

March 25, 2019

U.S. Commission on Civil Rights  
1331 Pennsylvania Avenue NW, Suite 1150  
Washington, DC 20425  
womeninprison@usccr.gov

**Re: Challenges Unique to Incarcerated LGBT People for Consideration in USCCR's Work on Women in Prison Seeking Justice Behind Bars**

Dear Commissioners and Staff:

We, the undersigned, are national, state based, and local non-profit civil rights and public policy organizations that advocate for the rights of lesbian, gay, bisexual, and transgender, queer, non-binary and intersex (hereinafter "LGBT") people through litigation, education, and public policy.<sup>1</sup> Our work aims to ensure that the Constitutional guarantees to be free from cruel and unusual punishment, enjoy due process, and receive equal protection of the law are realized by all people in jails and prisons, including LGBT people.

We appreciate the opportunity to provide additional information to the Commission regarding the experiences of incarcerated LGBT women as you examine the conditions for all incarcerated women, including where jails and prisons may be falling below standards required by the Constitution and federal law.

Studies show that some LGBT women are incarcerated at shocking rates.<sup>2</sup> LGBT women and non-binary people also face unique and exacerbated issues while incarcerated due to their sexual and gender minority status.<sup>3</sup> Accordingly, the experiences of LGBT women are important to highlight in any research and recommended policy changes for women in prison.

This letter provides information and recommendations regarding: (1) the disproportionate rates of incarceration of LGBT women and non-binary persons; (2) the stigma and bias incarcerated LGBT women and non-binary persons face by inmates and staff; (3) issues arising in the housing of transgender and non-binary individuals at sex-segregated facilities; (4) the extreme sexual violence experienced by LGBT women and non-binary persons behind bars;

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<sup>1</sup> A complete list of the Signatory Organizations appears in Appendix A.

<sup>2</sup> See, e.g., Nat'l Ctr. for Transgender Equality, LGBTQ People Behind Bars at 5 (2018) (noting transgender individuals report being incarcerated at twice the rate of the general population); Sandy E. James et al., The Report of the 2015 U.S. Transgender Survey, Nat'l Ctr. for Transgender Equality at 190 (2016) ("NCTE, Transgender Survey") (discussing rates).

<sup>3</sup> See generally Jason Lydon et al., Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey (2015) ("Concrete Closets").

(5) challenges LGBT prisoners face when accessing medical care; and (6) additional areas of concern, including the discipline that LGBT women and non-binary persons often face for their gender non-conformance.

## I. LGBT Women Are Disproportionately Incarcerated

The changing demographics of the U.S. prison population require that we change our frame of reference when we think about women in prisons, who they are, and what their needs are. Increasingly, women in U.S. prisons are Black and Latino<sup>4</sup>, they are relatively young<sup>5</sup>, and many are incarcerated for drug offenses (e.g. 59% of women in federal prison and 25% of women in state prisons respectively).<sup>6</sup> The majority of women in federal and state prisons are parents to minor children (63% of women in federal prison and 62% of women in state prison).<sup>7</sup>

With the recent addition of questions about sexual orientation and gender identity to federal surveys, including the National Inmate Survey, the diversity of women in U.S. prisons and jails has become clearer. The best estimates of the percent of the adult women in the United States who identify as lesbian or bisexual is 3.4%.<sup>8</sup> Yet, data from the National Inmate Survey, analyzed by the Williams Institute at UCLA School of Law, reveals that 42% of incarcerated women identify as sexual minorities (lesbian, bisexual, or reported same-sex sexual experience before being incarcerated), including one in three (33%) who identify as lesbian or bisexual.<sup>9</sup> This disparity in the rate of incarceration of lesbian and bisexual women is shocking.

Surveys also show that transgender people are at higher risk of experiencing incarceration. According to one survey, one out of six (or 16% of transgender people have been incarcerated at some point in their lives—a rate that skyrockets to 47% among black transgender people.<sup>10</sup> In the 2011-2012 National Inmate Survey, the Bureau of Justice Statistics reported there were approximately 3,209 transgender people in state and federal prisons.<sup>11</sup> In some states,

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<sup>4</sup> The Sentencing Project, *Fact Sheet: Incarcerated Women and Girls* (Nov. 2015), <https://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf>

<sup>5</sup> *Id.*

<sup>6</sup> E.A Carson & E. Anderson, *Prisoners in 2015*, Bureau of Justice Statistics (2016), <https://www.bjs.gov/content/pub/pdf/p15.pdf>

<sup>7</sup> L.E. Glaze & L.M. Maruschak, *Parents in Prison and Their Minor Children*, Bureau of Justice Statistics (2010), <https://www.bjs.gov/content/pub/pdf/pptmc.pdf>

<sup>8</sup> G.J Gates, *How Many People are Lesbian, Gay, Bisexual, and Transgender?*, The Williams Institute. (2011), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>

<sup>9</sup> I.H. Meyer et al., *Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011-2012*, 107 Am. J. of Public Health 234-39 (2017) (“*Incarceration Rates and Traits*”).

<sup>10</sup> Mara Keisling et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality & National Gay and Lesbian Task Force 163 (2011).

<sup>11</sup> Allen J. Beck, *Bureau of Justice Statistics, Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12: Supplemental Tables* (2014), [http://www.bjs.gov/content/pub/pdf/svpjri1112\\_st.pdf](http://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf) (“*Sexual Victimization, Supplemental Tables*”). As of this writing, analyses of data from the National Inmate Survey and

transgender women may be in women's prisons, while in others, they may be housed in men's prisons, which may, depending on the circumstances, be a violation of federal Prison Rape Elimination Act ("PREA") standards. The same is true for transgender men, and the experiences of transgender men housed in women's facilities should also be considered in the Commission's inquiry. As a whole, the unique challenges and higher risks of vulnerability experienced by LGBT people in America's prisons and jails require that we center their experiences when we consider reforms.

And while LGBT people in women's prisons should have their sexual orientation and gender identity respected and policies should affirm and protect them, it is also critical to recognize that many of these women and transgender people are also people of color, parents, people with disabilities and mental health issues, and those living with HIV. Therefore, the Commission should ensure that its review of conditions for women in prison recognizes their intersectional identities and the unique concerns and challenges faced by LGBT women.

## **II. LGBT Women and Non Binary People Face Daily Bias and Stigma in Prisons and Jails**

### **A. Background**

A challenge unique to incarcerated LGBT women and non-binary people is anti-LGBT bias and stigma from inmates and correctional staff. Studies have shown that "lesbians, particularly those who appear masculine," are frequently targeted for harassment by staff.<sup>12</sup> Bias and harassment of transgender and non binary populations is also widespread.<sup>13</sup>

When the Sylvia Rivera Law Project ("SRLP") conducted a participatory research project on transgender and non-binary people incarcerated in New York State in 2017, 95% of respondents stated that correctional staff used derogatory names to refer to them.<sup>14</sup> Respondents

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other surveys exist for LGB women and transgender people, little exists exclusively for transgender women. See, e.g., *Id.*; *Incarceration Rates and Traits* (aggregating data on transgender men and women); NCTE, *Transgender Survey* (same).

