justice Policy Associate



**Children's Defense Fund – New York**  
15 Maiden Lane, Suite 1200 New York, NY 10038  
(212) 697-2323 [www.cdfny.org](http://www.cdfny.org)

The Children's Defense Fund's (CDF) Leave No Child Behind® mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective and independent voice for all the children of America who cannot vote, lobby or speak for themselves. We pay particular attention to the needs of poor children, children of color and those with disabilities. CDF – New York's unique approach to improving conditions for children combines research, public education, policy development, community organizing and advocacy activities, making us an innovative leader for New York's children, particularly in the areas of health, education, early childhood and juvenile justice.

We would like to thank the Board of Correction for this opportunity to testify on the proposed rules designed to detect, prevent and respond to sexual abuse and sexual harassment in New York City jails. The Board's proposed rules offer protections against the abusive practices often experienced by those in carceral settings and, in particular, can be used to create meaningful changes for lesbian, gay, bisexual, transgender, intersex and gender non-conforming (LGBTI and GNC) young people who are particularly vulnerable. New York is one of only two states in the country that prosecutes all 16 and 17 year olds in the adult justice system, regardless of the severity of the offense, and CDF-NY strongly supports the removal of all 16 and 17 year olds from adult corrections. We are encouraged by the Board's investment in this rulemaking process and the potential to ensure protections against the types of assault, harassment, and prolonged isolation that are commonly experienced by LGBTI and GNC youth in custody. For young adults in New York City jails, we strongly support the continued utilization of the Transgender Housing Unit (THU) or similar unit, though our testimony today will focus on the placement needs of transgender youth under age 18 in New York City jail systems.

#### § 5-18 Use of Screening Information.

While the Department of Correction (DOC) currently operates the much needed THU, which serves as a voluntary housing option for some transgender inmates, due to sight and sound restrictions, the THU option is not an appropriate resource for 16 and 17 year olds in DOC custody. We appreciate that the Board's proposed rule § 5-18 explicitly points out that it does not incorporate PREA Standards § 115.42(g) so as to not limit "the Department's ability to allow individuals to be housed voluntarily in a transgender or similar housing unit".<sup>1</sup> It is our understanding that that PREA standard, prohibiting agencies from "plac[ing] lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status,"<sup>2</sup> does not apply to alternative housing where such placement is made voluntarily.<sup>3</sup> Importantly, PREA requires that corrections officials make "case-by-case" decisions about housing transgender prisoners<sup>4</sup> and that a person's own views with respect to their own safety should be given "serious consideration."<sup>5</sup>

We support the continued operation of THU for all transgender women who volunteer, though we also recommend that the Board incorporate stronger language to allow for the housing placement of individuals based on their self-identified gender identity. Given the untenably high rates of sexual abuse of women in men's units, gender identity-based placements are essential to fulfill the requirements and goals of the PREA regulations.<sup>6</sup>

---

<sup>1</sup> New York City Board of Correction. (2016). Notice of Public Hearing and Opportunity to Comment on Proposed Rules. New York, NY: Author. Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Notice%20Statement%20Rule.pdf>

<sup>2</sup> 28 C.F.R. § 115.42 (g)

<sup>3</sup> Strangio, C., and Fettig, A. (2014). ACLU Prison Rape Elimination Act (PREA) Toolkit: End the Abuse, Protecting LGBTI Prisoners from Sexual Assault. New York, NY: American Civil Liberties Union. Retrieved from <https://www.aclu.org/sites/default/files/assets/012714-prea-combined.pdf>.

<sup>4</sup> 28 C.F.R. § 115.42 (c)

<sup>5</sup> 28 C.F.R. § 115.42 (e) (See also, "A PREA audit that reveals that all transgender or intersex inmates in a facility are, in practice, housed according to their external genital status raises the possibility of non-compliance" - <http://www.prearesourcecenter.org/node/3927>)

<sup>6</sup> National Prison Rape Elimination Commission. (2009, June). National Prison Rape Elimination Commission Report. Washington, D.C.: Office of Justice Programs. Retrieved from <https://www.ncjrs.gov/pdffiles1/226680.pdf>. (The

