

April 23, 2019

Members of the Board of Correction  
1 Centre Street  
Room 2213  
New York, NY 10007  
Via email: boc@boc.nyc.gov

Re: **Special Hearing on PREA Standards Compliance**

Dear Members of the Board of Correction,

Lambda Legal welcomes the opportunity to submit written comments to the New York City Board of Correction (“Board” or “BOC”) for the meeting scheduled for April 23, 2019 devoted to New York City Department of Correction’s (“DOC”) compliance with the Board’s Standards to Eliminate Sexual Abuse and Sexual Harassment in Correctional Facilities (“PREA Standards”). The Special Hearing is an important opportunity for the Board to ask questions and demand answers from the DOC about compliance with the PREA Standards. In particular, we hope the Board addresses the needs of lesbian, gay, bisexual, and transgender (“LGBT”) people in custody including prevention of abuse by other incarcerated people and officials, investigation into complaints, due process, housing placement, and resources available to victims of sexual assault and violence.

Lambda Legal is the oldest and largest national organization dedicated to achieving full recognition of the civil rights of LGBT people and those living with HIV through impact litigation, education, and public policy work. For over forty years, we have worked to address sexual assault and violence against LGBT people in custody through comments to the National Prison Rape Elimination Act Commission, the Department of Justice, the Department of Homeland Security, and testimony to the United States Senate. Lambda Legal has appeared as counsel or amicus curiae in numerous federal and state court cases involving the rights of incarcerated LGBT people. For more information on LGBT people and the criminal justice system, I am including a copy of Lambda Legal’s *Protected and Served?* a national survey of thousands of lesbian, gay, bisexual, transgender, and gender-nonconforming people and people living with HIV, which focused on the communities’ experience with the criminal justice system and policing.

These comments provide information on how these issues impact LGBT people and the need for systems to take affirmative steps to comply with PREA Standards from a national perspective. LGBT people experience disproportionate rates of incarceration and higher rates of

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sexual violence when in custody. LGBT people are disproportionately incarcerated.<sup>1</sup> “According to the National Inmate Survey, in 2011- 2012, 7.9% of individuals in state and federal prisons identified as lesbian, gay, or bisexual, as did 7.1% of individuals in city and county jails[,] . . . approximately double the percentage of all American adults who identify as LGBT, according to Gallup (3.8%).”<sup>2</sup> According to data from the same survey, “The incarceration rate of self-identified lesbian, gay, or bisexual persons was . . . more than 3 times that of the US adult population.”<sup>3</sup> LGBT people’s vulnerability to sexual abuse is well known within the correctional community, including the Department of Justice (“DOJ”), the National Institute of Corrections (“NIC”), and the American Jail Association. As the NIC has noted, while incarcerated, “men and women with non-heterosexual orientations, transgender individuals, and people with intersex conditions were highly vulnerable to sexual abuse.”<sup>4</sup>

Lambda Legal receives numerous reports from LGBT survivors of sexual abuse from throughout the country including those in jails, prisons, juvenile facilities, and immigration detention facilities. Institutional sexual violence disproportionately affects LGBT people. The federal government has documented the high rates of abuse against people in men’s corrections facilities who are or are perceived to be LGBT. The DOJ’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, showing that 38.6% of gay male former prisoners and 33.7% of bisexual male former prisoners reported sexual victimization by another prisoner during incarceration as compared with only 3.5% of heterosexual former male prisoners.<sup>5</sup> In addition to reports of abuse by other prisoners, gay and bisexual prisoners reported significantly higher rates of abuse by staff than did their heterosexual counterparts, with rates of staff abuse of 5.2% against heterosexual men, as contrasted with 17.5% and 11.8% of bisexual and gay men, respectively.<sup>6</sup>

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<sup>1</sup> See Ctr. For Am. Progress & Movement Advancement Project, *Unjust: How the Broken Criminal Justice System Fails LGBT People*, iii-iv (2016), <http://www.lgbtmap.org/file/lgbt-criminal-justice.pdf>.

<sup>2</sup> *Id.* at iii.

<sup>3</sup> Ian H. Meyer, et al., *Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011-2012*, 107 *Am. J. Pub. Health* 234, 238 (2017).

<sup>4</sup> Brenda V. Smith, et al., National Institute of Corrections, *Policy Review and Development Guide, Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings*, (August 2013), <https://s3.amazonaws.com/static.nicic.gov/Library/027507.pdf>.

<sup>5</sup> Allen J. Beck, Bureau of Justice Statistics, U.S. Dep’t of Justice, *Sexual Victimization Reported by Former State Prisoners, 2008*, 16 (May 2012), <http://www.bjs.gov/content/pub/pdf/svrfsp08.pdf>.

<sup>6</sup> *Id.*

BJS 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).<sup>7</sup> 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.<sup>8</sup> 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.

These data show that departments of correction must take affirmative steps to protect LGBT people who are in their custody. As a resource, the Board can look to other states and systems that have enacted legislation and policies addressing the housing and treatment of transgender people in order to comply with PREA and constitutional requirements. Last year, Connecticut enacted SB13, An Act Concerning Fair Treatment of Incarcerated Persons, and became the first state in the nation to establish a legal right to be housed in a prison that matches the gender with which one identifies. Also in 2018, Massachusetts implemented a statute (General Laws 127 § 32A) allowing for the affirmative placement of transgender people in corrections facilities consistent with their gender identity. The Vermont Department of Corrections has had a policy affirmatively allowing placement consistent with gender identity since 2015.<sup>9</sup> Last month, California Senate Bill 132, the Transgender Recognition, Agency, and Dignity (RAD) Act, was introduced. If passed, the Transgender RAD Act will require the California Department of Corrections and Rehabilitation (CDCR) to classify and house transgender people in its custody based on their gender identity, unless the incarcerated transgender person's evaluation of their own safety is that another housing placement is safest.

Lambda Legal thanks the Board for this opportunity to offer information about LGBT people in custody, and urges continued outreach to LGBT communities as the Board continues its efforts to ensure compliance with the PREA Standards.

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<sup>7</sup> Allen J. Beck, Bureau of Justice Statistics, U.S. Dep't of Justice, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12 – Supplemental Tables* (Dec. 2014), [http://www.bjs.gov/content/pub/pdf/svpjri1112\\_st.pdf](http://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf); see also Allen J. Beck, Bureau of Justice Statistics, U.S. Dep't of Justice, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-2012*, 10 (2013), <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

<sup>8</sup> See Valerie Jenness, et al., *Transgender Inmates in California's Prisons: An Empirical Study of a Vulnerable Population* (Apr. 2009), <https://ucicorrections.seweb.uci.edu/files/2013/06/Transgender-Inmates-in-CAs-Prisons-An-Empirical-Study-of-a-Vulnerable-Population.pdf>.

<sup>9</sup> Vt. Dep't of Corrections, *Gender Identification, Care, and Custody* (2015), <http://www.doc.state.vt.us/about/policies/rpd/for-comment/432-01-gender-identification-care-and-custody>.



Sincerely,

*s/ Richard Saenz*

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