Written Testimony Presented to the Commonwealth of Massachusetts Commission on GLBT Youth

On the Status and Challenges of LGBTQ Youth in State Custody

Submitted by: Teen SENSE Initiative
The Center for HIV Law and Policy

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The Center for HIV Law and Policy (The Center) is pleased to offer this testimony to the Commonwealth of Massachusetts Commission on GLBT Youth. The Center is the only national legal and policy resource and strategy center for people with HIV and their advocates. The Center works to reduce the impact of HIV on vulnerable and marginalized communities and to secure the human rights of people most affected by HIV.

Our Teen SENSE program is a multidisciplinary initiative specifically designed to work with and on behalf of youth in out-of-home care. Teen SENSE advances the principle that respect and accommodation for all sexual orientations, gender identities, and gender expressions are central to HIV prevention, sexual health, and protection from sexual abuse. It also promotes the idea that all youth have the right to comprehensive, LGBTQ-inclusive health services that include sexual health care and sexual health education when they are confined in state facilities. Teen SENSE is a national movement that includes health care providers, young people, juvenile justice professionals, and others working together to advance the rights of youth in state custody and improve access to comprehensive, LGBTQ-inclusive health services.

I. CHALLENGES

Over 500,000 young people are involved in the United States foster care system, and five to 10 percent identify as lesbian, gay, bisexual, or transgender.[1] In the juvenile justice system, the Commonwealth of Massachusetts alone has 4,273 newly detained youth on average each year (according to yearly statistics from 2005 to 2010), although the number of youth passing through

[1] Edward Byrne & Arthur Lipkin, *Annual Recommendations to the Great and General Court and Executive Agencies*, 9 (October 2011), Massachusetts Commission on GLBT Youth Publications and Reports, http://www.mass.gov/cgly/Oct2011_MCGLBTY_Annual_Rec.pdf.

the state juvenile justice system is decreasing.[2] Today we focus our comments and concerns on some of the current challenges faced by LGBTQ youth and youth living with or at significant risk of HIV/AIDS who are in state custody, as well as recommendations for ways that the Commonwealth and LGBTQ youth advocates can identify and take steps to resolve the structural and social discrimination faced by these youth every day.

Most children and adolescents in state custody settings are from the vulnerable communities and populations most affected by HIV/AIDS.[3] Youth of color, low-income youth, and survivors of gender-based and other forms of violence are significantly overrepresented in state care systems.[4] LGBTQ youth are also disproportionately represented in foster and group homes.[5] Youth who identify as LGBTQ are more likely than other youth to be harassed and ostracized at school (often leading to truancy) or to become homeless.[6] In fact, 13.9% of Massachusetts students who identify as lesbian, gay, or bisexual skipped school at least once in 2009 because of feeling unsafe at or on the way to school, compared to only 3.4% of heterosexual Massachusetts students.[7] Additionally, 33.4% of homeless youth in Massachusetts identified as gay, lesbian, or bisexual (or were unsure of their sexual orientation).[8] These factors increase the chance that queer youth will end up in foster care or engage in conduct that may lead to their detention. Homeless LGBTQ youth are at greater risk than their homeless heterosexual

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[2] Massachusetts Executive Office of Health and Human Services, *Juvenile Offenders Monthly Population Report*, Juvenile Offenders Publications & Reports (June 10, 2012), http://www.mass.gov/eohhs/docs/dys/population-files.xls.
[3] Center for HIV Law and Policy, *Model Sexual Health Care Standards for Youth in State Custody*, Teen SENSE Initiative, 3 (January 2012), http://hivlawandpolicy.org/resources/download/693.
[4] *Id.*
[5] *Id.*
[6] The Equity Project, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts*, 66-78 (2009); Peter A. Hahn, *The Kids Are Not Alright: Addressing Discriminatory Treatment of Queer Youth in Juvenile Detention and Correctional Facilities*, 14 B.U. PUB. INT. L. J. 117 (2005)
[7] Massachusetts Department of Education, *Massachusetts High School Students and Sexual Orientation Results of the 2009 Youth Risk Behavior Survey*, Massachusetts Commission on GLBT Youth Publications & Reports (February 2011), http://www.mass.gov/cgly/YRBS09Factsheet.pdf.
[8] Heather Corliss, *High Burden of Homelessness Among Sexual-Minority Adolescents: Findings From a Representative Massachusetts High School Sample*, Am. J. Public Health, 1683-9 (September 2011).

