

National Prison Rape Elimination Commission
1440 New York Avenue, NW, Suite 200
Washington, DC 20005-2111

Submitted Via Email

August 15, 2008

Dear Commissioners,

On behalf of the Equity Project¹, which is a collaboration between Legal Services for Children², the National Center for Lesbian Rights³, and the National Juvenile Defender Center⁴, we are pleased to submit Comments on the National Prison Rape Elimination Commission's "Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Juvenile Facilities." In general, we are very pleased with the draft standards, and realize that they represent many long hours of work by National Prison Rape Elimination Commission ("NPREC" or "the Commission") staff, corrections experts, sexual abuse survivors, and survivor advocates. We acknowledge and thank the Commission and all of those involved for their excellent work in gathering information and developing these standards. We submit the following comments and suggestions for revisions with the goal of assisting in enhancing the standards' capacity to fulfill the mandate of the Prison Rape Elimination Act, and to ensure that they fully account for the needs of lesbian, gay, bisexual and transgender (LGBT) youth.

¹ The Equity Project is a multiyear national initiative to promote understanding of the experiences, strengths and needs of lesbian, gay, bisexual and transgender (LGBT) youth involved in the juvenile justice system, and to ensure that LGBT youth are treated with dignity, respect and fairness at each stage of the juvenile justice system process. For more information, please visit www.equityproject.org.

² Legal Services for Children was founded in 1975 as one of the country's first legal services offices providing direct representation to individual children and youth. LSC utilizes a multidisciplinary model which utilizes both attorneys and social workers to provide holistic services to children involved in a wide range of legal proceedings. LSC was one of the coordinators of the Model Standards Project, a national project that developed and is disseminating best practice guidelines governing the care of LGBT youth in out-of-home care.

³ Founded in 1977, the National Center for Lesbian Rights (NCLR) is a national legal resource center with a primary commitment to advancing the rights and safety of lesbian, gay, bisexual, and transgender (LBGT) people and their families through a program of litigation, public policy advocacy and public education. NCLR serves more than 4,500 clients a year, in all fifty states, including youth confined in juvenile justice facilities. NCLR's youth project focuses primarily on policy and advocacy work on behalf of LGBT youth in the child welfare and juvenile justice systems. In this capacity, NCLR works closely with many LGBT youth who have been confined in juvenile facilities, most of whom have experienced both physical and sexual abuse at the hands of peers and facility staff. At the August 19, 2005 NPREC hearing, NCLR staff attorney Jody Marksamer testified about sexual abuse experienced by LGBT youth.

⁴ The National Juvenile Defender Center (NJDC) was created in 1999 to respond to the critical need to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system. NJDC gives juvenile defense attorneys a more permanent capacity to address practice issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile crime. NJDC provides support to public defenders, appointed counsel, law school clinical programs and non-profit law centers to ensure quality representation in urban, suburban, rural and tribal areas. NJDC offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

LGBT Youth Are At-Risk for Confinement in Juvenile Justice Facilities

As you know, although the social climate for LGBT people has improved significantly over the past few decades, LGBT youth often continue to face enormous hostility and discrimination in their homes, schools, and social service settings. As a result of these pervasive problems, LGBT youth may not have access to family and social support to help prevent entrance into the juvenile justice system. Accordingly, LGBT youth are overrepresented in the populations of youth who are at-risk of arrest and of those who are confined in juvenile justice facilities.

One of the factors that increase risk of involvement in the juvenile justice system for LGBT youth is that they are significantly overrepresented among homeless and runaway youth. Many run to escape strife or abuse at home related to their gender identity or sexual orientation; others are simply kicked out of their home. Much of the delinquent behavior by LGBT youth is precipitated by some form of departure from home or child welfare placements. Without family or social system support, youth on the streets must fend for themselves in whatever way they can. Consequently many LGBT youth in juvenile facilities are arrested for committing non-violent survival crimes like prostitution, drug possession, and shoplifting, and are living on the streets at the time of the arrest. Another factor increasing risk of juvenile justice involvement is the unrelenting verbal harassment and physical assault that many LGBT youth experience in school. LGBT youth who skip school to escape this daily bullying or violence, may find themselves in juvenile court for truancy. Once in court, judges may use evidence of chronic truancy as an aggravating factor to support their decision to hold a youth in detention. In addition, when LGBT youth fight back at school, they are often charged with a delinquency offense. Finally, some LGBT youth are arrested for sex offenses merely for engaging in consensual, age-appropriate same-sex conduct that would not result in prosecution or conviction if the youth involved were not of the same sex.

