

**Carroll, John (BOS)**

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**Sent:** Thursday, September 28, 2017 3:36 PM  
**To:** Carroll, John (BOS)  
**Cc:** Adam Raskin, P. I.; Marvin Stender; David Tejada; constance bernstein; Rae Raucci  
**Subject:** EPIC Report Response for GAO Oct. 4. 2017 Meeting  
**Attachments:** Report to GAO Subcommittee - EPIC Report.V2RRdocx (3).pdf

**Categories:** 170664, 2017.10.04 - GAO

John,

This is Rae Raucci, Lead Investigator of the EPIC Report for the SF Civil Grand Jury 2016-2017. Here is the presentation response for the October 4th GAO Meeting at City Hall, as requested.

Thanks for handling this,

Rae Raucci

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**Educational Parity in Custody (EPIC) Report**  
**SF Civil Grand Jury 2016-2017**  
**Presentation at SF Board of Supervisors GAO Subcommittee Hearing**  
**October 4<sup>th</sup>, 2017**

To the GAO Subcommittee:

1. Introduction

This report is a follow-up to the EPIC Report by the 2016-2017 SF Civil Grand Jury. The report specifically looked at educational conditions in the SF city jail system for women inmates at this present time.

First and foremost, we found that the educational services being provided by the Five Keys Charter School and other programming provided by the Sheriff's Department for the most part meet the needs of the female inmates. The staff we interviewed are dedicated professionals, progressive in their thinking towards female inmates in the jail system.

Still, we found areas that could be improved in the area of

**education:**

- o **Training:** The deputies could benefit from additional training in interpersonal communication skills.
- o **Overtime:** At the time of our report, the deputies were working excessive over-time hours, which possibly

exacerbated negative attitudes towards the female inmates.

- **Data Gathering:** Due to lack of staff support, as well as statistically shorter terms for female inmates, it is difficult to collect data on such key measures whose results could help improve the effectiveness of the educational offerings for female inmates. This includes such measures as: successful re-entry, recidivism, educational progress, and/or various behavior characteristics.
- **Housing/Facility:** We learned that an ideal facility for the female inmates would be to establish women's educational pod much as is the case with the men's jail in San Bruno. In this model the housing and educational programming are integrated, where all women in the housing share in education together.
- **Transgender Housing in the SF Jail System:** We found that the SF Sheriff's Department still steadfastly refuses to change the discriminatory segregated housing conditions in the jail system for transgender inmates, even with a complete blueprint to end discrimination against transgender women in custody (Recommendations #10-14 in the EPIC Report).

## 2. The Situation at Hand

The main issue for the EPIC report, as well as the above issues already explained, is the SF Sheriff's **refusal** to implement SF Civil Grand Jury's recommendations to **end** discrimination against transwomen in the SF jail system, as proved by the Sheriff's Department's response to Finding / Resolution #10-14 in the EPIC Report (as follows):

Sheriff's Response #11: In Fiscal Year 2016-17, all deputies and program staff received a four-hour POST- 1 certified course in gender awareness. This year, we are implementing training on appropriate strip search protocols and have changed the Field Arrest Booking Card to record preferred gender identity, name, pronouns and gender of the deputy who will perform any required searches.

Our Response: This gender-awareness training is not the same as transgender sensitivity training. Deputies need to be trained that pre-op/post-op transgender women are female as any other female in the SF jail system. This is the only way to clear up the doubt/confusion that SF deputies have about trans individuals in the SF jail system.

Sheriff's Response #12: Disciplinary procedures are set forth in the San Francisco Charter, the Civil Service Rules, the Rules and Regulations of the Sheriff's Department, and the collective bargaining agreements between the City and the unions that represent the Sheriff's Department's sworn and non-sworn employees. Corrective action taken pursuant to violation of department policy, whether involving TGI policy or any other policy is consistent with these. Corrective action may include informal counseling, formal counseling or request for a formal reprimand, suspension or termination.

Our Response: There are still no disciplinary actions taking against Sheriff's deputies who refuse to search transgender individuals. No other class of individuals can a Sheriff deputy refuse to search. Clearly existing disciplinary policies need to be rewritten to include refusals to search transgender individuals as infractions for deputies involved.

Sheriff's Response #13: This recommendation is not consistent with standards set forth in the federal Prison Rape Elimination Act {PREA}, which recognizes that gender is not binary and therefore calls for transgender custodies

to be offered the opportunity to state their preferences for name, pronouns, housing and the gender of the deputy sheriff who will perform searches. The assumption that all transgender females wish to be housed with ciswomen, and all transgender males wish to be housed with cismen has been shown to be incorrect.

Our Response: This is not what the PREA guidelines state. The PREA guidelines clearly state that transwomen who profess their female identity must be treated as women in custody for their safety. There is no such thing as an assumption that transgender women and cisgender women don't want to be housed together. They very statement is prejudicial; there is no difference between transwomen and ciswomen. Both are female, and any artificial separation is blatantly discriminatory.

