

Testimony of the Juvenile Justice Coalition- LGBTQ Work Group

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Oversight: Young Women in New York City's Juvenile Justice System

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Introduction

My name is Beth Powers and I am the Senior Juvenile Justice Policy Associate at The Children's Defense Fund - New York. I am testifying today on behalf of the LGBTQ workgroup of the Juvenile Justice Coalition. I thank the Committee on Women's Issues and Committee on Juvenile Justice for holding this hearing.

The Juvenile Justice Coalition (JJC) is a network of child advocacy groups, legal service providers, alternative sentencing programs, and community-based organizations working to make the juvenile justice system in New York State more fair and effective. The JJC is coordinated by the Correctional Association of New York an independent, non-profit organization founded by concerned citizens in 1844 and granted unique authority by the New York State Legislature to inspect prisons and to report its findings and recommendations to the legislature, the public and the press. The JJC works to decrease the number of New York youth going to jails and prisons; reduce the disproportionate incarceration of youth of color; ensure the legal rights of all court-involved youth; improve outcomes for young people confined in youth justice institutions; and promote a youth development approach to youth justice. The bulk of our work is done through a working group structure. The LGBTQ work group is one such group of the JJC. This group advocates for the needs and rights of LGBTQ youth in the youth justice system. The JJC was instrumental in getting the state Office of Children and Family Services to create and issue a groundbreaking lesbian, gay, bisexual, transgender and questioning (LGBTQ) anti-discrimination policy in 2008 and is now working to ensure the effective implementation of the policy. We also worked closely with the New York City Administration for Children's Services (ACS) on a similar LGBTQ anti-discrimination policy, and continue to work with them on the implementation of the policy and the institution of best practices for LGBTQ youth in their care. We also work on a number of safety and medical issues for system-involved LGBTQ youth.

I am here today on behalf of the workgroup to address the need for a full continuum of services and a gender affirming environment for all of the cities' justice-involved young women and girls with particular attention to those who identify as LGBTQ. Nationally, LGBTQ young women in the youth justice system face particular health and safety risks as well as ongoing bias and discrimination as a result of their actual or perceived gender identity and sexual orientation.

This testimony focuses on the need for increased data collection, transparency and reporting on the services available to LGBTQ girls in New York City's Youth Justice System. Further, the present testimony reiterates a call that several members of our work group have made over the past several years which is to mandate ongoing staff training on LGBTQ affirming services. Such ongoing training is vital to make certain that all staff are trained and knowledgeable about best practices for creating a safe and affirming environment for LGBTQ young women.

The city has become a leader through its ongoing efforts to address the needs of LGBTQ youth. We hope to see the city continue its leadership by working to improve the quality of its services and transparency of its practices as it relates to juvenile justice programming for LGBTQ young women.

Background

There is a growing body of research that shows that LGBTQ youth are at increased risk for homelessness, substance abuse, school bullying and family rejection due to homophobia, transphobia, sexism, and social stigma.ⁱ Moreover, these issues frequently funnel LGBTQ youth into the youth justice system.ⁱⁱ Discriminatory and aggressive school discipline and push-out practices funnel LGBTQ girls into the “school to prison pipeline” and this is especially true for LGBTQ girls of color. Notably, a national longitudinal study published in *Pediatrics* found that LGB youth were 40% more likely than other youth to face punishment by school authorities, police and the courts, and that lesbian and bisexual girls were especially at risk. The study found lesbian and bisexual girls experienced 50 percent more police stops and reported about twice as many arrests and convictions as other girls who had engaged in similar behavior.

LGBTQ young women and girls face the added burden of sexual harassment, teen dating violence, and sexual victimization in school. National studies have shown that such harassment and bullying are all too common in schools around the country and that girls who experience sexual bullying and harassment in school frequently experience anxiety, distress, loss of self-esteem, and depression.ⁱⁱⁱ Feeling unsafe in school has been correlated with skipping school and dropping out,^{iv} and these behaviors in turn increase a girl’s risk of involvement with the juvenile justice system. Such hostile school climates adversely affect the safety and educational opportunities available to all young women and girls, including those who identify as LGBTQ. Ensuring safety and opportunity are pillars of preventing young women’s involvement with the justice system.