Once LGBT youth enter the juvenile justice system they are often treated harshly by judges, probation, and attorneys who lack awareness of the needs of LGBT youth or who hold bias against them. Without strong advocates, LGBT youth are frequently sent to secure juvenile justice facilities where they are often sexually and physically abused and harassed. It is within this context that we submit our comments on these standards in order to assist juvenile facilities in preventing, detecting, and responding to incidents of sexual abuse against LGBT youth in an effective and culturally-competent manner.

LGBT Youth Are Vulnerable to Sexual Abuse in Juvenile Justice Facilities

Based on the experiences consistently reported by LGBT youth themselves,⁵ it appears that sexual violence against LGBT youth in juvenile justice facilities is a pervasive problem that often goes unaddressed. Many LGBT youth in juvenile justice facilities report being harassed,

⁵ As part of the Equity Project we have talked with more than 75 LGBT youth during the last year at focus groups across the country. These youth shared their experiences in the juvenile delinquency system including experiences of sexual abuse in juvenile facilities. We have also represented LGBT youth who have been sexually abused in juvenile facilities and have assisted defenders and other attorneys whose LGBT clients have faced sexual abuse.

assaulted, raped, and beaten by other residents as well as by facility staff.⁶ Staff members often degrade LGBT youth by calling them offensive names and by failing to intervene when LGBT youth are sexually harassed or assaulted by other staff or residents. Many staff members treat LGBT residents as sexual predators or perverts, rather than as vulnerable youth who must be protected and who are still learning and growing. Often LGBT youth are afraid to report sexual abuse or find themselves punished by staff when they do.⁷

We commend the Commission for recognizing that LGBT youth are particularly vulnerable to sexual abuse and for requiring agencies to provide heightened protection in order to ensure that LGBT residents are safe (PP-2). In addition, we are pleased to see that LGBT youth are included in the list of vulnerable populations throughout the standards. This will help ensure that facilities do not treat LGBT youth as sexual predators and instead take the necessary precautions to keep these youth safe.

We also commend the Commission's recognition that vulnerable residents should be housed safely and in the least-restrictive setting possible and should have access to the same privileges and programs as other residents (PP-2). Unfortunately, many juvenile facilities segregate or isolate LGBT youth "for their own protection," presumably because it is easier for the facility to keep LGBT youth in isolation than it would be to address the physical and sexual violence these youth may experience in general population. Unfortunately, this apparently common practice essentially punishes LGBT youth because they are or may be victimized by others, denies them access to the same privileges and programs as other residents, and amounts to a violation of their constitutional rights.⁸ Standard PP-2 will help ensure that LGBT youth have equal access to the rehabilitative programming they need and are not punished because of their vulnerability to abuse.

Finally, we are pleased to see that the standards specifically prohibit the all-too-common practice of juvenile facilities using blanket policies to place LGBT youth in segregated housing or in isolation (PP-2). We strongly urge the Commission to keep the following statement in the discussion of Standard PP-2: "Facilities should not have blanket rules about how to handle LGBT youth; rather they should make individualized determinations about how to ensure the safety of each resident." This statement is crucial in order to reinforce that it is unacceptable for facilities to have strict, uniform policies that govern the classification of LGBT youth.

⁶ There are no statistics that can quantify the full extent of this problem because none of the minimal empirical research on the problem of sexual assault and rape in juvenile facilities has looked specifically at sexual victimization from the perspective of LGBT youth. The recently released Bureau of Justice Statistics on Sexual Violence Reported By Correctional Authorities in 2005 & 2006 document the high number of substantiated claims of sexual abuse made by youth in juvenile justice facilities. Unfortunately, however, these statistics do not report the sexual orientation or gender identity of the victim.

⁷ For additional discussion of the types of sexual abuse LGBT youth experience in juvenile facilities, see the attached testimony that was submitted to the Commission by Jody Marksamer in August 2005.