counterparts for negative health outcomes, including mental health issues and engaging in risky sexual behavior,[9] and transgender youth are at higher risk for alcohol and substance use to cope with feelings of depression or anxiety.[10]

Youth under state care have higher rates of sexually transmitted infections (STIs), unintended pregnancy, substance abuse, and HIV/AIDS, yet are more likely to lack access to basic sexual health care and disease prevention services while confined.[11] As a result of stigma, fear, and a history of mistreatment, LGBTQ youth in particular are less likely to be engaged in regular health care.[12]

Transgender youth have their own unique health care needs that often go unmet due to institutional ignorance, fear, stigma, or discrimination.[13] Puberty can be a difficult time for youth in state care, many of whom are struggling with their gender identity and expression. Many lack support systems to help make sense of their physical, mental, sexual, and emotional changes. Physical changes during puberty may shame or repulse transgender youth, prompting them to attempt to alter their appearance by concealing or injuring unwanted body parts or using hormones without the oversight of a doctor.[14] Fear of ridicule, rejection, or harassment prevents many transgender youth from seeking basic health services.[15] As a result, many transgender

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[9] Byrne & Lipkin, *supra* note 1, at 21.
[10] Center for HIV Law and Policy, *supra* note 3, at 29.
[11] Center for HIV Law and Policy, *supra* note 3, at 3.
[12] *See* Center for HIV Law and Policy, *Juvenile Injustice: The Unfulfilled Rights of Youth in State Custody to Comprehensive Sexual Health Care*, Teen SENSE Initiative, 8 (December 2010), http://www.hivlawand policy.org/resources/download/565. The Center's visits to juvenile detention facilities in New Jersey to discuss sexual health care with confined youth revealed that residents in these facilities face significant homophobia, both from staff and other residents. Youth in the female juvenile detention facilities who identified as lesbian, bisexual, or questioning stated that some staff members harassed them, called them derogatory names, and told them they should be involved with males and not other females. In the male juvenile detention facilities, youth stated that any resident who identified as gay, bisexual, transgender, or questioning would be subject to harassment and violence from other youth. The youth in the male facilities stated that no residents in the facility openly identified as GBTQ, and that the threat of being harassed or beaten prevented any GBTQ youth from doing so.
[13] Center for HIV Law and Policy, *supra* note 3, at 29.
[14] *Id.*
[15] *Id.*

youth do not consistently receive *any* health care, much less care that addresses their unique health needs.

The Center's own visits to juvenile detention facilities and interviews with youth illustrated that, even in facilities with staff who are sensitive to queer youth, their sexual health needs often go unmet in the absence of specific written policies and service guidelines.[16] Several youth interviewed stated that health care providers did not raise important sexual health care issues with them.[17] Although youth wanted to understand how to protect themselves from STIs, unwanted pregnancy, and HIV, medical staff did not offer this information.[18] Youth also expressed uncertainty as to whether they had been tested for certain STIs or HIV, and, if they had been tested, concerns that they had not been informed of their test results.[19] Youth also expressed dissatisfaction with the amount and quality of their sexual health education. They reported receiving conflicting information, and little or no information about how to protect themselves from STIs and HIV, especially during same-sex activity.[20] Many youth also stated that their medical information was not kept confidential. They reported that all staff knew if they had an STI, often told residents about other residents' STIs, or distributed medication in a way that made residents' STIs obvious.[21]

Under both state and federal law, however, youth detention and related facilities are obligated to provide medically appropriate and culturally sensitive health care to all youth, including LGBTQ youth, who are in their custody.[22] Because these institutions essentially step into the shoes of the parent, they also have a duty to provide for the safety of the young people in

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[16] Center for HIV Law and Policy, *supra* note 12, at 9.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *See, e.g.,* Youngberg v. Romeo, 457 U.S. 307 (1982).

their care, which includes understanding what conduct is inappropriate, how to address inappropriate or potentially abusive staff interactions with youth, when to intervene, and how to address a situation without punishing the person who was the subject of the harassment or violence. Fostering a safe and inclusive environment in which all youth feel protected – an environment that is reflected in the availability of consistent, LGBTQ-inclusive and affirming sexual health care and sexual health education – is a fundamental obligation of a parent, a role which the state chooses for itself when it removes a child from a home or the street in favor of out of home care. Meeting this obligation in turn serve to preserve health, reduce HIV and STI transmission risk, and increase the odds that at-risk youth will develop the essential life skills and knowledge to protect their sexual health, develop self-respect, and foster tolerance.

