

THE CENTER FOR HIV LAW AND POLICY

Sexual Health Advocacy for Youth in Foster Care and Detention Facilities

I. High-Risk and Underserved: Youth in State Custody

- The need for coordination and improvement of HIV legal and policy advocacy is particularly critical for youth in state care and custody. As many as half of all youth with HIV pass through the child welfare system, and youth in state care, particularly lesbian, gay, bisexual and transgender youth, are at an alarmingly high risk of becoming HIV- infected. Few if any states have a written policy concerning the provision of sound, comprehensive HIV/AIDS education for children in foster or residential care, and some have policies that are affirmatively harmful.
- Juvenile offenders are also at high risk of HIV infection; a recent survey of juvenile detainees in Chicago found that nearly all had engaged in activity placing them at risk of HIV infection. Many children at particular risk of HIV – e.g., runaways, drug users and adolescents who trade sex for money – "cycle through" youth detention facilities, yet few of these facilities offer educational programs addressing HIV prevention. Overall, fewer than a handful of states have policies addressing the needs of at-risk youth, or even rudimentary programs that address the sexual health and HIV prevention needs of adolescents in state care. The handful of existing agencies addressing the rights of the incarcerated tend to overlook those confined to juvenile detention facilities. Yet with nearly half a million juveniles spending time in detention centers around the country, targeting advocacy in this direction has a potentially significant impact for the health of at-risk youth and the communities to which they return.
- There is a critical need to address the discriminatory treatment and the lack of policies, staff training and services that endanger and stigmatize these youth, particularly LGBT youth, and foster self-destructive behavior. With access to sound sexual health information in schools a continuing question mark, and with an indifferent state as the "parent" on which youth in custody must rely for the answer to their health, safety and education needs, the impetus for intervention is clear.

II. Addressing the Needs of At-Risk Youth in State Care -- The Need, the Challenges, and Some Strategies for Change

- Sexual health and HIV prevention programming must be ongoing and recognize accurately and without judgment the full range of sexual orientation and gender identification issues. HIV prevention for gay youth must take place in a supportive environment, and deal with issues such as coming out, substance use, and with the development of skills and strategies for coping socially. Addressing the lack of prevention in state-regulated youth care facilities also must include the challenging task of eliminating the institutionalization of sexphobia, homophobia and heterocentrism in that system.
- Addressing States' Failure to Provide for the Protection of the Health of LGBT and At-Risk Youth in State Care:
 - State laws governing adolescents' autonomy in consenting to certain kinds of health care services provide a foothold.
 - State and local laws prohibiting sexual orientation-based discrimination can be used to challenge the failure to address LGBT youth in sexual health and HIV prevention programming.
 - State sponsorship of religion through incorporation of religious content in sexual education programs raises First Amendment issues .
 - State and federal equal protection guarantees require that all youth in state care have equal

access to services that protect their health and welfare.

- Restrictions on the right of adolescents in state care to access information and services related to their sexual health and choices threaten constitutionally-protected privacy rights.
- Support is available in some prison cases recognizing that, in the area of health care, the rights of those in custody may require more, rather than less, investment of resources than that afforded free people.
- Policy reforms can be linked to state licensing/certification requirements of group homes and foster parents; to accreditation standards that private and state funding and oversight agencies require of service providers; and to professional codes of ethics.
- The monitoring and investigation of physical and emotional abuse of queer youth in foster care and detention facilities must be improved and focused.
- Increase funding of housing and programmatic innovations that link LGBT foster youth to gay-supportive community resources.
- Develop reform initiatives through collaborative coalitions representing a diverse range of disciplines and community agencies with ties to child welfare. State advocates for children in neglect and abuse proceedings are a potential, and underused, resource.

Selected Resources

1. *For information on youth in detention, health issues and HIV:*

- American Medical Association, *Delivering Culturally Effective Health Care to Adolescents* (2002), available at www.ama-assn.org/ama/pub/category/1981.html (last visited May 29, 2007).
- Feinstein, R., Greenblatt, A., Hass, L., Kohn, S., Rana, J., The Urban Justice Center, *Justice for All? A Report on Gay, Lesbian, Bisexual and Transgendered Youth in the New York Juvenile System* (2001)(LGBT youth may make up anywhere from 4% to 10% of the juvenile justice population).
- Bureau of Justice Assistance, "Juveniles in Adult Prisons and Jails: A National Assessment" (2003), available at www.ncjrs.org.
- National Institute of Justice, *Breaking the Cycle of Drug Use Among Juvenile Offenders*, Final Technical Report (1999), available at www.ncjrs.org.
- Office of Juvenile Justice and Delinquency Prevention, "Treatment, Services, and Intervention Programs for Child Delinquents" (2003), available at the Juvenile Justice Clearinghouse, phone 800-638-8736, or online at ojjdp.ncjrs.org.
- Vera Institute of Justice, *Arrested Development: Substance Abuse and Mental Illness Among Juveniles Detained in New York City*, available at http://www.vera.org/publication_pdf/bridges.pdf.
- Reuters, Juvenile Offenders at High Risk of HIV, available at http://www.cjci.org/press/juvenile_hiv.html (last visited May 29, 2007).

