



THE CITY OF NEW YORK  
DEPARTMENT OF CORRECTION



## DIRECTIVE

<input type="checkbox"/> NEW <input type="checkbox"/> INTERIM <input checked="" type="checkbox"/> REVISED			SUBJECT		
EFFECTIVE DATE <b>10/22/19</b>		*TERMINATION DATE / /	<b>LESBIAN, GAY, BISEXUAL, TRANSGENDER, INTERSEX, GENDER NON-BINARY AND GENDER NON-CONFORMING INMATES</b>		
CLASSIFICATION # <b>4498R-A</b>	SUPERSEDES <b>4498</b>	DATED <b>12/03/14</b>	APPROVED FOR WEB POSTING <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	DISTRIBUTION <b>A</b>	PAGE 1 OF 12 PAGES
RECOMMENDED FOR APPROVAL BY REVIEW BOARD MEMBER  <i>Hazel Jennings</i> HAZEL JENNINGS, CHIEF OF DEPARTMENT    SIGNATURE			AUTHORIZED BY THE COMMISSIONER  <i>Cynthia Brann</i> CYNTHIA BRANN    SIGNATURE		

### I. PURPOSE

This policy is intended to provide a housing determination process that most closely aligns with an individual's gender identity and provide supplemental guidelines to staff on operational issues related to LGBTI-GNC-GNB inmates, including identification, searches, housing and programming decisions, and access to programs, services, commissary, toiletries, and clothing items. Staff are expected to treat inmates with respect and maintain professional positive interaction and effective communication with LGBTI-GNC-GNB inmates. Staff shall not use transphobic, racial, ethnic, homophobic or derogatory language towards an individual's gender, and should respect an individual's gender identity, pronoun and preferred name.

### II. POLICY

It is the policy of the New York City Department of Correction (Department) to receive, evaluate, house and/or provide secure, safe and humane custody of all persons, including lesbian, gay, bisexual, transgender, intersex, gender non-conforming, and gender non-binary individuals who are lawfully committed or held for confinement by the Department until their lawful and appropriate release or transfer to another authority.

### III. DEFINITIONS & TERMS

- A. Gender Identity: Refers to an individual's internal, personal sense of their own gender as male, female, both, or neither, regardless of the individual's sex assigned at birth.
- B. Gender Expression: Refers to external appearance, typically associated with one's gender identity and usually expressed through behavior which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine, or with expectations associated with the individual's gender identity.

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### III. DEFINITIONS & TERMS (Cont.)

- C. Cisgender or Cis: Describes an individual whose gender identity conforms to the sex assigned at birth. For example, a person who was assigned male at birth and currently identifies as a man. Typically, this person will identify as a “cisgender man” or just as a “man.”
- D. Transgender or Trans: Describes an individual whose gender identity is different from the individual’s sex assigned at birth. For example, a person who was assigned male at birth, but currently identifies as a woman. Typically, this person will identify as a “transgender woman” or just as a “woman.”
- E. Exigent circumstances: Any set of temporary unforeseen circumstances that require immediate action in order to combat a threat to security or institutional order.
- F. Gender Non-Binary (GNB): Describes an individual whose gender identity exists outside of the categories of male or female (i.e. outside of “binary” gender identity).
- G. Gender Non-conforming (GNC): Describes a person whose gender expression is outside of societal assumptions for how they should look or behave based on their gender identity.
- H. Sexual Orientation: Refers to an individual's enduring physical, romantic and/or emotional attraction to members of the same gender or different genders.
- I. Gay: Describes men who are physically, romantically, and/or emotionally attracted to men.
- J. Bisexual: Describes people of any gender who are physically, romantically, and/or emotionally attracted to people of their own gender and people of different gender identities.
- K. Intersex: A general term used to describe a variety of conditions in which an individual is born with a reproductive or sexual anatomy that doesn’t align with anatomy typically assigned to female or male individuals.
- L. Lesbian: Describes women who are physically, romantically, and/or emotionally attracted to women.
- M. LGBTQI: This acronym is used to refer to individuals who are lesbian, gay, bisexual, transgender, questioning and intersex. It is often used as an umbrella term to identify the full LGBTQI community.