However, transgender women comprise the majority of the transgender population behind bars, and as Dr. McLearn testified at the February 22 hearing, of the over 700 transgender people in the federal Bureau of Prisons' custody, about 80% were women (assigned male at birth). See USCCR Hearing: Women in Prison, (February 22, 2019), Morning Session (Panel 1), <https://www.youtube.com/watch?v=3bnlsDHv55E> (beginning at 1:31:25).

<sup>12</sup> The Correctional Association of New York, State of the Prisons: Conditions of Confinement in 25 New York Correctional Facilities (June 2002), [http://static.prisonpolicy.org/scans/State\\_of\\_the\\_Prisons.pdf](http://static.prisonpolicy.org/scans/State_of_the_Prisons.pdf).

<sup>13</sup> For more information, please see Sylvia Rivera Law Project, 10 Years Later, <https://srlp.org/10-years-later-srlp-updates-its-war-in-here/>

<sup>14</sup> Sylvia Rivera Law Project & Community Development Project, *It's (Still) War in Here: 10 Years Later, Working Title* (Forthcoming 2019) ("It's Still War in Here"). All data referenced on file with SRLP. All data referenced on file with SRLP.

overwhelming reported that they were called names like “f\*ggot,” “he/she,” “transgender freak,” and, “it” by the very officers charged with keeping them safe.<sup>15</sup> These daily indignities are not only degrading and inhumane, they make gender and sexual minorities vulnerable to additional abuse in carceral facilities.

In March 2019, SRLP asked Barbara, an incarcerated transgender woman of color and refugee to the United States held in a men’s prison, what the most important thing for people to know about prison conditions for transgender people would be.<sup>16</sup> She responded that “respect for who we are and how to communicate with us” was the number one challenge she faced.<sup>17</sup> It is striking that despite having survived various assaults and medical denials throughout her time inside, Barbara shared the daily indignity of being misgendered and daily lack of respect as being her most important concern. Likewise, 70% of LGBT prisoners surveyed by Black and Pink in 2015 cited verbal harassment by officers as a concern.<sup>18</sup>

Transgender and non-binary prisoners also experience physical assault at the hands of guards. Ninety-one percent of the surveyed by SRLP in 2017 reported being hit, shoved, punched, kicked in the ribs and chest, or assaulted with a baton by staff on at least one occasion.<sup>19</sup>

The mistreatment that transgender women experience in custody is similar to that experienced by transgender men, since both are targeted for gender non-conformance. For instance, Myth, a transgender man of color held in a women’s prison in New York State, reported that he was routinely stopped and “counseled” by various staff members who thought he was “confused.”<sup>20</sup> The medical service provider who Myth needed to visit for weekly testosterone injections for an entire year also counseled him to “just be a lesbian”— proof that bias also impacts the quality of healthcare that LGBT people receive behind bars.<sup>21</sup>

## B. Recommendations

Although just a tiny fraction of the kinds of discrimination and harassment that LGBT people face in prison, the stories featured above demonstrate that stigma and bias are an additional form of punishment for LGBT prisoners. Improved cultural competency and

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<sup>15</sup> Materials on file with SRLP.

<sup>16</sup> Pseudonyms are used throughout this letter to protect the confidentiality of the individuals referenced herein and prevent reprisal.

<sup>17</sup> Materials on file with SRLP.

<sup>18</sup> *Concrete Closets* at 39.

<sup>19</sup> SRLP, *It’s Still War in Here*. All data referenced on file with SRLP.

<sup>20</sup> With the exception of individuals who have given consent, pseudonyms have been given for all currently incarcerated individuals for purposes of confidentiality and to prevent reprisal.

<sup>21</sup> SRLP, *It’s Still War in Here*. All data referenced on file with SRLP.

respectful engagement trainings are desperately needed at corrections facilities across the country. Officers who demean and harass LGBT people in their custody should also face professional discipline.

### **III. LGBT Prisoners Face Unique Housing Challenges, and Safety and Privacy Concerns**

#### **A. Background**

##### **1. Housing Policies and Decisions Frequently Place Transgender Prisoners in Danger Of Sexual Victimization, and Violate PREA.**

The Federal PREA Standards require that correctional facilities perform a case-by-case analysis to determine the best housing placement for transgender prisoners, giving weight to their own assessment of where they would feel the safest.<sup>22</sup> These rules provide only a floor for correctional facilities' conduct; jurisdictions may offer greater protections than those outlined in PREA. However, as of 2018, only 16 states had certified they were in compliance with PREA, and even in those states, it is not guaranteed that facilities are following their own policies.<sup>23</sup>

Case in point, most transgender individuals are housed based on their sex-assignment at birth in facilities nationwide, notwithstanding PREA's requirement that individualized assessments be performed. In SRLP's 2017 survey of transgender prisoners in New York State, every single transgender woman was held in a men's prison and every single transgender man was held in a women's facility.<sup>24</sup> Gender non-conforming or non-binary persons were also uniformly held in prisons that conformed with the sex they were assigned at birth.<sup>25</sup> Likewise, all 116 of the transgender women in the custody of the Colorado Department of Corrections were housed in men's facilities and denied transfers even after enduring sexual assault.<sup>26</sup>

The practice of housing transgender women in male facilities, in addition to being widespread, dramatically increases their exposure to sexual abuse and assault relative to the overall prison population: For instance, a statewide study in California found that transgender women housed in male facilities were 13 times more likely to be sexually assaulted than male

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<sup>22</sup> Prison Rape Elimination Act Prison and Jail Standards, 28 C.F.R §§ 115.42 (2012).

<sup>23</sup> State-by-state information is available at <https://www.bja.gov/State-PREA-Submissions/>.

<sup>24</sup> SRLP, *It's Still War in Here*. All data referenced on file with SRLP.

<sup>25</sup> *Id.* (Since the survey, SRLP has worked with only two transgender women who have been housed in women's prisons in New York State. Both women are white)

<sup>26</sup> Kate Sosin, *Every One of Colorado's 116 Trans Women Inmates Is Imprisoned In Men's Facilities*, INTO (Nov. 16, 2018), <https://www.intomore.com/impact/every-one-of-colorados-116-trans-women-inmates-is-imprisoned-in-mens-facilities>

prisoners in the same facilities.<sup>27</sup> Transgender women in men's facilities are also victimized by male corrections staff: Seventy-five percent of respondents surveyed by SRLP in 2017 experienced at least one instance of sexual violence by a corrections officer.<sup>28</sup> For instance, Star, a transgender woman of color in a men's prison, was repeatedly forced to masturbate a corrections officer during his nightly "welfare checks." Star also wrote that the officer threatened to send her to solitary confinement if she did not comply.<sup>29</sup> Stories like these confirm the toxic mix of abuse and coercion that plagues LGBT people behind bars.

a. Recent Developments Confirm that Transgender Women Can Be Housed Safely in Accordance with their Gender & Safety Preferences

A growing number of corrections agencies across the country have successfully implemented a system of case-by-case housing placements for transgender people that includes the possibility of housing transgender women in women's facilities. In 2018, Massachusetts implemented a statute (General Laws 127 § 32A) allowing for the affirmative placement of transgender people in corrections facilities consistent with gender identity, and the Vermont Department of Corrections has had a policy affirmatively allowing placement consistent with gender identity since 2015.<sup>30</sup> Other state and federal corrections agencies have allowed transgender women to be housed in women's facilities on a case by case basis in recent years.<sup>31</sup> The success of these initiatives confirms that housing transgender women in accordance with their gender identities is both safe and feasible.

