



TESTIMONY OF GLBTQ LEGAL ADVOCATES & DEFENDERS IN SUPPORT OF S.905 AND H. 1341, AN ACT TO COLLECT DATA ON LGBTQI PRISONERS HELD IN RESTRICTIVE HOUSING

LGBTQ people, particularly low-income LGBTQ people and LGBTQ people of color, are disproportionately incarcerated and unduly subjected to solitary confinement (referred to as restrictive housing), a profoundly harmful practice that the United Nations has categorized as torture. It is imperative that Massachusetts end the discriminatory treatment of LGBTQ people in restrictive housing and the criminal justice system.

GLBTQ Legal Advocates & Defenders (GLAD) strongly supports passage of S.905 and H. 1341 which: (1) add voluntary disclosure of a person's sexual orientation and gender identity to preexisting restrictive housing data collection requirements in state and county correctional facilities; (2) require the collection of data on victims of sexual violence held in restrictive housing; and (3) provide for the input of community stakeholders in the creation of policies and procedures to implement the collection of this data.

These bills will elucidate the scope and extent of a practice that disproportionately impacts an already vulnerable population. The data collected through the enactment of these bills will provide a foundation for future evidence-based reform of the discriminatory use of restrictive housing for LGBTQ people in state and county correctional facilities.

Fundamental biases and structural inequities lead to the overrepresentation of LGBTQ people in prisons and jails. The underlying causes of disproportionate incarceration include profiling by law enforcement as well as policies that criminalize poverty, homelessness, participation in survival economies such as sex work, and the unequal impact of the school-to-prison pipeline (Nat'l Ctr. For Transgender Equal., *LGBTQ People Behind Bars* 5, 2018). The 2015 U.S. Transgender Survey found that transgender respondents were incarcerated at more than twice the rate of the general population (S.E. James et. al., *The Report of the 2015 U.S. Transgender Survey* 184-190, 2016). The rates are much higher for transgender people of color. For example, Black transgender women were incarcerated at nearly ten times the rate of the general population. Studies reveal similar disparities for LGB adults. Federal data, for example, reveals that LGB people are three times more likely to be incarcerated than the general population.

Once incarcerated, LGBT people face discrimination, humiliation, abuse and assault at disturbingly high levels. The unwarranted and discriminatory use of restrictive housing with respect to LGBTQ people is among the most harrowing of these disparities. The United States Department of Justice report on the use of restrictive housing in U.S. prisons and jails found

that lesbian, gay and bisexual inmates (28% in prison and 22% in jail) were more likely than heterosexual inmates (18% in prison and 17% in jail) to have spent time in restrictive housing (Allen J. Beck, Use of Restrictive Housing in U.S. Prisons and Jails 2011-2012 5, 2015). A report on Black and Pink's National LGBT Prisoner Survey found that a shocking 85% of LGBT respondents had been held in solitary confinement during their incarceration (Jason Lydon et. al., Coming Out of Concrete Closets 34, 2015). Half of respondents reported having spent two years or longer in restrictive housing (Lydon 34).

GLAD's inquiries from LGBTQ prisoners reflect these disparities. GLAD has received hundreds of inquiries from LGBTQ prisoners in the past ten years. Of these inquiries, almost 5% explicitly mentioned having been placed in solitary confinement. Of the individuals who explicitly stated that they had been placed in solitary confinement, 65% indicated that they identify as transgender. One person reported spending three years in solitary confinement after having been a victim of sexual assault, as a result of which they suffered depression, post-traumatic stress disorder, and anxiety.

The reasons that LGBTQ people are disproportionately subjected to restrictive housing reflect a failure of policy and a "punish the victim" approach. Black and Pink's Report explained:

It is not uncommon for prison staff to assert that they are placing prisoners into solitary confinement as a means of increasing safety ... [D]espite the Prison Rape Elimination Act's clear statement that isolation should only be used in circumstances when there is no other possible alternative to prevent abuse, it is nevertheless a routine practice used on LGBT prisoners. Fifty percent of those who have experienced solitary confinement were put there for their own protection but against their will (Emphasis added. Jason Lydon et. al., Coming Out of Concrete Closets 35, 2015).

