SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF JEFFERSON

In the Matter of,	:	
DEANNA LETRAY,	:	Index No. _____
Petitioner,	:	
-against-	:	
NEW YORK STATE DIVISION OF HUMAN RIGHTS, CITY OF WATERTOWN, POLICE DEPARTMENT, and JEFFERSON COUNTY, SHERIFF'S OFFICE,	:	
Respondents.	:	

MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION

Respectfully submitted,

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**Admission to the New York bar pending*

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PRELIMINARY STATEMENT

This petition seeks to confirm that the State Division of Human Rights, the state agency charged with enforcing the New York State Human Rights Law, has jurisdiction over complaints involving discriminatory conduct by police and correction agencies when that conduct falls squarely within the scope of two separate provisions of the law: public accommodation protections and housing accommodation protections. Applying the terms of the statute and controlling Court of Appeals precedent holding that the critical defining feature of public accommodations is the provision of services to the public, police services are public accommodations because they are owned and operated by state and local governments and provide services to the public at large. Federal courts have upheld claims brought under the Human Rights Law for the denial of equal access to police services and other states, including New Jersey, have held that police are quintessential public accommodations. Likewise, corrections agencies provide housing accommodations because they operate and manage buildings and portions of buildings – specifically jails and other correctional facilities – which are "used or occupied . . .[as the] sleeping place of one or more human beings." Exec. Law § 292(10). Under the express terms of the Human Rights Law, discriminatory conduct by police or correction agencies is prohibited when they function as either a public or housing accommodation and falls squarely within the jurisdiction of the Division of Human Rights.

Nevertheless, the Division recently asserted that it lacked jurisdiction over police and correction agencies and summarily dismissed the complaint of Petitioner Ms. DeAnna LeTray. Ms. LeTray alleged discriminatory conduct on the part of the Watertown City Police Department and Jefferson County Sheriff's Office that, if proven true, would establish she was denied equal access to public and housing accommodations on the basis of her sex, gender identity, and

disability in violation of the Human Rights Law. Because the Division's dismissal of Ms. LeTray's administrative complaint is based in an erroneous interpretation of the Human Rights Law, this Court should reverse the dismissal order and remand to the Division for a determination on the complaint's merits.

FACTUAL BACKGROUND

Because the proceedings before the Division involved only a summary dismissal for lack of jurisdiction, the question before this Court is limited to whether the Division has jurisdiction over the Watertown City Police Department and the Jefferson County Sheriff's Office assuming that the allegations in Ms. LeTray's administrative complaint are true. *See* Exec. Law § 298 (providing that, upon the filing of a notice of petition and petition, the court shall have jurisdiction over the Division's proceedings and of "the questions determined therein"); *Matter of Scopelliti v. Town of New Castle*, 210 A.D.2d 339, 340 (2d Dept 1994) (relying on allegations in the underlying administrative complaint filed with the Division for the purpose of determining whether the Division's summary dismissal on jurisdictional ground was proper). These allegations are set forth in the administrative complaint, attached as Exhibit A to the Verified Petition (the "Petition") dated December 3, 2018. For the court's convenience, the circumstances underlying her complaint are also summarized below.

Ms. LeTray, a transgender woman, was part of a domestic dispute at the home of her daughter and daughter's boyfriend in Watertown, New York on September 28, 2017. (Petition Ex. A.) During the dispute, her daughter's boyfriend threatened Ms. LeTray with a shotgun. (*Id.*) Responding to a call about a domestic disturbance, Watertown police officers made derogatory and harassing statements about Ms. LeTray's gender identity, including calling her a man and asking "How long have you done that?" and "How long have you dressed like that." (*Id.*) Refusing

to credit her version of events relating to the domestic dispute because of her gender identity, the officers decided not to let her leave the scene and instead arrested her and brought her to the precinct. (*Id.*)

Ms. LeTray experienced more discrimination and abuse at the precinct. Police officers removed her hair by force despite the fact that Ms. LeTray's hairpiece is a central part of her gender identity and expression. (*Id.*) The officers then tied her feet together and her hands together in a position often referred to as being "hogtied." (*Id.*) Upon being removed to the Jefferson County Correctional Facility, male officers forced Ms. LeTray to strip naked while being observed by a number of male officers through the window of the room in order to determine what genitals she has. (*Id.*) She was subjected to an invasive and unnecessary manual body cavity search during which male officers fondled her genitals and repeatedly probed her anus. (*Id.*) Ms. LeTray spent the night in a cell before being brought before a judge without her coat, shoes, or underwear. (*Id.*)

