

To: Assistant District Attorney [REDACTED]
Office of the District Attorney, Bronx County
215 East 161st Street, 4th Floor
Bronx, NY 10451

From: Whitney Hayes, Esq.
Deborah Lolai, Esq.
Klevis Baholli, MSW

Re: People v. L [REDACTED] (a.k.a. T [REDACTED]) H [REDACTED], Ind. No. 72466-23

Date: September 26, 2023

FOR PLEA NEGOTIATION PURPOSES ONLY

I. DISCRIMINATION TO INCARCERATION PIPELINE

L [REDACTED] H [REDACTED] is a Black transgender woman who has experienced significant trauma, violence, and discrimination throughout her lifetime. Ms. H [REDACTED] was born in Buffalo, New York, where she lived with her mother and three siblings, estranged from their father. Her childhood and upbringing were so traumatic that she could not discuss it openly with defense counsel without breaking down in tears. Nonetheless, Ms. H [REDACTED] disclosed that she was sexually abused by a family friend at the age of eight or nine, a childhood trauma that has come up both in medical records and in conversation. Ms. H [REDACTED] would endure the consequences of this abuse over the next several years with little to no support. Around the same time, she began coming to terms with her gender identity as a woman and openly came out as transgender at age fifteen, but her family could not provide the support that she needed and were rather upset about the revelation. **“I was the black sheep of the family,”** she shared. Records also reveal that Ms. H [REDACTED] faced behavioral issues in school as a result of bullying and racial harassment. No longer feeling safe in her home nor at school, Ms. H [REDACTED] began running away. At age 16, she would become entangled in the criminal legal system when she was arrested and adjudicated a youthful offender after pleading guilty to Attempted Petit Larceny. It was at this point that Ms. H [REDACTED] began stealing to survive a world in which she was stripped of her innocence, traumatized, and then shunned because of her gender identity.

Ms. H [REDACTED] left for New York City at 20 years old and never turned back. She came to NYC with the expectation that there would be many more supports for queer and transgender people in NYC than in Buffalo, and at least initially, she encountered that. Over time, however, Ms. H [REDACTED] began to realize that she would continue to face challenges specific to her identity no matter what community she placed herself in.

Ms. H [REDACTED] has consistently faced discrimination at the institutional level, which has caused trickle-down effects leading to her involvement in the justice system. For instance, when she was released from prison this past year, her parole officer referred her to the men’s shelter rather than the women’s shelter in accordance with her gender identity. According to Ms. H [REDACTED],

the parole officer told her that she's still a man and would need to go to the men's shelter. Because of the PO's transphobia, Ms. H■■■■ was ordered to go somewhere she knew she'd be unsafe and afraid for her life, but she went anyway in order to remain compliant with parole. She had no other choice. Unsurprisingly, as soon as Ms. H■■■■ arrived at the men's shelter, a cisgender man attacked her, forcing her to leave. She returned to central intake and requested to be placed in a women's shelter, but they too denied her and said that she was a man, despite this being explicitly in violation of the Department of Homeless Services' (DHS) own policies and NYC's Anti-Discrimination Laws. **"They made me feel like I had no other choice but to sleep in the train station. I was crying and crying. I had no support. This is how I became a working girl. Trying to make money to survive and get clothes. Black transgender women don't get a lot of respect."** This is just one instance of institutional discrimination that relegates many transgender women to the margins, compelling them to engage in sex work and other survival tactics just to have a place to stay or a meal to eat. Like everybody else, Ms. H■■■■ wants the basic necessities that will allow her to live a dignified life. In fact, the items she is alleged to have taken from the store in this case are food items.

Ms. H■■■■'s involvement in sex work began early in her life, when she, among other transgender women, realized that the world would turn its back on them. Ms. H■■■■ recounted the following to defense counsel, eventually breaking down in tears:

It's on my record that my whole life I was a prostitute trying to survive because I had no choice. At the time, nobody was trying to hire a transgender person, especially if you hadn't fully transitioned. Sometimes if I wanted to take a shower or sleep, I had to have sex with these guys. Sometimes I'd be so tired and didn't want to have sex, so they'd kick me out into the cold. I got so tired and began using drugs, but I stopped that right away because a lot of the girls died on the streets from doing drugs. I lost a few of them just a couple of years ago. I'm the only one left alive, breathing. I just want to live my life and get a job as a transgender woman and honor those lives that were lost. I lost D■■■■ who they stabbed and stuffed in a bag in the dumpster. I lost L■■■■. I lost D■■■■ who they killed in the park at night. Even though I was struggling and going through it at the time, all I wanted was to help them out. But now they're gone.

