

AN ASSESSMENT  
OF THE  
TRANSGENDER  
HOUSING UNIT

NYC Board of Correction – February 2018

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# Background

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The Department of Correction (DOC) issued its Transgender Housing Unit (THU) policy on alternative housing options for transgender people in custody in December 2014.<sup>1</sup> DOC's THU policy requires transgender men to be housed in protective custody at the Rose M. Singer Center (RMSC) and transgender women to be housed in a facility designed for male occupancy. The THU is available exclusively to transgender women but is not guaranteed for all transgender women.<sup>2</sup> The THU policy addresses procedures for placement, admission and access to services within the unit, staffing, programs, and, removal from the THU.<sup>3</sup>

In April 2015, DOC opened a THU for transgender women in the North Infirmity Command (NIC) facility. In July 2015, DOC relocated the THU to the Manhattan Detention Center (MDC). The THU is one housing unit with a 26-bed capacity and had an average daily census of 10 people in January 2018.

In November 2016, the Board of Correction (BOC) adopted rules designed to detect, prevent, and respond to sexual abuse and harassment of people in DOC custody. These rules are based upon the federal "Prison Rape Elimination Act" of 2003 (PREA) and were developed to effectively address sexual violence within New York City Jails. Recognizing the ways in which transgender and gender non-conforming people are uniquely vulnerable to violence in correctional facilities, the Board incorporated multiple provisions pertaining to these populations.<sup>4</sup> According to a 2011-12 survey by the Bureau of Justice Statistics, 39.9 percent of transgender people in prison and 26.8 percent of transgender people in jail reported unwanted sexual activity with other people in custody or any sexual activity with prison staff in the previous year — 10 times higher than for the general prison and jail populations.<sup>5</sup>

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<sup>1</sup> N.Y.C. DEP'T OF CORRECTION, DIRECTIVE NO. 4498, TRANSGENDER HOUSING UNIT (Dec. 03, 2014).

<sup>2</sup> See *id.* at 1.

<sup>3</sup> *Id.*

<sup>4</sup> N.Y.C. BOARD OF CORRECTION., CORRECTIONAL FACILITIES, ELIMINATION OF SEXUAL ABUSE AND SEXUAL HARASSMENT IN CORRECTIONAL FACILITIES CHAPTER 5, (added City Record Nov. 15, 2016, eff. Jan. 2, 2017).

<sup>5</sup> See ALLEN J. BECK, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES 2011-12, BUREAU OF JUSTICE STATISTICS 2 (2014), available at [https://www.bjs.gov/content/pub/pdf/svpjri1112\\_st.pdf](https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf); see also JAMIE M. GRANT ET AL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, NATIONAL LGBTQ TASK FORCE 6 (2011) (reporting that 16% of respondents who had been to jail or prison reported being physically assaulted and 15% reported being sexually assaulted), available at [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf); and VALERIE JENNESS, ET AL., VIOLENCE IN CALIFORNIA CORRECTIONAL FACILITIES: AN EMPIRICAL EXAMINATION OF SEXUAL ASSAULT, Irvine: Center for Evidence-Based Corrections, University of California (2007) 3, available at <http://ucicorrections.seweb.uci.edu/files/2013/06/BulletinVol2Issue2.pdf> (finding that 59 percent of transgender women housed in men's prisons had been sexually abused while incarcerated and that transgender people were 13 times more likely to be sexually assaulted than non-transgender people in prison).

The Board's Standards require that the Department "shall not assign a transgender or intersex inmate to a men's or women's facility based solely on the inmate's external genital anatomy and that the transgender [or intersex] inmate's own views with respect to his or her own safety shall be given serious consideration."<sup>6</sup> Instead, the Standards require the Department conduct a case-by-case multifaceted analysis to determine whether they can best ensure a transgender [or intersex] person's health and safety at a facility for men or women.<sup>7</sup> Compliance with these Standards should increase safety for transgender and gender non-conforming people in custody.<sup>8</sup> The Board cited and discussed the Department's failure to comply with these Standards at multiple public meetings in 2017. At the same time, various Board members and staff have cited the heightened importance of the THU in this context until other Standards are met.<sup>9</sup>

The Board's Standards additionally seek to eliminate sexual abuse and harassment for all people in custody by increasing accountability, improving screenings for risk of victimization, using data, requiring individualized determinations to ensure the safety of each inmate, and increasing and improving staff training, among many other reforms. Through data analysis and observations of the THU, this assessment of the THU seeks to inform the ongoing discussion of the unit's operations, future plans for the unit, and implementation of Minimum Standards intended to ensure the safety of transgender people in custody.

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<sup>6</sup> N.Y.C. BOARD OF CORRECTION., CORRECTIONAL FACILITIES, ELIMINATION OF SEXUAL ABUSE AND SEXUAL HARASSMENT IN CORRECTIONAL FACILITIES CHAPTER 5, § 5-18(d) (added City Record Nov. 15, 2016, eff. Jan. 2, 2017).

<sup>7</sup> *Id.* at § 5-18(c).

<sup>8</sup> N.Y.C. BOARD OF CORRECTION., CORRECTIONAL FACILITIES, ELIMINATION OF SEXUAL ABUSE AND SEXUAL HARASSMENT IN CORRECTIONAL FACILITIES CHAPTER 5, §5-06 LIMITS TO CROSS-GENDER VIEWING AND SEARCHES; § 5-12 EMPLOYEE TRAINING; § 5-17 SCREENING FOR RISK OF VICTIMIZATION AND ABUSIVENESS; §5-18 USE OF SCREENING INFORMATION; and, § 5-39 SEXUAL ABUSE INCIDENT REVIEWS (added City Record Nov. 15, 2016, eff. Jan. 2, 2017).

<sup>9</sup> See N.Y.C. BOARD OF CORRECTION MEETING MINUTES (Mar. 2017); (May 2017); (Sept. 2017); (Oct. 2017), *available at* <http://www1.nyc.gov/site/boc/meetings/2017-meetings.page>.

# Key Findings

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- The Department of Correction does not have an effective system for managing applications and placements into the THU.
  - Most applications to the THU reviewed by the Board (84%, n=99) had no decision recorded.
  - Most placements into the THU (73%, n=121) did not have an application associated with them.<sup>10</sup>
- Policies related to the application process have not been consistently practiced across all facilities.
  - People in the THU at the time of BOC observations reported that they were not informed of the THU's existence at intake. Most of them discovered it through word of mouth from others in custody or from Correction Officers who are not part of the intake process.
  - Forty-two percent (42%, n=50) of applications were from people housed in just one DOC facility: the Manhattan Detention Center. This is where the THU is located.
  - Applicants spent an average of 86 days in custody prior to completing an application.<sup>11</sup>
- The Department of Correction has received no appeals of its THU placement decisions.
  - There is no mechanism in place explaining the appeal process to people who have been denied placement.
  - There is no meaningful, independent appeals process. Currently, the committee which makes the initial THU placement decision is also tasked with making a final determination upon appeal.
- Both people housed in the THU and staff working in the THU report that there is no effective mechanism to address conflict between people in the unit.
  - During BOC visits to the THU, most housing area staff were not steady though some expressed a desire to be steady. Staff also cited frustration about excessive overtime and consecutive shifts.