⁸ See *RG v. Koller*, 415 F. Supp.2d 1129 (D.Hawai'i 2006) ("Consistently placing juvenile wards in isolation... simply to separate LGBT wards from their abusers, cannot be viewed in any reasonable light as advancing a legitimate non-punitive governmental objective. HYCF has attempted to remedy one harm with an indefensible and unconstitutional solution.").

Provide Guidance on How to Identify Youth Who are Vulnerable Based on Their Actual or Perceived Sexual Orientation or Gender Identity

We urge the Commission to expand the examples of traditionally vulnerable populations listed in the discussion of Standards PP-2 to include youth who are perceived to be LGBT because they are gender nonconforming. Currently, the list of examples of vulnerable residents includes residents who are gay, lesbian, bisexual, or transgender but it does not include residents who are perceived to be LGBT (PP-2). However, residents often appear to be targeted for abuse and harassment based solely on the fact that other residents or staff perceive them to be LGBT, even when these residents are not actually LGBT. Gender nonconformity is often an underlying factor, meaning that youth that are perceived not to conform to gender stereotypes are often victimized. Because in our experience youth who are perceived as LGBT are at just as great of a risk of sexual abuse as youth who are known to be LGBT, we recommend that the standards explicitly include these residents in the list of vulnerable populations. Without this addition, many youth who are vulnerable to sexual abuse will not get the heightened protection that they need.

Second, the standards state that facilities have an obligation to identify residents who may be vulnerable to abuse and provide them with heightened protection (PP-2, CL-2). However, the standards do not contain guidance on how to identify vulnerable residents. Because a youth's sexual orientation or gender identity is not always easy to determine, it is important for the Commission to provide guidance that will help facilities meet their obligation to identify residents that are vulnerable to abuse because they are, or are perceived to be, LGBT. Specifically, we urge the Commission to include the following guidance in the discussion of Standard CL-2:

- When trying to identify youth who are vulnerable to abuse because of their actual or perceived sexual orientation or gender identity, intake staff should place less stress on identifying which youth are actually LGBT and instead focus on identifying which youth are at risk of sexual abuse because they are known to be or are perceived to be LGBT. While it may seem that the easiest way to find out if a youth is LGBT is to simply ask them, in reality, many LGBT youth will not answer direct questions about their sexual orientation or gender identity out of fear of repercussions. Therefore, intake staff should take a more nuanced approach to identify these residents. Rather than directly asking all residents if they are LGBT, intake staff should ask a more general question about whether a resident is afraid he or she will be a target for sexual abuse because other people think they are LGBT. A question like this does not require youth to identify themselves as LGBT in order to get heightened protection from abuse. In addition, intake staff should carefully review residents' files to determine if there are any indications that the resident is vulnerable to abuse because of his or her actual or perceived sexual orientation or gender identity, or for any other reason. Finally, if an intake staff perceives a resident as LGBT, regardless of whether the residents has acknowledged it, the staff member should classify this resident as vulnerable to sexual abuse and provide heightened protection.

Clarify to Ensure That LGBT Youth are Appropriately Classified

Resident classification is one of the most important tools available for preventing sexual abuse in juvenile facilities. As properly noted in the standards, classification assessments help facilities to identify residents who may sexually abuse other residents. However, we encourage the Commission to add clarification to Standard CL-2 to ensure that LGBT youth are not misclassified as potential abusers at intake or when reassessed, simply because of their actual or perceived sexual orientation or gender identity. There are two changes we believe are necessary:

First, we recommend that the Commission add language to the standards to ensure that facilities appropriately consider a youth's LGBT identity during intake classification decisions. As currently worded, Compliance Checklists 25 & 26 for Standard CL-2 require facilities to evaluate specific factors to determine resident vulnerability and potential for abusiveness. LGBT identity is included on this list. However, the list does not specify whether a particular factor may make a resident vulnerable to abuse or whether it may be an indication that a resident is more likely to abuse others. Without specific evidence of predatory or abusive conduct, LGBT youth should not be categorized as potential sexual predators. As currently written, there is a risk that facilities may interpret that the classification assessment instruments described in these Checklists require them to classify LGBT youth as potential abusers. We recommend that the Commission add language to the discussion of Standard CL-2 that reinforces the concept that that a resident is more likely to need protection from potential sexual abuse because of their actual or perceived sexual orientation or gender identity, rather than that he or she is likely to abuse others, absent other specific indicators.