II. RECOMMENDATIONS

Because adequate sexual health care and sexual health education have significant, life-long consequences for all youth in state custody, we believe that written policies guaranteeing the elements of these basic services, standards that guide policy implementation, and mechanisms to enforcement of quality sexual health care and education for all youth under state care should be treated as central to basic medical services guaranteed to youth who rely on the Commonwealth for their needs. The United States Department of Justice noted that the effects of quality sexual health care and sexual health education in state facilities would reach far beyond those youth under their care: "[j]uvenile facilities may be prime settings for intensive HIV/STD education . . . . Since virtually all confined juveniles are eventually discharged, behavioral interventions could benefit not only the youths themselves but persons they encounter once

released."[23] Policies and standards in state care institutions must promote equal treatment and care those living with HIV/AIDS and those who identify as LGBTQ.

The Massachusetts Department of Youth Services (DYS) has a policy regarding HIV and STI services for youth in detention.[24] DYS offers STI screenings and HIV counseling and testing, and performs physical examinations for youth in its care.[25] DYS also has policies regarding staff and client sexual misconduct, and its website references an employee handbook.[26] However, none of the materials we reviewed include LGBTQ-specific information or standards for the provision of services or staff training, or for sexual health care beyond basic STI/HIV screening. Specific aspects of reproductive health, such as condom and other STI prophylaxis, birth control, and pregnancy termination are not addressed. While DYS's existing policies provide a foundation for protecting youth in state care, comprehensive policies that implement and enforce LGBTQ-inclusive sexual health care and sexual health education in state facilities would better serve DYS's goal to reduce the risk of HIV and STI transmission, while also empowering youth to take more affirmative responsibility for their and their partners' sexual health.

The Center's Teen SENSE initiative recently released a set of Model Policies and Standards that, used together, outline the essential elements for quality sexual health care and sexual health education for youth in state custody. The Model Standards provide a framework for bringing consistent and comprehensive LGBTQ-inclusive sexual and reproductive health care to

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[23] Rebecca Widdom & Theodore Hammet, National Institute of Justice, *HIV/AIDS & STDs in Juvenile Facilities* 1, 3 (1996).
[24] Department of Youth Services, *HIV Awareness Policy*, Continuum of Care Policies (November 2009), http://www.mass.gov/eohhs/docs/dys/policies/020514a-hiv-awareness.doc.
[25] Massachusetts Department of Youth Services, *Health Services Provided by the Department of Youth Services*, http://www.mass.gov/eohhs/consumer/family-services/youth-services/juvenile-justice/department-of-youth-services-health-services.html (last visited July 5, 2012).
[26] Department of Youth Services, *Client Sexual Misconduct*, Department Policies (March 2007), http://www.mass.gov/eohhs/docs/dys/policies/ 010506a-client-sex-misconduct-word.doc; Department of Youth Services, *Staff Sexual Misconduct*, Department Policies (March 2007), http://www.mass.gov/eohhs/docs/dys/policies/010507a-staff-sex-misconduct-word.doc; Department of Youth Services, *Employee Handbook*, Department Policies (January 1999), http://www.mass.gov/eohhs/docs/dys/policies/010501b-employee-handbook.doc.

the most at-risk, vulnerable, and underserved youth populations in the Commonwealth. Adoption of similar policies and standards that address sexual health and related staff training is a resource-efficient way of targeting those young people most in need with the services and skills to avert or lower the risk that they will become HIV-infected.

1. ***Sexual Health Care for Youth in State Custody***

Teen SENSE's *Model Policy: Sexual Health Care for Youth in State Custody* (Appendix A) outlines the minimum requirements for sexual health care services, including health screenings and comprehensive sexual histories; universal offers of HIV and STI counseling and testing; written information, counseling, and treatment related to pregnancy, HIV and STIs, and sexual abuse; written information and counseling on HIV and STI transmission and prevention; and ongoing care and discharge planning related to sexual and reproductive health. These services should be conducted in a confidential, culturally competent, and inclusive manner, particularly for youth who are pregnant, gender nonconforming, or LGBTQ.