Voluntary, transgender-specific housing units have also been an important resource for the trans community behind bars, as they are an environment where some individuals feel safest, given the current failures of many systems to protect incarcerated transgender people in the general population. New York City has run a Transgender Housing Unit for transgender women and trans-feminine people in recent years. The Transgender Housing Unit recently moved from a men's to a women's facility where it has been fully-operational for eight months. In addition to offering safe housing, individuals housed within the Unit participate in mixed cisgender/transgender programming, medical calls, religious services, and recreational activities—offering a template for others. However, there are shortcomings in implementation:

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<sup>27</sup> Valerie Jenness et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, UC Irvine: Center for Evidence-Based Corrections (2009) [https://ucicorrections.seweb.uci.edu/files/2013/06/PREA\\_Presentation\\_PREA\\_Report\\_UCI\\_Jenness\\_et\\_al.pdf](https://ucicorrections.seweb.uci.edu/files/2013/06/PREA_Presentation_PREA_Report_UCI_Jenness_et_al.pdf) ("California Correctional Facilities").

<sup>28</sup> SRLP, *It's Still War In Here*. Materials on file with SRLP.

<sup>29</sup> *Id.*

<sup>30</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>

<sup>31</sup> Angie Leventis Lourgos, *Transgender Inmate Moved to Illinois Women's Prison After Alleging Years of Abuse*, Chicago Tribune, Dec. 27, 2018, <https://www.chicagotribune.com/news/ct-met-transgender-prisoner-transfer-illinois- 20181227-story.html>

there is no clear process for obtaining placement in the Unit, and corrections staff retain ultimate discretion over placements despite their lack of training.<sup>32</sup> There are also gaps: each and every transgender women who transferred over to the New York State prison system from the City jail was sent to a male facility, contrary to PREA and New York State directives calling for case-by-case assessments.<sup>33</sup>

## 2. The Coercive Use of Solitary Confinement Against LGBT Individuals

LGBT people are also too frequently placed in solitary confinement. A 2015 report from the U.S. Bureau of Justice Statistics found that people in prisons and jails who identified as LGB were more likely to report being placed in solitary confinement during the past year than heterosexual-identified people. According to the report, 28% of LGB people in prisons and 22% of LGB people in jails had been placed in disciplinary or administrative segregation or solitary confinement in the past 12 months, compared to 18% of heterosexual people in prisons and 17% of heterosexual people in jails.<sup>34</sup> In Black and Pink's 2015 survey of 1,100 LGBT prisoners nationwide, the vast majority (85%) had been placed in solitary confinement during their time in prison or jail.<sup>35</sup> SRLP's 2017 survey likewise showed that 95% of transgender and gender non-conforming people in New York State prisons were housed in either disciplinary isolated confinement or protective custody for periods of time, while 83% of people experienced disciplinary solitary confinement.<sup>36</sup>

Bianca, a transgender woman incarcerated in New York, observed, "PC [protective custody] is even worse cause there are no cameras."<sup>37</sup> For Bianca, placement in protective custody would mean less opportunity to document an ongoing pattern of abuse she experienced. Another interviewee reported, "I've spent 95% of my time in PC where there are no programs," highlighting the negative impacts of denying educational, rehabilitative, and vocational programming to those housed in protective custody units.<sup>38</sup>

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<sup>32</sup> NYC Board of Corrections, *An Assessment of the Transgender Housing Unit* (Feb. 2018), <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/THU%20FINAL%20Feb%202018.pdf> (This assessment was made prior to the unit's move to the women's jail however the move to the women's jail was not accompanied by any new Directives, training, or implementation of review panels and therefore many findings remain accurate.)

<sup>33</sup> New York State Corrections and Community Supervision, *Directive 4401: Guidance and Counseling Services*, NYS (April 30, 2018), <http://www.doccs.ny.gov/Directives/4401.pdf>

<sup>34</sup> Allen J. Beck, *Use Of Restrictive Housing In U.S. Prisons And Jails, 2011–12*, Bureau of Justice Statistics, (October 23, 2015), <https://www.bjs.gov/content/pub/pdf/urhuspj1112.pdf>

<sup>35</sup> *Concrete Closets* at 5.

<sup>36</sup> SRLP, *It's Still War in Here*. All data referenced on file with SRLP.

<sup>37</sup> Bassichis, *'It's War in Here': A Report on the Treatment of Transgender and Intersex People in New York State Men's Prisons*, at 16, Sylvia Rivera Law Project (2007), <https://srlp.org/files/warinhhere.pdf> ("It's War in Here").

<sup>38</sup> *Id.*

Correctional officers often incorrectly think that segregating LGBT people or placing them in solitary confinement is an appropriate policy, either for the individual's own safety, or because the officers believe that LGBT people are a danger to others.<sup>39</sup> In many cases, these placements are made automatically and without facility personnel thinking through the best way to ensure an individual's safety and overall well-being. For example, correctional staff often automatically place LGBT people in segregated units for sex offenders. These types of placement decisions are in direct contradiction with PREA regulations given that these units can stigmatize LGBTQ prisoners, make them targets for staff harassment and abuse, and restrict their access to programming. Additionally, this can make it harder for people to be released on parole or to receive good time credit, causing people who are subjected to long-term solitary confinement to ultimately serve more time in custody.

### **3. Safety and Privacy Concerns Related to Strip Searches and Pat-Downs**

Regardless of where they are placed, transgender and non-binary prisoners face specific privacy and safety concerns when showering, using multi-user restrooms, changing clothing, being searched, or being tested for drug use. Unless there is a policy that states otherwise, rules limiting cross-gender pat and strip searches and rules governing supervision often end up being applied based on the prisoner's housing assignment and/or genital anatomy, and transgender prisoners are often subjected to unnecessary risk of harm.<sup>40</sup>

Even when conducted in a professional manner, searches—especially strip searches—can be unpleasant, humiliating, and, in many cases, traumatic experiences for any prisoner, regardless of the gender of the person conducting the search.<sup>41</sup> In accordance with PREA regulations, strip searches of transgender prisoners should be prohibited for the purpose of observing or documenting a person's genital characteristics, or for other non-legitimate purposes such as to punish or humiliate the transgender prisoner or to amuse staff members.<sup>42</sup>

Some agencies have adopted a practice of having transgender people searched by a combination of female and male staff—for example, having female staff search the torso of a woman who is transgender and male staff search her from the waist down. Such practices are degrading, intrusive, and impractical. The Department of Justice has clarified that under the PREA Standards this practice is never permitted, noting that the standards require searches of

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<sup>39</sup> *Representing Lesbian, Gay, Bisexual, Transgender, Queer, or Questioning (LGBTQ) Youth in Juvenile Court*, Office of the Juvenile Defender (April 2011), [http://www.ncids.org/JuvenileDefender/Guides/LGBTQ\\_Guide.pdf](http://www.ncids.org/JuvenileDefender/Guides/LGBTQ_Guide.pdf).

<sup>40</sup> See New York State Corrections and Community Supervision, *Directive 4901: Control and Search for Contraband*, NYS (May 14, 2014) (specifying that strip searches in New York State prison are done by guards of the same sex designation as the prison itself. Any woman in a men's facility is strip searched by men)

<sup>41</sup> See generally *Concrete Closets*.