Second, we urge the Commission to clarify that facilities should not reclassify residents as potentially abusive for violating facility rules about consensual sexual conduct. Currently, the standards state that resident disciplinary reports may trigger staff to revisit a resident's classification, if "disciplinary infractions appear to be related to inappropriate sexual behavior in the facility." (CL-2) We are concerned that the use of the term "inappropriate sexual behavior" may be overly broad, and in particular may disproportionately affect LGBT youth if they engage in consensual same-sex sexual contact that is labeled "inappropriate sexual behavior," as consensual contact does not indicate that a resident is likely to sexually abuse another resident. In addition, in some facilities youth are disciplined for "inappropriate sexual behavior," merely because they expressed their gender in a way that staff thought was sexual. Therefore, in order to ensure that facility staff do not reclassify residents as likely to engage in sexually abusive behavior because they engaged in consensual sexual contact or expressed their gender, we urge the Commission to use the phrase "sexually abusive behavior" in lieu of "inappropriate sexual behavior" (CL-2).

Facilities Should Consider Placing Transgender Girls in Girls' Facilities

We strongly encourage the Commission to provide guidance to facilities on ensuring facility placements for transgender girls that will best protect them from sexual abuse. The standards do not speak to the unique risks that transgender girls experience in boys' facilities, nor do they provide guidance to facilities on how to make appropriate housing decisions for transgender youth. Transgender girls often wear feminine clothing, use female pronouns, have a female name, and generally present themselves as girls. Some transgender girls also take female

hormones so they have female secondary sex characteristics, such as breasts. Despite their very clear feminine presentations, transgender girls are almost always housed in boys' facilities where they are at great risk of sexual abuse at the hands of male resident and male facility staff.⁹ In order to prevent this risk, some juvenile facilities have placed transgender girls in girls' units or in co-ed units for vulnerable residents. Accordingly, we recommend that the standards state that facility staff must seriously consider whether placement in a girls' unit is most appropriate for a transgender girl, taking into account her specific needs and vulnerabilities (PP-2).

Expand and Clarify the Definition of Sexual Abuse

In order to prevent all types of sexual abuse against residents in juvenile facilities, and to allow a facility to uphold a zero tolerance stance against these harms, we urge the Commission to expand the types of behaviors that are defined as "sexual abuse" under the standards. We have three recommendations that we believe will significantly improve the ability of juvenile justice facilities to adequately protect youth..

First, we strongly encourage the Commission to expand the types of sexually abusive behaviors between residents that fall under the definition of sexual abuse. Currently, the standards' definition of sexual harassment is limited to incidents of staff-on-resident only. While the standards include staff-on-resident indecent exposure under the definition of sexual abuse, they fail to address resident-on-resident indecent exposure. Resident-on-resident sexual harassment and resident-on-resident indecent exposure is a significant problem for many LGBT youth, as well as for other vulnerable youth in juvenile facilities. For example, LGBT youth have reported other residents in the facility fondling their own genitals while threatening to sexually assault them. Another youth reported having semen rubbed in his face by other residents. These incidents were often a precursor to future sexually abusive contact, especially when facility staff did not address the behaviors.

These types of sexually abusive behaviors do not appear to be covered by the current definition of sexual abuse, though they are clearly traumatizing for the youth who is victimized. Therefore, it is crucial that the standards define sexual harassment and indecent exposure between residents and include these acts under the larger definition of "sexual abuse." Residents will then have direct knowledge that they will be held accountable for their actions and that any sexual harassment or indecent exposure will be promptly addressed. We recommend that the standards define:

- "Resident-on-resident indecent exposure" as: The display by a resident of his or her genitalia, buttocks or breasts, or engaging in masturbation, that is directed at another resident or residents that has the effect of intimidating, humiliating, or threatening the

⁹ For example, one of the plaintiffs in *R.G. v. Koller* was a transgender girl who was originally placed in the girls' unit but was transferred to the general boys' unit, while the girl's unit was getting renovated. Once in the boys' unit she was subjected to physical and sexual assaults. In this case, the defendants' own experts submitted declarations stating that they believed that male-to-female transgender wards, like the plaintiff, were "better off . . . with the girls than anywhere else . . . and that the placement kept them physically and psychologically safe." *Id.* at 1145. *R.G. v. Koller* makes clear that juvenile justice agencies that house youth without regard for their gender identity or expression put transgender youth at risk of serious danger and can incur liability as a result.

