



Legislative Affairs  
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## 2023 – 2024 Legislative Memorandum

**Subject: The Gender Identity Respect, Dignity, and Safety Act  
S.2860 (Salazar) / A.709-A (Rozić)**

**Position: SUPPORT**

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Transgender, gender nonconforming, non-binary, and intersex (TGNCNBI) New Yorkers often survive at the intersection of many socioeconomic burdens. They disproportionately face food, shelter, and employment insecurity, race-based and gender-based discrimination, and immigration status issues.<sup>1</sup> They are also notoriously policed and criminalized, and thus disproportionately likely to be incarcerated.<sup>2</sup> Incarceration is dehumanizing for anyone, but TGNCNBI people, especially those who are Black, Indigenous, and other people of color, are especially likely to experience harassment, degradation, and violence.<sup>3</sup>

During processing and while in custody, people whose gender expression does not conform to their sex assigned at birth are frequently misgendered and referred to in demeaning ways by correctional officers. The vast majority of TGNCNBI individuals are placed in facilities that do not match their gender identity or that otherwise put their safety at risk. Improper housing regularly leads to violence, and when TGNCNBI people are attacked, they are often put in solitary confinement or other protective custody for extended periods of time, often against their own wishes.

S.2860/A.709-A would help keep TGNCNBI people safe by requiring that prisons and jails presumptively house people consistently with their gender identities, unless they opt-out, with a list of reasons that cannot be used as the basis for a denial; ensuring that staff at facilities respect a person's gender identity in all contexts, including name and pronoun use and during searches; and mandating access to clothing, toiletry items, and grooming standards consistent with a person's gender identity. It would also place a fourteen-day limit on involuntary protective custody.

**The NYCLU strongly supports S.2860/A.709-A and urges its immediate passage.**

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<sup>1</sup> See generally Sandy E. James et. al, *The Report of the 2015 U.S. Transgender Survey*, The National Center for Transgender Equality (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

<sup>2</sup> *Id.* at 184.

<sup>3</sup> See Sari L. Reisner et al., *Racial/Ethnic Disparities in History of Incarceration, Experiences of Victimization, and Associated Health Indicators Among Transgender Women in the U.S.*, WOMEN HEALTH 750 (2014).

One in six people who identifies as transgender reports having been incarcerated at some point in their lifetime, and this figure jumps to nearly one in two for Black transgender women.<sup>4</sup> In a 2017 survey of transgender and non-binary people incarcerated in New York State, 95 percent of respondents reported being verbally harassed and called derogatory names by corrections staff.<sup>5</sup> TGNCNBI people in the New York State carceral system regularly face vicious physical, verbal, and sexual harassment; they are nearly ten times more likely to be sexually assaulted than the general prison population.<sup>6</sup> They are also routinely misgendered, “dead named” (or called by their former name), and denied medical care.

In fact, the conditions TGNCNBI people face while incarcerated can be fatal. For example, Layleen Polanco, an Afro-Latinx trans woman, died of neglect in a solitary confinement cell at Riker’s Island, where she was placed for nearly three weeks despite her history of epilepsy, the obvious deterioration of her mental and physical health, and against procedures.<sup>7</sup>

Even the New York State Sheriff’s Association agrees that reforms are necessary. They endorsed the provisions included in S.2860/A.709-A as part of a settlement in Steuben County.<sup>8</sup> The Steuben County Sheriff described the settlement’s terms as necessary “to ensure that all citizen rights are met.”<sup>9</sup>

Finally, New York will not be the first state to pass legislation respecting the safety and dignity of TGNCNBI who are incarcerated. Connecticut, Massachusetts, and California<sup>10</sup> have enacted similar protections, and New Jersey agreed to protections as settlement to litigation.<sup>11</sup>

The NYCLU urges the legislature to expediently pass S.2860/A.709-A to bring these lifesaving reforms to New York State.

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<sup>4</sup> *LGBT People Behind Bars*, The National Center for Transgender Equality, <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf> at 5.

<sup>5</sup> Letter from Lambda Legal et. al to U.S. Commission on Civil Rights (March 25, 2019) (on file at <https://ccrjustice.org/sites/default/files/attach/2019/04/Final%20Letter%20re%20Concerns%20re%20LGBT%20women%20to%20USCCR%2C%20Women%20in%20Prison%20web.pdf>) at 3.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> See Erika Lorshbough, NYCLU, *Black Trans Lives Matter – Here’s How Our Criminal System Fails Them* (June 30, 2020), <https://www.nyclu.org/en/news/black-trans-lives-matter-heres-how-our-criminal-system-fails-them>.

<sup>8</sup> In June 2020, Steuben County, New York agreed to implement one of the strongest policies in the country protecting the rights of TGNCNBI people in custody. The settlement arose from a 2019 lawsuit filed on behalf of Jena Faith, a transgender woman who was suddenly transferred to a men’s facility where she was physically and verbally harassed and denied her prescribed hormone therapy. See Bobby Hodgson & Simon McCormack, NYCLU *NY Jail Forced a Trans Woman into a Men’s Facility* (September 3, 2019), <https://www.nyclu.org/en/news/ny-jail-forced-trans-woman-mens-facility>.

<sup>9</sup> *Steuben Sheriff Responds to Transgender Lawsuit and Settlement*, WELLSVILLE REGIONAL NEWS (Aug. 7, 2020, 1:40 AM), <https://wellsvilleregionalnews.blogspot.com/2020/08/steuben-sheriff-responds-to-transgender.html>.

<sup>10</sup> See Conn. Gen. Stat. § 18-81ii (West 2018); M.G.L.A. ch.127 § 39A(c) (West 2018); Cal. Penal Code §§ 2605-06 (West 2021).

<sup>11</sup> N.J. Dep’t of Corrections Internal Mgmt. Proc., PCS.001.TGI01 at 3 (2021), see [https://www.aclu-nj.org/sites/default/files/field\\_documents/2021.08.26\\_aclu-nj\\_gse\\_letter\\_to\\_passaic\\_county\\_0.pdf](https://www.aclu-nj.org/sites/default/files/field_documents/2021.08.26_aclu-nj_gse_letter_to_passaic_county_0.pdf).