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<sup>10</sup> Four placements without applications involved people who had previously applied and had been placed into the THU during their current incarceration.

<sup>11</sup> This analysis excludes four applications for individuals who entered DOC custody prior to the opening of the THU. This analysis includes multiple applications for the same incarceration.

- Staff in the THU at the time of BOC observations reported to the BOC staff that they had not received any specialized training for their work in the THU.<sup>12</sup>
- People housed in the THU report concerns regarding the lack of alternative THU housing units when conflicts arise.
- Nearly all individuals who applied (95%, n=112) stated they would feel more comfortable living in a separate housing area, rather than general population or protective custody.
  - Seventy percent (70%, n=83) of applications reviewed cited safety concerns related to harm from other people in custody
  - Thirty-five percent (35%, n=41) of applicants reported they had experienced prior harassment, threats, attacks or abuse in custody. Eight percent (8%, n=9) stated they were currently experiencing harassment, threats, attacks or abuse.

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<sup>12</sup> The Board's Minimum Standards mandate that Department and CHA staff working with transgender or intersex individuals shall receive training that includes the psychosocial and safety needs of such persons in custody and instruction on communicating in a manner that is respectful of their gender identity. N.Y.C. BOARD OF CORRECTION., CORRECTIONAL FACILITIES, ELIMINATION OF SEXUAL ABUSE AND SEXUAL HARASSMENT IN CORRECTIONAL FACILITIES Chapter 5, § 5(12)(h) (added City Record Nov. 15, 2016, eff. Jan. 1, 2017.).

# Recommendations

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- Educate DOC staff and people in custody about the THU including how to apply for placement in the unit. Ensure that all people in custody are provided information about THU at intake and that questions on the PREA Intake Questionnaire trigger appropriate follow-up if an individual self-identifies or appears to be transgender.
- Develop criteria and a transparent and timely process for placement in the THU that does not automatically place transgender individuals into facilities inconsistent with their gender identity.
- Regularly convene and utilize the evaluation and advisory committees to support management improvements.
- Create a mechanism to systematically manage applications for and placements into the THU.
- Revise and improve the process for appealing denial of placement in the THU.
- Increase steady staffing in the THU and assign a full-time social worker to facilitate individualized programming and services, mediate conflict between people housed in THU, contribute to exit decisions and plans, and serve as liaison between transgender individuals, uniformed staff, and DOC administration.
- Engage with local trans-led and -focused organizations for ongoing transgender-competent training for all DOC staff, starting with all staff working in the facility where THU is housed, and to deliver programming that aligns with the needs of those people in the THU.
- Add additional and consistent gender-responsive programming to the unit based on feedback from individuals in custody and individualized assessments.
- Clarify for people in custody the CHS policy regarding access to hormone therapy.
- Establish a task force to develop a plan for short and long-term improvements to the management and operation of the THU.

# Methodology and Limitations

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The findings in this report are based on a review of:

- 118 applications (from 91 unique individuals) to the THU from September 2015 to July 2017,<sup>13</sup>
- 167 placements (involving 130 unique individuals) in the THU from April 2015 to July 2017 as recorded in the Department’s inmate management system, and
- 166 complaints (from 63 unique individuals) regarding transgender issues received by the Board from April 2015 to July 2017.<sup>14</sup>

The above individual-level information was matched to DOC data sources including demographic information, identified mental health needs,<sup>15</sup> infraction history, suicide watch, top charge, and incidents in custody.<sup>16</sup>

Qualitative data included in this report come from nine observations of the THU by BOC staff between June 2 and August 16, 2017 and two observations of community meetings in the THU—one on October 27, 2017 and the other on December 22, 2017.

This report does not fully describe the experiences of all transgender individuals in DOC custody. DOC’s intake process involves many paper-based management systems making even estimating the transgender population difficult. DOC is updating its electronic inmate management system to track this. However, the paper-based PREA intake questionnaire does not differentiate between someone who identifies as or appears to be transgender because this flag combines other categories such as gay, lesbian, and intersex. These challenges mean that it has not been possible to identify and track those individuals in DOC custody who report being

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<sup>13</sup> In July 2017, the Board requested all THU applications from the Department and in August the Board received a total of 125 paper THU applications. The earliest application was dated September 4, 2015 and the last application provided was dated August 12, 2017. BOC research staff chose to analyze applications through July 2017 and therefore excluded the 5 applications provided from August 2017. Two applications dated during the study period were illegible thus only 118 applications were analyzed.

<sup>14</sup> Complaints regarding transgender issues were pulled using the search terms “THU”, “trans”, and “transgender.” These complaints were coded into categories and themes (i.e.—harassment by staff, harassment by other inmates, access to medical, incorrect housing, etc.).

<sup>15</sup> The Brad H/M indicator is assigned to individuals who have been incarcerated in city jails for at least 24 hours and who, during their confinement, had at least three mental health appointments.

<sup>16</sup> Incidents are events that occur in DOC facilities that affect the safety, security and well-being of the Department, its personnel, visitors and volunteers, as well as the inmates over whom it has custody and control, and are reflected in the Department’s 24-Hour Report. N.Y.C. DEP’T OF CORRECTION, DIRECTIVE No. 5000R-A, REPORTING UNUSUAL INCIDENTS, sec. IV(C), at 4 (eff. Nov. 19, 2004).

transgender.<sup>17</sup> The Department reports that the electronic system for PREA screening currently being implemented will capture data on individuals who self-identify as transgender during screening. Moving forward this should allow this population to be distinctly analyzed.

## Screening and Placement Process

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The Board's Minimum Standards require that people in custody be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by or sexually abusive toward other incarcerated people.<sup>18</sup> This assessment must consider whether the person identifies as or is perceived by DOC staff to be transgender.<sup>19</sup> Appropriate placement of a transgender person must be made on a case-by-case basis in order to ensure the individual's health and safety and must not be based solely on the person's external genital anatomy.<sup>20</sup>

According to DOC policy, the option for placement into the THU shall be introduced to individuals in custody during the new admission process.<sup>21</sup> Officers completing the Arraignment and Classification Screening Form (ARC 239M) are required to ensure that the option for Transgender Male or Transgender Female is completed:

The officer shall inquire whether the inmate has any concerns about being placed in the general population and the officer may flag an inmate as a potential candidate for THU based on, but not limited to, the following:

- The inmate has safety or other concerns about being placed in general population of the jail;
- An inmate's gender non-conforming appearance;
- Conflicts in what is marked as inmate's gender on his/her personal identification or other documents;

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<sup>17</sup> The transgender male/female flags on DOC's arraignment and risk screening form (ARC 239M) has been captured on paper but has not yet been fully integrated in the Department's electronic inmate management system. The PREA Intake Questionnaire contains a question asking if an individual identifies as gay, lesbian, bisexual, transgender, intersex, or gender non-conforming. The Department reports that implementation of the electronic system for capturing this information will be in place by April 2018.

<sup>18</sup> N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ELIMINATION OF SEXUAL ABUSE AND SEXUAL HARASSMENT IN CORRECTIONAL FACILITIES Chapter 5, §5-17(a) (added City Record Nov. 15, 2016, eff. Jan. 1, 2017).

