

## Testimony of Organizations Supporting LGBT Equality

### Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

June 19, 2012

Mr. Chairman Durbin and Members of the Judiciary Committee:

We thank Chairman Durbin and the Judiciary Committee for holding the first Senate hearing to consider the extensive human rights, fiscal, and public safety consequences of solitary confinement in U.S. prisons, jails, and detention centers. The undersigned organizations working to secure policies that benefit the lives of lesbian, gay, bisexual, and transgender (LGBT) people urge the Committee to not only consider the detrimental consequences of solitary confinement for the general prison population, but to also consider the especially severe effect on LGBT prisoners and LGBT immigrant detainees.

Solitary confinement is overused and abused by many correctional facilities in the U.S. at the high cost of the psychological, physical, and emotional well-being of those confined. Solitary confinement should only be used as a last measure to ensure inmate welfare and not as a routine procedure, as is so commonly the case across the United States. As this historic hearing will demonstrate, the effects of solitary confinement are devastating and far-reaching, as prison officials corral more vulnerable inmates into confinement rather than working to ensure a safer general population. This is especially true for transgender inmates.

We urge the Committee to not only seriously consider solitary confinement's consequences to the general prison population, but also the especially severe consequences for transgender prisoners. Transgender inmates are already at higher risk for discrimination and violence in the prison setting and are often placed in solitary confinement because prison officials deem them more vulnerable to sexual abuse. However, placing transgender prisoners in solitary confinement causes excessive harm by denying inmates services and programs, external support systems, and human interactions upon which they rely for survival. The Committee's timely hearing will demonstrate the dire need for U.S. correctional facilities to better protect inmates from the long-term damage caused by solitary confinement.

#### **Transgender Inmates are Disproportionately Housed in Solitary Confinement**

Though data on the experiences of transgender people in prison and jails is limited, recent data from the groundbreaking report *Injustice at Every Turn: A Report from the National Transgender Discrimination Survey*, conducted by the National Gay and Lesbian Task Force and the National Center for Transgender Equality, found that transgender people are more likely to be imprisoned than non-transgender people. Of the 6,450 transgender people surveyed, 16% reported being sent to jail or prison "for any reason," with rates of incarceration at 47% for Black respondents and 30% for American Indians. Comparatively, a 2003 Department of Justice report

shows that 2.7% of the general population is imprisoned at some point in life. Because transgender people are incarcerated at higher rates than the general population, they likely represent a larger percentage of the prison population.

Solitary confinement has become U.S. correctional facilities' quick fix for "protecting" transgender inmates from the unsafe conditions of the general prison population that remain unaddressed, effectively punishing inmates for their identities and for being victims of abuse. According to data from the U.S. Department of Justice, inmates placed in male prisons who are smaller in stature, display feminine traits or features, or are known to be gay are at a higher risk for physical and sexual assault.<sup>1</sup>

*Injustice at Every Turn* found that 16% of transgender people in prisons or jails were physically assaulted and 15% were sexually assaulted.<sup>2</sup> For black transgender respondents, 34% reported sexual abuse while in prison or jail.<sup>3</sup>

Because nearly all transgender inmates are placed into sex-segregated facilities based on their sex assigned at birth and not on their gender identity, transgender women are frequently placed in men's facilities, and transgender men are frequently placed in women's facilities.<sup>4</sup> When prison officials make these incongruous placements, inmates are singled out for scrutiny, harassment, and abuse by other inmates and prison staff.

The impact of placing transgender inmates in facilities inconsistent with their gender identity is seen in the data as well. *Injustice at Every Turn* found that 21% of transgender women housed in men's facilities reported experiencing physical abuse and 20% reported incidents of sexual abuse while in prison or jail. For transgender men, 11% of those placed in women's facilities reported physical abuse, and 6% reported sexual abuse. In addition transgender men are more often in danger of assault *by prison staff* than their transgender female peers.

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<sup>1</sup> Ally Windsor Howell, [A Comparison of the Treatment of Transgender Persons in the Criminal Justice Systems of Ontario, Canada, New York, and California](#), 28 Buff. Pub. Int. L.J. 133, 151 (2010)

<sup>2</sup> Grant, Jamie M. et. al. *Injustice at Every Turn: A Report of the National Transgender Discrimination Study*. Available at [http://www.endtransdiscrimination.org/PDFs/NTDS\\_Report.pdf](http://www.endtransdiscrimination.org/PDFs/NTDS_Report.pdf)

<sup>3</sup> Id.