other resident(s), or where the resident gains sexual gratification without the consent of the other resident(s) or where this consent is coerced; and

- “Resident-on-resident sexual harassment” as: Repeated actions, gestures, statements, or threats of a sexual nature by a resident directed at another resident or residents for the purpose of humiliating or intimidating the resident(s) or to cause the resident to fear that he or she will be sexually abused in the near future. This does not include discussion between residents of sexual subjects where participation is consensual and consent is not coerced, nor does it include name-calling or the use of obscene or vulgar language or gestures that are not directed at a particular resident(s).

Second, we strongly encourage the Commission to include additional examples in the definition of staff-on-resident sexual harassment. Many LGBT youth report being called “faggot,” “fairy,” “sissy,” and other derogatory comments by staff members who chide them about being too feminine or not feminine enough. Transgender youth report that staff call them names such as “baby” and “honey” so regularly that it creates an atmosphere where LGBT youth are sexualized, which may identify them as potential targets and thus render them especially vulnerable to sexual abuse. The examples in the definition of sexual harassment should specifically include demeaning references to or derogatory comments about gender identity and sexual orientation in order to ensure that these abusive practices are appropriately addressed under the standards, and are not treated as acceptable facility practice.

Third, the standards should also clearly identify and explicitly prohibit staff member’s use of residents’ sexualities to achieve custody and control goals, or for their own enjoyment. Many LGBT youth report that staff members have allowed other residents into their rooms so that these other resident can sexually abuse them. LGBT youth also report that it is common for facility staff to threaten to do this or to threaten to place LGBT youth in cells with aggressive residents who will abuse them if they continue to act gay or do not follow directions from staff. Some transgender youth have reported being “given” to other residents for their sexual use by staff members so that the staff can better control their unit. Such staff behavior should be considered both sexual abuse as well as sexual abuse by proxy. Therefore, we strongly encourage the Commission to include the following definition of sexual abuse by-proxy in its definition of sexual abuse:

- Sexual abuse by proxy, includes, but is not limited to, resident-on-resident sexual abuse that is initiated by a staff member who facilitates, permits, or coerces a resident(s) to sexually abuse another resident without that staff member actually being a party involved in the incident itself.

Distinguish Between Sexual Abuse and Consensual Sexual Contact

We agree with the Commission that sexual abuse can occur in many forms in juvenile facilities and that each form must be addressed and handled in an effective and professional manner. We urge the Commission to distinguish between sexual abuse, which should be dealt with as provided for by these standards, and developmentally appropriate consensual activities between residents, which may be prohibited by a facility, but should not be treated as sexual abuse. .

We have four recommendations in this area:

First, we strongly recommend that the Commission amend the definition of resident-on-resident sexual abuse so that it is limited to acts that are not consensual. We are concerned that the inclusion of the term “unable to consent” in this definition would require facilities to treat sexual contact that is consensual as sexual abuse if one or more of the residents are legally “unable to consent” because of their age. Without further clarification, this could have a disproportionate impact on LGBT youth if they engage in consensual same-sex sexual conduct which is then treated as sexual abuse because of the youths’ age. Therefore, we recommend that the definition of resident-on-resident sexual abuse should make clear that consensual sexual interaction between residents, where the consent was not coerced, does not constitute any form of sexual abuse and should not be punished as such, regardless of age of consent laws.

Second, the standards should explicitly state that they are meant to prevent and respond to sexually abusive conduct only and that it is not appropriate to use the standards to address consensual sexual conduct between residents. Therefore, the Commission should explicitly include language that says these standards only apply to non consensual acts (DI-2). While a resident who engages in consensual sexual conduct with another resident may be in violation of a facility rule, we strongly urge the Commission to add to the standards that consensual sexual conduct should not trigger the level of reports and investigations required under these standards.¹⁰ Treating consensual sex between residents as sexual abuse conflicts with the purpose and overall intent of the Commission in issuing these standards which is to help eliminate prison rape and other forms of sexual abuse.