PROCEDURAL HISTORY

On September 27, 2018, Ms. LeTray filed a verified complaint against the City of Watertown Police Department and the Jefferson County Sheriff's Office with the State Division of Human Rights. (Petition § 33.) The complaint alleged that she was discriminated against by the Watertown City Police Department and Jefferson County Sheriff's Office on the basis of her sex, gender identity, and disability in violation of the Human Rights Law. (*Id.*; *see* Petition Ex. A.)

On October 5, 2018, the Division of Human Rights served a Determination and Order of Dismissal for Lack of Jurisdiction on Ms. LeTray. (*Id.* ¶ 34; Petition Ex. A.) In its entirety, the Order states:

> Pursuant to Section 297.2 of the Human Rights Law, the Division finds that it does not have jurisdiction over the context of the complaint. The Division does not have jurisdiction over the Respondents [the City of Watertown Police Department and Jefferson County Sheriff's Office] because the respondent police and correction agencies are not public

> accommodations under the New York State Human Rights Law. The New York State Division of Human Rights lacks jurisdiction over these entities in regard to their performance of their functions. The complaint is therefore ordered dismissed and the file is closed.[1]

(Petition ¶ 34; Petition Ex. A.) In accordance with Executive Law § 298, Petitioner filed this appeal of that determination within 60 days of the service of the Division's Order.

ARGUMENT

The Division of Human Rights committed an error of law when it dismissed Ms. LeTray's administrative complaint on the grounds that it lacked jurisdiction over police and corrections agencies. The Division has jurisdiction over complaints involving those public agencies because they provide public or housing accommodations.

I. Standard of Review

This Court has the authority to review an order of the Division of Human Rights dismissing a complaint for lack of jurisdiction pursuant to Executive Law § 298. In reviewing the Division's determination, this court applies an "error of law" standard. *Matter of Tessy Plastics Corp. v. State Div. of Human Rights*, 47 N.Y.2d 789, 791 (1979) (§ 298 provides avenue of relief for petitioners asserting error of law in Division's jurisdictional determinations); *Baust v. State Div. of Human Rights*, 70 A.D.3d 1107, 1108 (3d Dept 2010) (dismissal of petitioner's administrative complaint on the grounds of election of remedies was an error of law); *Matter of Staten Island Alliance for Mentally Ill v. Mercado*, 273 A.D.2d 36, 36-37 (1st Dept 2000) (finding that the Commissioner's jurisdictional determination was contrary to law because the Division plainly has statutory authority to adjudicate a complaint of a denial of advantage by the Metropolitan Transit Authority, a public accommodation). In *Matter of Scopelliti*, for instance, the Second Department reviewed

[1] The Division failed to acknowledge that Ms. LeTray's allegations also implicated the housing discrimination protections of the Human Rights Law.

a determination by the Division that it did not have jurisdiction over claims of employment discrimination brought by public employees. Noting that the statutory definition of "employee" did not exclude public employees, the Second Department reversed the Division's order and held that the court "do[es] not have the authority to write such an exclusion into the New York law." 210 A.D.3d at 340.

II. Police and Other Law Enforcement Services Are Public Accommodations Subject to New York's Human Rights Law

Police departments and other law enforcement agencies are public accommodations because they are owned and operated by state and local governments and provide services to the public at large.[2] The Division's position that it categorically lacks jurisdiction over these agencies is a clear error of law.

The Human Rights Law prohibits owners and employees of public accommodations from discriminating against people on the basis of race, creed, color, national origin, sexual orientation, military status, sex, disability, or marital status. Exec. Law § 296(2)(a). The statute explicitly defines "public accommodations" to include places owned or operated by a state or local government. Specifically, it provides that:

> The term "public accommodation, resort or amusement" *shall include, regardless of whether the owner or operator of such place is a state or local government entity or a private individual or entity, except as hereinafter specified, all places included in the meaning of such terms* as: inns, taverns, road houses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants, or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectionaries, soda foundations, and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises; wholesale and retail stores and establishments dealing with goods or services of any kind, dispensaries, clinics, hospitals, bath-houses, swimming pools, laundries and all other

[2] Although this section largely addresses services provided by the police, many of these same services are provided by law enforcement officers employed by Sheriff's offices. (*See* Petition ¶¶ 16-25.) For the same reasons discussed herein, those types of services are also public accommodations.