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### III. DEFINITIONS & TERMS (Cont.)

- N. Queer: An umbrella term to describe individuals who don't identify as straight and/or cisgender. Due to its varying meanings and historical use as a derogatory term, this word should only be used when self-identifying or quoting someone who self-identifies as queer.
- O. Questioning: A term used to describe those individuals who are in the process of discovery and exploration about their sexual orientation, gender identity, and/or gender expression.
- P. Review Board for Reconsiderations: Shall consist of the Department's PREA Coordinator or designee; Chief of Department or designee; the Department's Health Affairs representative; Commanding Officer of the Female Facility or Designee; and the Director of LGBTQI Initiatives or designee.
- Q. Special Considerations Unit (SCU): Housing area(s) designated by the Department for the purpose of housing transgender, intersex, and GNB inmates.
- R. Special Considerations Determination Unit (SCDU): Refers to a unit that makes housing and, when appropriate, programming assessments and determinations for transgender, intersex and gender non-binary individuals known to the Department. The unit shall determine the inmate's housing assignment after a review of all of the inmate's records and any relevant information that would help make a determination, including information from the Health Care provider and the Director of LGBTQI Initiatives. This unit shall consist of the PREA Coordinator or designee; and Warden or designee.
- S. Transition: This is a term that is often used to describe the time period when transgender people start publicly living their lives in accordance with their gender identity.
- T. Sex Assigned at Birth: The assignment and classification of a person as male, female, intersex, or another sex assigned at birth often based on physical anatomy at birth.

### IV. PROCEDURES

#### A. STAFF RESPONSIBILITIES:

1. All staff shall comply with the provisions of this policy and ensure it is followed.
2. Department staff who are found to engage in inmate abuse or do not follow the guidelines addressed in this policy may be subject to disciplinary action.

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#### IV. PROCEDURES (Cont.)

3. All staff interactions with lesbian, gay, bisexual, transgender, intersex, gender non-conforming, and gender-non-binary (LGBTI-GNC-GNB) inmates shall be conducted in a confidential, professional and respectable manner, and in the least intrusive manner possible, consistent with security needs.
4. Staff shall address transgender inmates using the inmate's last name or preferred names and pronouns as indicated on the "Special Consideration Housing Form" (Attachment - A). An inmate's stated gender identity and pronoun (i.e. he/him/his, she/her/hers, they/them/theirs) should be respected at all times.
5. All staff shall be required to complete pre-developed LGBTI-GNC-GNB training. Priority shall be given to training for staff assigned to:
  - a. Special Considerations Unit staff;
  - b. Intake staff;
  - c. General Office staff;
  - d. Escort staff;
  - e. Programs staff;
  - f. Transportation Division staff; and
  - g. Visit staff.

#### B. GUIDELINES:

1. Facility Determination
  - a. In deciding housing placement for a transgender, intersex, or gender non-binary inmate, the Department shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security concerns. Persons shall be housed in the facility consistent with their gender identity, absent overriding concerns for the detained person's safety.
  - b. The SCDU is responsible for making case-by-case decisions about the housing placement of a transgender/intersex inmate and gender non-binary inmates.

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#### IV. PROCEDURES (Cont.)

- c. Decisions are based on, but not limited to, the following, when determining risk of vulnerability and safe placement of each transgender, intersex and gender non-binary individual:
  - d. The inmate's own views of where they feel safest, as documented on the SCH form, shall be given serious consideration. If an inmate changes their mind of where they feel safest, a new form must be completed and submitted to the SCDU;
  - e. The inmate's prior institutional history (to include incidents and grievances);
  - f. The inmate's prior violent or sexual crime history;
  - g. Whether the inmate is at risk because the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, gender non-conforming, or gender non-binary.
  - h. The inmate's gender identity including any designation from the PREA Intake Questionnaire (Form PREA-2);
  - i. Whether the inmate has previously experienced sexual victimization;
  - j. The inmate's physical appearance, age, and physical build;
  - k. Any relevant information obtained about the inmate from the PREA unit, security staff or medical and mental health staff, including information received since arrival;
  - l. Whether the placement would present management or security problems;
  - m. Separation orders or requests between inmates and/or staff; and
  - n. Any other relevant information about the inmate, including information that would present management or security problems.
- o. A final determination shall be made by the SCDU. The SCDU will provide its determination for appropriate housing within three (3) business days excluding holidays, unless extenuating factors exist which would require an extension of such time limit. Extenuating factors must be documented and verifiable. The SCDU must retain records concerning all housing applications and determination for no less than three (3) years.

