



NEW YORK
CITY BAR

**COMMITTEE ON LESBIAN, GAY,
BISexual AND TRANSGENDER RIGHTS**

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Hon. Bill de Blasio
Office of the Mayor
City Hall
New York, NY 10007

Dear Mayor de Blasio:

The New York City Bar Association (the “City Bar”) is an organization of over 24,000 lawyers and judges dedicated to improving the administration of justice. The Committee on Lesbian, Gay, Bisexual and Transgender Rights (the “Committee”) addresses the legal and policy issues as well as employment rules and procedures in legal institutions and the court system affecting LGBTQ individuals. The Committee respectfully submits this report in order to convey the City Bar’s position regarding much-needed policy changes to establish equal rights and protections for LGBTQ New Yorkers.¹

**MODERNIZE POLICY REGARDING PROOF REQUIRED TO CHANGE GENDER
DESIGNATION ON BIRTH CERTIFICATES**

The City Bar recommends that the City’s Department of Health and Mental Hygiene revise its outdated birth certificate policy, which currently requires transgender individuals to undergo “convertive surgery” in order to correct the gender designation on their birth certificates. This requirement is contrary to contemporary medical standards of care, which recognize that surgical intervention is not an appropriate treatment for all transgender individuals. In addition, the cost of such surgery often poses an insurmountable barrier to the ability of transgender persons to obtain birth certificates that are consistent with their gender identity and consistent with their other identity documents. Presenting a birth certificate with an incorrect gender for identification purposes can lead to confusion, discrimination, and harassment.

A modernized policy for transgender people seeking to amend their birth certificate’s gender designation should require only *one* document from a treating or evaluating healthcare

¹ These recommendations were included as part of our larger report of policy recommendations sent to your office last year. See “Policy Recommendations for New York City’s Next Mayor”, New York City Bar Association, May 2013, at <http://bit.ly/11Xmn8K>.

provider that demonstrates *clinically appropriate* treatment has been provided based on the person's individualized and particular medical needs. Such a policy would be comparable to the current policies of four federal agencies, three sister states, and another N.Y.S. agency. The U.S. State Department, the U.S. Office of Personnel Management, the U.S. Department of Veterans Affairs, the U.S. Citizenship and Immigration Services, and the states of Vermont, California, and Washington, as well as the New York State Department of Motor Vehicles, all have modern policies that reflect that certification from physicians and other health professionals attesting to clinically appropriate treatment or authenticity of a person's gender identity should be sufficient to correct the gender marker on identity documents.² New York City should likewise update its policy and improve transgender New Yorkers' ability to access identity documents that recognize and respect their gender identity.

IMPROVE THE RELATIONSHIP BETWEEN CITY AGENCIES AND LGBTQ NEW YORKERS

Human Resources Administration (HRA)

HRA has faced multiple lawsuits in the past few years based on its treatment of transgender and gender non-conforming individuals. According to the lawsuits, HRA employees made disrespectful comments about the clients' gender identity, declined to process requests to change gender and name, and refused to refer to the clients by the correct pronouns and legal name despite numerous requests.

These reports are concerning given that HRA is an agency tasked with helping those in need. Transgender individuals should be able to receive benefits and services from HRA without fear of being ridiculed or harassed. The City should take steps to train HRA staff on providing services for transgender individuals, and should also adopt a clear procedure consistent with contemporary medical standards for transgender individuals to correct the gender markers on their benefit documents.

Administration for Children's Services (ACS)

LGBTQ youth are more likely to be homeless and/or involved in the juvenile justice or child welfare system than their heterosexual peers. According to recent research, one out of every five homeless youth identifies as gay, lesbian or bisexual, and an estimated 4-10% of youth in the juvenile justice and child welfare systems are LGBTQ. This increased prevalence arises from multiple factors, including family rejection, harassment in schools, emotional and sexual abuse, and intolerance from their community.