Research has shown that LGBTQ in the youth justice system suffer routine and systemic mistreatment in detention and placement as a result of their perceived or actual sexual orientation, gender expression, or gender identity.^v Young women, especially LGBTQ women, are also among those at the highest risk for sexual violence. Sexual violence increases their risk of court-involvement and further victimization while in custody. Additionally, the ramifications of sexual violence—which can include a number of anxiety, depression and/or substance abuse disorders—increases a young woman’s risk of incarceration. According to national data collected as a result of the Prison Rape Elimination Act, LGBTQ youth are also among the highest risk of sexual victimization within correctional facilities.

Recommendations

1. Expand Data Collection and Transparency

LGBTQ youth are overrepresented in the youth justice system. One national study found that up to 15% of incarcerated youth are lesbian, gay, bisexual, or gender non-conforming.^{vi} LGBTQ girls and young women in particular are disproportionately involved with youth justice systems. Young women in juvenile justice systems are more likely than their male counterparts to identify as LGBTQ. A study completed by the Annie E. Casey Foundation in 6 different juvenile justice jurisdictions around the country found that juvenile justice involved girls were more than twice as likely as court-involved boys to identify as LGBTQ.^{vii} Specifically, the study found that 23 percent of girls compared to 11 percent of boys identified as “not straight.”^{viii}

JJC organizer, the Correctional Association of New York, recently gathered data suggesting a level of disproportionality may exist in New York’s juvenile justice system. In 2008 the New York State Office of Children and Family Services (OCFS) released a ground breaking policy to protect youth in their youth justice facilities and programs from discrimination on the basis of their perceived or known sexual orientation, gender identity, or gender expression. The policy was accompanied by a set of guidelines for best practices for working with lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth and is known as the LGBTQ Anti-Discrimination Policy and Guidelines. OCFS granted the Correctional Association access to visit OCFS facilities and speak directly to youth in care and facility staff in order to evaluate the safety of LGBTQ youth in custody, assess the effectiveness of the anti-discrimination policy and guidelines, and ensure meaningful implementation of the policy and guidelines. Known as the SAFETY Initiative, this project will culminate in the dissemination of a public report later this year highlighting key findings and recommendations based on the data and information collected from these visits.

The SAFETY Initiative visited eleven (11) OCFS youth justice facilities from 2012-2013 and collected 196 surveys from youth. At the time of our visits, an average of 497 youth were placed in OCFS’ youth justice system. Twenty seven percent (27%) of all youth who participated in our evaluation identified or were perceived^{ix} as LGBTQ. Nineteen percent (19%) identified as LGBTQ and 8% were perceived as LGBTQ. The Correctional Association collected 39 surveys from female facilities out of an average of 79 youth in female facilities at the time of our visits. They found that 81% of these youth in female facilities identified or were perceived as LGBTQ and 19% identified as non-LGBTQ. Notably, the vast majority of youth participants in the four female facilities they visited were LGBTQ. These results strongly suggests a disproportionate number of youth in OCFS female facilities who took the survey are LGBTQ and points to the need for more research about young women in the youth justice system in New York City.

A primary goal of the Close to Home Initiative is to “be data-driven to ensure key decisions are objective and information about changes in policy and practice is transparent.”^x In the past, many

of the systems and programs that girls came into contact had no process in place to systematically collect, disaggregate and publish data by gender much less by sexual orientation, gender identity, and gender expression.

Last year members of our work group testified before City Council supporting Introduction 0981-2012, a Local Law to amend the administrative code of the city of New York, in relation to requiring ACS to publish demographic data and incident reports on youth detained and placed in its juvenile facilities. In addition to supporting this measure, we recommended requiring ACS to include in its data reporting requirements demographic information on sexual orientation and gender identity (SOGIE). We were pleased at the passage of the local law, specifically the inclusion of reporting on biased based incidents, however continue to urge the City Council to require ACS to publicly report demographic information regarding SOGIE in juvenile justice facilities.

In the past year ACS has taken steps to collect data on SOGIE in detention. We applaud ACS in taking this step and encourage them in expanding this to all juvenile placements. We also encourage the Council to consider requiring ACS to report this data as a part of their regular demographic data reporting. Whenever possible, data should also be provided at the facility-level. However, we understand that in some instances and for some facilities the number of youth may be too small to release disaggregated information in a de-identified manner. In such instances we think it is important that the city synthesize the data and report back in qualitative form to the best of its ability on any trends that emerge in youth's responses.