2. *On the importance of science-based, gay-friendly programs and environments in promoting health and safety:*

- Dailard, C., *Understanding 'Abstinence': Implications for Individuals, Programs and Policies*, THE GUTTMACHER REPORT ON PUBLIC POLICY (Dec. 2003)("To date, no education program focusing exclusively on abstinence has shown success in delaying sexual activity.").
- *Sex Education: Needs, Programs and Policies*, The Alan Guttmacher Institute (2003), available at <http://www.soc.umn.edu/copher/sexeduc.pdf>.

- Blake, S.M., et al, *Preventing Sexual Risk Behaviors Among Gay, Lesbian, and Bisexual Adolescents: The Benefits of Gay-Sensitive HIV Instruction in Schools*, 91 AMERICAN J. OF PUB. HEALTH 940, 944 (June 2001)(Gay-supportive school environment can reduce self-endangering activity by LGBT youth).
- Uribe, V., Harbeck, K.M., *Addressing the Needs of Lesbian, Gay, and Bisexual Youth: The origins of PROJECT 10 and School-Based Intervention*, 22 J. HOMOSEX. 9-29 (1992); A New Milestone: Most gays with AIDS are Men of Color, 15 AIDS POLICY AND LAW 8 (Feb. 4, 2000).
- Mallon, G., *Let's Get This Straight: A Gay and Lesbian-Affirming Approach to Child Welfare*, (Columbia Univ. Press, 2000); Mallon, G., *We Don't Exactly Get the Welcome Wagon: The Experiences of Gay and Lesbian Adolescents in Child Welfare Systems* (1998).
- The Alan Guttmacher Institute (www.guttmacher.org), the Kaiser Family Foundation (www.kff.org), and SIECUS (www.siecus.org) are very useful resources for studies and information.
- Child Welfare League of America, *Serving Gay and Lesbian Youths: The Role of Child Welfare Agencies* (1991).

3. *Cases dealing with school sexual health/condom access programs and parental consent:*

- *Alfonso v. Fernandez*, 195 A.D. 2d 46, 606 N.Y.S.2d 259 (2d Dep't 1993)(upholding challenge to school condom availability plan as a "health service" requiring parental consent under NY Pub.Hlth Law § 2504(1), and a violation of plaintiffs' due process right to parent without state interference, but distinguishing condom program from "talk or literature on the subject of sexual behavior").
- *Curtis v. School Committee of Falmouth*, 652 N.E.2d 580 (1995)(criticizing *Alfonso* and upholding similar condom availability program).
- *Brown v. Hot, Sexy and Safer Productions, Inc.*, 68 F.3d 525 (1st Cir. 1995).
- *Parents United for Better Schools v. School District of Phila.*, 68 F.3d 525 (3d Cir. 1998).
- *See also ACLU of Louisiana v. Governor Foster*, No. 02-1440 (settlement agreement available at http://www.aclu.org/FilesPDFs/foster_settlement.pdf)(Recipients of abstinence program funds must submit monthly reporting forms to the governor's office certifying that "this month no activity, event or material created or supported in whole or in part with GPA funds has included religious content; that no GPA funds have been used to advocate or promote, through prayer or otherwise, religion or religious messages.").

4. *Cases relevant to issue of equal protection rights of all youth in state care to appropriate health and social services:*

- *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996)(U.S. Constitution's guarantee of equal protection requires school officials to protect both gay and hetero students from harassment).
- *Stemler v. City of Florence*, 126 F.3d 856 (6th Cir. 1997)(discrimination based on perceived sexual orientation violates equal protection guarantees).
- Recent challenges to parental notification statutes, in which state courts have rejected distinctions in mandated parental involvement between pregnant minors seeking abortions and those choosing to carry to term as violative of equal protection, are also potentially helpful. *See American Academy of Pediatrics v. Lungren*, 940

P.2d 797 (1997)(concluding that parental notification statute violates state equal protection guarantees because "no compelling state interest has been established to justify the classification of minors based upon their reproductive choices."); *see also State of Alaska v. Planned Parenthood of Alaska*, 35 P.3d 30 (Alaska 2001).

5. *On the privacy right of adolescents to access health services relevant to their reproductive choices:*

- *North Florida Women's Health and Counseling Services, et al. v. State of Florida*, 2003 WL 21546546 (Fla)(finding that Florida's parental notification statute governing minors seeking abortions violates state constitutional right of privacy).
- *State of Alaska v. Planned Parenthood of Alaska*, 35 P.3d 30 (Alaska 2001).