<sup>42</sup> PREA, 28 C.F.R. Section 115.15(e).

transgender prisoners to be conducted “in the least intrusive manner possible” and that “[r]equiring two officers to search transgender inmates or residents would be more intrusive than necessary.<sup>43</sup>”

#### **4. Safety and Privacy Concerns Related to Showers**

Transgender prisoners also experience sexual harassment or abuse while showering.<sup>44</sup> Under the PREA Standards, transgender and intersex prisoners must be provided an opportunity to shower separately from others if they so choose.<sup>45</sup> While agencies have some flexibility in how to provide this opportunity, it should not limit a person’s access to recreation, education, or other opportunities. This is heightened because most transgender people have to advocate for private shower opportunities rather than have them be assigned automatically. SRLP survey data shows that only 28% of respondents received a private shower pass with their gender dysphoria diagnosis. All other respondents had to self-advocate or ask for outside advocates to assist in getting their pass.<sup>46</sup>

Even when the PREA Standards are generally followed, there are multiple ways that correctional facilities do not adhere to the spirit of the law. Staceyanne, a transgender woman of color and asylee who was given a pass to use a “private shower” while held in a New York men’s facility was still forced to shower in a cage in full view of men.<sup>47</sup> Due to conditions such as this, many transgender people avoid showering. A transgender man who has not been afforded a private shower pass in his women’s facility told SRLP “there are too many women in the shower room. I wait as long as possible.”<sup>48</sup>

#### **B. Recommendations**

Housing, shower, and strip search policies that fail to acknowledge the complex realities of LGBT women and non-binary persons place them in extreme positions of vulnerability. Moving forward, policies should be implemented to effectuate the case-by-case housing determinations called for by PREA, ensuring that an individual’s preference will be given weight

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<sup>43</sup> National PREA Resource Center, *Is it ever appropriate for a transgender or intersex inmate or resident to be searched by both a male officer and a female officer, the male officer searching the parts of the body that are anatomically male and the female officer searching parts of the body that are anatomically female?* (Oct. 21, 2016) , <https://www.preasourcecenter.org/node/3259>.

<sup>44</sup> SRLP, *It’s Still War in Here*.

<sup>45</sup> PREA 28 C.F.R. Section 115.42(f).

<sup>46</sup> SRLP, *It’s Still War in Here*. All data referenced on file with SRLP.

<sup>47</sup> Materials on file with SRLP.

<sup>48</sup> Materials on file with SRLP.

and their surgery/transition status will not be determinative.<sup>49</sup> All facilities should become equipped to house transgender individuals in men’s and women’s facilities where they feel, and are, safest—whether that is in accordance with their gender, or in specially-designated pods for vulnerable populations, including LGBTQ people, where available under consent decree and desired by the individual. Their placement must be made in a manner that does not restrict their access to programming and good time credit. Facilities that do house transgender individuals based on gender identity should ensure that these individuals are not placed in restrictive housing and that they are fully integrated into the prison population in a manner consistent with their security or classification level.

Housing decisions should also be clearly explained to the individual. If an individual is denied housing according to their stated preference of where they would be safest, they should be informed of the reasoning behind the decision, there should be an ability to appeal determinations made improperly. Decisions should not rest on issues of access to updating identity documents, medical care or diagnosis, or other aspects of identity that are often inaccessible to low-income individuals or individuals in rural or resource-poor areas.

All corrections facilities in which transgender women are housed (men’s and women’s) should also cease relying on segregation and solitary confinement or other forms of restrictive housing to house LGBT prisoners with safety concerns—actions which jeopardize their mental well-being, while also restricting their access to parole, good time credit, and programming.

Finally, the PREA standards should be fully implemented so that transgender and non-binary prisoners are not stripped of their dignity every time they shower or are searched. For searches, the best practice would be to allow transgender prisoners to state, during the intake process, the gender of staff they feel would be safest and most comfortable to conduct any searches, and to have that request respected absent exigent circumstances. For showers, accommodations such as private stalls should be made available and provided to transgender individuals upon request.

## **IV. Incarcerated LGBT Prisoners are at Greater Risk of Experiencing Sexual Violence in Custody**

### **A. Background**

The Eighth Amendment’s proscription on cruel and unusual punishment in the form of sexual violence remains theoretical for far too many incarcerated LGBT prisoners, including

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<sup>49</sup> Clear policies on housing are needed here because when they are absent, transgender women usually end up being placed by default in a men’s facility or unit based on their genitalia or sex-assigned at birth. These placement practices have helped to produce the extremely high abuse rates for this population.

women. The heightened threat of sexual abuse that LGBT people face in carceral institutions has been well known for decades, since at least the Supreme Court’s 1994 decision in *Farmer v. Brennan*. Indeed, “[r]esearch on sexual abuse in correctional facilities consistently documents the vulnerability of men and women with non-heterosexual orientations (gay, lesbian, or bisexual) as well as individuals whose sex at birth and current gender identity do not correspond (transgender or intersex).”<sup>50</sup>

## **1. Sexual Violence Against LGB Women in Prison**

Incarcerated bisexual women face higher rates of sexual violence from other inmates than heterosexual women. In the first National Former Prisoner Survey in 2008, Bureau of Justice Statistics (“BJS”) determined that, of incarcerated women, 18% of bisexual women reported sexual victimization by other inmates, compared to 13% of lesbian women and 13% of heterosexual women.<sup>51</sup> Data from the National Inmate Survey evaluated by the Williams Institute combined the data for lesbian and bisexual women and found that 11.4% of lesbian and bisexual women reported sexual assault from another inmate, compared with 4.5% of heterosexual women.<sup>52</sup>

LGB women often cannot rely on correctional officers to protect them from sexual violence because correctional officials themselves are at times also involved in the sexual violence. Of formerly incarcerated women in state facilities, the rate of sexual victimization of both bisexual and lesbian women *by staff* was double that of heterosexual women; 8% of bisexual women and 8% of lesbian women reported experiencing sexual misconduct by state prison staff compared with 4% of heterosexual women.<sup>53</sup>

## **2. Sexual Violence Towards Transgender Women in Prison**

Transgender people report even higher levels of harassment and violence by fellow inmates than even LGB women. Because transgender women (and gender non-conforming and intersex people) housed in men’s facilities are often highly visible, they are frequent targets for violence and brutality.<sup>54</sup> According to the combined National Inmate Surveys, incarcerated transgender people face 10 times the rate of sexual violence from other inmates than their cisgender peers: 24.1% of transgender people in state and federal prisons and 22.8% in jails

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<sup>50</sup> Nat’l Prison Rape Elimination Comm’n Report 73 (2009), <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

<sup>51</sup> Allen J. Beck & Candace Johnson, Bureau of Justice Statistics, *Sexual Victimization Reported By Former State Prisoners 2008*, (2012), <http://bjs.ojp.usdoj.gov/content/pub/pdf/svrfsp08.pdf> at 5 (“Sexual Victimization”).

<sup>52</sup> Meyer, *Incarceration Rates and Traits* at Table 3.

<sup>53</sup> Beck & Johnson, *Sexual Victimization* at 16.

