

Once in immigration detention, LGBTQ and HIV-positive immigrants face denial of basic health care, solitary confinement, and sexual and physical violence. Immigrants can spend months and even years in detention fighting their deportation. With no right to appointed counsel in immigration proceedings, LGBTQ and HIV-positive immigrants often must engage in one of the most important fights of their lives alone, in an adversarial court setting against trained ICE prosecutors.

LGBTQ immigrants seeking lawful status in the U.S., whether detained or not, face an uphill struggle. Those seeking asylum, a common form of relief sought by LGBTQ immigrants, can be thwarted by the requirement that asylum be sought within a year of arriving in the U.S. For LGBTQ immigrants first arriving in the U.S., one year can prove to be insufficient time to gain even basic stability—; shelter, food, and employment can remain out of reach.

LGBTQ people seeking forms of family-based immigration relief can find themselves with few options, since many LGBTQ people face rejection from their birth family and are involved in family formations that do not fit the requirements immigration authorities impose. The recent changes in recognition of same-sex marriage by the federal government provide potential immigration benefits only for the relatively small number of LGBTQ immigrants who are partnered with U.S. citizens.

Employment-based immigration is a virtual impossibility for the vast majority of immigrants, and is especially out of reach for LGBTQ people who face employment discrimination. Even if they are able to overcome the obstacles to stable employment they face by virtue of their status as LGBTQ, their health status, and their lack of lawful immigration status, LGBTQ and HIV-positive immigrants can use employment as a conduit to lawful immigration status in only the rarest of cases.

“ Once in immigration detention, LGBTQ and HIV-positive immigrants face denial of basic health care, solitary confinement, and sexual and physical violence ... With no right to appointed counsel in immigration proceedings, LGBTQ and HIV-positive immigrants often must engage in one of the most important fights of their lives alone, in an adversarial court setting against trained ICE prosecutors.”

With comprehensive immigration reform efforts stalled, and deportations reaching record numbers, many LGBTQ and HIV-positive immigrants live in a constant state of fear and anxiety. By centering the experiences of LGBTQ and HIV-positive immigrants in crafting and revising current policies, however, some clear avenues for change emerge. For most, lawful status and the protections it provides are not currently an option. Thus, the question that must guide policy changes is how to reduce the harms associated with lack of lawful immigration status for LGBTQ and HIV-positive immigrants.

ANGÉLICA CHÁZARO

Immigration Attorney and Professor, University of Washington School of Law

Immigration, border, and security-related enforcement impact the lives of hundreds of thousands of people living in the U.S., including LGBT and people living with HIV (PLWH). The Williams Institute estimates there are at least 267,000 undocumented LGBT immigrants in the U.S.⁸² While few data are collected regarding the number of LGBT immigrants who are currently in detention or facing removal proceedings, advocates serving LGBT communities receive hundreds of requests for help per year from LGBT immigrants, many facing or in detention, and note that “LGBTI people make up a significant percentage of those detained in immigration detention and holding facilities.”⁸³ Because of widespread police profiling, selective and discriminatory law enforcement practices, false or dual arrest when seeking protection from violence, poverty, and a history of discriminatory immigration enforcement against LGBT people and PLWH,⁸⁴ LGBT immigrants often come into high rates of contact with law enforcement and immigration authorities.

This structural targeting of LGBT persons and PLWH is exacerbated by policy shifts in the past decade that have authorized a new role for local and state law enforcement agencies in federal immigration enforcement through programs like the S-Comm program and the Criminal Alien Program (CAP).⁸⁵ Advocates estimate that almost 70% of the 420,000 persons detained by Immigration and Customs Enforcement (ICE) in 2012 were held in state and local facilities.⁸⁶ Overall, the number of persons detained has increased dramatically in recent years as has the cost:⁸⁷ the number of detention beds maintained by law has increased to 34,000 a year, with this number being reauthorized annually during the appropriations process.