> cleaning establishments, barber shops, beauty parlors, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors; garages, all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof; travel or tour advisory services, agencies or bureaus; public halls, public rooms, public elevators, and any public areas of any building or structure.

Id. § 292(9) (emphasis added).

As the text makes clear, the list of places that constitute public accommodations is illustrative, not exclusive, and broadly encompasses any entity that provides conveniences and services to the public. *See Cahill v. Rosa*, 89 N.Y.2d 14, 21 (1996); *U.S. Power Squadrons v. State Human Rights Appeal Board*, 59 N.Y.2d 401, 410 (1983). In *Cahill*, for instance, the Court of Appeals considered the claim of a dentist that his services were not public accommodations. Specifically, the petitioner argued that dentists were not public accommodations because they are not included in the long list of places in the statutory definition, because customers need to make appointments, and because the office was on private property. 89 N.Y.2d at 20-21. The Court of Appeals rejected such a cramped reading of the statutory definition, holding that dental offices are public accommodations because their services are "generally open to all comers." *Id.* at 21. In addition, the Court reasoned that dentists are not specifically exempted under the statute, which provides only narrow exemptions for certain educational institutions and places that are "distinctly private" in nature. *Id.* at 22 (citing Exec. Law § 292(9) and noting that "while the Legislature intended that the inclusive list be broadly construed, it specified that exemptions were to be narrowly construed").

The Court of Appeals has also clarified that public accommodations are not limited to fixed locations such as a storefront or office. In *U.S. Power Squadrons*, the Court addressed whether the Power Squadrons, a corporation whose purposes included promotion of safety and skill in boating,

was a public accommodation within the meaning of the Human Rights Law. 59 N.Y.2d 401. The Power Squadrons argued that they could not be subject to the law because they do not operate from a fixed location, but rather hold various events at public schools and buildings, public waterways, and public parks and marinas. *Id.* at 411. The Court of Appeals rejected this argument, reasoning that:

> Public accommodations are customarily supplied at fixed places, but not necessarily so. We define "place" as did the New Jersey court when construing similar statutory language. It is a term of convenience, not limitation. The statute itself suggests such an interpretation because it lists places of accommodations which have no fixed place of operation but supply their services at a variety of locations, e.g., travel and tour advisory services and public conveyances. The statute also applies to establishments dealing with goods or services of any kind. Analytically, such establishments may discriminate by denying goods and services without denying individuals access to any particular place, e.g., home delivery service or services performed in the customer's home and mail order services. . . . The place of public accommodation need not be a fixed location, it is the place where petitioners do what they do.

Id. (internal citations omitted). The Court concluded that the Squadrons functioned as a public accommodation at all the locations where they permit public participation in their programs. *Id.* at 411-13.

The statutory text likewise compels the conclusion that police departments are public accommodations when and wherever they are providing services to the public. Police precincts are owned and operated by state or local government agencies and are "open to all comers." Exec. Law § 292(9); *Cahill*, 89 N.Y.2d at 21. As explained on the Watertown Police Department's website, "[p]olice officers must seek and preserve the public confidence by demonstrating impartial service to law and by offering service and trust to all members of the public." (Petition ¶ 17; Affirmation of Erin Beth Harrist in Support of the Verified Petition dated December 3, 2018 (Harrist Aff.) Ex. 1.) *See also Ciervo v. City of New York*, 93 N.Y.2d 465, 469 (1999) ("the very nature of their occupation . . . requires that police officers and firefighters confront emergencies

on behalf of the public"). Consistent with this mission, police precincts are open to the public at large throughout the day and evening through various means, including through walk-ins and by telephone. (Petition ¶ 20.) Officers are available to take complaints by the public and respond to requests for assistance, such as with traffic accidents or other emergencies. (*Id.* ¶¶ 16, 20.) On patrol, they ensure safe traffic conditions, respond to accidents for the purpose of documenting official reports, and coordinate other forms of public assistance, such as contacting medical personnel. (*Id.* ¶ 22.) They investigate criminal activity in the name of public safety, interviewing bystanders and other witnesses as well as victims and the accused. (*Id.* ¶¶ 24-26.) They provide security at public events and in public areas and may be called to mediate disputes that threaten public safety. (*Id.* ¶ 23.) They also provide training in schools and other institutions to inform the public about federal, state, and local laws. (*Id.* ¶ 21.) None of these services or activities are included within the narrow and restrictive exemptions to the Human Rights Law. Exec Law § 292(9) (exempting certain educational institutions and "distinctly private" clubs meeting certain criteria).