Once in custodial care, LGBTQ youth often experience increased risk of exposure to violence and rejection. ACS has implemented progressive measures to combat homelessness within the LGBTQ youth community such as sensitivity training, diversity recruitment and

² See "Report on the Need to Modernize New York State Policy Regarding Proof Required to Change Gender Designation on a New York State Birth Certificate", Committee on Lesbian, Gay, Bisexual and Transgender Rights, New York City Bar Association, March 2013, at <http://www2.nycbar.org/pdf/report/uploads/20072438-ModernizingGenderDesignationProofforNYSBirthCertificates.pdf>.

retention of qualified parents to house and mentor them. ACS should continue to earmark funding for these programs and policies. There are, however, a number of ways in which ACS could improve its services for LGBTQ youth.

First, the unique obstacles LGBTQ youth face within the juvenile justice and child welfare system are difficult to address without reliable data from ACS. The City Bar supports a change in policy which would require ACS to add sexual orientation and gender identity to the demographic data they collect from those they serve within the child welfare and juvenile justice systems. This policy change would align with existing State and City human rights laws, and existing ACS policies and directives that serve to promote safe environments for LGBTQ youth.³

In addition, the City Bar recommends comprehensive training and enforcement as to nondiscrimination policies for employees and contractors within agencies working with ACS, including the Department of Youth and Community Development, NYPD and Department of Education (DOE). Such oversight will ensure this vulnerable population is treated in a respectful and culturally competent manner, and that LGBTQ youth are given the tools to succeed.

NYPD

The NYPD must continue to build a positive relationship with LGBTQ individuals and communities and integrate LGBTQ individuals into its ranks. LGBTQ individuals and communities should feel safe from police abuse, misconduct, harassment and unlawful stops and frisks, so that they can openly express their gender and sexuality. In order to accomplish these goals, the City Bar recommends that the NYPD LGBT Advisory Panel currently in place be continued, and that your administration work to ensure full implementation of the June 2012 NYPD Patrol Guide revision clarifying that discrimination against and harassment of transgender and gender nonconforming individuals is prohibited and that such individuals must be treated with respect if detained.

Similar to the problem of profiling, certain LGBTQ individuals have reported being arrested or detained for prostitution simply based on their possession of condoms. Such arrests have negative personal safety and public health consequences, providing a disincentive for individuals who may be at high-risk from using protection when engaging in sex. The Committee urges you to support State and local legislative initiatives to prohibit police and prosecutors from using condom possession as evidence of prostitution and related offenses; and to issue written and verbal instructions to officers to cease the confiscation of condoms from suspected sex workers or anyone else, and discipline those who do so.

³ See ACS Policy #2011/05 “Promoting a Safe and Respectful Environment for LGBTQ Youth and their Families Involved in the Child Welfare System” and ACS Division of Youth and Family Justice Direction 01/2011 “Guidelines for Promoting a Safe and Respectful Environment for LGBTQ Youth and their Families Involved with DYFJ,” available at http://www.nyc.gov/html/acs/downloads/pdf/policy_newsletter_q2_2011.pdf (last visited March 26, 2013). See also N.Y. Exec. L. §§ 291, *et seq.*; N.Y.C. Admin. Code § 8-102(23).

IMPROVE THE QUALITY OF THE SCHOOL ENVIRONMENT

In New York, as across the nation, LGBTQ students, and those perceived to be LGBTQ or gender nonconforming, are more likely to be the subject of bullying and harassment by their peers. As part of an attempt to address this problem, the State Legislature enacted the Dignity for All Students Act (DASA) which, *inter alia*, requires school systems to enact a variety of policies and guidelines designed to reduce bullying and harassment of all students.⁴ Among these requirements are mandates to collect data on and report bullying and harassment incidents to the State Education Department (NYSED), incorporate diversity and civility training into curricula, amend or adopt codes of conduct, and appoint Dignity Act Coordinators to respond to bullying-related incidents. Likewise, the DOE Respect for All initiative and Disciplinary Code consider bullying based on sexual orientation “injurious” and “harmful” behavior, and direct swift intervention.