In March 2014, in response to significant pressure from immigrant rights groups, civil rights and labor advocates, and members of Congress—including the Congressional Hispanic Caucus, among others—President Obama ordered a review of his Administration’s deportation policy, which has already led to the deportation of nearly 2 million people since 2008.⁸⁸ Such mass deportations of undocumented people have been widely questioned and criticized by members of Congress, advocacy organizations, and immigrant rights and LGBT groups.⁸⁹

People who are LGBT and/or living with HIV in immigration detention report high incidence of sexual abuse, assault, transphobic and homophobic harassment, routine use of solitary confinement and restrictive housing, lack of adequate medical care, neglect, discrimination, and abuse at the hands of staff in immigration detention facilities.⁹⁰ Additionally, the one-year deadline for filing claims for asylum puts this particular form of immigration relief out of reach for one in five persons fleeing persecution. For LGBT people, this time limit may prove to be an even greater barrier due to reluctance to come forward based on experiences of discrimination at the hands of government authorities both prior to and after arrival in the U.S.⁹¹



Boston Community Church comes out against Secure Communities, October 2011. IMAGE: BLACK AND PINK

RECOMMENDATIONS:

- The Department of Homeland Security (DHS) should end S-Comm and CAP, along with other ICE ACCESS programs that require information sharing between local law enforcement agencies and federal immigration authorities, and shift immigration enforcement duties to local law enforcement agencies.
- The Department of Justice (DOJ) and the Administration should work with Congress to remove the one-year application deadline for asylum application.
- DOJ should ensure that asylum applicants are not detained while their applications are pending.
- The Administration should support and promote the elimination of annual deportation and detention quotas, and should clarify that ICE's 34,000 "bed quota" does not mandate ICE to fill the Congressionally authorized detention beds.
- The Administration should enact a moratorium on deportations.
- DOJ and DHS should prioritize the development and implementation of alternatives to detention, and the release of individuals in removal proceedings on their own recognizance. Release for all LGBT individuals should be prioritized to the maximum extent possible. ICE should specifically provide alternatives where existing community-sponsored alternative-to-detention programs are run by the U.S. Conference of Catholic Bishops (USCCB), and generally seek to include LGBT-friendly agencies so that LGBT immigrants who cannot be housed safely in detention may be released.
- The Administration should support and promote legislative changes that would increase discretion to immigration judges to make individualized custody determinations based on flight and safety risks, to set bonds, or to order a less restrictive form of custody.⁹²
- The Administration should develop, support and promote legislation that would eliminate the ban on entry and immigration based on prior involvement in prostitution or drug-related offenses.
- The Administration should seek to amend the Deferred Action for Childhood Arrivals (DACA) program requirements to eliminate the "serious misdemeanor" disqualification ground for youth who would otherwise be eligible.
- The Administration should seek to amend DACA program requirements to eliminate the age requirement for eligibility.
- DHS should require specialized and culturally appropriate training conducted by community-based advocates and experts, of at least eight hours annually, on LGBT and HIV issues arising in detention, for all staff in any facility in which ICE holds LGBT immigrants.

LGBTI people make up a significant percentage of those detained in immigration detention and holding facilities.

VIOLENCE AND ABUSE AGAINST LGBT AND PLWH IN FEDERALLY FUNDED IMMIGRANT DETENTION FACILITIES

Sexual abuse and violence are a pervasive part of the larger pattern of abuse faced by all detainees in federally controlled immigrant detention facilities, and particularly impact LGBT detainees.⁹³ The Center for American Progress reports that LGBT people are 15 times more likely to be assaulted in detention than non-LGBT people.⁹⁴

A November 2013 report by the Government Accountability Office (GAO) documented 215 allegations of sexual abuse and assault in ICE facilities between October 2010 and March 2013, and cautioned that “ICE data did not include all reported allegations. For example, the GAO was unable to locate an additional 28 allegations detainees reported to the 10 facilities it visited—or 40% of 70 total allegations at these 10 facilities—because ICE field officials did not report them to ICE headquarters.”⁹⁵