It is critical that the lack of access for 16 and 17 year olds to the THU not lead to the isolation or segregation of transgender girls, which is never an acceptable alternative to a lack of safe housing. Confining youth in adult facilities impedes access to age-appropriate programming and services, many of which are available to those similarly aged who reside in Administration for Children Services (ACS) facilities. It is ACS's policy that all transgender and gender non-conforming (TGNC) youth shall be in homes and congregate facilities that are affirming of their gender identities.<sup>7</sup> According to the Policy, *Best Practices, & Guidance for Serving Transgender & Gender Non-Conforming Children and Youth Involved in the Child Welfare, Detention, and Juvenile Justice Systems* published by ACS, "Whenever possible, TGNC young people are placed in a facility that is in accordance with their gender identity, or the placement that feels the safest and most comfortable for the TGNC young person."<sup>8</sup> It is our hope that DOC also recognize that transgender youth are one of the most vulnerable and highest risk populations within the justice system, and take significant steps to ensure their access to safe and affirming opportunities. We urge the Board to include assurances that 16 and 17 year olds in DOC custody be housed based on their gender identity, if that is their preference, and that serious consideration and respect be shown youth's understanding of their safety. An essential component of this is that youth's preference for placement be assessed and not assumed even when placing based on gender identify as some TGNC youth may not feel safest housed in a placement that matches their gender identity – particularly transboys/men.<sup>9</sup>

#### § 5-12 Employee Training.

In the Board's proposed rules, *Subchapter D: Training and Education* requires that the DOC and Correctional Health Association (CHA) shall train all of their employees who may have contact with inmates on "How to communication effectively and professional with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates."<sup>10</sup> Given that *Subchapter E: Screening for Risk of Sexual Victimization and Abusiveness* includes that the intake screening shall consider, at a minimum, "whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming,"<sup>11</sup> we expect that comprehensive and well-crafted training also foster a better understanding of, and correcting the misconceptions about, LGBTI and GNC persons, and assisting staff and inmates with strategies to keep LGBTI and GNC inmates safe. Given the likelihood that some LGBTI and GNC individuals may chose not to disclose their sexual orientation or gender identity during screening, we also strongly support the Board's inclusion of inmate's self-perception of vulnerability in the screening process. In those instances, we recommend strengthening the language of the standard that inmates should not be disciplined for their responses or lack of response to these questions.

CDF-NY recognizes and applauds the new emphasis on respect and safety for LGBTI and GNC people brought on by this rulemaking process. We would appreciate further clarity on how the

---

Commission found that transgender girls are especially vulnerable to abuse, especially when housed with boys - See p.148)

<sup>7</sup> Perry, J.R., and Green, E.R. (2014). *Safe & Respected: Policy, Best Practices, & Guidance for Serving Transgender & Gender Non-Conforming Children and Youth Involved in the Child Welfare, Detention, and Juvenile Justice Systems*. New York City, NY: New York City's Administration for Children's Services. Retrieved from [http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/FINAL\\_06\\_23\\_2014\\_WEB.pdf](http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/FINAL_06_23_2014_WEB.pdf). See also "Promoting a Safe and Respectful Environment for Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and their Families Involved in the Child Welfare, Detention and Juvenile Justice System." Retrieved from [http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/LGBTQ\\_Policy.pdf](http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/LGBTQ_Policy.pdf).

<sup>8</sup> IBID

<sup>9</sup> Perry, J.R., and Green, E.R. (2014). *Safe & Respected: Policy, Best Practices, & Guidance for Serving Transgender & Gender Non-Conforming Children and Youth Involved in the Child Welfare, Detention, and Juvenile Justice Systems*. New York City, NY: New York City's Administration for Children's Services. Retrieved from [http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/FINAL\\_06\\_23\\_2014\\_WEB.pdf](http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/FINAL_06_23_2014_WEB.pdf).

<sup>10</sup> New York City Board of Correction. (2016). Notice of Public Hearing and Opportunity to Comment on Proposed Rules. New York, NY: Author. Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Notice%20Statement%20Rule.pdf>

<sup>11</sup> New York City Board of Correction. (2016). Notice of Public Hearing and Opportunity to Comment on Proposed Rules. New York, NY: Author. Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Notice%20Statement%20Rule.pdf>

Board will define and monitor “whether the placement would present management or security problems” as listed in § 5-18 *Use of Screening Information*, to ensure that transgender youth are not being unjustly denied their basic human dignity.

#### Conclusion

We strongly urge the Board to house all transgender youth in units that reflect their gender identity, unless the young person objects to such placement, as a safeguard that emphasizes respect and safety. THU or a similar unit must remain open for those older adolescents who voluntarily choose to be placed in the unit, even while everyone ultimately should be placed according to their own feelings of safety and their self-identified gender identity.

Thank you again for the opportunity to testify.