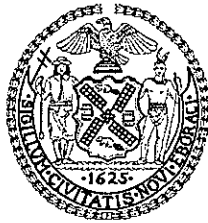


NYCTM
**Administration for
Children's Services**



**The New York City Council,
Committee on Juvenile Justice and Committee on Women's Issues
June 17, 2014**

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

Testimony by

**New York City Administration for Children's Services
Felipe Franco, Deputy Commissioner
Division of Youth and Family Justice**

facilities. Of those, 767 were young women. ACS directly operates two secure detention facilities, Horizon and Crossroads, each of which is co-ed. Youth reside in individual rooms and are assigned to “halls” based on gender. Unlike the two secure detention facilities, DYFJ’s non-secure detention residences are gender-specific. At this time, three out of the 13 non-secure detention facilities operated or contracted by DYFJ are serving young women.

In September 2012, New York City began Close to Home, a juvenile justice reform initiative that allows New York City youth who are found by a Family Court judge to have committed a delinquent act to receive services in or close to the communities where they live. These young people are placed into our custody and receive services at small, resource-rich residential programs in or near the five boroughs. ACS and the New York State Office of Children and Family Services (OCFS), have collaborated with nine local non-profit agencies to implement Non-Secure Placement (NSP), Phase I of Close to Home. Since the initiative began, ACS has provided NSP services to more than 800 youth. Of this total, nearly 300 young people have successfully completed their court order, which ACS divides into two components: residential care and aftercare. In 2013, 392 youth were placed with the NSP program, 114 of whom were young women. Similar to our non-secure detention facilities, non-secure placement residences are also gender specific. Of the 31 NSP sites, 9 serve young women.

While out-of-home placement is a critical component of our system, it should be our last option. As part of our continuum, ACS offers two community-based alternative programs, which allow youth the opportunity to receive services while remaining at home with their families. First, our Juvenile Justice Initiative (JJI) links young people and families with intensive, evidence-based therapeutic interventions aimed at diverting youth from residential placement. JJI is currently serving approximately 29 young women.

In addition, our Family Assessment Program (FAP) serves families seeking to file PINS (Person In Need of Supervision) petitions in the New York City Family Courts. PINS youth are those under the age of 18 who are charged with offenses unique to their status as juveniles, including truancy and running away from home. Through FAP, ACS works closely with youth and their families by using evidence-based interventions. In 2013, we served more than 6,700 families and are currently serving approximately 456 girls throughout the five boroughs.

Understanding the Needs of Young Women

Typically, young women who enter the juvenile justice system are between 14 and 16 years old. As it is both in the City and nationally, fewer females are juvenile offenders—youth who commit a serious felony. In fact, in 2013, only 4% of females in our care were juvenile offenders. Many of the offenses that young women commit, such as assault, appear to stem from anger, challenges within family relationships, impulse control, and trauma. While not all of these are specific only to young women, we have noticed that the young women in our care have challenges expressing emotions constructively, lack positive adult role models, have emotional problems, and have poor relationships with their caregivers.

Our staff report that many young women in our care also struggle with peer pressure and many are also involved in abusive and unhealthy relationships. Some may also be victims of sexual exploitation. ACS recognizes that the vast majority—as high as 90% of young people, regardless of gender, in the juvenile system—have experienced some sort of trauma.

To address this trauma, we strive to have a system that is both informed and responsive. ACS is proud of our partnership with Bellevue Hospital and NYU Langone Medical Center to create and implement trauma-informed screening and care in our secure detention facilities. We are one of the first secure detention system in the country to implement trauma-informed practices and training.

Services and Programs for Young Women in Juvenile Justice Facilities

ACS, along with our providers and partners, provide an array of therapeutic services throughout our continuum which work with young women and families to address relationship issues and promote greater cohesion. In addition, ACS programs build self-esteem, positive self-expression and relationships, and promote health education and life skills creativity.

Within our detention facilities, we have found that young people truly enjoy and thrive when expressing themselves through the arts and humanities. We have partnered with numerous organizations such as Voices Unbroken, which provides weekly writing-based creative workshops and builds literacy skills. We also work with Healing Arts from Montefiore Medical Center to bring together artists and youth to design and paint murals and artwork. Through our partnership with High Five/Art Connection we bring young women to theater and productions as well as museums and other art programs. Our collaboration with Carnegie Hall brings professional musicians to work with youth to compose and produce music, culminating in a concert.

To build life skills and empower young women to reach their full potential, we partner with the Mayor's Office to Combat Domestic Violence, NYU, New York Cares, and Day One, to educate girls about intimate partner violence, various forms of abuse, healthy relationships, and sexual health. We also work with the Girls Scouts Council of Greater New York, which provides financial literacy, leadership development, career exploration, and college preparation workshops. The Columbia University's Literacy Advocacy Program also provides tutoring and develops problem-solving and critical reasoning skills.

Recreational activities are also a critical component of our programming for young women. In addition to a range of arts and humanities programs, we offer weekly one-hour yoga sessions through Yoga for Yoga and the Lineage Project in our detention facilities and with Row New York,

a unique summer program that introduces young women to rowing and provides academic success programming.

Like our detention facilities, our non-secure placement residences also offer supportive services and programming. In 2013, ACS and OCFS convened a monthly group with all NSP providers who work with young women. The providers share concerns, challenges, and offer recommendations and or creative ways on how to work with this population. Providers are encouraged to partner with organizations like Exalt Youth, which offers structured classes, individualized support, and paid internships within placement, and a supportive alumni network to help prevent further justice involvement. Additionally, ACS is collaborating with the Kings County District Attorney's Office in implementing the Gender-Responsive Re-entry Assistance and Support Program (GRASP) and evidence-informed, re-entry program that focuses on transitioning young women from residential placement back into the community. Through GRASP, social workers will work with young women in the facilities to provide gender responsive skill-building groups, individual team and group mentoring, educational advocacy and tutoring, job placement, readiness training, and paid internships.

Supporting Special Populations

ACS supports various special populations, including pregnant and parenting young people; lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth, and sexually exploited youth.

Pregnant/Parenting: Each year, ACS serves a small number of pregnant young women involved, or at risk of being involved, in the juvenile justice system. ACS provides support services to these young women on a case by case basis and refers them to programs such the Nurse Family Partnership, which connects expecting mothers and young mothers to public health nurses from pregnancy until the baby turns two years old.

LGBTQ Youth: ACS is committed to providing a safe, healthy, inclusive, affirming and discrimination-free environment, regardless of sexual orientation, gender identity, and gender expression. We make all efforts to create a safe and supportive environment—from housing to transgender-affirming healthcare. In addition to our comprehensive LGBTQ policy, all of our DYFJ staff are trained on best practices. Beginning at intake, all young people are given an informative palm card and asked optional questions regarding their sexual orientation, gender-identity, and gender expression as well as quality of life issues. This assists staff in developing affirming placement and service plans. At the end of care, case managers, as required by our policy, must seek LGBTQ supportive resources in the community as a component of re-entry planning.

Sexually Exploited Youth: New York State's Safe Harbor law allows Family Court delinquency cases of youth under the age of 17 who are arrested for prostitution to instead be converted to a Person in Need of Supervision (PINS) petition. Conversion to a PINS petition prevents the young victim of sexual exploitation from being prosecuted for prostitution and allows that young person to receive critical support and services. In partnership with our providers and the Department of Youth and Community Development, ACS has developed a comprehensive set of services, which includes specialized juvenile justice placements, preventive services, counseling, and outreach.

ACS contracts with the Jewish Child Care Association (JCCA) whose Gateways program provides intensive trauma-informed services including assessment, therapy, counseling, and aftercare planning specifically designed for young women who are victims of sexual exploitation. For preventive services, ACS also contracts with Mt. Sinai-St. Luke's Roosevelt's New Beginnings program, which works with young people at-risk of or victims of sexual exploitation, and their families. Furthermore, the leading survivor-led Girls Educational & Mentoring Services (GEMS) provides weekly outreach and counseling sessions at our facilities.

Enhancing our Expertise and Capacity to Meet the Needs of Young Women

We can do more to meet the needs of young women in the juvenile justice system, beginning with seeking expertise and partnerships with communities, organizations, and within government. By addressing their needs now, we have the opportunity to make a significant impact and prevent young women from later entering the child welfare system. We welcome the opportunity to work with the Council to expand our work and make a lasting impact on young women. ACS recently met with representatives from the Office of Juvenile Justice and Delinquency Prevention National Training and Technical Assistance Center, who developed the Girls' Delinquency & Crime Initiative. The Center provides specialized training and technical assistance and we anticipate working with them in the coming months to conduct an assessment that will inform the development of a gender-responsive training module and services.

Closing

Thank you for the opportunity to share with you the important work we are doing to address the needs of young people in our juvenile justice programs. We are grateful for all of the support of the Council as we continue to strive to improve services for the City's most vulnerable youth. I am happy to take any questions you may have.



Testimony of

Stephanie Gendell
Associate Executive Director
Citizens' Committee for Children

Before the
New York City Council
Juvenile Justice and Women's Issues Committees

June 16, 2014

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

Good afternoon. My name is Stephanie Gendell and I am the Associate Executive Director for Policy and Government Relations at Citizens' Committee for Children of New York, Inc. (CCC). CCC is a 70-year old independent child advocacy organization dedicated to ensuring that every child in New York City is healthy, housed, educated and safe.

I would like to thank Council Members Cabrera and Cumbo and all of the members of the Juvenile Justice and Women's Issues Committees for holding today's oversight hearing regarding young women in New York City's juvenile justice system.

The need for more data regarding court-involved girls, as well as the need for more staff training and gender-responsive programs and services for girls are issues that CCC has long been concerned about.

In October 2006, CCC released a report entitled, *Girls in the Juvenile Justice System: Understanding Service Needs and Experiences*.¹ The report, based on a literature review, stakeholder interviews and focus groups with youth, highlighted the need to address gaps in data and research, expand the availability of gender-responsive programs and services, provide more staff training, and most importantly, the need to develop a city and statewide plan to better understand the service needs of girls. CCC's recommendations included improved data collection and coordination, more resources for gender-responsive programs and services across the juvenile justice continuum, expanded opportunities for court-involved girls to connect with positive peer and adult female role models and on-going staff training.

While there has been a tremendous amount of juvenile justice reform since 2006, unfortunately today's testimony will be reiterating many of the same recommendations we made in the 2006 report. That said, we remain hopeful that the new Administration, including Commissioners Carrion and Bermudez, as well as Director of the Mayor's Office of Criminal Justice Liz Glazer and Advisor, Vinny Shiraldi, who all have long histories reforming New York and New York City's juvenile justice systems, will take much-needed steps to better address the unique needs of girls and young women in the juvenile justice system.

Young Women/Girls in NYC's Juvenile Justice System

While there has been a tremendous decline in overall youth arrests and incarcerations, both nationally and in New York, the decline has not been as dramatic for girls. At the time of CCC's 2006 report, girls made up less than 20% of the juvenile justice system. According to the most recent publicly available data from the state and city, the percentage of girls has actually increased in the past 7-8 years to about 25-30%.

¹ Citizens' Committee for Children. *Girls in the Juvenile Justice System* is available at <http://www.cccnewyork.org/data-and-reports/publications/ccc-report-girls-in-the-juvenile-justice-system-understanding-service-needs-and-experiences/>.

According to the New York State Division of Criminal Justice Services (DCJS), in 2012, girls comprised 25% (990 out of 3,888) of the petitions filed in Family Court.² Data from ACS show that in 2013, 23% of the children/youth in detention³ were girls (468 of 2,074).⁴ Girls were 25% of the youth in non-secure detention (185 of 726) and 23% of the youth in secure detention (610 of 2,082).⁵ In Close to Home non-secure placement⁶ 27.9% of the youth admitted from September 2012 (the start of Close to Home) until June 2013 were girls (a total of 119 girls out of 427 youth).⁷ On the other hand, of the NYC youth still in state Office of Children and Family Services (OCFS) placements, which by 9/30/13 were mostly secure and limited secure, only 10% of the youth were girls (29 of 302 NYC youth).⁸

With regard to the types of offenses, DCJS's 2012 data presentation does include a comparison of charge types based on gender and it reveals important differences. For example, 48% of the charges for males were personal but 61% of the charges for girls were personal. The majority of the other arrests for girls were property (28%). For boys, property charges were 33% and drug charges were 7%. Only 2% of the charges against girls were drug charges.⁹

National studies have found that girls are more likely than boys to be detained or placed for less serious offenses¹⁰ and that girls in the system often have more service needs than boys.¹¹ Studies have also found that adolescent girls who come into contact with the juvenile justice system report much higher levels of abuse and trauma. Unfortunately, these girls also often report physical and emotional abuse from arrest through detention, including verbal abuse by staff, inappropriate touching, pushing, hitting, isolation, and the deprivation of hygiene supplies.

Experts in juvenile justice have identified the following elements as the components of gender-responsive programming: comprehensive work with girls, families and their communities; safe (promoting healing from trauma caused by abuse); empowering; community and family-focused; and relational.

² Division of Criminal Justice Services, *Juvenile Justice Annual Update for 2012*, May 21, 2013.

³ Youth are detained pre-trial when the Family Court Judge deems they are either a flight risk or risk to the community.

⁴ New York City Administration for Children's Services, *Detention Demographic Data Fiscal Year Report, Fiscal Year 2013*.

⁵ Id.

⁶ Youth are "placed" at the disposition of their trial, which is equivalent to the sentencing in an adult case.

⁷ New York City Administration for Children's Services, *Non-Secure Placement Demographic Data Fiscal Year Report, Fiscal Year 2013*.

⁸ Office of Children and Family Services, *Selected Characteristics of Youth Entering and Leaving OCFS Custody July 13-September 13 or in Custody on September 30, 2013*, New York City.

⁹ Division of Criminal Justice Services, *Juvenile Justice Annual Update for 2012*, May 21, 2013.

¹⁰ Boulton, Melany. *A Look at Girls in the Juvenile Justice System*. August 27, 2012. Watson and Edelman, *Improving the Juvenile Justice System for Girls: Lessons from the States*. Georgetown Center on Poverty, Inequality and Public Policy. October 2012.

¹¹ Watson and Edelman, *Improving the Juvenile Justice System for Girls: Lessons from the States*. Georgetown Center on Poverty, Inequality and Public Policy. October 2012.