The GAO report identified many deficiencies in the operation of DHS detention systems with respect to handling complaints of sexual abuse and assault.⁹⁶ The report also documented the existence of several sets of standards governing the operation of immigration detention facilities, each with slightly different sexual abuse and assault provisions.⁹⁷ GAO called on ICE to clarify in contracts with each facility which standards govern. In March 2014, DHS finalized its PREA rule for facilities holding immigration detainees. The rule provides significant tools for combating sexual abuse in detention but falls short in key areas when it comes to protecting transgender and intersex detainees, and does not contain a sufficient means of applying the standards to all facilities that hold immigration detainees in a timely manner.⁹⁸

The Center for American Progress reports that LGBT people are 15 times more likely to be assaulted in detention than non-LGBT people.

RECOMMENDATIONS:

- DHS should immediately begin to implement its Final PREA Rule in all facilities that hold immigration detainees, including contract facilities, and should certify full implementation by May 2015.
- DHS should adopt the NPREC recommendation that ICE make case-by-case determinations about whether to release victims and witnesses to sexual assaults in immigration detention by balancing: the danger the detainee may face in custody; the ability of the facility to protect that detainee without transferring or isolating him or her; the potential threat the detainee poses to the community; and the burden of monitoring the individual in the community as an alternative. In many cases, it may be safer for the detainee and less burdensome to the facility to release the detainee who has been a victim of or witnessed sexual abuse in custody. The merits of the detainee’s immigration case should not be taken into consideration when making such a determination.⁹⁹ Additionally, DOJ should consider adoption of a similar procedure in Federal Bureau of Prisons (BOP) facilities.¹⁰⁰

- DHS and ICE should implement the recommendations of the GAO Report on Immigration Detention, GAO-14-38.
- DHS should provide comprehensive training for officers and contract facility staff on how to identify and protect vulnerable populations, including LGBT individuals, and ensure that such training is provided by LGBT community-based organizations.
- ICE should ensure that immigration detainees have the ability to report sexual assault easily to staff inside and outside the facility; that they receive immediate medical assistance; and that assault evidence-collection kits are available for medical staff at all facilities.
- DHS should issue guidelines ensuring that all family structures are treated equally and LGBT parents or parents of LGBT children are not discriminated against in terms of access to visits, correspondence, video visiting, and other necessary steps to both ensure the strength of their family and meet the demands placed on them by local Departments of Social Services.
- In consultation with LGBT advocates, ICE should implement its Risk Assessment & Classification Tool (RACT) nationally to improve its ability to determine self-identified LGBT and HIV-positive detainees in the system.



Community United Against Violence (CUAV) organized Women Against S-Comm rally to show that deportation is a women's issue and an LGBTQ issue, San Francisco, 2013. *IMAGE: CUAV*

SEGREGATION AND HOUSING

Transgender detainees are not placed in housing consistent with their gender identity, and like most other LGB detainees, are placed in administrative segregation or protective custody as a routine matter, where they are subject to high rates of isolation, abuse, and discrimination.¹⁰¹ Several studies have shown that people in immigration detention facilities face extended periods of solitary confinement with little recourse to ending this harsh treatment.¹⁰² This problem is particularly acute for LGBT detainees, who are effectively punished for their sexual and/or gender identity.¹⁰³

In September 2013, ICE issued new guidelines governing oversight and procedures for review of people held in administrative segregation and protective custody in immigrant detention facilities, which stated that solitary confinement should be used as a last resort.¹⁰⁴ ICE's guidelines fall short of placing a limit on the length of solitary confinement, leaving many detainees vulnerable to indefinite isolation.¹⁰⁵

RECOMMENDATIONS:

- Given the tremendous harms demonstrated by the use of solitary confinement, DHS and ICE should end the use of solitary confinement for all detainees.
- DHS should put an end to routine placement of LGBT-identified people in restrictive segregation and/or solitary confinement. Consistent with the September 2013 ICE Segregation Directive, detention facilities should not use a detainee's sexual orientation or gender identity as the sole basis for a decision to place the detainee in involuntary segregation.
- ICE should release LGBT detainees based on "special vulnerability" status, as contemplated by ICE's Segregation Directive issued on September 4, 2013.
- All ICE detention facilities should comply with reporting and notice requirements as detailed in the September 2013 ICE segregation directive for detainees held in involuntary administrative segregation. For any segregation of more than 48 hours, require that detainee receives notice and opportunity to contest segregation.
- ICE should be required to issue periodic reports about placements in segregation and continued use of segregation.¹⁰⁶



Silent March to End Stop and Frisk, New York City, June 2012 IMAGE: S. NARASIMHAN

MEDICAL CARE

The 2013 GAO report on immigration detention¹⁰⁷ documented that the Performance-Based National Detention Standards (PBNDS) governing the provision of medical care at immigration detention facilities are not uniformly applied to all ICE detention facilities.¹⁰⁸

Many advocates have documented that LGBT and HIV-positive detainees suffer from poor medical care at immigration detention facilities.¹⁰⁹ A recent lawsuit challenging dangerous medical conditions in a Southern Illinois jail illustrated some of the obstacles that face LGBT people and PLWH in immigration detention facilities. The lawsuit noted that ICE had contracted with a facility that failed to meet its own standards four times, that had live cases of TB and MRSA,¹¹⁰ and in which “requests for medical treatment were repeatedly ignored, showers and restrooms were crusted with mold, drinking water was brown and putrid, jail pods were poorly ventilated, jail uniforms were tattered and soiled, and immigrants had no outdoor recreation or meaningful access to sunlight.” The facility was evacuated and the suit was dismissed.¹¹¹

RECOMMENDATIONS:

- DHS should ensure all detainees receive access to necessary medical care to the same extent that is available to persons outside of immigration detention.
- DHS and ICE should immediately extend the 2011 PBNDS to all facilities which it manages or with which it contracts, and must enforce compliance with these and other applicable medical standards.
- DHS should complete an assessment of medical services available to detainees of all federally operated immigration detention centers to determine whether people detained in these facilities are afforded the same level of care afforded to people in the custody of other BOP facilities, including but not limited to voluntary and confidential screening, evaluation, counseling and treatment for all sexually-transmitted and infectious diseases, and uninterrupted, confidential access to all appropriate medications and therapy, including HIV-related care and hormone therapy, consistent with current federal treatment standards and guidelines. DHS should issue a report for plans to remedy any deficiencies in care by January 2015.
- DHS must ensure that all HIV-positive detainees receive medication immediately upon detention and transfer in a confidential and timely manner, consistent with prescribed timing and dosage.
- DHS must ensure all detainees receive hormone and gender affirming medical treatment in a confidential and timely manner, in accordance with prescribed timing and dosage, and consistent with, but not contingent on, pre-detention treatment.
- DHS should ensure regular and comprehensive training of ICE detention officials in appropriate medical treatment for HIV-positive and LGBT people in detention.

Many advocates have documented that LGBT and HIV-positive detainees suffer from poor medical care at immigration detention facilities.

- DHS should create an independent oversight organization to monitor provision of health care in all facilities that house immigration detainees, including tracking of health care metrics such as morbidity and mortality rates, immunization and preventive health utilization, and other standard measures of quality performance in health care settings.
- DHS should require that health care professionals working in detention facilities report to health organizations, such as the Department of Health and Human Services (HHS), rather than to DHS or for-profit private contractors, so that they may maintain clinical independence.
- DHS should address chronic staffing shortages so that health professionals have adequate time to spend with each patient.
- DHS should ensure that lines of accountability for provision of quality health care to individuals in immigration detention are clear to health professionals, patients, and security personnel.¹¹²
- Because of the strong evidence that confirms the beneficial impact of drug treatment in detention centers, DHS should ensure that all detainees receive screening, diagnosis, and evidence-based treatment for substance use-related conditions, including access to approved opiate replacement therapies.¹¹³

“... the question that must guide policy changes is how to reduce the harms associated with lack of lawful immigration status for LGBTQ and HIV-positive immigrants.”