Third, we urge the Commission to include language in the standards that will further clarify what activities do not fall under the definition of sexual abuse. Facilities sometimes use rules prohibiting physical and sexual affection between residents to punish and stigmatize LGBT residents, who staff may assume are having sex with other residents based solely on their gender identity or sexual orientation. Further, these rules make it harder for LGBT residents to report sexual abuse because they may fear that staff members will not believe them and they will be punished for “having sex.” We recommend that the standards should explicitly state that residents should never be disciplined for consensual affectionate acts (hand holding, kissing, hugging, etc.) with one another and the Commission should make clear that LGBT youth should not be subject to discriminatory discipline for consensual affectionate acts because they are LGBT (DI-2).

Finally, in order to ensure that consensual sexual acts are not treated as sexual abuse, facility staff members need to be able to identify what is consensual sexual conduct and what is not. Therefore, we encourage the Commission to require facilities to train their staff members on how to properly differentiate between consensual sexual conduct and non-consensual/abusive conduct (Compliance Checklist 12).

¹⁰ The recently released Bureau of Justice Statistics on Sexual Violence Reported By Correctional Authorities in 2005 & 2006 includes statistics for consensual sexual contact between residents. Often sanctions for consensual behavior are just as harsh as the sanctions for resident-on-resident non consensual sexual activity..

Provide Guidance on How Facilities Should Apply Restrictions on Cross-Gender Supervision and Searches for Transgender Residents

In order to adequately address the safety concerns of transgender residents and protect their privacy and dignity, we strongly urge the Commission to include specific guidance on how facilities should apply the restrictions on cross-gender searches and supervision to transgender residents. We have three recommendations to improve privacy, safety, and dignity for transgender residents during supervision and searches:

First, the standards should advise facilities on how to protect transgender residents from unnecessary and degrading exposure of their bodies and reduce opportunities for staff sexual abuse. Changing clothes and other situations that require nudity, not only place transgender youth at high risk of sexual abuse, but it can also make the youth extremely uncomfortable. For many transgender youth, having body parts that do not match with their core gender identity is a source of serious emotional distress and embarrassment. It is essential for the safety and basic comfort of transgender residents that facilities respect these privacy concerns. Just as it would be a clear violation of respect and decency if facility staff forced a non-transgender girl to change her clothes in front of male staff, making a transgender girl take off her clothes in front of male staff would have similar implications as well as serious repercussions for the youth's emotional and physical safety. We urge the Commission to include specific language to ensure the privacy and dignity of transgender residents while disrobed and performing bodily functions (PP-3). Specifically, we recommend adding:

- Agencies can protect the privacy and dignity of transgender residents and reduce staff-on-resident sexual abuse by limiting the opportunities for non-medical staff members to view transgender residents when they are disrobed or performing bodily functions. This can be achieved through the use of privacy panels and other protective measures that do not limit the ability of staff members to provide supervision in housing areas. In addition, transgender residents (both transgender girls, transgender boys, and others) should not be isolated one-on-one with male staff members if they are out of sight of cameras, other staff or other residents, including during transportation outside the facility. This is because transgender youth (from all of these groups) are often perceived as female and/or feminine and are at considerably higher risk of being targeted by male staff for gender-based sexual violence and harassment.

Second, the standards should advise facilities on how to protect transgender residents from unnecessary and degrading exposure of their bodies during searches. Transgender youth are at high-risk of sexual abuse when searched by male staff members. For example, one transgender female youth reported that she was regularly searched by male staff members who repeatedly fondled her breasts and genitals. Unfortunately, incidents like this are not uncommon in juvenile facilities. For many transgender residents, the trauma of past sexual abuse is also aggravated by male staff members doing pat-down or other searches. Therefore, we recommend the standards should state transgender residents should be permitted to designate whether they prefer male or female staff members to search them. If there must be a general presumption about who should search transgender residents, we recommend that transgender youth (including transgender girls, transgender boys, and others) be searched by women facility staff (PP-3).