New York City's full continuum, from arrest through placement (including community-based alternative programs) must be gender-responsive. In addition, the professionals who interact with these young women, including police officers, detention staff, Close to Home staff, attorneys, judges and social workers, needs to be trained in working with young women.

CCC respectfully submits the following recommendations to improve the NYC Juvenile Justice System's ability to meet the needs of young women:

A) The City needs to collect and make public data on the demographics and experiences of girls touched by the juvenile justice system and use this data to conduct a comprehensive needs assessment.

It would be extremely informative to learn more about the girls who have been and are in contact with the juvenile justice system in NYC. Understanding the data and experiences of girls in the juvenile justice system is critical to ensuring that the programs and services are gender-responsive and meet the needs of the girls. The juvenile justice system was largely developed for boys. And while boys are a majority of young people in the system, girls make up a significant portion.

While there was some gender-specific data publicly available, CCC was unable to locate public data with regard to critical data points including the number of arrests for girls, the types of offenses girls are arrested for, the types of offenses leading girls to various outcomes, the needs of girls in the system, nor the number of girls participating in various alternative to detention/incarceration/placement programs. We believe that this type of data would be invaluable. It is critical for the City, including the City Council Members, advocates and the public, to have a fuller understanding of what types of behaviors are leading girls to be touched by the juvenile justice system, so that we can better meet their needs.

It would also be very helpful to know whether in NYC lower-risk girls are being detained or placed. If this is the case (as it has been found to be nationally), it would be helpful to learn why and see how it could be addressed. For instance, it could be a training-related issue for those working at ACS, Probation, Corporation Counsel and/or the court system. Alternatively, it could be because there are insufficient community-based alternative programs meeting the needs of girls, leading judges to feel they need to detain or place the young women.

NYC could assess the level of risk of girls throughout various parts of the system by reviewing the RAI (Risk Assessment Instrument) scores for boys and girls in detention. In addition, NYC could do an analysis that looks at types of arrests, charges, dispositions, etc. to really understand the differences between the experiences of boys and girls in the system.

Ultimately it is this data that will enable the City to assess the system's needs as it pertains to girls. CCC suggests that the Mayor's Office of Criminal Justice conduct this analysis and develop a plan to invest in needed services and training.

B) The city and state need to invest in a more gender-responsive continuum of services

It is critical that the juvenile justice system be gender-responsive and meets the needs of the girls in the system. This will ensure better outcomes for the young women and enhance public safety as these youth will be released into their communities where we hope they will become successful adults.

This must include all components of the system including the community-based programs that prevent out of home placements, detention, Close to Home, as well as after-care services.

This continuum must address the education, health, mental health and developmental needs of the young women. If the girls in NYC's system have been exposed to more abuse and trauma and/or have higher mental health needs, the system must be responsive to these needs.

In addition, the system needs to respond to the needs of lesbian, transgender, and pregnant and parenting girls.

Finally, the system should include access to female staff, volunteers and mentors.

C) The city and state should invest in on-going training for professionals (judges, attorneys, agency personnel and service providers)

CCC understands from both ACS and providers that when Close to Home was first implemented, staff at provider agencies had a much more difficult time meeting the needs of girls. This illustrates the need for both services and programs tailored to meet the needs of girls, as well as the need to train staff to work with young women.

CCC is encouraged by the commitment of the new Administration and the City Council to promoting better outcomes for children and youth in New York City. We believe that a strategic plan to better meet the needs of girls and young women in the juvenile justice system is a key component for the Administration and hope that the Mayor's Office, ACS and Probation will pay special attention to the needs of these girls.

Thank you for the opportunity to testify.

Testimony of the Ms. Foundation for Women

Lindsay Rosenthal
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New York City Council Hearing
Oversight of Young Women in New York City's Juvenile Justice System
June 17, 2014

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Introduction

Thank you for inviting us here today to discuss the needs of girls and young women in New York City's Juvenile Justice System.

I am here today on behalf of the Ms. Foundation for Women because we are concerned about the availability of a full continuum of gender-responsive services for the city's justice-involved young women and girls.

The Ms. Foundation for Women was founded 40 years ago by Gloria Steinem and others. The foundation has a long history of helping women secure the health, safety and equality we all deserve. We prioritize the concerns of low income women, women of color and LGBTQ women as these women face the greatest adversity. They are among the most vulnerable to many of society's ills, including the subject of today's hearing-- juvenile arrest and incarceration.

As leading policy experts on the health, safety and economic security of women and girls' throughout the United States, the Ms. Foundation understands the problem of girl's delinquency for what it truly is—a problem rooted in our failure to protect girl's *safety*, well-being and opportunity in their homes and communities.

Programs serving young women in the juvenile justice system should be focused on providing them with physical and psychological safety they need to recover from past abuse, protecting them from further harm, and ensure they receive the comprehensive services they need to thrive going forward.

Background

The "Abuse to Prison Pipeline": Understanding Gender-based violence and the Juvenile Justice System

Most young women involved with the juvenile justice system share the disturbing commonality that they each became victims of crime—in the form of physical and/or sexual abuse— well before they were ever prosecuted for breaking the law themselves. In fact, physical, emotional, and sexual abuse is one of the *primary* predictors of girls' detention.

The Centers for Disease Control estimates that 1 in 4 American girls will be sexually abused before age 18.ⁱ While approximately 25 percent of girls in the general population are estimated to be victims of sexual abuse, studies that have assessed the prevalence of abuse among girls in the juvenile justice system have consistently found significantly higher rates. For example, one

California study found that 60 percent of girls in the state's jails had been raped or were in danger of being raped at some point in their lives.

The consequences of sexual violence—which can include a number of anxiety, depression and/or substance abuse disorders— increase a young woman's risk of arrest and incarceration. This is especially true of the experience of low income girls, girls of color and LGBT girls who are victims of abuse as these young women are disproportionately involved with the juvenile justice system.

The majority of girls in the juvenile justice system are girls of color who come from the poorest and most marginalized communities in the city. Girls of color and LGBTQ girls who are victims of physical and sexual abuse often face barriers that other victims may not—such as poverty, disproportionate involvement in the child welfare system, and a comparative lack of access to appropriate supports and services. These additional adversities exacerbate the consequences of abuse and increase the likelihood of incarceration.

A 2012 study of detained youth found that girls were significantly more likely than boys to report all of the following:ⁱⁱ

- running away from home (76 percent vs. 41 percent);
- drinking alcohol at an earlier age on average (11.8 years vs. 12.9);
- Increased drug use, including using meth (56 percent vs. 21 percent), ecstasy (60 percent vs. 27 percent); LSD (28 percent vs. 7 percent), and spice (76 percent vs. 45 percent); and
- missing school due to substance use (50 percent vs. 16 percent)
- families with prior child welfare involvement (64 percent vs. 15 percent).

Research has shown that violence against girls contributes to incarceration of these vulnerable young women in a myriad of ways:

As the statistics above indicate, abuse may cause girls to engage in negative coping behaviors such as substance abuse, running away from home or foster care placements, and chronic truancy. These behaviors are often motivated by a girl's need to protect herself from further harm. But each of these responses to abuse increases the risk of incarceration.

Violence against girls—whether it takes place at home or in schools— also makes young women vulnerable to drop out and school push-out practices. Girls who experience sexual bullying and harassment in school frequently experience anxiety, distress, loss of self-esteem, and depression.ⁱⁱⁱ Feeling unsafe in school has also been correlated with skipping school and dropping out,^{iv} and both of these responses increase the risk of involvement with the juvenile justice system. Studies have found that girls who fight in school are often fighting to stop their own victimization, such as sexual harassment and abuse, especially in cases where a girl feels

that school administrators have ignored her victimization.^v Fighting in New York City schools often results in referral to the juvenile justice system.

A recent report by the African American Policy Forum explains that the nexus between victimization and school referral of children to the juvenile justice system may be particularly acute for Black girls whose experiences are not captured by analysis that examine racial justice and gender justice in isolation. The report explains that school system responses to girls often occur without consideration of their victimization histories, and instead, mimic the same exclusionary discipline responses as those which are applied to their male counterparts.^{vi}

In addition, LGB youth, particularly gender-nonconforming girls, face added burdens as a result of bullying related to their actual or perceived sexual orientation. A recent study in *Pediatrics* found that LGBT girls are up to three times more likely to experience harsh disciplinary treatment by school administrators than their non-LGB counterparts even though they were not engaging in significantly more delinquent behavior.^{vii}

It is critical that the city examine and revise school disciplinary and safety policies through a gendered lens. If schools retain vulnerable young women, prevent academic failure, and protect girls from harm while in school, they can help dismantle the abuse to prison pipeline for young women.

Moreover, girls who have entered the foster care system as result of abuse and maltreatment are especially vulnerable to arrest and incarceration. Girls in foster care who have experienced sexual abuse are especially at especially high risk. For example, one recent study found that girls in foster care with a history of sexual abuse were nearly twice as likely as their female peers in foster care without a history of sexual abuse to have contact with the juvenile justice system (41 percent vs. 24 percent).^{viii}

A history of sexual abuse and involvement with the child welfare system are also two of the most significant risk factors for commercial sexual exploitation or trafficking. Overall, children who experience sexual abuse are 28 times more likely to be commercially sexually exploited.^{ix} Of 2,250 child victims of trafficking in New York City in 2007, 85 percent had some child welfare background and 75 percent had spent some time in foster care.^x

Trafficking contributes substantially to girls' risk of involvement with the juvenile justice system. Even though the city no longer prosecutes girls for prostitution, commercially exploited girls are at high risk of arrest for a number of factors related to their exploitation. They may not be identified as trafficked by law enforcement or the juvenile justice system and therefore may not be referred for services they need. LGBT girls are at increased risk of trafficking as a result of their overrepresentation among the population of homeless youth and youth within the child welfare system.

Health Impacts

Public health experts describe girls involved with the juvenile justice system as among sickest and most medically underserved adolescents in the country.^{xi} Girls involved with the juvenile justice system experience greater mental health needs than their male counterparts.^{xii} Many of the physical and mental health conditions of girls in the juvenile justice system emerge from their exposure to violence and abuse.

Overall, trauma that results from abuse has been shown to impact a girl's physical, mental and emotional health. It can adversely impact the development of parts of the brain that help control responses to danger and regulate stress hormones,^{xiii} and therefore can disrupt a girl's "fight, flight or freeze" response to environmental stressors. Trauma may impact a girl's ability to regulate emotions in response to stress, such as fear and anger. These developmental effects can reduce a girl's level of functioning at home, at school, and in the community.

If left untreated child traumatic stress can have serious negative consequences for a girl's health and well-being throughout her lifespan. Fortunately, however, the long term harms of trauma can be mitigated through treatment and support. For girls in New York City, programs should work to implement a trauma-informed approach that reframes the system's response to girls who are acting out or engaging in delinquent behavior from "what's wrong with you?" to "what happened to you?." Programs should work to provide girls survivors of abuse with the physical, emotional, and psychological safety they need to recover from abuse and move forward with their lives.^{xiv}

The Adverse Childhood Experiences study which measured the impact of child trauma on health outcomes identified a strong link between child trauma and adolescent pregnancy.^{xv} A complete spectrum of services for girls in the New York City juvenile justice system must have capacity to serve pregnant and parenting adolescent girls by providing them with parenting classes and housing or placements where they can be with their babies, as well as by helping young mothers continue their education among other services.

Research has shown that connecting girls in the juvenile justice system with health care can be highly effective in preventing repeat involvement with the juvenile justice system. One study found that girls receiving access to physical health care were 72 percent less likely to re-offend and girls receiving mental health care are 37 percent less likely to re-offend.^{xvi}

Girls and Young Women in New York City's Juvenile Justice System

Because girls typically comprise no more than 20 percent of the juvenile justice system both in New York City and nationwide, juvenile justice systems often fail to provide gender-responsive programming that adequately serves the needs of all justice-involved girls. This is what advocates have termed the "tyranny of numbers."

In the past--- both in New York and nationally--- girls in the juvenile justice system encountered services that were designed for boys and failed to address their specific needs. Today, New York City is still struggling to provide gender-responsive services to all youth in its custody. For example, in its year-one report on the Close to Home Initiative The Office of Children and Family Services (OCFS) reported that provider agencies initially lacked the capacity to serve the number of young women admitted to non secure placement.^{xvii} In that report, OCFS also stated that programs were not prepared to meet the range of needs young women presented and that girls were not responding well to “gender neutral” services.^{xviii} OCFS and ACS has since engaged in a joint effort to improve the capacity of programs serving young women and have formed a “learning collaborative” across programs that serve young women in order to improve services.

The Ms. Foundation applauds these initial efforts to address the needs of young women. However, we urge the city to take the following steps to increase transparency and accountability as it relates to gender equity in the juvenile justice system:

- **Assess and report on gender-responsive services for girls in the Juvenile Justice System.**
The city should collect and report detailed information on the services available to young women in the juvenile justice system. Making information about the services available to girls in New York City’s juvenile justice system publically available will allow a diverse community of concerned stakeholders to engage with the system in order to more effectively serve the needs of girls.

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

At a minimum, such a report should focus on:

- The city’s capacity to meet the needs of pregnant and parenting girls.
- The city’s efforts to respond to the high prevalence of abuse among justice-involved girls.
- The city’s efforts to address the particular service needs of girls who are dually-involved in the child welfare and juvenile justice systems.
- How the city plans to address the substantial the mental, physical and reproductive health needs of all girls involved with the juvenile justice system.

- **The city should also develop a plan to assess its capacity to serve LGBTQ Young Women in the Juvenile Justice System.**

It is critical to specifically evaluate how well programs are meeting the needs of LGBTQ young women throughout the city. Young women in juvenile justice systems are more likely than their male counterparts to identify as LGBTQ. A study completed by the Annie E. Casey Foundation in 6 different juvenile justice jurisdictions around the country found that juvenile justice involved girls were more than twice as likely as court-involved boys to identify as LGBTQ.^{xix} Specifically, the study found that 23 percent of girls compared to 11 percent of boys identified as “not straight.”^{xx} (See testimony from my colleagues at the Juvenile Justice Coalition’s LGBT workgroup for a fuller discussion of the needs of LGBT young women and girls).