*Angélica Cházaro
Immigration Attorney and Professor*



Trans Day of Action, organized annually by the Audre Lorde Project, New York City, June 2012 IMAGES: S. NARASIMHAN



May Day LGBTQ contingent, New York City, May 2012 IMAGE: S. LONDON

IMMIGRATION HEARINGS AND ACCESS TO COUNSEL

A 2011 study of immigrant legal representation found that between 2000 and 2010, removal proceedings increased by 50% to 300,000 in New York State alone. Two factors had the largest impact on people in removal proceedings: whether they were detained, and whether they had access to counsel.¹¹⁴ Current law provides for access to counsel in immigration proceedings only at the applicant's expense. Individuals who were not detained were four times more likely to successfully challenge removal, while those who had access to counsel were six times more likely to successfully challenge removal.¹¹⁵ Funded by Congress, the Legal Orientation Program (LOP) allows legal services groups to educate individuals facing removal proceedings on procedures, options and on *pro se* representation. LOP has proven to improve access to information for immigrant detainees, leading to a more fair and efficient process.¹¹⁶

Individuals who were not detained were four times more likely to successfully challenge removal, while those who had access to counsel were six times more likely to successfully challenge removal.

RECOMMENDATIONS:

- The Administration should develop, support and promote statutory change to ensure access to counsel at the government's expense for all indigent immigrants, particularly where facing detention and deportation.¹¹⁷
- In the interim, ICE and DHS should partner with state and local government agencies to fund and provide *pro bono* attorneys for indigent, detained immigrants.
- In the absence of broad-based access to counsel, DOJ's Executive Office for Immigration Review (EOIR) should expand LOP to make it nationally available.

END S-COMM!

DON'T MEND IT

I PLEDGE TO BREAK ICE'S HOLD ON MY COMMUNITY & COUNTRY

JOIN THE EFFORT! SEND A MESSAGE TO THE WHITEHOUSE CALL 202-456-1111 OR TWEET @WhiteHouse #SComm: End it, Don't Mend it. chn.ge/end-scomm'

MORE INFO: ALTOPOLIMIGRA.COM/SCOMM

5 CRIMINALIZATION OF YOUTH

AT TIMES I WALK AROUND
AS A LOADED GUN
A CHILD SEEKING APPROVAL
VALUE AND VALIDATION
FOR SIMPLE FEELINGS

DID I NOT BREATHE?
LIVE UNDER THEIR
ROOF? EAT AND FEED
OVER THEIR TABLES?

AT TIMES THIS VOICE
BECOMING GAGGED
INSIDE WARPED DIMENSIONS
IN WHICH GOD REMAINS

SILENT, FACELESS, AND READY
READY TO PUNISH
READY TO KILL
ONE FOR BEING SELF
ONE FOR BEING BORN



Artwork by Yeniel Hernandez, FL, incarcerated Black and Pink member

There is an emerging literature on the overrepresentation of lesbian, gay, bisexual (LGB) and gender non-conforming (GNC) youth in the juvenile justice system. The numbers, as reported in this section, have helped establish the urgency of meeting the needs of youth following a pathway from family conflict and rejection to homelessness, arrests for survival crimes, and incarceration. At the same time, the numbers obscure the complexities of young people's full stories.