Similarly, the Southern Poverty Law Center has concluded that "[s]olitary confinement is too often used to separate LGBT people from the general prison population. This separation is prison officials' response to the vulnerability of LGBT people – effectively punishing them for being potential victims" (S. Poverty Law Ctr., Solitary Confinement: Inhumane, Ineffective and Wasteful 12, 2019; *See Also* Nat'l Ctr. For Transgender Equal., LGBTQ People Behind Bars 5, 2018: "If [LGBT prisoners'] vulnerability is recognized at all, it may be by placing them in indefinite solitary confinement, with little or no activity or human contact – conditions that can cause serious psychological trauma").

The use of restrictive housing for the protection of LGBTQ prisoners is particularly problematic given the high rates of sexual abuse against incarcerated LGBTQ individuals. One study found that 40% of transgender people in state and federal prisons reported being sexually assaulted in the year studied. (Nat'l Ctr. For Transgender Equal., LGBTQ People Behind Bars 6, 2018; *citing* Allen J. Beck, Sexual Victimization in Prisons and Jails Reported by Inmates 2011-12, Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates, 2013). LGB prisoners in the same federal survey were approximately three times as

likely to report sexual abuse (Nat'l Ctr. For Transgender Equal., *LGBTQ People Behind Bars* 6, 2018; *citing* Allen J. Beck, *Sexual Victimization in Prisons and Jails Reported by Inmates 2011-12*, 2013).

Solitary confinement, or restrictive housing, inherently inflicts profound psychological and physical harm. The UN Special Rapporteur on Torture has stated that even 15 days in solitary confinement “constituted cruel, inhuman, or degrading treatment, or even torture” and that after only 15 days in solitary, “harmful psychological effects often manifest and many even become irreversible” (Juan Mendez, *Seeing Into Solitary* 3, 2016). These harmful psychological effects include higher rates of suicide and self-harm for prisoners in solitary confinement.

Researchers agree that solitary confinement is psychologically damaging and every study on the effects of isolation longer than 60 days has found that such confinement causes psychological damage (*See* Stuart Grassin, *Psychopathological Effects of Solitary Confinement* 1450, 1983; Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement* 124, 2003). Negative mental health outcomes include hallucinations, increased anxiety, revenge fantasies, rage, severe and chronic depression, and self-mutilation, among other symptoms (ACLU Foundation, *Briefing Paper: The Dangerous Overuse of Solitary Confinement in the United States* 4, 2014).

However, the mental health impact of solitary confinement is even greater on populations already at high risk for negative mental health outcomes. Gay men, lesbians, bisexual people, transgender individuals, and HIV positive people have higher rates of depression, suicidality, and stigma than their heterosexual or cisgender peers (*See* S. D. Cochran et al., *Lifetime Prevalence of Suicide Symptoms and Affective Disorders Among Men Reporting Same-Sex Sexual Partners* 578, 2000; J. C. Tsao et al., *Stability of Anxiety and Depression in a National Sample of Adults with Human Immunodeficiency Virus* 118, 2004; Jamie M. Grant et al., *Injustice at Every Turn* 2, 2011). Placing a person who is already at higher risk for mental health problems into solitary confinement would thus be especially damaging to that person.

Similarly, the Southern Poverty Law Center explains that untreated gender dysphoria often results in depression and suicidal ideation, among other symptoms, which are made significantly worse by forced segregation and isolation (S. Poverty Law Ctr., *Solitary Confinement: Inhumane, Ineffective and Wasteful* 12, 2019).

The conditions giving rise to S.905 and H.1341 are not in dispute. Restrictive housing is a barbaric practice that disproportionately inflicts profound harm on LGBTQ people. This inhumanity cannot be tolerated in Massachusetts. These bills are a first step. They will result in data that can be used to formulate evidence-based reforms in the future. These bills do not create new burdens on correctional officials who already collect other demographic data on the populations subjected to restrictive housing.

Massachusetts has been a national leader in establishing equality and fair policies for LGBTQ people, but we are failing the most vulnerable among us. GLAD urges passage of S.905 and H. 1341 as simple, low-cost, but important first steps towards eradicating cruel and inhumane practices inflicted on LGBTQ incarcerated individuals in Massachusetts.

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October 8, 2019