The Ms. Foundation for Women strongly recommends that the city develop a plan to assess the capacity to serve LGBTQ young women in the juvenile justice system. Every program serving young women in New York City should be accountable for ensuring a gender-affirming environment for LGBTQ youth. LGBTQ young women should have access to the full spectrum of programs provided through the CTH Initiative.

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

- **Utilize gender-inclusive and LGBT affirming screening tools that accurately capture youth experiences and service needs.**

Utilizing standardized health screening and assessment tools to identify trauma histories and health conditions allows facilities to take a critical first step towards understanding girls’ needs and connecting them with the quality health care they need to recover from abuse.

Comprehensive screening and assessment tools ensure that critical physical, mental and reproductive health needs get noticed in juvenile justice facilities. A screen can quickly identify urgent health needs and the need for further assessment.

Leslie Acoca of the National Girls Health and Justice Institute developed the Girls Health Screen (GHS), which is the only validated health screening tool specifically for girls in the juvenile justice system. The screen has been successfully implemented in juvenile justice facilities in two California counties and in Philadelphia.^{xxi}

The screen takes between 15 and 30 minutes to administer depending on a girls reading level and catches health conditions that typical physical exam girls are given at intake often miss.^{xxii} Enable girls to respond in private to a computerized questionnaire that a girl can read or choose to have read to her through voice automation at a 4th grade reading level, she is more likely to provide an accurate history. Medical needs can then be confirmed and addressed through the intake exam with a medical professional.

Utilizing a comprehensive screen to identify the gender-specific health needs of detained girls in Philadelphia and California, the National Girls' Health Screen Project found among other conditions:

- 23 percent of girls reported a history of self harm; 18 percent presented with explicit suicidal ideation; 11 percent had a history of attempted suicide;
- over 40 percent said they were currently in pain, indicating an average likert scale rating of six;
- and 41 percent and 24 percent respectively had signs of vaginal tearing or rectal tearing possibly due to sexual assault.^{xxiii}

But without proper screening none of these conditions would be known or addressed by facility staff and girls would often be left without access to appropriate care. Thorough screening and assessment can also create a useful record to establish medical need for the Medicaid EPSDT benefit upon a girl's release if information is proactively shared between the justice and health systems.

New York City should work to ensure that it is adequately screening for gender-specific health needs.

Conclusion

We appreciate the time that the juvenile justice and women's rights committees have taken today to address this critical issue. Young women and girls in New York City's juvenile justice system are among the most vulnerable in our community. We look forward to working together to address the needs of the city's justice involved girls.

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Finkelhor D. The prevention of child sexual abuse. *Future of Children*. 2009;19:169-194.; Available at https://www.princeton.edu/futureofchildren/publications/docs/19_02_08.pdf;

ⁱⁱ Cynthia Burke P, Juvenile Arrestee Drug Use in the San Diego Region, SANDAG Criminal Justice Research Division, 2012, available at:

http://www.sandag.org/uploads/publicationid/publicationid_1772_16370.pdf

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- ⁱⁱⁱ Greetje Timmerman, "Adolescents' Psychological Health and Experiences with Unwanted Sexual Behavior at School," *Adolescence*, 2004, available at: <http://www.ncbi.nlm.nih.gov/pubmed/15727416>.
- ^{iv} American Association of University Women, "Hostile Hallways: Bullying Teasing and Sexual Harassment in School," available at: <http://www.aauw.org/files/2013/02/hostile-hallways-bullying-teasing-and-sexual-harassment-in-school.pdf>
- ^v Girls Study Group: Violence By Teenage Girls: Trends and Context, available at <https://www.ncjrs.gov/pdffiles1/ojdp/218905.pdf>
- See also Fighting for Girls: Addressing hostile school climate
- ^{vi} Monique Morris, "Race, Gender and the School to Prison Pipeline: Expanding Our Discussion to Include Black Girls" African American Policy Forum (Page 5) available at: <http://aapf.org/wp-content/uploads/2012/08/Morris-Race-Gender-and-the-School-to-Prison-Pipeline.pdf>
- ^{vii} Kathryn E. W. Himmelstein and Hannah Brückner, Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study, December 2010, available at: <http://pediatrics.aappublications.org/content/early/2010/12/06/peds.2009-2306.full.pdf+html>
- ^{viii} Tonya Edmond, Wendy Auslander, Diane E. Elze, Curtis McMillen, and Ron Thompson, "Differences Between Sexually Abused and Non-Sexually Abused Adolescent Girls in Foster Care," *Journal of Child Sexual Abuse*, (2002), available at: <http://www.ncbi.nlm.nih.gov/pubmed/16221654>
- ^{ix} Fran Sherman. MISSEY. MISSEY Statewide and National Advocacy Plan, March 2008, Available at <http://www.misseey.org/resources.html>
- ^x Elizabeth G. Hines and Joan Hochman, Sex Trafficking of Minors in New York: Increasing Prevention and Collective Action, The New York Women's Foundation, July 2012.
- ^{xi} Leslie Acoca, Jessica Stephens and Amanda Van Vleet, "Health Care Coverage for Youth in the Juvenile Justice System," The Henry J. Kaiser Family Foundation, May 19, 2014, available at: <http://kff.org/medicaid/issue-brief/health-coverage-and-care-for-youth-in-the-juvenile-justice-system-the-role-of-medicare-and-chip/>
- ^{xii} Ibid.
- ^{xiii} The National Child Traumatic Stress Network, "Understanding Child Traumatic Stress," available at: <http://www.nctsn.org/content/defining-trauma-and-child-traumatic-stress>.
- ^{xiv} The National Child Traumatic Stress Network "Using Trauma-Informed Child Welfare Practice to Improve Placement Stability Breakthrough Series Collaborative" available at: http://www.nctsn.org/sites/default/files/assets/pdfs/using_ticw_bsc_final.pdf
- ^{xv} Hillis et al., "The Association Between Adverse Childhood Experiences and Adolescent Pregnancy," *Pediatrics*, 2004, available at: <http://pediatrics.aappublications.org/content/113/2/320.full.pdf>
- ^{xvi} Leslie Acoca, "Educate or Incarcerate? Girls in the Florida and Duval County Juvenile Justice Systems," National Council on Crime and Delinquency, November 2000, available at: http://leslieacoca.org/images/Educate_or_Incarcerate_-_Girls_in_the_Florida_and_Duval_County_Juvenile_Justice_Systems_by_Leslie_Acoca.pdf
- ^{xvii} New York State Office of Children and Family Services, "Close to Home—Year One Overview," March 2014, available at:

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

^{xviii} Ibid

^{xix} As cited in Katayoon Majd, Jody Marksamer, and Carolyn Reyes, "Hidden Injustice: Lesbian, Gay, Bisexual and Transgender Youth in Juvenile Courts," The Equity Project, Fall 2009, available at: http://www.equityproject.org/pdfs/hidden_injustice.pdf.

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

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

^{xxi} Leslie Acoca, "Educate or Incarcerate? Girls in the Florida and Duval County Juvenile Justice Systems," National Council on Crime and Delinquency, November 2000, available at:

[http://leslieacoca.org/images/Educate_or_Incarcerate_-](http://leslieacoca.org/images/Educate_or_Incarcerate_-_)

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Testimony of the Juvenile Justice Coalition- LGBTQ Work Group

Presented by
Beth Powers
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Children's Defense Fund- New York

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

New York City Council Hearing

June 17, 2014

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Introduction

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

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

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

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

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

Background

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

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

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

Recommendations

1. Expand Data Collection and Transparency

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

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

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

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

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

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

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

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

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

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

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

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

2. Improve Oversight of LGBTQ Affirming Practices City-Wide

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

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

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

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

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

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

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

3.Mandated Staff Training and Professional Development System-wide

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

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

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

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

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

See also,

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

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

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

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

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

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

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

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

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

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

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

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



**TESTIMONY BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON JUVENILE JUSTICE AND COMMITTEE ON WOMEN'S ISSUES
ON SEXUAL AND REPRODUCTIVE HEALTH CARE FOR YOUNG WOMEN IN STATE CUSTODY**

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June 17, 2014

My name is Adrian Guzman, and I am pleased to offer this testimony on behalf of The Center for HIV Law and Policy (CHLP), a national legal and policy resource and strategy center for people with HIV and their advocates. I coordinate CHLP's Teen SENSE initiative, which works to secure the right of youth in state custody settings to comprehensive, LGBTQ-inclusive sexual health care and sexual health literacy programs. This includes ensuring that staff of foster care, detention, and other government-operated and -regulated youth facilities are equipped to understand and protect all youth in their care, regardless of sexual orientation, gender identity, gender expression, and HIV status. My testimony this afternoon focuses on our policy advocacy with the NYC Administration for Children's Services (ACS). CHLP hopes the New York City Council will support our efforts to ensure that ACS meets its affirmative obligation to provide for the essential sexual and reproductive health needs of youth in its care, including young women and girls.

Youth of color, youth from low-income backgrounds, LGBTQ youth, and youth survivors of sexual violence are significantly overrepresented in state custody settings. Youth entering the system often present with histories of physical abuse, sexual abuse, emotional abuse, neglect, and family instability. Sexually abused girls and young women are significantly more likely than their non-abused peers to enter care, and once there, often experience greater risk of sexual violence. For some, the pathway into state custody includes periods of homelessness and engaging in high-risk sexual behavior, often in exchange for shelter or food. Youth in out-of-home care face significant threats to their sexual health and well-being, including higher rates of sexually transmitted infections (STIs), HIV, unintended pregnancy, and substance use. For some youth who identify or are perceived as LGBTQ, their sexual orientation, gender identity, or gender expression may have led to family rejection, abuse, or neglect, prompting the state to remove them from their home.

A recent United States Department of Justice (DOJ) report surveying over 8,700 adjudicated youth in juvenile facilities across the United States found that nearly 10% of youth reported experiencing one or more incidents of sexual victimization by another youth or staff in the past 12 months or since admission, if less than 12 months.¹ According to the DOJ report, LGBTQ youth were nearly seven times as likely to report youth-on-youth victimization than heterosexual youth.²

Increasing young people's sexual health knowledge and ensuring access to sexual health services and programming while in care are critical prevention strategies that can help stop sexual violence before it is perpetrated. This link between sexual health and safety is the foundation of our work in New York. We have partnered with ACS on several initiatives over the last few years. Last fall, following recommendations we submitted to ACS on its LGBTQ policy³ and its transgender and gender nonconforming youth-specific policy,⁴ ACS invited our input on its *Sexual and Reproductive*

¹ ALLEN J. BECK, DAVID CANTOR, JOHN HARTGE, & TIM SMITH, U.S. DEPT. OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF J. STATISTICS, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2012: NATIONAL SURVEY OF YOUTH IN CUSTODY, 2012 (2013), *available at* <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>. (2013).

² *Id.*

³ THE CENTER FOR HIV LAW AND POLICY, COMMENTS TO NYC ACS ON POLICY # 2012/XX – “PROMOTING A SAFE AND RESPECTFUL ENVIRONMENT FOR LGBTQ YOUTH AND THEIR FAMILIES INVOLVED IN THE CHILD WELFARE, DETENTION AND JUVENILE JUSTICE SYSTEM” (2012), *available at* <http://www.hivlawandpolicy.org/resources/comments-nyc-ac-policy-2012xx---promoting-safe-and-respectful-environment-lgbtq-youth-and>.

⁴ THE CENTER FOR HIV LAW AND POLICY, COMMENTS TO NYC ADMINISTRATION FOR CHILDREN'S SERVICES ON DRAFT OF SAFE AND RESPECTED: POLICY, BEST PRACTICES, AND GUIDANCE FOR SERVING TRANSGENDER AND GENDER NON-CONFORMING CHILDREN AND YOUTH IN THE CHILD WELFARE AND JUVENILE JUSTICE SYSTEM (2012), *available at* <http://www.hivlawandpolicy.org/resources/comments-nyc-administration-children's-services-draft-safe-and-respected-policy-best>.

Health Care for Youth in Foster Care draft policy. Our comments,⁵ submitted in December 2013, focused on the content and timing of physical and mental health screenings, documentation of youth's sexual histories, STI and HIV counseling and testing, ongoing care and discharge planning related to sexual and reproductive health services, LGBTQ cultural competence, and LGBTQ-inclusive sexual and reproductive health training sessions for direct service staff, foster parents, and youth. Our recommendations are the product of a review of current literature on adolescent health care authored by the Centers for Disease Control, National Commission on Correctional Health Care, New York State Office of Family and Children's Services (OCFS), and our own Teen SENSE Model Policies and Standards on sexual health care for youth in state custody which are endorsed by ACS.

ACS has not made its review of our comments or other community input available to the public. CHLP offered to collaborate with the ACS Division of Policy and Planning and Measurement on the next phase of this work, but were told the agency planned to finalize the policy without further community input. No date was given for the release of the final policy.

A New York City Council Resolution expressing the need for written policies guaranteeing comprehensive, LGBTQ-inclusive sexual and reproductive health services and programming to the youth in its care would provide this public policy issue the urgency and platform it deserves. CHLP offers to work closely with the Committees to draft a Resolution that acknowledges ACS's work thus far, but also urges ACS to better align its policy with current expert consensus on these issues, as reflected in our recommendations. A Resolution would encourage ACS to make the process more collaborative and to set a release date for the final policy. The Committee on Juvenile Justice and Committee on Women's Issues are both well suited to introduce a Resolution that will help ensure that the young people involved with ACS have access to the sexual health services, sexual health literacy, and supportive staff they need to be safe and to thrive. CHLP looks forward to working closely with both Committees on this important next step to protect young people and strengthen ACS. Thank you.

⁵ THE CENTER FOR HIV LAW AND POLICY, COMMENTS TO NYC ADMINISTRATION FOR CHILDREN'S SERVICES ON DRAFT OF SEXUAL AND REPRODUCTIVE HEALTH CARE FOR YOUTH IN FOSTER CARE (2013), *available at* <http://www.hivlawandpolicy.org/resources/comments-nyc-administration-children's-services-draft-sexual-and-reproductive-health-care>.