Third, we encourage the Commission to provide further guidance on when it is appropriate for facility staff to conduct searches of transgender residents. We strongly support the limitations on strip searches and gender checks that are included in the draft standards, however we encourage the Commission to provide additional guidance on when it is inappropriate to search transgender residents in order to ensure that transgender residents are not sexually abused. Transgender and gender nonconforming youth regularly report being subject to humiliating strip searches so that staff members can look at their genitals or for other inappropriate reasons. Specifically, we recommend that the standards include a statement that strip and visual body cavity searches of transgender and gender nonconforming residents should only be performed for legitimate and documented purposes related to confiscating contraband or for other clear security-related purposes (PP-3).

Provide Confidentiality When Youth Make Reports of Sexual Abuse Where Possible and Ensure that Youth Are Told About Confidentiality Limitations

In order to ensure that residents will feel safe to report incidents of sexual abuse, it is essential the standards provide the greatest amount of confidentiality allowed by law for residents who report abuse. They should also ensure that residents are made aware of the confidentiality limitations that apply to their reports of abuse. If facilities are not required to tell residents that their reports of sexual abuse will be shown to other staff and to their parents or guardians, if they are under the age of 18, this can have very serious consequences especially when a resident is LGBT. Unfortunately, LGBT residents may be in danger of abuse if their parents or guardians find out that they are LGBT. A facility head may inadvertently disclose confidential information about a youth's sexual orientation or gender identity if he or she notifies a resident's parent or guardian of the details surrounding an allegation of abuse. Therefore we recommend that the standards require a facility head to consult with residents about safety concerns related to others being informed of alleged abuse and also to notify residents if their parents or guardians are contacted (SD-2).

While the standards discuss mandatory reporting laws that require staff to share information and forward resident reports of abuse to the appropriate authorities when a resident is a minor, the standards do not adequately address the great variation of these laws across jurisdictions. Therefore, we urge the Commission to require facilities to educate staff members on what the mandatory reporting laws are in their jurisdictions and how to comply with them (SD-1).

Finally, the standards should make clear that facility staff and others must take steps to ensure the confidentiality of residents, when mandatory reporting laws do not apply and when residents are not minors, to the same extent that facility staff are required to ensure the confidentiality of adult inmates in prisons and jails (SD-2).

Ensure LGBT Cultural Competency for Facility Staff, Volunteers, and Other Specialized Workers

We believe it is essential that all juvenile facility staff members are able to sensitively communicate with residents of all different backgrounds in order to effectively prevent, detect,

and respond to incidents of sexual abuse. Often staff members do not know how to decipher the truths and myths about LGBT youth and without training they may act on the basis of bias or misinformation. Therefore we recommend that the standards require all staff, volunteers, and other specialized workers to complete training on communicating effectively and working with LGBT youth to guarantee that these individuals are able to provide sensitive services to LGBT survivors of sexual abuse (TR-1, TR-5, Compliance Checklists 20 & 24).

In addition, hiring procedures like those discussed in standard PP-5 should include a background screen to exclude staff who hold bias against LGBT people or who believe that LGBT people are sexual predators or promiscuous by nature.

Resources to Assist Facilities in Preventing, Detecting, and Responding to Sexual Abuse Experienced By LGBT Residents

Finally, on page six of the introduction to the standards, the Commission urges facilities to reference “best practice” materials to assist them with their implementation of the standards. We urge the Commission to encourage facilities to use the Child Welfare League of America’s *Best Practice Guidelines for Serving LGBT Youth in Out-of-Home Care* to assist in staff development and general implementation of facility policies to prevent, detect, and respond to sexual abuse against LGBT residents.

Conclusion

As organizations working to ensure fair, respectful, and equitable treatment of LGBT youth in the juvenile justice system, we are very pleased to see that the draft standards recognize that LGBT youth are vulnerable to sexual abuse in juvenile facilities and include specific requirements for facilities that will greatly increase their ability to protect LGBT youth from sexual abuse. As discussed in this letter, and in the attached chart of our recommendations and suggested line-revisions, we believe some additional changes are necessary in order for facilities to adequately prevent, detect, and respond to sexual abuse against LGBT youth. We hope that our comments will assist the Commission in ensuring that the final standards fully account for the needs of LGBT youth.

Again, we thank the Commission and all of those involved for their excellent work in developing these draft standards. We greatly appreciate the opportunity to submit our comments for your consideration. Please contact Jody Marksamer at 415-365-1308 or jmarksamer@nclrights.org if you have any questions or you would like to discuss our recommendations further.

Respectfully Submitted,

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