<sup>4</sup> Ally Windsor Howell, [A Comparison of the Treatment of Transgender Persons in the Criminal Justice Systems of Ontario, Canada, New York, and California](#), 28 Buff. Pub. Int. L.J. 133, 145 (2010) citing Amnesty Int'l USA, *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.* 59-63 (2005), available at <http://www.amnestyusa.org/outfront/stonewalled/report.pdf>; Stop Prisoner Rape & the National Prison Project of the ACLU, *Still in Danger: The Ongoing Threat of Sexual Violence against Transgender Prisoners* (2005), available at <http://www.justdetention.org/pdf/stillindanger.pdf>; Human Rights Campaign Found., *Transgender Americans: A Handbook for Understanding* 44-46 (2005), available at [http://www.hrc.org/documents/Transgender\\_handbook.pdf](http://www.hrc.org/documents/Transgender_handbook.pdf). For examples of anecdotal evidence, see Oliver Libaw, *Prisons Face Dilemma with Transgender Inmates: Inmates Who Look Like Women, Housed with Men*, ABC News (Jan. 22, 2005), available at <http://abcnews.go.com/US/story?id=90919&page=1> (last visited May 1, 2010); Cosmo Garvin, *What's she doing in the men's jail?* News Review, Feb. 13, 2003, <http://www.newsreview.com/sacramento/content?oid=14229>. See also: Interview with anonymous inmate, Female-to-male Transsexual Prisoner, Gender Coalition meeting in Albany, N.Y. (Mar. 25, 2006) (notes on file with author) [hereinafter March 25 Interview].

As transgender inmates are at higher risk for physical and sexual assault because of their identities, they are disproportionately placed in solitary confinement “for their safety.” While solitary confinement can protect inmates from the unaddressed dangers of the general prison population, it exposes them to assault by prison staff and generally tends to exacerbate their fear, anxiety, and isolation by depriving them of community based support, resources and programming available to inmates in the general prison population.

### **Treatment of Transgender Inmates while in Solitary Confinement**

Solitary confinement severely restricts the movements and privileges of transgender inmates on the basis of their marginalized identities. Like other inmates who are placed in solitary confinement, transgender inmates are allowed at most an hour outside of their cell per day, with some inmates reporting as little as five to ten minutes each day.<sup>5</sup> If inmates are fortunate, they may be able to shower once a week, but often times, showers are less frequent.<sup>6</sup> While in solitary confinement, inmate access to prison programming, such as educational classes, laundry, the prison library, and other prison facilities, is severely restricted or denied altogether.<sup>7</sup> Necessary medical care is also sometimes altogether denied while in solitary confinement.<sup>8</sup>

The denial of medical care that is often inherent in use of solitary confinement may have additional disturbing consequences for transgender people. Twelve percent (12%) of transgender respondents surveyed in jail or prison reported being denied routine non-transition related healthcare and 17% report being denied hormone treatment. Transgender people of color also reported higher rates of denial of hormone treatment with American Indians reporting 36% denial and Black respondents at 30% denial.<sup>9</sup> The general denial of necessary medical treatment for inmates in solitary confinement compounded with the rates of medical care denial for transgender inmates in the general prison population implies there may be even more dire consequences for transgender inmates.

While solitary confinement arguably “protects” transgender prisoners from assault perpetrated by the general population, it increases inmates’ risk for assault and harassment by prison staff, a documented source of abuse for transgender inmates.<sup>10</sup> As confirmed by *Injustice at Every Turn*, of respondents who went to jail and/or prison, 37% reported they were harassed by correctional officers or staff. Respondents of color experienced higher rates of officer/staff harassment than

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<sup>5</sup> Ally Windsor Howell, A Comparison of the Treatment of Transgender Persons in the Criminal Justice Systems of Ontario, Canada, New York, and California, 28 Buff. Pub. Int. L.J. 133, 191-92 (2010)

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Estelle v. Gamble, 429 U.S. 97, 109 (1976)

<sup>9</sup> Grant, Jamie M. et. al. *Injustice at Every Turn: A Report of the National Transgender Discrimination Study*. Available at [http://www.endtransdiscrimination.org/PDFs/NTDS\\_Report.pdf](http://www.endtransdiscrimination.org/PDFs/NTDS_Report.pdf)