FOR THE RECORD

TESTIMONY

The Council of the City of New York
Committee on Juvenile Justice and
Committee on Women's Issues

“Oversight: Treatment of Girls in New York City's Juvenile Justice System”

June 17, 2014

Prepared and Presented by
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Juvenile Rights Practice
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FOR THE RECORD

The Special Litigation and Law Reform Unit of the Juvenile Rights Practice of The Legal Aid Society is pleased to submit this testimony on behalf of the Legal Aid Society. We thank the Committees on Juvenile Justice and Women's Issues, and Chairman Cabrera and Chairwoman Cumbo for focusing this hearing on the complex problems faced by teenage girls who become involved in the juvenile justice system in New York City. We welcome the opportunity to share the experiences and concerns of our clients with these committees.

The Legal Aid Society's Experience and Perspective

The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform. Through a network of borough, neighborhood, and courthouse offices in 25 locations in New York City, the Society provides comprehensive legal services in all five boroughs of the City. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States.

The Legal Aid Society's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 34,000 children, including approximately 4,000 who were charged in Family Court with juvenile delinquency, some of whom spent time in facilities run by or under the aegis of the Administration for Children's Services' (ACS) Division for Youth and Family

Justice (DYFJ). During the last year, our Criminal Practice handled nearly 230,000 trial, appellate, and post-conviction cases for clients accused of criminal conduct. The Criminal Practice has a dedicated team of lawyers, social workers and investigators devoted to the unique needs of adolescents charged in adult court--the Adolescent Intervention and Diversion Project. In addition to representing many thousands of children, youth, and adults each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

In the course of our representation of young people accused of delinquency or criminal activity, Legal Aid's staff experience every day the particular problems faced by girls caught up in these systems. Our perspective comes from our contacts with hundreds of individual teenage girls and their families, and also from our frequent interactions with the courts, the schools, community-based programs, the New York City detention and placement facilities, as well as New York State Office of Children and Family Services (OCFS) facilities.

I would like to start by sharing some general concerns: first, many of the issues faced by girls charged with crimes or delinquency are shared by similarly situated boys. Second, we can all agree that youth of color are disproportionately represented in the juvenile justice system and that this disproportionate minority contact (DMC) is an entrenched, persistent problem plaguing both young men and women in our juvenile justice system. We know this from the data and from our own observations. Anyone who works with New York City's juvenile justice-involved youth knows from their day-to-day interactions and observations that those young people prosecuted and detained are almost exclusively young people of color. The data supports what our eyes tell us-- between 90 and 95 percent of the youth admitted to secure detention in New York City are children of color. We are arresting, detaining, prosecuting, supervising and

sentencing African American and Latino children at a much greater rate than white youth in New York City.¹

Third, we know that LGBTQ young people are disproportionately represented in the juvenile justice system.² Social stigmatization and rejection, resulting in depression, isolation, and homelessness, act as powerful forces that often cause LGBTQ children to leave their homes and schools and ultimately face arrest and prosecution.³ As will be discussed more fully, transgender youth in particular face unique and problematic challenges.

Fourth, youth entering detention and placement live in under-resourced and heavily policed neighborhoods with low-performing schools and high rates of child abuse, neglect, substance abuse, mental illness and incarceration.⁴

While we acknowledge that ACS has taken great strides to improve its data collection and publish it at the direction of the City Council, we ask that ACS go further to disaggregate and publish its data by race, gender and sexual orientation and gender identity expression (SOGIE) to aid ACS in identifying problematic areas and developing effective responses and programming to improve the outcomes for system-involved youth.

Many areas of concern affect young women involved the juvenile justice system in particular. We applaud the committees' attention to the particular needs of girls in the juvenile justice system, and hope that the Council's continued efforts will press both the City and State

¹ State of New York 2009-2011 Three Year Comprehensive State Plan for the Juvenile Justice and Delinquency Prevention Formula Grant Program, page 12. See also www.nyc.gov/djj. Almost the entire detention population consistently has been composed of youth of color -- approximately 60 percent of those detained pre-trial are African-American and 37 percent are Latino.

² Angela Irvine, *"We've Had Three of Them": Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System*, 19 Colum. J. Gender & L. 675-76, 687 (2010).

³ Center for American Progress; *The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBT Youth in the Juvenile Justice System*, June, 2012.

⁴ The vast majority of individuals processed through the juvenile and adult courts come from five communities of New York City: Harlem, Bedford-Stuyvesant, Brownsville, East New York and the South Bronx. http://gothamist.com/2013/05/01/these_interactive_charts_show_you_w.php.

agencies operating and overseeing police, detention, placement, health, mental health, education, and child welfare to work constructively and jointly toward providing effective and needed *community-based* services as well as detention and placement programming to this troubled population.

General Characteristics of Girls in the Juvenile Justice and Criminal Justice Systems

It has become ever more apparent that some teenage girls in our City suffer from a high level of untreated or under-treated mental illness, emotional problems, exposure to trauma, poor family support, abuse, neglect, substance abuse, and homelessness.⁵ When these issues are not addressed adequately, teenage girls may end up running away, joining gangs, missing or failing school, and/or acting out in anti-social ways, often in order to create the bonds with others that they hope will replicate the love and family support that may be missing from their lives.

The extent of mental health problems among girls in the juvenile and criminal justice systems is staggering.⁶ A multi-state study found that 70 percent of youth (both boys and girls) in the juvenile justice system suffer from mental health disorders and that 27 percent of youth are experiencing disorders so severe that their ability to function is significantly impaired.⁷ The report further states that "more than 80 percent of the girls in this sample met criteria for at least one disorder, in comparison to 67 percent of boys."⁸ Many suffer from co-occurring disorders.

The same characteristics noted in national studies of girls in the juvenile justice and

⁵ *Report on Juvenile Justice, Mental Health & Family Engagement*, p. 4, October 2013; https://www.mhanys.org/MH_update/wp-content/uploads/2013/11/MHANYS_Juvenile-Justice-Report-2013_Final.pdf.

⁶ "In this study, more than 80 percent of the girls in this sample met criteria for at least one disorder, in comparison to 67 percent of boys." *Youth with Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study*, Jennie L. Shufelt, M.S. and Joseph J. Cocozza, PhD., National Center for Mental Health and Juvenile Justice. (June 2006). [http://www.unicef.org/tdad/usmentalhealthprevalence06\(3\).pdf](http://www.unicef.org/tdad/usmentalhealthprevalence06(3).pdf).

⁷ *Youth with Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study*, Jennie L. Shufelt, M.S. and Joseph J. Cocozza, PhD. (June 2006) National Center for Mental Health and Juvenile Justice. [http://www.unicef.org/tdad/usmentalhealthprevalence06\(3\).pdf](http://www.unicef.org/tdad/usmentalhealthprevalence06(3).pdf).

⁸ *Id.*

criminal justice systems are seen among girls in New York City. Indeed, “approximately 85 percent of young people assessed in secure detention intake reported at least one traumatic event, including sexual and physical abuse, and domestic or intimate partner violence.”⁹ Further, one in three young people screened positive for Post-Traumatic Stress Disorder (PTSD) and or depression.”¹⁰ In Fiscal Year 2013, ACS reported that 58 percent of youth in detention and placement were referred for and received mental health services.¹¹ ACS also examines the prevalence of cross-over youth--those who have had child welfare involvement and juvenile justice involvement. In fiscal year 2010, 48.2 percent of the detention admissions had current or past histories of child welfare involvement.

The mental health issues of many of these girls can be traced to their history of trauma or abuse. Indeed, the vast majority of *girls* who enter the juvenile justice or criminal justice systems have experienced sexual, emotional and/or physical abuse in the past, suffer from mental health problems and/or are substance abusers.¹² Exposure to trauma can also lead to substance abuse, mental illness and other self-harming behaviors. Indeed, research indicates that abuse (sexual or physical) may be the most significant underlying cause of high-risk behaviors leading to delinquency in girls.¹³ Victimization can lead to an increase in violent behavior, substance abuse and other self-harming behaviors, poor self esteem, running away, early sexual activity,

⁹ Innovations in NYC Health and Human Services Policy, Jennifer Fratello, et al. Vera Institute of Justice (2014) <http://www.vera.org/sites/default/files/transition-brief-juvenile-detention-reform.pdf> at 12.

¹⁰ Id.

¹¹ ACS <http://www.nyc.gov/html/ops/downloads/pdf/pmmr2014/acs.pdf>.

¹² “According to one researcher, between 56 percent and 88 percent of girls in the juvenile justice system report emotional, physical, or sexual abuse, with the numbers being three times higher than boys for reports of sexual abuse.” Representing Girls in the Juvenile Justice System, Office of the Juvenile Defender, (August 2012). <http://www.ncids.org/JuvenileDefender/Guides/RepresentingGirls.pdf>.

¹³ See, e.g., Girls Study Group, Understanding and Responding to Girls' Delinquency, Office of Juvenile Justice and Delinquency Prevention (April 2010) <https://www.ncjrs.gov/pdffiles1/ojjdp/226358.pdf>, pg. 6; Adolescent Girls with Co-Occurring Disorders in the Juvenile Justice System, pg. 3, Prescott, Laura, prepared for the National GAINS Center for People with Co-Occurring Disorders in the Justice System, December 1997.

and commercial sexual exploitation.¹⁴ Experts recognize that there is a distinct difference between how girls cope with past violence and how boys tend to cope with similar histories. Girls internalize violence much more than boys, often manifesting it by self-harming behavior.¹⁵ Yet the juvenile and criminal justice systems have traditionally overlooked the trauma that girls have endured and how that trauma might be related to the behavior for which they are charged. We are pleased that ACS has recently moved to alter its response and we strongly encourage ACS to expand its efforts to provide trauma-informed care to youth and staff in detention and placement, building upon the 2012 grant it is currently receiving from the Substance Abuse and Mental Health Administration (SAMHSA), in partnership with Bellevue Hospital Center and NYU Langone Medical Center.

Community Based Services, Diversion and Alternatives to Detention and Placement

Given their complex and overlapping needs, many teenage girls end up in the Family and Criminal Courts simply because the other systems have failed them. A system oriented toward prosecution and punishment rather than prevention and rehabilitation does nothing to address the real needs of these children. We urge ACS to emphasize *preventive* services for these girls, many of whom have from early on shown clear signs of the very kinds of abuse and related emotional problems that are predictors of their eventual involvement with the criminal justice system. The services and supports for teen girls (as well as for teen boys) that should be in place to *prevent* criminal behavior are lacking. Mental health and substance abuse services available in the areas where most of our clients live are frequently of low quality or overextended.

¹⁴ *Id.*

¹⁵ “Girls are more likely to internalize traumatic experiences and to suffer from depression, mood disorders, anxiety, and post-traumatic stress disorder (PTSD). They are also more likely to attempt self-harm and commit suicide.” Enhancing Mental Health Advocacy for Girls in the Juvenile Justice System, Fiza Quraishi (2012) National Center for Youth Law
http://www.youthlaw.org/publications/yln/2012/oct_dec_2012/enhancing_mental_health_advocacy_for_girls_in_the_juvenile_justice_system/.

We must ensure that there are quality services available in the community, to keep as many young people as possible in home settings, with needed supports and services. Proven and promising models exist, both here and in other parts of the country, that are cost-effective and humane, and that also reduce the likelihood of recidivism. Community-based programs that emphasize empowerment, in particular, are found to work with young women.¹⁶ Such models include the use of “strength based” approaches rather than “deficit based or punitive models,”¹⁷ Other effective models include the use of Multisystemic Therapy and Multidimensional Treatment Foster Care¹⁸ and Dialectical Behavior Therapy.¹⁹

Additionally, our City schools must participate in preventive interventions, and should receive additional funding and support for this purpose to avoid unnecessary and excessive arrests in schools. Without sufficient family, educational and mental health supports, many girls who have a history of truancy and behavioral and learning problems in school, end up charged with crimes or delinquency. .

Further, we ask the Council to support and encourage all City agencies that interact with young people at all stages of the juvenile justice system to work together to provide services and interventions to prevent and divert youth from deeper system involvement. We ask that the New York Police Department (NYPD) provide enhanced training related to adolescent development and mental health to ensure fair and humane treatment of all youth, including teenage girls and LBGTQ youth, during police encounters whether they take place in schools or on the streets. We are encouraged by the Department of Probation’s many initiatives to divert youth from court-

¹⁶ Girls in the Juvenile Justice System, Toward Effective Gender Responsive Programming What Works, Wisconsin Research to Practice Series, Issue No. 7 (January 2008).

¹⁷ Id.

¹⁸ http://www.ncmhjj.com/wp-content/uploads/2013/07/2007_Blueprint-for-Change-Full-Report.pdf

¹⁹ http://www.cdcr.ca.gov/Reports_Research/docs/DBT_Evidence_Draft_04_06_2011.pdf

involvement, detention and placement. We acknowledge the important work of ACS' Juvenile Justice Initiative and the Department of Probation's Esperanza program, both of which provide intensive home-based services to juvenile justice-involved youth as alternatives to placement.

Detention and Placement

The number of girls entering juvenile detention and placement has been on the rise. In Fiscal Year 1997 girls were 15% of the detention population; by Fiscal Year 2013 girls were approximately 25% of that population (23% of secure detention, 25% of non-secure detention).²⁰ In Fiscal Year 2013 girls in non-secure placement comprised 28 percent of the overall ACS non secure placement population.²¹ Detention as a remedy, albeit one of last resort, is a poor choice for this population, particularly for vulnerable girls whose problems are often further exacerbated by incarceration.

The characteristics of the detention environment and the standard intervention strategies employed in restrictive settings, such as the use of restraints and of isolation, frequently have the unintended effect of causing increased stress, thereby escalating self destructive and self-harming behavior.²² This is particularly concerning in New York City for young women in secure detention. Since October 2012, ACS has been under a corrective action plan imposed by OCFS due to the frequent use of physical restraints and high rate of room confinement imposed by ACS staff in its secure detention facilities. The ACS data available regarding restraint and room confinement use does not disaggregate for gender and we therefore do not know the rate of restraint and room confinement for young women. However, we do know that such extreme

²⁰ http://www.nyc.gov/html/acs/downloads/pdf/statistics/FY_13_Demographic_Report_Detention.pdf pg. 1.

http://www.nyc.gov/html/acs/downloads/pdf/statistics/FY_13_Demographic_Report_Detention.pdf pg. 3.

²¹ http://www.nyc.gov/html/acs/downloads/pdf/statistics/FY_13_Demographic_report_Non_Secure_Placement.pdf pg. 1.