The City Bar supports the DOE’s Respect for All initiative, a strong step towards implementing DASA and combating the epidemic of harassment and bullying in our country and city. However, there are areas in which the DOE could improve its efforts at DASA implementation. The City can improve its DASA implementation through the way it reports bullying and harassment incidents and disseminates the resulting information to the public. Although DASA requires data reporting, we understand that NYSED does not intend to recommend any specific data collection system, leaving the choice to school systems. The City’s Online Occurrence Reporting System appears to be, and indeed may already be, an efficient method of such data collection. However, this method could be more transparent on the DOE website. Specifically, the site does not explain what must be entered into the system, or what the data is used for after it is entered. The dissemination of this information, along with outreach and education, would be helpful in engaging parents – a core constituent group currently left out of DOE’s DASA implementation – as well as students, educators, and community leaders.

PREVENT SEXUAL ABUSE OF LGBTQ INMATES

As various reports and litigation have confirmed, LGBTQ individuals in the City’s detention centers suffer sexual abuse at alarming rates – both at the hands of fellow inmates and at the hands of correctional employees. The problem of sexual abuse in correctional facilities is not unique to the City. To address the problem, Congress enacted the Prison Rape Elimination Act (PREA) in 2003, P.L. 108-79, and, in May 2012, the U.S. Department of Justice (DOJ) promulgated standards to detect, prevent, reduce and punish sexual abuse in prisons and jails, lockups, community confinement facilities, and juvenile detention centers (hereinafter “jails”). The City is mandated to comply with these standards, which recognize the particular dangers to LGBTQ detainees.

The City should develop compliance protocols that meet and go beyond DOJ minimums, so as to maximize dignity and equality for all detained in City jails. Responsibility for compliance should be vested in coordinators at each institution. These coordinators should be charged with providing a meaningful measurement of reform success or failure; reporting these

⁴ Educ. L. §§ 10-18, and 801, effective July 1, 2012.

observations on a regular basis to their superiors and to their fellow employees at their host institution; and assuring that existing protocols are administered more effectively, tweaked as needed, or replaced by new practices altogether. Data and results should be made publicly available in order to ensure accountability. We urge you to take a strong position on the appointment of effective standards coordinators.

A key piece to eliminating sexual abuse in the City's jails is effective staff training. Detainees must be able to communicate freely with correctional staff as to the sexual abuse risks and sexual harassment they face. Staff members should feel comfortable reporting concerns about sexual abuse and sexual harassment up the chain of command. Communications training should include an LGBTQ-specific module so that staff must understand the particular risks faced by LGBTQ inmates and receive training on how to encourage open communication with this population through sensitive and respectful inquiries and reactions at the moment of intake and throughout detention.

Finally, we urge you to revisit the City's policies on housing for transgender and other non-gender-conforming detainees. The Department of Correction (DOC) currently only considers a detainee's genital sex in making prisoner placement. DOC must develop a protocol that considers gender expression – both as a matter of respect for detainees, and as a matter of securing their safety. PREA and the DOJ standards obligate DOC and other City agencies to make individualized sexual-abuse risk assessments in making placements, as well as to make ongoing situation-specific accommodation upon learning of the risk of sexual abuse.

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Our Committee appreciates your consideration of the foregoing recommendations. We would welcome the opportunity to meet with representatives from your office or any related City agencies to further discuss these issues. We look forward to working with your office to further the rights of LGBTQ New Yorkers.

Sincerely,



Jordan Backman
Chair, Committee on Lesbian, Gay, Bisexual and Transgender Rights

Cc: Dr. Mary Bassett, Commissioner, NYC Department of Health & Mental Hygiene
William Bratton, Commissioner, New York City Police Department
Bill Chong, Commissioner, NYC Department of Youth & Community Development
Carmen Fariña, Chancellor, NYC Department of Education
Joseph Ponte, Commissioner, NYC Department of Correction