<sup>19</sup> *Id.* at § 5-17(d)(7).

<sup>20</sup> *Id.* at § 5.18(c) and § 5.18(d).

<sup>21</sup> *Supra* note 1, at 6.

- A person’s prior identification as transgender or gender non-conforming; or
- Medical records indicating hormone therapy or surgery related to gender transition (to be determined by medical staff assigned to the clinic at the housing facility).<sup>22</sup>

Per DOC policy, once a person in custody indicates they are interested in transgender housing, they must request and complete the “Transgender Housing Unit Inmate Application Form.” All applications are to be forwarded to the Tour Commander for processing along with the Arraignment and Classification Screening Form. The Tour Commander then emails the THU Evaluation Committee. The Evaluation Committee must render a decision for the application within 48 hours of receipt from Tour Commander. The THU Evaluation Committee consists of DOC’s PREA Coordinator, the THU housing facility Commanding Officer, the Bureau Chief of Custody Management or designee, and an assigned representative from Health and Hospitals. Once the committee has made a decision, it must notify the applicant both in writing and verbally within 24 hours of the decision.

If the applicant is denied admittance to the THU, he or she may appeal the decision to the THU Advisory Committee.<sup>23</sup> The Advisory Committee consists of the same individuals as the Evaluation Committee along with: a volunteer from “the LGBTQI advocacy group,” a representative from Constituent Services, the Deputy Commissioner of Strategic Planning and Programs, and the General Counsel. The Advisory Committee makes recommendations on reconsideration requests to the Evaluation Committee, but only the Evaluation Committee can make placement determinations.<sup>24</sup> The THU Evaluation Committee shall attempt to issue a final decision on the appeal within three days of receipt of recommendation from the Advisory Committee.<sup>25</sup> Thus, per DOC policy, the Evaluation Committee is tasked with making both the initial and final determinations. BOC is not aware of any meetings of the Evaluation Committee. The Evaluation Committee has completed all review of and communication about applications via email.

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<sup>22</sup> *Supra* note 1, at 6.

<sup>23</sup> *Supra* note 1, at 7.

<sup>24</sup> *Supra* note 1, at 4.

<sup>25</sup> *Supra* note 1, at 8.

THU Evaluation Committee	THU Advisory Committee
<ul style="list-style-type: none"> <li>• DOC's PREA Coordinator</li> <li>• THU Housing facility(s) Commanding Officer</li> <li>• Bureau Chief of Custody Management or designee,</li> <li>• Health and Hospitals assigned representative.</li> </ul>	<ul style="list-style-type: none"> <li>• Members of the THU Evaluation Committee</li> <li>• Volunteer from the LGBTQI advocacy group</li> <li>• Bureau Chief of Security</li> <li>• Representative from Constituent Services</li> <li>• Deputy Commissioner of Strategic Planning and Programs</li> <li>• General Counsel</li> </ul>

Source: DOC Transgender Housing Unit Directive #4498.

## Applications

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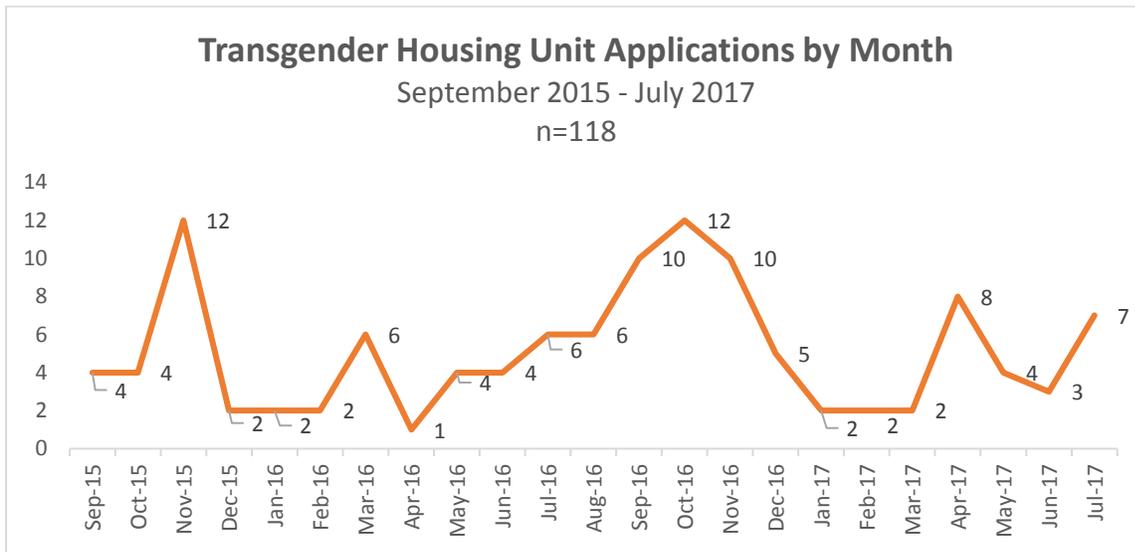
Board of Correction staff reviewed 118 applications, from 91 individuals, completed between September 4, 2015 to July 30, 2017.<sup>26</sup> Of the 118 applications reviewed, 40% (n=48) were associated with a placement into the THU. Six individuals submitted three applications, seven individuals applied twice, and the remaining applicants applied once. Of the 13 applicants that submitted multiple applications, six were eventually placed into the unit.

The number of applications submitted per month fluctuated over this period and ranged from a minimum of one application in April 2016 to a maximum of 12 applications in November 2015 (see Figure 1). Forty-two percent (47%, n=56) of all applications reviewed were from people in the Manhattan Detention Complex (MDC). The remainder of the applications came from other facilities such as the Brooklyn Detention Center (BKDC) (16%, n=19) and the Anna M. Kross Center (AMKC) (11%, n=13) (see Figure 2).