Consistent with this conclusion, federal courts in New York have upheld claims against police and other law enforcement officers who discriminated against people while responding to medical emergencies, investigating criminal activity, or conducting traffic stops. In *Green v. City of New York*, 465 F.3d 65 (2d Cir. 2006), for instance, the Second Circuit reversed the dismissal of a claim alleging discrimination in public accommodations when emergency personnel from the New York City fire and police departments failed to heed a disabled man's non-verbal communication rejecting medical treatment, instead physically removing him from his home against his will. *Id.* at 85. More recently, in *Williams v. State of New York*, 121 F. Supp. 3d 354, 363-69 (S.D.N.Y. 2015), a federal court held that the Human Rights Law applied to police

interactions at the scene of an assault in a case where the plaintiff, a deaf woman, was arrested despite the fact that the police failed to get an interpreter and did not communicate with her directly. Instead, the police relied solely on the likely biased reports of witnesses who were able to verbally communicate with them; the court noted that the police may not have arrested the plaintiff had the police been able to communicate with her and all of the witnesses, some of whom were also deaf.[3] *Id.* at 367-68; *see also Harris v. City of New York*, 2018 WL 1997974 (E.D.N.Y. Apr. 27, 2018) (denying summary judgment motion on public accommodation discrimination claim under the New York City Human Rights Law where police used racial epithets during traffic stop, failed to use seat buckle on arrestee, and neglected to provide medical treatment). These decisions are all consistent with the purpose of the Human Rights Law: "to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life" by "eliminate[ing] and prevent[ing] discrimination in . . . places of public accommodation, [and] . . . in public services[.]" Exec. Law § 290(3).

Other states have also held that police services are public accommodations under their anti-discrimination statutes. In *Ptasynski v. Uwaneme*, the New Jersey Appellate Division reversed the dismissal of a claim for public accommodation discrimination under the New Jersey Law Against Discrimination where the plaintiffs alleged they were denied equal access to police services based on their race. 853 A.2d 288 (N.J. App. Div. 2004).[4] Specifically, the plaintiffs were a couple who

[3] Although the court's analysis is focused on the Americans with Disabilities Act (ADA), the court noted that it is well-established that the ADA – which applies to police services – is coextensive with the Human Rights Law. *Williams*, 121 F. Supp.3d at 364 n. 10.

[4] The New Jersey Law Against Discrimination defines "public accommodation" almost identically with the New York statute. Specifically, it defines public accommodations "to include but not be limited to: any tavern, roadhouse, hotel, motel, trailer camp, summer camp, day camp, or resort camp, whether for entertainment of transient guests or accommodation of those seeking health, recreation or rest; any producer, manufacturer, wholesaler, distributor, retail shop, store, establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises; any place maintained for the sale of ice cream, ice and fruit preparations or their derivatives, soda water or confections, or where any beverages of any kind are retailed for

had called the police during a domestic dispute. When the husband was beaten by the police and called numerous racial epithets and the wife tried to call for help, she was punched in the eye and handcuffed. *Id.* at 291-93. Addressing whether the police were a "public accommodation," the New Jersey court found that they were:

> [W]e conclude that the [defendant] police department – both the building and the individual officers—is a place of public accommodation. A municipal police force is nothing more than an executive and enforcement function of municipal government. As a public entity, by its very nature a police force is a place of public accommodation.
>
> No formulistic analysis is required to determine whether the police engage in public solicitation or a police department is similar to those entities enumerated as public accommodations under the statute. A police department is not a private entity that needs to be shoe-horned into a list of other, primarily private, entities that provide services to the public. It would indeed lead to an anomalous result if private organizations with close ties to government agencies were places of public accommodations because of those ties, while the government agency itself was not.