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#### IV. PROCEDURES (Cont.)

- p. LGBTI-GNC and GNB inmates will be processed identified by themselves or by facility staff (at any time while in custody), and processed according to defined procedures. The Department will implement this policy using the following guidelines:

#### 2. Identifying LGBTI-GNC and GNB Inmates

- a. When identifying LGBTI-GNC and GNB inmates the following should be taken into consideration:
- i. Inmate self-reports.
  - ii. Information provided by the PREA Unit.
  - iii. Information provided by the Health Care provider.
  - iv. Information contained in the Securing Order.
- b. Inmates who are known to the Department to identify as transgender, intersex, or non-binary, or who have self-identified as such, shall be given the opportunity to complete the "Special Considerations Housing Form" (Attachment - A) during intake, booking or at any time while in the Department's custody. This is an ongoing obligation.
- c. Inmates may request the Special Considerations Housing Form from the Department any time after intake, while in the Department's custody.
- d. The Department shall consider all Health Care provider referrals for placement in the SCU.
- e. Process for Transgender, Intersex and Non-Binary Individuals
- i. Inmates with securing orders that indicate male shall start their custody at a male housing facility. Those inmates who identify as transgender, intersex or non-binary during their PREA screening and meet the guidelines for facility level determinations set forth in paragraph IV.B.1.c. shall be transferred to a female housing facility for intake and transgender/intersex new admission processing to await determination of the SCU.
  - ii. Those individuals whose securing order indicate male; and who identify as gender non-binary during their PREA screening, shall continue through the intake and new admission process at the male housing facility to await a determination from the SCU.

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#### IV. PROCEDURES (Cont.)

- iii. Inmates with securing orders that indicate female or transgender female shall start custody at a female housing facility. Inmates who identify as transgender, intersex or gender non-binary during PREA screening and meet the guidelines for facility determinations set forth in paragraph III.B.1.c shall remain at the female housing facility, complete the intake and transgender/intersex new admission process and await determination from the SCDU.
  - iv. All inmates who identify or have been identified as a transgender, gender non-binary or intersex must complete the SCH form (Attachment - A) during the intake process.
  - v. The facility, command, or division accepting an inmate's written SCH form shall immediately forward the form to the SCDU for processing via email [SCDUCommittee@doc.nyc.gov](mailto:SCDUCommittee@doc.nyc.gov).
  - f. The Special Considerations Determination Unit will provide its written determination for appropriate housing within three (3) business days excluding holidays, unless extenuating factors exist, which would require an extension of such time limit. Extenuating factors must be verifiable, and the reason must be documented.
  - g. An inmate's self-identification as transgender, intersex, and gender non-binary shall be sufficient for consideration for housing by gender identity absent evidence that the inmate is requesting admission for reasons unrelated to identifying as such, or if there are security or management concerns preventing placement within SCU and/or female facility.
3. Inmates who qualify will be housed based on their gender identity in a facility determined by SCDU.
    - a. Inmates who have indicated a preference for a female facility will be housed either in SCU or considered for placement in an otherwise appropriate housing unit in the female facility (i.e., General Population Unit).
      - i. Admission to SCU will be on a voluntary basis.
      - ii. Inmates who do not qualify to be housed at a female housing facility and/or SCU or who have listed a preference to be housed at a male facility that is determined to be appropriate will be transferred to a male housing facility for processing.

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#### IV. PROCEDURES (Cont.)