Model Sexual Health Care Standards for Youth in State Custody (Appendix B) sets forth in more detail the specific health services essential to an adequate care program, with information on the specific services that ensure care is LGBTQ-inclusive youth and the importance of quality sexual health care for LGBTQ youth.

For example, health screenings should address youth's physical and mental health, including examinations that cover their sexual histories and any instances of abuse. It is important for providers to obtain accurate sexual histories in a manner than normalizes same-sex sexual activity so that (1) youth feel accepted by the provider regardless of sexual orientation; (2) providers can identify youth who experience discrimination, isolation, or abuse because of their sexual orientation and refer them and their abusers for appropriate services; and (3) providers can

more accurately determine appropriate services for all youth. Because of the distinct risk that queer youth will have experienced stigmatization and discrimination, and the mental health impact of such abuse, staff members should be equipped to offer mental health services or referrals that are responsive to LGBTQ youth.

LGBTQ youth in state custody are particularly vulnerable to sexual victimization. A 2010 Department of Justice Bureau of Justice Statistics Special Report on Sexual Victimization in Juvenile Facilities reported that from 2008 to 2009 at least one in 10 youth was sexually abused, at least one in 10 experienced staff sexual misconduct, and LGBTQ youth were 10 times more likely to be sexually victimized than were heterosexual youth.[27] The Model Standards highlight the importance of having medical staff and support systems that acknowledge and address needs of these youth, especially those that identify as LGBTQ, so that these youth may safely report instances of sexual victimization and receive treatment accordingly.

The Model Standards also address the unique needs of transgender youth health concerns and the methods staff should use to identify and communicate those concerns to the youth, family members, and other staff. These methods include long-term mental health counseling when appropriate, the use of preferred names and pronouns and discussion with the youth about when it is safe to use these names and pronouns, and affirming youth who wear clothing and choose to groom consistent with their gender identity. Additionally, staff should discuss with youth and other providers plans for transition, STI screening, safety, mental health, the use or discontinuation of hormones and silicone injections, and ongoing care.

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[27] Bureau of Justice Statistics, *U.S. Dep't of Justice, Special Report: Sexual Victimization in Juvenile Facilities Reported by Youth 2008-2009,* 11 (2010), available at http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2113 (last visited July 5, 2012).

Finally, in order to foster communication between providers and all youth under their care, providers and facilities staff should conduct services and screenings in a form and language fully understood by youth who may not speak English or may have a physical or mental disability.

2. *Sexual Health Education for Youth in State Custody*

Model Policy: Sexual Health Education for Youth in State Custody (Appendix C) outlines the minimum requirements for a sexual health education program, including basic information on HIV and STI transmission; resources related to pregnancy, HIV and STIs, sexual violence, and LGBTQ discrimination; and information and discussion on sexual abuse and harassment, including reporting procedures. Introduction to these topics should increase in proportion to a youth's time in state custody. However, whether a youth is in custody for 24 hours or for over two months, youth facilities should offer basic information on STIs and HIV transmission in addition to a list of community resources related to pregnancy, STI prevention, sexual violence, and LGBTQ discrimination.

Classroom environments and teachers should create a comfortable space for youth of any sexual orientation, gender identity, and gender expression. They should demonstrate nonjudgmental, inclusive attitudes when discussing all points on the spectrum of gender and sexuality, adopting safer sex practices, and developing levels of understanding and skills that improve sexual health into adulthood while reducing the incidence and tolerance of sexual abuse.

Model Sexual Health Education Standards for Youth in State Custody (Appendix D) sets forth in more detail the essential content goals and instructional elements of a comprehensive, LGBTQ-inclusive sexual health education program, with recommendations for varying levels of information provided based on the length of time the youth is under state care. The Model

Standards emphasize specific principles that any curriculum or instructor should adhere to in order to create an inclusive, safe environment for youth in state custody to synthesize the knowledge and skills to make accurate and informed decisions about their sexual lives. At a minimum, curricula should incorporate the principles that (1) youth need and deserve respect, (2) youth need to be accepted, (3) a positive approach to sexuality is the best approach, and (4) all sexual orientations and gender identities must be acknowledged, understood and respected by all youth and staff.