Given that the programs have now been asking SOGIE questions for several months, the city should assess whether staff who are collecting data feel well-prepared to do so and whether the staff responsible for conducting intakes are recording youth's responses in a standardized way across facilities. In addition, disaggregating existing data by race, gender and SOGIE will help ACS create meaningful indicators that measure the service needs and outcomes for LGBTQ young women across the juvenile justice system. Doing so will help inform program planning, and enable ACS to improve and enhance services based on data. Youth, families, and the public benefit from increasing data transparency and specificity. By adopting these recommendations, ACS will ensure that a variety of stakeholders have the opportunity to engage with the youth justice system about how to best serve system impacted young people, as well as reduce and prevent further involvement.

We applaud the Council in requiring ACS to report biased-based incidents, defined as incidents that arose in whole or in part due to a child's perceived or actual sexual orientation, gender expression or gender identity, as reported by such child. The collection of data related to incidents of bias based harassment in ACS' youth justice facilities and programs is critical. The tracking of incidents of harassment and mistreatment, and inclusion of this information in published incident reporting data, will provide important insight into the safety and conditions for all youth in facilities. It should also be used by ACS to enhance their LGBTQ anti-

discrimination policy and general protocols to ensure equitable and culturally competent treatment of all youth in their care. It is critically important that the justice system become an environment that helps youth recover from past abuse and thrive going forward rather than exacerbating the harm they have already experienced.

Due to the social stigma LGBTQ people face, it may be difficult to obtain accurate information about the sexual orientation and gender identity of youth in custody. Youth with histories of rejection and discrimination due to their sexual orientation, gender identity, and/or gender expression may be reluctant to disclose such information at the time of admission and intake for safety reasons.^{xi} Similarly, young women who have experienced sexual abuse and trauma may not disclose those incidents when initially asked because of shame, stigma and self-blame associated with sexual victimization. For a variety of reasons, commercially sexually exploited youth are also unlikely to identify as such when initially asked by facility staff.

All youth should be given the opportunity to answer questions privately (without staff or other youth being in ear-shot of their responses) and anonymously in order to ensure they feel safe providing honest responses. We recommend an anonymous self-administered survey should be distributed to each youth on an annual basis to further collect information about the prevalence of LGBTQ youth in custody and their experiences while in detention and placement. The survey results should be included in the public reports. To ensure privacy, ACS programs should consider moving to a web or computer-based questionnaire that do not require a verbal response from youth or force youth to disclose confidential information to a staff person if they are not comfortable doing so.

2. Improve Oversight of LGBTQ Affirming Practices City-Wide

In its year-one report on the Close to Home Initiative the Office of Children and Family Services (OCFS) reported that provider agencies initially lacked the capacity to serve the number of young women admitted to non secure placement.^{xii} Moreover the city reported that programs were not prepared to meet the range of needs young women presented.^{xiii} We applaud the joint effort of OCFS and ACS to improve the capacity of programs serving young women and to form a “learning collaborative” across programs to continually improve services for young women. It is critical to specifically evaluate how well programs are meeting the needs of LGBTQ young women throughout the city, as well.

We recommend that the city develop a plan to assess the capacity to serve LGBTQ young women in the juvenile justice system. We strongly recommend that every program serving young women be accountable for ensuring a gender-affirming environment for LGBTQ youth. LGBTQ young women should have access to the full spectrum of programs provided through the CTH Initiative. While we are supportive of Close to Home programs that have developed particular expertise in serving LGBTQ young people, it is vital that youth in need of all types of juvenile

justice placements are guaranteed to be placed in a safe and LGBTQ affirming setting. Ultimately, youth should be placed in a setting that is best suited to address their primary need (for example, settings specialized to address the needs of youth with developmental delays) and should not have to sacrifice the level of competency the program offers in regard to supporting and affirming LGBTQ youth.

While all programs should be evaluated for LGBTQ competency, particular attention should be paid to programs designed to address commercial sexual exploitation of children (CSEC). Youth in foster care and homeless youth are particularly vulnerable to CSEC, two populations in which LGBTQ youth are over-represented. Programs designed to address CSEC are often tailored to the needs of heterosexual cis-gender girls. Please reference today's testimony from JJC member, Lambda Legal for a thorough assessment and recommendations regarding LGBTQ CSEC youth in New York's juvenile justice system.

Aftercare services should similarly be evaluated to determine their competence in meeting the needs of LGBTQ youth and providing and affirming environment for all girls. It is crucial that every program throughout the system be prepared to offer LGBTQ affirming services.