- iii. Such inmates should be interviewed for Protective Custody (PC).
  - b. Justification for denial to housing in the inmate's requested housing facility must be documented in writing and notice of the determination and their right to reconsideration provided to the inmate.
- 4. Removal from SCU or Female Housing Facility
  - a. All removal of inmates housed in SCU must be approved by SCDU, unless the removal is based on a staff or inmate assault or sexual misconduct or sexual assault allegation.
  - b. In the event of an assault or sexual misconduct or sexual assault allegation:
    - i. Both parties are to be removed from the SCU unless it can be determined immediately who the aggressor is.
    - ii. If both inmates are removed, they must await a determination by the facility or Investigation Division (ID) regarding who the aggressor was and who can be placed back into the unit, if anyone at all.
    - iii. If it is determined that an inmate cannot be placed back in the unit, an assessment of the appropriate location to house the inmate shall be conducted as provided for in B (1) of this directive.
  - c. The inmate can request to leave the SCU or female housing facility at any time by completing a voluntary discharge form and submitting it to a housing facility captain. The Captain shall scan and submit the Voluntary Discharge form to the PREA coordinator, Director of LGBTI Initiatives, and facility Warden by the end of his/her shift.
  - d. Inmates removed from SCU for any reason shall have the ability to re-apply by submitting a SCH form. Absent exigent circumstances, inmates must wait three (3) months before they can reapply.
  - e. An inmate can be removed or denied placement in an SCU and/or female housing facility for reasons including, but not limited to, factors referred to in section (B)(1)(c) above.



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#### IV. PROCEDURES (Cont.)

- f. Placement and programming assignments for each transgender, non-binary or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.
5. Reconsideration Process
    - a. Inmates who identify as transgender, intersex or gender non-binary who were previously denied admission into their requested facility, as indicated on the SCH Form, during the new admission process, may submit a form for reconsideration (See Appendix B) to the Reconsideration Review Board ("Review Board") within thirty days of notice of the initial denial.
    - b. Inmates who submit a form for reconsideration may submit any relevant information and/or material to the Review Board for its consideration so that the Review Board can make a determination.
    - c. The Review Board shall provide its final determination within ten (10) business days excluding holidays. The review board must articulate their decision in writing and send their written justification to the inmate within three (3) business days of their final determination absent extenuating circumstances. The Review Board must retain records concerning all housing applications and determinations for no less than 3 years.
    - d. Inmates who qualify for housing placement in a female housing facility, will be housed either in an SCU or considered for placement in an otherwise appropriate housing unit in a female housing facility, i.e., General Population housing.
    - e. Inmates who do not qualify to be housed at a female housing facility shall be transferred or remain at the male housing facility.
      1. Such inmates shall be interviewed for PC housing.
- C. Searches of Transgender, Intersex or Non-Binary Inmates
    1. All searches will be conducted and documented according to this Directive, Directive 5011R-A, "Elimination of Sexual Abuse and Sexual Harassment" and Directive 4508R-E, "Control of and Search for Contraband."
    2. Transgender, intersex, or gender non-binary inmates shall be asked to indicate on their Special Consideration Housing Form (Attachment - A) their gender preference of the staff who searches them.

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#### IV. PROCEDURES (Cont.)

3. Absent exigent circumstances, all strip and pat searches of transgender, intersex, and gender non-binary inmates are to be performed by officers of the gender requested and documented in writing on the "Special Consideration Housing Form" (Attachment - A), or, if not possible, by an officer of the same perceived gender identity as the inmate.
4. Cross-gender inmate pat/frisk searches of female inmates by male employees are prohibited, except in exigent circumstances.
5. If exigent circumstances exist; and a cross-gender pat/frisk search of a female inmate; or cross-gender strip search; or body cavity search of any inmate does occur, the search must be documented using "Random Search Form" (Attachment C), in accordance with Directive 4508R-E, "Control of and Search for Contraband." A copy of the completed form shall be forwarded to all persons designated on the distribution in accordance with Directive 4508R-E, as well as, the PCM and the PREA Coordinator.
6. No search shall be conducted for the sole purpose of observing a transgender or intersex inmate's genital characteristics.
7. As in all facilities, an inmate may not refuse a search.