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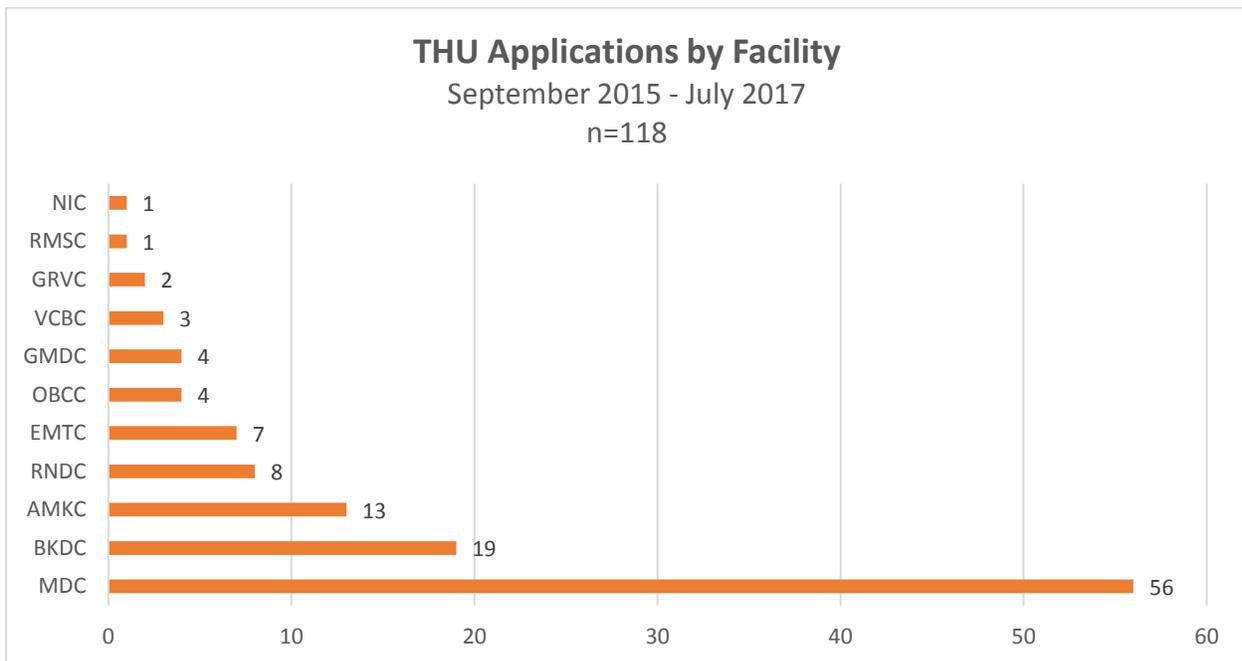
<sup>26</sup> Two applications were not legible and therefore not included in the summary of this sample.

Figure 1



Source: Board of Correction review of DOC THU applications.

Figure 2



Source: Board of Correction review of DOC THU application data.

An individual may apply for placement into the THU at any point during their detention. The average amount of time spent in custody prior to a person submitting an application was 86 days.<sup>27</sup> For applications resulting in a placement in the THU, the time spent in DOC custody prior to completing an application ranged from less than a day to 525 days. The median time in custody prior to application was 22 days.<sup>28</sup>

In general, individuals who applied and were not placed spent more time in DOC custody before applying than those who applied and received a placement. For applications that did not result in a placement (n=70), the median time spent in DOC custody prior to completing an application was 53 days.<sup>29</sup>

Individuals housed in the THU reported to Board staff that they were not informed of the THU's existence at intake. Most of them discovered it through word of mouth from other people in custody, or from correction officers separate from the intake process. One person claimed she only heard about the unit when she asked a correction officer about access to hormones.

Ninety-two percent (92%, n=109) of all applicants indicated on their application that they agreed to abide by the rules of the Transgender Housing Unit. The THU application itself does not state the rules of the unit, so it is unclear how applicants know the rules to which they are agreeing. Board staff are not aware of any written policies outlining the rules of the unit.

Table 1

<b>THU Application Summary (n=114) (September 2015 - July 2017)</b>				
<b>Time in Custody Prior to Application (Days)</b>		<b>Placed (n=44)</b>	<b>Not Placed (n=70)</b>	<b>Total (n=114)</b>
	Min	0	0	0
	Max	525	568	568
	Average	88	85	86
	Median	22	53	38
Source: Board of Correction review of DOC THU application and placement data. Includes multiple applications.				

<sup>27</sup> Note that an individual can request an application for the THU at any time during their detention, not only during the admissions process. This analysis excludes four applications for individuals who entered DOC custody prior to the opening of the THU.

<sup>28</sup> This analysis excludes four applications for individuals who entered DOC custody prior to the opening of the THU.

<sup>29</sup> Board staff found two applications by individuals who stated they did not want to be placed into the THU. One denied being transgender. It is unclear why they submitted an application.

## Gender Identity of Applicants

The Department's electronic inmate management system does not designate a person's gender identity based on self-report. Nearly 80 percent (n=94) of applicants had a preferred pronoun of "she/her" on their application, while 2.5% selected "he/him" (n=3). Seven percent (7%, n=9) listed their preferred pronoun as "other," while the remainder had no preference recorded on their application. In contrast, for those 118 applications, just one individual was designated as female in the DOC system. All others were designated as male. Some individuals housed in the THU report that officers did inquire about their gender identity at intake. However, in these cases, despite disclosing a transgender identity officers continued to misgender the individuals and provide no information about the THU or the application process.

While 80% of applicants preferred "she/her," all were housed in male facilities including those people housed in the THU which is inside a male facility. Minimum Standards require the Department not assign a housing placement based solely on the inmates' external genital anatomy but that gender identity also be considered.<sup>30</sup>

## Application Decisions

The Department has difficulty documenting decisions by the evaluation committee. Of the 118 applications, 11 applications were approved, eight applications were denied, and 99 applications (84%) did not have any decision recorded (see Figure 3). Forty percent (40%, n=48) of all applications were associated with a placement into the THU, indicating that applicants were placed in the unit without a formal application and written approval from the Department or that this documentation was not provided to the Board.

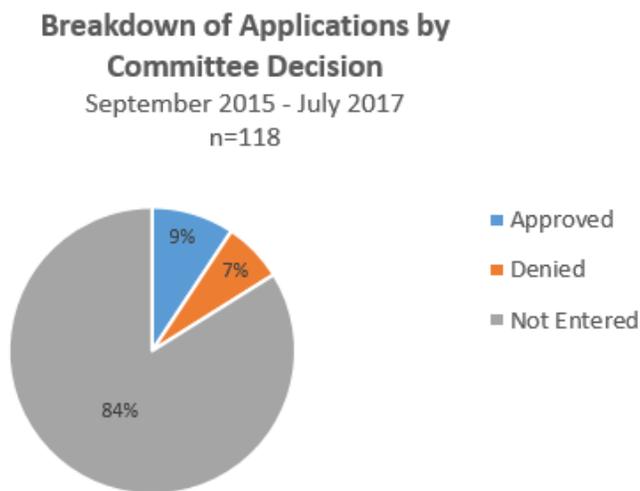
During Board staff visits to the THU, individuals in the unit expressed confusion about the screening and intake process. People in the THU reported that they would like to understand the decision-making process better. They also reported that THU approval times are irregular and often too long, regardless of previous placement into the unit, and that the denial process lacks transparency and appears inconsistently applied. Board staff received similar feedback from individuals housed elsewhere in DOC custody (see discussion in "Complaints" below).

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<sup>30</sup> N.Y.C. BOARD OF CORRECTION., CORRECTIONAL FACILITIES, ELIMINATION OF SEXUAL ABUSE AND SEXUAL HARASSMENT IN CORRECTIONAL FACILITIES CHAPTER 5, § 5-18(d), USE OF SCREENING INFORMATION (added City Record Nov. 15, 2016, eff. Jan. 2, 2017).

According to people housed in the THU, placement decisions tended to be responsive to incidents in custody, rather than the result of proactive screening. For example, several individuals reported being moved to the THU only after “something happened” (i.e. gender-based violence).<sup>31</sup>

Figure 3



Source: Board of Correction review of DOC THU application data.

For applications resulting in placement in the THU, the time from application to placement ranged widely from less than a day to 111 days. The median time to placement was 5 days and the average time from application to placement was 18 days (see Table 2).