²² *Improving Policy and Practice for Adolescent Girls with Co-Occurring Disorders in the Juvenile Justice System*, pp. 7-8. GAINS Center.

physical interventions can cause deleterious effects on young women in detention and should be an absolute last resort, used only after deescalation has been attempted and failed, and in a manner consistent with the mental health treatment plan.

When young women are detained and or placed outside of their homes, such settings must address their particular specialized needs. ACS should create more small detention and placement sites for girls that provide trauma-informed care aimed at preventing their re-entry into the system and future victimization. Such placements must also provide them with the education and skills they need to break free of their abusive pasts to become independent and self-sufficient. Additionally, detention and placement must be equipped to provide medical treatment and the necessary supports for pregnant and parenting young women and transgender girls as will be discussed more fully.

Many girls need a safe place to live as alternative to detention and placement or upon release—consequently there is a pressing need for supportive housing specifically dedicated to guiding these young women in making the transition to independent living. Our cases highlight the need for more alternatives to abusive and neglectful home situations. Such housing alternatives include foster care placements, residential treatment facility (RTF)²³ placement through the Office of Mental Health (OMH), substance abuse treatment programs, mother child placements and supportive independent living housing programs. With regard to girls with significant mental illness, ACS staff should refer them for treatment and placement with OMH rather than attempt to maintain these young women in ill-equipped detention and placement facilities. For example, August Aichhorn is the only OMH residential treatment facility with

²³ A residential treatment facility providing long-term intensive treatment for children and adolescents operated by the NYS Office of Mental Health.

beds dedicated for youth in the juvenile justice system. However, these beds are few relative to the need and only available to youth who have been placed with OCFS, not to youth placed with ACS through Close to Home. ACS should collaborate with OMH to ensure that additional beds are made available to New York City youth.

LGBTQ Young Women

Transgender youth are at greater risk than others of becoming involved in the juvenile justice system. One study of urban youth shows that 67% of young transgender woman have engaged in sex work.²⁴ It has been our experience that many of our transgender youth clients have been arrested on “prostitution” and other charges in both the juvenile and criminal justice systems. Yet, the City does not have a court diversion program for this population of youth to provide them with appropriate services and prevent them from going deeper into the system. Given the unique experiences and needs of this population of girls relative, the City must develop diversion and other services specifically for them in order to reduce their risk of arrest and incarceration.

Further, the City must evaluate and increase its preventive, detention and placement services for LGBTQ youth in general, and girls of transgender experience, in particular. While we are encouraged that ACS has implemented an LGBTQ anti-discrimination policy and requires its contract agencies to accept all youth, it appears that there is only one safe residential option for transgender girls in the Close to Home spectrum, SCO Children and Family Services. If a transgender girl does not succeed in SCO's milieu, it is extremely difficult to find an appropriate placement for her as most of the residential programs serving youth are not prepared to take a transgender girl. In this instance the young woman would remain in ACS detention

²⁴ Transgender Female Youth and Sex Work: HIV Risk and a Comparison of Life Factors Related to Engagement in Sex Work (AIDS Behav. Oct 2009; 13(5): 902-913. Published online Feb 6, 2009. doi: 10.1007/s10461-008-9508-8)

until another option is identified. Prolonged detention is not the solution. ACS needs more residential options for transgender girls.

Commercially Sexually Exploited Girls

Girls who have been commercially sexually exploited face many challenges when they are placed in juvenile facilities.²⁵ These girls often do not receive appropriate mental health treatment, supportive services, or adequate discharge planning. Most of the girls in ACS custody who have been sexually exploited have experienced repeated physical and sexual abuse at the hands of their pimps and johns. They need immediate crisis intervention services, and intensive and ongoing counseling by therapists who have been specially trained to work with this vulnerable population. Sexually exploited youth who are in custody face biases and are frequently subjected to crude comments, ridicule, harassment and further victimization, both by staff and other residents. The Legal Aid Society has testified repeatedly before the Council about the challenges faced by existing service providers because of a lack of funding, and while there have been great strides made in terms of understanding the sexual exploitation of youth, we ask that the Council continue to ensure that these youth are supported and respected as victims who deserve quality services.

In closing, we again commend the Council's attention to the ongoing problems of teenage girls charged with crimes or delinquency. We look forward to working with the Council and others to ensure that the government agencies that have the greatest impact on the lives of New York City's youth receive appropriate training and provide comprehensive, preventive and

²⁵ The term sexually exploited child is defined as any person under the age of eighteen who has been subject to sexual exploitation because he or she is the victim of the crime of sex trafficking; engages in any act of prostitution; is the victim of the crime of compelling prostitution; participates in sexual performance; or loiters for the purpose of engaging in a prostitution offense. See Social Services Law §447-a, Penal Law §230.34, Penal Law §230.00, Penal Law §230.33, Article 263 of the Penal Law; and Penal Law §240.37.

treatment services. Thank you for giving us the opportunity to testify at this hearing.

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CASES

To: The Committee on Juvenile Justice jointly with the Committee on Women's Issues

From: Rukia Lumumba, Director of Youth Programs, CASES

Date: Tuesday, June 17, 2014

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

Good afternoon. Today's hearing on *Oversight: Young Women in New York City's Juvenile Justice System* is critical to the continued development of New York City's Justice System. The Council's recognition of the need for this hearing and its ongoing commitment to improving the justice system should be applauded and continued.

I am Rukia Lumumba. I am the Director of Youth Programs of CASES (the Center for Alternative Sentencing and Employment Services), which is a member of the ATI / Reentry Coalition¹. New York City stands out as a national model for the quality and array of its alternative to incarceration and detention programs. The City Council has played a paramount role in this achievement. I thank the Council for your ongoing support of CASES and the ATI / Reentry Coalition². Your support in a Council budget initiative provides important resources to our programs and we are asking that you will continue that support this year. Your support has allowed us to leverage support many times over, all of which will allow the eight organizations that comprise the ATI/Reentry Coalition to serve **tens of thousands** of women, men and children.

As prison populations appear to be stabilizing nationally, and New York is reducing prison and detention populations, it is instructive to explore how these changes are impacting young women. There are now 200,000 women in prison or jail in the United States, a figure that

¹ The ATI/Reentry Coalition includes CASES, Center for Community Alternatives (CCA), Center for Employment Opportunities (CEO), EAC New York City TASC, Fortune Society, Legal Action Center (LAC), Osborne Association and Women's Prison Association (WPA).

² The ATI/Reentry Coalition includes CASES, Center for Community Alternatives (CCA), Center for Employment Opportunities (CEO), EAC New York City TASC, Fortune Society, Legal Action Center (LAC), Osborne Association and Women's Prison Association (WPA).

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represents an increase of over 750% in the last three decades, and nearly twice the rate of increase that men experienced.³ From 2000 to 2009 the number of women incarcerated in state or federal prisons rose by 21.6%, compared to a 15.6% increase for men.⁴ By 2008, the number of girls referred to juvenile court had increased by 48% to 450,000—almost 30 percent of total delinquency court referrals.⁵ With regard to race, Black women are incarcerated at a rate nearly three times that of White women.⁶ Additionally, justice involved women and girls have limited access to services that meet their numerous and complex needs.⁷ Many face sexual and physical trauma and are more sensitive to violence resulting in poor self-image, limited healthy attachments and educational obstacles.⁸ A review of CASES' Court Employment Program FY13 data, found that prior to intake, 48% of young women were not enrolled in school or were enrolled but not attending. The average reading level at intake was 6th grade. 48% of the young women had mental health needs and 50% had substance use needs.

Recognizing the myriad challenges young women face, CASES and our fellow members of the ATI/Reentry Coalition have developed programs that address young women's individual needs and empower them to deal with their personal challenges. Collectively, our programs have resulted in decreased recidivism and long-lasting positive outcomes. Data on CASES's alternative to incarceration Girls Rising program showed that 62% of young women between the ages of 16 and 19 successfully completed the program. A similar review of data from our Court Employment Program (CEP) shows that 65% of young people successfully completed the program. A two-year post program follow-up showed that 80% of young people remained free of

³ Why It Matters. Women's Prison Association, <http://www.wpaonline.org/about/why-it-matters>. June 15, 2014.

⁴ The Changing Racial Dynamics of Women's Incarceration. Marc Mauer. The Sentencing Project. February 2013.

⁵ Justice for Girls: Are We Making Progress? Francine T. Sherman. 59 UCLA L.REV.1584(2012).

⁶ The Changing Racial Dynamics of Women's Incarceration. Marc Mauer. The Sentencing Project. February 2013.

⁷ Justice for Girls: Are We Making Progress? Francine T. Sherman. 59 UCLA L.REV.1584(2012).

⁸ Justice for Girls: Are We Making Progress? Francine T. Sherman. 59 UCLA

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re-arrests. Other important outcomes are school-related: although at intake, 48% of young women in our CEP program were not enrolled in school or were truant, by the time they complete the program, 68% were enrolled in and attending school or a high school equivalent diploma earning program. Specifically, in FY 2013, 24.39% of young women were enrolled in and attending HSE (High School Equivalent) classes; 39% were enrolled in and attending school; and 5% were enrolled in and attending a vocational training program at exit. Even more, all of the young women received supportive case management to meet their mental health and substance abuse needs. The success of young women in the CEP and Girls Rising programs are examples of the success ATI/Reentry Coalition members experience daily. ATI providers decrease recidivism and increase opportunities of growth and stability among their clients.

The work of the ATI /Reentry Coalition is an integral part of the strategy that has enabled the City to reduce crime. We have made important contributions to the lower populations in jails, prisons and juvenile detention facilities. The Coalition brings services to some of the City's most disadvantaged neighborhoods. As opposed to incarceration, our programs invest in people and their families and ultimately strengthen whole communities. Supporting the Coalition is a cost-effective way to reduce crime, help people change their lives for the better, strengthen communities, and save taxpayer dollars. Our programs produce immediate and long-term savings. The young woman who enters an ATI/ATD program (less than \$15,000 a year) is not being held in detention on Rikers (\$76,000 per year) or Horizons (\$200,000 per year). And recidivism rates for our young woman clients far lower than the jail /prison/detention alternative. Through our collective services, the ATI/Reentry Coalition improves the services and treatment of women, reunites families and provides opportunities for individuals to attain employment, education and recovery. As you reflect and analyze the needs of young women, also remember what has worked to address their many needs.

While New York City has made great strides, there is still more to do. We are hopeful that City Council will continue to support the ATI/Reentry Coalition so that we can continue to provide effective, efficient services to the **tens of thousands** of women, men and children we

L.REV.1584(2012).

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serve. We have built an alternative to incarceration infrastructure in New York that needs to be maintained and built upon. Data throughout New York City and the Nation indicates that Alternatives to Incarceration (ATI) programs “work”. New York City has been a model for ATI development and justice reform; let’s continue to be a model. Support what works.

Testimony of Lambda Legal

Maxwell Philp
Youth in Out-of-Home Care Project Intern
Lambda Legal

New York City Council Hearing
Oversight of Girls in New York City's Juvenile Justice System
June 17, 2014

My name is Maxwell Philp. I am a student at NYU and a summer intern with Lambda Legal's Youth in Out-of-Home Care Project and I am testifying today on Lambda Legal's behalf. I thank the Committee on Women's Issues and the Committee on Juvenile Justice for holding this hearing.

Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those living with HIV through impact litigation, education and public policy work. Lambda Legal's Youth in Out-of-Home Care Project raises awareness and advances reform on behalf of LGBTQ youth in child welfare, juvenile justice and homeless systems of care. Lambda Legal is a member of the LGBTQ Work Group of the New York Juvenile Justice Coalition.

This afternoon I will be testifying about the issue of the commercial exploitation of youth and, in particular, how LGBT youth are at increased risk of being commercially exploited and of entering the juvenile justice system as a result of being victimized. I'd like to begin my testimony with the following quote from a transgender youth who was commercially sexually exploited and was part of a research study conducted by Jo Rees.

*"It's hard. Because first of all you don't know what we been through and second of all, put yourself in our shoes. Your family doesn't like you because of who you are, you're trying to get support but it's hard and it all goes back on you...you don't have nowhere to sleep, nowhere to stay and nobody's helping you, now what would be your first thing? Get a job? Right, well it's hard. No one will give us a job 'cos of how we are. Look.... you gotta do what you gotta do, right... it's important for people to understand, it's not easy living our life."*¹

The problem of commercial sexual exploitation of children (CSEC)² is often inaccurately depicted as impacting only heterosexual, cisgender³ girls. This incomplete understanding masks the reality of the disproportionate number of lesbian, gay, bisexual, and transgender (LGBT)⁴ and gender non-conforming youth who are victims of commercial sexual exploitation. The forthcoming information and recommendations are specific to New York City-based LGBT and

¹ Jo Rees, *supra* note 53, at 87 (quoting transgender youth engaged in commercial sex).

² For purposes of this submission, we are using the term CSEC to describe any youth involved in the commercial sex trade. Although the term 'sex trafficking' traditionally implies that a person is trafficked by someone else, the trafficking of youth as defined by the Trafficking Victims Protection Act (TVPA) is inclusive of both youth who have a trafficker and youth engaged in the commercial sex industry regardless of the presence of force, fraud or coercion. We want to highlight that this is inclusive of youth engaged in survival sex and other forms of CSEC. The term "children" in CSEC is also misnomer in that most of the youth providers see are not children. Also, if we do not acknowledge that there are youth without traffickers, they can be misunderstood as uncooperative if they cannot give up a name of a trafficker to law enforcement. Many youth that providers work with do not identify as victims of trafficking and providers would not use the term trafficking with a client. These youth do, however, qualify for protections under the TVPA and we want to insure their inclusion in New York's plan of action. Although not the focus of this submission, we want to acknowledge youth who experience other or additional exploitation or trafficking, such as labor trafficking.

³ Cisgender describes a person whose gender identity and expression matches the sex assigned or presumed at birth.

⁴ The acronym "LGBTQ" generally is preferred over "LGBT" in the youth context because it is more inclusive. The "Q" represents youth who self-identify as "queer" or those who may be "questioning" their sexual orientation and/or gender identity as they move through the process of adolescent development. But because the research we cite in this overview uses "LGBT," we use that acronym throughout for purposes of consistency.

gender non-conforming youth who are at increased risk of commercial sexual exploitation and involvement with the juvenile justice system.