<sup>54</sup> Bassichis, *It’s War in Here* at 17.

reported being sexually assaulted by another inmate,<sup>55</sup> compared to about 2.0% for the general prison and jail population.<sup>56</sup> A 2007 study of California state prisons found the rate of sexual assault among transgender inmates to be 13 times that of the general inmate population.<sup>57</sup>

Passion Star, a transgender woman incarcerated in Texas state prison and housed in seven male facilities was persistently threatened with violence by male inmates if she did not provide sexual favors, was repeatedly and viciously assaulted by inmates when she resisted, reported the abuse to correctional authorities (risking greater harm to herself) and was publicly called a “snitch” by correctional officers, subjecting her to additional violence from other inmates. In one facility, she received threats from inmates demanding she perform sexual acts, was placed in a cell with a person who sexually propositioned her, and after a guard ignored her pleas to be moved to a different cell, her cellmate threatened her with a knife, held her down, and raped her.<sup>58</sup> In another facility, an inmate whose threats and demands she’d resisted “slashed [her] face with a razor while [she] struggled,” and called her a “snitching faggot,” as others watched.<sup>59</sup> Other incarcerated transgender women who have shared their stories also report that correctional officials either implicitly permitted or actively participated in the abuse.<sup>60</sup>

Correctional staff themselves perpetrate sexual violence against incarcerated transgender people. BJS has found that 16.7% of transgender people in state and federal prisons and 22.9% in jails reported being sexually assaulted by facility staff<sup>61</sup> compared to 2.4% of all persons incarcerated in state and federal prison and 1.8% of those in jail.<sup>62</sup>

Bianca, a transgender woman housed in a men’s facility in New York reported, “[t]he correctional officers are the ones who are the most violent.”<sup>63</sup> “I was in full restraints when the correctional officers assaulted me.”<sup>64</sup> Understandably, she was afraid to file complaints against the officers who committed the sexual assaults.<sup>65</sup>

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<sup>55</sup> Beck & Johnson, *Sexual Victimization, Supplemental Tables* at Table. 2.

<sup>56</sup> Beck & Johnson, *Sexual Victimization* at 10.

<sup>57</sup> Jenness, *California Correctional Facilities* at 3.

<sup>58</sup> Declaration of Passion Star para. 11, *Zollicoffer v. Livingston*, S. D. Tex. No. 14-cv-03037, [https://www.lambdalegal.org/in-court/legal-docs/star\\_tx\\_20150304\\_affidavit\\_of\\_passion\\_star](https://www.lambdalegal.org/in-court/legal-docs/star_tx_20150304_affidavit_of_passion_star)

<sup>59</sup> *Id.* at para. 28.

<sup>60</sup> Bassichis, *It's War in Here* at 22.

<sup>61</sup> Beck & Johnson, *Sexual Victimization*, Supp. Tbls. at Tbl. 2.

<sup>62</sup> Beck & Johnson, *Sexual Victimization* at 6.

<sup>63</sup> Bassichus, *It's War in Here* at 17.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

## B. Recommendations

In order to make the Eighth Amendment’s proscription on cruel and inhuman punishment a reality for incarcerated LGBT women, corrections departments must find a way to end the scourge of sexual violence against them by inmates and officers. Agencies can begin by fully implementing the PREA Standards, including its policies on screening individuals for vulnerabilities and making housing decisions to prevent sexual assault from occurring. If an assault occurs, correctional departments should ensure that victims have access to, and receive, high-quality medical care (including mental health care), and that bias or stigma by an official does not prevent victims from accessing care.<sup>66</sup> Victims should also be given multiple avenues to make confidential complaints, which should be thoroughly investigated, and the results fully communicated to complainants. Corrections officers must also be fully trained on their responsibility to stop preventable sexual assault, and there must be zero tolerance for officers who abuse or harass LGBT persons in their custody.

## V. Challenges that LGBT Prisoners Face When Accessing Healthcare

### A. Background

#### 1. Transgender Inmates Are Frequently Denied Access to Gender Dysphoria Care

Even though the U.S. Constitution furnishes LGBT people the right to receive medical treatment behind bars—including treatment for gender dysphoria<sup>67</sup>—the healthcare needs of LGBT prisoners are frequently ignored. Healthcare deprivations in the transgender community are frequent as well as dire: in recent years, the Signatories have received hundreds of requests from transgender prisoners nationwide who were wrongfully refused gender dysphoria care.<sup>68</sup> In a 2015 survey of nearly 300 inmates self-identified as transgender, less than 25% were receiving

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<sup>66</sup> See generally, Amicus Brief submitted in *Lucas v. Chalk*, 6th Cir. No. 18-14096 (Jan. 22, 2019), [https://www.lambdalegal.org/in-court/legal-docs/lucas\\_tn\\_20190122\\_brief-of-amici-curiae](https://www.lambdalegal.org/in-court/legal-docs/lucas_tn_20190122_brief-of-amici-curiae).

<sup>67</sup> The U.S. Government has affirmed that transgender prisoners have a right to comprehensive gender-dysphoria treatment pursuant to the Eighth Amendment. See Statement of Interest of the United States at 17, ECF No. 29, *Diamond v. Owens*, 5:15-cv-50-MTT (M.D. Ga. 2015) (“Diamond SOI”) (affirming the constitutional right to comprehensive gender-related care). Courts have repeatedly done the same. See, e.g., *Diamond v. Owens*, 131 F. Supp. 3d 1346, 1371–75 (M.D. Ga. 2015) (sustaining transgender woman’s Eighth Amendment healthcare claim against Georgia); *Kothmann*, 558 F. App’x at 912 (describing the constitutional right to gender dysphoria care behind bars as well-settled); *De'lonta v. Johnson*, 708 F.3d 520, 525–26 (4th Cir. 2013) (providing “some treatment” for gender dysphoria instead of complete treatment can constitute an Eighth Amendment violation); *Fields v. Smith*, 653 F.3d 550, 554–59 (7th Cir. 2011) (barring state from restricting the provision of gender dysphoria care behind bars); *Phillips v. Mich. Dep’t of Corr.*, 932 F.2d 969 (6th Cir. 1991) (same); *Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1195 (N.D. Cal. 2015) (ordering state to provide transgender inmate gender dysphoria care including gender-confirmation surgery); *Edmo v. Idaho Dep’t of Corr.*, 1:17-CV-00151-BLW, 2018 WL 6571203, \*\*16–19 (D. Idaho Dec. 13, 2018) (same).

<sup>68</sup> Statistics on file with Counsel for the Signatory Organizations.

gender dysphoria treatment that conformed with medically-accepted standards of care.<sup>69</sup> And prisoners who received hormone therapy were frequently denied other equally-crucial forms of care, including surgery and “social transition,” i.e. allowances concerning gender expression, grooming, and dress.