Table 2

<b>Time from Application to THU Placement (n=48) (September 2015 - July 2017)</b>		
<b>Placed</b>	Min	0
	Max	111
	Average	18
	Median	5
Source: Board of Correction review of DOC THU application and placement data.		

For those who applied and were not placed into the THU, the time spent in custody post application also ranged widely from one day to over two years. The average time in custody post application was 110 days, almost twice the Department-wide average, and the median was

<sup>31</sup> This report does not investigate these claims.

63 (see Table 3). This suggests that those applicants who were not placed into the THU are spending a significant amount of time in DOC custody post-application before being discharged. Forty-one percent (41%, n=26) of applications that did not result in placement were moved to protective custody. Almost a third of those who applied and were not placed into the THU remained in a general population unit after their application (see Table 4).

Table 3

<b>Time from Application to DOC Discharge (n=64) (September 2015 - July 2017)</b>		
<b>Not Placed</b>	Min	1
	Max	749
	Average	110
	Median	63
Source: Board of Correction review of DOC THU application and placement data. * Excludes six applications that were associated with individuals who applied while already in the THU or had previous applications during the same incarceration that eventually resulted in placement into the THU.		

Table 4

<b>Post-Application Housing Area Applications Not Resulting in Placement in the THU (September 2015 - July 2017)</b>		
Protective Custody	26	41%
General Population	19	30%
New Admission	9	14%
Discharged	6	9%
Mental Health	3	5%
Maximum Security	1	2%
	<b>64</b>	<b>100%</b>
SOURCE: Board of Correction review of DOC housing history. Housing area refers to area placed after the application date.		

## Reasons for Application to the THU

Most applications reviewed (78%, n=92) cited more than one reason for requesting placement in the THU. Most individuals who applied (95%, n=112) stated they would feel more comfortable living in a separate housing area, rather than general population or protective custody. Applicants stated that being among their peers would provide some peace of mind.

One applicant wrote, "I feel like if I'm in transgender housing I would be around other individuals that respect me and accept me for who I am. I'd feel more comfortable and wouldn't need to worry and watch my back from others."

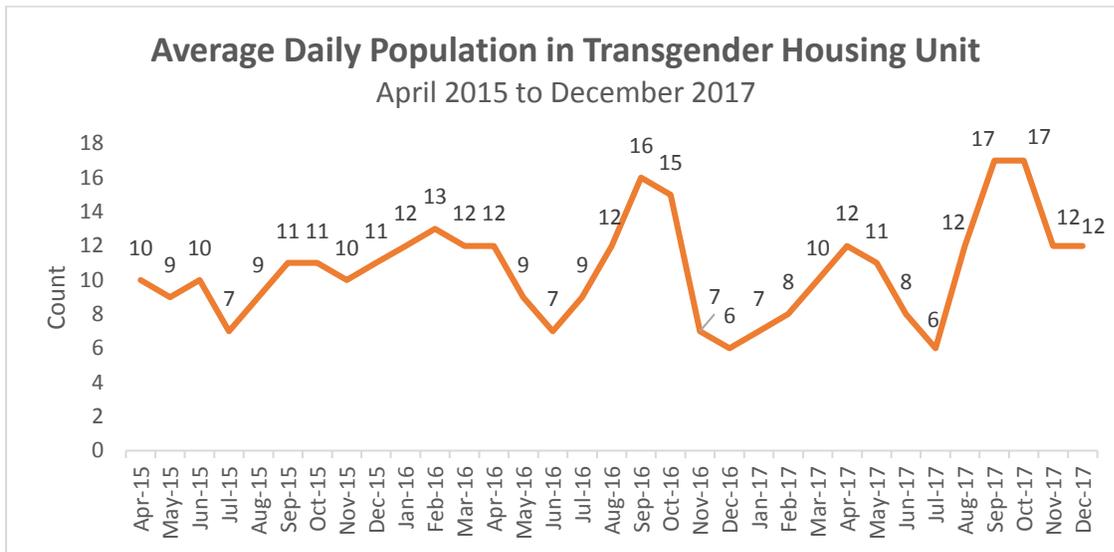
Seventy percent (70%, n=83) of applications reviewed cited safety concerns related to harm from other people in custody; one individual wrote, "I fear for my life because I am a transgender woman and because of this I'm being humiliated, harassed, attacked. . ." Thirty-five percent (35%, n=41) of applicants mentioned they had experienced prior harassment, threats, attacks or abuse in custody. Eight percent (8%, n=9) stated they were currently experiencing harassment, threats, attacks or abuse. One person wrote "I am not comfortable with other heterosexual inmates, I'm being called homo, faggot and that's not a place to be for me." Five applicants (4%, n=5) cited safety concerns related to harm from staff; one writing "My life has been threatened by male inmates and correction officers at my previous facilities."

THU applications also included individuals' requests for services. Eighteen percent (18%, n=21) stated that they were either currently taking hormone replacement therapy or would like to be and 4% (n=5) requested or mentioned needing mental health services on their application. One individual stated that the THU would provide them with stability to properly receive services, noting that "moving and changing housing areas so constantly has me unable to properly receive [ ] treatment and medication."

## Placements

Between April 2015 and July 2017 there were 167 placements of 130 unique individuals into the Transgender Housing Unit. Since opening, the average daily population in THU ranged from a minimum of 6 individuals in December 2016 and July 2017 to a maximum of 17 individuals in September 2017 and October 2017. As of December 2017, the average daily population was 12 people.

Figure 4



Source: Board of Correction review of DOC THU housing history.

Seventy-nine percent (79%, n=102) of the individuals placed into the THU had one placement, 16% (n=21) had two placements, and 5% (n=7) had three or more placements into the THU.<sup>32</sup>

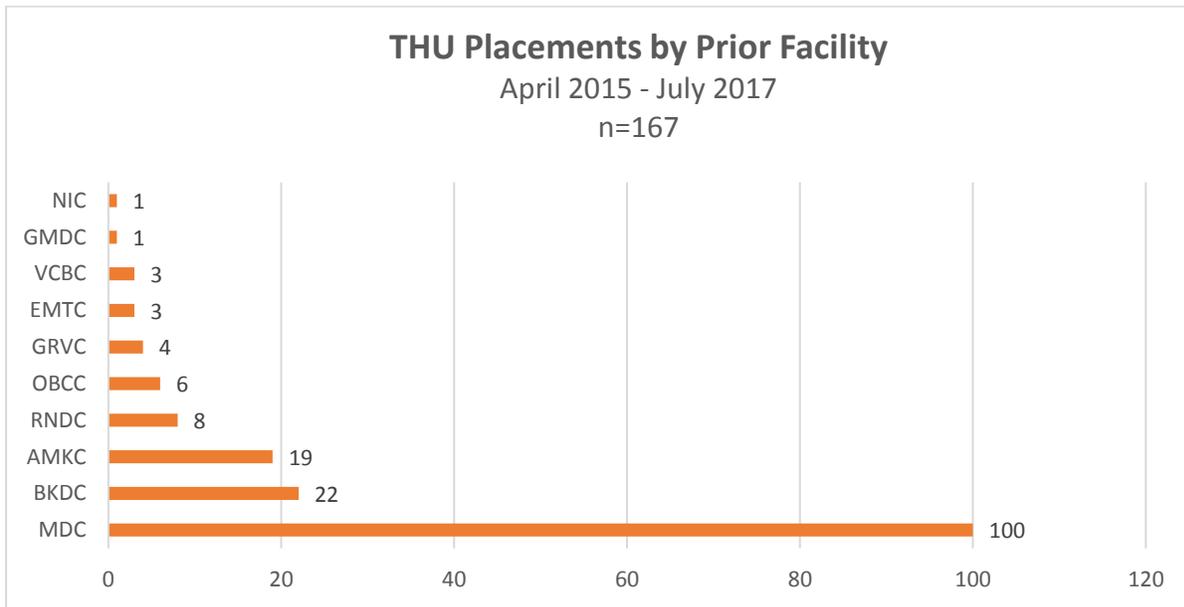
Twenty-seven percent (27%, n=46) of those placements had an application associated with the placement,<sup>33</sup> while the remaining 73% (n=121) did not have an application associated with their placement.