SUMMARY

This testimony first describes the impact of involvement with commercial sex on LGBT and gender non-conforming youth. It then describes factors that cause LGBT youth to be at risk for involvement with CSEC.⁵ For example, LGBT youth face the overlapping challenges of family rejection and discrimination at school, leading to push-out. Transgender youth in particular face discrimination in accessing affirming general and transition related health care.

Current gaps in New York City's available services funnel LGBT and gender non-conforming CSEC-involved youth into the juvenile justice system. Such gaps include but are not limited to a dearth of support for LGBT youth and their families to prevent family rejection from resulting in homelessness, foster care, and juvenile justice involvement; unsafe and unwelcoming out-of-home care; under-resourced LGBT-focused organizations; a lack of cultural competency and training of stakeholders within child welfare, juvenile justice and PINS systems to address unique needs of LGBT youth; and the absence of a court-mandated diversion program for LGBT and gender non-conforming commercially sexually exploited youth.

Solutions exist to help meet the needs of this population. We recommend providing support to address family rejection; increasing sources of safe and inclusive housing; supporting voluntary programs with a client-centered practice; training court personnel and service providers to be culturally competent and meet the particularized needs of LGBT and gender non-conforming youth; supporting clinical interventions that address the particular dynamics of CSEC as they affect LGBT youth; and the creation of a culturally competent court-sanctioned diversion programs. However without additional research on this particularly vulnerable population, effective programs and strategies cannot be created to intercept these youth before they fall deeper into the juvenile justice system. The report closes with a consideration of additional complexities and concerns with regard to sex trafficking laws.

I. LGBT AND GENDER NON-CONFORMING YOUTH ARE AT INCREASED RISK FOR COMMERCIAL SEXUAL EXPLOITATION AND SUBSEQUENT INVOLVEMENT WITH JUVENILE AND CRIMINAL JUSTICE SYSTEMS

a. LGBT youth are disproportionately represented among youth at risk for commercial sexual exploitation.

A major national study examining the commercial sexual exploitation of children (CSEC) found that between 25% and 35% of boys and young men involved in CSEC self-identify as gay

⁵ A significant barrier to meeting the needs of these youth is the lack of available research and data on this population. They are under-studied and under-counted. This report is informed by the available research, and where there are gaps we have relied on the experiences of service providers who work with affected youth.

or bisexual, or as transgender girls.⁶ This constitutes a disproportionate number of LGBT-identified youth among this population.

Risk factors for child sexual exploitation in general are prior sexual abuse and domestic violence, homelessness, foster care placement, and Persons in Need of Supervision (PINS) petitions, school absence/truancy, drug abuse, and gang participation.⁷ LGBT youth are disproportionately represented in child welfare, juvenile justice, and homeless systems and have statistically higher rates of risk for being victims of physical and sexual violence, and for drug abuse.⁸

Because of the correlation between poverty, homelessness and engagement in commercial sex, the disproportionate number of homeless LGBT and gender non-conforming youth makes them a particular cause for concern. A growing body of research estimates that 20 to 40 percent of homeless youth are LGBT-identified.⁹ This number is grossly disproportionate compared to LGBT youth in the general population (estimated between 4 and 10 percent).¹⁰ LGB homeless youth are more likely than their non-LGB homeless peers to report being asked to exchange sex for money, food, drugs, shelter, and clothing.¹¹ One study in Canada found that LGBT youth were three times more likely to engage in survival sex (exchanging sex for basic needs such as shelter or food) than their heterosexual peers.¹² In a separate study, gender nonconforming and gay, lesbian, bisexual and questioning youth were generally found to be more likely to be detained for prostitution than their heterosexual and gender conforming peers.¹³

⁶ R.J. ESTES & N.A. WEINER, UNIV. OF PA. SCH. OF SOC. WORK, CTR. FOR STUDY OF YOUTH POLICY, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U. S., CANADA AND MEXICO: US NATIONAL STUDY 60 (2001). This study referred to participants by their sex assigned at birth and not their gender identity. More research is needed into the breakdown of sexual orientation and gender identity of girls and young women who engage in commercial sex.

⁷ ELIZABETH G. HINES, & JOAN HOCHMAN SEX TRAFFICKING OF MINORS IN NEW YORK: INCREASING PREVENTION AND COLLECTIVE ACTION iv (2012, July).

⁸ See CHILD WELFARE LEAGUE OF AMERICA & LAMBDA LEGAL, GETTING DOWN TO BASICS: TOOLS TO SUPPORT LGBTQ YOUTH IN CARE: LGBTQ YOUTH RISK DATA (2012), available at http://www.lambdalegal.org/sites/default/files/gdtb_2013_20_youth_risk_data.pdf (citing Bryan Cochran, Angela J. Stewart, Joshua A. Ginzler & Ana Mari Cauce, *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 AM. J. PUB. HEALTH 773 (2002)).⁹ NICHOLAS RAY, NATIONAL GAY AND LESBIAN TASK FORCE, LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH: AN EPIDEMIC OF HOMELESSNESS 1 (2006) available at <http://www.thetaskforce.org/downloads/HomelessYouth.pdf>.

⁹ NICHOLAS RAY, NATIONAL GAY AND LESBIAN TASK FORCE, LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH: AN EPIDEMIC OF HOMELESSNESS 1 (2006) available at <http://www.thetaskforce.org/downloads/HomelessYouth.pdf>.

¹⁰ LAMBDA LEGAL ET AL., NATIONAL RECOMMENDED BEST PRACTICES FOR SERVING LGBT HOMELESS YOUTH 1 (2009) available at <http://www.lambdalegal.org/publications/national-recommended-best-practices-for-lgbt-homeless-youth>.

¹¹ *Id.* (citing James M. Van Leeuwen, et al., *Lesbian, Gay, and Bisexual Homeless Youth: An Eight City Public Health Perspective*, 85 CHILD WELFARE 151 (2006)).

¹² See TASK FORCE, *supra* note 9, at 3 (citing Stephen Gaetz, *Safe streets for whom? Homeless youth, social exclusion, and criminal victimization*, 46 CANADIAN J. OF CRIMINOLOGY & CRIM. JUST. 423 (2004)).

¹³ See Angela Irvine, *We've Had Three of Them: Addressing the Invisibility of Lesbian, Gay, Bisexual, and Gender Nonconforming Youths in the Juvenile Justice System*, 19 COLUM. J. GENDER & L. 675, 694 (2010) ("10% of gay, bisexual or questioning boys were detained for prostitution compared to 1% of their heterosexual peers, 11% of lesbian, bisexual and questioning girls were detained for prostitution compared to five percent of their peers....7%

Transgender people are disproportionately represented in the homeless youth population.¹⁴ One study found that 46% of homeless transgender youth engage in commercial sex.¹⁵ Transgender youth engaging in commercial sex are considered to be the most at risk for violence.¹⁶ According to recent research, the violation of gender norms and relatively high amount of money transgender youth make when engaged in commercial sex are two factors that contribute to this increased risk of violence.¹⁷ Further, transgender youth report being targeted by police for harassment, assault, and arrest due to their gender presentation.¹⁸

New York City:

A report published in 2008 by the John Jay College of Criminal Justice examined the commercial sexual exploitation of children (CSEC) in New York City.¹⁹ The report estimated that 3,946 teenagers were selling sex in the five boroughs of New York City.²⁰ 54% of such teenagers are cisgender male, 42% are cisgender female and 4% are transgender.²¹ The majority of youth engaging in commercial sex are homeless.²² Almost all, 95%, reported that they sold sex for cash.²³ Poverty was reported as a driving force for participation in commercial sex.²⁴ In a study currently underway by The Urban Institute in partnership with Streetwise and Safe, Youth preliminary finding indicate youth traded sex in exchange for money, housing, and food.²⁵

of gender non-conforming boys were detained for prostitution compared with 1% of their gender conforming peers. 6% of gender non-conforming girls were detained for prostitution compared with 7% of their gender conforming peers”).

¹⁴ See TASK FORCE at 58.

¹⁵ See TASK FORCE at 62 (citing Laura Dean et al., *Lesbian, gay, bisexual, and transgender health: Findings and concerns*, 4 J. OF THE GAY & LESBIAN MED. ASSOC. 101 (2000)).

¹⁶ MARYA GWADZ ET AL., CENTER FOR DRUG USE AND HIV RESEARCH (CDUHR), INSTITUTE FOR AIDS RESEARCH, NATIONAL DEVELOPMENT AND RESEARCH INSTITUTES, INC., WORK EXPERIENCES OF HOMELESS YOUTH IN THE FORMAL AND STREET ECONOMIES: BARRIERS TO AND FACILITATORS OF WORK EXPERIENCES, AND THEIR RELATIONSHIPS TO ADVERSE OUTCOMES (2005).

¹⁷ See RIC CURTIS ET AL., JOHN JAY COLLEGE OF CRIMINAL JUSTICE, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN NEW YORK CITY, VOLUME ONE: THE CSEC POPULATION IN NEW YORK CITY: SIZE, CHARACTERISTICS, AND NEEDS 16 (2008) available at <https://www.ncjrs.gov/pdffiles1/nij/grants/225083.pdf>. (citing MARYA GWADZ ET AL., NY CTR. FOR DRUG USE AND HIV RESEARCH, INST. FOR AIDS RESEARCH, NAT'L DEV. & RESEARCH INST., WORK EXPERIENCES OF HOMELESS YOUTH IN THE FORMAL AND STREET ECONOMIES: BARRIERS TO AND FACILITATORS OF WORK EXPERIENCES, AND THEIR RELATIONSHIPS TO ADVERSE OUTCOMES (2005)).

¹⁸ See LAMBDA LEGAL ET AL., *supra* note 9, at 1; <http://www.fiercenyc.org/cop-watch>.

¹⁹ CURTIS ET AL., *supra* note 17.

²⁰ *Id.* at 33. Note that this estimate does not include minors who are held indoors by traffickers or who do not speak English. It does include minors who are under the control of pimps. *Id.* at 113.

²¹ *Id.* at 34.

²² *Id.* at 42.

²³ *Id.* at 115.

²⁴ *Id.*

²⁵ How LGBTQ Youth, YMSM & YWSW Engage in the Commercial Sex Market, Meredith Dank, PhD, Senior Research Associate, The Urban Institute & Mitchyll Mora, Streetwise and Safe (SAS); American Society of Criminology, November 21, 2013, Atlanta, Ga. (power point on file with M. Dank, see final page for disclaimer regarding use of study).

LGBT youth in New York City became homeless around 14.4 years old for lesbian and gay teens and 13.5 for transgender teens.²⁶ LGBT youth are disproportionately numbered among homeless youth populations in New York City.²⁷ One recent study in New York City found that 18% of homeless youth identified as gay or lesbian, 11% identified as bisexual and 5% identified as transgender.²⁸ However, the study's authors acknowledged that these numbers are underestimates because of the reluctance of many study participants to disclose their sexual orientation or gender identity.²⁹ This study found that, on average, homeless LGBT youth tended to live away from home longer than their heterosexual, cisgender peers, with transgender youth homeless for the longest period of time.³⁰ This study found that LGBT homeless youth had greater exposure to the foster care and criminal justice systems than their heterosexual and cisgender peers.³¹

LGBT youth of color face the intersecting burdens of homophobia, transphobia, and racism, and are even more disproportionately represented among CSEC youth. According to the recent John Jay study, an estimated 29% of CSEC-involved youth were "Black," 23% were "white," 23% were "Hispanic," and 22% identified as "multiracial."³²

b. LGBT youth are at increased risk for commercial sexual exploitation due to a number of unique factors.

i. Family rejection based on sexual orientation, and gender identity and expression, causes LGBT youth to be out-of-home at a disproportionately high rate.

"Okay well, basically I was kicked out at the age of 17 because of my sexuality by my [grandmother] who was my legal guardian at the time. [T]hat's when I came out but she already had signs that I was already gay because my brother is gay also. So it's like, no, no, no bueno but yeah, she kicked me out. I started going to school with an attitude and stuff like that, places I live, fighting, just doing what kids are not supposed to do. So 18, turning 18 is like...I guess my life just like finally started for me because of the simple fact I lost my virginity at 18, I started, I started doing drugs at 18, so it's like 18 was the new 21. So, yeah like I could say in the middle of my age of being 18, I started having sex for food, shelter and money."

- 21 year old, Mixed Race, Gay Male³³

²⁶ GAY LESBIAN AND STRAIGHT EDUCATION NETWORK, KEY FINDINGS ON THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH IN OUR NATION'S SCHOOLS (2007), available at <http://glsen.org/press/2011-national-school-climate-survey>.

²⁷ See LANCE FREEMAN & DARRICK HAMILTON, EMPIRE STATE COALITION OF YOUTH AND FAMILY SERVICES, A COUNT OF HOMELESS YOUTH IN NEW YORK CITY 5 (2008), available at www.citylimits.org/images_pdfs/pdfs/HomelessYouth.pdf.

²⁸ See *id.* at 13.

²⁹ See *id.* at 13–14.

³⁰ See *id.* at 16–17.

³¹ See *id.* at 21.

³² See Curtis, *supra* note 17, at 40.

³³ Youth respondent in The Urban Institute's study (with Streetwise and Safe) on how LGBTQ Youth, YMSM, and YWSW engage in the commercial sex market, Meredith Dank (see final endnote for complete information).

LGBT youth face high rates of family rejection, thus increasing their rate of homelessness, entry into foster care, contact with the juvenile justice system, and subsequent risk of commercial sexual exploitation.³⁴ LGBT youth often become homeless by leaving home to escape violence and abuse stemming from their families' rejection of their sexual orientation and/or gender identity or expression.³⁵ Service providers that work with this population report that close to seven in ten (68%) of their LGBT clients have faced family rejection, and 54% have experienced physical, sexual and/or emotional abuse in their family.³⁶ Recent research demonstrates that LGBT youth who end up in the juvenile justice system are twice as likely to have experienced family conflict, abuse, and homelessness as their peers.³⁷

A lack of support from appropriate, skilled therapists compounds family rejection. LGBT youth need and deserve appropriate, skilled therapists who support them in their sexual orientation and gender identity. Unfortunately, some youth are subjected to "reparative" or "conversion" therapists who attempt to change their sexual orientation or gender identity. These so-called "therapies" fail any credible scientific or therapeutic test, have been rejected by all mainstream medical and therapeutic organizations, including the American Psychological Association and the American Association of Marriage and Family Therapy, as baseless and potentially dangerous, and have been outlawed in some (but not all) jurisdictions.³⁸ Youth subjected to these practices by their parents are placed at risk of significant mental and physical consequences, not to mention family rejection and homelessness when these efforts "fail."³⁹

ii. Harassment and discrimination in schools contribute to school push-out.