Sexual health education curricula also must concretely address the actual experiences of youth in state care. Youth need practical resources on how to manage existing conditions and the risks and repercussions of sexual assault, homelessness, sex work, drug abuse, and pregnancy. As the Model Standards suggest, for example a quality sexual health education program should encompass youth about drug abuse and harm reduction skills; and the signs and consequences of violence and sexual harassment perpetrated by youth and adults against LGBTQ as well as heterosexual youth.

3. *Training for Youth Facility Staff: Ensuring Competence that Includes the Rights and Needs of LGBTQ Youth*

The implementation and enforcement of comprehensive sexual health care and sexual health education in out-of-home care institutions is unlikely to succeed in an environment of stigma and intimidation. The Teen SENSE *Model Policy: Training for Youth Facility Staff: Ensuring Competence that Includes the Rights and Needs of LGBTQ Youth* (Appendix E) and related Model Standards (Appendix F) outline the basic requirements for ensuring the competence of all staff in sexual health principles and the rights and needs of LGBTQ youth in custody. They anticipate that all staff of foster care, detention, and other government-regulated

youth facilities will receive the necessary training that equips them to understand and protect the health and well-being of all youth, regardless of the youth's gender identity or sexual orientation.

Quality staff training curricula should prepare staff to identify the effects of stigma or discrimination on LGBTQ or HIV-positive youth's health, maintain confidentiality and an atmosphere of safety and acceptance, ensure access to services consistent with LGBTQ youth's interests and communities with which they identify, and explain procedures for reporting and responding to youth and staff complaints about conduct that is in conflict with these policies.

Model Staff Training Standards: Focusing on the Needs of LGBTQ Youth (Appendix F) delineates specific goals for staff training programs that apply to all levels of staff members in every department or position at institutions for youth in state custody. The Model Standards set forth a number of educational objectives that staff training curricula should incorporate. One important educational objective is that staff members will understand and be effective in ensuring the privacy and confidentiality of all youth, including LGBTQ and HIV-positive youth. Youth in state custody are less likely to seek needed services if they are concerned that their privacy will be violated, and LGBTQ youth may feel or be vulnerable to violence if their sexual orientation or gender identity is disclosed to others within the facility.[28]

Staff training provides staff with the resources and capabilities to engage respectfully with LGBTQ youth's sexuality and gender. Staff must support and encourage LGBTQ youth to embrace their own sexual orientation, gender identity, and gender expression, while understanding and being sensitive to age-appropriate adolescent sexuality and gender expression. Competent staff members make sure that LGBTQ youth have knowledge of and access to services consistent with their interests and identities, use appropriate and respectful terms to

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[28] Center for HIV Law and Policy, *Model Staff Training Standards*, Teen SENSE Initiative, 10 (January 2012), http://hivlawandpolicy.org/resources/download/694.

identify youth of all sexual orientations and gender identities, and make referrals and provide resources as necessary for care and treatment.

IV. CONCLUSION

It is important that out-of-home care staff, as well as legislators, advocates, and the Commonwealth, understand the need for sexual health and staff competencies and meaningfully invest in this process. Teen SENSE and its Model Policies and Standards provide a useful legal and human rights framework guiding the adoption of appropriate, nonjudgmental sexual health care and real HIV prevention as a routine part of health services for youth in state custody. The imperative for written policies and standards that incorporate sexual health into basic health services is both a human rights and a pragmatic one. Comprehensive, LGBTQ-inclusive sexual health services for youth in care seize a unique public health opportunity not only to advance individual health but to efficiently address a major health threat for those youth most at risk for HIV, STIs and sexual abuse. By supporting and adopting these standards for this care, the Commonwealth of Massachusetts can send a powerful message that *all* youth – youth of color, queer youth, homeless youth, and youth with physical and mental disabilities – deserve the basic tools of knowledge, power, and respect regarding their own sexual health decision-making, sexual orientation, and gender identity.

Accordingly, we strongly encourage your consideration, endorsement, and implementation of the Teen SENSE Model Policies and Standards for youth in state custody. Thank you for the opportunity to present this testimony on these important issues.