



TESTIMONY OF GLBTQ LEGAL ADVOCATES & DEFENDERS
In Support of S 1566 / H 2484, *An Act to promote rehabilitation including guaranteed health, treatment, and safety for incarcerated LGBTQI+ people*
In Support of S 1559 and S 1609, *An Act relative to inmate telephone call rates*
October 21, 2021

Senator Walter F. Timilty
Representative Carlos González
Massachusetts State House
Joint Committee on Public Safety and Homeland Security

Dear Chair Timilty, Chair González, and Members of the Joint Committee on Public Safety and Homeland Security:

Through strategic litigation, public policy advocacy, and education, GLBTQ Legal Advocates and Defenders (GLAD) works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation.

GLAD writes in strong support of **S 1566** and its accompanying House bill **2484**, *an Act to promote rehabilitation including guaranteed health, treatment, and safety for incarcerated LGBTQI+ people*. GLAD separately writes to express its support for **S 1559** and **S 1609**, each entitled *an Act relative to inmate telephone calls*.

S 1566 / H 2484: *An Act to promote rehabilitation including guaranteed health, treatment, and safety for incarcerated LGBTQI+ People*. These bills would take important steps to ameliorate the profound harms that incarcerated LGBTQI+ people face, and would provide additional mechanisms for the public, policy officials, and advocates to gain a greater understanding of the demographics of the Commonwealth's incarcerated population and instances of sexual assault. Namely, these proposals would restrict the use of solitary confinement against an incarcerated person due to their LGBTQI+ status or for reporting acts of sexual violence in good faith, among other crucial steps to reduce the harms that occur to incarcerated LGBTQI+ individuals. Further, the bills would provide additional access to critical HIV prevention and management care, as well as a means for individuals to pursue civil actions directly related to sexual violence without cumbersome grievances processes. In all, the safeguards contained in these bills will have a profound impact on the health and safety of LGBTQI+ individuals who are incarcerated, including LGBTQI+ people of color and others with intersecting identities.

The proposed legislation is a crucial step to improve the safety of, and reduce punishments and harms to, incarcerated LGBTQI+ individuals, which data demonstrate represent a larger portion of the incarcerated population than Non-LGBTQI+ groups. Further, those LGBTQI+ individuals who are incarcerated face greater challenges, difficulties, and threats to their safety



while incarcerated than the general population. A 2017 analysis done by the Williams Institute of the 2011-2012 National Inmate Survey found that not only was the rate of incarceration of LGBTQI+ people nearly three times higher than the general incarceration rate, but that incarcerated sexual minority individuals “experience higher rates of mistreatment, harsh punishment, and victimization.”¹

Additionally, punitive policies surrounding restrictive housing and solitary confinement overwhelmingly impact LGBTQI+ individuals. A study by Black & Pink of the national LGBTQI+ incarcerated population found that an overwhelming majority of respondents (85%) had spent time in solitary confinement and that half of respondents had spent two years or longer there.² Indeed, half of the respondents who experienced solitary confinement were “put there for their own protection but against their will.”³

These bills are an important step to curbing the abuse of restrictive housing practices that disproportionately harm LGBTQI+ individuals, both by reducing the likelihood of the use of such practices and protecting individuals who come forward to report instances of abuse or mistreatment that may otherwise be placed in restrictive housing using a paternalistic view of what is best for their safety. Reducing the use of restrictive housing is a critical step to improving the mental health of the incarcerated populations, given its well-documented detrimental effects. This is especially important for LGBTQI+ individuals, as LGB adults are more than twice as likely as heterosexual adults to experience a mental health condition, and transgender individuals are nearly four times as likely as cisgender individuals to experience a mental health condition,⁴ raising the likelihood that restrictive housing will exacerbate existing conditions for these populations.

Further, this legislation protects individuals from being singled out for disproportionate punishment due to their identity or expression, while lowering the risks of harm perpetrated by other incarcerated individuals or correctional officers. One study found that incarcerated sexual minority individuals are routinely punished for consensual sexual acts leading to consequences affecting parole, housing, and access to other programs. Further, these individuals are more likely than heterosexual peers to be disciplined for even nonsexual behaviors, such as attire and gender expression due to the perceived deviation from societal norms.⁵ These bills will help ensure that individuals are not punished and treated differently solely due to the expression of their sexual

¹ Ian H. Meyer et al., *Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey*, 107 *AJPH Res.* 267, 270 (2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5227944/pdf/AJPH.2016.303576.pdf>.