Over the past two years, my staff and I have conducted interviews with 145 straight, LGB, and GNC youth in San Jose, Oakland, New York, Chicago, and New Orleans. Each story brings its own twist. For example, Mark is now a nineteen-year-old gay, white, homeless youth in Chicago. He is from a rural community and lost his mother when he was six. His aunt adopted him but never treated him the same as her own children, leaving him home during vacations and punishing him more severely because she suspected him of being gay. He accumulated a series of drug possession charges in high school and was on probation for three years. After completing high school, he moved to Chicago. However, he is unable to hold a job because he is bi-polar. He doesn't consistently take his medication because it makes him feel cut-off from his emotions. Instead, he self-medicates with marijuana and is chronically homeless, entering a lottery for shelter beds every night that forces him onto the streets when a bed isn't available. Mark

leads a precarious life that leaves him vulnerable to violence and criminal justice involvement.

Other youth that remain at home face challenges that undermine their well-being in more hidden ways. Cazzie is a young black sixteen-year-old living near New Orleans. Like many youth in her area, she is haunted by memories of Hurricane Katrina and losing her grandmother during the months that followed due to health problems that the family attributes to the stress of being displaced. Cazzie has been called a tomboy since she was a little girl and teased by her mother for wearing sweatshirts and playing sports. Conflicts around her gender presentation started escalating when she was in the eighth grade. At that time, Cazzie started a relationship with a boyfriend who was in a gang. She started dealing drugs and driving around town with her new friends. One of the boys was shot and killed on a night when she wasn't out with them. Cazzie was soon after caught on her school campus with pills that she was selling to her friends. She was expelled from school and ultimately transferred to an alternative school that is remedial and fails to challenge her academically. She is currently fighting to get back into her general education high school, but she is vulnerable to the capricious decision making of a principal who is resisting her readmission. Amidst this battle, Cazzie is thankful because her home environment has improved. Cazzie has less conflict with her mother because she has decided to wear more

feminine clothes. But she is clearly stifling her gender expression to maintain peace, a choice that may lead to escalating family tension in the future.

As the federal government pursues policy changes to improve the lives of LGB and GNC youth, remember the large number of youth impacted by families, schools, and the juvenile justice system. But don't forget that these numbers aggregate struggles, both public and private, that real youth live with each day.

ANGELA IRVINE, PH.D.

Director of Research—Oakland, National Council on Crime and Delinquency

“ There is an emerging literature on the overrepresentation of lesbian, gay, bisexual (LGB) and gender non-conforming (GNC) youth in the juvenile justice system ... At the same time, the numbers obscure the complexities of young people’s full stories.”

LGBT youth and youth who are gender non-conforming are significantly overrepresented in the juvenile justice system: approximately 300,000 gay and transgender youth are arrested and/or detained each year, of which more than 60% are Black or Latino/a.¹¹⁸ Native American youth are even more overrepresented in both federal and state juvenile justice systems and receive harsher sentences.¹¹⁹ While LGB and gender non-conforming youth comprise just 5 to 7% of the overall youth population, they represent 13 to 15% of youth who come in contact with the system.¹²⁰

A variety of factors including school push out, family rejection, homelessness, and failed safety net programs contribute to the disproportionately high rates of LGBT young people who come into contact with the juvenile justice system. For Indigenous LGBT and Two Spirit youth, these factors are further exacerbated by the continuing impacts of Indigenous communities’ historical experiences of mandated attendance at Indian residential schools and of mainstream education, which contribute to school push out and criminalization. For these reasons and others, LGBT youth are often criminalized with harsh school sanctions, labeled as sex offenders, detained for minor offenses, and denied due process and basic civil rights.¹²¹

Approximately 300,000 gay and transgender youth are arrested and/or detained each year, of which more than 60% are Black or Latino/a. Native American youth are even more overrepresented in both federal and state juvenile justice systems and receive harsher sentences.

Despite the number of LGBT youth entering the system, schools, law enforcement officers, district attorneys, judges, and juvenile defenders are unequipped to respond to the unique experiences and challenges they face. Further, policies that detain youth for status offenses or divert them into alternative schools and day-placement settings unfairly criminalize them, derail their education, and set off what is often a lifetime of economic insecurity.