MDC was the source of most placements to the THU, 60% (n=100), followed by BKDC (13%, n=22), and AMKC (11%, n=19) (see Figure 5).

<sup>32</sup> Some individuals were placed in the THU multiple times as a result of a new incarceration while others were moved back into the THU during the same incarceration.

<sup>33</sup> Includes those individuals who had an application prior to THU placement. Two of the 48 individuals whose application resulted in a placement were placed after the placement review period, July 31, 2017.

Figure 5



Source: Board of Correction review of DOC THU housing history.

Nearly half of those placed into the THU (46%, n=77) were transferred to the THU from a protective custody unit. Twenty-seven percent (27%, n=45) were housed in the general population. Just over 20% (n=37) were placed into the THU initially, either directly from intake or from a new admission housing area. Two percent (2%, n=4) of placements came directly from a punitive or restrictive housing unit, including Punitive Segregation (n=2), Restrictive Housing Unit (n=2) or an Enhanced Restraint Unit (n=2). Another two percent (2%, n=4) were placed directly from a mental health unit,<sup>34</sup> one of whom was placed directly from Clinical Alternative to Punitive Segregation.

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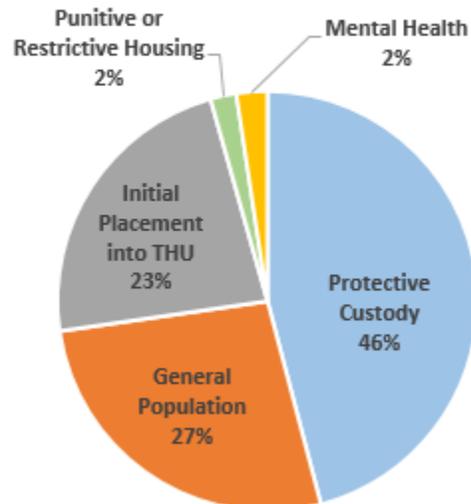
<sup>34</sup> Includes two individuals from a Mental Health housing area (MOD 11A), one person from a CAPS unit, and one person from a Mental Observation unit, all at AMKC.

Figure 6

### Housing Location Prior to Placement into Transgender Housing Unit

April 2015 - July 2017

n=167



Source: Board of Correction review of DOC housing history. Punitive or Restrictive Housing includes PSEG, RHU and Restraint Units.

## Characteristics of the Population Placed in the THU

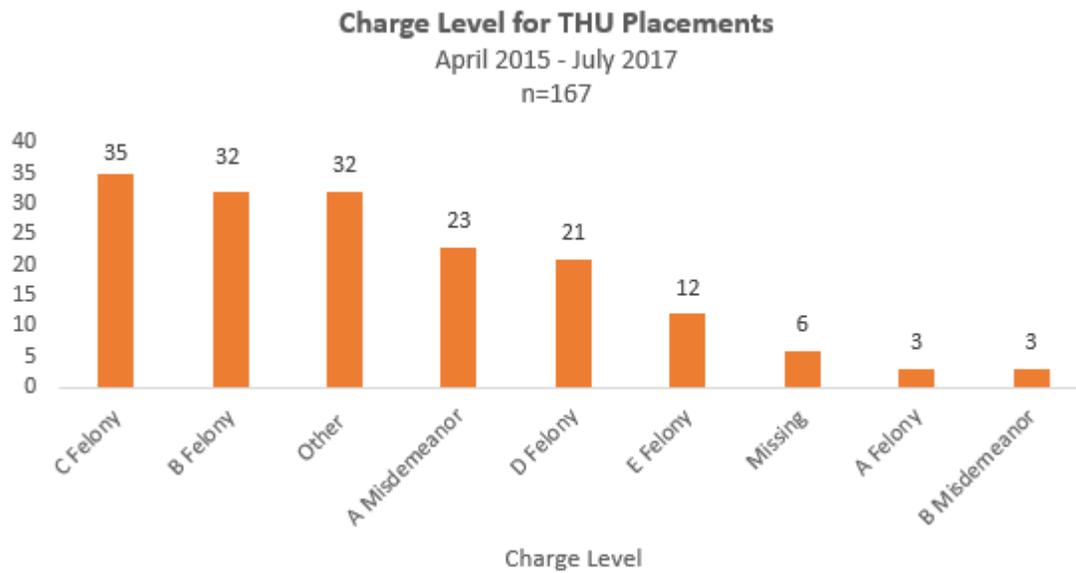
### Custody Status

Ninety-seven percent (97%, n=163) of the placements were detainees and 3% (n=4) involved people serving city sentences. One placement was for a person awaiting transfer to state prison.

### Charge Level

An analysis of the top charge level for the 167 placements into THU indicates that 62% (n=103) of the placements were associated with a felony charge, 16% (n=26) were associated with a misdemeanor charge, and 19% (n=32) had other charges such as a court warrant, court order or civil commitment (see Figure 7). Six placements (3%, n=6) were missing charge level data.

Figure 7



Source: Board of Correction review of DOC THU housing history.

#### Gender as Recorded by DOC

Of the individuals placed in the THU, 98% (n=127) were designated as male in DOC's inmate information system while 2% (n=3) were designated as female.

#### Age

The average age of individuals placed in THU was 33 years and the median age was 29. Ages ranged from 19 years to 77 years. The age range for those individuals placed into the THU is relatively similar to that of the Department-wide demographic data, while the average age in the THU is slightly younger than the average age in the overall population (36 years).<sup>35</sup>

#### Race and Ethnicity

The THU had a greater percentage of Black individuals and a smaller percentage of Hispanic individuals as compared to the overall population. Sixty-six percent (66%, n=86) of people housed in the unit during the study period reported their race as Black, 24% (n=30) as Other, 8% (n=11) as White, and 2% (n=3) as unknown. Seventy-four percent (74%, n=96) identified as non-Hispanic, and 26% (n=34) identified as Hispanic. Department-wide the incarcerated

<sup>35</sup> DEP'T. OF CORRECTION, NEW YORK CITY DEPARTMENT AT A GLANCE, FIRST THREE MONTHS OF FY 2018 (2017), available at [https://www1.nyc.gov/assets/doc/downloads/press-release/DOC\\_At\\_a\\_Glance-FY18\\_1STQTR\\_120517.pdf](https://www1.nyc.gov/assets/doc/downloads/press-release/DOC_At_a_Glance-FY18_1STQTR_120517.pdf)

population's demographics are 57% Black, 31% Other, and 12% White. Thirty-three percent (33%) of individuals Department-wide are Hispanic and 67% are non-Hispanic.<sup>36</sup>

### Mental Health

Individuals in the THU were more likely to have mental health needs than the overall DOC population. Almost sixty percent (59%, n=77) had identified mental health needs as compared to the 42% of the general population.<sup>37</sup> This finding is consistent with national trends finding a higher prevalence of mental health needs in the transgender population outside of custody.<sup>38</sup>

### Suicide Watch

Individuals housed in the THU were more likely to have been on a suicide watch at some point during their current incarceration. Twenty-two percent (22%, n=29) of individuals placed into THU were on the suicide watch list at some point during their current incarceration, compared with only 2.5% of all admissions between April 2015 and December 2017.<sup>39</sup> Board staff found four individuals who were placed on suicide watch during their stay in the THU.