#### D. Programming Assignments for Transgender or Intersex Inmates

1. The Department shall provide an opportunity to participate in additional programming for transgender and intersex inmates specific to the needs of the population in all facilities to which such individuals are assigned.
2. Programming assignments for transgender, gender non-binary, or intersex inmates shall be made on an individualized basis and after considering the criteria set forth in III B.1.c. Whenever programming assignments for transgender, gender non-binary and intersex inmates are being considered the SCDU shall be consulted.
3. SCU staff shall be steady assigned to the SCU housing area, absent extenuating circumstances.

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#### IV. PROCEDURES (Cont.)

- a. Intra-facility movement of transgender, intersex and gender non-binary inmates shall be escorted by a steady escort as follows:
    - i. All movement to and from housing areas; and
    - ii. Attendance at program or service locations within the facility.
    - iii. Staff assigned to supervise, escort and transport our transgender, intersex and gender non-binary inmates must be trained on all provisions of this policy and must have completed pre-developed LGBTI-GNC-GNB training.
  4. Programs and recreation services available to inmates assigned to a housing facility, shall also be afforded to transgender, intersex, and gender non-binary inmates. They shall be permitted to comingle with other facility populations for the purposes of access to mandated services, work assignments, programs and recreation.
  5. A shower logbook shall be instituted for any general population housing unit that houses both transgender/intersex and cisgender inmates at the female housing facility, as well as within the transgender/intersex new admission unit. Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
  6. LGBTI-GNC-GNB inmates shall not be denied access to programs or services based solely on their LGBTI-GNC-GNB status.
  7. If placement in a program presents an articulable security risk that cannot be mitigated, such risk must be documented in writing.
- E. Toiletry Items and Clothing
1. Transgender and intersex inmates shall have access to toiletries (e.g. face cream, cleaners, sanitary supplies, razor, etc.) appropriate to their gender identity and gender expression, regardless of the facility to which they are assigned.
  2. Transgender and intersex inmates shall have the ability to order clothing that accords with their gender identity and gender expression (e.g. female undergarments for transgender women or male undergarments for transgender men) regardless of the facility to which they are assigned. All inmates have to abide by the rules and regulations, for purposes of this section, as pertains to clothing.

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#### IV. ATTACHMENTS

- A. [Special Consideration Housing Form](#)
- B. [Special Consideration Housing Reconsideration Form](#)
- C. [Inmate Voluntary Discharge Form](#)

#### V. REFERENCES

- A. [Directive 4508R-E, entitled "Control of and Search for Contraband," dated May 15, 2009.](#)
- B. [Directive 5011R-A, entitled "Elimination of Sexual Abuse and Sexual Harassment," dated 5/31/19.](#)
- C. [Board of Correction Minimum Standards on the Elimination of Sexual Abuse and Sexual Harassment & Prison Rape Elimination Act.](#)

#### VI. SUPERSEDES

- A. Directive 4498, entitled "Transgender Housing Unit", dated 12/3/14.
- B. Any other Directive, Operations Order, Teletype, Memorandum, etc., that may be in conflict with the policies and procedures outlined herein.

#### VII. SPECIAL INSTRUCTIONS

- A. Within ten (10) days of the effective date of this order Commanding Officers of Facilities and Divisions shall promulgate a Command Level Order to ensure strict compliance with the provisions outlined herein.
- B. Copies of all Command Level Orders shall be forwarded to the office of the respective Supervising Warden.
- C. Commanding Officers of Facilities and Divisions shall ensure that the provisions of this Operations Order are strictly complied with.



# NYC DEPARTMENT OF CORRECTION

## Special Considerations Housing Form

Please note: Some inmates do not identify as either male or female. If an inmate does not identify as either male or female, this form can be completed for purposes of identifying a search and housing preference. However, a determination will still be made on a case-by-case basis.