Transgender prisoners who are denied access to comprehensive gender dysphoria care often experience mental and physical anguish including depression, suicidality, and the compulsion to engage in self-harm and self-surgery, including attempted castration in the case of transgender women.<sup>70</sup> Ashley Diamond, the transgender rights activist who made national headlines in 2015 when she successfully challenged Georgia’s policy of denying hormone therapy to transgender inmates, experienced these devastating side-effects first hand—repeatedly attempting suicide and self-surgery during the period she was refused hormone therapy.<sup>71</sup>

Inmates denied social-transition care suffer a similar fate: For instance, after Georgia prison officials prohibited transwoman Robbin Amanda Bayse from expressing her gender and seized her makeup as contraband, Robbin became suicidal, repeatedly tried to castrate herself, and used a sharp object to carve thin, arched eyebrows permanently on to her face.<sup>72</sup> Likewise, Vicky, a transgender woman incarcerated in Florida, reported feeling suicidal, hopeless, and at the edge of “the abyss” after officials denied her social-transition care. As she explains:

The agony the dysphoria engenders on a daily basis is too excruciating. For me the quality of life triumphs any quantity of days, and if I cannot live consistent with my identity as a woman *then I chose not to live*, as the essence of my being will have been eviscerated.<sup>73</sup>

Even corrections departments that nominally comply with the law frequently make information concerning treatment virtually inaccessible. For instance, 59% of respondents surveyed by SRLP in 2017 reported they had never seen the governing documents for transgender-specific healthcare while incarcerated in New York State. For those who had actually seen applicable policies, the majority (79%) became aware solely through legal

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<sup>69</sup> The World Professional Association for Transgender Health’s Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (the “WPATH Standards”) are the definitive protocol on the treatment of gender dysphoria inside and outside of prison. Id., see also Diamond SOI at 8. According to the WPATH Standards, the accepted course of treatment for gender dysphoria typically involves hormone therapy to feminize or masculinize the body; changes in gender expression, grooming, and dress to affirm one’s gender identity; and surgery to change primary and/or secondary sex characteristics where medically indicated. WPATH Standards at 9-10.

<sup>70</sup> WPATH Standards at 68.

<sup>71</sup> See Deborah Sontag, *Transgender Woman Cites Attacks and Abuse in Men’s Prison*, N.Y. Times, Apr. 5, 2015, <https://www.nytimes.com/2015/04/06/us/ashley-diamond-transgender-inmate-cites-attacks-and-abuse-in-mens-prison.html>

<sup>72</sup> Ms. Bayse is referred to herein by her chosen name. Materials on file with Counsel for Signatories.

<sup>73</sup> Pseudonym used for confidentiality purposes. Materials on file with Counsel.

advocacy organizations like SRLP.<sup>74</sup> The process for obtaining diagnoses and initial evaluations is also closely guarded—practices which further limit the ability of transgender individuals to access care behind bars.<sup>75</sup>

## **2. Prison Mental Health Services Are Grossly Deficient**

Mental health care services are also woefully inadequate for LGBT prisoners—including victims of sexual assault suffering post-traumatic stress disorder (“PTSD”).<sup>76</sup> More than half of the LGBT prisoners surveyed in 2015 lacked access to counseling and therapy services.<sup>77</sup> And even when mental health services were actually provided, nearly 20% of those surveyed had experienced anti-LGBT bias from the providers.<sup>78</sup> LGBT people behind bars also had trouble accessing specialized psychiatric treatment—with 36% reporting they lacked access to needed medication, while another 30% of inmates were forced to take medications that were poorly suited to their actual health needs.<sup>79</sup>

## **3. HIV/AIDS Treatment is Often Inadequate**

Unsurprisingly, LGBT people also face significant barriers when it comes to accessing HIV/AIDS-related care behind bars. Inmates are routinely forced to bear the costs of their medicine and doctors visits: charging fees as high as a hundred dollars for basic care.<sup>80</sup> Oftentimes these fees were prohibitive—forcing them to go without life-saving treatment.<sup>81</sup> Eight percent of individuals with HIV/AIDS surveyed in 2015 were not receiving any medication whatsoever.<sup>82</sup>

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<sup>74</sup> See generally SRLP, *It's Still War in Here*. Access to information is particularly critical as the United States tends to have long mandatory sentences including life sentences. Over a quarter of the respondents to SRLP’s 2017 survey were facing a sentence of 25 years to life and the average age of respondents was 44. For individuals who transition later in life or who did not have access to transgender related information while outside, it is crucial to be made aware of options including both how to get a diagnosis and what medical possibilities exist. For example, 62% of respondents in SRLP’s 2017 survey—including all transgender male respondents—received their diagnosis after going to prison.)

<sup>75</sup> *Concrete Closets* at 4 (noting that 67% of trans prisoners surveyed in 2015 were still awaiting diagnosis).

<sup>76</sup> *Concrete Closets* at 48-49, 54.

<sup>77</sup> *Concrete Closets* at 48-49.

<sup>78</sup> *Concrete Closets* at 48-49.

<sup>79</sup> *Concrete Closets* at 49.

<sup>80</sup> *Concrete Closets* at 5, 47 (reporting that 81% of inmates were assessed fees for health care).

<sup>81</sup> *Concrete Closets* at 5.

<sup>82</sup> *Concrete Closets* at 47.

Substantial proportions of incarcerated people affected by HIV are female,<sup>83</sup> black, or Latino. For women prisoners, the prevalence of HIV is significantly higher than in the U.S. population as a whole.<sup>84</sup> While approximately one percent of both incarcerated men and incarcerated women are living with HIV,<sup>85</sup> this represents a significant overrepresentation of women with HIV in the prison population, because men account for approximately three times as many cases of HIV as do women in the general population.<sup>86</sup>

Like their male counterparts, women prisoners often have substance abuse problems that place them at higher risk for HIV.<sup>87</sup> Additionally, almost half of women in U.S. jails and prisons have historically reported physical or sexual abuse prior to their incarceration.<sup>88</sup> The disproportionate representation of women of color in prison, combined with the disproportionate impact of HIV on women of color, contributes to a higher prevalence of HIV among incarcerated women.<sup>89</sup>

Although prison systems do not collect accurate data regarding transgender inmates, it may be assumed that the disproportionate impact of HIV and rate of incarceration of transgender people in general would lead to a high prevalence of HIV among incarcerated transgender people as well.<sup>90</sup> Transgender people confront high rates of unemployment, underemployment, homelessness, and marginalization, which often force them to work in underground economies, including sex work.<sup>91</sup> In the United States, one in six transgender people report a history of incarceration, and nearly half of black transgender women have been incarcerated. As mentioned

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<sup>83</sup> Statistics identifying prisoners as male or female or as men and women often miscategorize transgender men and women. Because accurate data about transgender people in prison are not collected in most prison systems, many of the statistical statements are slightly skewed by these miscategorizations.

<sup>84</sup> Theodore M. Hammett & Abigail Drachman-Jones, *HIV/AIDS, Sexually Transmitted Diseases, and Incarceration Among Women: National and Southern Perspectives*, 33 *Sexually Transmitted Diseases* S17–S22 (2006); see also Theodore M. Hammett et al., *National Institute of Justice, CDC, & Bureau of Justice Statistics, 1996–1997 Update: HIV/AIDS, STDs, and TB in Correctional Facilities* 10–11 (1999) (rate of HIV infection is higher among women in almost all of the correctional systems surveyed).

<sup>85</sup> Laura M. Maruschak & Jennifer Bronson, Bureau of Justice Statistics, *HIV in Prisons, 2015 – Statistical Tables at 4* (Aug. 17, 2017), available at <https://www.bjs.gov/content/pub/pdf/hivp15st.pdf>.

<sup>86</sup> Scott Skinner-Thompson, AIDS and the Law Chp. 14-4 (2019)

<sup>87</sup> E. Ann Carson, Ph.D., Bureau of Justice Statistics, *Prisoners in 2013* at Table 13 (revised Sept. 30, 2014), available at <http://www.bjs.gov/content/pub/pdf/p13.pdf>.