### Length of Stay in THU

The median length of stay for those who were placed in and exited THU was 21 days and the average was 50 days.<sup>40</sup> The median length of stay for those who were still in the THU as of December 1<sup>st</sup> 2017 is 194 days and the average is 276 days (see Table 5).

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<sup>36</sup> Department-wide race and ethnicity data were calculated by reviewing unique individuals from bi-weekly cross section data from 04/1/2015 to 07/30/2017. This information comes from the Inmate Management System in which DOC inputs self-reported race of new admissions and whether they identify as Hispanic.

<sup>37</sup> In fiscal year 2017, approximately 42% of DOC's ADP was receiving mental health services (Brad H/M Designation). See NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS, MAYOR'S MANAGEMENT REPORT: FISCAL YEAR 2017 at 76 (Sept. 2017), available at [goo.gl/horDQF](http://goo.gl/horDQF).

<sup>38</sup> S.E. JAMES, ET AL., THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY. NATIONAL CENTER FOR TRANSGENDER EQUALITY 5 (2015), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF> (reporting that 39% of respondents experienced serious psychological distress in the month prior to completing the survey, compared with only 5% of the U.S. population).

<sup>39</sup> This finding is also consistent with findings of higher rates of attempted suicide for the transgender population not in custody. *Id.* at 5 (finding 40% of respondents have attempted suicide in their lifetime—nearly nine times the attempted suicide rate in the U.S. population (4.6%)).

<sup>40</sup> Exit may include discharge or transfer to a different housing unit.

Table 5

Summary of Length of Stay in THU (n=167) (April 2015 and July 2017)		
	Exited THU (n=163)	Still in THU (n=4) *
Min	1	146
Max	335	568
Average	50	276
Median	21	194
Source: Board of Correction review of DOC THU housing history. *In unit as of 12/1/2017		

## Conditions in THU

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People housed in the THU expressed the importance of the unit. Most people in the THU reported feeling safer after being placed in the unit. Many stated that they did not feel safe in their previous housing area and believed there are more individuals in general population that are unaware of the THU as an option. People housed in the THU told Board staff that programming such as yoga, art therapy, and weekly community meetings aid in creating a supportive environment.

### Staffing

Board staff visited the THU nine times between June 2<sup>nd</sup> and August 16<sup>th</sup>, 2017. During six of the nine visits, there were no steady staff present.<sup>41</sup> Although the Directive does not require steady staff, BOC has emphasized the importance of steady staff to a well-managed unit.<sup>42</sup> During three of nine visits, staff encountered one steady officer in the unit.<sup>43</sup>

One officer on post was working overtime and expressed frustration over working triple shifts. Another officer who was not steady expressed interest in becoming a steady officer. One officer on duty told Board staff that there had been facility-wide staffing shortages resulting in many officers having to work double and triple shifts. During the time period these concerns were noted, the Department reported almost 75,000 hours of overtime from June through August 2017 at MDC.

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<sup>41</sup> Based on self-reporting by staff.

<sup>42</sup> See e.g., N.Y.C. BOARD OF CORRECTION., AN ASSESSMENT OF THE N.Y.C. DEP'T OF CORRECTION IMPLEMENTATION OF ADULT ENHANCED SUPERVISION HOUSING (Apr. 2017) at 41, available at [goo.gl/jisFpb](http://goo.gl/jisFpb).

<sup>43</sup> Based on conversations, it was not clear if this was a steady post on paper or just practice.

## Staff Training

According to the Board’s Minimum Standards, the Department and CHS must provide training to all staff on how to communicate effectively with transgender people in custody.<sup>44</sup> The Department and CHS must train at least 20% of all employees by December 31, 2017.<sup>45</sup> Additionally, Board Standards mandate that staff working directly with transgender persons in custody must receive training that includes the psychosocial and safety needs of this population and instruction on communicating in a manner that is respectful of gender identity. The Department must complete such training by January 2, 2018.<sup>46</sup>

All DOC staff that BOC staff spoke to reported receiving DOC’s standard number of PREA training hours at the Department’s academy. No officers reported receiving extra training related to transgender issues or the THU. These reports are supported by statements from those in the custody in the THU. Multiple people in custody in the THU complained about a lack of steady officers and an absence of training for many assigned to the unit. They recommended that officers receive “sensitivity training” on how best to interact and communicate with transgender individuals, which could help eliminate confusion, misinformation, and disrespect towards them.

## Access to Hormones

One common source of confusion among individuals in the THU and expressed to BOC staff relates to the distribution of hormones. According to Correctional Health Services (CHS), the administration of hormones depends on whether the patient had received hormones prior to being detained. If a patient was receiving hormones before admission to DOC custody and requests continuation, CHS requests the patient’s records, conducts an assessment, and then continues treatment as appropriate. If the patient is requesting hormones for the first time, the individual must see Mental Health and a specialist at Bellevue or Elmhurst Hospital to determine the appropriate level of hormones they should receive.<sup>47</sup> Individuals in the THU reported differing ideas and understanding about access to hormone treatment and were unaware of the official CHS policy. Further information, such as the number of requests for and

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<sup>44</sup> N.Y.C. BOARD OF CORRECTION., CORRECTIONAL FACILITIES, ELIMINATION OF SEXUAL ABUSE AND SEXUAL HARASSMENT IN CORRECTIONAL FACILITIES CHAPTER 5, 5-12(a) (added City Record Nov. 15, 2016, eff. Jan. 2, 2017).

<sup>45</sup> N.Y.C. BOARD OF CORRECTION., CORRECTIONAL FACILITIES, ELIMINATION OF SEXUAL ABUSE AND SEXUAL HARASSMENT IN CORRECTIONAL FACILITIES CHAPTER 5, 5-12(f)(1) (added City Record Nov. 15, 2016, eff. Jan. 2, 2017).