### INMATE INFORMATION

DATE	NAME (LAST NAME, FIRST NAME) & ALIAS	
DATE OF BIRTH	GENDER IDENTITY	PREFERRED PRONOUN
	Transgender Male: <input type="checkbox"/> Transgender Female: <input type="checkbox"/> Intersex: <input type="checkbox"/> Gender Non-Binary: <input type="checkbox"/>	(e.g.; he, she, they, other)
BOOK & CASE #	NYSID #	CURRENT FACILITY

### HOUSING PREFERENCE

While in custody I would prefer to be housed at:

a female facility:

the Special Considerations Unit:

a male facility:

### SEARCH PREFERENCE

While in custody I would prefer to be searched by:

Women:

Men:

No Preference:

### REASON FOR HOUSING REQUEST


### INMATE ACKNOWLEDGEMENT

If accepted to the facility of my preference, I agree that to abide by all departmental rules.

Inmates who identify as transgender, intersex or gender non-binary who are denied admission into their preferred facility, as indicated on this Special Consideration Housing Form, may submit a form, "Special Considerations Housing Reconsideration Form," for reconsideration to a Reconsideration Review Board ("Review Board") within seven days of their initial denial. Inmates who submit a form for reconsideration may submit any relevant information and/or material to the Review Board for its consideration.

Inmate Signature:

Date:

### TO BE COMPLETED BY DOC STAFF COMPLETING THE FORM ONLY

RANK, NAME, SHIELD NUMBER	DATE RECEIVED:	FACILITY

Staff Signature:

Date:

TO BE COMPLETED BY PREA TEAM COMMITTEE MEMBER ONLY:

**SPECIAL CONSIDERATIONS HOUSING FINAL DECISION**

Approved:  Denied:   
If denied, check the appropriate denial category that applies below

CHS ASSESSMENT RESULTED IN RECOMMENDATION TO BE PLACED IN A MEDICAL/THERAPEUTIC UNIT

HISTORY OF UNRESOLVED CONFLICT WITH AN INDIVIDUAL(S) CURRENTLY HOUSED IN THE UNIT

INCONSISTENCY IN THEIR IDENTITY (IN PLACE OF LACK OF MEDICAL/LLEGAL REASONS)

OTHER SECURITY CONCERNS:

Please provide an explanation of security concern:

ADDITIONAL COMMENTS:

RANK, NAME, SHIELD NUMBER	MEMBER SIGNATURE	Date:



**REVIEW BOARD MEMBER DETERMINATIONS**

REQUIRED MEMBERS	NAME		RANK OR TITLE
<b>PREA COORDINATOR OR DESIGNEE</b>	Print:	Signature:	Rank or Title:
Date of Determination:	Approved: <input type="checkbox"/> Denied: <input type="checkbox"/>		Comments:
<b>CHIEF OF DEPARTMENT OR DESIGNEE</b>	Print:	Signature:	Rank or Title:
Date of Determination:	Approved: <input type="checkbox"/> Denied: <input type="checkbox"/>		Comments:
<b>HEALTH AFFAIRS REPRESENTATIVE</b>	Print:	Signature:	Rank or Title:
Date of Determination:	Approved: <input type="checkbox"/> Denied: <input type="checkbox"/>		Comments:
<b>COMMANDING OFFICER</b>	Print:	Signature:	Rank or Title:
Date of Determination:	Approved: <input type="checkbox"/> Denied: <input type="checkbox"/>		Comments:
<b>DIRECTOR OF LGBTI INITIATIVES</b>	Print:	Signature:	Rank or Title:
Date of Determination:	Approved: <input type="checkbox"/> Denied: <input type="checkbox"/>		Comments:

**SPECIAL CONSIDERATIONS HOUSING FINAL DECISION**

Approved: <input type="checkbox"/> Denied: <input type="checkbox"/> If denied, check the appropriate denial category that applies below	
CHS ASSESSMENT RESULTED IN RECOMMENDATION TO BE PLACED IN A MEDICAL/THERAPEUTIC UNIT <input type="checkbox"/>	
HISTORY OF UNRESOLVED CONFLICT WITH AN INDIVIDUAL(S) CURRENTLY HOUSED IN THE UNIT <input type="checkbox"/>	
INCONSISTENCY IN THEIR IDENTITY (IN PLACE OF LACK OF MEDICAL/LEGAL REASONS) <input type="checkbox"/>	
OTHER SECURITY CONCERNS: <input type="checkbox"/> Please provide an explanation of security concern:	