² Jason Lyndon et al., *Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey* 34 (2015), available at <http://www.blackandpink.org/wp-content/uploads/Coming-Out-of-Concrete-Closets.-Black-and-Pink.-October-21-2015..pdf>

³ *Id.* at 35.

⁴ National Alliance on Mental Health, *LGBTQI, Identity and Cultural Dimensions* (2021), <https://www.nami.org/Your-Journey/Identity-and-Cultural-Dimensions/LGBTQI>.

⁵ See Meyer, *supra* note 1 at 272.



orientation and gender identity, and will provide vital resources for individuals without fear that they will be placed in solitary confinement simply because of their orientation or identity.

GLAD also applauds the proposed protections and improvements for incarcerated individuals that are, or at higher risks of becoming, HIV positive. The rate of HIV among incarcerated individuals is 5 to 7 times that of the general population, and the correctional setting is often the first place incarcerated people are diagnosed with HIV and provided treatment.⁶ Providing individuals consistent access to HIV-prevention medications and HIV management medications, as well as resources for individuals living with HIV, is a crucial public health and safety step, which will improve the lives of LGBTQI+ individuals who are currently incarcerated.

Finally, GLAD highlights that these measures will also have a profound benefit for incarcerated individuals with multiple intersecting identities. A national survey of transgender individuals found that the incarceration rate for transgender respondents was higher among transgender people of color and low-income respondents, likely due to “a history of bias, abuse, and profiling toward LGBTQ people by law enforcement, along with high rates of poverty, homelessness, and discrimination in schools and the workplace.”⁷ The steps envisioned in S 1566 / H 2484 to improve the lives of the LGBTQI+ population will therefore have a compounding impact on individuals of color who are incarcerated.

S 1559 / S 1609: An Act relative to inmate telephone call rates. This is common-sense legislation that will foster continued relationships between and among incarcerated people and their family members. The current system unfairly and unethically transfers to incarcerated people, but also their family members, the responsibility for generating additional sources of revenue for the state through the mechanism of high phone rates. It does this at the same time it disincentivizes incarcerated people from maintaining family support systems on which they rely to endure incarceration and upon which they will need to depend for post-release supports. Incarcerated individuals in the Commonwealth are charged a range of prices per minute of telephone use, and data from 2018 demonstrate that jails charge nearly three times the state prison rate.⁸ Further, contracts with providers allow facilities to earn commissions, which can “incentivize prisons and jails to charge high phone rates in exchange for a share of the revenue.”⁹ Research shows that the majority of individuals held in jails have not yet been convicted of any crime as they await trial or try to make bail, meaning that these facilities punish individuals through phone call fees before

⁶ The Center for HIV Law Policy, *Prisons and Jails* (2019), <https://www.hivlawandpolicy.org/issues/prisons-and-jails>.

⁷ National Center for Transgender Equality, *LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and Their Legal Rights* 5 (2018), available at <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>.

⁸ Peter Wagner and Alexi Jones, *State of Phone Justice: Local jails, state prisons and private phone providers*, Prison Pol’y Inst. (2019), available at https://www.prisonpolicy.org/phones/state_of_phone_justice.html

⁹ Editorial Board, *Calling home: A hardship for prisoners, a boon to Bristol County sheriff*, BOSTON GLOBE (2020), available at <https://www.bostonglobe.com/2020/07/21/opinion/calling-home-hardship-prisoners-boon-bristol-county-sheriff/>.



they have even been found guilty of any crime.¹⁰ Further, given the disproportionate impact of the criminal system and incarceration on people of color and low income individuals, these punitive mechanisms to raise revenue are exploiting some of the most marginalized and vulnerable members of the community. An incarcerated individual's family should not be penalized and punished during already stressful and destabilizing periods as a means of raising revenue for the criminal system. This legislature would join Connecticut, which recently became the first state to enact similar legislation, at the forefront of efforts to reduce the systemic harm exacted on the families of incarcerated individuals through exorbitant billing practices.

GLAD strongly supports these bills, and we urge the Committee to report them out favorably.

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¹⁰ Wendy Sawyer and Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, Prison Pol'y Inst. (2020), available at <https://www.prisonpolicy.org/reports/pie2020.html>.