<sup>46</sup> N.Y.C. BOARD OF CORRECTION., CORRECTIONAL FACILITIES, ELIMINATION OF SEXUAL ABUSE AND SEXUAL HARASSMENT IN CORRECTIONAL FACILITIES CHAPTER 5, 5-12(h) (added City Record Nov. 15, 2016, eff. Jan. 2, 2017). In addition to the Board’s Minimum Standards, Mayor De Blasio issued an Executive Order on March 7, 2016 which mandates training related to transgender diversity be completed by all city frontline staff by March 7, 2018. See N.Y.C. OFF. OF THE MAYOR, EXEC. ORD. NO. 16 (March 7, 2016), *available at* [https://www1.nyc.gov/assets/cchr/downloads/pdf/EO16\\_Single-Sex\\_City\\_Facilities.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/EO16_Single-Sex_City_Facilities.pdf).

<sup>47</sup> N.Y.C. HEALTH AND HOSP. CORP. CORRECTIONAL HEALTH SERVICES, TRANSGENDER CARE, POLICY NO. MED24B (revised July 2015).

the number of individuals receiving hormone treatment, is needed to better understand access to hormone treatment.

## Complaints Received by BOC

The Board received 166 complaints from 63 unique individuals referencing transgender, trans, or THU between April 2015 – July 2017. The sample of complaints analyzed were pulled if the complainant identified as transgender or the complaint referenced transgender using a key word search (“THU”, “trans”, and “transgender”). Thus, this sample does not necessarily capture all complaints submitted to BOC from transgender people in custody during this time. Complaints were coded into categories and themes (i.e. —harassment by staff, harassment by other people in custody, access to medical, incorrect housing, etc.).

Twenty-seven complaints were from people housed in the THU. Twenty-six complaints were specific to the operation of the THU (see Table 6). For those 26 complaints related to the operation of the THU, the following subcategories were identified. One complaint may fall into multiple sub-categories:

Table 6

<b>Complaints Related to Operation of the THU (April 2015- July 2017)</b>				
<b>Category*</b>	<b># of Complaints</b>	<b>% (n=26)</b>	<b>Not in THU</b>	<b>While in THU</b>
Application Process	13	50%	13	0
Staff	2	8%	0	2
Requesting in	11	42%	11	0
Requesting out	3	12%	1	2
Source: Board of Correction review of complaints received by BOC. *One complaint may fall into multiple sub-categories				

For the Department-wide analysis, Board staff grouped the 166 complaints into three broad categories: complaints by transgender individuals that do not relate to their gender identity or the operation of the THU, complaints regarding the operation of the THU, and complaints that concern treatment in custody as it relates to their gender identity (see Table 7). One complaint may fall into multiple categories. Over half of the complaints made by transgender individuals were related to their gender identity.

Table 7

<b>Department-wide Complaints by Transgender Individuals (April 2015 – July 2017)</b>		
Category*	#	% of 166
General Complaint Unrelated to Gender Identity	64	38%
Treatment in Custody Due to Gender Identity	103	62%
Operation of THU	26	16%
Source: Board of Correction review of complaints received by BOC. *One complaint may fall into multiple sub-categories		

Table 8 outlines the types of complaints that involved concerns about treatment due to gender identity. The following subcategories were identified:

Table 8

<b>Complaints Regarding Treatment in Custody Due to Gender Identity (April 2015 - July 2017)</b>		
Category*	#	% of 166
Abuse Not Specified	17	10%
Abuse by Staff	6	4%
Abuse by Inmate	13	8%
Harassment Not Specified	43	26%
Harassment by Staff	25	15%
Harassment by Inmate	22	13%
Housing	74	45%
Medical	10	6%
Mental Health	5	3%
Source: Board of Correction review of complaints received by BOC. *One complaint may fall into multiple sub-categories		

This analysis is meant to provide an overview of general trends identified in review of complaints of transgender people in custody to inform ongoing discussion. It is not a representation of the full universe of types of concerns transgender individuals may have regarding their experiences in confinement.

# Glossary

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<b>Clinical Alternative to Punitive Segregation (CAPS)</b>	A non-punitive unit developed for people with Serious Mental Illnesses, modeled on in-patient forensic wards. Clinical staff are available in the units at all times during the day and evening tours conducting individual and group therapy and offering supervised activities. Time spent out-of-cell is dictated by the peoples' ability to engage successfully with other people in custody and staff. People discharged from CAPS go back to the most appropriate housing area when they have successfully demonstrated stability and an ability to maintain good behavior.
<b>City Sentenced</b>	A person in custody who has been convicted of a crime and sentenced to a term of incarceration for one year or less, concurrent terms of one year or less, or two consecutive terms of one year or less.
<b>Detainee</b>	A person in custody who is awaiting trial but has not been convicted of a crime(s) or a person who has been convicted of a crime, but not yet sentenced.
<b>Enhanced Restraint Status</b>	A designation given to a person who, having either exhibited violent behavior during his or her incarceration or exhibited violent behavior during a prior incarceration within the last five years, are subject to enhanced security restrictions. Depending on the individual, said security restrictions or restraints may include security mitts, handcuffs, waist chains, and leg irons. People with Enhanced Restraint Status must be in enhanced restraints during movement to and from all service areas and places of escort.
<b>Enhanced Restraint Unit</b>	A housing area where all individuals have enhanced restraint status (see Enhanced Restraint Status definition).
<b>Gender Non-Conforming</b>	Refers to a person whose appearance or manner does not conform to traditional societal gender expectations.
<b>General Population (GP)</b>	General population housing is designated by custody level for people who have completed classification and new admission processing, including medical and mental health screening, and for people who do not require special housing.
<b>Intersex</b>	Refers to a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.
<b>Mental Observation (MO)</b>	Mental observation housing is designated by custody level for people whose mental condition requires a higher level of observation than those in general population. People for whom this type of housing may be appropriate include those whose mental condition requires close observation by clinical staff and those at increased risk of suicide.

<b>New Admission (NA)</b>	New admissions housing is designated by custody level where practicable, for newly admitted individuals who are awaiting completion of classification or new admission processing, including medical and mental health screening.
<b>Protective Custody (PC)</b>	Protective custody housing is designated by custody level for people determined to be too vulnerable for general population housing and who, for their own safety, are assigned to protective custody housing. People may be assigned to protective custody housing on a voluntary or involuntary basis. The Department takes into account the reasons for a person’s placement into protective custody and whether the individual has been placed voluntarily or involuntarily into protective custody.
<b>Punitive Segregation (PSEG)</b>	Punitive segregation is designated for individuals found guilty of violent Grade I infractions or Department rules or for those who are in pre-hearing detention status. Individuals are locked in their cells for up to 23 hours per day, with one hour of recreation, while they serve a specific sentence imposed as a result of a disciplinary hearing.
<b>Restricted Housing Unit (RHU)</b>	Restricted Housing Units are designated for people found guilty of an infraction and sentenced to a disciplinary penalty of punitive segregation or are in pre-hearing detention status and who cannot, because of their mental condition, be housed in standard punitive segregation units. Mental health services and treatment programs are provided to help people assimilate back into general population or a non-punitive segregation mental observation housing. Though individuals cannot opt out of assignment to an RHU, they are encouraged to participate in the non-mandatory three-level incentive program through which they can earn increased lock-out time and a reduction in their punitive segregation term upon successfully fulfilling all requirements of the program.
<b>Transgender</b>	Transgender is a term used to describe a person whose gender identity is different from the person’s assigned sex at birth.