Id. at 297 (internal citations omitted); *see also Dept of Corr. v. Human Rights Comm'n*, 917 A.2d 451, 452 (Vt. 2006) (all public or governmental entities are public accommodations because they "are created for the very purpose of serving the general public"). Applying this ruling, a recent New Jersey appellate court reversed summary judgment for the defendant police department in a case where a transgender arrestee alleged they were subjected to derogatory comments in a police station. *Holmes v. Jersey City Police Dept.*, 160 A.3d 41 (N.J. App. Div. 2017).

Michigan's appellate court reached the same conclusion. In *Diamond v. Witherspoon*, 696 N.W.2d 770 (Mich. App. 2005), the plaintiffs were several women who had been pulled over by

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consumption on the premises; any garage, any public conveyance operated on land or water, or in the air, any stations and terminals thereof; any bathhouse, boardwalk, or seashore accommodation; any auditorium, meeting place, or hall; any theatre, motion-picture house, music hall, roof garden, skating rink, swimming pool, amusement and recreation park, fair, bowling alley, gymnasium, shooting gallery, billiard and pool parlor, or other place of amusement; any comfort station; any dispensary, clinic, or hospital; any public library; any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education or the Commissioner of Education of the State of New Jersey. . . ." N.J.S.A. 10:5-5l.

the defendant police officer for traffic violations. Instead of being issued traffic tickets, however, the officer coerced the women into sexual contact and photographed the women naked. *Id.* at 773-74. The court held that the women were denied equal access to police services in violation of Michigan's statute prohibiting discrimination in public accommodations. *Id.* at 778-80.

In light of the statutory text, controlling Court of Appeals precedent, and persuasive authority from federal and other state courts, it was an error of law for the Division of Human Rights to categorically decline jurisdiction over police and other law enforcement agencies.

III. Corrections Agencies Operate Housing Accommodations Subject to New York's Human Rights Law

Because corrections agencies operate buildings used to house people overnight – in particular, jails and other correctional facilities – they are housing accommodations within the meaning of the Human Rights Law. It was a clear error of law for the Division to determine that it categorically lacked jurisdiction over corrections agencies.

The Human Rights Law defines "housing accommodation" to include "any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings." Exec. Law § 292(10). The owners and operators of these buildings are prohibited from discriminating in the provision of accommodations. Specifically, the Human Rights Law provides:

> It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof: . . . (2) To discriminate against any person because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

Id. § 292(5)(a)(2).[5]

Applying these express statutory terms, corrections agencies that own, manage, or operate jails or other correctional facilities are subject to the Human Rights Law. A jail is a "building. . . which is used or occupied or is intended, arranged or designed to be used or occupied, as the . . . sleeping place of one or more human beings." Exec. Law § 292(10). The Jefferson County Correctional Facility, for instance, is "a 196 bed direct supervision facility" designed to "lawfully detain and house inmates." (Petition ¶ 28; Harrist Aff. Ex. 3.) Corrections agencies are responsible for providing all necessities for people housed in jails or correctional facilities, such as beds, blankets, pillows, water, and food, and facilities such as bathrooms and showers. (Petition ¶¶ 26-27.) Because they are housing accommodations, they are prohibited from discriminating in the furnishing of these provisions or in any of the services they provide.

The court in *Wilson v. Phoenix House*, 42 Misc. 3d 677 (N.Y. Sup. Ct. 2013), illustrates how these provisions are applied in the context of a residential drug treatment facility. Ms. Wilson, a transgender woman, entered into a plea agreement which provided that she would reside at Phoenix House as an alternative to prison. *Id.* at 680. After the facility refused to house her in the women's residential area and decided to transfer her out of the facility because she was transgender, she sued Phoenix House for discriminating against her in the provision of housing. *Id.* at 681-82. The court held that Phoenix House, an institution serving as a treatment facility for criminal court program participants, was a housing accommodation because it was a residential facility and the plaintiff slept there, meeting the statutory requirements of Executive Law § 292(10). *Id.* at 695, 702. The court also rejected the defendants' position that there was no Human

[5] The law further provides that housing facilities are required to make reasonable accommodations to ensure disabled people have equal access and are treated fairly. Exec. Law § 296(18).