<sup>88</sup> Caroline Wolf Harlow, U.S. Dep't of Justice, Bureau of Justice Statistics, *Prior Abuse Reported by Inmates and Probationers* 1 (1999); see also J. Stevens et al., *Prevalence of Prior Sexual Abuse and HIV Risk-Taking Behavior in Incarcerated Women in Massachusetts*, 2 *J. Corr. Health Care* 2 (1995) (study of women prisoners in Massachusetts found an increased risk for HIV infection among women with past histories of sexual abuse).

<sup>89</sup> See Peter M. Brien & Caroline Wolf Harlow, U.S. Dep't of Justice, *HIV in Prisons and Jails* at 1 (1995).

<sup>90</sup> Skinner-Thompson, AIDS and the Law Chp. 14-5.

<sup>91</sup> 14T. Poteat et al., *HIV risk and preventive interventions in transgender women sex workers*, 385 *The Lancet* 274 (2015); see also L.S. Rubenstein et al., *HIV, prisoners, and human rights*, 388 *The Lancet* 1202, 1206 (2016).

above, in surveys conducted by the Bureau of Justice Statistics from 2007 to 2012, 34% of adult transgender respondents reported sexual victimization from other prisoners or from correctional staff.<sup>92</sup>

## B. Recommendations

To fulfill their Eighth Amendment obligations, corrections departments must furnish LGBT prisoners comprehensive medical care, including medical and surgical care related to gender dysphoria, treatment for HIV/AIDS, and a full-menu of mental health services, including for prisoners with PTSD. Prison healthcare services should also be provided at low or no cost to ensure that poverty does not serve as a barrier to accessing care.

## VI. Additional Issues Unique to Incarcerated LGBT People Warrant Attention

In this letter, the Signatories aimed to identify a number of the major challenges for, and frequent abuses of the rights of, incarcerated LGBT women and non-binary people. However, the above outlined issues are not, and should not be considered, exhaustive. Additional issues unique to incarcerated LGBT women and non-binary people also warrant attention by the Commission which we have been unable to sufficiently address in this letter.

For example, research shows that incarcerated LGBT people are treated more harshly by staff for the same behavior, compared to incarcerated non-LGBT people.<sup>93</sup> Touching by or between LGBT people is often perceived by staff to be sexual and triggers a harsher response, when the same action by a non-LGBT person is not seen in the same way or is punished less harshly. Similarly, incarcerated LGBT people may face discipline for failing to abide by gender norms in their attire or gender expression.<sup>94</sup> This is likely further exacerbated for LGBT people of color given that research also suggests that people of color are particularly at risk and are confined in long-term isolation at higher rates than their white counterparts.<sup>95</sup>

Relatedly, “because of sex segregation in carceral institutions, ... sexual minority inmates are more likely than are straight inmates to have consensual sex with other inmates.”<sup>96</sup> This consensual sexual contact often violates the rules of facilities in which LGB women are

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<sup>92</sup> Beck, *Sexual Victimization, Supplemental Tables*, at Table 1; see also L.S. Rubenstein et al., HIV, prisoners, and human rights, 388 *The Lancet* 1202, 1206 (2016).

<sup>93</sup> Sarah Bergen et al., *Toward Equity: A Training Curriculum for Understanding Sexual Orientation, Gender Identity, and Gender Expression, and Developing Competency to Serve LGBT Youth in the Juvenile Justice System*, The Equity Project, (2015).

<sup>94</sup> Meyer, *Incarceration Rates and Traits*, at 239.

<sup>95</sup> Beck, *Use Of Restrictive Housing In U.S. Prisons And Jails, 2011–12*.

<sup>96</sup> Meyer, *Incarceration Rates and Traits*, at 239.

housed.<sup>97</sup> As a result, incarcerated sexual minority women “are routinely punished for such behavior, with consequences that can affect parole, housing, access to programs, and family visitation.”<sup>98</sup> While sexual contact between incarcerated women may raise safety concerns when officials cannot determine whether coercion is involved, it is important to recognize when contact is consensual because “the risks of over-policing consensual behavior ought not to be ignored.”<sup>99</sup>

Each of these above-mentioned issues merit the attention of the Commission. And there may be additional issues that incarcerated gender and sexual minorities face which this letter does not address. The issues mentioned in this letter are not exhaustive of the challenges unique to incarcerated gender and sexual minorities.

## VII. Conclusion

LGBT individuals are significantly overrepresented in prisons and jails; therefore, no discussion of women in prisons and jails is complete without consideration of their experiences and needs. Rather, their experiences should be central to this conversation, and any recommendations for reform. Given the discrimination, coercion, and harassment that LGBT prisoners face on a daily basis, training and interventions are desperately needed. The above-mentioned recommendations draw from the Signatories collective experience and are an attempt to chart the way forward. Therefore, we ask that they receive the full consideration of the Commission.

For questions or further information, please contact Puneet Cheema, Staff Attorney at Lambda Legal at [PCheema@LambdaLegal.org](mailto:PCheema@LambdaLegal.org) or at (202) 804-6245, extension 596.

Respectfully Submitted,

Lambda Legal Defense and Education Fund, Inc.

The Center for Constitutional Rights

The Sylvia Rivera Law Project

The National Center for Transgender Equality

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> Meyer, *Incarceration Rates and Traits* at 239.

The Movement Advancement Project

The National Center for Lesbian Rights

The National Trans Bar Association

The National LGBTQ Task Force

The Transgender Legal Defense and Education Fund

The National Network of Community Advocacy

Just Detention International

Southern Poverty Law Center

Transcending Barriers

Black and Pink

## **Appendix A: List of Signatory Organizations**

1. **Lambda Legal Defense and Education Fund, Inc.** (“**Lambda Legal**”) is the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people, and everyone living with HIV through impact litigation, education, and public policy work. Lambda Legal was founded in 1973 and has offices in California, New York, Illinois, Texas, Georgia, and Washington, D.C. Lambda Legal has appeared as counsel in the following cases on behalf of incarcerated transgender people: *Rosati v. Igbinoso*, 791 F.3d 1037 (9th Cir. 2015) (reversing dismissal of a transgender prisoner’s complaint alleging that denial of gender-confirming surgery constituted cruel and unusual punishment in violation of the 8th Amendment); *Fields v. Smith*, 712 F. Supp. 2d 830 (E.D. Wis. 2010), *aff’d*, 653 F.3d 550 (7th Cir. 2011) (challenging Wisconsin statute that barred treatment for gender dysphoria to transgender inmates); and *Hicklin v. Precynthe*, No. 4:16-CV-01357-NCC, 2018 WL 806764 (E.D. Mo. Feb. 9, 2018) (finding denial of hormone therapy based on a blanket rule, rather than an individualized medical determination, constitutes deliberate indifference in violation of the 8th Amendment).

2. **The Center for Constitutional Rights** (“**CCR**”) is a national, not-for-profit legal, educational and advocacy organization dedicated to protecting and advancing rights guaranteed by the United States Constitution and international law. Founded in 1966 to represent civil rights activists in the South, CCR has litigated numerous landmark civil and human rights cases on behalf of individuals impacted by arbitrary and discriminatory criminal justice policies, including policies that disproportionately impact LGBTQI communities of color and policies that violate the Eighth Amendment’s prohibition against cruel and unusual punishment and cause significant harm to people in prison. CCR successfully mounted a challenge regarding the use of solitary confinement in prisons and jails in its class action *Ashker v. Brown*, No. 4:09-cv-05796-CW (N.D. Cal 2009).

