



Legislative Affairs
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2023 – 2024 Legislative Memorandum

**Subject: Relates to explicitly covering state correctional facilities, local correctional facilities, and police under the Human Rights Law
S.6611 (Brouk) / A.2746-A (Gallagher)**

Position: SUPPORT

The New York human rights law prohibits discrimination based on age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence in many facets of life in New York, including in housing and public accommodations. However, the law has been selectively applied.

Police, prisons, and jails purport to serve the public and yet are some of the worst offenders when it comes to human rights violations.¹ Worse still, despite the text and the legislative intent of the New York State human rights law making clear that the statute prohibits discrimination by police, prisons, and jails, these entities have been able to act with impunity because some courts and the Division of Human Rights (DHR) itself have interpreted them to be “non-covered entities” immune from its provisions.²

S.6611 (Brouk)/A.2746-A (Gallagher) addresses this misinterpretation by clarifying that prisons and jails are housing accommodations, and that police, prisons, and jails are public accommodations, within the meaning of the human rights law.

The New York Civil Liberties Union (NYCLU) strongly supports this bill and urges its expedient passage.

In 2017, after the NYCLU’s client, DeAnna LeTray, a transgender woman, was arrested, police mocked and questioned her gender identity, ripped her hair out of her head, and, once

¹ *E.g. New York State Police-Transparency Database*, NYCLU, <https://www.nyclu.org/en/new-york-state-police-transparency-database> (last updated Aug. 15, 2023); Special Report by the Nunez Independent Monitor, July 10, 2023, *Nunez v. City of New York*, No. 1:11-cv-05845 (SDNY filed Aug. 18, 2011).

² *E.g. Nathan Porceng, Human Rights Watchdog Investigates Landlords, Teachers, and Dentists – But Not Cops or Prison Guards*, NEW YORK FOCUS, Aug. 10, 2023, <https://nysfocus.com/2023/08/10/deanna-letray-human-rights-law-prison-jail-police-gallagher>.

she arrived at the jail, stripped her naked and sexually assaulted her.³ Following the ordeal, Ms. LeTray filed a complaint with the state DHR, asking it to investigate the abuse and discrimination she endured. The agency declined, insisting that it did not have jurisdiction under state human rights law over police or corrections agencies.⁴

Clarifying that the human rights law applies with equal force to police, prisons, and jails will open up avenues of redress for people like Ms. LeTray who experience abuse, mistreatment, and discrimination in our criminal legal system. In addition to ensuring that New York State's statutory antidiscrimination protections – which are often more protective than their federal analogues – reach law enforcement conduct, the bill importantly clarifies that people who believe they were subjected to illegal discrimination are able to access the New York State DHR's investigation and complaint process. This is of critical importance given DHR's limited vision of its jurisdiction. For New Yorkers who may not have the resources to bring a lawsuit in court, the DHR is an essential resource.

And, this clarification is particularly important for the Black, Brown, Indigenous, and immigrant communities who bear the brunt of over-policing.⁵ For example, between 2014 and 2017, Black and Latino men between the ages of 14 and 24 accounted for 38 percent of police stop and frisks – even though they are only five percent of the City population; these young people were innocent 80 percent of the time.⁶

The legislation is equally important for transgender, gender non-conforming, nonbinary, and intersex (TGNCNBI) New Yorkers – especially TGNCNBI New Yorkers of color – who are notoriously policed, criminalized, disproportionately likely to be incarcerated,⁷ and disproportionately likely to suffer discrimination at the hands of police and corrections officers. 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

³ Erin Harrist & Simon McCormack, *This State Agency Is Refusing to Help a Trans Woman Who Says She Was Assaulted By Police*, NYCLU, Dec. 5, 2018, <https://www.nyclu.org/en/news/state-agency-refusing-help-trans-woman-who-says-she-was-assaulted-police>.

⁴ *Id.* Ms. LeTray sued the Division of Human Rights in state court, and the court sided with the Division. *LeTray v. New York State Div. of Human Rights*, 181 N.Y.S.3d 1296 (N.Y. App. Div. 2020). In February 2021, Ms. LeTray filed a second lawsuit, this time in federal court, arguing that the police department, sheriff's office, as well as individual police and corrections officers, violated her rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, the New York State Civil Rights Law, and the New York State Constitution. That case is ongoing. *LeTray v. Jefferson County*, No. 5:20-cv-01194-GLS-TWD (NDNY filed Feb. 8, 2021).

⁵ *E.g. Stop-And-Frisk in the De Blasio Era (2019)*, NYCLU, Mar. 14, 2019, <https://www.nyclu.org/en/publications/stop-and-frisk-de-blasio-era-2019>; *New York Should Legalize Marijuana the Right Way*, NYCLU, Apr. 25, 2019, https://www.nyclu.org/sites/default/files/field_documents/20190425_marijuana_onepager_final.pdf.

⁶ *Id.*

⁷ Sandy E. James et. al, *The Report of the 2015 U.S. Transgender Survey*, The National Center for Transgender Equality 184 (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

names by corrections staff.⁸ According to a recent survey by the Sylvia Rivera Law Project and TakeRoot Justice, seventy-five percent of respondents, the majority of whom are transgender women of color, “reported at least one instance of sexual violence by corrections officers.”⁹

Police, prisons, and jails have obligations to treat the people with whom they interact with respect and to keep the people in their custody safe. S.6611/A.2746-A will reinforce those obligations and open up paths for redress when police, prisons, and jails fall short. The NYCLU strongly urges its immediate passage.

⁸ 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.

⁹ SYLVIA RIVERA LAW PROJECT & TAKEROOT JUSTICE, IT’S STILL WAR IN HERE: A STATEWIDE REPORT ON THE TRANS, GENDER NON-CONFORMING, INTERSEX EXPERIENCE IN NEW YORK PRISONS AND THE FIGHT FOR TRANS LIBERATION, SELF-DETERMINATION, AND FREEDOM 27 (2021).