1. Truancy:

A 2011 report demonstrated that 63.5% of LGBT students report feeling unsafe in their schools because of their sexual orientation.⁴⁰ One in three LGBT students reported skipping school due to safety concerns, resulting in truancy and the risk of suspension and expulsion.⁴¹

³⁴ See TASK FORCE *supra* note 12, at 2, *see also*, Angela Irvine, *supra* note 13, at 692–93.

³⁵ See LAURA E. DURSO & GARY J. GATES, SERVING OUR YOUTH: FINDINGS FROM A NATIONAL SURVEY OF SERVICE PROVIDERS WORKING WITH LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH WHO ARE HOMELESS OR AT RISK OF BECOMING HOMELESS 4 (2012).

³⁶ See *id.* at 3–4.

³⁷ JEROME HUNT & AISHA MOODIE-MILLS, CTR FOR AMERICAN PROGRESS, THE UNFAIR CRIMINALIZATION OF GAY AND TRANSGENDER YOUTH: AN OVERVIEW OF THE EXPERIENCES OF LGBT YOUTH IN THE JUVENILE JUSTICE SYSTEM 2 (2012), *available at* <http://www.americanprogress.org/issues/lgbt/report/2012/06/29/11730/the-unfair-criminalization-of-gay-and-transgender-youth/>.

³⁸ LAMBDA LEGAL, HEALTH AND MEDICAL ORGANIZATION STATEMENTS ON SEXUAL ORIENTATION, GENDER IDENTITY/EXPRESSION AND "REPARATIVE THERAPY" (2011) *available at* http://www.lambdalegal.org/sites/default/files/publications/downloads/fs_health-and-med-orgs-stmts-on-sex-orientation-and-gender-identity_1.pdf.

³⁹ See *e.g.*, LAMBDA LEGAL, PICKUP V. BROWN AND WELCH V. BROWN (last visited, Jan. 1, 2014) <http://www.lambdalegal.org/in-court/cases/pickup-v-brown-and-welch-v-brown>.

⁴⁰ See *Ending the School to Prison Pipeline: Testimony for S. Judiciary Subcomm. on the Constitution, Civil Rights, and Human Rights*, 112th Cong. 4 (2012) (statement of Hayley Gorenberg, Deputy Legal Director, Lambda Legal Defense and Education Fund) *available at* http://www.lambdalegal.org/in-court/legal-docs/leg_us_20121210_testimony-school-to-prison-pipeline (citing JOSEPH G. KOSCIW, ET AL., GAY, LESBIAN &

2. *Suspensions and Expulsions:*

LGB⁴² youth are punished by school and criminal authorities at higher rates than heterosexual youth.⁴³ A nationally representative study found that LGB teens are approximately 1.25 to 3 times more likely than their heterosexual peers to be punished by their schools, police and the courts.⁴⁴ These disparities in punishments cannot be explained by differences in rates of misbehavior as research indicates LGB youth are less likely than the general youth population to be engaged in violence, yet they are still singled out for punishment because of their sexual orientation.⁴⁵ Too often, anti-LGBT harassment goes unchecked: 84.5% of LGBT youth reported that anti-LGBT remarks resulted in interventions by faculty and staff “never” or only “some of the time.”⁴⁶ In such environments, LGBT youth who defend themselves from harassment are sometimes driven to fight. Zero-tolerance policies, together with a disregard for events that precede and often provoke an altercation, result in expulsions and school push-out for LGBT bullying victims.⁴⁷ As with all students of color, LGBT students of color are particularly at risk of disproportionate punishment: The U.S. Department of Education has released data that demonstrate that African American students are far more likely to be suspended or expelled from school.⁴⁸

3. *Placements in inappropriate alternative schools:*

Lambda Legal Help Desk callers report being sent to alternative schools because school officials were uncomfortable with their sexual orientation.⁴⁹ This push-out from a familiar school environment to new school placements, many of which are inappropriate, increases the likelihood that LGBT students will leave school and end up at risk for homelessness and involvement with CSEC.⁵⁰

STRAIGHT EDUC. NETWORK, THE 2011 NATIONAL SCHOOL CLIMATE SURVEY xiv (2011), *available at* http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/002/2105-1.pdf. *See also* CTRS. FOR DISEASE CONTROL AND PREVENTION, LESBIAN, GAY, BISEXUAL AND TRANSGENDER HEALTH, <http://www.cdc.gov/lgbthealth/youth.htm> (last visited Dec. 10, 2012)).

⁴¹ *See id.*

⁴² This data comes from a study that didn’t explore the experiences of transgender youth, although anecdotal evidence indicates that these youth are similarly at risk of excess punishment.

⁴³ Kathryn E. W. Himmelstein & Hannah Brückner, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127 PEDIATRICS 49, 49-57 (2010).

⁴⁴ *See id.* at 54.

⁴⁵ *See* Karen N. Peart, *Lesbian, Gay and Bisexual Teens Singled Out for Punishment*, YALE NEWS, Dec. 6, 2010, <http://news.yale.edu/2010/12/06/lesbian-gay-and-bisexual-teens-singled-out-punishment> (quoting lead author of study).

⁴⁶ *See* JOSEPH G. KOSCIW, ET AL., *supra* note 40, at 17.

⁴⁷ *See* Hayley Gorenberg, *Of Counsel: Ending the School-to-Prison Pipeline*, LAMBDA LEGAL (Sept. 12, 2013), http://www.lambdalegal.org/blog/201309_of-counsel.

⁴⁸ *See* Press Release, U.S. Dept. of Educ., New Data from U.S. Department of Education Highlights Educational Inequities Around Teacher Experience, Discipline and High School Rigor (Mar. 6, 2012), *available at* <http://www.ed.gov/news/press-releases/new-data-us-department-education-highlights-educational-inequities-around-teache>.

⁴⁹ *See id.*

⁵⁰ *See id.*

iii. Employment discrimination

LGBT youth of employable age, and transgender youth in particular, face employment discrimination.⁵¹ This compounds the already difficult task of finding work without a high school diploma.⁵² Inability to find employment makes these youth more vulnerable to engaging in commercial sex, as it may be the only way to meet their basic needs. When LGBT youth are excluded from their families, schools, employment opportunities, survival sex can become a last resort:

*"I look at us like we are trying to do something with ourselves and we want to do things...like we want to get a normal job as ourselves...we want to do all that stuff but we can't because of the fact that there's always these ignorant people in the world who want to bring us down, so the only option is to go out and do some sort of job to make money. So a lot of girls just do it because the money's good and there's a lot of guys who buy it...buy us, you know, I just think it's a bad thing really, I just feel it's degrading and we shouldn't have to do that"*⁵³

Another CSEC-engaged transgender youth was very blunt in describing her predicament: "no one will ever give us work."⁵⁴

iv. Transgender youth lack appropriate health care

In a recent survey conducted by Lambda Legal, 70% of transgender or gender-nonconforming people who responded reported experiencing some form of health care discrimination or harassment.⁵⁵ Even when a doctor considers transition-related health care necessary, most insurance companies refuse to cover it, and these youth generally cannot begin hormone treatment without parental/guardian consent.^{56 57} This is true despite the fact that the American Medical Association, The World Professional Association for Transgender Health, and numerous other professional medical organizations support appropriate medical care and insurance coverage for this population.⁵⁸ Transgender youth generally cannot begin hormone

⁵¹ See TASK FORCE, *supra* note 9, at 58.

⁵² See TASK FORCE, *supra* note 9, at 22.

⁵³ Jo Rees, *Trans Youth Involved in Sex Work in New York City: A Qualitative Study* 88 (May, 2010) (unpublished Ph.D. dissertation, New York University) (on file with author) (quoting transgender youth engaged in commercial sex).

⁵⁴ *Id.* at 88.⁵⁵ See LAMBDA LEGAL, *TRANSGENDER RIGHTS TOOLKIT: A LEGAL GUIDE FOR TRANS PEOPLE AND THEIR ADVOCATES: OVERCOMING HEALTH CARE DISCRIMINATION 1* (Feb. 2, 2007), *available at* http://www.lambdalegal.org/publications/trt_overcoming-health-care-discrimination.

⁵⁵ See LAMBDA LEGAL, *TRANSGENDER RIGHTS TOOLKIT: A LEGAL GUIDE FOR TRANS PEOPLE AND THEIR ADVOCATES: OVERCOMING HEALTH CARE DISCRIMINATION 1* (Feb. 2, 2007), *available at* http://www.lambdalegal.org/publications/trt_overcoming-health-care-discrimination.

⁵⁶ *See id.*

⁵⁷ See LAMBDA LEGAL, *TRANSGENDER RIGHTS TOOLKIT: A LEGAL GUIDE FOR TRANS PEOPLE AND THEIR ADVOCATES: SURVIVAL TIPS FOR TRANS YOUTH 1* (Aug. 8, 2013), *available at* http://www.lambdalegal.org/publications/trt_survival-tips-for-trans-youth.

⁵⁸ See LAMBDA LEGAL, *TRANSGENDER RIGHTS TOOLKIT: A LEGAL GUIDE FOR TRANS PEOPLE AND THEIR ADVOCATES: SURVIVAL TIPS FOR TRANS YOUTH 1* (Aug. 8, 2013), *available at* http://www.lambdalegal.org/publications/trt_survival-tips-for-trans-youth.

⁵⁹ *See id.* at 1–2⁶⁰ *See id.* at 1–2.

treatment without parental/guardian consent.⁵⁹ These youth are unlikely to receive appropriate health care when they face a multitude of challenges including family rejection, school push-out, employment discrimination, violence, poverty and homelessness.⁶⁰ Faced with these obstacles to safe, affordable health care, some transgender youth engage in commercial sex to attempt to fund transition-related health care, including hormones sold illegally.⁶¹ Changes in policy or the addition of services to intercept these youth before involvement in CSEC could prevent transgender youth from entering the juvenile justice system, and provide them with healthy solutions to their basic needs.

II. INSUFFICIENT SPECIALIZED RESOURCES AND LACK OF CULTURAL COMPETENCE AMONG PROVIDERS AND GOVERNMENT ENTITIES RESULTS IN INEFFECTIVE SERVICE DELIVERY AND DISCRIMINATION AND CONTRIBUTES TO THE DISPROPORTIONATE NUMBER OF LGBT AND MSM COMMERCIAL SEXUALLY EXPLOITED YOUTH AT ALL STAGES OF JUVENILE AND CRIMINAL JUSTICE SYSTEMS

a. Insufficient community resources exist to address family rejection based on sexual orientation and gender identity and expression and to prevent youth from risk of commercial sexual exploitation.

In New York City, only one community provider, SCO Family of Services, works specifically to address family rejection based on sexual orientation and gender identity and expression. Other foster care agencies and service providers in New York City work with court-involved LGBT youth who are out-of-home or at risk of out-of-home placement and work on family issues, but most have not had specific training on family rejection. Given the disproportionate numbers of LGBT youth in New York City present in the child welfare, juvenile justice, and homeless systems, there is a clear need for additional services to prevent the entry of LGBT youth into formal out-of-home care. Currently, there is no concrete way for families, particularly low- to medium-income earners, to gather information about and to access family acceptance services without some form of government involvement. Without services to prevent LGBT youth from becoming homeless, they will continue to face a disproportionate risk of commercial sexual exploitation and contact with juvenile and criminal justice systems.

b. Many traditional out-of-home care spaces are unsafe and unwelcoming for LGBT youth

Many traditional out-of-home care spaces, including shelters, are not LGBT competent. LGBT youth report being discriminated against when trying to access these homeless youth services.⁶² Some report being assaulted by their peers because of their sexual orientation or gender identity when trying to participate in programs serving homeless youth.⁶³ Youth who identify as transgender often are denied access to shelters, or are placed in inappropriate social

⁶⁰ See *id.* at 1–2.

⁶⁰ See *id.* at 1–2.

⁶¹ See ESTES & WEINER, *supra* note 6, at 72.

⁶² See LAMBDA LEGAL ET AL., *supra* note 9, at 2.

⁶³ See *id.*

service provider programs.⁶⁴ This compounds the family rejection and resulting homelessness previously described, and drives youth to seek alternative housing. Many LGBT youth are trading sex for a place to sleep because they estimate doing so to be safer than going to a shelter - a choice no teenager should have to make.⁶⁵ A recent study in New York City found that LGBT homeless youth reported greater frequency than their heterosexual cisgender peers of spending the night with a sex work client—a choice no teenager should have to make.⁶⁶

Many LGBT youth in foster care leave placements because those placements are not affirming and supportive. As a result, these youth are compelled to find their own housing, thus placing themselves at risk of commercial sexual exploitation as they attempt to meet their housing needs and other basic needs, such as food and clothing.⁶⁷

LGBT youth and young adults sometimes choose to live together in informal groups, where they support one another and contribute to rent.⁶⁸ Some LGBT youth in alternative housing arrangements are CSEC involved. These alternative housing arrangements provide shelter that may otherwise not be available to CSEC-involved LGBT youth. However, under the current legal regime, these individuals risk being criminalized because they engage in CSEC together, often for safety. Policy makers should be careful that laws intended to hold adults accountable for exploiting vulnerable people through trafficking do not punish some of the vulnerable youth themselves when they work together to protect one another in a dangerous environment.

c. Existing voluntary, community-based programs that serve LGBT and MSM commercially sexually exploited youth are under-resourced

I think they just need more staff. There times when I'll go to my program and I really need to talk to somebody and everybody is just busy. You know they are either with another client or they're short staffed. Because I understand now they are cutting a lot of programs so a lot of people are not having enough staff. If they can, if they can change that then I think a lot of clients will be a lot happier.

- 21 year old, Puerto Rican, Female Lesbian.⁶⁹

⁶⁴ See TASK FORCE, *supra* note 12, at 58.

⁶⁵ See e.g. TASK FORCE, *supra* note 12, at 3. (citing Stephen Gaetz, *Safe streets for whom? Homeless youth, social exclusion, and criminal victimization*, 46 CANADIAN J. OF CRIMINOLOGY & CRIM. JUST. 423 (2004)).⁶⁶ See LANCE FREEMAN & DARRICK HAMILTON, *supra* note 27, at 24.