Ms. H■■■■'s housing instability and line of work have caused her to experience a significant amount of interpersonal violence at the hands of intimate partners. In speaking of those partners, Ms. H■■■■ has told defense counsel about times that she was genuinely afraid for her life. One man in particular told her, "If you try to put me in jail, I'll fuckin' have you killed!" Because of her history of vulnerability in intimate relationships, defense counsel has identified that Ms. H■■■■ could benefit from engagement with the STEPS to End Family Violence Criminalized Survivors Program (CSP), both while incarcerated and in the community. This program can provide the clinical support needed to help Ms. H■■■■ re-establish a sense of safety in her life while simultaneously connecting her to the material resources needed to do so. Ms. H■■■■ agreed that her participation with STEPS CSP could benefit her in many ways and she willingly began working with them following intake on July 24, 2023 (see STEPS enrollment letter). Ms. H■■■■ is also working with defense counsel and discharge planners at CHS to ensure that she has the public benefits and supports necessary to ensure her survival and wellbeing once she is released back into the community. Ms. H■■■■ is now connected to multiple layers of support, something she previously lacked entirely.

II. EVALUATING MS. H [REDACTED] THROUGH AN INTERSECTIONAL LENS

In evaluating Ms. H [REDACTED]'s life, from early childhood continuing through to the present moment, it is crucial to step back and view her experiences through a lens that layers her various identities on top of one another and reflects how those different identities intersect to produce a particularly unique experience. The term intersectionality was first used by Kimberle Crenshaw in the 1980s to explain how the discrimination black women face is different and more severe than that which white women or black men face because of the overlaying marginalized identities that black women hold. In the three decades since this term was created, our understanding of gender identity has evolved beyond cisgender women and cis men. With this understanding comes a corresponding expansion of marginalization as it applies across the gender spectrum, and the knowledge that transgender women face a higher level of discrimination than cis women. Black trans women face a higher level of discrimination than white trans women. Using this lens to understand and evaluate the experiences of marginalized people allows us to factor in the contribution of systemic inequities to one's individual relationships, decisions, and overall path through life.

For Ms. H [REDACTED], specifically, this means that it is impossible to critically analyze her experiences as a survivor of multiple forms of violence without also thinking about those experiences in the context of being a Black, trans woman.

III. INSTITUTIONAL AND SYSTEMATIC VIOLENCE AGAINST TRANSGENDER WOMEN OF COLOR

Beyond the higher likelihood of violence on an individual level with a partner or family member, trans people, most specifically trans people of color, face a much greater risk of being subject to violence on an institutional and systemic level. Black trans women's lives are at risk every day just for being who they are and existing in the world, without even considering threats they face on a personal level or in their relationships. Viewing this systemic issue of increased violence in the context of the criminal justice system is critical to understanding the incredible dangers Ms. H [REDACTED] faces while incarcerated, as the carceral system is one of the many in which LGBTQ people are at a greatly increased risk of hate violence and discrimination, both at the hands of other people in custody and those of Correctional staff. After noting this phenomenon in so many of our cases, the Bronx Defenders created a specific project to address this issue and support our most vulnerable clients.

IV. THE LGBTQ DEFENSE PROJECT AT THE BRONX DEFENDERS

The LGBTQ Defense Project at The Bronx Defenders is staffed by a group of advocates who specialize in the representation of clients who have criminal cases and identify as LGBTQ. Because of the criminalization of transgender women, most of our clients in the project are transgender women. As such, we have represented hundreds of transgender women who have been incarcerated at some point in their lives - both in the New York City Department of Corrections (DOC) custody, and in the New York State Department of Corrections and Community Supervision (DOCCS) custody. Our work ranges from representation in their criminal cases, prisoner rights advocacy with DOC and DOCCS, and re-entry services. Because

of our specific client population, we are in a unique position to observe and document trends that our clients experience and collect relevant data.