<sup>10</sup> Christine Peek, Breaking Out of the Prison Hierarchy: Transgender Prisoners, Rape, and the Eighth Amendment, 44 Santa Clara L. Rev. 1211, 1240 (2004) citing Schwenk v. Hartford, 204 F.3d 1187, 1192 (9th Cir. 2000) (transsexual plaintiff alleged attempted rape by a Washington state prison guard); Darren Rosenblum, “Trapped” in Sing Sing: Transgendered Prisoners Caught in the Gender Binarism, 6 Mich. J. Gender & L. 499, 525 (2000) (citing Meriwether, 821 F.2d at 410). See also James Robertson, A Clean Heart and an Empty Head: The Supreme Court and Sexual Terrorism in Prison, 81 N.C. L. Rev. 433, nt. 101, at 446 (2003). “Because transsexuality and homosexuality are often conflated, officials may also consider transgender inmates appropriate targets.”

their white peers, with Latinas/os at 56%, black respondents reporting 50%, and multiracial individuals reporting 44%. Transgender male inmates experienced officer/staff harassment at higher incidence (44%) than their transgender female (40%) peers.<sup>11</sup>

These practices and experiences reflect the punitive nature of solitary confinement and demonstrate that while the intent may be to protect transgender inmates from some general population risks, forced solitary confinement often results in undeserved punishment that causes more harm to already vulnerable inmates.

### **Effects of Solitary Confinement on Transgender Prisoners**

In addition to transgender inmates experiencing the punishing restrictions of solitary confinement and heightened risk of physical and sexual abuse by prison staff, the mental and emotional effects of solitary confinement are severe and long-lasting. Prisoners in solitary confinement develop psychopathologies at higher rates than those in the general population (28% v. 15%),<sup>12</sup> and have been found to engage in self-mutilation at rates higher than the general population.<sup>13</sup> In an extensive study of the Pelican Bay State Prison in Del Norte, California, researcher Dr. Stuart Grassian found that prisoners who had been in solitary confinement had “high anxiety, nervous-ness [sic], obsessive ruminations, anger, violent fantasies, nightmares, trouble sleeping, as well as dizziness, perspiring hands, and heart palpitations.”<sup>14</sup>

For all prisoners in solitary confinement, but especially for transgender prisoners who are more vulnerable to sexual assault by prison officials or staff, the mental and emotional impact of solitary confinement impacts inmates’ lives beyond their prison sentences.

Recent data suggests a correlation between solitary confinement and suicide attempts. A recent study from 2005 of the 44 inmates who committed suicide in the California prison system showed that 70% were housed in solitary confinement.<sup>15</sup> Another study from 2007 on suicide attempts in prison documented that solitary confinement is a major factor in suicidal ideation and suicide attempts.<sup>16</sup>

Given the overuse of solitary confinement as placement for vulnerable transgender inmates and the prevalence of suicide attempts among the transgender population, the correlative data on suicide and solitary confinement is especially troubling. Data from *Injustice at Every Turn*

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<sup>11</sup> Grant, Jamie M. et. al. *Injustice at Every Turn: A Report of the National Transgender Discrimination Study*. Available at [http://www.endtransdiscrimination.org/PDFs/NTDS\\_Report.pdf](http://www.endtransdiscrimination.org/PDFs/NTDS_Report.pdf)

<sup>12</sup> Andersen, H. S., Sestoft, D. D., Lillebæk, T. T., Gabrielsen, G. G., Hemmingsen, R. R., & Kramp, P. P. (2000), —A Longitudinal Study of Prisoners on Remand: Psychiatric Prevalence, Incidence and Psycho-pathology in Solitary vs. Non-Solitary Confinement. | *Acta Psychiatrica Scandinavica*, 102(1), 19.

<sup>13</sup> Haney, C., & Lynch, Mona. (1997), —Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement. | *New York University Review of Law and Social Change* 23: 477-570.

<sup>14</sup> Rodriguez, Sal. Fact Sheet: Psychological Effects of Solitary Confinement. Solitary Watch. (available at <http://solitarywatch.files.wordpress.com/2011/06/fact-sheet-psychological-effects-of-solitary-confinement2.pdf>) last accessed June 14, 2012.

<sup>15</sup> Thompson, Don. *Convict Suicides in State Prison Hit Record High*. Associated Press, January 3. (2006).

<sup>16</sup> Suto, I. *Inmates Who Attempted Suicide in Prison: A Qualitative Study*. School of Professional Psychology. Paper 46 (2007).

reflects that a staggering 41% of transgender people had attempted suicide, compared to 1.6% of the general population. Suicide attempts were even higher for transgender people of color, with rates at 56% for American Indians and 54% of multiracial people.