Rights Law violation because she was not discriminated in the "sale, rental or lease" of housing. *Id.* at 701-03.[6] Applying fundamental principles of statutory interpretation, the court held that the law prohibited an owner, lessee, sub-lessee, assignee, or managing agent of a housing accommodation to discriminate *either* in the sale, rental or lease of housing *or* in the furnishing of facilities or services in connection with housing. *Id.* at 702-03. The court ultimately upheld the plaintiff's housing discrimination claim. *See also Doe v. Bell*, 194 Misc. 2d 774 (N.Y. Sup. Ct. 2003) (applying the housing accommodation protections to state-operated foster care facility).

For these reasons, corrections agencies provide housing accommodations to the degree they operate and manage jails and other correctional facilities. It is an error of law for the Division to categorically decline jurisdiction over correction agencies as it did in its dismissal of Ms. LeTray's administrative complaint.

IV. The Division of Human Rights Has Jurisdiction Over Ms. LeTray's Complaint

Because Ms. LeTray alleged discriminatory treatment by both the Watertown Police and the Jefferson County Sheriff's Office in the provision of public services and housing, the Division has jurisdiction over her claims and should make a determination on their merits. According to the complaint allegations, Watertown police officers made derogatory statements about her gender identity after responding to a call for assistance with a domestic dispute. (Petition Ex. A.) Refusing to credit her version of events because of her gender identity, they decided not to let her leave the scene, instead arresting her and bringing her to the local precinct where officers forcibly removed her hair. (*Id.*) This behavior, if true, would constitute discrimination on the basis of her sex, gender identity, and disability. Exec. Law § 296(2)(a) (prohibiting discrimination in public

[6] Although the court's analysis proceeds under the City Human Rights Law provision, the language is almost identical to the relevant language in the State Human Rights Law provision. *Compare* Exec. Law § 296(5)(a) *with* NYC Admin. Code § 107(5)(a).

accommodations); 9 N.Y.C.R.R. § 466.13 (discrimination against transgender people is discrimination based on sex and disability discrimination). Federal trial courts have held that plaintiffs stated claims for public accommodation discrimination where there were allegations, like those here, of the police conducting biased investigations by failing to question deaf witnesses, *see Williams*, 121 F. Supp. 3d at 363-69, or using racial slurs during an arrest, *see Harris*, 2018 WL 1997974. And in circumstances bearing striking similarity to Ms. LeTray's allegations, a New Jersey appellate court reversed summary judgment in favor of the police department where the officers referred to a transgender male arrestee as "it," stated "so that's a f**cking girl?," and one officer threatened to put his first down his throat "like a f**cking man." *Holmes*, 160 A.3d at 42.[7]

Ms. LeTray's allegations also state a claim of discrimination in housing accommodations under Executive Law §§ 292(10), 296(5)(a)(2). According to the Jefferson County website, its jail is operated by the correctional division of the Jefferson County Sheriff's Office. (Petition ¶ 30; Harrist Aff. Ex. 3.) The jail was built to house up to 196 individuals and Ms. LeTray slept there on September 28, 2017. (Harrist Aff. Ex. 3; Petition Ex. A.) Given these facts, the Jefferson County Sheriff's Office is the operator of a housing accommodation pursuant to Executive Law § 292(10). By allegedly subjecting her to a sexual assault, Ms. LeTray was discriminated against in the furnishing of housing accommodations on the basis of her sex and gender identity. (Petition Ex. A.) *See e.g.*, *State Div. of Human Rights v. Stoute*, 36 A.D.3d 257, 264-65 (2d Dept. 2006) (holding that sexual harassment in housing accommodations violates Executive Law § 296(5)(a)(2)).[8]

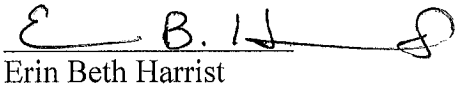
[7] To the degree law enforcement officers with the Jefferson County's Sheriff's Office engaged in similar behavior, it is likewise discriminatory conduct prohibited under the public accommodations provision of the Human Rights Law and is within the jurisdiction of the Division of Human Rights.

[8] Ms. LeTray may also have been discriminated against if the Jefferson County's Sheriff's Office failed to make reasonable accommodations based on the fact that she is transgender. Exec. Law § 296(18). The Division of Human Rights explicitly recognizes that being transgender may constitute a disability under the meaning of the Human Rights Law. 9 N.Y.C.R.R. § 466.13.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court reverse the Division's order dismissing her administrative complaint and remand to the Division for a determination of the complaint's merits.

DATED: December 3, 2018



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