Advocates in the LGBTQ Defense Project have been working with Ms. H[REDACTED] since the beginning of her case. Most of our time has been spent helping her navigate the abuse and neglect she has faced since she entered DOC custody. Unfortunately, there is only so far our advocacy can go with DOC, and much of our work with Ms. H[REDACTED] has been focused on mitigating and healing the harm she is experiencing, rather than preventing it entirely. She has been incarcerated in the men's jails since her arrest and has been waiting for months to be accepted to the Rose M. Singer Center, the women's jail. As of September 2023, she remains in the men's jail.

Below, we outline the national statistics on conditions of incarceration for LGBT people generally, and for transgender people specifically, and the state of conditions of confinement for transgender women in NYS Prisons compared with NYC Jails.

V. NATIONAL STATISTICS.

LGBT people's vulnerability to sexual abuse has been widely acknowledged and extensively documented. As the National Institute of Corrections has noted, while incarcerated, "men and women with non-heterosexual orientations, transgender individuals, and people with intersex conditions were highly vulnerable to sexual abuse." The Department of Justice's Bureau of Justice Statistics ("BJS"), charged with collecting, analyzing, and publishing data related to crime in the United States, produced the National Former Prisoner Survey, estimated that transgender prisoners held in United States prisons are about ten times more likely to have been sexually assaulted, as compared to the general prison population (at least 39% of transgender prisoners, as compared to 4% of the general prison population). In California, a study of state prisons designated for men found that the rate of sexual assault for transgender women in those prisons was 13 times higher than for men in the same prisons. And in New York according to data collected by the Sylvia Rivera Law Project in 2017, 91% of transgender and gender non-conforming people survived at least one form of physical assault in prison. Seventy five percent, or three out of every four respondents, reported at least one instance of sexual violence by a corrections officer.

Out of the hundreds of transgender clients we have represented, 100% of them have experienced harassment or assault during their incarceration. This is despite the improvements that the Department of Corrections has made in the last few years, such as beginning to house a very small percentage of transgender women in the women's jail at Rose M. Singer Center.

VI. NYS DOCCS PRISON SYSTEM AS COMPARED TO NYC DOC JAIL SYSTEM

While Ms. H[REDACTED]'s experience being incarcerated in NYC jails has been extremely difficult, what we know from our experience representing transgender clients is that what she would face during her time upstate in DOCCS custody, if she were sentenced to prison time, would be exponentially worse. Even though Ms. H[REDACTED] has been forced to be housed in men's units during her time in the city jails, DOC has recently developed a limited understanding of the

specific and disproportionate harms that transgender women face while incarcerated. This is the reason DOC has begun to house a very limited number of transgender women at Rose M. Singer Center. However, there are currently no clear criteria of which transgender women are eligible to be housed at RMSC, and that decision is an arbitrary one which is made at the complete discretion of DOC staff, regardless of the preference of the incarcerated individual. We have never represented a transgender client who was housed consistently with their gender identity in DOCCS custody.

Unlike DOC's new slightly improved practices of housing transgender women, DOCCS does not currently have any concrete practices to house transgender women with women. The two options that transgender women have in DOCCS custody are: 1) to be housed in a men's general population unit, where they will without a doubt be subject to agonizing sexual violence, or 2) to be housed in solitary confinement in the men's facility, where they will be locked in a tiny cell for 23 out of 24 hours per day. What we know from the experiences of our transgender clients is that often DOCCS will involuntarily place transgender women in solitary confinement for their own "protection," especially after learning about a sexual assault that occurred against them. The problem with this approach is that solitary confinement - which is otherwise only used for punitive purposes - is incredibly harmful to people's psychological well-being. It is for this reason that there are regulations which limit the amount of consecutive time that a prisoner can be housed in solitary confinement. However, those regulations are routinely disregarded for transgender women by corrections staff because they feel that it is the safest place for them to be. As a result, transgender women are often housed in solitary confinement for years at a time, taking an extremely detrimental toll on their mental health and cognitive functioning. Solitary confinement would have a particularly devastating impact on Ms. H[REDACTED].

The reality is that transgender people's experience of incarceration turns out to be exponentially more punitive than cisgender people's experience of incarceration because of the specific harms and struggles they face while serving their time, just for being who they are. This phenomenon mirrors that of the experiences of transgender people in our world currently, and more specifically black transgender women. Ms. H[REDACTED]'s identity has shaped her experiences since she was born, and it is impossible to separate her current circumstances from her experiences as a Black trans woman. She has been surrounded by violence for her entire life.