Of all transgender people who were incarcerated at some point, the suicide attempt rate rises to 52%. However, for those who were incarcerated 3-5 years, the suicide attempt rate is 60%. For those that are incarcerated for five or more years, 70%. It is possible that the over-usage of solitary confinement during imprisonment contributes to the increased suicide attempts.

### **Solitary Confinement of Transgender Immigrant Detainees**

While placements of transgender inmates in solitary confinement within prisons, jails, and correctional facilities around the U.S. are generally unwarranted and create lasting detrimental consequences, transgender immigrant detainees placed in solitary confinement in detention facilities also experience negative outcomes.

Many of the approximately 32,000 immigrant detainees being held in the United States have not committed any criminal offense, but are awaiting a judge's determination of deportation proceedings.<sup>17</sup> Despite the fact that Immigration and Customs Enforcement detention is not designed to be punitive, many of the detainees are treated as criminals. Transgender immigrant detainees are no exception to this practice and are often treated far worse; they may be placed in solitary confinement for the same reasons as transgender inmates: convenience for prison officials, consequences of housing placements based on sex assigned at birth, and refusal to address safety issues in the general detainee population that make transgender detainees more vulnerable to physical and sexual assault.

Cases of transgender immigrant detainees experiencing sexual assault at the hand of detention officers, and denial of health care have been reported.<sup>18</sup> A recent complaint from the National Immigrant Justice Center details mistreatment of more than a dozen LGB and transgender detainees in California, Pennsylvania, Texas and other states. The complaint details a sexual assault against a transgender detainee while being transported to an immigration hearing, as well as accounts of prison officials' ignorance, or in some cases total indifference, to the needs and vulnerable status of transgender detainees.<sup>19</sup>

In another appalling recent account, Victoria Arellano, a 23-year-old HIV-positive transgender undocumented immigrant was detained at a traffic stop. While in detention for two months, Arellano's health quickly deteriorated, and she was not sent to the infirmary until her fellow

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<sup>17</sup> Harmon, Andrew "Eight Months in Solitary" The Advocate. May 7, 2012. Available at <http://www.advocate.com/news/news-features/2012/05/07/transgender-detainees-face-challenges-broken-immigration-system?page=0,0>

<sup>18</sup> Restore Fairness. *A transgender detainee speaks out*. Breakthrough TV; 2009. Available at: <http://vimeo.com/7551045>.

<sup>19</sup> Harmon, Andrew "Eight Months in Solitary" The Advocate. May 7, 2012. Available at <http://www.advocate.com/news/news-features/2012/05/07/transgender-detainees-face-challenges-broken-immigration-system?page=0,0>; citing "Stop Abusing of LGBT Immigrants." National Immigrant Justice Center available at <http://www.immigrantjustice.org/stop-abuse-detained-lgbt-immigrants>.

detainees, who had been caring for her, staged a protest. When she finally was taken to a hospital two days later, her symptoms were too far gone and she died of an AIDS-related infection. Her family filed a wrongful death lawsuit in federal court.<sup>20</sup>

This is just one example of the horrific experiences of transgender detainees in immigrant detention facilities, and being in solitary confinement can worsen their ability to get help when needed. The Committee's consideration of the effects of solitary confinement on transgender people must include an analysis of the consequences for the most vulnerable and voiceless transgender people in immigration detention.

## **Conclusion**

Solitary confinement affects many people incarcerated in U.S. jails, prisons, and detention facilities, but none so significantly as transgender inmates and immigrant detainees involuntarily confined not because of their actions, but because of their identities. A full review of the inhumane practice of solitary confinement and its far-reaching consequences cannot ignore the experiences of this extremely vulnerable group of people.

The United States must discontinue the discriminatory use of solitary confinement for housing transgender inmates and immigrant detainees . Prison officials and staff must commit to changing the dangerous and abusive conditions of the general prison population, rather than punishing transgender inmates and detainees for their very existence. By creating prison environments sensitive to the experiences and identities of transgender inmates and detainees, sexual abuse reporting and enforcement becomes transparent.

We applaud the Committee taking the first important step by holding this historic hearing. However, important work still remains to ensure that transgender inmates and detainees are exposed to solitary confinement only in extreme and rare circumstances.

Sincerely,

Lambda Legal  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Gay and Lesbian Task Force Action Fund  
National Latina Institute for Reproductive Health  
Transgender Law Center

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<sup>20</sup> Hernandez, Sandra. A lethal limbo. *Los Angeles Times*. 2008. Available at: <http://articles.latimes.com/2008/jun/01/opinion/op-hernandez1>.