⁶⁶ See LANCE FREEMAN & DARRICK HAMILTON, *supra* note 27, at 24.

⁶⁷ See TASK FORCE, *supra* note 12, at 12.

⁶⁸ Many LGBT youth are involved in the ballroom or ball scene, which often involves competing in drag. Some youth connected with the ball scene are part of informal “houses” led by a “house mother” or “house father.” These houses offer an informal family structure and support for some LGBTQ youth. In one city a provider has described organized trafficking connected with houses, however that has not been the experience of New York City service providers working in this area.

⁶⁹ Youth respondent in The Urban Institute’s study (with Streetwise and Safe) on how LGBTQ Youth, YMSM, and YWSW engage in the commercial sex market, Meredith Dank (see final endnote for complete information).⁷⁰ Ian Urbina, *Gay Youth Find Place to Call Home in Specialty Shelters*, N.Y. Times, May 17, 2007, <http://www.nytimes.com/2007/05/17/us/17homeless.html?pagewanted=all>.

There are far too few shelters that provide a safe space for this marginalized population. As reported in *The New York Times*, there are only “50 beds for gay homeless youth” in New York City.⁷⁰ In New York City, the following LGBT-inclusive organizations received Safe Harbor Funding to work with CSEC-involved LGBT youth. They are culturally competent, but lack sufficient funding to meet the complete needs of CSEC-involved LGBT youth:

- **The Ali Forney Center (AFC):** “Our mission is to protect lesbian, gay, bisexual, transgender, questioning (LGBTQ) youth from the harm of homelessness, and to support them in becoming safe and independent as they move from adolescence to adulthood.”⁷¹ In addition to providing street outreach, case management, primary medical care, HIV testing, mental health assessment and treatment, food and clothing, and an employment assistance program for LGBT homeless youth, AFC runs a weekly psycho-educational group “Coinz”, as well as a Safe Harbor paid internship program that supports CSEC youth.⁷²
- **The Hetrick-Martin Institute (HMI):** “[HMI] believes all young people, regardless of sexual orientation or identity, deserve a safe and supportive environment in which to achieve their full potential. Hetrick-Martin creates this environment for lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth between the ages of 13 and 24 and their families.”⁷³ HMI has a street outreach program and runs a closed group for CSEC youth.⁷⁴
- **Safe Horizon:** “Safe Horizon provides support, prevents violence, and promotes justice for victims of crime and abuse, their families, and communities”⁷⁵ Safe Horizon supports CSEC youth through outreach efforts, as well as a psycho-educational group.⁷⁶
- **The Door:** “The Door’s mission is to empower young people to reach their potential by providing comprehensive youth development services in a diverse and caring environment.”⁷⁷ The Door offers free counseling, GED, job training, case management, meals, street outreach, clothing, showers/laundry, legal services, supportive housing, a health clinic, arts, recreation, sports, and LGBTQ specific groups for any young person age 12-21 and up to 24 if they are homeless. A CSEC youth may access any of these services.

Other New York City-based organizations doing CSEC work, such as the Jewish Child Care Association (JCCA), have expressed an interest in developing cultural competency to serve

⁷⁰ Ian Urbina, *Gay Youth Find Place to Call Home in Specialty Shelters*, N.Y. Times, May 17, 2007, <http://www.nytimes.com/2007/05/17/us/17homeless.html?pagewanted=all>.

⁷¹ THE ALI FORNEY CENTER, <http://www.aliforneycenter.org/> (last visited Jan. 14, 2014).

⁷² See Safe Harbor, Program Updates, Oct. 2013.

⁷³ HETRICK MARTIN INSTITUTE, OUR MISSION, <http://www.hmi.org/page.aspx?pid=310> (last visited Jan. 14, 2014).

⁷⁴ See Safe Harbor, Program Updates, Oct. 2013.

⁷⁵ SAFE HORIZONS, ABOUT US, <http://www.safehorizon.org/index/about-us-1.html> (last visited Jan. 14, 2014).

⁷⁶ See Safe Harbor, Program Updates, Oct. 2013.

⁷⁷ THE DOOR, OUR MISSION, <http://www.door.org/about-door> (last visited Jan. 22, 2014).

LGBT populations but lack the resources required to train staff members to develop such expertise.

- d. The Persons in Need of Supervision (PINS) system fails to refer LGBT and MSM youth to providers who are specialized or even culturally competent, resulting in a disproportionately high rate of failure and referral to formal justice system involvement.**

Existing voluntary, community-based, LGBT-competent service providers (see list above) report that they receive few referrals from the Persons in Need of Supervision (PINS) system. LGBT youth who are referred to services that are not LGBT-competent are at risk for receiving inappropriate services or facing harassment or discrimination. A youth's ineffective or harmful experience with a provider increases the risk for failure and referral to court-mandated services. Consequently, the lack of appropriate services for PINS cases contributes to the overrepresentation of LGBT youth in delinquency proceedings, too often setting wheels in motion to result in further encounters with a criminal system rather than diversion on a noncriminal path.

- e. No court-sanctioned diversion program serves LGBT and MSM youth**

Youth who are not successful in the PINS process face a formal delinquency case, and are required to engage in court-mandated services to avoid adjudications. The Girls Education Mentoring Service (GEMS) provides a court-mandated diversion from the juvenile justice system for cisgender girls and young women who have been involved in CSEC.⁷⁸ According to its mission statement, "GEMS provides young women with empathetic, consistent support and viable opportunities for positive change."⁷⁹ The program offers an alternative to incarceration, and it provides young women with support, counseling, and case management.⁸⁰ While GEMS is an important resource for some commercially sexually exploited youth, GEMS has acknowledged that it is not culturally competent to provide services to LGBT youth. GEMS staff lack the training or capacity to meet the needs of this population, and GEMS does not allow boys or transgender girls into the program. GEMS is the only court-mandated diversion program.

Without the opportunity for diversion at the court-mandated stage, LGBT and MSM youth are more likely to end up in the juvenile justice system than their heterosexual, cisgender female peers. This deficit severely disadvantages youth by depriving them of equal treatment.

III. RECOMMENDED SOLUTIONS

- a. Provide support to address family rejection**

⁷⁸ See e.g. *People v. L.G.*, No. 2000QN056893, 2013 WL 4402830, at *3 (N.Y. Crim. Ct., Queen's Cty. Jul. 12, 2013).

⁷⁹ GEMS, MISSION & HISTORY, <http://www.gems-girls.org/about/mission-history> (last visited, Jan. 14, 2013).

⁸⁰ See GEMS, HOLISTIC CASE MANAGEMENT, <http://www.gems-girls.org/what-we-do/our-services/intervention/holistic-case-management> (last visited, Jan. 14, 2013).

As described earlier, too many LGBT youth are kicked out, rejected, or abused by their families when they disclose their sexual orientation or gender identity or exhibit gender non-conforming behavior. Expanding the ranks of community-based service providers trained in providing therapeutic services designed to increase family acceptance and minimize rejection would help reduce the number of LGBT youth in informal or formal out-of-home care. Communities and families should be made aware of these services so that families can access them on a voluntary basis without, or at least prior to, contact with government systems. Child welfare, juvenile justice, and homeless systems should develop family acceptance services in communities where they do not exist, and increase the utilization of services where they are already in place. Other systemic players, such as judges, attorneys for children, and attorneys for parents and guardians, should also be made aware of family acceptance services as additional referral sources. Implementing these services in a preventative model, whether to prevent placement in foster care or as a part of juvenile diversion efforts, will reduce the numbers of LGBT youth who are at heightened risk of commercial sexual exploitation.

b. Provide clinical interventions that address CSEC and LGBT identity

Commercially sexually exploited youth who are LGBT or gender non-conforming have experienced overlapping trauma, including but not limited to family rejection, discrimination, and violence. It follows that CSEC youth and service providers who encounter these young people have identified a need for clinical interventions including counseling and therapy. These services should be individualized and provided by clinicians trained on the interaction of CSEC with sexual orientation and gender identity.⁸¹

c. Provide more housing that is safe and inclusive

Lack of available and safe housing was identified by LGBT youth as a main reason for their participation in CSEC. Traditional out-of-home care providers should treat LGBT and gender non-conforming homeless youth with respect and provide a safe place to stay. Staff should be trained and provided with support to become culturally competent.⁸² For example, intake should be a welcoming experience, where youth can self-identify their sexual orientation and gender identity but are not required to do so.⁸³ They should be provided with information regarding LGBT programs and services.⁸⁴ Transgender and gender-nonconforming youth should be called by their preferred names and gender pronouns.⁸⁵ These and numerous other best practices should be implemented by all service providers that encounter homeless youth.

Until all out-of-home care spaces are safe for everyone, their absence narrows the housing options for LGBT and gender non-conforming youth drastically, to where many will continue to decide that their “best” option is to trade sex for shelter.⁸⁶

⁸¹ See e.g. *id.* at 6.

⁸² See generally LAMBDA LEGAL ET AL., *supra* note 10.

⁸³ See *id.* at 4.

⁸⁴ See *id.* at 6–7.

⁸⁵ See *id.* at 6.

⁸⁶ While this report focuses on youth under 18 as they are covered under the Safe Harbor legislation, we recognize that a large number of young adults aged 18–21 are engaged in commercial sex. As youth age out of the child

d. Support voluntary programs with a client-centered practice that connect with youth in their current circumstances without demanding they first institute change in their lives to access services

When asked what services would be most helpful to them, youth identified greater outreach and nonjudgmental counseling.⁸⁷ As documented by recent research, the majority of commercially sexually exploited youth are not arrested or, if they are, the arrests are for crimes other than prostitution.⁸⁸ Boys are particularly unlikely to be arrested for prostitution.⁸⁹ This population, therefore, needs not only culturally competent services, but also needs easy access to them without a court mandate.⁹⁰ The trauma involved in telling their stories keeps these youth from accessing services that require that they prove victimhood. Service providers are most likely to be able to help LGBT and gender non-conforming youth if they can first gain the youths' trust by meeting these youth where they are in a nonjudgmental way. Zero-tolerance approaches are unlikely to be successful, and should be replaced with lower-barrier services that help keep youth as safe as possible while giving them tools to exit CSEC. Programming should specifically address sexual orientation and gender identity. In addition, youth report benefitting from peer education services where they support one another in a manner that service providers are often unable to do due to a lack of understanding or able to relate.

e. Train judges, court personnel, attorneys for children, caseworkers, and service providers to reach out to and to recognize LGBT and MSM youth and their needs

LGBT and gender non-conforming CSEC youth describe experiences of discrimination and rejection in their encounters with government agencies, courts, police, and service providers. These experiences make them more isolated, and more vulnerable to CSEC. Everyone who comes into contact with these youth should be trained to recognize LGBT and gender non-conforming youth, and to support them and their particularized needs. The dominant narrative and training that these professionals learn is one of pimped cisgender heterosexual girls. Other stories need to be added to these trainings, to recognize the experiences of all CSEC youth, including LGBT and gender non-conforming youth.

Cultural competency must be increased across all of the foregoing systems and providers, who need to learn about the particularized needs and unique experiences of LGBT and gender non-conforming CSEC-involved youth. The judiciary, police, and service providers should be informed of existing resources that serve LGBT youth so that they can connect youth with the services that can best meet their needs.

f. Create a culturally competent court-sanctioned diversion program

welfare system, there are serious gaps in services to support them. The lack of available shelters and supports result in routine involvement with survival sex for this marginalized population.

⁸⁷ See Curtis et al., *supra* note 17, at 122.

⁸⁸ See Curtis et al., *supra* note 17, at 89.

⁸⁹ See *id.*

⁹⁰ Surviving our Struggle, a project of The Trauma Center in Boston, is an innovative project that specializes in the needs of male victims of commercial sexual exploitation. <http://www.traumacenter.org/initiatives/SOS.php>

New York City should create and fund court-sanctioned diversion programs to assist LGBT and gender non-conforming CSEC-involved youth. Such programs would provide support and holistic care, rather than further punish marginalized youth who are victims of CSEC. It is unacceptable that the only program currently available is open only to cisgender heterosexual girls⁹¹. The significant numbers of transgender girls, in particular, who are regularly arrested on prostitution-related charges, makes the need for a court mandated diversion program capable of competently addressing their needs all the more important. LGBT and gender non-conforming CSEC-involved youth must have the same opportunity to access safe supportive counseling and housing through a court mandate as their heterosexual peers. Implementation and utilization of these programs should add to, but not replace, other opportunities for youth to avoid formal adjudications where appropriate, such as resolving charges via adjournments in contemplation of dismissal.

- g. More research is needed on the unique experiences of commercial sexually exploited youth who are MSM or LGBT, and on effective strategies and beneficial services to assist this population.**

More research is needed in order to assess demographics, experiences and needs of youth who are gender non-conforming, and who are LGBT. . There is a dearth of research of these youths' particular experiences and the challenges that they face. While we look forward to forthcoming publications from the Urban Institute studying LGBT CSEC-involved youth, more research is needed to develop interventions and policies that are most likely to help these vulnerable groups. Without more research, it would be impossible to design effective programming.

IV. LEGAL ISSUES REMAIN UNDER CURRENT REGIME

We applaud the recent expansion of the Safe Harbor for Exploited Children Act to include sixteen- and seventeen-year-olds. However, problems remain with this legal regime. For example, CSEC youth and young adults who work together to increase their personal safety are still at risk of being criminalized as traffickers of one another. LGBT CSEC-involved youth and young adults often choose to live together and support one another as an alternative to unsafe shelter or foster care arrangements. While there is a potential for exploitation, policy makers should recognize that the potential does not always materialize, and carefully consider the range of individual situations rather than routinely criminalize this behavior along with the behavior they intend to prohibit.

Respectfully submitted on June 17, 2014 by:

Lambda Legal

⁹¹ While there are bisexual and lesbian girls who live at GEMS, there is no programming available at GEMS that addresses their sexual orientation, nor are all GEMS personnel culturally competent to meet their needs.

Disclaimer: The Urban Institute's current study, done in cooperation with Streetwise and Safe, is funded by the Office of Juvenile Justice and Delinquency Prevention. Use of information from the study is governed by the following provisions:

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