To ensure all programs are adequately LGBTQ competent, the city should develop a plan to evaluate all juvenile justice programs. ACS currently evaluates LGBTQ competency to a degree in its Scorecard evaluations of programs. Given that this subset weighs only a small percentage of the overall score a program can accomplish, we recommend further developing a tool to assess overall LGBTQ competence to allow the city to identify programs in need of improving in regard to serving LGBTQ youth.

We believe it is critical that the city implement oversight mechanisms that require such evaluations and assessments to become common practice. The city should routinely assess all contracted agencies providing youth justice services with a meaningful assessment of gender responsiveness and LGBTQ affirming practices.

3.Mandated Staff Training and Professional Development System-wide

We strongly recommend that training and professional development be mandated to ensure that the collection, management, and publication of information about sexual orientation and gender identity benefits, and does not harm, youth and families. Furthermore, ACS should be supported and resourced to develop their capacity to fully comply with such protocols. Such mandatory training should be provided to new staff as well as through annual refreshers for existing staff by recognized experts with experience working with young women, trans women, and LGB women.

ⁱ Center for American Progress; The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBTQ Youth in the Juvenile Justice System, June, 2012

ⁱⁱ Center for American Progress; The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBTQ Youth in the Juvenile Justice System, June, 2012

ⁱⁱⁱ See e.g., Greetje Timmerman, Adolescents' Psychological Health and Experiences with unwanted sexual behavior at school, *Adolescence*, (2004)

^{iv} AAUW HOSTILE HALLWAYS, <http://www.aauw.org/files/2013/02/hostile-hallways-bullying-teasing-and-sexual-harassment-in-school.pdf>

See also,

NWLC http://www.nwlc.org/sites/default/files/pdfs/nwlcharassbullying_titleixfactsheet.pdf

^v Center for American Progress; The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBTQ Youth in the Juvenile Justice System, June, 2012

^{vi} Angela Irvine, “*We’ve Had Three of Them*”: *Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System*, 19 *Colum. J. Gender & L.* 675–76, 687 (2010).

^{vii} As cited in Katayoon Majd, Jody Marksamer, and Carolyn Reyes, “Hidden Injustice: Lesbian, Gay, Bisexual and Transgender Youth in Juvenile Courts,” (Fall 2009), page 94. available at: http://www.equityproject.org/pdfs/hidden_injustice.pdf

^{viii} Garnette, L., Irvine, A., Reyes, C., & Wilbur, S. (2011). Lesbian, Gay Bisexual, and Transgender (LGBTQ) Youth and the Juvenile Justice System. In Sherman, F., & Jacobs, F. (Eds.). (2011). *Juvenile Justice: Advancing Research, Policy and Practice*. Hoboken, NJ: Wiley & Sons.

<http://www.juvjustice.org/sites/default/files/ckfinder/files/LGBTQ%20%20Status%20Offense%20Webinar.pdf>

^{ix} Youth respondents were categorized as LGBTQ if they identified as lesbian, gay, bisexual, questioning, transgender, or AG (AG or “aggressive” is a term used in LGBTQ communities of color to describe female identified people with a masculine presentation). In addition to those who openly identified as LGBTQ, youth were included in the LGBTQ category if they stated that they had been threatened, harassed, or assaulted because of their sexual orientation, gender identity, or gender expression (SOGIE), or that they had felt unsafe at school due to SOGIE. Many of the youth who encountered SOGIE-based violence openly identified as LGBTQ in the survey, but some did not. Given that the LGBTQ anti-discrimination policy covers both “actual” and “perceived” SOGIE, youth who stated that they were perceived as LGBTQ (but may not have identified openly as such) were included in the LGBTQ category. However, the majority of youth in female facilities openly identified as LGBTQ.

^x See New York City Administration for Children’s Services, “Close to Home: Plan for Non-Secure Placement,” June 8, 2012, available at:

http://www.nyc.gov/html/acs/downloads/pdf/cth_NSP_Plan_final.pdf (page 8)

^{xi} Shannan Wilber et al., Child Welfare League of America, CWLA Best Practice Guidelines: Serving LGBTQ Youth in Out-of-Home Care 36 (2006).

^{xii} http://www.ocfs.state.ny.us/main/rehab/close_to_home/CTH%20Year%201%2003%2011%2014.pdf (page 10)

^{xiii} http://www.ocfs.state.ny.us/main/rehab/close_to_home/CTH%20Year%201%2003%2011%2014.pdf

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