Sheriff's Response #14: This recommendation is not consistent with the standards set forth in the federal Prison Rape Elimination Act {PREA}, which recognizes that gender is not binary, and therefore, calls for transgender women to be offered the opportunity to state their preference for housing. Furthermore, certain structural changes are necessary for the current ciswomen's housing to be compliant with PREA requirements for, among other things, shower funding for these changes was included in a \$70 million jail renovation grant proposal that was

rejected by the state Board of State and Community Corrections. We continue to work with the City to identify funding in order to modify areas of women's housing to allow transgender women who are if appropriate security classification to be housed with ciswomen if they so prefer.

Our Response: This response clearly shows the draconian length that the SF Sheriff's Department will go to keep transwomen in discriminatory jail facilities. The idea that transgender women need "privacy showers" to be built before they can be housed with other females is a prejudicial attitude better left to the "Bathroom Bill" states. According to the SF Sheriff, transwomen can't be transferred to female jail housing until "privacy showers" are built. This tautological "protection" for transwomen is the same argument made by transphobic organizations/governmental bodies that transwomen can't have the same bathroom privileges as "real" women because "real" women need protection from them.

In reality, keeping transgender women separate from other women in the SF jail system mars their educational development, increases their sense of dissociative

dysphoria, and cements a discriminatory environment for them. In actual support of PREA guidelines, the best and only way to keep transwomen from being raped by men in jail is to move them immediately to women's housing facilities.

### 3. So What Can We Do From Here?

As it relates to our report, the SF Sheriff's intransigence from implementing the Women's Educational Dorm and their continuing refusal to house / treat transgender women as women in the SF jail system can only be overcome by direct action from the SF Board of Supervisors. Only if the full board makes the Sheriff's Department change its ways will the discrimination built into the jail system against transgender women end.

### 4. Disciplinary Fining

The best procedure to have the Sheriff's Department to comply with the Civil Grand Jury findings / recommendations #10-14 to transfer trans females to female housing in the SF jail system is to create a binding resolution to fine the SF Sheriff's Department 1% of their SF General Fund budget every year for willfully refusing to recognize transgender females in custody as females. This



**Transgender Inclusion Act** would serve as the best way to have the Sheriff's Department to do the right thing by trans inmates in the SF jail system. An example 1% budget fine would be &1.78M per year (based on a yearly \$178M General Fund contribution to the SF Sheriff's budget).

5. Rule

There is a precedent from the 1987 Federal Highway Safety Act that pertains to this matter. The US Supreme Court held that the Federal government could withheld highway funds from states that would not comply with Federal mandates for highway speeds, as such funds are dependent on compliant with Federal guidelines. Locally, the SF Board of Supervisors has used fines against SF agencies in the past to implement local policy when the relevant agency refused to take direction from governmental oversight.

Likewise, the Board of Supervisors can levy this kind of fine against the SF Sheriff's Department's refusal to humanely treat transgender females as females directly in the face of public oppositions, and in the findings of a SF Civil Grand jury.

## Addendum

### Timeline

#### 1. Draft Resolution

##### a. Draft Transgender Inclusion Act Resolution

October - December 2017

##### b. Present to full Board of Supervisors February 2018 for plenary vote

##### c. The Resolution will read as follows:

#### Transgender Inclusion Act

#### SF Sheriff's Compliance Order March 2018 - March 2020

In a 24-month timeframe, the SF Sheriff's Department will effectively follow Recommendations #10-14 from the EPIC Report in their entirety, including increased training for Sheriff's Deputies about transgender women (both pre-op and post-op), creating disciplinary actions against any deputy in the Sheriff's Department who refuses to search transgender women, as well as revising the classification system in the SF jail system to include transgender females as females in jail housing, and actually writing transfer orders for all transgender females in the jail system from "protective custody" into female housing. The SF Sheriff's Department will acknowledge this Compliance

Order by providing an action plan for implementation to the Board of Supervisors by May 2018, and must complete all steps in the Compliance Order by March 2020 to avoid a 1% budget reduction from the 2019-2020 SF General Fund contribution to the SF Sheriff's Department's operating budget.

## 2. Implementation

The first phase of this implementation will be drafting the legislation. I would suggest having Rae Raucchi, transgender law student, former legislative intern at the BOS, and a former SF Civil Grand Jury work with Supervisor Jane Kim's office from October 2017 - December 2017 to draft this legislation, with assistance from Supervisor Peskin's and Supervisor Breed's office.

Once the **Transgender Inclusion Act** consent order is drafted, it is my hope that Supervisors Kim, Peskin, and Breed would present it to the full Board of Supervisors in January / February 2018, with a plenary vote in March 2018, to make the Consent Order to free transgender inmates to appropriate housing in the SF jail system law for the SF Sheriff's Department.