HOMELESSNESS AND FOSTER CARE

Research shows that LGBT youth entering the juvenile justice system are most likely to have experienced family rejection, abuse, poverty, failed safety net programs, and homelessness. Family rejection and interfamily conflict stemming from parental refusal to accept a child's sexual orientation or gender identity often force LGBT youth onto the streets. One study found that 39% of LGBT youth were forced to leave their homes because of their sexual orientation or gender identity.¹²²

Homelessness is the greatest predictor of involvement with the juvenile justice system. In order to take care of themselves, homeless youth are more likely to engage in criminalized survival activities such as sex work, drug trade, or theft, and are often subjected to discriminatory policing practices targeting homelessness and routine daily activities such as sleeping, sitting or lying in public spaces. Homeless youth are also at risk for arrest for status offenses such as running away, failing to attend school, and curfew violations that penalize them for being disconnected from unwelcoming families and communities.¹²³

Safety net programs such as foster care are often ill-equipped to support LGBT youth, despite the fact that LGBT youth are much more likely to be placed in foster care than their non-LGBT peers. One study of youth aging out of the child welfare system in three Midwestern states found 23.8% of female respondents and 10.2% of male respondents reported a sexual orientation in a category other than completely heterosexual, and another found that 65% of all LGBT youth had lived in a foster or group home at some point.¹²⁴ Due to the ongoing effects of colonialism and mandated attendance at Indian residential schools in which widespread physical, sexual, cultural and spiritual abuse took place, Native youth experience rates of abuse and neglect twice as high as white children, and are thus much more likely to be placed in foster care.¹²⁵ If placed in foster care outside of their communities, Native youth who are LGBT or Two Spirit are often further harmed by the widespread ignorance and invisibility of Native history, traditions, and identity.

Once in foster care, LGBT youth often flee group homes and foster families because of homophobic and transphobic harassment and abuse. Involvement in the foster care and juvenile legal systems leads to negative health and education outcomes and likely involvement in the adult criminal legal system.¹²⁶ Compared with their heterosexual peers, LGBT youth in juvenile detention are:

- Twice as likely to have been removed from their homes because someone was hurting them.
- Almost twice as likely to have lived in a foster or group home.
- More than twice as likely to have been detained in juvenile facilities for running away from their home or placement.¹²⁷

In 2011, the Department of Health and Human Services' (HHS) Administration on Children, Youth and Families (ACYF) issued guidance on supporting LGBT youth in foster care to child welfare agencies and others who work with foster children. As a next step, additional funding and resources should be made available to further train and support parents and practitioners to meet the unique needs of LGBT youth.¹²⁸ Additionally, Native LGBT and Two Spirit youth in the child welfare and the juvenile justice systems often experience harassment and mistreatment based upon both their heritage or political status and their actual or perceived sexual orientation or gender identity—with little recourse. Effective protections for LGBT youth require significant changes to the systems charged with their care.¹²⁹

RECOMMENDATIONS:

- The Department of Justice’s (DOJ) Office of Juvenile Delinquency and Prevention (OJJDP) should issue guidance discouraging the arrest and detainment of truant and homeless youth simply because they are truant and/or homeless.
- As a follow-up to the 2001 guidance issued by HHS for foster care agencies on eliminating discrimination on the basis of sexual orientation and gender identity, HHS should extend protections against discrimination based on HIV status and marital status in foster care facilities and placements, and provide support to staff and foster families to create safe and welcoming environments for LGBT youth.¹³⁰ HHS should continue to develop programs that foster family acceptance and increase permanency for youth.
- HHS should mandate elimination of exclusions of potential adoptive and foster parents solely because of their sexual orientation, gender identity, or marital status as a condition of receipt of federal funding (no matter which type of organizations states contract with to carry out services with the funding), and expand access to loving, permanent homes.
- HHS should dismantle policies that enable the promotion of gender conformity and/or suppress LGBT youth’s ability to express their sexual orientation and gender identity while in state custody, specifically through clothing and grooming.
- HHS should mandate, as a condition of federal funding, that states ensure that LGBT youth are not required or forced to participate in counseling, reparative therapy, programming or religious activities that condemn LGBT people or enforce heterosexuality or normative gender expressions while in foster care.
- HHS should require child welfare agencies to adopt strict confidentiality policies, specifically with respect to a young person’s sexual orientation, gender identity, and HIV status, including with respect to parents and guardians, as a condition of receipt of federal funding.
- HHS should strengthen home-based interventions to build strong supportive families to reduce LGBT youth homelessness, and support the Reconnecting Youth to Prevent Homelessness Act, which would improve permanency for older foster care youth and all homeless young people, LGBT or otherwise. Where home-based interventions are not possible, HHS should expand independent living programs focused on building skills for independence rather than mandatory group home-based programs that are frequent sites of violence and harm for LGBT youth. All federally supported programs should ensure LGBT youth have decision-making power regarding family reunification or independent living so that they are not relentlessly subjected to abusive homophobic or transphobic family environments.



Trans Day of Action, organized annually by the Audre Lorde Project, New York City, June 2012

IMAGE: S. NARASIMHAN

SCHOOL CLIMATE

Schools are among the most hostile environments for LGBT youth. According to one study, 63.5% of LGBT youth felt unsafe at school because of their sexual orientation, and 43.9% reported feeling unsafe due to their gender expression.¹³¹ LGBT students report extremely high rates of verbal (84%) and physical (40%) harassment at school,¹³² including by school officials and law enforcement officers in schools.¹³³ Transgender youth in particular have been found to be more likely to experience verbal assault or searches by school security and police in schools.¹³⁴ This hostile climate is exacerbated for LGBT youth of color, half

My mom [told the judge I was gay]. She told him I wouldn't go to school and I got kicked out. [But the problem was] I was getting harassed at school. My PO lied and said it wasn't as bad [at school] as it was.

Andrew, a 17-year-old Latino gay male youth¹⁴³

of whom also report often hearing racist taunts and slurs in schools, as well as for American Indian and Alaskan Native students. Eighty-six percent of American Indian and Alaska Native students expressing a transgender identity reported harassment, 51% physical assault, and 21% a sexual assault in school.¹³⁵

While many districts have moved to adopt anti-bullying policies, most are generic and miss an opportunity to adequately protect populations like LGBT youth by failing to enumerate them. Strict anti-bullying policies also have the unintended consequence of punishing victims who may be fighting back or protecting themselves, and often criminalize bullies rather than foster healthier interactions and address the underlying school climate. As such, the response to bullying in schools should never be criminalization, for any youth.¹³⁶

In many cases, schools also lack support systems for LGBT youth such as gay-straight alliances and other welcoming groups, and are virtually devoid of culturally competent mental health supports to help LGBT young people cope with hostile school settings. Some go so far as to ban access to LGBT resources and information, including viewpoint-neutral websites that would provide educational information about sexual orientation and gender identity, and access to supportive online communities.¹³⁷

What's more, zero tolerance school conduct policies and policing of sexuality and gender identity by the adults in schools further isolate LGBT youth and erode the overall school climate. For example, school dress codes that penalize students for wearing gender non-conforming attire unfairly punish non-normative gender identity and expression. Similarly, sanctions against students who express same-sex affection such as kissing or holding hands, where those same behaviors among different-sex partners are accepted as normal adolescent behavior, discriminates against LGB youth.¹³⁸

According to one study, 63.5% of LGBT youth felt unsafe at school because of their sexual orientation, and 43.9% reported feeling unsafe due to their gender expression.

Hostile and unsafe school climates often cause LGBT youth to skip school and in some cases, fight back against physical and verbal assaults, increasing the likelihood that they will come into contact with the juvenile justice system through enforcement of truancy laws or other status offenses through police sweeps, fines, and arrests, or through enforcement of school disciplinary codes by law enforcement agents.