3. **The Sylvia Rivera Law Project** (“**SRLP**”) is a collective organization that works to guarantee that all people are free to self-determine their gender identity and expression, regardless of income or race, and without facing harassment, discrimination, or violence. SRLP is founded on the understanding that gender self-determination is inextricably intertwined with racial, social, and economic justice. We seek to increase the political voice and visibility of low-income people and people of color who are transgender, gender non-conforming, and/or intersex. We believe that in order to create meaningful political participation and leadership, we must have access to basic means of survival and safety from violence. SRLP has been offering direct service, litigation, and organizing support to incarcerated transgender, gender non-conforming, and/or intersex people in prisons and jails in New York State since 2002.

4. **The National Center for Transgender Equality (“NCTE”)** is a non-profit organization devoted to advancing justice, opportunity, and well-being for transgender people through education and advocacy on national issues. Since 2003, NCTE has been engaged in educating legislators, policymakers, and the public, and advocating for laws and policies that promote the health, safety, and equality of transgender people. NCTE has deeply involved since 2009 in federal, state, and local efforts to implement the Prison Rape Elimination Act (“PREA”) and to address the vulnerability of transgender people in confinement settings.

5. **The Movement Advancement Project (“MAP”)** provides independent and rigorous research, insight and communications that help speed equality and opportunity for all. MAP works to ensure that all people have a fair chance to pursue health and happiness, earn a living, take care of the ones they love, be safe in their communities, and participate in civic life. In 2016-2017, MAP, in partnership with many leading LGBT and civil rights organizations, released a groundbreaking series of reports highlighting the challenges facing LGBT people in the criminal justice system entitled “Unjust.”

6. **The National Center for Lesbian Rights (“NCLR”)** is a national non-profit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBT people and their families in cases across the country involving constitutional, civil, and criminal rights. NCLR has a particular interest in promoting equal treatment of LGBT youth and adults in prisons, jails, and detention facilities.

7. **The National Trans Bar Association (“NTBA”)** is a bar association dedicated to promoting the advancement of trans and gender non-conforming legal professionals. NTBA is also committed to expanding formal legal protections and access to legal representation for trans and gender non-conforming people.

8. **The National LGBTQ Task Force (“Task Force”)** is a progressive social justice organization that works toward a society that values and respects the diversity of human expression and identity and achieves equity for all. The Task Force has worked to build power, take action, and create change to achieve freedom and justice for (LGBTQ) people and their families since 1973. Because LGBTQ and gender non-conforming people, especially LGBTQ/GNC people of color, are more likely to be involved in the criminal legal system and are often profiled on the basis of sexual orientation and gender identity in addition to other demographic factors like race, ethnicity and class, addressing the needs of LGBTQ women in prisons and jails is a critical piece of our broader efforts to reform the criminal legal system.

9. **Transgender Legal Defense and Education Fund (“TLDEF”)** is a national civil rights organization committed to achieving full recognition of civil rights of transgender persons in the United States. Since its founding in 2003, TLDEF has represented transgender persons who have been discriminated against in a broad array of contexts in state and federal impact litigation throughout the country. We receive a high volume of correspondence from transgender persons who are incarcerated. They report problems with improper placement in sex-specific housing, safety concerns, sexual assault, health care denials, discrimination and harassment.

10. **The National Network of Community Advocacy** is a coalition of organizations and advocates who have teamed up to address a number of issues including sexual assault; domestic violence; LGBT rights; and criminal justice reform including the use of solitary confinement, the lack of mental health care, and the placement of LGBT persons in jails and prisons where they are vulnerable to sexual abuse.

11. **Just Detention International (“JDI”)**, founded in 1980, is the only organization in the world dedicated exclusively to ending sexual abuse behind bars. JDI works to hold government officials accountable for prisoner rape; promote public attitudes that value the dignity and safety of people in detention; and ensure that survivors of this violence get the help they need. JDI trains staff on sexual abuse prevention and response, educates prisoners about their rights, and creates policies that increase safety for LGBT and other especially vulnerable prisoners. JDI also helps make sure that survivors in detention get the crisis services they need and deserve.

12. **Southern Poverty Law Center (“SPLC”)** is a non-profit civil rights organization dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society. Since its founding in 1971, the SPLC has won numerous landmark legal victories on behalf of the exploited, the powerless, and the forgotten. SPLC was counsel in *Diamond v. Owens*, 5:15-cv-50-MTT (M.D. Ga. 2015) (ending the Georgia Department of Corrections’ policy of denying hormone therapy to transgender inmates on a blanket basis).

13. **TRANScending Barriers** is a Georgia-based, trans-led, non-profit organization whose mission is to empower the transgender and gender non-conforming community through community organizing with leadership building, advocacy, and direct services so that lives can be changed and a community uplifted.

14. **Black and Pink** is a national volunteer organization made up of currently and formerly incarcerated LGBTQI and gender non-conforming people, as well as community members who support them. Black and Pink facilitates pen-pal support for LGBTQI and gender non-conforming people who are incarcerated, distributes a monthly newsletter of primarily

queer/trans prisoner writing, and advocates for specific prisoner needs, including access to transition related healthcare, when possible while also working to abolish the Prison Industrial Complex as a whole. Black and Pink has over 15,000 LGBTQ incarcerated members across the nation and chapters in Boise, Boston, Chicago, New Orleans, New York City, Providence, San Francisco, Seattle, and Southwest Ohio. Black and Pink has a direct interest in the health and safety status of incarcerated persons.

## **Appendix B: Supporting Resources**

- Sandy E. James et al., The Report of the 2015 U.S. Transgender Survey, Nat'l Ctr. for Transgender Equality (2016) ([Link](#))
- Jason Lydon et al., Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey (2015) ([Link](#))
- Christy Mallory et al., Discrimination and Harassment by Law Enforcement Officers in the LGBT Community, Williams Institute (2015) ([Link](#))
- Amnesty Int'l, Stonewalled: Police Abuse and Misconduct Against LGBT People in the U.S. (2005) ([Link](#))
- Sylvia Rivera Law Project, It's War In Here (2007) ([Link](#))
- Ilan Meyer, Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011–2012, AJPH Transgender Health (2017) ([Link](#))
- Movement Advancement Project & Ctr. for Am. Progress. “Unjust” report series. (2016) ([Link](#))
- Nat'l Ctr. for Transgender Equality, Ending Abuse of Transgender Prisoners: A Guide to Winning Policy Change in Jails and Prisons (2018) ([Link](#))
- Nat'l Ctr. for Transgender Equality, LGBTQ Criminal Justice Reform: Real Steps LGBTQ Advocates Can Take to Reduce Incarceration (2018) ([Link](#))
- Nat'l Ctr. for Transgender Equality, LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and Their Legal Rights (2018) ([Link](#))
- Nat'l Ctr. for Transgender Equality, Policies to Increase Safety and Respect for Transgender Prisoners: A Guide for Agencies and Advocates (2018) ([Link](#))
- Sylvia Rivera Law Project, Systems of Inequality: Criminal “In”justice (2016) ([Link](#))
- Sylvia Rivera Law Project, Testimony on Healthcare in NYS Prisons (Oct. 2017) ([Link](#))