VII. CONCLUSION

Ms. H[REDACTED] has lived through decades of trauma, violence, and discrimination. Those experiences precipitated the events leading to her arrest in this case, where she is charged with stealing food items. She has been incarcerated since her arrest in May, and, during that time, has worked to build rehabilitative and support networks through our LGBTQ Defense Project, STEPS and discharge planning. As we have discussed, Ms. H[REDACTED] hopes to be able to resolve this case as soon as possible. Based on everything we have discussed herein and our prior conversations, we ask that you offer Ms. H[REDACTED] a plea to petit larceny and three months jail.

Thank you,

Klevis Baholli

Klevis Baholli, LMSW
Social Worker for Ms. H [REDACTED]

Deborah Lolai, Esq.
Attorney for Ms. H [REDACTED]

Whitney Hayes
Attorney for Ms. H [REDACTED]

September 26, 2023

Deborah Lolai & Whitney Hayes
The Bronx Defenders
360 East 161 Street
Bronx, NY 10451

RE: L [REDACTED] H [REDACTED] (NYSID: 08792310N)

Dear Ms. Lolai and Ms. Hayes,

This letter serves as an update on Ms. L [REDACTED] H [REDACTED]'s participation in the **STEPS to End Family Violence Criminalized Survivors Program (CSP)**. For over 30 years, the STEPS Criminalized Survivors Program has offered comprehensive clinical and legal support services to survivors of intimate partner violence (IPV) or other forms of gender-based violence (GBV) who have been criminalized for their efforts to survive or resist abusive partner behavior. We support survivors facing felony and/or misdemeanor charges in any borough. In addition, STEPS CSP has a designated Advocate/Counselor serving criminalized survivors on-site at the Manhattan and Brooklyn Family Justice Centers, and a Training team that helps lead the City's whole response to criminalized survivors.

An intake interview was conducted on **July 24, 2023**, but a decision on enrollment was held until more information could be provided to STEPS CSP. When we received more information, **Ms. H [REDACTED]** was deemed eligible for the program based on her history of gender-based violence. She was enrolled in STEPS CSP on **September 19, 2023**.

The STEPS Criminalized Survivors Program provides the following services:

- Individual counseling aimed at identifying trauma symptoms and addressing their effects, cultivating insight, and diversifying coping strategies through evidence-based interventions such as Seeking Safety and Cognitive Processing Therapy (CPT),
- Group counseling that focuses on the intense emotions and myriad trauma symptoms that may impact survivors of gender-based violence,
- Legal advocacy that includes regular communication with the defense attorney and accompaniment to court appearances,
- Court letters or reports that focus on participant progress, and the participant's trauma narrative/history of intimate partner violence,
- Completion of the Danger Assessment by a certified clinician,
- Serve as an Alternative to Incarceration (ATI) or Alternative to Detention (ATD).


During the intake interview that was conducted on July 24, 2023, this writer met with Ms. H [REDACTED] and assessed for mental and physical wellbeing, experience as a survivor of intimate partner violence and/or gender-based violence, and case management needs. Based on our discussion

during the intake, Ms. H[REDACTED] identified needs with housing, individual counseling, and goal setting around employment. In addition, Ms. H[REDACTED] and her team have identified histories of trauma and IPV that this writer will work to address with Ms. H[REDACTED] as is appropriate during our sessions. STEPS CSP can provide referrals to housing providers or employment assistance programs and will continue to assess Ms. H[REDACTED]'s needs to adapt or expand referrals if necessary. In our counseling sessions, we will also address any safety concerns Ms. H[REDACTED] may have and create a safety plan if appropriate.

STEPS CSP can provide these services to Ms. H[REDACTED] whether she is detained or in the community and can continue providing program services for up to a year from Ms. H[REDACTED]'s case reaching a disposition.

Should you have any questions regarding Ms. H[REDACTED]'s participation in STEPS, please contact me by phone at [REDACTED] or email [REDACTED].

Respectfully,



[REDACTED] LMSW
Clinical Advocate
Criminalized Survivor's Program
STEPS to End Family Violence
A program of Rising Ground

